

Uyghur Genocide: Avenues Toward Accountability

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Questions asked by the moderator

- 1) What is the scope of international crimes that are being committed by China against the Uyghurs?
- 2) To what extent do the crimes being committed mirror other cases where crimes against humanity and genocide have been established?
- 3) How do we find the legal resources to invoke the legal remedies available?

A. Scope of the crimes

- 1) Legal scope
 - a) Crimes against humanity

Crimes against humanity, as set out in the statute of the International Criminal Court, are a list of eleven listed crimes committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.¹ The eleven listed crimes are

- i) Murder;
- ii) Extermination;
- iii) Enslavement;
- iv) Deportation or forcible transfer of population;
- v) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- vi) Torture;
- vii) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced

¹ Statute of the International Criminal Court Article 7

- sterilization, or any other form of sexual violence of comparable gravity;
- viii) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender ..., or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- ix) Enforced disappearance of persons;
- x) The crime of apartheid;
- xi) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

The crime of extermination overlaps with the crime of genocide. The crime of enslavement arguably includes forced labour. The crime of forcible transfer includes internal transfer. The crimes of apartheid, deportation and forced pregnancy appear not to be relevant. For all other crimes, there is evidence and, for some crimes, overwhelming evidence.

b) Genocide

The crime of genocide, as set out in the Statute of the International Criminal Court, is also a list of crimes, a smaller list than the eleven for crimes against humanity, a list of five. They are any of these acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group:

- i) Killing members of the group;
- ii) Causing serious bodily or mental harm to members of the group;
- iii) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- iv) Imposing measures intended to prevent births within the group; or
- v) Forcibly transferring children of the group to another group.²

² Statute of the International Criminal Court Article 6

The crime of forcibly transferring children of the group to another group appears not to be relevant here. For all others there is substantial evidence.

2) Factual scope

There is extensive evidence from the media, researchers and human rights organizations about most of the crimes specified in the definitions of crimes against humanity and genocide. One crime that is addressed more specifically in answer to the next question is the killing of Uyghurs for their organs.

The killing of prisoners of conscience for their organs is a crime without witnesses who are not complicit in the crime. It is a crime without documents from officials, who are actively involved in cover up. There are no bodies available for autopsy, since bodies are cremated after organ extraction. Establishing the crime, though it can be done beyond a reasonable doubt, involves piecing together many components of evidence, a time consuming task which, once done, can not be communicated quickly. The crime is nonetheless among the gravest and deserves our attention.

3) Ethnic scope

The Chinese regime targets ethnic Turkic minorities. Uyghurs are the largest group in this category. There are in China nonetheless several others Turkic minorities. The next largest after the Uyghurs are the Kazakhs.

Within Xinjiang, the ethnic minorities outnumber the Han Chinese. The Turkic minorities are accused of splittism, wanting to separate Xinjiang from the rest of China and form an independent country. This accusation is focused particularly on the Uyghurs, since they are by far the largest Turkic minority in Xinjiang and indeed in China.

4) Religious scope

Religious persecution in China is selective. The Government recognizes components of some religions, those components controlled by the state. It represses those religion, components of religions and spiritual beliefs not controlled by the state.

Uyghurs are predominantly, but not entirely, Muslim. The Islam they practice is not state controlled and is, consequently, repressed. Uyghur Muslims suffer from intersectionality. They suffer from accusations and slurs of terrorism directed against Muslims generally as well as the accusations of splittism.

5) Geographic scope

Prejudice and persecution against ethnic Turks pervade China. It is not confined to Xinjiang. The most vulnerable are those ethnic Turks elsewhere in China who come from Xinjiang and Uyghurs in particular.

The presumption of innocence does not apply to Uyghur Muslims. The Chinese state presumes them guilty of disloyalty until they prove themselves innocent, through sufficiently convincing effusions of loyalty to the Chinese Communist Party. These effusions may save them from the worst forms of persecution, but do not insulate them from the pervasive discrimination against Uyghur Muslims in China.

The problems Uyghurs from China face is not limited to China; it is global in scope. Uyghurs from China, as indeed, Falun Gong, report hacking, harassment, spying, intimidation, and threats against family members back home. The viciousness of Chinese Communist agents abroad has been so systematic and pervasive as to lead to a broadening of the legislation or advocacy for legislation on registration of foreign agents.

6) Demographic scope

The Uyghur victims of Chinese Communist oppression cross all demographic categories. Men, women and children are all victims. There is no upper or lower age limit. Young children are separated from their parents. Both children and parents suffer.

B. Mirroring

The most obvious case of crimes against humanity and genocide committed against Uyghurs mirroring other crimes against humanity or other genocides is the killing of Falun Gong for their organs. Uyghur prisoners of conscience were killed for their organs even before Falun Gong, but in small numbers.

The industrialization of the killing of prisoners of conscience for their organs began with Falun Gong. Practitioners of Falun Gong became the primary target for this industrialization because of a confluence of circumstances.

The first was the institutionalization of organ sourcing through the prison system. From the get go, China was sourcing organs from prisoners sentenced to death and then executed.

The second was the fall off in the death penalty through centralization of its imposition in Beijing and the reduction of death penalty crimes. The third was the absence of a donation system. The cultural inhibition against organ donation in China was such that the Government did not establish one until 2010 which, even today, produces tiny numbers.

Fourth was the absence of a national organ distribution system, established only in 2013. That meant that all organs had to be sourced locally. Fifth, the development of transplant technology worldwide created a global demand for transplants far exceeding the supply, leading to extensive waiting times for organs almost everywhere outside of China.

Sixth, there was the Chinese Communist Party 180 degree turn around in 1999 from encouraging the practice of Falun Gong because it was beneficial to health and cut down costs on the health system to repressing it because it had become too popular and threatened the supremacy of the Party. The initial Party encouragement along with Falun Gong's ingenious blending of Chinese exercise and spiritual traditions led to a practitioner population of an estimated 100 million, far too large for the Party.

Seventh was the shift from socialism to capitalism. That shift led to Government funding being withdrawn from the health sector and the need to replace it with other sources of funding.

Eighth and related, with the shift from socialism to capitalism, was the ideological collapse of Communism, which was based on demonizing capitalists. Authoritarian governments generally and totalitarian governments in particular justify their non-democratic rule by demonizing fictitious enemies. Having lost their capitalist fictitious enemies, the Chinese Communists needed another one. Falun Gong became the unlucky candidate. The Party began a vilification campaign against Falun Gong which, though it had little connection with reality, was itself very real.

Ninth, the Party flip flop on Falun Gong without any credible explanation led to mass protests and mass arrests in the millions. Practitioners of Falun Gong were everywhere in China, which meant that more or less every location in China had large volumes of detained Falun Gong. Some of those arrested would sign on to pledges of Party loyalty and abandonment of the practice and get released, but hundreds of thousands would not, even after torture.

Tenth, the vilification of the Falun Gong population which to practitioners and outsiders just seemed odd, akin to demonizing those who practice yoga, dehumanized the practitioners in the minds of their state captors. The Falun Gong population in detention

became to be considered non-persons and extremely vulnerable.

This combination then generated, in the early 2000s the industrialized killing of Falun Gong for their organs. The numbers were large, up to 100,000 transplanted organs per year. The financial windfall was enormous, in the billions of dollars. And so was the infrastructure. Huge transplant hospitals and transplant wings of hospitals were built throughout China based on an assumption of a seemingly endless supply of organs available on demand.

The Falun Gong population in captivity could not, of course, last forever. While practitioners continued to be arrested, later arrests came nowhere near the volume of the earlier years. The Falun Gong population over time got depleted through the mass killing for their organs. And new arrests came nowhere near to replacing them.

From where was the replacement to come, to make up for the shortfall caused by the killing off of Falun Gong in detention? A replacement, to be sure, was necessary, not just to keep the transplant killing machinery functioning, but, even more, to finance the health system as a whole. The replacement answer was the Uyghurs and other Turkic minorities of Xinjiang. Four developments made this possible.

One was the development of national organ distribution system. With the advent of that system, organs could be shipped from Xinjiang to other locations in China. This development is graphically illustrated by airport signs. The Kashgar airport, an airport near a mass detention camp, has a dedicated lane with signage in Chinese, English and Arabic. The sign, in green, pasted on the floor, states "Special passenger Human organ transport channel" meaning presumably that the lane is both for special passengers and human organ transports. The reference to special passengers would explain the signage in English and Arabic. Pictures of the signs are pasted below.



According to a Radio Free Asia report from January 2017, there are similar signs throughout Xinjiang at its various airports. The same media report states that China Southern Airlines has reported more than 500 air shipments of living organs out of Xinjiang to the rest of China up to the date of the news story.³

The second development was innovations in transplant technology to allow for longer survival of organs after extraction, through the proliferation in China of ECMO - extracorporeal membrane oxygenation. ECMO devices exist in portable form, meaning that they can be used to oxygenate organs which are being transported from Xinjiang to elsewhere in China.

This combination of a national organ transplantation distribution system and the development of technology which allowed for survival of organs for longer once extracted meant that organs extracted in Xinjiang could be shipped to hospitals and transplanted into patients throughout China. Reliance throughout China on locally sourced organs for transplants was no longer essential.

The third development was the mass incarceration of Uyghurs. As of March 2019, there were, according to the research of Adrian Zenz, an estimated 1.5 million Uyghurs and other Turkic minorities arbitrarily and indefinitely detained in Xinjiang, not that far off from the number of Falun Gong arbitrarily detained at the height of their mass detention.⁴ There sprung up a large new prisoner of conscience population as the depletion of Falun Gong detainees through mass killing from organ extraction was becoming critical.

³ <https://www.rfa.org/cantonese/news/organ-10062017075527.html>

⁴ Stephanie Nebehay, "1.5 million Muslims could be detained in China's Xinjiang: academic" Reuters, March 2017

<https://www.reuters.com/article/us-china-xinjiang-rights/15-million-muslims-could-be-detained-in-chinas-xinjiang-academic-idUSKCN1QU2MQ>

The fourth, concomitant, development was the demonization of the Uyghur and other Turkic minorities in Xinjiang. The slanders uttered against them, while incredible to outsiders, made it easier for their jailers to treat them inhumanely.

For Falun Gong, it was easy to pinpoint the triggering mechanism which led to their repression, their spectacular growth and non-Communist beliefs. For Uyghurs, the triggering mechanism is not so easy to identify, since there was no dramatic growth in the Uyghur population akin to the burgeoning of the Falun Gong phenomenon.

The change had more to do with the perpetrators than the victims. The Communist Party under Xi Jinping has become a lot more aggressive and hostile to criticism than his predecessor Hu Jintao was. Wolf warrior diplomacy is one feature of this shift.

Xinjiang is a colony of China, occupied by the Communists in 1949. There has been historical grumbling about this occupation and a continuation of a desire for the pre-existing autonomy. What accelerated during the presidency of Xi Jinping is not so much an increase in this grumbling as an increased intolerance of it. The Communist state under Xi Jinping has developed a quasi-paranoic view of any perceived opposition to its supremacy. Uyghurs are the emblematic victims.

Different triggering mechanisms have led to similar results. One can see the mirroring in Uyghurs of the organ extraction of Falun Gong through blood type testing and tissue examination. It is obvious that these tests are not being done for health when the victims are being tortured into manifesting loyalty to the Chinese Communist Party. The point was made more acutely with Falun Gong, since Falun Gong would be detained with other prisoners. The Falun Gong would be blood tested and organ examined; other prisoners would not.

Uyghurs and other Turkic minorities are not detained with others. The result is that the

Government of China can claim that all prisoners are being given these tests, as if the fact that the prisoners were Turkic minorities had nothing to do with the testing.

One can also see the mirroring through the disappearances. Those Falun Gong who are not disappeared, who get out of detention and out of China can report on the disappearances of other Falun Gong. The difference typically between those who get out and those who disappear is that those who disappear refuse to recant and refuse even to disclose their identities to their jailers in order to protect their home environment.

For Uyghurs and other Turkic minorities, there is even more information, even more detail about disappearances than there is for Falun Gong, because many of the detained are Kazakhs. They are not just ethnic Kazakhs; they are Kazakh nationals. These Kazakh nationals tend to be deported, after detention, to Kazakhstan where they can recount what they saw in Xinjiang.

Ethan Gutmann, a journalist who has interviewed in Kazakhstan many of these detained and then deported Kazakhs for a forthcoming book on transplant abuse with Uyghur victims, reports two groups leaving the Xinjiang camps. One is persons on average 18 years old, announced at detention lunches as graduating, who are sent to forced labour in factories. The second group are those on average 28 years olds who disappear in the middle of the night.

Because of the number of witnesses, it is possible to estimate the number of disappearances. Witness information is that the disappearances are 2.5 to 5% of the population of the camps a year. If we take the most recent estimate by Adrian Zenz of total population of the camps of 1.5 million, that gives us 37,500 to 75,000 disappearances a year.⁵ These are the candidates for death through organ extraction,

⁵ Victims of Communism Memorial Foundation, "Understanding China - Searching for the Disappeared" 30 Apr 2020, <https://www.youtube.com/watch?v=lf9dd3Si2k4>

persons with organs which have reached maturity and which have yet to decline.

The cold genocide of Falun Gong is also mirrored with the Uyghurs. An article I co-wrote observed that the mass killing of Falun Gong for their organs fits within the category of cold genocide, a genocide occurring slowly and in a multi-dimensional manner, in which the mass killing through organ extraction is only a part.⁶

One can say the same of the Uyghurs. They too are subject to a slow-moving genocide for which the mass killing through organ extraction is only a part.

This sequential victimization of first the Falun Gong, then the Uyghurs with forced organ transplantation highlights the contagious nature of human rights abuses. Human rights abuses have to be stopped or they spread.

There is a direct link between the earlier mass killing of Falun Gong for their organs and the later killing of Uyghur for their organs. If the killing of Falun Gong for their organs had been stopped in its tracks when it was first identified, the mass killing of Uyghurs for their organs would not be occurring.

The genocide of the Uyghurs is more visible than the genocide of the Falun Gong for a variety of reasons. One is that it is geographically concentrated. Another is that the genocidal practice of birth prevention, which is practiced on Uyghurs but not Falun Gong, leaves a wide swath of witnesses. A third is that ethnic genocide is more easily recognizable than genocide of a dispersed group who engage in a set of exercises underlain by a modern, China specific, spiritual belief.

⁶ Cheung, Maria; Trey, Torsten; Matas, David; and An, Richard (2018) "Cold Genocide: Falun Gong in China," *Genocide Studies and Prevention: An International Journal*: Vol. 12: Iss. 1: 38-62. <https://doi.org/10.5038/1911-9933.12.1.1513> , Available at: <https://digitalcommons.usf.edu/gsp/vol12/iss1/6>

It is impossible to deny the mass detention of Uyghurs in Xinjiang when their detention camps are visible by satellite. And, indeed, the Chinese Communists do not deny it claiming only that the mass detentions serve some benign purpose - reeducation or training.

The Chinese Communists, against all the evidence, do deny the genocide of Uyghurs through forced sterilizations, abortions and insertions of IUDs. Yet the statistics are impossible to ignore. Adrian Zenz notes that population growth fell by 84 percent in the two largest Uyghur prefectures of Xinjiang between 2015 and 2018, and declined further in several minority regions in 2019. For 2020, one Uyghur region set a near-zero birth rate target of 1.05 per thousand.⁷

This second technique of genocide against Uyghurs, birth prevention, helps to establish the first technique - the killing of Uyghurs for their organs. If the Chinese Communists are prepared to engage in one genocidal technique against the Uyghurs, why would they hesitate to engage in another?

This genocide against the Uyghurs also further helps to cement the conclusion of genocide against the Falun Gong. If the Chinese Communists are prepared to engage in genocide against the Uyghurs, why would they have hesitated to engage in genocide against the Falun Gong?

One other mirroring in the Uyghurs of the genocide of the Falun Gong through organ extraction is the use of modern technology. Though the term "genocide" is relatively new,

⁷ "Sterilizations, IUDs, and Coercive Birth Prevention: The CCP's Campaign to Suppress Uyghur Birth Rates in Xinjiang
Publication: China Brief Volume: 20 Issue: 12 July 15, 2020, The Jamestown Foundation
<https://jamestown.org/program/sterilizations-iuds-and-mandatory-birth-control-the-ccps-campaign-to-suppress-uyghur-birth-rates-in-xinjiang/>

having been coined in the twentieth century by Rafael Lemkin, the fact of genocide is as old as human history and then some. The oldest historical accounts and the religious and mythical accounts which preceded them feature mass killings of innocents based on their group identity.

What distinguishes one genocide from another is not so much the fact as killing as the verbalizations and the techniques. Hatred of the victim group is a common feature of all genocides. The vocabulary of dehumanization though is almost always different. What victim group before the Uyghurs, after all, has been accused of "splittism" as a justification for mass killings?

As well, technology shifts. What made the Holocaust so deadly was not the hatred of Jews, which had existed since time immemorial. It was the machine guns, the tanks, the radio, the poison gas, and the railways, none of which had existed in the hands of avowed antisemites in an earlier era.

One can say the same of transplant technology. We have not seen mass killings through organ extraction before Falun Gong and the Uyghurs because, in an earlier era, the transplant technology simply did not exist.

Technology is morally neutral. Typically, its inventors do not imagine the nefarious uses to which it can be put and do nothing themselves to guard against it. The inventors do not bring to their inventions the malevolence of its subsequent users. We are consequently constantly being blindsided as one new technology after another produces disastrous results.

The killing of Falun Gong and then the Uyghurs makes this much larger point. Indeed, the genocide of the Uyghurs amplifies it, by using not only transplant technology, but, as well, portable ECMO technology, which did not exist when the mass killing of Falun Gong for their organs began.

We are a lot better now than we used to be in recognizing genocide for what it is. There is a term; there is a convention - the Genocide Convention; there is a court - the International Criminal Court - to prosecute the crime.

Yet, because of the constantly shifting vocabulary of hatred and techniques of genocide, we are still caught unawares. It is easy enough to recognize a genocide that takes the same form and uses the same incitements as past genocides. Yet, when the vocabulary and techniques shift and the perpetrators, of course, cover up, obfuscate, intimidate, bully and deny, all too many question the existence of the crime or just remain silent.

How we are going to build in our defences against the endless cycle of mass killings which comes with each new iteration of technology goes beyond the scope of this presentation. For present purposes, I note only that the genocide of the Uyghurs fits regrettably into an all too familiar pattern.

C. Invoking legal remedies

It is not necessary to be a lawyer to invoke or create a legal remedy. Many of remedies available can be invoked by national governments or created by parliaments. And any citizen can approach their own government or member of parliament to invoke or create those remedies.

Here are a few suggestions. The Genocide Convention, to which China is a state party, provides,

"Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the

other acts enumerated in article III."⁸

There are at least two actions that states parties to the Genocide Convention can ask of competent organs of the United Nations for the prevention and suppression of the Uyghur genocide. Individuals can in turn ask their states to make these requests.

One is to call upon the United Nations Security Council to refer to the International Criminal Court the situation of Uyghurs in China.⁹ China has a veto in the Security Council and would presumably veto such a referral. Yet, the very attempt would send a message to the Chinese regime.

Second, the jurisdiction of the International Criminal Court, though best invoked with the assistance of lawyers, can be invoked by non-governmental organizations alone.¹⁰ A request by a non-governmental organization to the Court prosecutor is sufficient to trigger a consideration by the prosecutor whether to commence a preliminary examination of the alleged crime.

A third is to ask the United Nations General Assembly to refer to the International Court of Justice the question whether what is happening to the Uyghurs in Xinjiang amounts to genocide. The Charter of the United Nations provides:

"The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question."¹¹

China does not have a veto in the General Assembly. As long as a majority of states voting on the resolution approve the request, the Court will have to answer the question.

⁸ Article VIII

⁹ Court statute article 13(b)

¹⁰ Article 15(2)

¹¹ Article 96(1)

A fourth is to ask the United Nations General Assembly to recognize East Turkestan as an observer state or even a member state of the General Assembly. The General Assembly has the power to do this also, by a majority of states voting on the resolution, whether the Government of China agrees or not.

The vicious repression of the Turkic Muslims of Xinjiang under Xi Jinping has created a perverse result. From a point of view of principle, it will be hard ever again to justify that Xinjiang should be part of China.

Every people has a right to self determination. Whether that right means a right to statehood depends on how badly the people is treated in the state or states where they live. In general, the right to self determination of a people coalesces into a right to statehood where the human rights of the people are consistently and flagrantly violated in the state or state in which they currently live, provided, of course, the state of the victim people seeking recognition respects human rights.¹²

The Communists under Xi Jinping have treated the Uyghurs and other Turkic Muslims in Xinjiang so badly that the continuation of Xinjiang as part of China has become indefensible. If there was not sufficient justification for an independent state of East Turkestan before the Xi Jinping presidency, the intolerable cruelty we have seen inflicted on Turkic minorities during his presidency has given more than sufficient justification now. The United Nations General Assembly, through requests for membership, should be asked to recognize this fact.

There are three pieces of legislation all states can enact which would help to alleviate the

¹² There is a significant body of literature and jurisprudence on this subject. See for instance the concurring opinion of Judge Wildhaber, joined by Judge Ryssdal in the case of *Loizidou v. Turkey*, European Court of Human Rights, application no. 15318/89, 18 December 1996

plight of the Uyghurs. Again, any citizen can ask their legislature to enact this legislation.

One, and a fifth possible legal remedy, is extra-territorial legislation, criminalizing complicity in organ transplant abuse abroad and imposing compulsory reporting from health professionals to health administrators of transplant tourism. It is anomalous that complicity in killing a person at home for their organs is a crime, but that killing a person abroad for their organs is not. Mostly this sort of legislation does not exist. Where it does not, it should be enacted.

A second piece of legislation and a sixth possible legal remedy is legislation which allows for a ban of goods imported from Xinjiang as presumptively the product of forced labour. The presumption would be rebuttable, but failing presumption, the importation of the products should be banned. Where the legislation allowing for the application of such a presumption does not exist, it too should be enacted.

A third piece of legislation and a seventh legal remedy is legislation which prohibits of exports of surgical equipment or pharmaceutical supplies to China. Even with China, current levels of anti-rejection drugs, on which patients after transplant depend, should be exempted. Increases beyond current levels should not be exported. Nor should pharmaceutical supplies used specifically in transplantation procedures.

Eighth, state universal jurisdiction can be invoked by individuals or non-governmental organizations. China is not a state party to the statute of the International Criminal Court. That may pose a jurisdictional problem in bringing Chinese state officials who have committed these crimes before the Court. However, states that are parties to the Court statute often have universal jurisdiction legislation which would allow for prosecution of perpetrators of crimes set out in the Court statute. Anyone with evidence can ask state prosecutors to activate that jurisdiction against perpetrators who fall within the terms of

the legislation.¹³

Conclusion

The overall title of this panel is "Avenues toward accountability". There are already in place avenues towards accountability for the victimization of the Uyghurs which could and should be accessed. If the avenues are insufficient, new ones should be constructed.

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¹³ For Canada, see The Crimes Against Humanity and War Crimes Act, Statutes of Canada 2000, chapter 24