

## **Combating organ transplant abuse in China: a Nordic action plan**

by David Matas

In remarks I delivered to public seminars in Copenhagen, Denmark on September 17, 2019, and Helsinki, Finland, on September 18, 2019 and to a Parliamentary briefing in Stockholm, Sweden, on September 19, 2019, I presented for each country an action plan to combat organ transplant abuse in China. This text elaborates on those remarks, dealing with all three countries together.

In China, prisoners of conscience, primarily practitioners of the spiritually based set of exercises Falun Gong but more recently Uyghurs, and also, in lesser numbers Tibetans and House Christians, are being killed for their organs for transplants. The evidence of this mass killing can be found at:

### **i) Works posted on the internet**

1. a report dated June 2006, a revision dated January 2007 under the name *Bloody Harvest*, co-authored by David Matas and David Kilgour;<sup>1</sup>
2. a 2006 submission to the US Congress by Kirk Allison Director, Program in Human Rights and Health, school of Public Health, University of Minnesota;<sup>2</sup>
3. a 2007 Yale undergraduate thesis by Hao Wang under the title "China's Organ Transplant Industry and Falun Gong Organ Harvesting: An Economic Analysis";<sup>3</sup>
4. a 2016 joint update by David Matas, David Kilgour and Ethan Gutmann of *Bloody Harvest* and *The Slaughter*;<sup>4</sup>

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<sup>1</sup> Seraphim Editions

<sup>2</sup> [http://commdocs.house.gov/committees/intlrel/hfa30146.000/hfa30146\\_0f.htm](http://commdocs.house.gov/committees/intlrel/hfa30146.000/hfa30146_0f.htm)

<sup>3</sup> <http://organharvestinvestigation.net/events/YALE0407.pdf>

<sup>4</sup> <https://endtransplantabuse.org/an-update/>

## ii) Published books

- 1) *Bloody Harvest* August 2009, co-authored by David Matas and David Kilgour;
- 2) *State Organs*, a collection of essays from mostly medical professionals, co-edited by David Matas and Torsten Trey, 2012;<sup>5</sup>
- 3) *The Slaughter*, by Ethan Gutmann, 2014;<sup>6</sup>

## iii) Documentaries

- 1) *Red Reign*, 2013, by Masha Savitz;
- 2) *Human Harvest*, 2014, by Leon Lee, which won a 2015 Peabody Award;
- 3) *Hard to Believe*, 2015, by Ken Stone;

## iv) Websites of NGOs

- 1) the World Organization to Investigate Persecution against the Falun Gong;<sup>7</sup>
- 2) the International Coalition to End Transplant Abuse in China (ETAC);<sup>8</sup>
- 3) the China Organ Harvest Research Center;<sup>9</sup>
- 4) Doctors against Forced Organ Harvesting (DAFOH);<sup>10</sup>

## v) Published articles

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<sup>5</sup> Seraphim Editions

<sup>6</sup> Prometheus Books

<sup>7</sup> <http://www.upholdjustice.org/>

<sup>8</sup> <https://endtransplantabuse.org/>

<sup>9</sup> <https://www.chinaorganharvest.org>

<sup>10</sup> <https://dafoh.org/>

"Cold Genocide: Falun Gong in China" by David Matas, Torsten Trey, Maria Cheung, and Richard An, published in *Genocide Studies and Prevention: An International Journal*<sup>11</sup>

## **vi) The judgment of an independent tribunal**

The judgment of the China Tribunal, an independent people's tribunal mandated to inquire into forced organ harvesting from prisoners of conscience in China and to investigate what criminal offences, if any, have been committed.<sup>12</sup>

This accumulated evidence establishes beyond doubt that organ transplant abuse with prisoner of conscience victims has been happening and is happening on a massive scale. The question becomes what to do about it. I have a number of suggestions to make for Denmark, Finland and Sweden.

### **1) Criminal prosecution**

The China Tribunal in June 2019 concluded that forced organ harvesting of prisoners of conscience in China constitutes crimes against humanity and torture.<sup>13</sup> They recommended that the General Assembly ask the International Court of Justice for an advisory opinion whether forced organ harvesting of prisoners of conscience constitutes genocide.<sup>14</sup>

The criminal law of all three countries allows for prosecution of genocide and crimes

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<sup>11</sup> <http://scholarcommons.usf.edu/gsp/vol12/iss1/6>

<sup>12</sup> <https://chinatribunal.com/>

<sup>13</sup> Summary judgment, paragraphs 188 and 189 pages 53 and 54  
[https://chinatribunal.com/wp-content/uploads/2019/07/ChinaTribunal-SummaryJudgment\\_17June2019.pdf](https://chinatribunal.com/wp-content/uploads/2019/07/ChinaTribunal-SummaryJudgment_17June2019.pdf)

<sup>14</sup> Summary judgment paragraph 193 pages 53 and 54

against humanity. The law of Denmark and Finland also allow for prosecution for torture even when it does not constitute a crime against humanity.

For these prosecutable crimes in all three countries, the courts have universal jurisdiction. Neither the accused nor the victim has to be a national or permanent resident. The crime does not have to be committed in the country. In Denmark and Finland, it is sufficient that the wrongdoer is present in the country, even as merely a visitor. In Sweden, not even physical presence is required.

Denmark can prosecute a visitor for an act committed abroad against a foreign national where an international convention to which Denmark is a party requires that Denmark to take jurisdiction over the act.<sup>15</sup> Denmark is a state party to the Convention against Torture.<sup>16</sup> The Convention against Torture obligates states parties to establish and jurisdiction over torture in cases where the accused is present in its territory and it does not extradite the accused.<sup>17</sup>

Denmark can also prosecute a visitor for an act committed abroad against a foreign national for where the act is an offence set out in the Statute of the International Criminal Court.<sup>18</sup> Crimes against humanity and genocide are crimes within the jurisdiction of the International Criminal Court.<sup>19</sup>

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<sup>15</sup> Penal Code section 8

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[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-1&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&clang=en)

<sup>17</sup> Article 5(2)

<sup>18</sup> Penal Code section 8

<sup>19</sup> Article 5(1)(a) and (b)

Danish human rights lawyer Tyge Trier in September 2005 filed a complaint on behalf of the Danish Falun Gong Association against Jia Chunwang shortly before he came to attend in Copenhagen a conference of prosecutors.<sup>20</sup> Jia was the Minister of the Public Security Bureau and head of the Communist Party bureaucracy responsible for the repression of Falun Gong, the 610 Office. Jia left Denmark after the conference was over and before an investigation was completed to determine whether the authorities should apply for an arrest warrant.<sup>21</sup>

In Finland, the Criminal Code provides that the Finnish law applies to Finnish crimes listed in a decree which are committed outside of Finland by a non-national against a non-national.<sup>22</sup> Crimes against humanity, genocide and torture are crimes listed in the decree.<sup>23</sup>

Luo Gan, then one of the nine members of the Chinese Communist Party's governing body, the Central Standing Committee, and head of its justice and legal affairs committee came to visit Finland in September 2003. While he was there, a Finnish human rights lawyer,

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<sup>20</sup> Dorrit Siefert "Falun Gong in International Struggle for Justice against China's Regime" *Information* 30th August 2005

<sup>21</sup> "Universal Jurisdiction in Europe: The State of the Art" Human Rights Watch June 2006, paragraph 14

<sup>22</sup> Chapter 1 article 7(1)

<sup>23</sup> Decree on the application of chapter 1, section 7 of the Criminal Code, Section 1(2), (3) and (9) reproduced in English at "Extraterritorial Jurisdiction in the European Union" December 2010, Redress and FIDH (International Federation for Human Rights) page 126

<https://www.fidh.org/en/region/europe-central-asia/Extraterritorial-Jurisdiction-in>

Erkki Kannisto, on behalf of the local Falun Dafa association, filed with the prosecution office and the police a complaint against him for genocide and torture. Luo Gan left the country before criminal proceedings could be engaged.<sup>24</sup>

A Swedish statute adopted in June 2014 allows for prosecution of genocide and crimes against humanity.<sup>25</sup> Torture is not a separate crime under Swedish law, but may constitute a crime against humanity. In theory, as noted, Sweden can prosecute crimes against humanity and genocide even if the accused is not present in Swedish territory.<sup>26</sup> However, there are obvious practical difficulties in doing so.

Universal jurisdiction may work as a remedy where the accused are long stayers. Against those on short visits, whatever the theoretical legal possibilities, there is simply not enough time to get prosecutions going.

Invocation of universal jurisdiction in particular cases may help to raise awareness of the crimes of which individuals are accused. It may also discourage their travels again to the country where proceedings have been launched. However, going beyond that requires something else.

## **2) Magnitsky legislation**

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<sup>24</sup> Clearharmony.net "Finland: A fair human rights lawyer", 2003-10-06

<http://se.clearharmony.net/articles/a8258-Finland-En-rattfardig-manniskorattsadvokat.html#.XYTNACgzZkg>

<sup>25</sup> Act on Criminal Responsibility for Genocide, Crimes against Humanity, and War Crimes

<sup>26</sup> "'These are the Crimes we are Fleeing': Justice for Syria in Swedish and German Courts" Human Rights Watch, October 3, 2017

Magnitsky legislation, which now exists in six countries, allows authorities to freeze the assets of serious human rights violators, and deny them entry. Identified offenders are named publicly under the legislation. The six countries with the legislation are Latvia, Lithuania, Estonia, Canada,<sup>27</sup> the US<sup>28</sup> and the UK.<sup>29</sup>

The legislation is named after Serge Magnitsky, a human rights lawyer killed in a Russian prison after exposing corruption. Original Magnitsky legislation targeted corrupt Russian officials but has since been expanded to encompass all serious human rights violations everywhere.

None of the countries to date have listed Chinese accused under this legislation. There has been a request to that effect in December 2018 to the Government of Canada, to list fourteen lead persecutors of Falun Gong.<sup>30</sup>

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<sup>27</sup> The Canadian legislation can be found at this link:

<https://laws-lois.justice.gc.ca/eng/acts/J-2.3/FullText.html>

Information about those listed under the Canadian legislation can be found at this link:

[https://www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/sanctions/victims\\_corrupt-victimes\\_corrompus.aspx?lang=eng](https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/victims_corrupt-victimes_corrompus.aspx?lang=eng)

<sup>28</sup> The US legislation can be found at this link:

<https://www.congress.gov/114/bills/s284/BILLS-114s284rfh.pdf>

Information about those listed under the US legislation can be found at this link:

<https://www.treasury.gov/resource-center/sanctions/Programs/pages/magnitsky.aspx>

<sup>29</sup> Information about the UK legislation can be found at this link:

<http://researchbriefings.files.parliament.uk/documents/CBP-8374/CBP-8374.pdf>

<sup>30</sup> Tom Blackwell "Time to sanction rights-abusing Chinese officials under Canada's Magnitsky Act, experts say," National Post, May 15, 2019

Denmark, Finland and Sweden should enact such legislation and list those responsible for organ harvesting of prisoners of conscience in China. Jia Chunwang, whose prosecution could not complete in Denmark, and Luo Gan, whose prosecution suffered a similar fate in Finland, are obvious candidates, among many.

### **3) Mandatory reporting**

On this current visit to Europe, at the European Society for Organ Transplantation Congress, in Copenhagen, on September 16, 2019, I presented a lengthy paper on the need for every country to have mandatory reporting of transplant tourism by health professionals to health administrators.<sup>31</sup> Neither Denmark nor Finland nor Sweden has that reporting now.

In a nutshell, this reporting is essential to combat complicity in organ transplant abuse abroad. Without mandatory reporting, we get caught in a vicious circle. We do little about the problem because we do not know how big it is. We do not know how big it is, because we do little about the problem.

Legislation making complicity in transplant abuse abroad an extraterritorial offence is spreading. As extra-territorial legislation encompasses more countries, so does the need for health professionals to report to health officials about transplant tourism to make these laws effective.

The Danish Council of Ethics reported in 2008:

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<https://nationalpost.com/news/time-to-sanction-rights-abusing-chinese-officials-under-canadas-magnitsky-act-experts-say>



"Every year a number of Danes travel to a different country to buy a new kidney. According to the National Board of Health, Denmark, the number is about four people a year."<sup>32</sup>

The report indicates that the source of this information is private conversations with an official in the National Board of Health. There is no reference to publicly available information.

What are exact numbers each year? Does use of the word "about" mean that National Board of Health is not sure? What are the countries to which these travelers go?

The information on this topic in the report generates more questions than answers. Only mandatory reporting with publicly available aggregate statistics would give the answers.

#### **4) Civil liability**

The law needs to address civil as well as criminal liability. The issue of civil liability raises the question of state immunity. The crimes in China are crimes of China; we are dealing with a state sponsored crime. To what extent can state authorities be held civilly responsible for those crimes?

Since perpetrators are individuals, the doctrine of sovereign immunity, on its face, should not present an obstacle to holding perpetrators to account. Nonetheless, the doctrine of sovereign immunity is expanded to cover individuals acting in state functions, since states act through individuals; penalizing individuals for acting in state functions prevents the state from functioning.

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<sup>32</sup> "Organ Donation: Ethical deliberations and recommendations"

<http://www.etiskraad.dk/~media/Etisk-Raad/en/Publications/Organ-donation-2008.pdf?la=da>

Again, superficially, this exemption of individuals acting in state functions from being brought to account foreign courts should not impede justice for gross human rights violations, since gross human rights violations are not properly state functions. On the contrary, at least formally, all states reject gross human rights violations and claim that they are not engaged in them.

Yet, typically sovereign immunity law does not provide exemptions for grave human rights violations. This absence stands in contrast to the exception for commercial activity, which is often present. States typically allow foreign states to be sued in local courts for violation of commercial promises, but not for promises to respect human rights.<sup>33</sup>

There are some exceptions. The US allows for officials of states designated as sponsors of terrorism to be sued for grave human rights violations.<sup>34</sup> Canada allows for officials of states designated as sponsors of terrorism to be sued for terrorism.<sup>35</sup> But these exceptions are too narrow. For one, they do not catch officials of non-designated states and China has not been designated in any country by any of these statutes.

A designation system is inevitably going to be politicised and slow. A better gatekeeper, to prevent private lawsuits by those who would use phony accusations of human rights abuse as a political weapon, would be the requirement of consent by the state on a case by case basis, not on a foreign state by foreign state basis.

Even with this problem, the absence of an exemption for grave human rights violation in sovereign immunity statutes, there would seem, at first glance, for China, a way out, since

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<sup>33</sup> For Canada, see the State Immunity Act

<sup>34</sup> Foreign Sovereign Immunities Act

<sup>35</sup> Justice for Victims of Terrorism Act

Chinese human rights violations are directed not by state officials acting in state functions but rather by Communist Party officials, acting in Party functions. In China, the state is a puppet; the Party pulls the strings.

Sovereign immunity applies to the state and state functionaries; not to the political parties and party operatives, even in the governing party. This seemingly simple rule has not, regrettably, been applied by foreign governments and courts to China. Foreign governments and parties view the Communist Party and Chinese state to be so closely linked that they have extended sovereign immunity from the state to the Communist Party.<sup>36</sup>

There have been many civil suits around the world against the lead persecutors of Falun Gong - against Jiang Zemin, Bo Xilai, and Luo Gan. These lawsuits have in most cases run aground on the shoals of sovereign immunity. They have not led to judgments against the perpetrators. But they have led to calls for reform in the law of sovereign immunity, a call for an exception for grave violations of peremptory norms of international human rights law.<sup>37</sup> Such an exception could and should be enacted.

In Denmark, there is no legislation on sovereign immunity. For determination whether there is sovereign immunity, Denmark relies on customary international law.<sup>38</sup> When it comes to sovereign immunity and human rights, customary international law, as one might expect, is not completely clear.

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<sup>36</sup> See for instance *Rong Jin v Bo Xilai*, 2016 ONSC 917

<sup>37</sup> See for instance Bill C-632, 41st Parliament of Canada, second session

<sup>38</sup> Gorrissen Federspiel "Sovereign immunity in Denmark"

Individual plaintiffs brought a case in the Italian courts against Germany for World War II human rights violations. Germany in 2008 brought a case against Italy to the International Court of Justice, claiming that Italian courts could not assert jurisdiction over Germany for German human rights abuses, even when those abuses violated peremptory norms of international law. The International Court of Justice in 2012 agreed, on the basis that, at the time the abuses were committed, there was no exception to sovereign immunity in customary international law for violation of the peremptory norms of international law.<sup>39</sup>

Peremptory norms of international law are norms which admit no exception. The prohibitions against torture, crimes against humanity and genocide are such norms. At international law, there is no situation where either torture or a crime against humanity or genocide is permissible.

The 2012 International Court of Justice case leaves open the question whether there is an exception today, if not during World War II, to sovereign immunity in customary international law for violation of the peremptory norms of international law. There is indeed an argument that such an exception exists today at customary international law.<sup>40</sup> The existence of such an exception could be argued in a Danish lawsuit.

However, it would be a lot simpler and more certain to enact legislation setting forth such an exception. Even if customary international law does not set out such an exception, it

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<sup>39</sup> *Jurisdictional Immunities of the State* (Ger. v. It., Greece Intervening), Judgment, 2012 I.C.J. 143 (Feb. 3)

<sup>40</sup> Winston P. Nagan and Joshua L. Root "The Emerging Restrictions on Sovereign Immunity: Peremptory Norms of International Law, the U.N. Charter, and the Application of Modern Communications Theory" University of Florida Levin College of Law, UF Law Scholarship Repository, Winter 2013

does not prohibit state legislation enacting such an exception.<sup>41</sup>

The Ministry of Foreign Affairs of the Government of Finland made a statement, without legislation, in March 1999 that

"participation in commercial activities by a State is not to be considered an act of government, *jure imperii* and therefore, the State does not enjoy immunity in respect of these activities."<sup>42</sup>

The Government could make a similar statement about peremptory norms of international law and, in particular, torture, crimes against humanity and genocide. The Government of Finland could and should state that participation by the State and its agents in violation of peremptory norms of international law, in particular, torture, crimes against humanity and genocide is not to be considered an act of government, *jure imperii* and therefore, the State and its agents do not enjoy immunity in respect of these activities.

Both Finland and Sweden, in becoming parties to the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property, made declarations that their joining was "without prejudice to any future international legal development concerning the protection of human rights".<sup>43</sup> This bespeaks an "After you Antoine" approach.

How does customary international law develop? This law comes from the practice of

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<sup>41</sup> *Bouzari v. Canada*, United Nations Committee against Torture, May 6, 2005, UN document number CAT/C/SR.646/Add.1, paragraph 67 (I was counsel to Mr. Bouzari).

<sup>42</sup> Council of Europe Database The Immunities of States and International Organisations

<http://www.cahdidatabases.coe.int/Contribution/Details/392>

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[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=III-13&chapter=3&lang=en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-13&chapter=3&lang=en#EndDec)

states which they consider binding. It is difficult to impossible to arrive at development of customary international law without development of state practice.

For customary international law to develop, there generally has to be practice by one state, then another, then another and so on. When Finland and Sweden refer to "future international legal development", they seem to be saying "after everyone else does it, we will do it as well". If every state took that attitude, then the development of customary international would become effectively frozen.

A more appropriate declaration when joining the United Nations Convention on Jurisdictional Immunities of States and Their Property would have been that their joining was without prejudice to the interpretation and application of the principles of international law concerning the protection of human rights from serious violations. As just noted, one of those principles, right now, is that international law right now does not prohibit an exception to state immunity for violations of the prohibitions against torture, crimes against humanity and genocide.

Be that as it may, Italy made exactly that declaration. No other state objected to the declaration. No other state claimed that the declaration was in fact a reservation. No other state claimed that the declaration was incompatible with the object and purpose of the Convention.

It would be consistent with both treaty and customary international law today for all the Nordic states to provide either by way of legislation or formal statement an exception to state immunity for violations of the prohibitions against torture, crimes against humanity and genocide. They should do so.

## **5) Immigration ban**

Anyone complicit in transplant abuse abroad should be denied visas and entry to the

country. Denmark, Finland and Sweden all fall within the Schengen zone of the European Union. The Schengen zone border control entry requirements include a prohibition on entry of anyone who there are serious grounds for believing has committed a serious criminal offence.<sup>44</sup>

Individuals are prohibited entry through the issuance of alerts by member states of the European Union to border control. Denmark, Finland and Sweden each should be issuing alerts to the European Union border control for all those who there are serious grounds for believing have been complicit in the killing of prisoners of conscience for their organs in China.

As well, visa applicants to Denmark, Finland and Sweden should be asked on their visa application forms if applicants for visas participated in organ transplant abuse. The US non-immigrant visa application form asks all visa applicants: "Have you ever been directly involved in the coercive transplantation of human organs or bodily tissue?"<sup>45</sup>

This question is based on a US entry ban for those directly involved in the coercive transplantation of human organs or bodily tissue.<sup>46</sup> The Canadian proposed legislation working its way through Parliament includes an immigration ban for those having engaged in conduct that would, in the opinion of the Minister, constitute an offence in relation to

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<sup>44</sup> Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, Article 24(2)(b)

<http://www.europeanmigrationlaw.eu/documents/Regulation%202018-1861.pdf>

<sup>45</sup> Form ds-160, page 20

[https://travel.state.gov/content/dam/visas/PDF-other/DS-160\\_Example.pdf](https://travel.state.gov/content/dam/visas/PDF-other/DS-160_Example.pdf)

<sup>46</sup> 8 U.S. Code 1182f

trafficking in human organs.<sup>47</sup>

It is unlikely that the guilty would answer yes to such a question. Yet, the question itself can be deterrent of entry and a marker of country standards.

A visa policy in place preventing entry of participants in organ transplant abuse could avoid inappropriate invitations to those abroad who have engaged in that abuse. As well, if someone answers no dishonestly and is given a visa, the person can be removed or the visa revoked for the dishonesty without necessarily having to prove the involvement in the abuse, but merely for foreclosing inquiries about that involvement.

## **6) Ethics development**

Also as part of this current visit to Europe, I presented another lengthy paper to the European Association of Centres of Medical Ethics at Oxford in the United Kingdom, 14 September, 2019. Health professional ethics are an essential component of the tool box needed to work against complicity in transplant tourism abroad.

Ethical standards allow for a different form of enforcement - professional discipline instead of criminal or civil regulatory proceedings. The standards one can impose through ethics on professionals can be higher than those imposed through the law on the public at large.

Transplantation, is after all, not a lay activity. One would expect health professionals to have relevant ethical standards as much in this area as in any other. The gap in this area is one which sorely needs filling.

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<sup>47</sup> Adding section (c.1) to section 35(1) of the Immigration and Refugee Protection Act. See <https://www.parl.ca/DocumentViewer/en/42-1/bill/S-240/third-reading>



The ethical principles of the Danish,<sup>48</sup> Finnish<sup>49</sup> and Swedish<sup>50</sup> Medical Associations are general in nature. They all say nothing specific about organ trafficking.

The Danish Association, on its website, addresses a whole sequence of particular issues under the heading "Currently on ethics". However, addressing organ transplant abuse abroad is not one of the issues addressed. The Swedish Medical Society also has guidelines<sup>51</sup> and statements<sup>52</sup> which refer to specific components of the profession and specific issues. But again there is nothing about transplantation or organ trafficking.

The Danish Council of Ethic has a publication on organ donation with a section on organ trading which concluded "that organ trading is an independent ethical problem that needs to be considered in partial or total isolation from the issue of the need for organs in Denmark".<sup>53</sup> I would go further.

Not only does organ trading need to be considered in isolation from the need for organs in Denmark. Organ trading needs to be considered, period. So far, in Denmark, as far as I can tell, it has not been.

## **7) Bodies exhibits**

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<sup>48</sup> [https://www.laeger.dk/sites/default/files/laegeforeningens\\_etiske\\_principper.pdf](https://www.laeger.dk/sites/default/files/laegeforeningens_etiske_principper.pdf)

<sup>49</sup> <https://www.laakariliitto.fi/en/ethics/>

<sup>50</sup> <https://slf.se/rad-och-stod/etik/lakarforbundets-etiska-regler/>

<sup>51</sup> <https://www.sls.se/Etik/Etiska-riktlinjer/>

<sup>52</sup> <https://www.sls.se/etik/etiska-uttalanden/>

Denmark in the Hellerup suburb of Copenhagen at a museum called Experimentarium has had running since November 2018<sup>54</sup> a plastinated bodies exhibition.<sup>55</sup> The website of the exhibit has a webpage with frequently asked questions. One of those questions and the answer given is this:

"Where did the specimens on display come from? Will we know who the plastinates are or how they died?

The Body Worlds exhibitions rely on the generosity of body donors; individuals who bequeathed that, upon their death, their bodies could be used for educational purposes in the exhibition. All the whole-body plastinates and the majority of the specimens are from these body donors; a few organs and specific specimens that show unusual conditions come from old anatomical collections and morphological institutes. As agreed upon by the body donors, their identities and causes of death are not disclosed. The exhibition focuses on the nature of our bodies, not on providing personal information."<sup>56</sup>

The Finnish Science Centre Heureka in Vantaa, north of Helsinki, hosted a plastinated bodies exhibition from the same exhibitor on February 16 to September 22, 2013.<sup>57</sup> A Swedish science museum, Tom Tits Experiment, also hosted this exhibit from this same

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<https://www.visitcopenhagen.com/press/copenhagen/body-worlds-you-will-never-be-same-again>

55 <https://bodyworlds.com/city/copenhagen/>

56 <https://bodyworlds.com/about/faq/>

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<https://www.epressi.com/tiedotteet/terveys/world-famous-body-worlds-exhibition-to-heureka.html>

<https://www.epressi.com/tiedotteet/lifestyle/body-worlds-exhibition-opened-at-heureka.html>

exhibitor in Sodeltarje, near Stockholm, 20 July to 25 November 2012.<sup>58</sup>

A different exhibitor planned an exhibit for Gothenburg, Sweden in September 9th to 11th 2016 which did not happen because of problems with the venue. The exhibitor promised a rescheduled exhibit for October 2019.

On the website of the exhibition, the exhibitor wrote:

"Our exhibition consists only of objects placed there on a voluntary basis. People who in their lifetime decided to put their bodies at the disposal of science. All items are identified by a registration number which can be read out with an appliance and then arranged without any problems. In addition, most of the bodies have died of cancer, which is also the main theme of the exhibition. Our exhibition is unlike other purely scientific, no artistic poses but has only a purely informative focus. The exhibition has been reported to the police in accordance with laws and regulations. We have not received any objections or complaints from the police."<sup>59</sup>

There are several jurisdictions which have taken specific legal action against bodies exhibits. The State of New York in May 2008 reached a settlement with a bodies exhibitor, Premier Exhibitions, in which the exhibitor agreed, before displaying a body as part of any New York exhibit, to obtain written documentation demonstrating the source of each body and body part, the cause of death, and the decedent's consent to the use of his or her body.<sup>60</sup>

The State of Hawaii enacted legislation in June 2009 an outright prohibition. The

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<sup>58</sup> <https://www.aftonbladet.se/nyheter/a/rLda9l/fladda-lik-visas-upp-for-barn>

<sup>59</sup> <http://www.maenniskokroppen.se/content/naer-och-var/>

legislation states "No person shall display a dead human body for commercial purposes."<sup>61</sup>

The City of Seattle in July 2010 enacted an ordinance regulating the commercial display of human remains. The ordinance required consent in the will of the deceased or by a person who has the right to control the disposition of the remains. A City official was designated to determine the adequacy of the documentation offered to establish consent.<sup>62</sup>

In France, the court ordered the closing of a bodies exhibit. The judgment of the highest French court in September 2010 based this order on the findings that

- a) respect due to the human body does not stop with the death;
- b) the remains of deceased persons must be treated with respect, dignity and decency;
- c) in order to determine whether the exposed bodies were treated with respect, dignity and decency, the Court had to determine whether they had a lawful origin and, more particularly, whether the persons concerned had given their consent, during their lifetime, to the use of their corpses; and
- d) the exhibitor refused the request of the Court to examine the conditions under which the bodies were presented to the public.<sup>63</sup>

The Czech Republic in July 2017 enacted an amended Burial Act which addressed bodies

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<sup>61</sup> [https://www.capitol.hawaii.gov/session2009/bills/GM735\\_.PDF](https://www.capitol.hawaii.gov/session2009/bills/GM735_.PDF)

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[http://clerk.seattle.gov/search/results?s1=bodies&s9=&s7=&s6=\(%40DTIR%3E20100700%3C20100800\)+OR+\(%40DTA%3E20100700%3C20100800\)+OR+\(%40DTS%3E20100700%3C20100800\)+OR+\(%40DTSI%3E20100700%3C20100800\)+OR+\(%40DTMY%3E20100700%3C20100800\)+OR+\(%40DTF%3E20100700%3C20100800\)&s2=&s8=&Sect4=AND&l=200&Sect2=THESON&Sect3=PLURON&Sect5=LEGI2&Sect6=HITOFF&d=LEGC&p=1&u=%2Fsearch%2Fcombined%2F&r=9&f=G](http://clerk.seattle.gov/search/results?s1=bodies&s9=&s7=&s6=(%40DTIR%3E20100700%3C20100800)+OR+(%40DTA%3E20100700%3C20100800)+OR+(%40DTS%3E20100700%3C20100800)+OR+(%40DTSI%3E20100700%3C20100800)+OR+(%40DTMY%3E20100700%3C20100800)+OR+(%40DTF%3E20100700%3C20100800)&s2=&s8=&Sect4=AND&l=200&Sect2=THESON&Sect3=PLURON&Sect5=LEGI2&Sect6=HITOFF&d=LEGC&p=1&u=%2Fsearch%2Fcombined%2F&r=9&f=G)

<sup>63</sup>

<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000022826393>

exhibits. The amended law prohibits the exhibition of the body of a deceased person without his or her consent.<sup>64</sup> The law is similar to the French court judgement in the sense that the prohibition is linked to the concept of dignity. The Czech prohibition has an umbrella provision which states that human remains and human remains must be treated with dignity and for this reason, among others, consent is required.

Bodies exhibits are not organ transplant abuse. However, they are cognate, similar fact evidence. Body Worlds is only one of many private enterprises displaying plastinated bodies and body parts as exhibits.

Plastinated body parts can be bought over the internet from Shenyang City in Liaoning Province in China.<sup>65</sup> Shenyang City is a center for the killing of Falun Gong for their organs and the home location of the first whistleblower on this abuse, the woman with the pseudonym Annie.

Whether this is true for the exhibitors in Denmark, Finland and Sweden or not, many of the bodies and/or parts in various exhibits around the world have come from China, and within China, from police sources. The evidence points to the sourcing in China from prisoners of conscience for both organs for transplants and bodies for exhibits.<sup>66</sup>

Denmark, Finland and Sweden need legislation addressing these exhibits. The legislation should

- a) require verifiable documentation showing consent of the individuals whose bodies were put on display after death or their family members
- b) require verifiable documentation showing the sourcing of the bodies, and

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<sup>64</sup> Section 4(1)(b), <http://www.psp.cz/sqw/text/tiskt.sqw?O=7&CT=954&CT1=0>

<sup>65</sup> [http://roundfin.com/product/Biological\\_Specimen/47.html](http://roundfin.com/product/Biological_Specimen/47.html)

c) prohibit sourcing of bodies from prison or detention or police.

When the Gothenburg exhibitor puts on their website the statement quoted above:

"The exhibition has been reported to the police in accordance with laws and regulations. We have not received any objections or complaints from the police."

that is a statement of a gap in the law. It is a gap which needs filling.

## **8) Human rights dialogues**

After the Tiananmen Square massacre, in 1990 and then from 1992 to 1997, various states concerned with the promotion of human rights co-sponsored resolutions at the United Nations Human Rights Commission (the predecessor of the UN Human Rights Council), criticizing human rights violations in China. Except for 1995, debate on these resolutions were cut off before they began through passage of no action motions.<sup>67</sup>

As the result of concerted Chinese diplomatic initiatives, a number of states which had co-sponsored the China resolution in previous years decided not to co-sponsor a resolution in 1997. Denmark sponsored the resolution alone, although sixteen other states voted with Denmark against the inevitable Chinese no-action motion.<sup>68</sup>

In response to the Danish resolution, China threatened Denmark with diplomatic and

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<sup>67</sup> Human Rights Watch "Chinese Diplomacy, Western Hypocrisy and the U.N. Human Rights Commission" 1 March 1997

<https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=printdoc&docid=3ae6a7d94>

<sup>68</sup> Henry Chu and Craig Turner, "China Blocks Rights Measure, Punishes Denmark for Effort", April 16, 1997

<https://www.latimes.com/archives/la-xpm-1997-04-16-mn-49192-story.html>

economic sanctions.<sup>69</sup> They drew up a list of Danish companies that would be excluded from consideration for future deals with China.<sup>70</sup> When Denmark did not back down, China announced that it would suspend official bilateral visits with Denmark.<sup>71</sup>

After 1997, the governments co-sponsoring these resolutions, including Denmark, agreed to stop presenting them in exchange for bilateral human rights dialogues with China. There is one such bilateral dialogue with the European Union. There is another one with Sweden. In 2017, ten international human rights organizations, including Human Rights Watch and Amnesty International, called for a suspension of the dialogues on the basis that they had led to no meaningful change in respect for human rights in China.<sup>72</sup>

A report by a Canadian academic and consultant, Charles Burton, noted these concerns about the Canada Chinese human rights dialogue:

- The Chinese Ministry of Foreign Affairs takes up much of the dialogues reading scripts. These scripts are repeated at the dialogues of the various countries over the year.
- There is little connection established between the dialogues and progress on the ground; it is difficult to determine benchmarks or other objective indicators of success.

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<sup>69</sup> Paul Lewis, "China Warns Denmark On Resolution" April 8, 1997

<https://www.nytimes.com/1997/04/08/world/china-warns-denmark-on-resolution.html>

<sup>70</sup> Greg Moore, "China's Cautious Participation in the UN Human Rights Regime" Human Rights & Human Welfare, Volume 1:1, January 2001 citing Ann Kent "A review of China, the United Nations, and Human Rights: The Limits of Compliance", 1999

<https://www.du.edu/korbel/hrhw/volumes/2001/1-1/kent.pdf>

<sup>71</sup> Henry Chu and Craig Turner, "China Blocks Rights Measure, Punishes Denmark for Effort", April 16, 1997

<https://www.latimes.com/archives/la-xpm-1997-04-16-mn-49192-story.html>

<sup>72</sup> "EU: Suspend China Human Rights Dialogue" June 19, 2017

<https://www.hrw.org/news/2017/06/19/eu-suspend-china-human-rights-dialogue>

- The Chinese Ministry is showing less commitment to the dialogues by downgrading the level of head of delegation and reducing staff in their Human Rights Division.
- The rise of nationalism in China concomitant with China's economic rise to power has made the Chinese Government unwilling to be chastised over human rights any more.
- The Chinese side tends to drag its feet in making dialogue arrangements sending out a signal that the western nations are the demandeurs in this instance.
- The Chinese response to the lists of cases of concern is not as complete as Canada expects it should be and degree of responsiveness varies significantly year by year.
- There is a pervasive cynicism about the process and dialogue fatigue has set in.<sup>73</sup>

In retrospect, one can say that the exchange of resolutions for dialogue turned out to be a bad deal. Countries concerned about human rights should walk away from the deal and turn to the UN Human Rights Council with resolutions on China. Even if these resolutions are defeated by no action motions, as their predecessors were, they put more pressure on China to improve human rights than these dialogues have done.

In light of what happened to Denmark in 1997, it may be asking too much for any one country to do this alone. However, all countries concerned about respect for human rights should do this in concert.

## **9) European Union Parliament resolution**

The European Union Parliament in December 2013 passed a resolution recommending that Member States of the EU publicly condemn organ transplant abuses in China and

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<sup>73</sup> "Assessment of the Canada-China Bilateral Human Rights Dialogue", April 19, 2006



raise awareness of this issue among their citizens travelling to China.<sup>74</sup> The European Union resolution speaks to the present.

Denmark, Finland and Sweden should do exactly that. They should each publicly condemn organ transplant abuses in China and raise awareness of this issue among their citizens travelling to China

Barbel Kofler, Federal Government Commissioner for Human Rights Policy and Humanitarian Assistance at the Federal Foreign Office, Government of Germany, issued a statement on July 20th, 2019 in which she appealed

"to the Chinese Government to comment on the serious and long-standing allegation that the organs of detained Falun Gong followers are systematically harvested. The Chinese Government should urgently increase transparency on the procurement of organs and grant independent observers free access to prisons and internment centres in order to counter these allegations."<sup>75</sup>

Asking for a comment is not quite the same as a condemnation. Yet, it is a step above what the Governments of either Denmark or Finland or Sweden have said or done on this issue.

## **10) The Council of Europe**

The Council of Europe Convention against trafficking in Human Organs was approved and opened for signature in March 2015. To date, there are nine ratifying states, and fifteen signatory states which have not ratified. Because five ratifying states is the number of states necessary for the entry into force of the Convention, the Convention has now

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<sup>74</sup> European Parliament resolution on organ harvesting in China (2013/2981(RSP))

entered into force.

The Convention requires states parties to establish as a criminal offence organ trafficking and transplant tourism.<sup>76</sup> The offence would have to apply to citizens and permanent residents who engage in those abuses abroad. Norway is one of the nine which has both signed and ratified the Convention. Norway has, as well, as one might expect, enacted implementing legislation.

However, neither Denmark nor Finland nor Sweden has ratified or even signed this Convention, although they now have had more than four years to do so. All should sign, ratify and implement this Convention.

### **11) UN Human Rights Council Joint Letter**

The Permanent Representatives to the United Nations in Geneva of Denmark, Finland and Sweden, along with the Permanent Representatives of 19 other countries, in July 2019, sent a joint letter to the President of the UN Human Rights Council stating:

"We, the co-signatories to this letter, are concerned about credible reports of arbitrary detention in large-scale places of detention, as well as widespread surveillance and restrictions, particularly targeting Uighurs and other minorities in Xinjiang, China."

The letter called on China to take a number of consequent actions based on the concern about these credible reports. The Permanent Representatives asked that the letter be recorded as a document of the 41st Session of the Human Rights Council and that it be published on the website of Office of the United Nations High Commissioner for Human Rights, which it was.<sup>77</sup>

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<sup>76</sup> Articles 4,5, 7 and 8

<sup>77</sup> UN document A/HRC/41/G/11

The 2013 European Parliament resolution referenced earlier in this text stated in part:

"1. Expresses its deep concern over the persistent and credible reports of systematic, state-sanctioned organ harvesting from non-consenting prisoners of conscience in the People's Republic of China, including from large numbers of Falun Gong practitioners imprisoned for their religious beliefs, as well as from members of other religious and ethnic minority groups;"

This resolution was adopted without recorded opposition. The European Parliamentary groups which jointly proposed the resolution to the Parliament were the PPE Group (Group of the European People's Party, Christian Democrats), the ALDE Group, (the Alliance of Liberals and Democrats for Europe), the Verts/ ALE Group (Group of the Greens/ European Free Alliance), and the EFD Group (Europe of Freedom and Democracy).

The Danish members of the proposing groups at the time of the adoption of this resolution were these:

On the Venstre list: (ALDE)

Anne E Jensen

Morten Lokkegaard

Jens Rohde

On the Socialist People's Party list: (Greens-EFA)

Margrete Auken

Emilie Turunen

On the Danish People's Party list: (EFD)

Morten Messerschmidt

Anna Rosbach Andersen

The Finnish members of proposing groups of the European Parliament at the time of the adoption of the resolution were these:

On the Centre Party list: (ALDE)

Anneli Jaatteenmaki

Riikka Manner

Hannu Takkula

On the Green League list: (Greens-EFA)

Satu Hassi

Tarja Cronberg

On the True Finns/Christian Democrats list: (EFD and EPP Group)

Sari Essayah

Sampo Terho

On the Swedish People's Party list: (ALDE)

Nils Torvalds

The Swedish members of proposing groups of the European Parliament at the time of the adoption of the resolution were these:

On the Liberal People's Party list: (ALDE)

Marit Paulsen

Olle Schmidt

Cecilia Wikstrom

On the Green Party list: (Greens-EFA)

Isabella Lovin

Carl Schlyter

On the Pirate Party list: (Greens-EFA)

Amelia Andersdotter

Christian Engstrom

On the Centre Party list: (ALDE)

Kent Johansson

414 members of the European Parliament in 2016, including many Danish, Finnish and Swedish members, signed a declaration again referring to

"persistent credible reports on systematic, state-sanctioned organ harvesting from non-consenting prisoners of conscience in the People's Republic of China, primarily from practitioners of Falun Gong peaceful meditation and exercises but also from Uighurs, Tibetans and Christians".<sup>78</sup>

The obvious question which arises is why the Permanent Representatives of Denmark, Finland and Sweden would sign a joint letter in 2019 to the President of the UN Human Rights Council expressing concern about credible reports of arbitrary detention, widespread surveillance and other restrictions of Uighurs and other minorities in Xianjing, China and not sign a similar joint letter in 2013 or 2016 expressing concern about "persistent and credible" reports of systematic, state-sanctioned organ harvesting from non-consenting prisoners of conscience in China, including from large numbers of Falun Gong practitioners. This question arises in particular because so many of the European Parliamentarians of these countries in 2013 and 2016 had endorsed this concern. Whatever the answer, there is a direct link between the relative global inaction in response to the evidence of the killing of prisoners of conscience for their organs throughout China and the current persecution of the Uighurs and other minorities in Xianjing.

In any case, better late than never. The joint letter of July 2019 is a salutary example which the Permanent Missions of Denmark, Finland and Sweden to the United Nations in Geneva should now follow. The Permanent Representatives should now jointly send to the President of the UN Human Rights Council, with other willing states, a joint letter expressing concern about persistent and credible reports of systematic, state-sanctioned organ harvesting from non-consenting prisoners of conscience in China, including from large numbers of Falun Gong practitioners and calling for consequent action from China.

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<sup>78</sup> [http://www.europarl.europa.eu/doceo/document/PV-8-2016-09-12-ANN-2\\_EN.html](http://www.europarl.europa.eu/doceo/document/PV-8-2016-09-12-ANN-2_EN.html)

## 12) UN Human rights council

Neither Sweden nor Finland is a member of the United Nations Human Rights Council. Denmark is a member. Not being a member means a state can not vote in the Council. However, not being a member does not prevent a state from speaking at Council sessions.

Finland until December holds the rotating presidency of the European Union and spoke on behalf of the EU at the session of the Council in June and September. In those session, in agenda item 4, titled "Human Rights situation that require the Council's attention", the Finnish/EU statement addressed China at length.

But Falun Gong was not mentioned. Organ transplant abuse was not mentioned. The closest they came was grave concern expressed about the detentions and trials of a list of named human rights defenders and lawyers, one of whom was Gao Zhisheng, who has been active in opposing the killing of Falun Gong prisoners of conscience for their organs.<sup>79</sup>

Finland, in addition to delivering the EU statement gave its own statement at the June session. In the June statement, about China, Finland stated:

"We are deeply concerned about the widespread surveillance, profiling based on ethnicity, in China and we call on China to respect its national and international obligations of human rights and fundamental freedoms, including Freedom of Religion or Belief, most notably in Xinjiang and Tibet."

Denmark gave a statement under Agenda item 4 at both the June and September 2019

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<https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/41Session/Pages/Statements.aspx?SessionId=30&MeetingDate=03/07/2019%2000:00:00>

session where it referred to ten other countries, but not China. The only oblique reference to China was a statement that Denmark "aligns itself with the EU statement".

Sweden in June under this agenda item stated about China only this:

"The rights of persons belonging to minorities must be guaranteed. We call on China to take urgent steps to do so, particularly in Xinjiang and in Tibet."

In September, Sweden said this:

"We call on China to respect the rights to peaceful assembly, to manifest religion and culture, in particular for persons belonging to ethnic minorities in Xinjiang and Tibet, and to allow meaningful access for independent observers. In this context we recall the letter sent by 25 delegations to the President of the Council and the High Commissioner in June."

It would not take a great deal of time or effort for either Denmark or Finland or Sweden to add the words "Falun Gong" or "organ transplant abuse" to their list of concerns about China. Their silence on this persecution and these victims is unjustifiable.

### **13) UN General Assembly**

In my view, the mass killing of Falun Gong for their organs is a form of genocide.<sup>80</sup> The most direct way of addressing genocide is prosecuting for genocide. Prosecuting for international crimes can be done at either international or local instances.

There remains nonetheless a legal obstacle. There is a lot of money being made in China from selling organs extracted by force from prisoners of conscience. Some of those involved in murder through forced extraction may be motivated by the money to be made alone, with little regard to the identity of the victims. Even if one can accept the fact of mass killings in China of prisoner conscience victims through organ extraction, do these

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<sup>80</sup> <https://scholarcommons.usf.edu/gsp/vol12/iss1/6/>

mass killings manifest the requisite intent to establish genocide?

The China tribunal received a legal opinion from Datuk N. Sivananthan which stated:

"an intention to forcefully harvest the organs for the sake of profit is not the same as an intention to forcefully harvest the organs to bring about the physical or biological destruction in part or in whole of a protected group. ... One may seek to argue that even if the harvesting of the organs were done for the sake of profit, the perpetrators would have knowledge that their actions would bring about the destruction in part or in whole of the group. However, this argument is reliant on a knowledge-based approach that has yet to be supported by any court rather than a purpose-based approach that has been adopted by the ICTY, ICTR and ICC. As such, it is highly unlikely that the perpetrators' knowledge of the effect of their actions without any intention to cause such an effect would be sufficient to meet the requirement of intent under the Genocide Convention."

Nonetheless, the notion that specific intent is required seems ill-founded in light of an article in the Statute of the International Criminal Court, which provides that the intent for genocide has the same as knowledge component as the intent for the other crimes over which the Court has jurisdiction. The fact that tribunals have used to date a purpose based approach is not in itself a rejection of a knowledge based approach.

If a purpose based approach is available, a knowledge based approach is unnecessary. As well, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda do not have an intent provision like one finds in the statute of the International Criminal Court, stating that the intent for genocide, like the intent for other crimes, includes knowledge.

Sivananthan in his opinion cites an academic article which in turn suggests that exclusion of the knowledge based approach by the International Criminal Court could be based on



the phrase in the Court Statute "unless otherwise provided".<sup>81</sup> It seems odd for Sivananthan to cite this article in light of the fact that, though the article does refer to the position that Sivananthan adopts, it argues against that position.

The full text of the relevant Court provision is this:

"Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge."<sup>82</sup>

There is nothing otherwise provided in the Court statute or the Court elements of crime. Moreover, the manner of phrasing suggests that what is being said is that strict requirements (intent and knowledge) must be met, unless otherwise required. The phrase "unless otherwise required" is meant to refer to a possible relaxation of requirements, not a possible enhancement of requirements. The argument about specific intent twists the phrase "unless otherwise provided" around to allow for stricter requirements, for intent, than those set out in the statute.

Be that as it may, the phrase "unless otherwise provided", so the argument goes, could refer to the origins and development of the prohibition against genocide. If one goes to the origins and development of the prohibition against genocide, there are indeed views which express the need to establish a specific intent.

For instance, in its 1996 commentary to the Draft Code of Crimes Against the Peace and Security of Mankind, the International Law Commission stated that

"the prohibited [genocidal] act must be committed against an individual because of his membership in a particular group and as an incremental step in the overall objective of destroying the group . . . . The intention must be to destroy the group

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<sup>81</sup> <https://core.ac.uk/download/pdf/46713705.pdf>

<sup>82</sup> Article 30(1)

'as such,' meaning as a separate and distinct entity, and not merely some individuals because of their membership in a particular group."<sup>83</sup>

The China Tribunal, as noted earlier, determined beyond reasonable doubt that the mass killing of prisoners of conscience for their organs had occurred and was still occurring. They also without hesitancy found this abuse to be a crime against humanity and torture.

However, when it came to genocide, they were not so sure. They recommended that the UN General Assembly refer the interpretation of the law of genocide to the International Court of Justice by way of resolution asking for an advisory opinion.<sup>84</sup>

While I favour prosecution of those responsible for mass murder of Falun Gong or Uyghurs through organ extraction for genocide, I also think it is important to clear up the uncertainty on the law of intent which has developed in the law of genocide. An advisory opinion from the International Court of Justice would do that.

While the request for an advisory opinion would require a majority of those voting in the General Assembly, the initiative of only one state is necessary to get the ball rolling. Either Denmark or Finland or Sweden or, ideally, all three together could propose such a resolution.

#### **14) UN Security Council**

The International Criminal Court has jurisdiction over crimes committed by nationals of

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<sup>83</sup> Report of the International Law Commission on the Work of Its Forty-Eighth Session, U.N. GAOR, 51st Sess., Supp. No. 10, at 87, U.N. Doc. A/51/10 (1996) Chapter 11, the Draft Code of Crimes Against the Peace and Security of Mankind and commentary at 88.

states parties to the Court treaty or crimes committed within the territory of states parties. China is not a state party to the treaty of the International Criminal Court.

The Security Council can refer to the Court situations which occur even in the territory of non-state parties. China has a veto in the Security Council and would likely veto any referral resolution.

Nonetheless, such a referral is worth seeking. The effort itself would serve to raise awareness of the crime. If the effort did result in a Chinese veto, other ways might well be sought to bring perpetrators to justice, including the exercise of universal jurisdiction discussed earlier.

Neither Denmark nor Finland nor Sweden is a current member of the Security Council. Nonetheless, any or all of them could suggest to current members such a referral resolution.

**Conclusion**

The plan of action has so many items not just because there is a lot that can be done. The number of actions that can be undertaken is an indication of how little has been, is being done.

When David Kilgour and I began our work, one reason, though far from the only, we came to the conclusion that we did that the killing of Falun Gong for their organs was occurring was that nothing was being done to prevent it or stop it, either in China or abroad. That remains today, for Denmark, Finland and Sweden, still true.

At least today, one can point to efforts in other countries to stand against this abuse. There is no reason why Denmark, Finland and Sweden should not follow suit.

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