

GENOCIDE IN THE PEOPLE'S REPUBLIC OF CHINA:  
VIOLATIONS OF INTERNATIONAL CRIMINAL LAW IN THE  
SUPPRESSION OF FALUN GONG

Dissertation Submitted for the Master of Studies Degree in  
*International Human Rights Law*

*University of Oxford*

*By*

Candidate number 1001420

St. Antony's College

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**ABSTRACT**

In July 1999, the Communist Party of China launched a nationwide campaign to eliminate Falun Gong, a spiritual practice believed to have as many as 70 million adherents. Since that time, hundreds of thousands of Falun Gong practitioners have been detained without due process in prisons, reeducation-through-labour camps, detention centers, and “black jails.” Torture and other high-pressure methods are used to force adherents to renounce their beliefs, sometimes resulting in deaths, while official sources and state-run media agencies depict the group as evil and openly call for its “complete eradication.”

In response to the suppression campaign, Falun Gong adherents outside China have sought to invoke the concept of universal jurisdiction to bring charges against senior Chinese leaders alleging torture, genocide, and crimes against humanity. By drawing on the Convention on the Prevention and Punishment of the Crime of Genocide and jurisprudence of international criminal tribunals for Rwanda and the former Yugoslavia, this essay will assess the claims that genocide has occurred against the Falun Gong. I argue that while several aspects of the Falun Gong case are unique—including the party-state’s emphasis on forced conversion as a means of destruction and the debate over the group’s religious identity—the suppression of Falun Gong would likely fit the convention definition of genocide.

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## INTRODUCTION

In 2002, while on an official visit to the United States, Chinese Communist Party chairman Jiang Zemin was served papers complaining of torture and genocide. The plaintiffs alleged that Jiang had ordered and planned the nationwide suppression of the Falun Gong spiritual discipline, and that U.S. courts had jurisdiction under the Alien Tort Claims Act and the Torture Victims Protection Act.

The case never made it far: the U.S. State Department argued that Jiang enjoyed absolute immunity as a former head of state, even for alleged violations of *jus cogens* norms.<sup>1</sup> The court accepted the government's suggestion as conclusive and binding upon it, signalling that immunity for foreign officials is a matter of politics, not law.

China is a permanent member of the UN Security Council and is not a signatory to the Rome Statute. Chinese officials accused of genocide are therefore unlikely to face an international tribunal, barring a regime change or major political reversal. As the U.S. case demonstrates, China's political clout can also deter individual nations from attempting to exercise jurisdiction.

But what if it were otherwise? If, in the future, a domestic or international court were to examine the suppression of Falun Gong for the purpose of assigning individual criminal responsibility, how might they assess claims that genocide has occurred? This paper represents a preliminary attempt to answer this question, assessing the party-state's persecution in light of the 1948 Genocide Convention and subsequent jurisprudence.

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<sup>1</sup> Sean Murphy, 'Head-Of-State Immunity For Former Chinese President Jiang Zemin' (2003) 97 *The American Journal of International Law*, 974-977

The first chapter provides an overview of the facts of the anti-Falun Gong campaign. It briefly describes the origins of the persecution; the policies, plans, and organizational structures put in place for its execution; and details of the abuses meted out against Falun Gong adherents.

Chapter two deals with the mental element of genocide: the specific intent to eliminate an ethnical, racial, national or religious group in whole or in part. I argue that an extensive record of official speeches, policy documents, and editorials in the state-run press—coupled with a pattern of widespread rights violations—could serve as proof that senior Communist Party leaders intended to eliminate Falun Gong in whole or substantial part.

Chapter three addresses the physical acts enumerated in the genocide convention. This paper focuses only on (a) killing members of the group, and (b) causing serious bodily or mental harm to members of the group, though it should be noted that other acts of genocide—such as deliberately inflicting conditions of life calculated to bring about physical destruction—may also apply. By drawing on the relevant case law, I conclude that the atrocities committed against Falun Gong adherents in China are acts of genocide.

## **CHAPTER I: FACTS OF THE PERSECUTION OF FALUN GONG**

In July of 1999, the Chinese Communist Party launched a nationwide campaign to eliminate the Falun Gong spiritual practice. In the nearly two decades since, human rights monitors estimate that hundreds of thousands of Falun Gong adherents have been detained without due process in prisons, reeducation-through-labour camps, black jails or psychiatric facilities.<sup>2</sup> Local authorities face intense pressure to forcibly convert Falun Gong adherents, leading to widespread reports of torture and deaths in custody. Moreover, a

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<sup>2</sup> See Stephen Noakes and Caylan Ford, 'Managing Political Opposition Groups In China: Explaining The Continuing Anti-Falun Gong Campaign' (2015) 223 *The China Quarterly* ; Sarah Cook, 'The Politburo's Predicament: Confronting The Limitations Of Chinese Communist Party Repression' (Freedom House 2015) 17.

growing body of evidence indicates that large numbers of Falun Gong victims have been killed to supply a lucrative trade in human organs.

The campaign against Falun Gong is unprecedented in contemporary China in its scope, intensity, and duration. The number of possible crimes committed—including crimes against humanity and acts of genocide—is expansive. And since the campaign has relied on mass mobilization of the citizenry, large numbers of Chinese nationals are potentially implicated in the commission, ordering, aiding and abetting, or incitement of the crimes. While it is beyond the scope of this paper to provide a complete summary of the alleged violations, this chapter aims to provide a general view of the origins, structure, and key features of the suppression campaign.

## **Background**

Falun Gong is a spiritual practice involving meditation and a moral philosophy based on the tenets of ‘truth, compassion, and tolerance.’ It was first popularized in China in 1992, though its teacher Li Hongzhi suggests that Falun Gong’s practice methods and essential philosophy had been transmitted privately through generations of masters and disciples.<sup>3</sup> The practice grew quickly in the 1990s, and was buoyed by support from government agencies that viewed it as a means of improving public health and morality. At its peak, government sources estimated that it had up to 70 million adherents.<sup>4</sup> Included among them were retirees, students, farmers and factory workers, but also intellectuals, judges, senior bureaucrats, and high-ranking Communist Party officials. In a state that does not tolerate independent civil society groups—let alone religiously oriented ones—this popularity came at a cost.

By the late 1990s, senior Chinese officials were strongly divided on the Falun Gong question. Some argued that the group was peaceful, non-political, and should therefore be left alone. Others, particularly in the central security and propaganda agencies, viewed

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<sup>3</sup> Li Hongzhi, ‘Lectures in Guangzhou,’ (December 1994)

<sup>4</sup> Seth Faison, ‘In Beijing: A Roar of Silent Protests’ *New York Times* (Beijing April 27 1999).

Falun Gong as a potential threat on account of its theistic beliefs, the number and demographic composition of its followers, its organizational capacity, and the fact that it had resisted co-optation and control by the state. These leaders sought to curtail Falun Gong's growth and actively sought a pretext to crack down on the group.<sup>5</sup>

These debates within the Party leadership were settled on April 25 1999, when an estimated 20,000 Falun Gong adherents assembled quietly in central Beijing to request legal protection and an end to escalating monitoring and harassment from state security agencies.<sup>6</sup> The demonstration, peaceful though it was, had the opposite effect.

On the evening of the April demonstration, Communist Party Chairman Jiang Zemin wrote that Communist ideology must “defeat” Falun Gong.<sup>7</sup> In the weeks that followed, Jiang issued no fewer than 13 written policy directives calling for a crackdown.<sup>8</sup> The party leadership then devised an extensive plan for eliminating Falun Gong, which would unite the entire apparatus of the state to crush the group.<sup>9</sup> On July 7, 1999, Jiang ordered the creation of a “Central Leading Group to Deal with the Falun Gong Problem.” The group was helmed by a member of the Politburo Standing Committee, and its deputies were drawn from the highest echelons of the Propaganda and Security Ministries.<sup>10</sup> Jiang described the group's mandate as follows:

*Upon its establishment, the [Central Leading Group] on Falun Gong shall take immediate actions to organize resources, track down the Falun Gong organizational structure throughout China, formulate a crackdown strategy, and be fully mobilized to break and wipe out Falun Gong. We shall not wage a war without preparations....The heads of Communist Party and of government at all levels in all regions must take responsibility and in accordance with the CCCCPC's requirements, implement this task in their own localities.<sup>11</sup>*

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<sup>5</sup> See Benjamin Penny, *The Religion of Falun Gong* (University of Chicago Press 2012), 55.

<sup>6</sup> James Tong, *Revenge Of The Forbidden City* (Oxford University Press 2009) 6.

<sup>7</sup> Jiang Zemin, 'A New Signal: Letter From Comrade Jiang Zemin To Members Of The Standing Committee Of The Political Bureau Of The CPC Central Committee And Other Relevant Comrades' (1999).

<sup>8</sup> Tong 33.

<sup>9</sup> Mickey Spiegel, *Dangerous Meditation* (Human Rights Watch 2002).

<sup>10</sup> Sarah Cook and Leeshai Lemish, 'The 610 Office: Policing the Chinese Spirit' (2011) 11 Jamestown Foundation China Brief.

<sup>11</sup> Jiang Zemin, 'Comrade Jiang Zemin's Speech at the Meeting of the Political Bureau of the CCCCPC Regarding Speeding Up the Dealing With and Resolving the 'Falun Gong' Problem' (July 7 1999).

The Party's anti-Falun Gong policies are implemented by an extralegal body called the "610 Office," named for the date of its creation on June 10 1999. The office was charged with overseeing the "complete disintegration" of Falun Gong, and held a commanding influence over the country's judiciary, media, and police.<sup>12</sup> In addition to the central 610 Office, every province, municipality, and township in the country was ordered to establish their own 610 Office to carry out orders from the center, which instructs them on how to propagandize against, monitor, detain, and forcibly convert Falun Gong adherents.<sup>13</sup>

### **The suppression campaign**

On 20 July 1999, security forces raided the homes of thousands of Falun Gong adherents nationwide and transported them to detention facilities. Two days later, China's Ministry of Civil Affairs declared "Falun Gong organizations" to be illegal.<sup>14</sup> The Ministry of Public Security then issued a circular forbidding citizens from displaying Falun Gong messages or insignia, distributing Falun Gong books, assembling for the purpose of practicing Falun Gong, and protesting or otherwise resisting the ban.<sup>15</sup>

Within a week, two million Falun Gong books had been seized and destroyed.<sup>16</sup> Schools, work units, and neighbourhood committees were mobilized against Falun Gong adherents, pressuring them to denounce the practice.<sup>17</sup> If the targeted persons refused, they risked expulsion, loss of employment or wages, or were sent to reeducation centers. Communist Party members and government employees were compelled to attend study sessions to criticize Falun Gong, and school children were similarly made to "struggle" against the group. Access to jobs, education, and housing became conditional on a person's attitude

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<sup>12</sup> Cook and Lemish (no. 10); Tong (n 6) 133-135.

<sup>13</sup> *ibid.*

<sup>14</sup> Spiegel (n 9).

<sup>15</sup> 'Notice Of The Ministry Of Public Security Of The People's Republic Of China' (July 22 1999) 32 Chinese Law and Government.

<sup>16</sup> Xinhua, 'China destroys over two million confiscated Falun Gong publications' (Beijing July 29 1999).

<sup>17</sup> Spiegel (n 9).

toward Falun Gong—a phenomenon that is still evident today.<sup>18</sup> As a result, untold numbers of adherents have been forced into destitution or are in hiding.

During the first several years of the campaign, the country's state-run press was saturated with anti-Falun Gong invective in what has been described as a “massive propaganda campaign.”<sup>19</sup> The group was presented as an existential threat to the party, the country, and the people, and was variously depicted as vermin or a cancer. The following statement from the state-run Xinhua News Agency is representative:

*“The masses have bitterly hated this poisonous tumour in society for a long time. Consistent with public opinion, the Party and the government resolutely took a series of major measures and led the people of the whole country to carry out a determined struggle against the Falun Gong evil cult, and have achieved major victories....if we fail to take firm action against the Falun Gong evil cult and allow it to develop, the people, the families and the nation will no longer be able to enjoy peace.”<sup>20</sup>*

Similar rhetoric pervades the education system. A widely distributed school textbook depicted the words “Falun Gong” literally dripping in blood; in some images, Falun Gong was personified as the grim reaper, leading children to their demise. The book's introduction reads in part:

*“The struggle against deviant religions is the same as other political struggles: it should be a mass struggle...When the masses are awakened, when they are mobilized, when they hate the [Falun Gong] cult to the bones, when they rise up and attack it, the cult will truly become a rat crossing the street. It will have no market, nowhere to hide itself, and only then will it be drowned out in the great sea of mass struggle.”<sup>21</sup>*

The suppression of Falun Gong aimed at the “complete eradication” (彻底铲除) of the group. This language is reiterated frequently in government and party documents, in the state-run press, and in the speeches and statements of the political leadership. During a

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<sup>18</sup> Noakes and Ford (n 2) 671-672.

<sup>19</sup> David Ownby, *Falun Gong And The Future Of China* (Oxford University Press 2010), 176 ; Amnesty International, ‘People's Republic Of China, The Crackdown On Falun Gong And Other So-Called "Heretical Organizations"’ (2000) 4.

<sup>20</sup> *Xinhua*, ‘Li Lanqing Spoke at the National Award-giving Meeting for Advanced Groups and Individuals in Combating Evil Cults’ (February 26 2001).

<sup>21</sup> Lu Renjie et al., *Pictures That Expose and Criticize Falun Gong* (China Writers Publishing House 2003).

rare Communist Party Central Work Conference in February 2001, for example, each of the seven members of the Politburo Standing Committee were required to “testify in turn to the need to eradicate” Falun Gong<sup>22</sup> According to the New York Times, the leadership “made it clear that they hope to crush the defiant Falun Gong movement altogether.”<sup>23</sup> Xinhua News, the official mouthpiece of the Communist Party, declared “[T]o eradicate the Falun Gong cult will help create a harmonious and stable environment for the country's socialist construction and benefit both the country and the people.”<sup>24</sup> Another article proclaimed: “in order to safeguard social order and the interests of the people, the Falun Gong cult must be completely eradicated.”<sup>25</sup>

Soon, even private practice of Falun Gong meditation or possession of Falun Gong literature became grounds for extralegal imprisonment and torture.<sup>26</sup> In January 2001, the central 610 office reportedly “ordered all neighborhood committees, state institutions and companies” to detain Falun Gong practitioners and subject them to ideological reprogramming; no one was to be spared.<sup>27</sup> Soon thereafter, the Washington Post reported that the government was sanctioning “the systematic use of violence against the group.” According to an unnamed government advisor, the official policy involved a combination of high-pressure propaganda, reeducation tactics, and torture to “break” recalcitrant Falun Gong believers.<sup>28</sup>

By the 2010s, the cumulative number of detained individuals had risen well into the hundreds of thousands.<sup>29</sup> Several sources indicate that Falun Gong practitioners were the largest group of prisoners of conscience in the country, that they were the majority population in many prisons and labour camps, and that they were targeted for especially

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<sup>22</sup> Spiegel (n 9).

<sup>23</sup> Erik Eckholm and Elisabeth Rosenthal, ‘China’s Leadership Pushed for Unity,’ *New York Times* (Beijing, March 9 2001).

<sup>24</sup> Xinhua, ‘Xinhua Commentary Calls For Long-Term Fight Against Falun Gong Cult’ (September 7 2003).

<sup>25</sup> People’s Daily, ‘Falun Gong cult is the creator of human tragedy’ (March 20 2001)

<sup>26</sup> Spiegel (n 9); Charles Hutzler, ‘Falun Gong Feels Effect of China's Tighter Grip — Shift Means Even Private Practice Is Banned’ *Wall Street Journal* (April 26 2001)

<sup>27</sup> John Pomfret and Philip Pan, ‘Torture Is Breaking Falun Gong’ *Washington Post* (August 5 2001).

<sup>28</sup> Ibid

<sup>29</sup> Cook (n 2) 17

severe torture solely on the basis of their Falun Gong beliefs.<sup>30</sup> As noted by a 2005 report by Human Rights Watch:

*The government's campaign against [Falun Gong] has been so thorough that even long-time Chinese activists are afraid to say the group's name aloud. One Beijing petitioner said: 'Petitioners are usually locked up directly. But the worst is [she whispers] Falungong. They have terrible treatment, not like the others.'*<sup>31</sup>

Within labour camps, prisons, and reeducation centers, the party-state's objective is typically not to kill or maim Falun Gong adherents *per se*. Instead, the aim is to “transform” the minds of Falun Gong believers. Transformation has been described as “a process of ideological reprogramming whereby practitioners are subjected to various methods of physical and psychological coercion until they recant their belief in Falun Gong”<sup>32</sup>—in other words, it is forced religious conversion. Labour camps and prison officials receive compensation for every Falun Gong practitioner who is transformed, and are punished or denied promotions if they fail to meet transformation quotas or if rates of “relapse” are too high.<sup>33</sup>

Individuals are considered to have been successfully transformed when they sign statements promising to stop practicing Falun Gong, to sever all connections with the group, condemn the doctrine and teachings of the practice, engage in self-criticism, and agree to cooperate with authorities. They may also be required to make videotaped statements denouncing Falun Gong, or to participate in the transformation of their former coreligionists, including by physically abusing them.<sup>34</sup> Such methods are apparently seen as effective ways to test the sincerity of the newly converted.

Former Falun Gong detainees describe the process of forced conversion as causing severe

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<sup>30</sup> Amnesty International, ‘China: Changing the Soup but not the Medicine: Abolishing re-education through labour in China’ (2013) 14, 18-25; Chinese Human Rights Defenders, ‘Re-education through labor abuses continue unabated: overhaul long overdue’ (2009) 195

<sup>31</sup> Human Rights Watch, ‘We Could Disappear at Any Time: Retaliation and Abuses Against Chinese Petitioners’ (2005) 58.

<sup>32</sup> Congressional-Executive Commission on China (CECC), ‘2008 Annual Report’ (2008) 90

<sup>33</sup> Cook (n 2); Amnesty International (n 30) 14.

<sup>34</sup> Amnesty International (n 30) 19 ; 25-27.

mental harm. As noted in a 2015 report by Amnesty International:

*The greatest expressions of shame and mental anguish by Falun Gong practitioners...were associated with their recollections of having succumbed to the pressure and cooperated with the “transformation” process. Even more acute is the psychological shame and humiliation that some practitioners expressed in relation to participating in the “transformation” of other practitioners, to the extent that very few are willing to admit to their involvement in this or speak in detail about this experience.<sup>35</sup>*

For Falun Gong practitioners who do not willingly submit to the transformation process, authorities employ increasingly severe physical torture against them. Common forms of torture include beatings; shocks with electric truncheons; crude or violent forced-feedings; simulated drowning; sexual humiliation and rape with foreign objects; injections with unknown pharmacological substances; and suspension by the limbs or being forced into stress positions, sometimes for days or weeks at a time. In addition, detainees encounter sleep deprivation, lack of access to sanitation, insufficient food, and denial of medical treatment.<sup>36</sup> As of 2008, Falun Gong sources had compiled over 63,000 individual reports of torture in custody, many of them specifying the precise circumstances of the torture and the names of the alleged perpetrators.<sup>37</sup> In the 2006 report of the UN Special Rapporteur on Torture, Falun Gong victims accounted for fully two-thirds of Chinese torture cases.<sup>38</sup> The combination of psychological pressure and physical torture causes severe and lasting harm in its victims, a portion of whom suffer long-term physical disabilities, mental collapse, or death following their release from custody.<sup>39</sup>

Centrally mandated transformation quotas and directives, together with a culture of impunity and the intense vilification of Falun Gong adherents in the state-run press, has

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<sup>35</sup> Ibid, 27.

<sup>36</sup> Ibid, 18-25, 29-33 ; UN Human Rights Council, ‘Report of the Special Rapporteur on Torture’ (2006) UN Doc E/CN.4/2006/6/Add.6, 13-14.

<sup>37</sup> Chinese authorities consistently obstruct efforts to independently verify reports of torture or killing in custody. However, reports from Falun Gong sources are generally considered reliable by human rights organizations and academic sources. See Ownby (n 19) p 162-163.

<sup>38</sup> CECC (n 32) 88.

<sup>39</sup> For a selection of representative cases, see Falun Dafa Information Center (FDIC), ‘Documented Falun Gong Deaths January-April 2011’ (May 30 2011)

<http://media.faluninfo.net/media/doc/2011/06/documented-falun-gong-deaths-jan-apr-2011.pdf>

Accessed April 10 2017.

also led to scores of deaths. Among the first cases to be documented in the Western press was that of Chen Zixiu, a 58-year-old former factory worker. As reported by the Wall Street Journal:

*Ms. Chen was taken back into the room. After again refusing to give up Falun Gong, she was beaten and jolted with the stun stick, according to two prisoners who heard the incident and one who caught glimpses of it through a door. Her cellmates heard her curse the officials, saying the central government would punish them once they were exposed. But in an answer that Falun Gong adherents say they heard repeatedly in different parts of the country, the Weifang officials told Ms. Chen that they had been told by the central government that "no measures are too excessive" to wipe out Falun Gong. The beatings continued and would stop only when Ms. Chen changed her thinking...*

The guards then forced Ms. Chen to run barefoot through the snow, at which point she collapsed and lost consciousness. Guards ignored the pleas of other inmates to take her to a hospital, and she died the following morning. Her family was called to claim the body:

*Her calves were black. Six-inch welts streaked along her back. Her teeth were broken. Her ear was swollen and blue. ... That day, the hospital issued a report on Ms. Chen. It said the cause of death was natural.<sup>40</sup>*

Centrally coordinated transformation drives have persisted into recent years. In 2010, for instance, the central 610 office ordered a three-year campaign to intensify the forced religious conversion of Falun Gong adherents, requiring local officials authorities to enter villages, households, schools, businesses in search of Falun Gong practitioners to “transform” and “conquer.”<sup>41</sup> Within labor camps and prisons, the new transformation quotas led to an intensification of torture and a spate of deaths. In one prison in northeast China, three Falun Gong practitioners were allegedly tortured to death in a two-week period after refusing to convert.<sup>42</sup> Among them was 47-year-old Qin Yueming. According to testimony from other inmates, Qin was beaten for days. Guards then administered a deliberately violent forced-feeding, during which the feeding tube may have punctured his

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<sup>40</sup> Ian Johnson, 'A Deadly Exercise: Practicing Falun Gong Was A Right, Ms. Chen Said, To Her Last Day' *Wall Street Journal* (2000).

<sup>41</sup> Noakes and Ford (n 2) 665.

<sup>42</sup> Falun Dafa Information Center, 'Northeast China Prison Under Lockdown After Deaths Exposed Online' (March 28 2011).

lungs or esophagus. He died the next morning. Photographs of Qin's body, taken surreptitiously by family members, show his torso covered in bruises, with dried bloods around his nose. Echoing the Chen Zixiu case, prison authorities reportedly told his family that he died of a heart attack. When family members tried to hold prison officials accountable, they were sent to labor camps.<sup>43</sup>

As of 2017, Falun Gong sources have documented over 4,000 named individuals who reportedly died as a result of torture or mistreatment in custody.<sup>44</sup> In many of these cases, death may not have been the original objective, but it was the reasonable and foreseeable result of torture and mistreatment and, more broadly, of central policies that encouraged abuse, dehumanized the victims, and shielded the perpetrators from accountability.

In addition to deaths stemming from torture and mistreatment, there are also reports of large-scale medicalized killing, whereby the organs of Falun Gong practitioners are harvested to supply a lucrative trade in organs.<sup>45</sup>

Until recently, China did not have any organized system for organ donation and allocation. Nonetheless, since approximately 2000, it has developed one of the largest transplant industries in the world. According to a 2016 report, tens of thousands of organs per year have unexplained sources.<sup>46</sup> In 2006, allegations emerged that Falun Gong adherents comprised a major source of the "missing" organs, with hospitals, police and the judiciary colluding to profit from their deaths.

Some of the key evidence in support of these claims include the vast disparity between known sources of organs and the volume of transplants performed; the exceedingly short

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<sup>43</sup> Amnesty International (n 30) 32.

<sup>44</sup> Minghui, 'Falun Gong practitioners persecuted to death' <http://library.minghui.org/category/32,96,,1.htm> accessed April 11 2017.

<sup>45</sup> David Matas and David Kilgour, *Bloody Harvest: Organ Harvesting of Falun Gong Practitioners in China* (Serpahim Editions 2009); Ethan Gutmann, *The Slaughter: Mass Killing, Organ Harvesting, and China's Secret Solution to Its Dissident Problem* (Prometheus Books 2014).

<sup>46</sup> Nathan Vanderklippe, 'Report Alleges China Killing Thousands of Prisoners to Harvest Organs' *The Globe and Mail* (Beijing, June 22 2016).

wait times for kidney, liver, and heart transplants, which suggests that organs are harvested on demand from a captive population; the correlation between the growth in China's transplant industry and the onset of the suppression against Falun Gong; and the fact that Falun Gong was both the largest and arguably the most vulnerable prisoner group in this time period.<sup>47</sup> Former Falun Gong prisoners also recalled being subjected to targeted medical exams in custody, wherein doctors would draw large volumes of blood, probe their organs or perform chest x-rays, but refuse to treat any of the actual injuries or illnesses they may have sustained in custody.<sup>48</sup> In recorded phone calls with undercover investigators, the staff of several Chinese hospitals admitted to sourcing organs from Falun Gong adherents. Notably, a number of prominent organ transplant surgeons have had roles in the anti-Falun Gong campaign, and have publicly advocated for the group's destruction.<sup>49</sup>

Although reports of large-scale organ harvesting from Falun Gong prisoners has not been proven conclusively, a growing body of evidence gives credence to the claims, and it appears to be the most plausible scenario for explaining how many of the organs are sourced. The Chinese government has never convincingly refuted the substance of the evidence.

## CHAPTER II: THE MENTAL ELEMENT

Genocide is distinct from other international crimes in that it requires the perpetrators to have a specific intent (*dolus specialis*) to destroy an ethnical, racial, national, or religious group, in whole or in part. This chapter will discuss the various components of the mental element of genocide, and consider how they might apply to the suppression of Falun Gong.

### **Intent to destroy**

As originally devised by Raphael Lemkin, the term genocide was defined as:

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<sup>47</sup> Matas and Kilgour (n 46).

<sup>48</sup> Gutmann (n 46) 233-235.

<sup>49</sup> Matthew Robertson and Jacob Lavee, 'China's Organ Transplant Problem' *The Diplomat* (March 29 2017).

*A coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objective of such a plan would be disintegration of the political and social institutions of culture, language, national feelings, religion, and the economic existence of national groups and the destruction of the personal security, liberty, health, dignity and even the lives of the individuals belonging to such groups.*<sup>50</sup>

Although Lemkin understood genocide to entail both cultural and physical elimination, the drafters of the Genocide Convention deliberately limited its scope to physical destruction. Thus, among the constitutive acts of genocide included in the genocide convention (discussed in Chapter 3), all refer to the physical or biological targeting of members of the protected groups.

This raises a question about the connection between the *mens rea* and the *actus reus* of genocide. The planners and architects behind the persecution of Falun Gong explicitly sought to eradicate the group, but they may not have initially intended to achieve the physical destruction of Falun Gong adherents *per se*. If all members of the group willingly renounced the religion, it is possible that coercive measures, torture, and killings would not have occurred. It is only because Falun Gong adherents resisted transformation that the authorities resorted to increasingly severe measures to punish and re-educate recalcitrant believers, resulting in widespread killings and severe bodily and mental harm.

In his book *Genocide in International Law*, William Schabas presents a hypothetical scenario in which a state intends to destroy a group by targeting its political, economic, or cultural foundations, but where some members of the group are killed—perhaps incidentally—in the process. He writes: “If destruction is viewed from this large perspective, then such killing would meet the definition of genocide, being killing of members of a group with the intent to destroy the group, even though the intent is not to destroy the group by killing.” Schabas notes that the Genocide Convention may support such an interpretation, and would thus apply even in cases where “an intent at physical destruction is not obvious but where the intent to destroy the community as a political, economic, social and cultural

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<sup>50</sup> Raphael Lemkin, *Axis Rule in Occupied Europe*, (The Lawbook Exchange Ltd 2005) 79.

entity is beyond question.”<sup>51</sup>

Such an interpretation was probably not the goal of the drafters of the Genocide Convention. As noted by the *Semanza* Trial Chamber, the *travaux préparatoires* shows that the drafters “unequivocally chose to restrict the meaning of ‘destroy’ to encompass only acts that amount to physical or biological genocide.”<sup>52</sup> However, the ordinary meaning of the text of the Genocide Convention does not restrict the *mens rea* to mean the physical destruction of individual members; that belongs to the *actus reus*, and the two must not be conflated. As the International Law Commission writes, genocide requires an intent “to destroy the group as such, meaning as a separate and distinct entity, and not merely some individuals because of their membership in a particular group.”<sup>53</sup>

Finally, even if the perpetrators did not initially plan to destroy by killing, their plans evolved to encompass large-scale acts of physical destruction. The case law makes clear that the intent to destroy must be formed before the commission of the enumerated acts, but it does not require premeditation for the acts themselves. In *Kayeshima and Ruzindana*, the Trial Chamber asserted: “for the crime of genocide to occur, the *mens rea* must be formed prior to the commission of the genocidal acts. The individual acts themselves, however, do not require premeditation; the only consideration is that the act should be done in furtherance of the genocidal intent.”<sup>54</sup>

Communist Party leaders unequivocally and repeatedly declared their intention to completely destroy Falun Gong as an entity, and the killing and serious bodily and mental harm suffered by Falun Gong adherents has been in furtherance of that goal. Thus, the *mens rea* element is met.

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<sup>51</sup> William Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge University Press 2000) 229.

<sup>52</sup> *Semanza* (Trial Chamber) ICTR-97-20 (May 15 2003) para. 315.

<sup>53</sup> International Law Commission ‘Draft Code of Crimes against the Peace and Security of Mankind’ (1996) 45.

<sup>54</sup> *Kayishema and Ruzindana* (Trial Chamber) ICTR-95-1 (May 21 1999) para. 9.

## Proof of intent

In previous genocide prosecutions, the *ad hoc* tribunals noted that the existence of a plan or policy is not a necessary ingredient for genocide, but that it is “strong evidence of the specific intent”<sup>55</sup> and may “facilitate proof of the crime”.<sup>56</sup>

Unlike the genocides in Rwanda and the former Yugoslavia, the campaign against Falun Gong is accompanied by an extensive paper trail in which Communist Party authorities describe—often in extremely candid terms—their plans and policies to eradicate Falun Gong.<sup>57</sup> This includes detailed directions from the 610 Office on how lower-level officials should monitor, imprison, re-educate, and propagandize against Falun Gong adherents for the purpose of eliminating the group.<sup>58</sup> Intent can also be established from the speeches and public declarations of officials who participated in the campaign, and statements in the official press, where Falun Gong is described as evil, cancerous, and as an “enemy” that must be eradicated.<sup>59</sup>

Even without such evidence, the *ad hoc* tribunals concluded that intent could be inferred from such factors as the scale and the nature of the atrocities committed; the number of group members affected; the use of derogatory language toward members of the targeted group; the systematic targeting of victims on account of their membership in the group; the general political doctrine that gives rise to the acts; and the methodical way of planning.<sup>60</sup> The *Krstic* Trial Chamber further stated: “attacks on the cultural and religious property and symbols of the targeted group [...] may legitimately be considered as evidence of an intent to physically destroy the group.”<sup>61</sup>

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<sup>55</sup> *Ibid* para. 94.

<sup>56</sup> *Jelusic* (Appeals Chamber) ICTY-95-10 (July 5 2001), para. 48.

<sup>57</sup> Spiegel (n 9).

<sup>58</sup> Tong (n 6) 140-150 ; Cook and Lemish (n 10).

<sup>59</sup> For an analogous example, see *Nahimana et al.* (Trial Chamber) ICTR-99-52 (Dec 3 2003) para. 957-969.

<sup>60</sup> *Akayesu*, (Trial Chamber) ICTR-96-4-T (September 2 1998) para. 523-524 ; *Kayishema and Ruzindana* (n 54) para. 93, 527 ; *Jelusic* (n 56) para. 47.

<sup>61</sup> *Krstic*, (Trial Chamber) ICTY-98-33 (August 2 2001) para. 580.

Nearly all of these factors are evident in the suppression of Falun Gong: the group is subject to extreme and dehumanizing propaganda; its religious texts and symbols have been attacked and destroyed; the property of members has been seized; adherents are barred from seeking jobs, housing, and education; and the suppression occurs amidst a general political doctrine that presents Falun Gong as an existential threat to the nation; and across the country, hundreds of thousands have been imprisoned. Experts familiar with the details of the suppression estimate hundreds of thousands—and perhaps millions—of Falun Gong adherents have been detained without due process in facilities where they experience psychological and physical torture, with some being killed. Having a large number of actual victims is not a necessary to prove genocide—again, that would be to confuse the *mens rea* and the *actus reus*.<sup>62</sup> However, the extraordinary scale of the suppression and the number of affected individuals does serve as evidence of the intent to destroy the group in whole or in part.

For decision makers, intent can be proven based on their statements and the policies they enact. However, it may be more difficult to directly prove intent among front-line executants, such as labor camp or prison guards. This has led some to suggest that, for executants, knowledge of the general context and nature of the act should constitute proof of intent.<sup>63</sup> In practice, the ICTR has employed such a standard. For instance, the *Akayesu* Trial Chamber writes that intent can be inferred “from the general context in which other culpable acts were perpetrated systematically against the same group, *regardless of whether such other acts were committed by the same perpetrator or even by other perpetrators*.”<sup>64</sup> The assumption is that executants have knowledge of the wider context of their crimes, and their participation as part of a wider attack is evidence of their intent. Returning to the persecution of Falun Gong, it is almost inconceivable that prison and labor camp officers are unaware of the nationwide campaign to eliminate the group.

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<sup>62</sup> Schabas (n 51) 233.

<sup>63</sup> Cherif Bassiouni, 'Commentary on the International Law Commission's 1991 Draft Code of Crimes against the Peace and Security of Mankind' (1993) 11 *Nouvelles etudes penales*, 233 ; Schabas 225.

<sup>64</sup> *Akayesu* (n 60) para. 728.

### **In whole or in part**

To qualify as genocide, the perpetrator must intend to destroy the group “in whole or in part.” Even the most ambitious architects of genocide can hardly hope to destroy a group in its entirety. The Hutus in Rwanda did not seek to eliminate all Tutsis worldwide, and General Mladić could not have planned to destroy all Muslims. In most cases, therefore, genocide involves the destruction of a group in part. The case law of the *ad hoc* tribunals and other commentaries provide guidance on how this can be interpreted.

Citing a 1985 report by the Sub-Commission on Genocide, the Trial Chamber in *Kayishema and Ruzindana* wrote that the wording of the Genocide Convention “would seem to imply a reasonably significant number, relative to the total of the group as a whole, or else a significant section of a group such as its leadership. Hence, both proportionate scale and total number are relevant.”<sup>65</sup>

The International Law Commission writes that genocide “requires the intention to destroy at least a substantial part of a particular group.” In *Krstic*, the Trial Chamber similarly wrote that the intent to destroy must concern “a substantial part” of the group, “either numerically or qualitatively.”<sup>66</sup> Further elaboration of this principle is found in the *Jelisc* judgement, where the Chamber concluded that genocidal intent “may consist of desiring the extermination of a very large number of the members of the group [...] [I]t may also consist of the desired destruction of a more limited number of persons selected [*i.e.* leadership of the group] for the impact that their disappearance would have upon the survival of the group as such.”<sup>67</sup>

The planners of the campaign against Falun Gong explicitly described their intention to destroy the group in whole or in substantial part. Their own literature frequently calls for the “complete eradication” of the group, and in fact the party-state even seeks to

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<sup>65</sup> *Kayishema and Ruzindana* (n 54) para. 96.

<sup>66</sup> *Krstic* (n 61) para. 634.

<sup>67</sup> *Jelisc* (Trial Chamber), ICTY-95-10 (December 14 1999) para. 82.

marginalize and suppress Falun Gong communities outside its borders.<sup>68</sup> In official documents, central government authorities set targets on the number of known Falun Gong adherents to be “transformed” across the country, with quotas typically ranging from 60 – 100% in a given period.<sup>69</sup> If achieved, these directives would certainly result in the destruction of Falun Gong in whole or substantial part. And although any unrepentant Falun Gong believer is liable to face persecution, the Party places special priority on what it terms “leaders” or “core members” who are most essential to the group’s survival. This would include, for example, those who facilitate encrypted communications among Falun Gong believers; run underground printing presses to produce Falun Gong books; or document and report on human rights abuses.

### **Religious Groups**

The four protected groups under the genocide convention are “ethnic, racial, national, or religious.” Although the drafters considered including social and political groups, they ultimately chose to include only the four categories listed above, which are assumed to have a relatively stable character.<sup>70</sup>

On its face, the question of whether Falun Gong should qualify as a religion appears fairly straightforward. International human rights NGOs consistently classify it as a religion, as do governments and UN agencies.<sup>71</sup> Scholars of Chinese history and religion say that Falun Gong is “profoundly religious”<sup>72</sup>: it claims a Buddhist lineage, includes rigorous precepts for moral conduct, espouses a belief in Gods and spiritual realms, and involves a systematic program of exercises and meditation meant to affect moral growth and inner purity.

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<sup>68</sup> See ‘Falun Gong and China’s Continuing War on Human Rights,’ Joint Hearing before the Committee on International Relations of the U.S. House of Representatives (July 21 2005)

<sup>69</sup> Amnesty International (n 30) p 14; Noakes and Ford (n 2) 665.

<sup>70</sup> International Law Commission (n 53) 45.

<sup>71</sup> See for example CECC (n 32) ; U.S. Department of State, ‘International Religious Freedom Reports 2015: China’; Freedom House ‘The Battle for China’s Spirit: Religious Revival, Repression, and Resistance under Xi Jinping’ (February 2017); UN Human Rights Council, *Report of the Special Rapporteur on Freedom of Religion or Belief* (2010) UN Doc A/HRC/13/40/Add.1.

<sup>72</sup> Penny (n 5) 225.

However, the classification of Falun Gong as a religion has been disputed at different times by the group itself and by the Chinese party-state. The following section examines these cultural and historical context surrounding the emergence and classification of Falun Gong, and considers how religious might be defined for purposes of the convention.

#### *Defining protected groups*

The Genocide Convention does not contain a precise definition of a religious group, and neither is religion clearly defined in international law. The case law on genocide does little to clarify the issue: in *Akayesu*, the ICTR stated simply ““The religious group is one whose members share the same religion, denomination or mode of worship,”<sup>73</sup> and in *Kayishema and Ruzindana*, the Trial Chamber wrote “a religious group includes denomination or mode of worship or a group sharing common beliefs.”<sup>74</sup> U.S. genocide legislation is slightly more helpful, defining “religious group” to mean “a set of individuals whose identity as such is distinctive in terms of common religious creed, beliefs, doctrines, practices, or rituals.”<sup>75</sup>

Based on these broad definitions, Falun Gong easily qualifies as a religion. But according to the *ad hoc* tribunals, the *travaux préparatoires* of the Convention suggests that the drafters intended for it to apply only to groups that were relatively permanent and involuntary. In *Jelusic*, the Trial Chamber found that the drafters of the convention sought to limit its applicability to stable groups “to which individuals belong regardless of their own desires”<sup>76</sup> In the *Akayesu* judgment, the ICTR similarly found that the *travaux préparatoires* indicates a wish to include only “‘stable’ groups, constituted in a permanent fashion and membership of which is determined by birth, with the exclusion of the more ‘mobile’ groups which one joins through individual voluntary commitment, such as political and economic groups.” The Chamber went on to say that “membership in such groups would seem to be

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<sup>73</sup> *Akayesu* (60) para. 515.

<sup>74</sup> *Kayishema and Ruzindana* (n 54) para. 98.

<sup>75</sup> Genocide Convention Implementation Act of 1987, S. 1851, 18 USC § 1093 (6).

<sup>76</sup> *Jelusic*, (n 67) para. 69.

normally not challengeable by its members, who belong to it automatically, by birth, in a continuous and often irremediable manner.”<sup>77</sup>

Based on these readings of the preparatory works, the drafters of the convention may not have meant to include groups like Falun Gong under the umbrella of religion: given that the practice has only been taught publicly since 1992, it is necessarily a religion of choice, rather than birth. Moreover, its spiritual leader Li Hongzhi notes repeatedly that practice of Falun Gong must be voluntary, and that individuals are free at any time to leave the group.<sup>78</sup>

But while the drafters of the Genocide Convention intended to limit its applicability to stable groups, they also acknowledge that individuals can change their religion or nationality, albeit not as easily as they could change their political opinions.<sup>79</sup> That they chose to include religion anyway suggests an acceptance that religious beliefs could be voluntarily chosen. Another salient point is that many Falun Gong adherents tend to be highly devout and committed to their spiritual practice—so much so that they refuse to recant their beliefs even under threat of torture or death. As noted in the preceding chapter, the act of renouncing Falun Gong—even insincerely—is often source of deep mental anguish and shame. In that respect, Falun Gong is hardly analogous to ‘mobile’ social, economic, or political groups.

Most importantly, the ordinary meaning of the Convention is clear: religions are a protected group.<sup>80</sup> If Falun Gong satisfies the generally accepted definition of a religion, then it is a religion for purposes of the genocide convention as well.

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<sup>77</sup> *Akayesu*, (n 60) para. 511.

<sup>78</sup> Li Hongzhi, ‘First Fa Teaching Given in the United States’ (San Francisco, Oct 5 1996).

<sup>79</sup> Hiram Abtahi and Philippa Webb, *The Genocide Convention: The Travaux Préparatoires* (Martinus Nijhoff Publishers 2008) 1392.

<sup>80</sup> Refer to Article 31 of the Vienna Convention of the Law of Treaties, which specifies that treaties should first be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms ...in their context and in the light of its object and purpose.” Per Article 32, the preparatory works need only be consulted as a supplemental means of interpretation if the meaning is ambiguous or obscure.

The Tribunals also allude to the other criteria for assessing whether a given group is protected by the convention. As noted by the *Rutagana* Trial Chamber, “in assessing whether a particular group may be considered as protected from the crime of genocide, [the Chamber] will proceed on a case-by-case basis, taking into account both the relevant evidence proffered and the political and cultural context.”<sup>81</sup> In *Semanza*, the ICTR writes: “the determination of a protected group is to be made on a case-by-case basis, consulting both objective and subjective criteria,” which includes the perception of the perpetrators.<sup>82</sup>

What follows is a discussion of the subjective and objective facts surrounding Falun Gong’s classification as a religion, including the relevant political and cultural context.

### *Categorizing Falun Gong*

In China, Falun Gong was first classified as a form of *qigong*. Qigong—sometimes called Chinese yoga—is usually characterized by slow-moving exercises, regulated breathing, and meditation.

For centuries, qigong-like techniques were employed by Daoist and some Buddhist practitioners as a means of achieving spiritual transformation, and were transmitted orally through generations of masters and disciples. In the Maoist era, however, the overtly religious or theological aspects of qigong were downplayed or cast off, as theistic beliefs were verboten. To survive in the new political climate, qigong was re-classified as a branch of Chinese medicine.<sup>83</sup> Stripped of their religious content, qigong practices were permitted to flourish in China under the supervision of the state. By the early 1990s, tens of millions of people were practicing qigong.<sup>84</sup>

It was in this environment that Falun Gong made its public debut. In 1992, Master Li Hongzhi began holding seminars to disseminate Falun Gong. The practice quickly rose to

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<sup>81</sup> *Rutagana* (Trial Chamber) ICTR-96-3 (Dec 6 1999) para. 56, 58.

<sup>82</sup> *Semanza* (n 52) para. 317.

<sup>83</sup> Ownby (n 19) p 10.

<sup>84</sup> Zhu Xiaoyang and Benjamin Penny, “The Qigong Boom,” *Chinese Sociology and Anthropology* Vol. 27, No. 1 (1994) 3.

prominent within the qigong community, and with the approval and encouragement of government agencies, it soon attracted tens of million of adherents.<sup>85</sup> Falun Gong's popularity could be attributed in part to its low or non-existence fees to and its reputed efficacy in improving health. It was also unique for other reasons: its teachings stressed that the pursuit of health cannot be divorced from individual moral rectitude and the nurturing of virtue. According to Li, the true purpose of qigong was not merely better health, but spiritual perfection or enlightenment.<sup>86</sup>

Falun Gong's is a moral and well-ordered universe. At the heart of its philosophy are the tenets *Zhen-Shan-Ren* – truth, compassion, and forbearance. These values represent the essential nature of the universe, the ultimate expression of the Buddhist Law, or the Dao.<sup>87</sup> The adherent of Falun Gong seeks assimilation to these virtues through improving his or her moral character (*xinxing*) while relinquishing worldly desires and attachments, such as to wealth, fame, lust, jealousy, and other expressions of selfishness.<sup>88</sup> Through disciplined moral cultivation, the student aims to return to the “original and true self.”<sup>89</sup> In addition to its moral code, the practice involves an extensive body of scripture and a systematic program of spiritual exercises. Its teachings discuss otherworldly realms and the existence of gods other, higher lives or forces. The ultimate goal of the practice is transcendence of the mortal world, enlightenment, and reconciliation with the divine. According to Benjamin Penny, Falun Gong is “in all meaningful ways, a religion.”<sup>90</sup>

Falun Gong's theological bent was not lost on Chinese authorities. Although the state initially supported the practice, by the mid-1990s some influential party members were growing wary of its popularity, with some detractors suggesting that Falun Gong was not merely qigong, but in fact a sort of disguised religion. In 1996, Falun Gong's registration

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<sup>85</sup> Ownby (n 19) 87-89.

<sup>86</sup> David Palmer, *Qigong Fever: Body, Science and Utopia in China*, (New York: Cambridge University Press, 2007) 472.

<sup>87</sup> Li Hongzhi, *Zhuan Falun* (English Edition, Yih Chyun Book Co. 2000) 15.

<sup>88</sup> Penny, (n 5) 170.

<sup>89</sup> Li, *Zhuan Falun* 18.

<sup>90</sup> Penny (n 5) 225.

with the state-run qigong association was officially ended. In a letter explaining the decision, the association stated that although Falun Gong had produced “unparalleled results in terms of fitness and disease prevention,” Li Hongzhi “departed from the correct aims” of qigong by propagating “theology and superstition.”<sup>91</sup>

The charge that Falun Gong was a covert religion was not mere semantics; it had potentially serious political consequences.

The Chinese government only extends legal protection to five “patriotic” versions of Buddhism, Daoism, Islam, Protestantism and Catholicism, all of which are subject to the doctrinal and administrative control of the Communist Party.<sup>92</sup> Even these approved religious face restrictions: they are not permitted to proselytize, for instance, whereas ostensibly non-religious qigong practices were free to assemble and preach with minimal interference. Religious believers who do not submit to the state—including underground Christians, Catholics loyal to the Vatican, or worshippers of the Dalai Lama—are liable to be suppressed. Therefore, as it was being popularized in the 1990s, Li Hongzhi emphatically declared that Falun Gong was *not* a religion. To do otherwise in the political climate of modern China would be to invite immediate suppression, and would have constrained efforts to publicize the practice.<sup>93</sup>

There is one other reason why Falun Gong eschewed the religious label. Namely, the Chinese term for religion (*zongjiao*) refers only to world historic faiths with churches or temples, a professional monastic class or clergy, rituals, sacred texts, etc. The word itself a neologism that appeared the late 19<sup>th</sup> century following an influx of Christian missionaries; in imperial China, the demarcation between the secular and spiritual realms was

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<sup>91</sup> *ibid* 51.

<sup>92</sup> CECC (n 32) 73-93.

<sup>93</sup> Penny (n 5) 24.

considerably less rigid.<sup>94</sup> Numerous expressions of religious faith or practice are therefore not captured by the term *zongjiao*. As Penny notes, “by any reasonable definition of what constitutes ‘religion’ or ‘religious activities,’ the definition of religion promulgated by the Chinese authorities is too narrow.”<sup>95</sup>

Falun Gong lacks most of the features of an institutionalized religion. Although it has a body of scripture, it does not have any system of membership, formal hierarchy, places of worship, or tithing. Under the narrow definition of *zongjiao*, therefore, Falun Gong did not consider itself to be a religion.<sup>96</sup>

In international human rights law, a group’s self-understanding carries considerable weight. This is especially true in the area of indigenous rights, though it can also apply to other protected classes such as religious or ethnic groups.<sup>97</sup> From this perspective, the fact that the Falun Gong community has historically rejected the religious label could be problematic. However, this is a rejection only of the Chinese translation, *zongjiao*, which is excessively narrow and tinged with political connotations. In the West, Falun Gong has grown increasingly comfortable defining itself as a religion.<sup>98</sup>

Having addressed Falun Gong’s self-perception, it is also important to consider the Chinese party-state’s understanding of Falun Gong. Because the Genocide Convention requires a specific intent to destroy an ethnic, national, racial or religious group, the perpetrator’s subjective perceptions is relevant in assessing whether genocide has occurred.

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<sup>94</sup> David Ownby, ‘Statement of David Ownby, Director, The Center of East Asian Studies, University of Montreal,’ Testimony for the Congressional-Executive Commission on China (Washington DC May 23 2005).

<sup>95</sup> Penny (n 5) 22.

<sup>96</sup> Li Hongzhi, ‘Some Thoughts of Mine’ (June 2 1999).

<sup>97</sup> *Kayeshima* (n 54) para 98.

<sup>98</sup> See Li Hongzhi, ‘Teaching the Fa at the meeting with Asia-Pacific students,’ (New York, April 12 2004).

In this case, the Chinese party-state has emphatically declared that Falun Gong is not a true religion, but instead a “heterodox teaching” (*xie jiao*) that deserves to be eradicated.<sup>99</sup> The term *xiejiao* is often rendered in English as “evil cult”—a misleading translation, but one that was likely chosen to “intimate sinister motivations that would seem to justify crackdowns” on such groups.<sup>100</sup> This language is used to legitimize the campaign against Falun Gong and undercut sympathy for its practitioners. For example, in its external communications the Chinese party-state frequently seeks to equate Falun Gong with the Branch Davidians or Aum Shinrikyo cults, though experts note that such comparisons are unjustified, and that Falun Gong does not possess the qualities of a ‘cult.’<sup>101</sup>

Nonetheless, it is possible that Chinese authorities are sincere in their belief that Falun Gong is not a religion—or, more precisely, that it is not a *zongjiao*. As already noted, religious beliefs that do not take the form of institutionalized religion, or that do not submit to the authority of the state, are outside the scope of the term. Since imperial times, unauthorized religions have been labelled as *xiejiao*—heterodox teachings. This word does not necessarily signal that a religious belief is inauthentic or ineffective.<sup>102</sup> Instead, it describes religious teachings that the authorities disapprove of, or that do not support and sustain imperial rule.<sup>103</sup> At various points in time, both Catholicism and Buddhism have been attacked as *xiejiao*.<sup>104</sup>

However, even if Falun Gong does not fit the definition of an institutionalized or politically orthodox religion, Chinese leaders were fully aware that it is a system of common spiritual beliefs and practices. As mentioned in the previous section, in 1996 government agencies began accusing Falun Gong of propagating “theology.” In April 1999, while discussing whether to implement a ban on Falun Gong, the Chinese Premier

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<sup>99</sup> Louis Charbonneau, ‘U.N. Envoy defends Falun Gong, ‘evil cult’ for China’ *Reuters*, (Oct 22 2010).

<sup>100</sup> Richard Madsen, ‘The Upsurge of Religion in China’ in *The China Reader: Rising Power (6<sup>th</sup> edn*, Oxford University Press 2016) 195.

<sup>101</sup> Ownby (n 19) xi, 164; Ian Johnson, *Wild Grass: Three Stories of Change in Modern China* (Vintage Books 2004) 223-226.

<sup>102</sup> Penny (n 5) 7.

<sup>103</sup> Madsen (n 100) 191.

<sup>104</sup> *Ibid*; Kwang-Ching Liu, *Heterodoxy in Late Imperial China* (University of Hawaii Press 2004) 482.

described the practice as having a “religious patina.”<sup>105</sup> Soon thereafter, the Political Department of the People’s Liberation Army described Falun Gong as a “Qigong organizations with a religious coloring,” and thereby forbid military men and their families from practicing it.<sup>106</sup> In June of 1999, the General Office of the Chinese Communist Party Central Committee called on provincial authorities to “assess and critique Falun Gong’s avocation of theism.”<sup>107</sup> When the crackdown finally began, party organs declared that Falun Gong was fundamentally incompatible with Marxism and dialectic materialism on the basis that it propagated theism, preached the existence of gods and supernatural phenomenon, and aimed for transcendence of worldly pursuits.<sup>108</sup>

Finally, whether or not the Chinese government views Falun Gong as an evil or orthodox religion, states do not have the sole prerogative to determine what is or is not a genuine religious belief. In General Comment No. 22 on the application of the International Covenant on Civil and Political Rights, the Human Rights Committee states:

*The terms "belief" and "religion" are to be broadly construed. Article 18 [of the ICCPR] is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.*<sup>109</sup>

By most objective criteria, Falun Gong is a religion, albeit not an institutionalized one. The religious nature of Falun Gong has been recognized by academic experts, NGOs, and government bodies. Human rights jurisprudence in the United States and Canada has

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<sup>105</sup> Zong Hairen, ‘Zhu Rongji in 1999’ (2002) *Chinese Law & Government*, 35:1, 63.

<sup>106</sup> *ibid*, 59.

<sup>107</sup> ‘Order Document ([1999] 21),’ General Office of the Chinese Communist Party Hebei Provincial Committee (June 3 1999).

<sup>108</sup> Xinhua, ‘People’s Daily on the struggle between materialism and idealism’ (Beijing, July 27 1999).

<sup>109</sup> UN Human Rights Committee, CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion) (1993) UN Doc CCPR/C/21/Rev.1/Add.4.

treated Falun Gong as a protected religion or religious creed,<sup>110</sup> and it is recognized as a religious group for the purpose of refugee status assessments.<sup>111</sup> And despite their rejection of the *xongjiao* label, Falun Gong adherents also describe their practice as a religious faith that forms a core part of their identity. Finally, from a subjective perspective, the Chinese Communist Party may call Falun Gong a heretical teaching, but it does recognize the religious or “theistic” character of the group. Thus, for the purposes of a genocide prosecution, Falun Gong should be considered a protected group.

### CHAPTER III: THE ACTS

This section describes the constitutive acts of genocide based on existing jurisprudence, and contemplates how they might apply in the case of Falun Gong. For purposes of this analysis, this paper focuses on acts (a) and (b) of the genocide convention: killing members of the group, and causing severe bodily or mental harm to members of the group.

#### **Killing members of the group**

Killing represents the ultimate act of physical destruction. Among the five constitutive acts of genocide, it is also the most self-explanatory. In the process of drafting the Genocide Convention, the formulation “killing members of the group” was adopted “after little discussion and without a vote.”<sup>112</sup>

Although the meaning of the act is fairly unambiguous, the *ad hoc* tribunals do provide some further guidance on how it can be interpreted. In *Akayesu*, the Trial Chamber noted that acts of genocide “must have been committed against one or several individuals,

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<sup>110</sup> U.S. Department of Justice, Office of Public Affairs ‘Justice Department Resolves Discrimination Case Against Flushing, N.Y. Restaurant That Ejected Patrons Because of Religion’ (August 12 2010) ; Ontario Human Rights Commission ‘Backgrounder — Tribunal finds Falun Gong a protected creed under Ontario’s Human Rights Code’ (Jan 25 2006).

<sup>111</sup> In some cases, Falun Gong is understood as a both a religious and a social group. See for example *RRT Case No. 1405804* [2014] RRTA 658, Australia: Refugee Review Tribunal, 7 August 2014 ; *Yang v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1463; 2001 FCT 1052, Canada: Federal Court, 26 September 2001.

<sup>112</sup> Schabas (n 51) 157.

because such individual or individuals were members of a specific group, and specifically because they belonged to this group.”<sup>113</sup> The *Semanza* Trial Chamber similarly noted that the act involves intentionally killing “one or more members of the group, without the necessity of premeditation.”<sup>114</sup> Individuals who do not belong to the targeted ethnical, national, racial or religious group, but who are killed in the course of events, are not victims of genocide. Moreover, genocide can occur even if only one member of the group is killed, provided the requisite *mens rea* element is met.<sup>115</sup>

As noted by the *Kayishema and Ruzindana* Trial Chamber, for the purposes of the Genocide Convention killing should be interpreted to mean “unlawful, intentional killing.”<sup>116</sup> A definition of this term is offered in *Akayesu*, where the Trial Chamber defines “unlawful, intentional killing of a human being” to mean the following:

1. the victim is dead;
2. the death resulted from an unlawful act or omission of the accused or a subordinate;
3. at the time of the killing the accused or a subordinate had the intention to kill or inflict grievous bodily harm on the deceased having known that such bodily harm is likely to cause the victim's death, and is reckless whether death ensues or not.<sup>117</sup>

For its part, the ICC writes: “the term killed is interchangeable with the term ‘caused death.’”<sup>118</sup>

#### *Applicability to Falun Gong*

As noted in the previous chapter, the campaign against Falun Gong has resulted in numerous deaths stemming from torture and abuse in custody. Upwards of 4,000 cases have been documented, and possibly many more have yet to be reported and verified.

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<sup>113</sup> *Akayesu* (n 60) para. 521.

<sup>114</sup> *Semanza* (n 52) para 319.

<sup>115</sup> Schabas (n 51) 158.

<sup>116</sup> *Kayishema and Ruzindana* (n 54) para 103.

<sup>117</sup> *Akayesu* (n 60) para. 589.

<sup>118</sup> International Criminal Court, ‘Elements of Crimes’ (2011) 2.

Based on a review of persecution testimonials, it is likely that many of the torture-related deaths of Falun Gong adherents were not premeditated. That is, labor camp guards intended to cause physical harm and suffering with the goal of “transforming” the target, but did not necessarily set out to kill them. However, the definition of killing as an act of genocide does not require premeditation. Recalling the Akayesu Trial Chamber, killing only requires that the victim is dead; that the death resulted from an act of omission or the accused or a subordinate; and that the accused or a subordinate “had the intention to kill or inflict grievous bodily harm on the deceased having known that such bodily harm is likely to cause the victim's death, and is reckless whether death ensues or not.”<sup>119</sup> The vast majority of documented cases of Falun Gong deaths would clearly satisfy these criteria, as deaths were a reasonable and foreseeable result of torture. The possible exceptions are the very elderly or infirm, where it may be more difficult to prove that the acts of the accused were the proximate cause of death.

Organ harvesting would be another clear example of intentional killing, though in some cases it may prove challenging to assign individual criminal responsibility. For example, doctors performing operations may not be aware that they are removing or transplanting organs from Falun Gong victims, and may therefore may not have the mental element necessary for genocide—or even for a joint criminal enterprise.<sup>120</sup> On the other hand, the country's more prolific transplant surgeons are almost certainly aware that the organs are taken from Falun Gong adherents or other prisoner populations, and some have spoken openly about the sourcing process. Some physicians are even involved in the anti-Falun Gong campaign. Zheng Shusen, one of the leading members of the Chinese organ transplant establishment, simultaneously serves as the chairman of the Zhejiang province Anti-Cult Association—a Communist Party-affiliated body dedicating to propagandizing against Falun Gong.<sup>121</sup> In a 2009 book, the surgeon writes: “Falun Gong’ and similar evil religions are like viruses corroding the organism of humanity, warping the souls of

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<sup>119</sup> *Akayesu* (n 60) para. 589.

<sup>120</sup> For example, see Ethan Gutmann, ‘The Xinjiang Procedure’ *Weekly Standard* (Dec 5 2011).

<sup>121</sup> Robertson and Lavee (n 49).

believers, destroying social order, disrupting economic development, and have become a public nuisance to mankind and a cancer on society.”<sup>122</sup>

Another question arises over the motives of the surgeons. It is conceivable that many transplants surgeons are aware of the provenience of the organs used for transplant, and knowingly participate in the killing of Falun Gong adherents in the context of the eradication campaign, but are themselves motivated chiefly by the prospect of professional or financial gain. The *Jelusic* Appeals Chamber addressed this question, noting that the existence of personal motives was “irrelevant” in criminal law. The Chamber said it was necessary “to distinguish specific intent from motive. The personal motive of the perpetrator of the crime of genocide may be, for example, to obtain personal economic benefits, or political advantage or some form of power. The existence of a personal motive does not preclude the perpetrator from also having the specific intent to commit genocide.”<sup>123</sup>

#### **Causing serious bodily or mental harm to members of the group**

Although the drafters of the Genocide Convention chose explicitly to include only the biological and physical aspects of genocide, the crimes covered by Article II(b) of the Convention may not necessarily lead to death, or even to permanent damage. However, the harm must be deliberate, and sufficiently serious as to affect long-term suffering or injury. Serious bodily or mental harm impedes the ability of victims to lead a normal life, and can harm the group’s social existence, but does not necessarily result in its immediate physical destruction.<sup>124</sup>

As noted by the *Krstic* Trial Chamber, serious bodily or mental harm is “need not cause permanent and irremediable harm, but it must involve harm that goes beyond temporary unhappiness, embarrassment or humiliation. It must be harm that results in a grave and

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<sup>122</sup> *ibid.*

<sup>123</sup> *Jelusic* (n 56) para 49.

<sup>124</sup> Paola Gaeta, *The UN Genocide Convention: A Commentary* (Oxford University Press 2009) 94.

long-term disadvantage to a person's ability to lead a normal and constructive life."<sup>125</sup> This view was further affirmed in *Akayesu*, *Semanza*, *Kayishema and Ruzindana*, *Rutaganda*, and others.<sup>126</sup>

Examples of serious harm listed by the *Krstic* Trial Chamber include "inhuman treatment, torture, rape, sexual abuse and deportation."<sup>127</sup> In *Kayishema and Ruzindana*, the ICTY defined it as harm that "seriously injures the health, causes disfigurement or causes any serious injury to the external, internal organs or senses."<sup>128</sup> The *Akayesu* Trial Chamber wrote that serious bodily or mental harm could include "acts of torture, be they bodily or mental, inhumane or degrading treatment, persecution."<sup>129</sup> The ICC was clearly influenced by the *ad hoc* tribunals in its definition of serious bodily or mental harm, which "may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment."<sup>130</sup>

Beyond these broad definitions, however, no objective criteria exist to assess the extent of harm required; instead, the *Kayishema and Ruzindana* Trial Chamber concluded that it should be assessed on a case-by-case basis, using a "common sense approach" and relying on the relevant jurisprudence.<sup>131</sup>

With respect to mental harm, there has been some debate over its definition. In drafting the Genocide Convention, the concept of mental harm was first introduced in the context of the use of narcotics designed to impair the mental faculties of the target population. This has led some commentators to adopt an exceedingly narrow definition of mental harm, limiting it to harm that causes "physical injury to the mental faculties"<sup>132</sup> or harm

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<sup>125</sup> *Krstic* (n 61) para. 513.

<sup>126</sup> *Akayesu* (n 60) para. 502 ; *Kayishema and Ruzindana* (n 55) para. 108; *Rutaganda* (n 81) para. 51; *Semanza* (n 52) para. 320.

<sup>127</sup> *Krstic*, (n 61) para. 513.

<sup>128</sup> *Kayishema and Ruzindana* (n 54) para. 109.

<sup>129</sup> *Akayesu* (n 60) para. 504.

<sup>130</sup> International Criminal Court, 'Elements of Crimes' (2011) 2.

<sup>131</sup> *Kayishema and Ruzindana* (n 54) para. 108-113.

<sup>132</sup> Schabas (n 51) 161.

induced through the use of narcotics.<sup>133</sup> What's more, domestic U.S. legislation defined serious harm as that which leads to "permanent impairment."<sup>134</sup> However, as noted by William Schabas, these views are not supported by the text of the convention, nor even by a careful reading of the *travaux préparatoires*.<sup>135</sup> Moreover, subsequent jurisprudence in the ICTY and the ICTR supports the view that severe mental harm includes emotional or psychological anguish, and that permanent impairment is not a necessary condition.

In cases of sexual violence and rape, for example, the *Akayesu* Trial Chamber noted that Tutsi women were "subjected to the worst public humiliation, mutilated, and raped several times, often in public...and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities." The Chamber described sexual violence as one of the worst ways to inflict harm, in that the victims suffer both physically and mentally.<sup>136</sup>

Serious mental harm can also result from extreme trauma and threats to life, irrespective of whether physical harm actually occurred. In the ICTY, for instance, the *Krstic* Trial chamber noted that the mental trauma experienced by the survivors of mass executions of the Srebrenica massacre constituted serious harm.<sup>137</sup> The threat of death may itself cause serious mental harm: the *Akayesu* Trial Chamber concluded that death threats—issued in the context of an interrogation and beating—produced serious mental harm.<sup>138</sup> The *Kayishema and Ruzindana* Trial Chamber agreed that "interrogations combined with beatings, and/or threats of death, were all acts that amount to serious bodily harm."<sup>139</sup>

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<sup>133</sup> Nehemiah Robinson, *The Genocide Convention: A Commentary* (Institute of Jewish Affairs, 1960) p. ix.

<sup>134</sup> Genocide Convention Implementation Act of 1987, S. 1851, 18 USC § 1091 a(3).

<sup>135</sup> Schabas (n 51) 161.

<sup>136</sup> *Akayesu* (n 60) para. 731.

<sup>137</sup> *Krstic* (n 61) para. 514.

<sup>138</sup> *Akayesu* (n 60) para. 711-712.

<sup>139</sup> *Kayishema and Ruzindana* (n 54), para. 108.

### *Applicability to Falun Gong*

In view of the relevant case law, the acts committed against Falun Gong adherents qualify as severe mental or physical harm. Serious physical harm results from widespread and severe torture, beatings, denial of medical care, and sexual violence. Even after their release from custody, many continue to suffer long-term physical injury or disfigurement as a result of mistreatment and torture in custody. In addition to serious physical harm, there are several reports of individuals suffering complete mental collapse following their imprisonment and reeducation, leaving them unable to care for themselves. Moreover, as already noted, the process of forced religious conversion itself is a source of extreme mental anguish, the pain of which is amplified when individuals are forced to participate in the “transformation” of others, or risking torture themselves.

Falun Gong practitioners are also subjected to injections with unknown pharmacological substances, some of which induce states of delusions or psychosis, while others apparently inhibit the appetite and cause difficulty sleeping.<sup>140</sup> The use of these narcotics, whose precise purpose is unknown, is notable in light of the drafting history of the Genocide Convention, where the inclusion of “serious bodily and mental harm” was first discussed in the context of biological experiments and the use of narcotics.<sup>141</sup>

Finally, the threats made against practitioners in custody may also be categorized as causing severe bodily or harm. In RTL and other detention facilities across China, Falun Gong adherents report being told by guards that their deaths would be treated as suicides and that no one would be held accountable. According to a report by Amnesty International, “Many former practitioners also reported that RTL police and guards frequently told them, in some cases while torturing them, that RTL camps had a “quota” of individuals that could die each month or year—meaning that if they refused to cooperate they were risking

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<sup>140</sup> Falun Gong Human Rights Working Group, ‘China: Systematic Psychiatric Torture of Falun Gong Practitioners in Hospitals (November 3 2011).

<sup>141</sup> Schabas, (n 51) 159-160.

death.”<sup>142</sup> These threats occur amidst torture, in facilities where deaths are known to occur, and where inmates routinely witness the torture, beatings, and disappearance of their friends and coreligionists. Based on the *Akayesu* and the *Krstic* judgements, it would be reasonable to conclude that this is also an example of serious mental and physical harm.

## CONCLUSION

By 2006, Falun Gong activists had filed at least 54 criminal and civil lawsuits in 33 countries against Communist Party chairman Jiang Zemin and other senior party and government officials alleging torture, crimes against humanity, and genocide.<sup>143</sup> Ultimately, only courts in Spain and Argentina agreed to indict the leaders—a largely symbolic gesture. Most others, including the United States, declining to exercise jurisdiction on political or other grounds.

But it was not for a lack of merit that these cases failed. If ever a court were to try senior Communist Party officials responsible for the suppression campaign—to say nothing of the many mid- and low-level cadres involved in its execution—there would be strong grounds to find that they had ordered and incited acts of torture, persecution, enslavement, and even genocide against Falun Gong.

With respect to the mental element of genocide, a court would find extensive documentary evidence of the Communist Party and 610 Office policy to isolate Falun Gong adherents socially; to dehumanize them in the media; deprive them of education, housing, and careers; to monitor and harass their families; to destroy their religious texts and symbols; to deny them legal rights to assembly, speech, conscience, and due process; and to punish those who refuse to recant their faith, including through extrajudicial imprisonment, torture, and killing. The objective of the campaign, as reiterated repeatedly in official documents, speeches, and in official news outlets, is nothing short of the complete

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<sup>142</sup> Amnesty International (n 30) 31-32.

<sup>143</sup> Ownby (n 19) 219.

eradication of the group. Hardly anyone in China, least of all members of the judiciary, media, or the security agencies, could reasonably claim ignorance of this intent.

In addition to an explicit plan and statements from senior officials, intent could be inferred from the scale, repetition, and severity of atrocities committed in anti-Falun Gong campaign, which has been described the most intense instance of religious persecution since the Great Cultural Revolution.<sup>144</sup>

Jurists would likely grapple with defining religion under the genocide convention, a question for which there is relatively little relevant jurisprudence. Falun Gong's religious status would be contested partly on the grounds that it lacks many features of institutionalized religions, and also because it is a newly emerged religion, membership in which is strictly voluntary, rather than a matter of birth. Nonetheless, belief in Falun Gong forms a core feature of the identity of its practitioners, for whom it represents a path to spiritual salvation. A review of the academic literature would find that Falun Gong is profoundly religious, and although Chinese authorities have sought to label it heretical teaching, they do recognized it as a set of common religious beliefs. Thus, it would ultimately be deemed a protected group.

With respect to the acts of genocide, a court would find that central party officials ordered the large-scale imprisonment of Falun Gong practitioners in prisons, labour camps, and other detention facilities without due process. They ordered local authorities to forcibly convert Falun Gong practitioners using virtually any means necessary. All across the country, these policies led to intense physical and psychological torture of Falun Gong adherents, which exceeded the punishment meted out to other classes of prisoners, and which often leads to serious and lasting bodily and mental harm. When killings occurred, as they often have, the perpetrators have been shielded from accountability. Moreover, as evidence of systematic organ harvesting demonstrates, medical professionals working in

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<sup>144</sup> Freedom House, 'The Battle for China's Spirit: Religious Revival, Repression and Resistance under Xi Jinping' (February 2017).

collusion with state and party entities may have deliberately killed large numbers of Falun Gong adherents. All of these acts have been committed with intent to destroy Falun Gong in whole or in substantial part.

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## APPENDIX I

### Convention on the Prevention and Punishment of the Crime of Genocide

*Approved and proposed for signature and ratification or accession by General Assembly resolution  
260 A (III) of 9 December 1948*

*Entry into force: 12 January 1951, in accordance with article XIII*

The Contracting Parties ,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided :

#### **Article I**

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

#### **Article II**

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

#### **Article III**

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;

- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

#### **Article IV**

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

#### **Article V**

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

#### **Article VI**

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

#### **Article VII**

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

#### **Article VIII**

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.

#### **Article IX**

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

#### **Article X**

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

## **Article XI**

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

## **Article XII**

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

## **Article XIII**

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a procès-verbal and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

## **Article XIV**

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

## **Article XV**

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

#### **Article XVI**

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

#### **Article XVII**

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

- (a) Signatures, ratifications and accessions received in accordance with article XI;
- (b) Notifications received in accordance with article XII;
- (c) The date upon which the present Convention comes into force in accordance with article XIII;
- (d) Denunciations received in accordance with article XIV;
- (e) The abrogation of the Convention in accordance with article XV;
- (f) Notifications received in accordance with article XVI.

#### **Article XVIII**

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XI.

#### **Article XIX**

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.