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**Uyghur Tribunal Expert Report:
China’s State Responsibility for Breaches of the Genocide Convention**

Yonah Diamond and John Packer
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1. Introduction

This report is submitted in advance of oral testimony to be delivered on 11 September by the authors (Messrs Yonah Diamond and John Packer). Our testimony arises from and is in relation to the report published jointly by the Newlines Institute for Strategy and Policy (the Newlines Institute) and the Raoul Wallenberg Centre for Human Rights (RWCHR) dated 8 March 2021 and entitled *The Uyghur Genocide: An Examination of China's Breaches of the 1948 Genocide Convention*.¹ The authors contributed to that report as, respectively, the Principal Author and the Principal Advisor. The report was initiated by Dr. Azeem Ibrahim² in summer 2020 in his capacity as a Director of the Newlines Institute. The report was the result of collaboration among over 50 independent experts comprising individuals possessing a range of relevant expertise and from all principal regions of the world, of whom 32 experts are named in the report³. All contributions were *pro bono*.

The Newlines-RWCHR report analyzes whether the People's Republic of China (China or the PRC) bears State Responsibility for genocide against the Uyghurs in breach of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention), notably Article II thereof. The report examines key developments relating to the destructive campaigns against the Uyghurs as a group, dating from May 2013 and the start of the "Strike Hard Campaign," and only makes findings of fact on systematic trends when supported by direct evidence and corroborated by multiple data points. The direct evidence examined includes firsthand/eyewitness testimony, authenticated government documents, directives and statistics, and reliable satellite imagery analyses.

The report concludes that China bears State Responsibility for genocide, including breaches of every provision of Article II, on a clear and convincing standard, i.e. a standard of proof that is higher than we believe is required by international law (see *infra*). The report has been cited by governments and parliaments around the world in debating and declaring that the identified atrocities constitute genocide (or at least its serious risk),⁴ and a number of leading genocide scholars endorsed the report following publication, including, notably, Ambassador Samantha Power and General Roméo Dallaire among others.⁵ The findings of the report have been confirmed by other reports subsequent to its release. We refer the members of the Tribunal to the 8 March 2021 report for background and submit the present report to clarify some aspects of law as applied to the situation under examination. In terms of the application of the elements of genocide enshrined in the Genocide Convention, we will focus on the question of intent to destroy the group as such, as the acts of genocide have already been amply demonstrated in our previous report and we note that other independent experts will present before this Tribunal testimony regarding the acts in question.

¹ <https://newlinesinstitute.org/uyghurs/the-uyghur-genocide-an-examination-of-chinas-breaches-of-the-1948-genocide-convention/>

² Dr Ibrahim is a Director at the Newlines Institute for Strategy and Policy, author of "*The Rohingyas: Inside Myanmar's Genocide*" (Hurst, 2017), and recipient of the 2019 International Association of Genocide Scholars Engaged Scholar Award.

³ A number of contributors declined to be named for a variety of reasons, including related to their official positions and for fear of retribution.

⁴ A number of parliamentary and governmental bodies have debated both the possibility of commission of genocide or the serious risk of it – each of which gives rise to State responsibility and entails consequences in International Law.

⁵ See <https://twitter.com/SamanthaJPower/status/1370067488436670476?s=20>, <https://www.youtube.com/watch?v=v488j5GpQ0E>.

2. The Law on State Responsibility

It is at present virtually impossible to bring China, or one of its officials, before an international adjudicative body for the crime of genocide. Specifically, China is not a party to the Rome Statute and therefore does not recognize the jurisdiction of the International Criminal Court (ICC).⁶ China is also a permanent Security Council member and can – and surely would – block any attempt at an ICC referral in effect foreclosing its jurisdiction. Moreover, the prospects of a national court exercising universal jurisdiction over a high-ranking Chinese official is almost inconceivable given China’s increasing global influence. China similarly does not recognize the jurisdiction of the International Court of Justice (ICJ) over genocide cases, having lodged a reservation to the Genocide Convention that stipulates it “does not consider itself bound by article IX of the said Convention,”⁷ thus foreclosing ICJ jurisdiction over the interpretation and application of the Convention in respect of China in a contentious case.⁸ Further, we do not believe there exists any reasonable prospect of establishment of an ad hoc international tribunal in respect of the matters here concerned. As a result of these limitations, and in light of the urgency of the situation, we assembled a coalition of independent experts to determine whether China bears *State responsibility* for breaches of the Genocide Convention, *not individual criminal responsibility*— a distinct legal regime (see *infra*).

We chose to apply the law of State Responsibility, as opposed to international criminal jurisprudence, for the following additional reasons.

First, the State Responsibility framework allows other States to reach sovereign conclusions as to the application of International Law in general and of the Genocide Convention in particular to the facts at hand including especially determinations as to China’s breaches of the Genocide Convention and to take effective countermeasures to respond, seek justice, and prevent violations that are ongoing or at serious risk. This is the natural requirement for effectiveness in the conduct of international relations and law. The absence of adjudication does not render the treaty non-applicable and it would be absurd to suggest that in the absence of an available judicial recourse the Law would not apply. Specifically with regard to the Genocide Convention, the possibility of a reservation to Article IX of the Genocide Convention (i.e. the jurisdiction of the ICJ) applies solely with regard to disputes between States party and has no effect with regard to the substantive obligations per se. Moreover, to argue otherwise (i.e. absence of recourse to a court) would render almost all International Law meaningless, including the over 158,000 treaties

⁶ “The States Party to the Rome Statute,” *International Criminal Court*, https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx; There is currently a team of lawyers pursuing an innovative argument for jurisdiction based on a nexus to Cambodia and Tajikistan (State Parties), though this will be an uphill battle given that the genocidal acts are almost entirely carried out within China’s territory, and the unlikelihood of the Court apprehending a suspect; <https://apnews.com/article/europe-business-crime-government-and-politics-a3f92d7348b0878bed274ec40645e136>

⁷ For China’s reservation and objection to ICJ jurisdiction over and interpretation of the Genocide Convention, see UN Treaty Collection citing China’s reservation to the Genocide Convention and objection to the only ICJ Advisory Opinion on the Genocide Convention, *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, I.C.J. Reports 1951, <https://www.icj-cij.org/public/files/case-related/12/012-19510528-ADV-01-00-EN.pdf>.

⁸ Article IX reads in full: “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.”

registered with the United Nations absent compulsory judicial jurisdiction.⁹ Further, the idea of adjudication before a court is but one of many options for the pacific settlement of disputes prescribed in Article 33 of the UN Charter.

Second, State responsibility better addresses accountability for genocide under a system that is designed to diffuse individual responsibility to the point of nonrecognition. The genocidal system under the PRC is systematic, bureaucratic, technical, and extremely sophisticated, and sustained by a complex hierarchy of government bodies, commissions, officials, and centralized machine learning, making it difficult to attribute large-scale State-sanctioned atrocities to any single individual. Indeed, some actions of the State, such as adoption of Laws or Court decisions, are by their nature not acts of individuals. In our view, the Chinese system is unprecedented and requires a context-specific approach to assess a crime of the severity, magnitude, and complexity of genocide.

Third, the intent requirement for genocide is more ascertainable under the law of State Responsibility, as a form of “collective fault,”¹⁰ rather than the near-impossible inquiry into the *mens rea* of an individual, a feature that does not apply to States.¹¹ State intent, as it were, gives rise to an objective standard—rather than a subjective inquiry—that allows for an inference of the “intent to destroy... [the] group as such” from the State’s destructive policies and practices which can more reasonably be demonstrated by the mass of evidence.

State Responsibility vs Individual Criminal Responsibility

The distinction between the law of State Responsibility and individual criminal responsibility is delineated by both regimes. The International Criminal Court’s founding treaty, the Rome Statute, accounts for this strict division. Notably, Article 25(4) makes the distinction unequivocal: “No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.”¹² Article 10 further limits the application, and influence, of the law and rules of the ICC to the ICC itself, which are therefore not to be applied to State Responsibility.¹³

The International Law Commission’s Articles on Responsibility of States for Internationally Wrongful Acts (ILC Articles on Responsibility of States), the so far authoritative statement of the law on State responsibility¹⁴, similarly recognizes the separate regimes, holding that the

⁹ Pursuant to Article 102 of the UN Charter, Member States are to register and publish all treaties; the UN treaty Series so far runs some 2,500 volumes and includes since 1946 over 158,000 treaties; see: <https://www.oecd-ilibrary.org/content/publication/edca3afd-en-fr>

¹⁰ Beatrice I. Bonafè, *The Relationship Between State and Individual Responsibility for International Crimes*, at 123-24.

¹¹ See the deliberations and eventual decision of the International Law Commission, notably *Yearbook of the International Law Commission*, 1976, Vol. II(2), in particular at para. 59.

¹² Under Art. 1, the Court is empowered “to exercise jurisdiction over *persons* for the most serious crimes of international concern.”

¹³ Art. 10 reads: “Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.”

¹⁴ The International Law Commission was established by the UN General Assembly in 1947 pursuant to Article 13(1)(a) of the UN Charter to “initiate studies and make recommendations for the purpose of ... encouraging the progressive development of international law and its codification”. The ILC comprises 34 members elected from the UNGA and its reports are considered and adopted by the UN Member States.

authority is “without prejudice to any question of the individual responsibility under international law.”¹⁵ Of course, as the ILC has explained,

[w]here crimes against international law are committed by State officials, it will often be the case that the State itself is responsible for the acts in question or for failure to prevent or punish them. In certain cases, in particular aggression, the State will by definition be involved. Even so, the question of individual responsibility is in principle distinct from the question of State responsibility.¹⁶

For its part, the ICJ affirms this strict distinction in its 2015 judgment regarding a dispute over breaches of the Genocide Convention:

State responsibility and individual criminal responsibility are governed by different legal régimes and pursue different aims. The former concerns the consequences of the breach by a State of the obligations imposed upon it by international law, whereas the latter is concerned with the responsibility of an individual as established under the rules of international and domestic criminal law, and the resultant sanctions to be imposed upon that person.¹⁷

Under these closed regimes, an individual can be acquitted, while a State is or is not responsible for genocide.¹⁸ As pointed out by Professor Beatrice Bonafè, citing the example of Darfur and the 2005 report of the UN’s International Commission of Inquiry,

With respect to the same facts, a state might be responsible while the individual perpetrator can be acquitted – and the other way around – according to the requirements of each responsibility regime and the actual possibility to prove them.¹⁹

The application of international criminal jurisprudence as binding on States for their responsibility under international law is therefore a conflation.²⁰ Moreover, it is clear that, with regard to the ICJ, the Genocide Convention covers State responsibility for genocide as expressly stated in Article IX regarding disputes “relating to the responsibility of a State for genocide.”²¹

¹⁵ For further distinction between the modes of liability, see ICTY, *Prosecutor v. Furundzija*, IT-95-17/1-T, Trial Judgment, 10 December 1998, para. 142.

¹⁶ ILC Commentary on Article 58 of the Draft Articles on the Responsibility of States, 2001, p. 142 at para. 3.

¹⁷ *Croatia v. Serbia*, ICJ Judgment of 3 February 2015, para. 129.

¹⁸ *Ibid.* para. 182 (“State responsibility can arise under the Convention for genocide and complicity, without an individual being convicted of the crime.”) For a discussion on the distinction between individual and State responsibility, see Bonafè, *Reassessing Dual Responsibility for International Crimes*, *Seqüência (Florianópolis)*, August 2016.

¹⁹ Beatrice I. Bonafè, “Reassessing Dual Responsibility for International Crimes”, *Seqüência (Florianópolis)*, n. 73, pp. 19-36, ago 2016, at 23.

²⁰ A violation of the Genocide Convention might better be characterized as international responsibility, as it concerns an *erga omnes* breach of an obligation owed to the international community as a whole.

²¹ See also *Bosnia v Serbia*, para. 162.

3. Source of Law

In this context, the primary source of law is the Genocide Convention, a legally binding treaty to which 152 States are party, including China (signed and ratified in 1949 and 1983, respectively).²² The ILC Articles on Responsibility of States are widely recognized as codification of customary international law on State responsibility and have been relied upon by States and international courts alike in practice.²³ In fact, as recently as the UN's 2019 Sixth Committee meeting just before the pandemic, China affirmed that the ILC's Articles on Responsibility of States are viewed by States "for guidance in addressing the issue of State responsibility in their practice." The Vienna Convention on the Law of Treaties (VCLT), or the "treaty on treaties," to which China is also party, provides the primary rules for interpreting the Genocide Convention.²⁴ Under the law of State Responsibility, breaches of the Genocide Convention are determined by recourse to these primary rules of international law and interpretation.²⁵

According to its own Statute (which is appended to and forms part of the UN Charter), ICJ jurisprudence is a "subsidiary means for the determination of rules of law" (Article 38(1)(d)). The ICJ is fundamentally a dispute resolution body, whose decisions are, according to its own Statute, explicitly not legally binding on the ICJ itself, beyond the specific parties to any single dispute.²⁶ Thus, ICJ jurisprudence regarding the relevant legal standards is likewise not binding under international law.

4. Legal Standards

Neither in General International Law nor in the law of treaties exists an explicit rule on the standard of proof. Indeed, the subject is generally not addressed; the Vienna Convention on the Law of Treaties makes no mention of it. Nor, of course, does any domestic theory or practice of law on the matter prevail at International Law; there exist varying systems and rationales. This said, the principle of good faith (as a General Principle of Law) may offer some guidance, and in the *lex specialis* of International Human Rights Law and of International Criminal Law the standard of "beyond a reasonable doubt" (drawn from Anglo-Saxon law) or its equivalent has

²² *The Convention on the Prevention and Punishment of the Crime of Genocide* (Genocide Convention) was adopted by unanimous vote, UN General Assembly resolution 260 (III) of 9 December 1948, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf. There are currently 152 States parties, "Status of Treaties: Convention on the Prevention and Punishment of the Crime of Genocide," *United Nations Treaty Collection* https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&clang=_en#33.

²³ For the ILC, see *supra* note 14; see *Croatia v. Serbia*, *supra*, note 16, para. 128; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, para. 401.

²⁴ Though the VCLT came into force (1980) after the Genocide Convention (1951), its rules on treaty interpretation apply to the Genocide Convention as they are deemed to have codified longstanding Customary International Law, *Oil Platforms (Islamic Republic of Iran v. United States of America)* (Judgment), 12 December 1996, [1996] ICJ Rep 803, para. 23; The international ad hoc tribunals also draw on the VCLT. See e.g. *Nyiramasuhuko et al. (Butare)* (ICTR-98-42), para 2137; *Aleksovski* Appeal Judgement, para. 98; *Celibici* Appeal Judgement, para. 67.

²⁵ There is no formal rule of *stare decisis* under international law. *Bosnia v. Serbia*, *supra*, note 18, para. 149.

²⁶ Art. 59 of the ICJ Statute reads: "The decision of the Court has no binding force except between the parties and in respect of that particular case." <https://www.icj-cij.org/en/statute>

been adopted in order to respect the high standards of due process required to protect a vulnerable individual human being.

For States, the general standard of proof for breaches of international law is the preponderance of the evidence which applies to obligations, notably those specific obligations arising from a treaty. Given the especially serious nature of the breaches in question, our report applied a “clear and convincing” standard of proof, i.e. a higher standard than we believe is required by International Law.²⁷

The challenges in securing direct evidence must therefore be considered when assessing the evidence, and specifically that pertaining to the State’s intent to destroy.

International fact-finding inquiries apply the “reasonable grounds to believe/conclude” standard for evaluating genocide allegations.²⁸ The ICJ has applied a similar “credible evidence sufficient to conclude” standard in *Congo v. Uganda*, a case dealing with serious breaches of peremptory norms.²⁹ Nonetheless, the ICJ’s Rules and Statute contain no guidance on the standard of proof, other than the authority to settle the handling of evidence on an ad hoc basis after hearing from the parties (Rules, Article 58), in line with the Court’s dispute resolution function confined to the narrow disputes before the Court. Moreover, the ICJ has not established a uniform standard of proof in its decisions. In fact, the ICJ has expressed its evidentiary standards in at least fifteen different ways.³⁰

A fair and just standard of proof must also take into account the restrictions on securing direct evidence. The ICJ, in its first case, *Corfu Channel*, affirmed that a State’s exclusive territorial control makes it difficult for a victim State to “furnish direct proof of facts giving rise to responsibility [i.e. the knowledge requirement in *Corfu*],” and therefore warrants “a more liberal recourse to inferences of fact and circumstantial evidence.”³¹ In this context, the Court noted that “indirect evidence [...] must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion.”³²

It is salient that China not only refuses to cooperate or participate in any investigation in the matters here of concern, but, rather, it is actively hiding and destroying evidence within its exclusive territory and control. China has thus far blocked any independent, unfettered access to the region, and yet was elected last year to a three-year term on the Human Rights Council, one

²⁷ On the standard of proof in respect of the Genocide Convention, see, amongst others: Stephen Wilkinson, “Standards of Proof in International Humanitarian and Human Rights Fact-Finding and Inquiry Missions”, the Geneva Academy of International Humanitarian Law and Human Rights, at 20, <https://www.geneva-academy.ch/joomlatools-files/docman-files/Standards%20of%20Proof%20in%20Fact-Finding.pdf>.

²⁸ According to the IFFMM, the standard is “met when a sufficient and reliable body of primary information, consistent with other information, would allow an ordinarily prudent person to reasonably conclude that an incident or pattern of conduct occurred” (A/HRC/39/64, para. 6). See Independent International Fact-Finding Mission on Myanmar full account and Independent International Commission of Inquiry on the Syrian Arab Republic report “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf; <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23575&LangID=E>; <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/236/74/PDF/G1923674.pdf?OpenElement>

²⁹ *Democratic Republic of Congo v. Uganda*, ICJ, Judgment of 19 December 2005, para. 211.

³⁰ <https://www.geneva-academy.ch/joomlatools-files/docman-files/Standards%20of%20Proof%20in%20Fact-Finding.pdf>, at 20.

³¹ *Corfu* Judgment 1949, at 18.

³² *Ibid.*

of the key bodies empowered with initiating a fact-finding mission.³³ Moreover, since last year Chinese authorities have scrubbed or omitted critical data for the region from public record—including birth rate, population breakdown, birth control, and prison information³⁴—expelled at least 20 foreign journalists, and continues to harass and monitor the few journalists who are granted limited access to the region. These restrictive conditions were only exacerbated by the COVID-19 pandemic.³⁵ The evidentiary burden for making a *prima facie* case of breaches of the Genocide Convention must account for these serious limitations. For instance, satellite imagery analyses should be accorded special weight in proving the extent of the mass atrocities.

5. Intent Jurisprudence

The ICJ has only issued judgments for disputes over the Genocide Convention in two cases, both stemming from the mass atrocities committed in the context of the conflict(s) in the former Yugoslavia, notably in Bosnia and Herzegovina and in Croatia between 1991 and 1995. These cases were unique in the sense that the Court could rely on the troves of factual findings tested by and emerging from rigorous trials and appeals before the International Criminal Tribunal for the former Yugoslavia. The Court admitted as much in the case of *Bosnia v. Serbia*:

This case does however have an *unusual feature*. Many of the allegations before this Court have already been the subject of the processes and decisions of the ICTY... The Court has been referred to extensive documentation arising from the Tribunal's processes, including indictments by the Prosecutor, various interlocutory decisions by judges and Trial Chambers, oral and written evidence, decisions of the Trial Chambers on guilt or innocence, sentencing judgments following a plea agreement and decisions of the Appeals Chamber.³⁶ [emphasis added]

The Court not only largely drew on the facts established by the ICTY, but also on its conclusions on questions of law or application of the law to the facts.³⁷ The Court's reliance on the ICTY's assessments of intent is particularly problematic.³⁸ The Court in *Bosnia v. Serbia* stated that the specific intent (*dolus specialis*) to “destroy, in whole or in part... [the] group as such” can be inferred from a pattern of conduct when such conduct could only point towards such intent.³⁹ Eight years later, and absent justification, the Court essentially repeated this phrasing that “intent to destroy the group, in whole or in part, must be the only reasonable inference which can be

³³ <https://www.un.org/en/ga/75/meetings/elections/hrc.shtml>

³⁴ China Statistics Press. 2020a. Xinjiang Statistical Yearbook; see also Ruser/ASPI UT Report, <https://www.aspi.org.au/report/family-deplanning-birthrates-xinjiang>, at 23; <https://www.cnn.com/2021/06/24/china/xinjiang-prisons-china-intl-hnk-dst/index.html>

³⁵ https://www.washingtonpost.com/world/asia_pacific/china-genocide-olympics-uyghurs-xinjiang/2021/03/17/d892816c-75b7-11eb-9489-8f7dacc51e75_story.html

³⁶ *Bosnia v. Serbia*, paras. 212-14.

³⁷ For example, to support the lack of special intent, the Court cited its careful examination of “the criminal proceedings of the ICTY and the findings of its Chambers, cited above, and observes that none of those convicted were found to have acted with specific intent (*dolus specialis*).” *Bosnia v Serbia*, para. 277, 281, 292.

³⁸ In discussing the intent discovered by the ICTY, the Court noted “any evaluation by the Tribunal based on the facts as so found for instance about the existence of the required intent, is also entitled to due weight.” *Bosnia v. Serbia*, para. 223, an approach followed by *Croatia v. Serbia*, para. 182.

³⁹ *Bosnia v. Serbia* paras. 373, 376.

drawn from the pattern of conduct.”⁴⁰ However, the *Bosnia* articulation is an exact replica of the ICTY’s *criminal standard* applied to questions of intent: “when the Prosecution relies upon proof of a state of mind of an accused by inference, that inference must be the only reasonable inference available on the evidence.”⁴¹ Indeed, the Court in *Croatia v. Serbia* confirmed that the *Bosnia* decision blurred the individual-State distinction: “the criterion applied by the ICTY Trial Chamber in the Judgment in the *Tolimir* case is in *substance identical* with that laid down by the Court [ICJ] in its 2007 Judgment” [emphasis added].⁴² These heightened standards applied by the ICJ, including proof beyond a reasonable doubt⁴³, are of course designed to protect the liberty interests of the individual accused against *criminal prosecution*, and cannot reasonably apply to sovereign States. The Court was correct to rely on the ICTY’s rigorous *factual* findings, but erred when replicating its *criminal trial standard of proof* for determining State responsibility.

Notwithstanding the above, even on a higher standard of proof, it is implausible to look at the situation in Xinjiang and conclude that China’s destructive campaigns will result in anything but the destruction of the Uyghurs as a group as such, at least in substantial part.

6. Intent to Destroy

Genocide is distinguished as an international crime by the destruction of a *group* entity.

Article II of the Genocide Convention defines genocide as follows:

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.*

As referenced, the VCLT provides the applicable interpretive approach in Article 31:

A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

Accordingly, on a plain reading of the text of the Genocide Convention, *any one* of the five acts constitutes genocide if committed with the requisite intent to destroy, in whole or in part, the identified protected group, as such. The acts are discrete, not conditioned on one another, nor

⁴⁰ *Croatia v. Serbia*, paras. 148, 417, 510.

⁴¹ *Prosecutor v. Krstic*, Case No. ICTY-IT-98-33, Appeals Chamber Judgment, para. 41.

⁴² *Croatia v. Serbia*, para. 148.

⁴³ The *Bosnia v Serbia* judgment even intimates a stricter standard at one point of proof “beyond any doubt,” para. 422.

listed in hierarchy. Furthermore, there is no language in the text indicating that the intent to destroy only entails biological or physical destruction. These terms are purely a legal construction read into the Convention, largely influenced by the international criminal tribunals presiding over individual criminal responsibility. To illustrate this point, according to the ordinary meaning of the terms within the four corners of the treaty, genocide can be committed through acts (b) and (e) alone, neither of which necessarily entail physical or biological destruction of the group members. Moreover, acts (c) and (d) both require specific intent for physical (“calculated to bring about its physical destruction”) and biological (“intended to prevent births”) destruction respectively, implying by deduction that the other acts need not have an accompanying physio-biological destruction intent attached to them⁴⁴ in so far as the terms would discretely retain their ordinary meanings (or else they would be redundant).

This interpretation of group destruction is also rooted in precedent by regional and international courts with jurisdiction over State responsibility. Notably, the European Court of Human Rights (ECtHR) upheld the German courts’ interpretation of intent to destroy as meaning “destruction of the group as a social unit in its distinctiveness and particularity and its feeling of belonging together; a biological-physical destruction was not necessary.”⁴⁵ The case was the first genocide conviction by German courts since the crime of genocide was incorporated into its domestic law in 1955. The ECtHR concluded that “the domestic courts’ interpretation of ‘intent to destroy a group’ as not necessitating a physical destruction of the group, which has also been adopted by a number of scholars is therefore covered by the wording, read in its context, of the crime of genocide in the Criminal Code.”⁴⁶ Guatemala’s Commission for Historical Clarification (led by renowned German jurist Professor Christian Tomuschat), which specifically dealt with State responsibility, noted in its conclusions on acts under Article II(b) that “the resulting destruction of *social cohesion* of the group, typical of these acts, corresponds to the intent to annihilate the group, physically and *spiritually*.”[emphasis added]⁴⁷ Moreover, the ICTY Trial Chamber even suggested that:

‘Destruction’, as a component of the mens rea of genocide, is not limited to physical or biological destruction of the group’s members, since the group (or a part of it) can be destroyed in other ways, such as by transferring children out of the group (or the part) or by *severing the bonds among its members*.¹⁷⁰¹ Thus it has been said that one may rely, for example, on evidence of deliberate forcible transfer as evidence of the mens rea of genocide.⁴⁸

⁴⁴ See *Prosecutor v. Krstic*, Case No. ICTY-IT-98-33, Appeals Chamber Judgment, Partial Dissenting Opinion of Judge Shahabuddeen, para. 48, (when discussing the built-in intent in Article II (c) and (d): “*a contrario*, it would seem that, in other cases, the Statute itself does not require an intent to cause physical or biological destruction of the group in whole or in part.”)

⁴⁵ ECtHR, citing German Court, *Jorgic v. Germany* (Application no. 74613/01), Judgment, Strasbourg, 12 July 2007, para. 18.

⁴⁶ Application no. 74613/01, para. 105, “The Court notes that the domestic courts construed the “intent to destroy a group as such” systematically in the context of Article 220a § 1 of the Criminal Code as a whole, having regard notably to alternatives no. 4 (imposition of measures which are intended to prevent births within the group) and no. 5 (forcible transfer of children of the group into another group) of that provision, which did not necessitate a physical destruction of living members of the group in question.”

⁴⁷ “Guatemala: Memory of Silence,” *Commission for Historical Clarification*, February 1999, Conclusions, para. 115.

⁴⁸ *Krajišnik* (IT-00-39), Judgment, para. 854.

The footnote (within the quoted text) goes on to read:

It is not accurate to speak of ‘the group’ as being amenable to physical or biological destruction. Its members are, of course, physical or biological beings, but the bonds among its members, as well as such aspects of the group as its members’ culture and beliefs, are neither physical nor biological. Hence the Genocide Convention’s ‘intent to destroy’ the group cannot sensibly be regarded as reducible to an intent to destroy the group physically or biologically, as has occasionally been said.⁴⁹

The Trial Chamber ultimately found insufficient evidence of intent, so the question was never decided on Appeal.⁵⁰ Nonetheless, these authoritative decisions demonstrate that the interpretation of intent to destroy as encompassing the social unit in all its complexities is a well-accepted interpretation.

The terms of the Genocide Convention must also be read in the light of its object and purpose, as expressly stated in its title and in Article I: to bind the Contracting Parties to prevent and punish genocide. As the ICJ put it, the object of the Convention “is to safeguard the very existence of certain human groups,”⁵¹ an ideal that provides “the foundation and measure of all its provisions.”⁵² The terms of Article II must therefore be read in light of this primary purpose to safeguard the existence of what constitutes a group.

⁴⁹ *Ibid.* FN: 1701.

⁵⁰ *Ibid.* 1092-94

⁵¹ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, I.C.J. Reports 1951, at 12.

⁵² *Ibid.*

7. Evidence of Specific Intent

As demonstrated, the concept of *mens rea* does not apply *stricto sensu* to States. As the prominent international criminal law scholar Professor Paola Gaeta has put it, under the law of State Responsibility there is “no need to demonstrate that the state as such—or one or more of its officials—harboured a genocidal intent in the criminal sense... a requirement that *only* pertains to the criminal liability of individuals.”⁵³[emphasis added] The State’s “intent to destroy” is measured by objective standards: comprehensive destructive campaigns or State policies “manifested in actions which had a logical and coherent sequence.”⁵⁴ A more objective approach to the question of intent has likewise been adopted by the international criminal tribunals, relying primarily on the “general criminal context” as evidence of intent, and acknowledging “that intent is a mental factor which is difficult, even impossible, to determine.”⁵⁵

In the words of the Prosecution in the case of *Krstic* in discussing the destruction of mosques which, on its own, does not necessarily constitute genocide, but like all the destructive campaigns it is:

a factor in the matrix of all the other factors that you could consider when assessing whether or not there was genocidal intent. We know that immediately on the heels of the deportations and immediately during or after the mass executions, the traces of the Muslim community were being erased.⁵⁶

Such objective acts, attributable to the State, could be read as intentional—not accidental or coincidental—especially when juxtaposed with scale, given timing and over time, as well as other pertinent factors.

The ILC Articles on the Responsibility of States are additionally helpful in considering the composite nature of State responsibility for genocide. First, it must be recalled, as indicated

⁵³ P. Gaeta, “On What Conditions Can a State Be Held Responsible for Genocide?”, *European Journal of International Law*, 2007, at 643.

⁵⁴ “Guatemala: Memory of Silence,” *Commission for Historical Clarification*, February 1999, para. 120, describing the acts of genocide as “obeying a higher, strategically planned policy.” See also para. 111, “Considering the series of criminal acts and human rights violations which occurred in the regions and periods indicated and which were analysed for the purpose of determining whether they constituted the crime of genocide, the CEH concludes that the reiteration of destructive acts, directed systematically against groups of the Mayan population, within which can be mentioned the elimination of leaders and criminal acts against minors who could not possibly have been military targets, demonstrates that the only common denominator for all the victims was the fact that they belonged to a specific ethnic group and makes it evident that these acts were committed ‘with intent to destroy, in whole or in part’ these groups.” The pleadings of Bosnia and Herzegovina phrased the inference of State intent in a conceptually helpful way: “an operational plan for the destruction of the group... can readily be ascertained by induction through a global analysis of the criminal actions taken by the state against the targeted group.” ICJ, *Bosnia v. Serbia*, Oral pleadings, 20 April 2006, CR/2006/34, para. 33.

⁵⁵ Bonafè *supra* note 10, at 134-35; see e.g. ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Judgment, 2 September 1998, para. 523; ICTY, *Prosecutor v. Jelisić*, IT-95-10-A, Judgment, 5 July 2001, para. 47 (“On the issue of determining the offender’s specific intent, the Chamber considers that intent is a mental factor which is difficult, even impossible, to determine. This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber considers that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act.”)

⁵⁶ *Krstic*, ‘Transcript’ (27 June 2001), p. 10029, at 1-5.

above, that the ILC considered and rejected the idea of *criminal* responsibility of the State. Rather, a violation or breach “through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act”; the breach starts “with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.”⁵⁷ Article 26 of the ILC Articles on the Responsibility of States further provides that there are no defenses or nothing that will preclude “the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm.” China’s purported goals behind its destructive campaigns against Uyghurs do not determine the State’s intent; its objective and comprehensive system of destruction does.

The inference of specific intent is thus derived from the State-orchestrated and interconnected destructive campaigns, which target every aspect of the Uyghurs as a group and, when viewed as a whole, can only amount to an intent to destroy the group as such.

Mass Surveillance, State Terror, and Severance of Uyghur Communal Bonds

Since 2014, Xinjiang has become one of the most extensively surveilled regions in the world, where Uyghurs are most closely monitored by a combination of human and digital mechanisms. The government has mandated a program that has sent over a million cadres, or public servants, to live in Uyghur homes at regular intervals for week-long “homestays,” monitoring their every move with the ever-present threat of detention, and intruding on the most intimate of spaces, including sharing beds.⁵⁸ When Chen Quanguo was appointed Party Secretary for the region in late 2016, he launched an unprecedented recruitment of approximately 100,000 new officers, and a policing grid of thousands of “convenience police stations” throughout Xinjiang.⁵⁹ The government uses facial recognition technology that exclusively tracks Uyghurs and systematically gathers their biometric data, information which is fed into a machine learning policing system known as the Integrated Joint Operations Platform (IJOP).⁶⁰ There is even evidence suggesting that the government has benefitted from a “Uyghur alarm” developed by Huawei and tested an emotion detection software on Uyghurs during interrogations/torture.⁶¹ IJOP monitors the personal information of Uyghurs from video cameras, wifi networks, security checkpoints, smartphone checks, and other personal records, and uses algorithms to generate lists of “suspects” for detention.⁶² A leaked confidential government document revealed that IJOP

⁵⁷ Article 15, Breach consisting of composite act.

⁵⁸ “China’s Uyghurs Told to Share Beds, Meals with Party Members”, *Associated Press*, 30 November 2018, <https://apnews.com/article/9ca1c29fc9554c1697a8729bba4dd93b>.

⁵⁹ James Leibold and Adrian Zenz, “Xinjiang’s Rapidly Evolving Security State.” *Jamestown, China Brief Volume: 17 Issue: 4*, <https://jamestown.org/program/xinjiangs-rapidly-evolving-security-state/>.

⁶⁰ James Leibold (2020), “Surveillance in China’s Xinjiang Region: Ethnic Sorting, Coercion, and Inducement”, *Journal of Contemporary China*, 29:121, at 51; <https://www.nytimes.com/2019/04/14/technology/china-surveillance-artificial-intelligence-racial-profiling.html>.

⁶¹ <https://www.washingtonpost.com/technology/2020/12/08/huawei-tested-ai-software-that-could-recognize-uyghur-minorities-alert-police-report-says/>; <https://www.bbc.com/news/technology-57101248>.

⁶² Wang, Maya. “China: Big Data Fuels Crackdown in Minority Region”, *Human Rights Watch*, 28 October 2020, www.hrw.org/news/2018/02/26/china-big-data-fuels-crackdown-minority-region; see also Wang, Maya. “China’s Algorithms of Repression: Reverse Engineering a Xinjiang Police Mass Surveillance App.” *Human Rights Watch*, 1 May 2019, www.hrw.org/report/2019/05/02/chinas-algorithms-repression/reverse-engineering-xinjiang-police-mass.

flagged nearly 2 million Uyghur users of a software app of concern to the government and ordered localities to “carry out investigation and verification one by one, and for those suspected of terrorism, it is necessary to fix evidence and crack down according to the law.”⁶³

The system of terror has taken on a life of its own through community policing and artificial intelligence. This mass surveillance system permeates Uyghur life both inside and outside the detention compounds, terrorizing all Uyghurs and resulting in the severance of communal bonds and trust. The authorities in Xinjiang have quite literally and effectively followed Xi Jinping’s 2014 order to deploy “walls made of copper and steel” and “nets spread from the earth to the sky.”⁶⁴

Mass Internment

Satellite imagery analyses have identified and mapped out upwards of 380 newly built or expanded detention centres across Xinjiang, with enough space to detain more than a million prisoners at once (19.2 million sq. meters), before accounting for the severe overcrowding to which former detainees have testified, and excluding the 100 detention centers built before 2016.⁶⁵ Two leaked lists from Karakax and Aksu, prefectures where Uyghurs constitute 80% and 90% of the population respectively, cover a wide variety of benign and vague grounds for detention, including being “born after 1980s,” “generally untrustworthy,” “generally acting suspiciously,” “having complex social ties,” “birth policy violations,” and the like.⁶⁶ According to internal police documents, there are citywide quotas for collecting intelligence on Muslims, which includes scanning phones and computers for 53,000 markers of suspicious activity or grounds for detention.⁶⁷ According to the Neighborhood Watch Units’ Trustworthiness Assessment Forms, “being ethnic Uyghur” is a factor in point deductions, which could result in detention.⁶⁸ Even in Urumqi, where Han make up over 70% of the population, the greatest number of individuals flagged for detention are Uyghurs, who comprise 12.9% of the population.⁶⁹

The vast majority of detainees are Uyghur men between the ages of 18 and 55.⁷⁰ As expert witness Darren Byler has demonstrated, the mass internment drive has also contributed to irreparably destroying familial ties, resulting in a significant number of partners of detainees

⁶³ “Integrated Joint Operation Platform’ Daily Essentials Bulletin, No. 20,” (IJOP Bulletin No. 20) as published by the *ICIJ, China Cables*, <http://www.documentcloud.org/documents/6558508-China-Cables-IJOP-Daily-Bulletin-20-English.html>.

⁶⁴ James Leibold and Adrian Zenz, “Xinjiang’s Rapidly Evolving Security State.” *Jamestown, China Brief Volume: 17 Issue: 4*, <https://jamestown.org/program/xinjiangs-rapidly-evolving-security-state/>.

⁶⁵ See <https://xjdp.aspi.org.au/explainers/exploring-xinjiangs-detention-facilities/>;

<https://www.buzzfeednews.com/article/meghara/china-camps-prisons-xinjiang-muslims-size>

⁶⁶ In Aksu and Karakax, Uyghurs constitute 80% and more than 90% of the population, respectively; “China: Big Data Program Targets Xinjiang’s Muslims”, *Human Rights Watch*, 9 December 2020, www.hrw.org/news/2020/12/09/china-big-data-program-targets-xinjiangs-muslims; “‘Ideological Transformation:’ Records of Mass Detention From Qaraqash [also spelled Karakax], Hotan”, *Uyghur Human Rights Project*, February 2020, https://docs.uhrp.org/pdf/UHRP_QaraqashDocument.pdf; Shepherd, Christian and Laura Pitel, “The Karakax List: How China Targets Uighurs in Xinjiang,” *Financial Times*, 17 February 2020, <https://www.ft.com/content/e0224416-4e77-11ea-95a0-43d18ec715f5>.

⁶⁷ Byler UT Report at 11, 17-18.

⁶⁸ Byler UT Report at 12.

⁶⁹ Byler UT Report at 12.

⁷⁰ <https://shahit.biz/eng/#stats>

divorcing their detained husbands, sometimes to escape the sexual abuse of their live-in cadre “relatives.”⁷¹

In a rare and telling testimony before this Tribunal, a former Han Chinese police officer, under the pseudonym Wang Leizhan, explained how the violence of mass internment is condoned and even encouraged by deeply ingrained State policy and formal training. After testifying to the brutal methods of physical and mental torture inflicted on Uyghurs, including sexual violence, he testified to the following:

I think such torture against Uyghurs took place because it was encouraged by central Chinese Government. This is because, according to Chinese government policy, Uyghurs are systematically and collectively defined as ‘terrorists’... As part of the national policy of seeing Uyghurs as automatically enemies/terrorists, as part of my police training, I was taught to see Uyghurs as ‘the enemy.’ If a Chinese police officer decided to arrest Uyghurs, we were told to invent reasons/pretext and to make the arrest appear as legal/plausible as possible.⁷²

In addition to the notorious internment camps operating outside the criminal justice system, the breadth and scope of formal prison sentences have skyrocketed in Xinjiang since 2017.⁷³ Recent reports suggest that Uyghurs are increasingly being transferred to serve long-term formal sentences, confirming the concerted plan to render the internment campaign more permanent with a veneer of legitimacy.⁷⁴ This proposition is further supported by the fact that the majority of newly built or expanded prisons since 2019 are high security facilities.⁷⁵

The government has also established a parallel unprecedented system of institutionalized long-term Uyghur forced labour programs within and outside the internment camps.⁷⁶ The expansion of these programs shows no sign of abating.

Coercive Birth Prevention Campaign

The Chinese Government is simultaneously engaged in a well-documented systematic coercive birth prevention campaign targeting Uyghurs in tandem with the mass internment drive, describing it in the same terms—a “strike-hard campaign” against “illegal births.”⁷⁷ At a high-level meeting in 2017, Chen Quanguo demanded “effective containment of illegal births in the four southern prefectures of Xinjiang through a clear transformation of the masses’ concept on

⁷¹ Byler UT Report, at 5-6.

⁷² UT Witness Statement, Wang Leizhan, 7 June 2021, paras. 9-10.

⁷³ In 2014, 21,000 prison sentences were issued. Between 2016 and 2018, more than 250,000 people were imprisoned formally. In 2016, 27% of sentences were over five-year terms, a percentage that grew to 87% a year later.

⁷⁴ <https://www.cnn.com/2021/06/24/china/xinjiang-prisons-china-intl-hnk-dst/index.html>

⁷⁴ <https://www.hrw.org/news/2021/02/24/china-baseless-imprisonments-surge-xinjiang>;

<https://www.cnn.com/2021/06/24/china/xinjiang-prisons-china-intl-hnk-dst/index.html>

⁷⁵ Ruser, Nathan. “Exploring Xinjiang’s Detention System”, *The Xinjiang Data Project*, September 2020,

<https://xjdp.aspi.org.au/explainers/exploring-xinjiangs-detention-facilities/>.

⁷⁶ See Laura T. Murphy & Nyrola Elima, *In Broad Daylight: Uyghur Forced Labour and Global Solar Supply Chains*, Sheffield Hallam University Helena Kennedy Centre for International Justice, May 2021, at 9-13.

⁷⁷ Ruser at 7. The coercive birth prevention campaign in Xinjiang is evidenced by government documents and statistics and corroborating testimony, including Zumret Dawut before the Tribunal (paras. 30-33).

childbirth.”⁷⁸ According to the Karakax List, the two most cited reasons, by far, for detention or internment are (1) “birth policy violations” and (2) “unsafe post 80s, 90s, or 00s person” (referencing years of birth).⁷⁹ These two principal reasons for detention suggest that a key driver of the mass internment campaign is the coercive birth prevention program, and vice versa, either by enforcing strict “birth policy” rules or detaining young or middle aged persons.⁸⁰

By 2019, the government planned to subject over 80% of women of child-bearing age in the Southern four prefectures—Hotan, Kashgar, Aksu, and Kizilsu—to “birth control measures with long-term effectiveness,” essentially referring to sterilizations or IUDs.⁸¹ Since the crackdown escalation, Xinjiang authorities began issuing directives and maintaining spreadsheets to implement “sterilization,” particularly in the Southern four prefectures.⁸² These Southern target areas are significant since Uyghurs comprise approximately 90% of the population in the South.⁸³

Officials enforce these policies by classifying those who undergo sterilization or IUDs as “trustworthy,” and therefore perhaps protected from detention.⁸⁴ A government directive requires State workers to subject women of childbearing age to quarterly pregnancy checks and visit them on a monthly basis; refusal can result in detention.⁸⁵ All women are subjected to at least quarterly gynecological examinations.⁸⁶ Xinjiang county directives, corroborated by firsthand testimony, show that women face penalties, including detention or threat of detention, for illegal pregnancies or failure to comply with sterilizations or IUDs.⁸⁷ According to a 52 GB leak of police files, in the majority of cases of illegal births, the victims were sentenced to 3-5 years in prison.⁸⁸ Government documents further state that illegal pregnancies must be “disposed of early.”⁸⁹ Camp survivors have similarly testified that women are forced to undergo abortions if

⁷⁸ Ruser at 7.

⁷⁹ “Ideological Transformation: Records of Mass Detention From Qaraqash [also spelled Karakax], Hotan”, *Uyghur Human Rights Project*, February 2020, https://docs.uhrp.org/pdf/UHRP_QaraqashDocument.pdf, at 9.

⁸⁰ Zenz, Adrian, “The Karakax List: Dissecting the Anatomy of Beijing’s Internment Drive in Xinjiang,” *Journal of Political Risk*, <https://www.jpolarisk.com/karakax/>; These reasons are corroborated by local officials, who have interned all or nearly all Uyghurs born between 1980 and 2000, branding them an “untrustworthy generation”; see “Xinjiang Authorities Targeting Uyghurs Under 40 For Re-Education Camps”, *Radio Free Asia*, 22 March 2018, <https://www.rfa.org/english/news/uyghur/1980-03222018155500.html>; Thum, Rian, “China’s Mass Internment Camps Have No Clear End in Sight,” *Foreign Policy*, 22 August 2018, <https://foreignpolicy.com/2018/08/22/chinas-mass-internment-camps-have-no-clear-end-in-sight/>.

⁸¹ Zenz, Adrian. “Sterilizations, IUDs, and Mandatory Birth Control: The CCP’s Campaign to Suppress Uyghur Birthrates in Xinjiang” *Jamestown*, June 2020, <https://jamestown.org/product/sterilizations-iuds-and-mandatory-birth-control-the-ccps-campaign-to-suppress-uyghur-birthrates-in-xinjiang/> at 12.

⁸² *Ibid.* at 16, 18.

⁸³ The following numbers on the Southern four prefectures of Kashgar, Hotan, Aksu, and Kizilsu are from the Xinjiang Statistical Bureau’s Xinjiang Statistical Yearbook 2019, available at <http://tjj.xinjiang.gov.cn/tjj/rkjyu/202006/3b1eef1049114b0c9cf9e81bf18433ef.shtml>.

Uyghurs/Total Population

Kashgar: 4,289,151 / 4,633,781 (92.5%)

Hotan: 2,453,618 / 2,530,562 (97%)

Aksu: 2,051,412 / 2,561,674 (80%)

Kizilsu: 413,655 / 624,496 (66%)

Total: 9207836 / 10350513.

⁸⁴ Ruser UT Report at 18; Byler UT Report, at 3.

⁸⁵ Byler UT Report, at 2-3.

⁸⁶ Byler UT Report, at 3.

⁸⁷ Zenz, *supra*, note 79, at 11-12, 15; Ruser/ASPI UT Report, at 17.

⁸⁸ Byler UT Report, at 4.

⁸⁹ Byler UT Report, at 2.

pregnant upon arrival.⁹⁰ The authorities also enforce birth prevention measures by incentivizing reporting on “illegal births,” or officials who fail to report illegal births accurately, with cash rewards.⁹¹

In 2018, Xinjiang had the highest net IUD placements of *any region in China* (calculated as placements minus removals), despite comprising 1.8% of China’s total population.⁹² An August 2020 Kizilsu report (66% Uyghur) noted that 88% of all childbearing age women had “long-term effective birth prevention” measures.⁹³

As a result of these aggressive “family planning” policies, the indigenous birthrate in Xinjiang plummeted. Between 2017 and 2019, the birth-rate across Xinjiang dropped by nearly half—the most extreme drop out of any region in the world since 1950.⁹⁴ In counties with indigenous populations of 90% or higher, the birth-rate fell by 56.5% on average, including a 66.3 % decrease in 2019-2020.⁹⁵ The 29 counties with available 2019-2020 data show a 58.5% drop from the 2011-2015 baseline average.⁹⁶ Hotan County (99% Uyghur) suffered a 70.8% drop between 2012 and 2018.⁹⁷ In Urumqi (70% Han), every Han-majority district saw an increase in birth-rates compared to the pre-2017 baseline (as did the Han-majority county of Qitai, which is 72% Han),⁹⁸ whereas the birth-rates in the two indigenous-majority Urumqi districts declined.⁹⁹ Southern Xinjiang’s growth rates are near or below zero and appear to be continuing on this downward trend,¹⁰⁰ at a time when China is encouraging childbirth across the country to fend off a national crisis—all demonstrating a clear discriminatory program suppressing Uyghur births in the region. The government does not even dispute these declines in birthrates, but instead attributes them to “the comprehensive implementation of the family planning policy.”¹⁰¹ Moreover, China’s US Embassy outwardly admitted that the anti-extremism policies in Xinjiang made “Uyghur women... no longer baby-making machines.”¹⁰²

The combined mass internment and coercive birth prevention campaigns clearly point towards an intent to biologically destroy the group as such.

⁹⁰ Gulbahar Jelilova, UT Testimony, para. 11. See also <https://shahit.biz/eng/> Victim # 1723 (“As for the pill they received, I think it was a birth control pill. They didn’t want any births. If you were pregnant when you came to the camp, they performed an abortion. If you refused, they took you to a stricter place, one without visits with relatives.”)

⁹¹ Ruser UT Report, at 17.

⁹² China Statistical Yearbook of Health and Hygiene (2019), available

at <https://web.archive.org/web/20210527122258/http://heqishi.com/material/2019%E5%B9%B4%E4%B8%AD%E5%9B%BD%E5%8D%AB%E7%94%9F%E5%81%A5%E5%BA%B7%E7%BB%9F%E8%AE%A1%E5%B9%B4%E9%89%B4.pdf>.

⁹³ Zenz, “‘End the dominance of the Uyghur ethnic group’: an analysis of Beijing’s population optimization strategy in southern Xinjiang,” *Central Asian Survey*, 24 August 2021, at 295.

⁹⁴ Ruser UT Report, at 4.

⁹⁵ Numbers corroborated by Zenz, *supra* note 79, at 4.

⁹⁶ Ruser UT Report, at 11.

⁹⁷ Ruser UT Report, at 11.

⁹⁸ Thum UT Report, at 8.

⁹⁹ Ruser UT Report, at 15.

¹⁰⁰ Zenz, *supra*, note 79, at 295. Though data is missing from 2020, government targets suggest efforts to suppress birth-rates further, Thum UT Report, at 9.

¹⁰¹ Watson Ivan, et al. “China’s Xinjiang Government Confirms Huge Birth Rate Drop but Denies Forced Sterilization of Women,” *CNN*, 21 September 2020, <https://www.cnn.com/2020/09/21/asia/xinjiang-china-response-sterilization-intl-hnk/index.html>; Ruser UT Report, at 22.

¹⁰² Davidson, Helen, “Twitter removes China US embassy post saying Uighur women no longer 'baby-making machines,’” *Guardian*, 10 January 2021, <https://www.theguardian.com/world/2021/jan/10/twitter-removes-china-us-embassy-post-saying-uyghur-women-no-longer-baby-making-machines>

Forcible Separation of Uyghur Children and Families

Since 2017, pursuant to a new policy, the government has pursued an unprecedented expansion of massive,¹⁰³ State-run, highly securitized, boarding schools and orphanages to confine Uyghur children full-time, including infants.¹⁰⁴ According to a Ministry of Education planning document, the residential-school expansion was at the top of its list of priorities and, between 2017 and 2019, the number of children separated from their families and placed into state-run boarding schools in the region increased by 76.9%, from 497,800 to 880,500.¹⁰⁵ The explicit goals of these boarding schools are “to promote the teaching of the national standard language [Mandarin Chinese]... block the influence of the family’s atmosphere on the children to the greatest extent and reduce the occurrence of ...listening to the scriptures at home.”¹⁰⁶ The government set a 2020 goal of running one to two such boarding schools in each of Xinjiang’s over 800 townships.¹⁰⁷ Under State custody, Uyghur children are being raised in Chinese-language environments with standard Han child-rearing methods adopted by the State.¹⁰⁸ The State is thus forcibly transferring Uyghur children to State-run Han group settings. Expert witness Rian Thum has demonstrated that it is reasonable to conclude that the majority of Uyghur middle school students are now in residential schools and that the transfer of Uyghur children into Han-dominated facilities is not only a by-product of losing parents to mass internment but is an independent goal in and of itself.¹⁰⁹ The systematic forcible separation of Uyghur children from their families, combined with the widespread forcible prevention of Uyghur births and mass internment, threatens “the group’s capacity to renew itself, and hence to ensure its long-term survival” or existence (to use the language of the ICJ interpreting the Genocide Convention).¹¹⁰

Destruction of Language

A rigorous analysis of Uyghur-medium primary level textbooks further demonstrates the erasure of Uyghur culture, religion, history, literature, and poetry from primary education.¹¹¹ The government has completely replaced “bilingual education” with “national language education” or Chinese-medium education, depriving the next generation of the Uyghur language,¹¹² while

¹⁰³ For example, in 2018, a rural county (Yumin) with a population of 50,000 built a 3,000 square-meter centre, *see* Feng, Emily. “Uighur Children Fall Victim to China Anti-Terror Drive.” *Financial Times*, 10 July 2018, <https://www.ft.com/content/f0d3223a-7f4d-11e8-bc55-50daf11b720d>.

¹⁰⁴ “China: Xinjiang Children Separated from Families”, *Human Rights Watch*, 15 September 2019, <https://www.hrw.org/news/2019/09/15/china-xinjiang-children-separated-families>; Zenz, Adrian, “Break Their Roots: Evidence for China’s Parent-Child Separation Campaign in Xinjiang,” *Journal of Political Risk*. <https://www.jpolrisk.com/break-their-roots-evidence-for-chinas-parent-child-separation-campaign-in-xinjiang/>.

¹⁰⁵ The planning document is available at: http://web.archive.org/web/20191216040455/http://www.moe.gov.cn/jyb_xwfb/xw_zt/moe_357/jyzt_2016nztzl/ztl_xyncs/ztl_x_y_dxjy/201801/W020180109353888301306.pdf, at 232, and <http://archive.is/QZ2eM>; *see also* Adrian Zenz, “Parent-Child Separation in Yarkand County, Kashgar”, *Medium*, 13 October 2020, https://adrianzenz.medium.com/story-45d07b25bcad#_ftn7 and Qin, Amy. “In China’s Crackdown on Muslims, Children Have Not Been Spared.” *New York Times*, 28 Dec. 2019, <https://www.nytimes.com/2019/12/28/world/asia/china-xinjiang-children-boarding-schools.html>.

¹⁰⁶ Thum UT Report, at 3.

¹⁰⁷ *Ibid.*

¹⁰⁸ Sean Roberts, *The War on the Uyghurs: China’s Internal Campaign against a Muslim Minority* (Princeton, NJ: Princeton University Press, 2020), at 232.

¹⁰⁹ Thum UT Report, at 3-4.

¹¹⁰ *Croatia v. Serbia*, para. 136.

¹¹¹ Joanne Smith Finley and Ondřej Klimeš, “China’s Neo-Totalitarian Turn and Genocide in Xinjiang,” *Society and Space*, <https://www.societyspace.org/articles/chinas-neo-totalitarian-turn-and-genocide-in-xinjiang>.

¹¹² *Ibid.*

subjecting adult detainees in the camps to torture and/or degrading or inhumane treatment for speaking Uyghur or failing to speak Chinese.¹¹³

Destruction of Uyghur Sacred Sites, Mosques, and Way of Life

The Australian Strategic Policy Institute estimates that approximately 16,000 Xinjiang mosques, or 65% of the total, have been destroyed or damaged due to government policies, largely since 2017, with 8,500 mosques completely demolished.¹¹⁴ A number of the mosques that remain intact and undamaged have been converted into commercial or civic spaces.¹¹⁵ Private religious schools have also been destroyed. In addition, an estimated 58% of important religious-cultural sites in the region, such as shrines, cemeteries, and pilgrimage sites, have been damaged or completely demolished,¹¹⁶ sites at the heart of Uyghur spiritual identity, including what is widely considered the holiest Uyghur site, Ordam Padshah.¹¹⁷ Many of the undamaged sites are fully enclosed by walls or security checkpoints.¹¹⁸

In early 2018, Xinjiang officials extended these destructive practices further into public, private, domestic, and communal Uyghur spaces. Officials implemented a “Beautifying Spaces” programme, intended to transform “backward” Uyghur lifestyles and erase ethnically distinct Uyghur architecture.¹¹⁹ Authorities have specifically ordered the destruction of two household features that stand at the center of Uyghur domestic and sacred life—the *supa*, an interior raised platform, and *mehrab*, an arch or niche facing the direction of Mecca for prayer.¹²⁰

The practices connected to these destroyed or converted sacred sites and household features not only carry religious significance for the Uyghurs but also capture essential elements of Uyghur identity, culture, communal bonds, and connection with the land.¹²¹

¹¹³ <https://shahit.biz/eng/>; Victims # 1414, 1540, 2209, and 3623.

¹¹⁴ As confirmed by satellite imagery and eyewitness testimony: “Cultural Erasure”, *Australian Strategic Policy Institute*, 24 September 2020, <https://www.aspi.org.au/report/cultural-erasure>. According to another intensive investigation by *The Guardian* and *Bellingcat*, 42% of the mosques and shrines analyzed between 2016 and 2018 were partly or completely demolished, including the sites of mass pilgrimages, a central practice for Uyghurs. Eyewitness accounts indicate that the number is far higher; see Kuo, Lily, “Revealed: New Evidence of China’s Mission to Raze the Mosques of Xinjiang”, *The Guardian*, 7 May 2019, <https://www.theguardian.com/world/2019/may/07/revealed-new-evidence-of-chinas-mission-to-raze-the-mosques-of-xinjiang>.

¹¹⁵ Joanne Smith Finley, “‘Now We Don’t Talk Anymore’ Inside the ‘Cleansing’ of Xinjiang,” *China File*, <https://www.chinafile.com/reporting-opinion/viewpoint/now-we-dont-talk-anymore/>; *Cultural Erasure*, *supra* note 114.

¹¹⁶ *Ibid.*

¹¹⁷ Thum, Rian. “The Spatial Cleansing of Xinjiang: Mazar Desecration in Context.” 24 Aug. 2020, *Made in China Journal*. <https://madeinchinajournal.com/2020/08/24/the-spatial-cleansing-of-xinjiang-mazar-desecration-in-context/>.

¹¹⁸ *Cultural Erasure*, *supra* note 114.

¹¹⁹ Smith Finley and Klimeš, *supra* note 111.

¹²⁰ Timothy A. Grose, “If you don’t know how, just learn: Chinese housing and the transformation of Uyghur domestic space,” *Ethnic and Racial Studies*, 6 July 2020.

¹²¹ The prominent Uyghur scholar, Rahile Dawut, who studied these sites and disappeared in 2017, likely due to her work preserving Uyghur native traditions, once commented: “If one were to remove these ... shrines, the Uighur people would lose contact with earth. They would no longer have a personal, cultural, and spiritual history. After a few years we would not have a memory of why we live here or where we belong.” Kuo *supra*, note 114; see also Roberts, *supra* note 108, at 228.

Selective Targeting of Uyghur Leaders

There is a growing list of approximately 400 disappeared or imprisoned Uyghur intellectuals from 2016 to the present, including Government officials, prominent academics, celebrated writers, poets, linguists, tech developers and the like.¹²² Some of these figures were even praised for fostering understanding and building bridges between minorities and the Government,¹²³ or the Han majority.¹²⁴ Many of these community leaders and guardians of Uyghur identity are subjected to formal, often harsher prisons sentences, and even death sentences,¹²⁵ evidencing a deliberate Government policy of selectively targeting prominent Uyghur leaders.¹²⁶

8. Conclusion: In Whole or In Part

The Tribunal has requested an explanation as to how the “part” is being targeted substantially. We would first submit that the group as a whole is being targeted. When taking an aerial view of the realities on the ground, one cannot reasonably conclude otherwise. The government has launched discrete and interconnected attacks at every possible aspect of what defines the Uyghurs’ survival as a group: the coerced reduction and prevention of Uyghur births; mass internment of Uyghurs; disappearance of Uyghur community leaders, household heads, and intellectuals; severance of all communal or familial Uyghur bonds; eradication of communal, spiritual, and religious Uyghur sites and rituals; erasure of Uyghur language; and the forcible transfer of the next generation of Uyghur children from their homes to be raised in Han settings by the State. The sheer comprehensiveness of these destructive campaigns can only lead to one conclusion—destruction of the Uyghur group as such.

According to the ICJ, the “in part,” or “substantial part,” requirement has been interpreted to mean that “the part targeted must be significant enough to have an impact on the group as a whole.”¹²⁷ It is therefore important to consider the significance or prominence of the part of the Uyghur population that has been targeted,¹²⁸ when assessing “in part,” including the selective

¹²² “List of Uyghur intellectuals imprisoned in China from 2016 to the present”, *Xinjiang Victims Database*, last updated: 13 March 2021, https://shahit.biz/supp/list_003.pdf.

¹²³ See case of Uyghur media app owner, Ekpar Asat, who disappeared in 2016 and was reportedly sentenced to 15 years; Wong, Edward, “Sister Fights to Free Uighur Businessman Held in China After U.S. Trip”, *The New York Times*, 9 May 2020, <https://www.nytimes.com/2020/05/09/us/politics/china-uighurs-arrest.html>

¹²⁴ “The Persecution of the Intellectuals in the Uyghur Region: Disappeared Forever?”, *Uyghur Human Rights Project*, October 2020, https://docs.uhrp.org/pdf/UHRP_Disappeared_Forever_.pdf, e.g. Abdukerim Rahman, a 77 year-old literature professor at Xinjiang University was charged as “two-faced,” despite being praised by the Chinese State for over 50 years; Ramzy, Austin. “China Targets Prominent Uighur Intellectuals to Erase an Ethnic Identity”, *The New York Times*, 5 January 2019, <https://www.nytimes.com/2019/01/05/world/asia/china-xinjiang-uighur-intellectuals.html>.

¹²⁵ Shepherd, Christian, “Fear and Oppression in Xinjiang: China’s War on Uighur Culture,” *Financial Times*, 12 September 2019, www.ft.com/content/48508182-d426-11e9-8367-807ebd53ab77. The editor-in-chief of a State-run literature magazine committed suicide out of fear of being sent to an internment camp. “Uyghur Editor of State-Run Magazine Commits Suicide ‘Out of Fear’ of Detention.” *Radio Free Asia*, 28 September 2018 <https://www.rfa.org/english/news/uyghur/suicide-09282018171559.html>; See Harris, Rachel, “Cultural Genocide in Xinjiang: China Targets Uyghur Cultural Leaders”, *The Globe Post*, 17 January 2019, <https://theglobepost.com/2019/01/17/cultural-genocide-xinjiang/>.

¹²⁶ See Harris, Rachel, “Cultural Genocide in Xinjiang: China Targets Uyghur Cultural Leaders”, *The Globe Post*, 17 January 2019, <https://theglobepost.com/2019/01/17/cultural-genocide-xinjiang/>.

¹²⁷ *Bosnia v. Serbia*, at para. 198.

¹²⁸ *Prosecutor v. Krstic*, Case No. ICTY-IT-98-33, Judgment, at paras. 12 and 587 (“In addition to the numeric size of the targeted portion, its prominence within the group can be a useful consideration. If a specific part of the group is emblematic of the overall group, or is essential to its survival, that may support a finding that the part qualifies as substantial within the meaning of Article [II].”), and citing the Final Report of the Commission of Experts Established Pursuant to Security Council Resolution

targeting, disappearances, harsh sentencing and even deaths,¹²⁹ of prominent Uyghur leaders and religious figures. The deliberate campaign targeting these leading figures carries significant probative value for the question of genocidal intent.

Even on a narrower interpretation of intent, there is sufficient evidence to infer the State's genocidal intent to destroy a substantial part of the Uyghur group biologically, based on China's own statistics and directives. These official documents conclusively show that Uyghur birth rates are plummeting and growth rates are near or below zero. These numbers will not abate so long as Uyghur women continue to be subjected to draconian, coercive birth prevention measures, and men to mass internment or forced labor. Moreover, it is reasonable to conclude that Uyghur prison rates are increasing and that Uyghur birth rates continue to precipitously drop, since China has concealed all recent Xinjiang prison data (since 2018) and birth rate data (since 2019-2020) from public record.¹³⁰ This departure from longstanding tradition of public documentation by the State can only lead to a negative inference.

9. Epilogue: 'Bystanders' and the Duty to Prevent¹³¹

China is not the only State with obligations vis-à-vis the situation in Xinjiang and the genocide (or serious risk of genocide) against the Uyghurs. The first and foremost obligation of the Genocide Convention, binding on each and every State party, is to prevent and punish genocide. That obligation is multilateral, i.e. *inter pares*. As discussed above, State responsibility occurs when there is a breach that is attributable to a State. The attributable conduct for the obligation to prevent which gives rise to State responsibility is framed as an omission: the failure of the State to prevent and/or punish genocide.

According to the ICJ, the duty to prevent starts at the time the State knows or ought to know that there is a serious risk of genocide occurring, and “[f]rom that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (*dolus specialis*), it is under a duty to make such use of these means as the circumstances permit.”¹³² In the case of *Bosnia v Serbia*, the ICJ took note of an abundance of documentary evidence demonstrating that the respondent State had “foreknowledge” of an imminent massacre (which we now know to have been the Srebrenica genocide) and the fact that the respondent State was “fully aware of the climate of deep-seated hatred which reigned” between the individual perpetrators of the genocide and the victims, the Bosnian Muslims.¹³³ The ICJ also found that the respondent State was in a position of influence over, and closer to, the perpetrators of genocide than any other State party to the Genocide

780 (1992) “that an intent to destroy a specific part of a group, such as its political, administrative, intellectual or business leaders, ‘may be a strong indication of genocide regardless of the actual numbers killed.’”

¹²⁹ For a list of documented deaths in detention, see *Xinjiang Victims Database*, <https://shahit.biz/eng/#lists>. See also “Prominent Uyghur Poet and Author Confirmed to Have Died While Imprisoned”, *Radio Free Asia*, 25 January 2021, <https://www.rfa.org/english/news/uyghur/poet-01252021133515.html>. Moreover, according to a first-hand account, elderly detainees as old as 80 years of age were the main targets of torture and inhumane treatment at the internment camp. Imams could be sentenced to more than 20 years, and hand-cuffed and shackled at all times (Victim # 67 <https://shahit.biz/eng/>).

¹³⁰ According to ASPI/Ruser UT Report, “roughly 95 percent of Xinjiang’s missing births in 2019 appear to be in indigenous-majority counties,” at 15.

¹³¹ The authors acknowledge with appreciation the research assistance of Aneta Bajic in respect of this section of the report.

¹³² See *Bosnia v Serbia*, para. 432.

¹³³ *Ibid.* at paras. 436-438.

Convention.¹³⁴ Even if this position of influence did not exist, the ICJ found that “for a State to be held responsible for breaching its obligation of prevention, it does not need to be proven that the State concerned definitely had the power to prevent the genocide; it is sufficient that it had the means to do so and that it manifestly refrained from using them.”¹³⁵ The ICJ concluded that in light of the evidence that the respondent State had prior knowledge that the genocide was at serious risk of occurring and was in a position of power with the means to prevent, the respondent State “violated its obligation to prevent the Srebrenica genocide in such a manner as to engage its international responsibility.”¹³⁶

When applying the same logic and principles to the Uyghur genocide, whether or not there is consensus that a genocide is occurring at this moment, States parties would be hard-pressed to argue that they were not aware of the environment in China, the enormous means apparently being deployed (including to hide the situation or prevent free access and independent scrutiny), and the manifest risk of genocide faced by Uyghurs as a group, as such. In short, the 151 States parties to the Genocide Convention, in addition to and separate from China, are under an obligation at least to employ the means at their disposal to try to prevent genocide against the Uyghurs. Therefore, as passive bystanders, each State party violates the Genocide Convention and engages State responsibility for its omissions.

In this regard, it bears observing that Article VIII of the Genocide Convention expressly stipulates the option for States parties to call upon the UN to take action to suppress acts of genocide, as follows:

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.¹³⁷

Furthermore, a State party to the Genocide Convention incurs State responsibility for breaching the duty to prevent at the time a serious risk of genocide arises and extends through the entire period during which the genocide continues.¹³⁸ Article 14(3) of the ILC Articles on the Responsibility of States provides:

The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.¹³⁹

One practical method of preventing genocide is already contained in the Genocide Convention itself. Article V of the Genocide Convention imposes upon States parties a duty to legislate in

¹³⁴ *Ibid.* at para. 434.

¹³⁵ *Ibid.* at para. 438.

¹³⁶ *Ibid.*

¹³⁷ The Genocide Convention, *supra* note 20 at Article VIII.

¹³⁸ See Eyal Mayroz, “The legal duty to ‘prevent’: after the onset of ‘genocide’”, (2012) 14 *Journal of Genocide Research* 1 at 84; see at 86 for research into how the international community has used “prevent” and “stop” interchangeably when referring to genocide, including how an early draft of the Genocide Convention referred to stopping genocide in its title.

¹³⁹ ILC Draft Articles (here Article 14, para. 3) are available with official commentary online at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

domestic law the prohibition of genocide. Failure to do so is not only a breach of Article V, but it can be said to be also a breach of Article I, i.e. the duty to prevent, because such prevention cannot occur, at least domestically, if the internationally proscribed acts are not domestically criminalized since no crime can be committed and no punishment can be imposed if there is no law which proscribes and establishes punishment for that crime. Accordingly, the first step in preventing genocide is to criminalize it domestically across all States parties.

Another method of preventing genocide, at a minimum, is to call it out when it is identifiable whether in fact occurring or at serious risk of occurring. Naming and shaming, for example by passing a motion in Parliament or publicly issuing an official statement, undoubtedly draws attention and can in effect place on notice violators in terms of prospective consequences including permissible sanctions.¹⁴⁰ Often naming and shaming is the first step to preventing genocide or suppressing acts of genocide, prior to engaging in diplomatic negotiations or participating in military interventions.¹⁴¹ Arguably, naming and shaming is also the most minimal action to take to prevent or suppress genocide while avoiding a breach of international obligations under the Convention,¹⁴² and every State (as part of the “international community as a whole”) has the capacity to name and shame, and so should act, no matter its proximity to the situation or acts of concern.¹⁴³ Indeed, the example of The Gambia in the ICJ case against Myanmar in respect of the Rohingya¹⁴⁴ underlines the much more meaningful possibility for action available even to small, distant and weak States having no immediate connection with a situation nor incurring or likely to incur specific injury. As such, one can only imagine all that could and should be done by the 151 other States parties to the Genocide Convention vis-à-vis the situation in Xinjiang and the Uyghur genocide. To the extent such possibilities for action exist, those States failing, by omission, to act incur State responsibility for breach of their duty to prevent.

¹⁴⁰ See Schiffbauer, Björn, “The duty to prevent genocide under international law: naming and shaming as a measure of prevention”, (2018) 12.3 *Genocide Studies and Prevention: An International Journal* 86.

¹⁴¹ *Ibid.* at 87.

¹⁴² *Ibid.* at 86.

¹⁴³ *Ibid.* at 87.

¹⁴⁴ See the case of *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, ICJ, documents and “Latest Developments”, available online at: <https://www.icj-cij.org/en/case/178>

1 11th September 2020 (5:24:25 – 7:24:13)

2 John Packer & Yonah Diamond

3

4 PACKER & DIAMOND – Our testimony today builds on the report from March 8 of this
5 year, *The Uyghur Genocide: An Examination of China’s Breaches of the 1948*
6 *Genocide Convention*, which was jointly published by the Newlines Institute for
7 Strategy and Policy (the Newlines Institute) and the Raoul Wallenberg Centre for
8 Human Rights (RWCHR) and to which we served as Principal Author and Principal
9 Advisor. The report was the result of a *pro bono* collaboration of over 50 independent
10 experts from around the world with a range of relevant expertise, including on China’s
11 ethnic policies, Xinjiang, genocide, and international law, of whom 32 experts are
12 named in the report.

13 The report analyses whether China bears State Responsibility for genocide against
14 the Uyghurs, in breach of the Genocide Convention, and concludes that China is
15 responsible for genocide against the Uyghur group, including every genocidal act in
16 Article II. The report only makes significant findings of fact when supported by direct
17 evidence, including eyewitness testimony and government documents, or reliable
18 satellite imagery analyses. While we did not address crimes against humanity, our
19 factual findings can and should be admitted as evidence of such crimes as well.

20 We examined the question of whether China bears *State responsibility* for genocide,
21 *not* individual criminal responsibility— a distinct legal *régime*— for the following
22 reasons.

23 At present, the absence of an international court with jurisdiction over Chinese officials
24 does not render the Genocide Convention, a multilateral treaty that is legally binding

25 on China and 151 other States, inapplicable, nor does it make ongoing State violence
26 against Uyghurs and other Turkic Muslims any less urgent. The burden therefore falls
27 on States, and the Tribunal in this instance, to reach official determinations as to
28 whether China, as a State, is responsible for genocide in breach of the Genocide
29 Convention and to then take effective countermeasures to respond, seek justice, and
30 halt violations that are ongoing or prevent those at serious risk.

31 Moreover, the repressive and sophisticated system in XJ is designed to diffuse
32 individual responsibility to the point of nonrecognition, sustained by a complex
33 hierarchy of government bodies, officials, and even artificial intelligence. Many of these
34 acts are by their nature not acts of individuals but products of a State system. In our
35 view, this system is unprecedented in many ways and therefore requires a context-
36 specific approach to assess a crime of the severity, magnitude, and complexity of
37 genocide.

38 **The Law**

39 Under a State responsibility analysis, the primary sources of law are the Genocide
40 Convention and the ILC Articles on Responsibility of States. The Vienna Convention
41 on the Law of Treaties (VCLT), or the “treaty on treaties,” to which China is also party,
42 provides the primary rules for *interpreting* the Genocide Convention. The
43 jurisprudence of the International Court of Justice is not legally binding, though can be
44 considered persuasive authority.

45 Art. 31 of the VCLT provides the applicable interpretive approach:

46 • A treaty shall be interpreted in good faith in accordance with the ordinary
47 meaning to be given to the terms of the treaty in their context and in the
48 light of its object and purpose.

49 On a plain reading of Article II of the Genocide Convention, *any one* of the five acts on
50 its own constitutes genocide if committed with the requisite intent to destroy, in whole
51 or in part, the identified protected group, as such. Genocide can be committed through
52 acts (b) and (e) alone, neither of which necessarily entail physical or biological
53 destruction of the group members. An interpretation of group destruction as
54 encompassing the social unit in all its complexities is not only based on a good faith
55 ordinary reading of the terms, but is also a well-accepted interpretation rooted in
56 authoritative decisions by international bodies, including the European Court of Human
57 Rights, Guatemala's Commission for Historical Clarification, and even a decision of
58 the International Criminal Tribunal for the former Yugoslavia.

59 The terms of the Genocide Convention must also be read in the light of its object and
60 purpose—to prevent genocide and safeguard the existence of human groups.

61 There is no uniform standard of proof to be applied to allegations of genocide under
62 international law, though it is clear that the appropriate evidentiary standard must
63 account for the serious challenges in evidence-gathering.

64 China not only refuses to cooperate with any international investigation but hides and
65 destroys evidence within its exclusive territory and control, and actively seeks to
66 portray its policies in the region positively through propaganda and forced video
67 statements. China has thus far blocked any independent, unfettered access to the
68 region, and yet was elected last year to a three-year term on the Human Rights
69 Council, one of the key bodies empowered with initiating a fact-finding mission.¹ The

70 leaked government blueprint for the mass internment system, known as the Telegram,
71 contains an entire section devoted to “strict secrecy,” banning all “mobile phones and
72 cameras” in the facilities, and a directive to train staff to maintain secrecy over
73 important data, which are not to “be disseminated,”² nor “open to the public.”³ Former
74 detainees have been (1) forced to sign documents never to disclose their experiences
75 in the internment camps (on penalty of being sent back along with family members),
76 (2) coached on what to say upon release, including to deny they were ever in
77 detention, and (3) forced to appear in videos portraying internment and the party in a
78 positive light.

79 Over the past couple years, Chinese authorities have destroyed critical evidence,
80 including scrubbing or omitting critical data for the region from public record—including
81 birth rate, population breakdown, birth control, and prison information— and burning
82 documents related to internment.⁴ This destruction of evidence tends to occur
83 following major leaks of documents. For example, according to one cadre, in the
84 aftermath of the release of the “China Cables,” “It took five or six days to burn
85 everything [in the office].”⁵ The government has also expelled an unprecedented
86 number of foreign journalists (at least 56 foreign correspondent positions remain
87 unfilled since 2020 due to expulsions and visa delays—in 2017, it used to take as little
88 as 2 weeks to process, now its indefinite),⁶ and continues to harass and monitor the
89 few journalists who are granted limited access to the region— restrictive conditions
90 which were only exacerbated by the COVID-19 pandemic.⁷ The evidentiary burden
91 must account for these serious limitations, which also give rise to negative inferences.⁸

92 There is zero requirement under specific intent to look into the minds of officials or find
93 statements expressing explicit intent to destroy the Uyghur group. China’s purported

94 counterterrorism goals behind its crackdown do not determine the State's intent; its
95 objective and comprehensive system of destruction against the Uyghurs does. The
96 inference of specific intent is measured by objective standards, including State-
97 orchestrated and interconnected destructive campaigns, which target every aspect of
98 the Uyghurs as a group and, when viewed as a whole, can only amount to an intent to
99 destroy the group as such. I will close with a summary of these destructive campaigns.

100 First, the all-encompassing mass surveillance system that terrorizes Uyghurs
101 throughout XJ has broken up families and severed communal bonds.

102 Second, the mass internment campaign has further torn Uyghur families and
103 communities apart, through rounding up Uyghurs and other Turkic Muslims in the
104 estimated millions.⁹ According to leaked documents and former detainees, grounds
105 for detention were often for who they are, such as being "born after 1980s" or
106 "untrustworthy," charges that criminalize an entire ethnicity,¹⁰ where "being ethnic
107 Uyghur" is an official factor which could also result in detention¹¹ and harsher prison
108 conditions. The vast majority of these detainees are Uyghur men between the ages of
109 18 and 55,¹² resulting in an increase in divorces, as well, to escape the stigma or
110 sexual abuse of live-in cadres.¹³ The government is also subjecting Uyghurs to a
111 parallel unprecedented system of long-term forced labour programs.¹⁴

112 Neither of these campaigns show any signs of abating. Recent reports demonstrate
113 that Uyghurs are increasingly being transferred to serve long-term formal sentences,
114 confirming a concerted plan to render the internment campaign more permanent with
115 a veneer of legitimacy.¹⁵

116 Third, the Chinese Government is simultaneously engaged in a well-documented
117 systematic coercive birth prevention campaign targeting Uyghurs in tandem with the
118 mass internment drive, even describing these campaigns in the same terms— “strike-
119 hard campaigns,”¹⁶ both conceived at high-level meetings. According to the leaked
120 Karakax List, where Uyghurs comprise 80% of the population, the two most cited
121 reasons, by far, for detention or internment are (1) “birth policy violations” and (2)
122 persons born after “1980s, 90s, or 2000s.”¹⁷ These two principal reasons for
123 detention, and the fact that the vast majority of detainees are Uyghur men between 18
124 and 55, reveal that a key driver of the mass internment campaign is the coercive birth
125 prevention programs, and vice versa, either by enforcing strict “birth policy” rules or
126 detaining young or middle aged persons.¹⁸

127 The authorities coercively impose these systematic birth prevention measures,
128 including sterilization and IUDs, through the ever-present threat of detention¹⁹ or other
129 penalties, and further erode Uyghur communal bonds by incentivizing reporting on
130 “illegal births” with cash rewards.²⁰ Officials are further required to subject women to
131 regular pregnancy checks and pregnant women are forced to undergo abortions upon
132 internment or if deemed illegal.

133 By 2019, the government planned to subject over 80% of women of child-bearing age
134 in the Southern four prefectures (Hotan, Kashgar, Aksu, and Kizilsu) to sterilizations
135 or IUDs.²¹ These Southern target areas are significant since Uyghurs comprise
136 approximately 90% of the population in the South.²² And the available data shows that
137 these campaigns are drastically driving Uyghur birthrates down.

138 In 2018, Xinjiang had the highest net IUD placements of *any region in*
139 *China* (calculated as placements minus removals), despite making up 1.8% of China’s

140 total population.²³ An August 2020 report from a majority Uyghur prefecture noted that
141 88% of all childbearing age women have IUDs or have been sterilized.²⁴ Between 2017
142 and 2019, the birth-rate across Xinjiang dropped by nearly half—the most extreme
143 drop out of any region in the world since 1950,²⁵ with greater decreases in indigenous
144 majority areas. Even in areas that are majority Han further North, we see the same
145 downward trend in Uyghur births. Available data for 2019-2020 show that these
146 decreases are continuing, with Southern Xinjiang’s growth rates already near or below
147 zero,²⁶ at a time when China is encouraging childbirth across the country to fend off a
148 national crisis—all demonstrating a clear discriminatory program suppressing Uyghur
149 births in the region. The government does not even dispute these declines in
150 birthrates, but instead attributes them to “the comprehensive implementation of the
151 family planning policy.”²⁷ Moreover, China’s US Embassy outwardly admitted that the
152 anti-extremism policies in Xinjiang made “Uyghur women... no longer baby-making
153 machines.”²⁸ The combined mass internment and coercive birth prevention campaigns
154 deprive the Uyghur population of the ability to reproduce and further point towards an
155 intent to biologically destroy the Uyghur group as such.

156 Fourth, the government has forcibly transferred Uyghur children en masse into State-
157 run Han group settings, in breach of Art. II (e), which further evidences an intent to
158 destroy the group by tearing families apart with the express goal of preventing the
159 transmission of Uyghur traditions, religion, culture, or language,²⁹ essentially cutting
160 off the next generation of Uyghurs.

161 Fifth, the State has banned and is erasing Uyghur language, culture, religion, history,
162 literature, and poetry.

163 Sixth, the State has destroyed or damaged the vast majority of XJ mosques (approx.
164 16,000 acc. to reliable satellite imagery analyses by the Australian Strategic Policy
165 Institute) and the majority of sacred sites, including sites at the heart of Uyghur identity
166 like Ordam Padshah,³⁰ or what is widely considered the holiest Uyghur site.³¹ Why
167 would the authorities go to the middle of the sand dunes to remove a few flag poles,
168 areas which serve no economic or other purpose? Because they know that's the heart
169 of Uyghur identity, and are therefore destroying that specifically, along with their
170 connection to the land. Many remaining sites have been converted into commercial
171 or civic spaces or enclosed with walls or checkpoints.³²

172 In early 2018, officials extended these destructive practices into domestic, private
173 Uyghur spaces, intended to transform "backward" Uyghur lifestyles and erase
174 ethnically distinct Uyghur architecture.³³ Authorities have specifically ordered the
175 destruction of two household features that stand at the center of Uyghur domestic and
176 sacred life.³⁴ The practices connected to these destroyed or converted sacred sites
177 and household features not only carry religious significance for the Uyghurs but also
178 strike at essential elements of Uyghur identity, culture, communal bonds, and
179 connection with the land.³⁵ Lastly, the government is selectively targeting prominent
180 Uyghur community leaders and the guardians of Uyghur identity to harsher prison, and
181 even death, sentences,³⁶ or disappearances. There is a growing list of hundreds of
182 disappeared or imprisoned Uyghur intellectuals from 2016 to the present, including
183 Government officials, prominent academics, celebrated writers, poets, linguists, tech
184 developers and the like.³⁷ Some of these figures were even praised by the
185 government, for instance, for fostering understanding and building bridges between
186 minorities and the Government,³⁸ or the Han majority.³⁹

187 **Conclusion: In Whole or In Part**

188 The government is committing independent and interconnected destructive
189 campaigns and attacks targeting every possible aspect of what defines the Uyghurs'
190 survival as a group: the coerced reduction and prevention of Uyghur births; severance
191 of all Uyghur social bonds; mass internment characterized by widespread torture and
192 sexual violence; disappearance of Uyghur community leaders, household heads, and
193 intellectuals; eradication of communal, spiritual, and religious Uyghur sites and rituals;
194 erasure of Uyghur language and heritage; and the forcible transfer of the next
195 generation of Uyghur children from their homes to be raised in Han settings by the
196 State. When taking an aerial view of the comprehensiveness of these policies and
197 their destructive impact on the Uyghurs one can only conclude that they evidence an
198 intention to destroy the Uyghurs as a group as such.

199 There is also sufficient evidence to infer the State's genocidal intent to destroy a
200 substantial part of the Uyghur group on a narrow interpretation of biological
201 destruction, based on China's own statistics and directives. These official documents
202 conclusively show that Uyghur birth rates are plummeting, and growth rates are near
203 or below zero. These birthrates will only continue to drop so long as the draconian,
204 coercive birth prevention measures, mass internment and forced labour schemes
205 remain in place. The fact that China has concealed all recent Xinjiang prison data
206 (since 2018) and birth rate data (since 2019-2020) from public record,⁴⁰ a departure
207 from longstanding tradition of public documentation by the State, can only lead to the
208 negative inference that Uyghur birth rates continue to decrease. We hope this Tribunal
209 will put the victims at the centre in your deliberations, while adhering to the appropriate,
210 conceptually coherent legal regime. It is possible to do both.

211 *COUNSEL – You’ve identified that the intent to destroy on the part of the PRC is*
212 *destruction of the Uyghurs as a whole or in substantial part. Are you able to justify why*
213 *the destruction is substantial either in numerical or other terms?*

214 P&D – We would first submit that the comprehensive destructive campaign aims to
215 destroy the group as a whole. Especially by sheer numbers, millions in different
216 categories for example mass sterilisation, internment. If one would take a narrower
217 interpretation of intent biologically or physically then would have to look at the number
218 of births prevented, number of women disproportionately sterilised in Uyghur majority
219 areas and make determination whether that is substantial part physically – in our view
220 based on a plain reading and interpretation of international law this destructive
221 campaign is sufficient to prove a campaign to destroy a group.

222 The obligation under the Genocide Convention is not to commit genocide with regard
223 to the specific group which Uyghurs constitute in whole or in part – or is disjunctive in
224 that phrase – so do not need to establish every one or whole, must look at the notion
225 of in part – quantitative and qualitative, with no specification to time threshold or period.
226 It may be there needs to be an event of mass execution, it may be quantitative
227 numbers will be destroyed apart of group quant as percentage or a real number, wish
228 to underline. ‘In part’ also speaks to qualitative: if a group ceases to exist by character,
229 then part of the group has been destroyed. That is a necessary precondition for *raison*
230 *d’être* of the Convention is to prevent destruction of *the group* as such. Not distracted
231 by a numbers game or period of time.

232 *COUNSEL – Would you still maintain that knowing that policies in Southern Xinjiang*
233 *are not replicated in the North generally, the proof of targeting of intellectuals is in the*
234 *hundreds or thousands and the proportions of those being targeted with alleged*

235 *prohibited acts are less than 15-20%? Could it be possible to justify still an intent to*
236 *destroy a substantial part?*

237 YD – The mass sterilisation and birth prevent campaign though lots of evidence
238 suggesting aggressively pursued in south where Uyghurs are 90% in some places in
239 north. For example, in Urumqi. Every Han majority district experiences a growth in
240 birth, but Uyghur majority district experience declines in birth rates – confirmed in
241 county in the north where Uyghurs experience discriminatory decline in birth rates
242 (shown by Rian Thum). We do not have so much information recently of birth rates.

243 'In part' can be a qualitative feature, if part of group targeted for long term prison
244 sentences, death, disappearances which intellectuals are subjected to that is further
245 evidence as it carries more weight as these are representatives of the group and
246 guardians of the community. When they are disappearing or dying that carries greater
247 weight for the question of in part.

248 JP – From the ordinary application of treaty law, the treaty doesn't stipulate a
249 threshold, understanding the intent of state, consent was not the establishment of
250 threshold, we are not disagreeing with the qualification of substantial to treaty – the
251 reason is because don't believe a single individual subject to one of five acts would be
252 sufficient to constitute a breach of the Convention even if killing individuals might be
253 motivated by another of genocidal character. That notion should not be reduced to an
254 imaginary numerical threshold – 15-20% - think of country for example: if it was 20%
255 of UK is over 10 million people. Your reference was to single elements. We need to
256 interpret the conduct of the state as there is a need to attribute responsibility to the
257 whole of acts – not to single elements which do the trick it would be erroneous to do
258 so. Look in context and light of pattern it becomes clearer.

259 COUNSEL – *When referring to substantial part, what you are talking about is intent to*
260 *destroy a substantial part rather than the actual destruction of a substantial part?*

261 JP – Yes.

262 COUNSEL – *You’ve mentioned and quoted various statements by President Xi and*
263 *other high-officials; might these be explained as relating to policies to root out terrorism*
264 *and/or pursue an assimilation or forced integration project rather than a destructive*
265 *one through the commission of crimes?*

266 JD – Here I would refer the tribunal back to the real requirement for intent to destroy
267 is not an explicit statement. Historically it is not case, even with the final solution it is
268 not evidently clear it meant the mass destruction of Jews. This simply does not exist
269 in history. Both required in ICC and international criminal tribunals – they rely on
270 general criminal context to derive intent. I would say these statements while indeed
271 horrific and evidencing in a sense an intent to break roots and wipe them out root and
272 branch which could refer to ‘terrorists’ and ‘extremists’ when combined with the
273 broader context for Uyghurs and Turkic minorities. That is not the primary evidence of
274 intent which are the destructive campaigns.

275 COUNSEL – *What evidence is there to suggest prominent leaders, intellectuals,*
276 *religious figures are being specifically targeted as opposed to falling generally within*
277 *the dragnet deployed by the CCP or the PRC for apparent extremist-oriented*
278 *behaviour?*

279 JD – It appears that people in those positions, Uyghurs in those positions, are
280 subjected to harsher sentences and disappearances. That would have to be
281 scrutinised with further fact witnesses. That is the case. Even death sentences and
282 imams dying in prisons.

283 COUNSEL – You said in the *New Lines* report there are reports of mass death – is
284 there an evidential basis for this? The citation you provide has deaths only in the
285 hundreds – the Uyghurs number many millions. Is there anything else we should
286 consider in respect of the evidence in relation to mass death?

287 YD – At present there is not exactly a lot of available primary evidence indicating, one
288 would have to ask what mass death means. If the numbers we have do not appear to
289 be mass death. Also stress the Xinjiang Victim Database has documented death in
290 detention or shortly after. A lot of these individuals are 35-55 or under 18. China held
291 a press conference confirming deaths documented by the Xinjiang Victim Database
292 which is relatively small sample of the overall sample of victims. It increased from
293 10,000 victims earlier this year to 25,000 today that are registered. There are also first-
294 time testimonies, one Uyghur in particular who testified to 9 deaths in her cell in 3
295 months. While this is one testimony this is a situation where all circumstances must
296 be taken into consideration. So, deaths confirmed clearly do not demonstrate the full
297 extent. There is also systematic neglect of medical treatment, systematic and
298 widespread torture, and prisoners dying as result of torture. Have to take this into
299 consideration.

300 JP – The conclusions reached by the collective to *New Lines* report do not turn on
301 article 2.a finding to be breach in 2.b, c, d or e. This would be plainly wrong and an
302 absurd reading of the convention. It would be to say required killing to find subsequent
303 breaches. In literature there is the term ‘slow burning genocide’, takes place over
304 period of time – used in context of Rohingya, also in Canada indigenous women and
305 girls disappear. There is a confluence of conditions contribute to state which give rise
306 to among other things killing but also gives rise to other breaches, I would suggest not
307 to stumble over that. Our suspicion looking at whole is that numbers exceed what have

308 been reported now and our expectation such numbers will grow should there be
309 unfettered access to investigation.

310 *COUNSEL – You’ve focused your report on Southern Xinjiang – why are these*
311 *prohibited acts not occurring in Northern Xinjiang to the same extent, if indeed they*
312 *are not?*

313 YD – There is evidence of discriminatory birth rate decline in the north, prisons
314 geolocated over 380 build or expanded across Xinjiang. So, every populated area –
315 not only in southern Xinjiang though aggressive forced birth prevention campaign, we
316 see evidence pursued more aggressively in the south that is significant as Uyghurs
317 are 90%, so you know group targeted are them. The destructive policies are not
318 restricted to the south.

319 *COUNSEL – You have departed from a traditional interpretation of specific intent as*
320 *set out in the jurisprudence of the ICTY/ICTR/ICJ namely that the intent to destroy is*
321 *restricted to intent to physically or biologically destroy. Some of the prohibited acts of*
322 *genocide are acts of conduct not result and therefore fall within this traditional*
323 *interpretation. Three short consequential questions arise: Why are you not applying*
324 *the interpretation of the genocide convention as set out in the jurisprudence of ICJ and*
325 *ICTY/ICTY when considering specific intent?*

326 JD – Because the treaties that govern it say we should not. If you read the treaties,
327 what you have characterise as traditional is the practice elaborated in *lex speciales* –
328 specific legal regime applicable to individual responsibility. With regard to individual
329 responsibility is specific limited legal regime – not only distinct legal regime, in
330 international criminal Rome Statute explicitly says has no implication shall have not

331 law regard to states. Even Article 10 says jurisdiction should apply intra the regime for
332 consistency.

333 Second of all, more important, general international law, here the Geneva Convention
334 law of treaties which codify the cumulated practice of states and developed it, and is
335 believed to be the reference makes clear we should apply the Genocide Convention
336 as treaty law to states, observed to quote the court, to take for example, we believe
337 erroneous, notions elaborate protection of individual, standards to individuals and so
338 forth and apply them to states. We believe traditional and orthodox approach is broad
339 established practice of all international law is one we are suggesting. One decision of
340 court of the international court of justice which has applied it in this way and we believe
341 this is erroneous.

342 *COUNSEL – [They have set out extensive jurisprudence on this question yet you apply*
343 *a lower threshold not necessarily consistent with the jurisprudence: “Based on the*
344 *ordinary meaning of the terms of Article II in their context and in light of their object*
345 *and purpose, the “intent to destroy [the protected group] ... as such” encompasses an*
346 *intent to destroy the group to the point that the group no longer exists as a group and*
347 *can no longer reconstitute itself as such”] Note: ICJ jurisprudence still selectively used*
348 *to interpret particular aspects of specific intent – seems inconsistent and piecemeal.*

349 *COUNSEL – Are you not conflating here two things – an intention to do something*
350 *(namely physical or biologically destroy) and the outcome or result of that intention.*
351 *Would you agree that intent to just socially or culturally destroy the group would be*
352 *insufficient to meet the test?*

353 JP – When we approached this matter, we were asked straightforward question – is
354 there a breach in our opinion in context of facts as appear to be with regard to

355 responsibility of state party, the PRC, in the matter of genocide. We applied traditional
356 orthodox international law. If you look at article 2, which we only looked at as there are
357 other obligations to China under Article 3, 4, it is very clear in ordinary meaning it can
358 be nothing other than ordinary that physical destruction is not the entirety of obligation
359 explicitly there is for example is mental harm which is disjunctively identify. There is
360 explicitly the removal of children, can interpret over long period of time. Group as such
361 in 'existence', quoting from general assembly resolution, 'existence of group is not
362 merely a composite of atomised biological beings, it is group as such'. In our view a
363 number of provisions of Article 2 would in physical or biological terms at least three do
364 not, so extraordinary for state parties to dispense of specific obligations of treaty the
365 no reference in law. Article 58 the conflation in our view has been conflation of two
366 regimes of individual and state where it is applicable law nor sensible to apply.

367 YD – The question presumes that first intention to destroy implies a person
368 intentionally doing something but clearly state responsibility – states intention has to
369 be interpreted – courts have looked at scale, destructive campaigns, looked at results
370 to find intent. Add to Johns point that acts c and d have spec intent attached to it
371 whereas others do not (physical and biological destruct). The Genocide Convention
372 was product of years of deliberation, seem strange to include extra words that imply
373 this intent to destroy group meaning the general intent encompasses group and all
374 that defines the group as such, added words as such. ICJ has hear disputes between
375 states in own statute states its own decisions are not legally binding on ICJ itself
376 beyond that specific dispute. it is difficult to say you have to apply standards from ICJ
377 especially as China not recognise the ICJ.

378 *COUNSEL – Finally, would your conclusion on intent still hold if you had applied the*
379 *conservative interpretation of the law – that intent to destroy entails physical or*

380 *biological destruction? Would the intent to socially or culturally destroy would not meet*
381 *the test?*

382 JP – The Genocide Convention does not say that. We would start with article 32 – all
383 law established this, what matters here is the consent of states. State is sovereign.
384 The ICJ is not sovereign over states, it is an institution that serves states members,
385 statute of court is part of charter and it is an adjudicative body, one of 8 optional means
386 to solve dispute. It is dispute resolution mechanism for states. How international law
387 works and what is reliable we have to proceed with the orthodox means. The treaty
388 does not say ‘social’, it says ‘as such’ which gives specificity to it. The ‘part’ is
389 qualitative and quantitative. This would have to go to heart of existence of group. May
390 a group exist absent language? I think it would be manifestly possible to exist absent
391 an element of identity. No single identity marker identifies the group. Position to see
392 treaty as whole, look at all acts compositely, specifically Article 2 there are 5 essentially
393 acts to look at and draw attention to.

394 *COUNSEL – Standard of proof is beyond reasonable doubt, except a states duty to*
395 *prevent as of course it is absurd to apply standard to something not yet occurred or is*
396 *occurring, you have given other situations where not apt to apply beyond reasonable*
397 *doubt. could you clarify whether you think there is any situation where beyond*
398 *reasonable doubt situation would be applicable to state responsibility?*

399 JP – No. General international law doesn’t stipulate standard of proof. No customary,
400 no treaty, one of notorious questions, notorious that there is no standard. Look in
401 practice of states, look at the ICJ studied in Geneva academy identifies 15 different
402 standards of practice. Jurisprudence is small and limited, in respect of genocide is
403 minute, 2 cases. There are 158,000 treaties registered by obligation under Article 1, 2

404 UN charter. There is more than 1000 multilateral treaties, in 100 years ICJ and a
405 permanent court of international justice, just 200 cases have even been adjudicated.
406 It is improper to talk of traditional position of things on standard of proof. And it won't
407 exist and doesn't. Where state responsibility attached, Article 2 body established by
408 UN pursuant to Article 13 of the Charter and treaty based, defines the wrongful act of
409 a State as 2 elements only: the wrongful act of state when conduct act/omission s
410 attributed to the State under international law; and constitutes a breach of an
411 international obligation of the State. to qualify that as dependent that on adjudicated
412 outcome on a standard of proof which may be extraordinarily high is inappropriate, all
413 international law would cease to function. States conduct themselves on the
414 assumption, a state may attribute acts to wrongful state then entitled to make
415 countermeasures with exception of individual responsibility. This is not *lex speciales*,
416 a peculiar international law as important of individual protected by human rights law.
417 If speak to legal advisors in most countries, fail advise of government if bound by
418 standard of reasonable doubt.

419 YD – Even according to international courts, beyond reasonable doubt standards is to
420 protect a defendant from sanctions, sanctions are to protect individuals so I do not
421 think it is applicable to states. Second point, consider what China has been doing,
422 leaving out and taking information out or omitting birth data for region departing from
423 long standing tradition of public information, how can someone be convinced beyond
424 reasonable doubt in this framework. How can someone operate in this framework?
425 This is why state responsibility is important as it allows others to make determination
426 without any cooperation and with obstacles and destruction of evidence in the way.

427 JP – Of course the regime of international human rights law and European Court of
428 Human Rights operates to a standard beyond reasonable doubt, within the context of
429 *lex specialis*.

430 *PANEL – Of all the reports that have ventured to express opinions on genocide by the*
431 *PRC this year, you are the only one to present here, we are very grateful. Not only are*
432 *reports the preserve of distant anonymity, the USA has chosen to express an opinion*
433 *that another state what is sometimes cause the greatest of all crimes. But not thought*
434 *it necessary to explain on what material or means it has reached that conclusion. I will*
435 *be comparatively brief. Even in an extended period of time i have no doubt my*
436 *colleagues will want to ask a lot of questions. It is necessary in light of what you have*
437 *said to explore a little history. And so it was in 1921 Assassinated grand vizier of*
438 *ottoman empire in berlin, Raphael Lemkin law student couldn't understand why army*
439 *was about to be whereas grand vizier had avoided this. He became obsessed with this*
440 *to murder of nearly all family in WWII to advance concept of genocide. Find himself in*
441 *pol climate which exists to this day of state resistance to direction of law and morality*
442 *and as William Schabas says in his book there was an appalling experience at London*
443 *conference where statute of Nuremburg trial was corrupted to ensure wouldn't expose*
444 *America for pursuit the lynching of black Americans - he was successful in having the*
445 *term genocide as a new term used as a term of description in four maybe three of the*
446 *first Nuremburg trials but the judgement showed him the difficulty of controlling states*
447 *from outside such things as holocaust of Jews was not going to be allowed for. Went*
448 *to UN and forced the convention through. Extraordinary act for single human to do.*
449 *That convention should be understood to be much unloved by all the great powers,*
450 *they didn't want it but had to have it. Do you agree so for? Yes. Later discussions*
451 *various things considered and eliminated e.g., Cultural and political such as in hands*

452 *of Russia – let us be under no doubt genocide is not unique feature of human bad*
453 *behaviour it is a defined segment on what humans do to other humans starting with*
454 *thinking and thoughts and ending in mass killing. What is also not well known, and you*
455 *confirmed this, is genocide was then forgotten. Through 50s, 60s, 70s, towards end of*
456 *60s or was it the end of the 70s Great Britain acceded the convention, then China then*
457 *US, an unpopular and unwanted convention so far as states were. Reason they didn't*
458 *want it may be Article 1. There may be other reasons – Article 1 if you find genocide,*
459 *as a state anywhere in the glob, you have to do something. No state wanted this.*
460 *However, having acceded to it, one e.g. In 1971 in GB foreign secretary dissolved*
461 *response re Bangladesh, nothing to be tried, we can't decide, and said dead letter or*
462 *falls on barren ground. Since then, has there been any occasion when any government*
463 *has responded to the imperative in Article 1?*

464 JP – Responded in contentious case?

465 *PANEL – By doing something, sending armies in?*

466 JP – There was the invocation in February 1992 which regard to protection of Kurds
467 in north of Iraq and Shia Arabs in south of Iraq to protect those groups explicitly
468 concerns of genocide.

469 *PANEL – Which government, what did they do?*

470 JP – Resolution 667 – all necessary means taken of states including UK, mention as
471 antecedent to vulnerable of Kurds, gassing in Halacha. There was credible and serious
472 risk there would be genocide.

473 *PANEL – This part of 1990s?*

474 JP – February 1991.

475 *PANEL – This is the first time GC may be, was some effect. Come to 1998 first*
476 *genocide trial, this is demonstrative of efficacy of GC, not very much. If move forward*
477 *when come to e.g., Rwanda, in Rwanda foreign secretary was reported as Bangladesh*
478 *saying word genocide shouldn't be used in 1993,4,5 re the former Yugoslavia there*
479 *was determination never to use the term as would have forced the hand of the forced*
480 *to doing it. So they never allowed use the word, they did not want it to have effect. This*
481 *is a people's tribunal as you understand. It will not make recommendations and will*
482 *provide one piece of information. Here to fill a gap as Jean Paul Satre saying in respect*
483 *of the Vietnam tribunal. Although the Tribunal isn't an activist body, will not become*
484 *one, it would prefer its outcome to be of effect. Several parliaments around world have*
485 *pronounced genocide as being committed and nowhere succeeded in getting*
486 *governments to act under Article 1 of the Genocide Convention. The British*
487 *government is so determined not to allow Article 1 to be considered that it has imposed*
488 *on itself a protocol where it says genocide can only be determined by a judge, but as*
489 *there isn't a judge who can determine it, there can be no determination. they are*
490 *continuing to avoid possible activation of article 1 even though the British parliament*
491 *voted unanimously. There is no idea amongst the 9 of us what conclusion we will*
492 *reach. Would you accept that the simpler the conclusion one way or another that a*
493 *tribunal representing the public interest resolves, is more likely to give effect than if it*
494 *is complex in its resolution?*

495 JP – In short, simplicity is always welcome in such matters, especially if to move public
496 conscience is goal. I concur entirely of summary of historical experience I would
497 suggest is at start odd as law as stated in Genocide Convention and is at odds with
498 the raison d'être of convention was adopted by the UN general assembly the day
499 before the Universal Declaration of Human Rights, not by coincidence. In order of

500 human development re international relations charter of UN, establishes two
501 parameters for states: 1. You may not at liberty destroy part of population (ethnic,
502 rational, religious, national group) genocide puts part in that, and the Declaration of
503 Human Rights obligations in obligations in charter Article 1 and 5 says the state must
504 direct its functions to wellbeing of individual, must positively contribute to wellbeing.
505 Has sad to watch last 75 years and the persistent violations in particular genocide
506 conventions of non-application.

507 *PANEL – Is simplicity preferred to complexity at this stage? If this tribunal, peoples,*
508 *make decision when no precedent for conviction other than by mass killing, with a*
509 *different interpretation of standard of proof from the highest, is this likely to be subject*
510 *to accepted by any government?*

511 Yes I do. We have third case at of The Gambia v Myanmar. The Gambia acting on
512 public interest, a small weak state standing up for Genocide Convention. The point is
513 that it is time we change practice of states. Contribution of tribunal is to undermine the
514 point. Simple and clear to distinguish individual and state responsibility. People can
515 understand state cannot be arrested, prosecuted, put in jail. A simple example from
516 Rohingya one of the key elements of persecution 1982 law of citizenship, that law was
517 not enacted by individual, cannot be repaired by an individual, it was act of state.

518 YD – I don't think people's tribunal should consider political ramifications of its
519 decision. I would assume it would retain more authority if stuck to the law. Which is in
520 Genocide Convention, not in political reality. I do think that the decision based in the
521 law will retain more power.

522 *PANEL – How much what you talk about make any sense to the average person off*
523 *the street?*

524 JP – I think it would to normal people, who come to here. They understand what state
525 is quite clearly. Number of people dealing with this here with Brexit. Not esoteric or
526 complex – state existed since time immemorial – if we are trying to move – the tribunal
527 may move states to act. The consequences of report specifically debated in
528 parliaments where decisions were taken for example. Belgian, was read by the state
529 department in the US and can say it is in the province knowledge of existing
530 government in Washington told previous member of cabinet. This is not without
531 bearing and I hope tribunal has aspiration for the man in street but also the responsible
532 authorities of state.

533 *PANEL – How to get to parliament if not via the man in street? How much of detail of*
534 *law, practice, court ever in the mind of hundreds of parliamentarians, my suggestion it*
535 *would be very little? A point Mr Diamond point made on the burden proof to stop people*
536 *being hanged if they shouldn't be - in areas of law where it applies, earlier on you said*
537 *the difficulties of proving something have to be taken into consideration in adjusting*
538 *standard of proof? Is that right? Does the legal system not work on the basis that if*
539 *don't have the evidence isn't this just bad luck? How change that?*

540 YD – In the ICJ's first decision, Corfu channel case, I dealt with this as the country in
541 question had complete control over territory the court has to give more weight to
542 indirect or circumstantial evidence. It is fundamental principle of law as well as just
543 practically something, we have such mountains of evidence pre 2019 operating in
544 conditions got worse over pandemic with close to zero transparent reporting on
545 Xinjiang. These are critical factors in overall.

546 *PANEL – What do you think of this observation, that the tribunal should not be*
547 *concerned with what it does not have, or what it might have in a conventional*

548 *investigation, but must do as physicists or engineers when faced with impasse and*
549 *unknown path of enquiry, is to look elsewhere, test conclusions with same rigour as a*
550 *tested investigation with more investigation, do you accept that?*

551 JP – We accept that but standard would not be beyond reasonable doubt,

552 *PANEL – This was in China tribunal where beyond reasonable doubt was applied and*
553 *finding of crime and not of crime were made.*

554 JP - There is a problematic aspect in this tribunal as you are simultaneously looking
555 at individual and state. That is not international practice there is either individual or
556 state responsibility. You have given yourself challenging task. I would say one should
557 be cautious in terms of applying that. I would say it would be sensible to say if looking
558 at individual for example a Head of state or head of CCP in autonomous area in
559 Xinjiang, or detention camp apply *this* standard, and I looking at state apply *that*
560 standard – that is not inconsistent, it is entirely reconcilable.

561 *PANEL – You have supplied the material for us to make that choice and bifurcated*
562 *decision if we choose to do so. If indicated a possible outcome it is not expression or*
563 *expectation it's an opportunity to consider the efficacy of simplify or efficacy – given*
564 *what is of concern with the Genocide Convention should be activated and not left on*
565 *one side.*

566 *PANEL – You quote in document a huge difference in relative birth rates in recent*
567 *years in Uyghurs and Han population but don't give absolute values, can you tell us*
568 *how absolute birth rates compare, how big is the different?*

569 YD - I'm not a statistician, this might be better addressed to the Australian Policy
570 Strategic Institute, Dr Thum, Dr Zenz who have conducted analyses. When growth
571 rates are approaching 0, birth rates approaching 0, decline by 80 % from one year to

572 next – in absolute numbers as well the numbers have dropped dramatically abed on
573 previous birth rates in the Uyghur community.

574 *PANEL – We have heard earlier today as more repressive comes to power there is*
575 *increasing hiding of births of Uyghur population, there is also concerns there may be*
576 *further bias in data in virtue of interest of those in charge to reduce the birth rate of the*
577 *Uyghur population, to show the figures show this is happening. Do you think this is*
578 *real?*

579 JP – The Chinese policies on births are now new or secret. What is extraordinary here
580 is how being applied and now being clearly purposefully we believe as part of
581 consistent with genocidal intent, are being applied to intend to hide. One may imagine
582 the negative inference in this – this is not a one off, what leads us to think this way is
583 others.

584 YD – What you meant officials have quotas to meet and so they may be fudging the
585 data?

586 *PANEL – Question if that bias – the question coming round to is if over time, if we take*
587 *birth rates as they were a few years ago and project forward 10 or 20 years, with all*
588 *shortcomings of modelling, there is no doubt proportion Uyghurs would increase than*
589 *Han population. It is possible that with current situation it would remain stable. What I*
590 *am asking you do you think if proportion of Han to Uyghur remains stable over next 20*
591 *years, would that count as genocide, as socially engineered to prevent an increase in*
592 *the Uyghur proportion?*

593 YD – Go back to the Genocide Convention, it is difficult to compare populations our
594 analysis is not about numbers how many births, it's about all of the destructive
595 practices and how that contributes to destruction. The physical body is not relevant to

596 those questions, if you are taking a restrictive approach there has to be a certain
597 number of births prevented, shown their numbers are being prevented. this is more
598 apt question for John or Rian Thum or Adrian Zenz or Nathan Ruser who have looked
599 at data and know if that is the way the trends are going.

600 JP – The speculation of projection of demographics that takes a single factor and
601 ignores transfers of population, move out population, departs from provision Article 2
602 on prevention of births. We have not speculation, we have evidence of acts attributed
603 to state which *have* prevented births. We would stop at our position 11 September
604 2021 our view that attributable to the PRC there have been acts which have prevented
605 births of a substantial number destroying and with the intention to destroy Uyghurs as
606 such.

607 *PANEL – Two questions if I may. Thinking about intent, is it on state responsibility*
608 *analysis enough these acts take place, don't have to prove any particular kind of intent*
609 *not on part of senior CCP official, just show these acts, on mental stage are brought*
610 *together, and don't have to concern ourselves on your view to trying to attribute*
611 *decisions to one group, or one person, if acts take place that is sufficient to meet that*
612 *intent?*

613 YD – Yes, that is view of international criminal tribunals which preside over individual
614 responsibility – they admit it is near impossible to look into mental state – why the
615 majority of those decisions are based on a broader context and why acts rather than
616 inquiry into someone's mind.

617 JP – We are not saying sufficient to have strict liability analysis act occurred and
618 therefore there is intention – the Genocide Convention explicitly and unusually
619 stipulates an intent. Just the simple word intent, which is very unusual, is the idea

620 deliberate purposeful, not merely that just the act occurred. How does one know there
621 is intent? Assimilate the state as individual is a fool's game. There are elements of
622 state which are acts of state which are by their character are not attributable to
623 individual. In China it is constructed in such a way so this is not possible. For example,
624 the application of artificial intelligence, where does responsibility for individual sit there.
625 But do know what state responsibility is. If organs, individual of state, for example the
626 Head of state, not only entities but specific actors such as head of state, head of
627 government, carry in personam acts responsibility. Their acts and words spoken are
628 relevant to the state – may not separate from state. What Boris Johnson says does
629 matter. We you are looking at intent, not exactly a mind we have to understand what
630 the deliberate and purposeful intention of those acts. We are talking about a powerful
631 state, China, we are not talking about develop countries no country of control, this is
632 state with all means and tech, if deciding law public policy, thought party, agent, etc
633 those may be through pattern of conduct even with omission of words, that is intent.
634 They didn't build detention centres not intending to detain people. we have to
635 deductively draw inferences. Key elements are 'as such' re a group. Was intent
636 destruct, if in part not whole, of group 'as such' - connectivity the deliberate purposeful
637 connectivity connected to Uyghurs.

638 *PANEL – If one can show detention centres, clearly state are put state in detention,*
639 *how far does that get you down the intention road?*

640 JP – Very far but is not all work, needs as such. There is an intent to do such act. If
641 they are now aimed at destruction of group as such you need additional work.

642 YD – You can look at it this way. How the historical commission in Guatemala, last line
643 of the last slide please, some of these aren't genocidal acts: Destruction of mosques,

644 burning books, official categorisation of Uyghur as grounds for detention. Those things
645 have to be viewed from a bird's eye. Starting from 2017 not only acts cumulatively it
646 looking at all of this together, and whether points towards logical sequence, this is way
647 commission phrased it. Is it the logical result from targeting the group from literally
648 every possible way you can in addition to 5 acts.

649 *PANEL – You seek to persuade us that as a people's tribunal whether a fair and just*
650 *standard of proof should account for restriction on securing direct evidence. In doing*
651 *that you cite ICJ Corfu channel case. I am wondering how far that is relevant to us*
652 *here. In that case the ICJ affirmed because state exclusive territorial control makes it*
653 *difficult to victim states difficult to furnish proof that would warrant, case of victim*
654 *states, how might that apply in our context?*

655 YD – Genocide Convention victim states are the 151 other states, genocide is not to
656 commit is obligation not to commit so we are all victims.

657 JP – In general practice of states there is not a stipulate standard of proof – balance
658 of probabilities or preponderance. These references are Anglo-Saxon law not Islamic
659 law for example, not invoking one cultural or legalistic above others. Essentially
660 balance of probabilities, interesting about the Genocide Convention of gravity of
661 different standard so one can imagine look at Genocide Convention what would be
662 applicable for Article 5 – state must include in domestic law, do we need a beyond
663 reasonable doubt standard? If not there we can assume its intended not to be there.
664 We can just read their laws. States are duty bound to share laws. It is possible to
665 imagine, we have actually applied higher standards, clear and convincing, we do not
666 believe it should be beyond reasonable doubt for the state for all of its obligations.

667 *PANEL – If reliance insufficient evidence in terms of Article 2.a so reliant on b-e, what*
668 *does destruction look like either whole/in part that human biological probably not*
669 *dissimilar in some forced marriage. What does it look like in 10 years' time, if you*
670 *imagine someone planning this, what are they conceiving in their mind that this group*
671 *would look like? Second bit of question is some policies if attributable for instance to*
672 *around education, sterilisation, are very long-term policies, presumably the outcome*
673 *could be very long term, does that matter re our determination?*

674 JP – Second point does not matter, time not threshold. I speak to you as a Canadian
675 we have such examples. Difficulty is to look over time. If stop at certain point in time
676 you have to establish where in that timeline. duty is to prevent. Also not waiting or
677 absurd to have the result before the prevention.

678 What would it look like – scholars take note of Daniel Firestein, Gregory Stanton have
679 spoken about stages, they have mapped out, genocide not accident or instant but on
680 the whole, genocides are planned, conducted over time. If we did look like to normal
681 person in street we could imagine the dehumanisation that end of the, if we reduce it
682 only to physical biological human beings no one would argue would remain that the
683 group does not exist, a group as defined in the convention, ethnic, religious, they must
684 have a character of belonging of groupness, if distilled all elements of group of just left
685 with bones, flesh with no esprit, no ability to self-generate, you have destroyed the
686 group. We have evidence of this from other genocides – interruption of reproduction,
687 socially and culturally. I think humans can understand this. We would recognise this.

688 YD – Think a lot of people would get confused seem forced assimilation or cultural
689 genocide – those terms do not accurately reflect the situation. What is the impact of
690 mass sexual violence in prison, the impact of years of prison in torture, of tearing

691 families apart not get back together. If China says they want to create entire single
692 nation, race and were happy to include Uyghur people in race, what does that mean
693 for rates of suicide. There are so many factors. The terms I just mentioned are almost
694 colonial and not looking from victims' perspective. The destruction of religion, the
695 destruction of culture, if you take away cream cheese bagels it's a way of life for some
696 people more important than physical existence. 10 years' time destruction is terrifying
697 to think about.

698 *PANEL – First there is individual responsibility vs state responsibility. What is the state*
699 *and individual is fused, for example we have measures of party states, President Xi*
700 *has changed the constitution so he is president for life and has head of several bodies,*
701 *lots of guidelines back to and President Xi – what happens to your argument when the*
702 *state and individual are fused in this way?*

703 JP – L'état c'est moi. In the same way, possible to imagine synonymy of state and
704 individual for example. Monarch – two going in sync which is extremely rare. Though
705 do in some states for example in Saudi Arabia – his acts are of the state. May be case,
706 part of problem for public in lay sense – we want to personify it, we were told this was
707 Stalin, Hitler. But it wasn't Hitler, it was the system, it was the judiciary dare I say in
708 the third Reich. a lot of the operative elements may be very small but it has reach. So
709 we have to escape as part of your task to help the public understand that it is not
710 reducible to one bad guy. Bad apple-ism is a distraction. In case of complex system
711 like China it is almost a constructed distraction. I have the theory of such regimes, I
712 was assistant to the Special rapporteur in Iraq. The role of party in which is implicated
713 almost everything couldn't be professor in Iraq without being a party member.
714 Elements penetrate to become the state. The state is the primary actor in international
715 relations and law which gives us passports it is also primary responsibility of

716 interaction. Let's not let the state off the hook. They are may be overlapping, may be
717 individual w individual responsibility and at same time state.

718 *PANEL – Look at Article 2 of the Genocide Convention, at the five elements there, as*
719 *a lay person I am wondering does our understanding of these, how imp demonstrate*
720 *the intersection of certain of these 5 elements?*

721 YD – The acts are discreet in terms of the actus reus of the crime. One would look at
722 first whether there is an intent to destroy group as such, and if there is then have
723 members been killed, torture, imprisoned, caused serious bodily harm, each one on
724 its own. The real question for you is looking at intent to destroy demonstrated by the
725 mass atrocities, by coordinated campaign of targeting. The acts are illustrative of how
726 you go about destroying a group. These acts have been amply demonstrated by this
727 tribunal.

728 JP – From a logical perspective, the five are discreet and stipulated as such as matter
729 of treat interpretation. Proving one is sufficient. Finding coherence, approach of actor
730 responsibility, it is sensible there is intersection that they not only take children away
731 but they also create conditions which is an extremely wide area. The intersectional
732 approach is telling. What we recorded we believe there are violations discreetly under
733 each one and all of them.

734 *PANEL – To conclude, if there was a circumstance where under your analysis of state*
735 *responsibility a case of genocide was made out, if strong left found a document from*
736 *the later showed he had initiated conduct but for a different reason, what say to that?*

737 JP – These are not mutually exclusive.

738 *PANEL – So it is genocide and not genocide?*

739 JP – No, you may be committing genocide with additional purposes. Like breaking and
740 entering. I cannot imagine genocide historically with one without some additional
741 purposes. In Auschwitz gas chambers they were melting gold.

742 *PANEL – If having made determination, you find a document from the leader ordering*
743 *the behaviour for an intention different, what would you say then, would you say*
744 *determination is mistake?*

745 JP – No as the conclusion is on the composite of acts you can infer, otherwise I would
746 just say note and lock it in a safe saying the purpose of my genocide is not to commit
747 genocide. That is part of the argument about sole purpose. If simply means the PRC
748 issues a statement, and they do claim the intention is counter terrorism, population
749 policy, economic even if document to support this.

750 YD – There is no defence of genocide

751 *PANEL – Remember bad things people do to each other, just in case helpful in future*
752 *evidence, sociologists look at genocide from different perspective look at different*
753 *circles, is their circle bigger or is it Venn diagram that intersects? If we would like to*
754 *find contemporaneous writer opposing your views, who would it be? Apart from*
755 *Shabas. Only ones good enough to tell us. Who would be the person to turn to for the*
756 *other view.*

757 JP – Certainly Shabas with whom we agree on many things, but on a few we disagree.
758 I would think there are a number of scholars from who will hold position essentially
759 from now there are narrow areas of law such as international criminal law become self-
760 generated and closed. They talk to each other and quote each other. I believe there
761 would be a number of international criminal law scholars who will support the views of
762 Shabas. I would say they are mistaken.

State Responsibility for Genocide

Genocide Convention 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.

Vienna Convention on the Law of Treaties

- Article 31:

A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

State Responsibility vs. Individual Responsibility

- *Article 58 Individual responsibility*

“These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State.”

“State responsibility and individual criminal responsibility are governed by different legal regimes and pursue different aims”

Croatia v. Serbia, ICJ Judgment of 3 February 2015, para. 129.

Destructive Campaigns Evidencing Specific Intent

- *Mass Surveillance, State Terror, and Severance of Uyghur Communal Bonds*
- *Mass Internment*
- *Coercive Birth Prevention Campaign*
- *Forcible Separation of Uyghur Children and Families*
- *Destruction of Uyghur Sacred Sites, Mosques, Way of Life and Language*
- *Selective Targeting of Uyghur Leaders*