

Tom Lantos Human Rights Commission

Hearing

on

Forced Organ Harvesting in China: Examining the Evidence

May 12, 2022- 10:30 a.m. – 1:00 p.m.

Virtual, via Cisco WebEx

Statement of Geoffrey Nice

Chair of China Tribunal and of Uyghur Tribunal

I – together with Nick Vetch – formed the Uyghur Tribunal (2020-2022) at the request of Dolkun Isa, President of the World Uyghur Congress (WUC).

The Tribunal's construction followed experience I had of two earlier tribunals on which I had served in different capacities – the Iran Tribunal and the Indonesia Tribunal - and the China Tribunal (2018-2019) that I chaired and that was formed largely on the basis of *principles* I was then to apply for the Uyghur Tribunal.

My present thinking on how such tribunals may be of value is best confirmed by experience of the Uyghur Tribunal.

Both Tribunals are non-activist. Accordingly I do not argue about their conclusions. All I – or any other members of either Tribunal - am (or are) prepared to do is to explain the Tribunals' processes by which Judgments were reached.

In both cases the Tribunals were commissioned by activist NGOs: The China Tribunal by the International Coalition to End Transplant Abuse in China (ETAC); The Uyghur Tribunal by the World Uyghur Council (WUC).

Judgments of both Tribunals speak for themselves and for the conclusions they reach.

The China Tribunal found that:

'Forced organ harvesting has been committed for years throughout China on a significant scale and that Falun Gong practitioners have been one – and probably the main – source of organ supply. The concerted persecution and medical testing of the Uyghurs is more recent and it may be that evidence of forced organ harvesting of this group may emerge in due course. The Tribunal has had no evidence that the significant infrastructure associated with China's transplantation industry has been dismantled and absent a satisfactory explanation as to the source of readily available organs concludes that forced organ harvesting continues till today.

The Tribunal considered whether this constituted a crime of Genocide;

The Falun Gong and the Uyghurs in the PRC each qualify as a 'group' for purposes of the crime of Genocide.

For the Falun Gong, the following elements of the crime of Genocide are clearly established:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group.

Thus, bar one element of the crime, Genocide is, on the basis of legal advice received, clearly proved to the satisfaction of the Tribunal.

The remaining element required to prove the crime is the very specific intent for Genocide. Accepting legal advice about proving this intent, the Tribunal cannot be certain that the requisite intent is proved and thus cannot be certain that Genocide itself is proved.

The Tribunal wishes to point out that specific intent does not necessarily make a crime of Genocide worse in real wickedness than an individual Crime Against Humanity proved by the same set of facts.

The Tribunal notes that forced organ harvesting is of unmatched wickedness even compared – on a death for death basis – with the killings by mass crimes committed in the last century. There is justifiable belief in the minds of some or many – rising to probability or high probability – that Genocide has been committed.

In line with this, and by considering the evidence and the law, there can be no doubt that there is a duty on those who have the power to institute investigations for, and proceedings at, international courts or at the UN to test whether Genocide has been committed. They should act immediately to determine accountability for any acts contrary to the provisions of the Genocide Convention.

Commission of Crimes Against Humanity against the Falun Gong and Uyghurs has been proved beyond reasonable doubt by proof of one or more of the following, legally required component acts:

- murder;
- extermination;
- imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- torture;
- rape or any other form of sexual violence of comparable gravity;
- persecution on racial, national, ethnic, cultural or religious grounds that are universally recognised as impermissible under international law; and

- enforced disappearance.

in the course of a widespread and systematic attack or attacks against the Falun Gong and Uyghurs.

In regard to the Uyghurs the Tribunal had evidence of medical testing on a scale that could allow them, amongst other uses, to become an 'organ bank'. The world is already watching their interests and their geographical location – although very large – may render it possible to lend them support more easily than for the Falun Gong who are dispersed throughout the country.

Governments and international bodies must do their duty not only in regard to the possible charge of Genocide but also in regard to Crimes against Humanity, which the Tribunal does not allow to be any less heinous. Assuming they do not do their duty, the usually powerless citizen is, in the internet age, more powerful than s/he may recognise. Criminality of this order may allow individuals from around the world to act jointly in pressurising governments so that those governments and other international bodies are unable *not* to act.

Governments and any who interact in any substantial way with the PRC including:

- Doctors and medical institutions;
- Industry, and businesses, most specifically airlines, travel companies, financial services businesses, law firms and pharmaceutical and insurance companies together with individual tourists,
- Educational establishments;
- Arts establishments

should now recognise that they are, to the extent revealed above, interacting with a criminal state.'

The Uyghur Tribunal found that:

**'Torture** of Uyghurs attributable to the PRC is established beyond reasonable doubt

**Crimes against humanity** attributable to the PRC is established beyond

reasonable doubt by acts of: deportation or forcible transfer; imprisonment or other severe deprivation of physical liberty; torture; rape and other sexual violence; enforced sterilisation; persecution; enforced disappearance; and other inhumane acts.

Accordingly, on the basis of evidence heard in public, the Tribunal is satisfied beyond reasonable doubt that the PRC, by the imposition of measures to prevent births intended to *destroy* a significant part of the Uyghurs in Xinjiang as such, has committed genocide.'

Neither Judgment has been challenged by any individual or body as to any factual conclusion or as to the legal conclusions reached. The PRC has made generalised attacks on the Tribunals and rejected the Judgments, but never with any detail that could properly be considered as a challenge.

The Judgments have each been referred to and relied on by parliaments and by organisations of various kinds (details more likely to be provided by ETAC and WUC as

the Tribunals themselves, pursuant to their non-activist characters, do not regard it as necessary to log reliance on their work and only hear of reliance from time to time.

The principles referred to above, on the basis of which the Tribunals reached their decisions, are:

1. Work had to be and was commissioned by an interested party – in each case an activist NGO.
2. Funds required – hire of rooms for hearings, travel of witnesses etc and payment of some junior researchers (at well below market rates) were initially provided by the NGOs. In the case of the Uyghur Tribunal, further funds were provided by crowd-funding and similar methods, in part assisted by Tribunal staff.
3. Tribunal members were selected with attention to all relevant diversities. Lawyers were not favoured in any way nor were people identified with human rights work or with the particular issue under consideration. They were recruited on condition that they had no special interest in China or the PRC. (In the China Tribunal Professor Waldron, an academic with expertise on China, was appointed by ETAC with my consent *not* to provide *evidence* to the Tribunal members but to ensure that in their deliberations Tribunal members did not fall into error by reason of gaps in cultural understanding. Similarly, in that Tribunal Professor Martin Elliott, a leading UK transplant surgeon was recruited by ETAC at my suggestion to ensure that in deliberations the Tribunal members did not err simply on the basis of misunderstanding technicalities in medical evidence; Professor Elliott, just as with Professor Waldron, was not allowed to give evidence and did not do so (save for one minor point of no consequence).
4. All tribunals members worked entirely *pro bono*, without financial or any other benefit. Members were not allowed to make any contribution to the costs of the Tribunals.
5. Evidence collected was collated and stored - electronically in the case of the Uyghur Tribunal – and from the store of evidence representative selections were

made for presentation to the Tribunal by Counsel to the Tribunals in consultation with me and – for the Uyghur Tribunal – with me and the Vice-Chair Nick Vetch. It was critical that any evidence favourable to the PRC was adduced and considered.

6. Wherever possible evidence both factual and expert - was given in person at Tribunal hearings or by video link and in public. Other evidence was considered - with appropriate added caution - in writing. All written materials relied on were and are available to the public.
7. The PRC was invited on many occasions before and during both proceedings - by hard copy letters sent to the London Embassy because the PRC declines any other form of communication - to take part in the Tribunals' proceedings. No responses were received.
8. The Tribunals worked on the same basis as any jury, starting with a notional blank sheet of paper on which evidence would be added, tested and assessed.
9. No inferences adverse to the PRC were drawn either from the general reputation of the PRC for Human Rights breaches, its occasional *ad hominen* or other generalised attacks on the Tribunal and its members or from any failure to answer specific questions asked of it.
10. The Tribunals - each of which had some members educated or trained in the law - received and acted on advice on the law from independent lawyers (China Tribunal) or Counsel to the Tribunal and his team (Uyghur Tribunal because chosen independent lawyers were disabled for acting once sanctions were imposed on the Tribunal by the PRC). Tribunal members educated or trained in the law *did not advise on the law* but acted along with fellow members as would jurors in proceedings that use juries.
11. Factual conclusions were made on the basis of proof beyond reasonable doubt; the law was applied according to a similar test - i.e. only where the law was clear beyond question was it applied (this was particularly significant in the case of genocide for the Uyghur Tribunal)

Geoffrey Nice, Wednesday, 11 May 2022, UK