

INTERNATIONAL CONFERENCE

# Genocide In the New Era



*Stockholm, January 26 – 28, 2004*

# Participants

## Professionals

- Jeffrey Addicott, Director, Center for Terrorism Law, St. Mary's University School of Law, USA
- Attorney Clive Ansley, Canada
- Barrister Georges-Henri Beauthier, Belgium
- Attorney Peter Bergquist, Sweden
- Janice Cheung, Executive Director, the Petals of Peace
- Barrister Theresa Chu, Taiwan
- Viviana Galli, founder member, China Mental Health Watch, USA
- Attorney Carlos Iglesias, Spain
- Attorney Wolfgang Kaleck, Germany
- Attorney Erkki Kannisto, Finland
- Attorney Terri Marsh, USA
- Attorney Morton Sklar, Executive Director of the World Organization for Human Rights USA, Judge of the Administrative (Labor) Tribunal of the Organization of American States
- Attorney Joshua Sondheimer, Litigation Director, Center for Justice and Accountability, USA
- Lord Francis Thurlow, Friends of Falun Gong
- Harry Wu, Executive Director of Laogai Research Foundation
- Erping Zhang, Executive Director of International Advocates for Justice

## Non Governmental Organizations

- Association SHERPA, France
- China Mental Health Watch, USA
- China Support Network, USA ([www.chinasupport.net](http://www.chinasupport.net))
- Committee for an International Special Tribunal on the Persecution of Falun Gong ([www.specialtribunal.org](http://www.specialtribunal.org))
- Free Church for China, USA ([www.freechurchforchina.org](http://www.freechurchforchina.org))
- Friends of Falun Gong, Sweden
- Genocide Watch ([www.genocidewatch.org](http://www.genocidewatch.org))
- Global Coalition to Bring Jiang to Justice, USA ([www.grandtrial.org](http://www.grandtrial.org))
- Global Mission to Rescue Persecuted Falun Gong Practitioners ([www.globalrescue.net](http://www.globalrescue.net))
- The Golden Lotus Press ([www.goldenlotuspress.com](http://www.goldenlotuspress.com))
- International Society for Human Rights, Germany ([www.igfm.de](http://www.igfm.de))
- Laogai Research Foundation ([www.laogai.org](http://www.laogai.org))
- The Petals of Peace ([www.petalsofpeace.org](http://www.petalsofpeace.org))
- Press Freedom and Human Rights League ([www.tongmeng.org](http://www.tongmeng.org))
- Safeguarding the Rights of Women and Children, USA
- Society for threatened people, Germany
- The World Organization for Human Rights, USA ([www.woatusa.org](http://www.woatusa.org))
- World Organization to Investigate the Persecution of Falun Gong ([www.upholdjustice.org](http://www.upholdjustice.org))
- World Service Authority ([www.worldservice.org](http://www.worldservice.org))

*"The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated."*

**- Judge Jackson in the opening statement for the prosecution at the Nuremberg trials**

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THE WORLD HAS CHANGED irrevocably since the Holocaust. It left permanent scars, but also armed the world with important tools for addressing genocide in the future, such as the Convention on Genocide. And although people the world over are committed to preventing genocide, some questions remain: If and when that scourge against humanity emerges, will we be able to recognize it? What patterns might we expect to find? If we do recognize it, how will we handle it? This conference attempts to address these and similar questions, drawing from various disciplines and subject areas, as well as from research and personal experience.

ONE OF THE HIGHLIGHTS of the conference will be a discussion of what many have classified as a current case of genocide – the ongoing persecution of the Falun Gong meditation group in the People's Republic of China. Through understanding the case of Falun Gong in China we come to see how modern genocide differs from that of the past in that the Internet and the globalization of the economy play a major role.

# Genocide in the New Era

A Conference Co-sponsored by Friends of Falun Gong Europe,  
International Advocates for Justice, and 17 other NGOs  
in Stockholm, Sweden, 26-28 Jan. 2004

The Convention on the Prevention and Punishment of the Crime of Genocide, which provides a specific articulation of the prohibition against genocide, has gained universal support and been ratified by more than 120 nations, including China. By becoming a signatory, the People's Republic of China has agreed to "undertake to prevent and punish" the crime of Genocide, irrespective of the rank or status of those responsible. Nonetheless, former leader of China Jiang Zemin, initiated a campaign of genocide and torture to discredit and eradicate the belief in and practise of Falun Gong in China, in direct violation of the values and common shared interests which comprise the moral and public order of man.

As part of a worldwide tribute to the global recognition of human rights and the Intergovernmental Conference on Preventing Genocide, Friends of Falun Gong Europe and the International Advocates for Justice were joined by 17 NGOs to sponsor "Genocide in the New Era" - an international conference attended by human rights attorneys and NGOs from Sweden, Belgium, Spain, Canada, Finland, Denmark, Taiwan, Germany, the United Kingdom, the United States and other nations. The conference addressed the widespread phenomena of genocide in China, its impact on millions upon millions of persons in China and abroad, and offered proposed measures to prevent and stop genocide in China and wherever else it occurs.

Prominent international human rights speakers addressed the reality of genocide in China from legal, political and moral perspectives. Those in attendance

included Attorney Georges-Henri Beauthier from Belgium (internationally renowned for the Pinochet case and the case he filed against Jiang Zemin), Attorney Joshua Sondheimer of the American Centre for Justice and Accountability, Jeffrey Addicott, Director of the Centre for Terrorism Law in St Mary's School of Law, Wolfgang Kaleck, attorney and president of Republican Lawyers Association in Germany, attorney Clive Ansley from Canada as well as attorney Erkki Kannisto from Finland. Falun Gong attorneys Carlos Iglesias, Theresa Chu and Terri Marsh presented papers to highlight the persecution of Falun Gong in China. Erping Zhang, Executive Director of International Advocates for Justice, spoke about the lack of rule of law in China today. Being senior diplomat for more than 30 years, Lord Thurlow gave a speech on the role of the diplomacy in preventing genocide. Speeches were also made by NGO leaders from the Laogai Foundation, the International Society for Human Rights and many other rights groups.

Virtually all agreed that the continuing persecution of some hundred million Chinese citizens by the government of the People's Republic of China for their moral beliefs is a most serious manifestation of genocide as defined in Article 2 of the 1948 Genocide Convention, and is unacceptable in the world today, prejudicing the development of cooperation and trust between nations.

For further information regarding the conference, please visit website; [www.fofg-sverige.net](http://www.fofg-sverige.net)

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## Opening Speech

*Lord Francis Thurlow*

One of the most striking changes of the last 25 years has been the astonishing speed with which the developing international legal system has taken off. International law has been with us in one form or another for centuries, in a very small way, on matters like the Law of the Sea and so on. But it was only after the last war that a real impulse was given to the creation of a structure of legal principles, which might guide and sit in judgement on the citizens of all the countries of the globe with shared legal principles. This is not easy.

For the first 25 years after the war, one saw the basic steps of creating a greatly developed structure, by United Nations conventions and also by other international means. It's one thing to have things written down in splendid international documents and quite another thing to get action on the ground. This depends on the development of institutions, mechanisms and professional skills. The last 25 years have seen tackling and success in each of these fields. I take off my hat and pay tribute to those, some of them present with us today, who have taken part in this vital process of making international law a reality.

Why do we need international legal principles? Until the last war, we were still essentially in the old balance of power system of everything being effectively in the hands of a comparatively small number of major western states. This was a system that had lasted for a long time and until 1914 had lasted rather well through the balance of diplomacy and shared standards. Amongst the western powers on the whole, there were the same kind of moral standards and legal principles. They knew how to talk to each other and preserved a sometimes precarious but nevertheless successful balance.

But everything changed after the Second World War. I was in the middle of it. From this relatively small group, the United Nations was founded. I was in at the start of this: in the first meetings of the United Nations, the preparatory meeting and early meetings of security councils, as a junior official. There were only 49 members of the United Nations and, with difficulty, it was possible to get meaningful and sensible resolutions. But it became increasingly difficult as more and more countries became independent. Now you have about 150, many of them extremely small. They haven't got the

resources of personnel or material resources to have strong foreign offices and diplomatic and intelligence services. So there's largely a divorce between the resources and capacity of nations and their voting power in the United Nations. We've got to grapple with this problem of change in the United Nations.

While the structure has been growing, the predicament of humanity has been worsening. We kid ourselves with our enormous, continuous technological revolutions - especially the IT revolution - that things are getting better and better. A lot of people really believe this and believe that technology can solve everything. It is the creed of materialism, which after all is the religion of age. While technology has accelerated, moral standards have declined in equal measure. So there is no longer a shared common standard: to put it in the lowest moral terms, a common standard of decency. Falun Gong is privileged to be part of the seeding of the next culture. Seeds do not grow into trees overnight. We are in the early period of the sprouting of the seed. The world still has to learn gradually of a new phenomena, a new beginning, which I am convinced is going to become the basis of a new world culture, shared world values of the traditional kind and eventually reflected in a new society: a new world society.

This conference is about the means by which this process is going to develop and we are fortunate in having distinguished representatives of non-governmental organizations who are at the cutting edge of moving forward. Governments can only do a limited amount because they can't go further than the public opinion of their respective electorates allows.

There are strict limits in any democratic country to what a Prime Minister of government or President can do if he wants to be re-elected or if his party has aspirations to continue in power. I'm glad to say, having spent my working life in governmental circles, that democratic parliamentary governments are finally recognising that non-governmental organizations are an absolutely essential part of the organic system of achieving social change. Non-governmental organizations can get further in touch with what is really going on than the organs of government. They are the antennae, the social antennae, of movement and growth and adaptation.

One of the features of the political conference that is going on a few yards away is to move towards institutional recognition of the necessary partnership between governments and non-governmental organizations, to recognise their contribution, to give status, and perhaps to have this reflected in certain new institutions. What goes on in our conference here has a bearing on the follow-up of what goes on in that conference there.

I, on behalf of you all, thank the members of the non-governmental organisations that are contributing

to our deliberations. I know that we should all gain much from what they have to tell us and point the way to movement forward.

Thank you.

## **Genocide Against The Falun Gong In the Context Of the Supposedly “Reformed” Chinese Legal System**

*Attorney Clive Ansley, Canada*

Whenever I am asked for my opinion concerning the present state of the legal system in China, I am reminded of the story of an old and learned Chinese scholar towards the end of the nineteenth century. When asked by one of his students what he thought of Western Civilization, he contemplated silently for a minute or so and then replied “I think that would be a very good idea!” That is precisely my position with respect to the Chinese legal system.

The crimes of the Chinese government against the practitioners of Falungong are not in dispute. There is no doubt that the vicious and gratuitous violence perpetrated on those who simply speak in favour of the movement or hold up Falungong banners; the incarceration, torture and mass murder of Falungong adherents; together with the government and media campaign of hatred and vitriol against them, combine to meet the legal definition of genocide.

What is difficult for many international observers to reconcile is how this can occur in a country described by many influential opinion leaders as having made huge and rapid strides in implementing the rule of law.

Who are the opinion leaders who have shaped the world’s view of the “developing” Chinese legal system? Do their views accord with reality? What do we mean when we use the term “Chinese legal system”? What role do the Chinese “courts” play in the legal system? Does the Chinese government have any intention whatever of implementing the “rule of law”, ever? Finally, even within the pathetically meagre limitations of the Chinese “legal system”, have the government’s actions conformed to Chinese law as it exists today?

When Jiang Zimin instituted this diabolical campaign of genocide against Falungong, did he invoke any legal process or legal machinery whatsoever? If not, how could the mass murder, incarceration, torture and general persecution of such a huge number of people occur totally outside the legal system? How could one man impose his will on the entire nation and do it 100% extra-legally?

It is necessary to specifically address all these questions and understand their answers before we can begin

to comprehend what has occurred in China since 1999 with reference to Falungong, and more generally what has happened and continues to happen to a wide variety of dissident groups and individuals in China.

To much of the international community, China has in recent years been portrayed as a country whose leaders are determined to implement the “rule of law”, a country which is steadily and rapidly constructing a credible legal system which will meet all international standards and expectations. I want to state at the outset that nothing could be further from the reality. I am often told that I should not judge the Chinese legal system by measuring it against mature and sophisticated systems in other countries which have developed over many centuries. Let me say at once that that is not my standard of measurement!

First, many commentators point out that China has only had a legal system since July 1st, 1979, so “Of course, it’s not perfect”; “Rome wasn’t built in a day”; “At least it’s moving in the correct direction, right?” WRONG!

Two points:

1) I of course accept that China cannot be expected to construct a legal system overnight which will match the standards of western systems. I would be optimistic if it were true that the trend is in the right direction. IT IS NOT! CHINESE “COURTS” ARE SUBSTANTIALLY WORSE TODAY THAN THEY WERE FIFTEEN YEARS AGO AND THEY CONTINUE TO DEGENERATE.

2) I do not criticize China for not meeting western standards. I do not use western yardsticks to evaluate China’s performance. I evaluate the performance of the Chinese legal system by measuring it against its own written laws. THE CHINESE GOVERNMENT REPEATEDLY AND SYSTEMATICALLY IGNORES ITS OWN LAWS AND THE LEGAL PROCEDURES WHICH ARE SET OUT IN ITS WRITTEN STATUTES. THE “COURTS” EVINCE NO INTEREST IN LAW; MOST JUDGES NEVER READ THE LAW AND 100% OF THE “JUDGEMENTS” EMANATING FROM CHINESE COURTS ARE POLITICALLY, RATHER THAN JUDICIALLY, DRIVEN.

### **Who Provides the Rose Coloured Glasses through which the Chinese Legal System is Typically Viewed?**

#### **Western Governments Influenced by Perceived Market Opportunities in China**

Throughout all of modern Chinese history, the elusive (some would say mythical) dream of the limitless

Chinese market has obsessed occidental nations. At the beginning of the current “Open Door” policy, one western manufacturer of cosmetics waxed exuberant over the fact that the population of China constituted a total of “two billion armpits” and that if even a small percentage of their owners could be induced to purchase deodorants, this would result in a bonanza for western manufacturers!

Today there is no doubt whatever that trade and investment interests dictate the China policy of almost all Western nations. They know that China invariably moves to “punish” any member of the international community with the temerity to criticise the Chinese leadership for anything. France, Denmark, and Holland have all been hit hard with illegal economic reprisals for criticising China’s flagrant violations of human rights standards, or otherwise opposing the Chinese government’s express political position.

Today, there is scarcely a government anywhere in the world willing to jeopardize its market share in China by speaking out against this Chinese regime which is arguably the most repressive and blatant abuser of fundamental human rights among all the nations of the world. Crimes which may be denounced with impunity when committed by the governments of Iran, Iraq, Saudia Arabia, or Syria are systematically ignored when perpetrated by the government of China.

My Canadian government is an excellent case in point. In 1994, when the Clinton administration in the US was making a feeble attempt to hold the Chinese government accountable for human rights abuses, a confidential Canadian government source revealed that the Canadian government had assured its Chinese counterpart that if the USA imposed any trade sanctions against China, Canada had both the ability and the will to step into the breach and provide China with any product required.

Today, China is attempting to extradite from Canada a Chinese citizen who is claiming refugee status there. The Canadian Department of Citizenship and Immigration (CIC) is working hand in glove with the Chinese government, the Chinese police, and the Chinese prosecutors to arrange this extradition, notwithstanding the fact that such extradition would without doubt end the life of the refugee applicant. Further, CIC has, in flagrant violation of its undertakings to the tribunal hearing the case, identified to the Chinese police a number of Chinese citizens still in China who provided evidence in the Canadian hearings as Protected Witnesses, receiving solemn assurances that under no circumstances would their identities be divulged to any Chinese authorities. Finally, the Canadian Ambassador has stated that “major diplomatic and trade considerations” hang in the balance in this

case. It is thus patently clear that the Canadian government is entirely prepared to ignore human rights issues in favour of improving Canada's trade and investment position in China.

A complaint is now going forward to the United Nations alleging that Canada has violated the Convention Against Torture by revealing to Chinese authorities the identity of a Chinese witness, Tao Mi, who had already been tortured by Chinese police over a lengthy period. Indeed, the Canadian authorities approached the Chinese and arranged for this person to be picked up by the Chinese police.

In the course of implementing the instructions of the Chinese government in this particular case, the Canadian government has argued before the tribunal and the court hearing the case that there can be no such thing as torture in China, because it is prohibited by the Chinese Code of Criminal Procedure. The Government of Canada also argues that the Chinese courts are politically independent because judicial independence is guaranteed by the Chinese Constitution. The Canadian government maintains that the alleged recent reforms in the Chinese legal system ensure that the refugee applicant in the current case will be assured a fair trial. Can it be that these sophomoric arguments represent the genuine opinion of the Canadian Government? Is my government simply unbelievably naïve, to the point of being impenetrably obtuse? No! I can personally attest, because of my own participation in the process, to the fact that the Canadian government has over the past two decades always possessed accurate and up to date information concerning the total corruption of the Chinese court system. The Canadian government today wilfully and with full knowledge misrepresents the nature of the Chinese legal system and whitewashes China's abysmal human rights record, purely for trade considerations.

### **The International Business Community**

The deliberate intent to misrepresent the realities of the Chinese legal system and mislead the public is not readily discernible amongst investors and traders with economic interests in China. Rather, the problem here is that as a general proposition the business community simply does not care about human rights issues. Such topics are considered "political" and it is a hallowed shibboleth of commerce that political issues are and should be entirely separate from business and economics. Also, large segments of the international business community are not really aware of how the Chinese court system operates, because they are almost entirely unaffected by it. Every contract between a foreign party and a Chinese party in China, if the foreigner has retained a competent lawyer, will contain a dispute res-

olution clause providing for foreign arbitration, ensuring that the foreign party will never come within the jurisdiction of any Chinese "court". That is changing, and the perspectives of foreign investors may also change in turn.

But on those rare occasions when foreign investors are unable to avoid confronting the realities of human rights abuses in any country whose government is strengthened by their continued investment, amazingly it is always discovered that the best policy for influencing the oppressors, promoting democracy, and ending human rights abuses just fortuitously happens to be the policy which produces the largest profits for foreign investors. The theory is that public criticism of brutish torturers will only offend those torturers and make matters worse; in contrast, public expressions of support, friendship, and solidarity with the offending governments will enable foreign investors and their governments to privately persuade the torturers to abandon their brutish methods.

### **Foreign Lawyers In China**

The overwhelming majority of foreign lawyers practising in China would say that the Chinese legal system has improved tremendously over the past fifteen years or so. I do not dispute this, so long as we are very clear in our definition of "legal system". These lawyers invariably have in mind the impressive outpouring of statutes and regulations which have provided a great corpus of legislation covering all aspects of investment in China and have made business there much more predictable. It is today far easier for a foreign lawyer in China to advise his clients on Chinese government policy toward investment in specific sectors of the economy, and of the viability of any specific enterprise contemplated. But this "legal system" (read "legislative framework") has nothing whatever to do with the "court system"; nor is it in any way relevant to establishing the "rule of law" in China, a subject we shall shortly explore.

### **What is the Role of the Chinese "Courts" Within the Chinese "Legal System"?**

The development of the Chinese "legal system" is truly impressive so long as it is clearly understood that this term begins and ends with written rules determined by the government alone, and intended solely as behavioural guidelines for foreign investors and Chinese citizens. The "courts" have no powers of judicial review whatsoever. There is reason to believe that at least some among the top Chinese leadership have never read the Chinese Constitution and don't even know what freedoms have been enshrined therein. When the government or individual ministers violate the Constitution or any other statute there is no remedy available. There is

no such thing as the practice of constitutional law in China because it is absolutely impossible for any Chinese “court” to hear a constitutional challenge to any decision or policy of China’s leaders.

Conversely, the most powerful individual in the legal system at every level is not a member of any “court”. He is the Chairman of the Political Legal Committee of the People’s Congress. In any case sufficiently sensitive to warrant his intervention, this individual can simply over-rule the highest “court” and substitute his judgement for that of the “court”. He holds infinitely more power than does the Chief Justice of the “court”.

It is essential to understand that China’s so-called “courts” are nothing more and nothing less than very low level administrative organs of the Chinese Communist Party. There is not a modicum of judicial independence. There are several reasons for this:

1) Judges are appointed and may be removed by the Communist Party (theoretically by the People’s Congresses at each level, but these are mere rubber stamp bodies completely controlled by the Party);

2) “Judgements” are normally not made by the individuals who have heard the case in the public trial, but by an invisible back room body known as the “Judicial Committee”, which receives direct input from the local Party Boss and which may in one afternoon decree judgements in up to 25 cases, having neither attended the hearings nor read the documents pertaining to any of them.

3) Supreme Court “Judges” are required to attend regular lectures by Party theoreticians, in which they are instructed that while it is of course important to pay attention to the law, they should be even more concerned with the social and political impact of their decisions.

4) Even the Chinese Constitution, as meaningless as that document is to Chinese society, stipulates that the judiciary is under the leadership of the National People’s Congress. Moreover, by statute, the “courts” and the entire judicial process are placed under the supervision of the Procuratorate (the prosecution arm).

5) Quite aside from legal theory or statutory provision, the practice is for the Party to dictate required results to the “courts”. Both Jiang Zimin and Li Peng used to routinely telephone the President of the Chinese Supreme Court to apprise him of a case which would shortly be submitted to his court and to provide instructions on the “judgement” required.

6) The “courts” of China are corrupt from top to bottom, although the form of corruption varies according to the size of the case, whether it involves a “foreign element”, and whether it is politically “sensitive”.

a) At the lower levels, particularly in the case of civil litigation between Chinese citizens, the Party will often

have no interest in the case and “judges” either on the visible tribunal or on the “Judicial Committee” may have the freedom of action necessary to decide the case. This allows them to augment their meagre incomes by indulging in the common garden variety of corruption: filling their pockets with “reimbursements” from Plaintiffs or Defendants, or both.

b) In the absence of simple bribery, the corruption is found in the very structure of the “courts”, resulting in a system in which “The one who hears the case does not make the judgement; the one who makes the judgement has not heard the case.”

c) A hybrid form of corruption occurs when the Party interest is an economic one, that is to say that the local party organization wishes to support the economic interests of a powerful local player, particularly where a foreign defendant is involved. About five years ago, Beijing sent a directive to all the lower “courts” decreeing that “When you have a dispute between a Chinese party and a foreign party, you must ensure that your Judgement reflects the national interest.” The message was not too subtle for the “judges” and today it is virtually impossible for any foreign party to win a case against a Chinese party.”

d) However, by far the most deleterious form of corruption is of course the fact that the “courts” are presented visually and publicly as judicial institutions but in reality their strings are pulled and manipulated, marionette fashion, by Communist Party ideologues completely outside the vision of judicial observers.

The fundamental issue here is that the Chinese Communist Party and its leaders are above the law and are not subject to the decisions of the “courts” in any respect. On the contrary, the “courts” are under the direct leadership and instruction of the Party and only the Party has the right to interpret the meaning of any law or regulation. It follows that no inherent “right” arises for any natural or legal person by virtue of the law itself. As in a Lewis Carroll fantasy, “the law means whatever the government, not the ‘court’, says it means.” It is necessary at this point to clearly differentiate among “rule of law”, “rule by law”, and “rule of men”.

### **“Rule of Law” v. “Rule of Men” and “Rule by Law”**

In the Warring States period of the late Zhou Dynasty, several centuries B.C., the central debate among the leading philosophers of the day was whether “peace, order, stability, and good government” was best served by selecting good and virtuous men and placing all power in their hands, or whether the protection of the citizenry was best realised through the enactment of a comprehensive and detailed set of laws and by making

all human beings subject to the law, rather than to the fiat of the leader of the day. This debate has continued in China right to the present and has still not been resolved. But for the moment, there is no doubt that the Chinese system embraces “Rule of Men”, and not “Rule of Law”. The omnipotent rulers are above the law and there is no way of making them subject to the law. But the confusion is further exacerbated by the failure of many commentators and writers to distinguish between “Rule of Law”, and “Rule by Law”.

“Rule of Law” means of course that the law itself is the highest authority, all citizens without exception are subject to the law and enjoy the rights enshrined in law, no individual is above the law, and any dispute concerning the meaning of the law is resolved by an independent and competent judiciary. It requires no more than a glance at the machinery of “justice” in China to realise that according to these criteria, the Chinese system does not begin to approach the prerequisites for the “Rule of Law”. Again, we are not judging the Chinese system by Western standards. The Chinese Communist Party/Government claims to have already instituted the Rule of Law in China. It is perfectly fair and appropriate to judge the system against that apocryphal claim.

There is no doubt that the Communist Party/Government has attempted to utilize Rule By Law as a tool in maintaining its complete and total dictatorship over the Chinese population. Prior to 1979, there was a total absence of codification, which meant that Chinese citizens had no way of knowing when they were likely violating government policies and thereby jeopardizing themselves unwittingly. For foreign investors, it meant they had no way of ascertaining in advance whether the government would allow foreign investment in a given economic sector, or if so, whether the government would require such investors to joint venture with a Chinese partner, or whether it would require the Chinese joint venture partner to hold a majority interest. Converting secret government policies to written rules made government more efficient in all areas. But when the government changes its mind or policy, whether on criminal or investment matters, it simply ignores and over-rides the law. Because the “Rule of Men” prevails, utilising “Rule by Law” simply as a tool, no force, effect, or authority resides in the written law itself when the government opts to adopt a different stance.

Let us consider how this state of affairs applies to the ongoing Genocide being perpetrated against the Falungong.

Article 35 of the Chinese Constitution provides that Chinese citizens enjoy freedom of speech and freedom of assembly. Article 36 provides that Chinese citizens enjoy freedom of religion. Yet anyone in China today

who displays a Falungong banner, speaks in support of Falungong, or is found to be a Falungong practitioner, is subjected to almost unimaginable brutality in public, while offering no resistance whatever to the police thugs who arrest him/her. These peaceful believers are then incarcerated without charge and murdered by the hundreds while imprisoned. On what basis have the constitutional rights of these citizens to freedom of speech, assembly, and religion been suspended?

The answer is simple. One individual, Jiang Zimin, exercising power in the same manner as the emperors of old, and without invoking any law or involving any court, has declared Falungong an “evil cult”. To this day, no charges have been brought and no legal process invoked against Falungong practitioners. To be sure, ordinary criminals being sentenced to death for mass murders and other heinous crimes are, after the fact, falsely declared to have been Falungong adherents by a Chinese media which publishes whatever the Chinese Communist leadership orders it to publish. But neither Falungong nor any individual practitioner has ever been afforded the opportunity to mount a defence in court against the accusations of Jiang Zimin. This entire genocidal pogrom has been based on nothing other than the determination by one megalomaniac that the movement constitutes an “evil cult”. In the face of this one modern emperor’s individual decision, constitutional guarantees are rendered worthless and no law or court can come to the aid of Jiang’s victims.

It is unclear whether this situation is what former Canadian Prime Minister Jean Chretien had in mind when he declared in the course of a recent visit to China that human rights had made great progress over the previous decade under President Jiang Zimin.

## **Conclusion**

There is no legal system in China available to protect the victims of the brutality routinely dispensed by China’s rulers.

This deficiency should not be seen as simply an indication that the system is still developing. China’s political system is completely based on the principle of the Communist Party’s absolute authority over all aspects of society and the subordination of all governmental, social, media, and judicial institutions to the Party. Neither Jiang Zimin, who continues to manipulate the current leadership from behind the scenes, nor the Communist Party itself, has any intention of ever implementing the “Rule of Law” in China, for reasons which are self-evident. The “Rule of Law” is absolutely anathema to the continued power of the Communist Party and its perceived right to exercise total dictatorship over the Chinese polity.

It is errant nonsense to seriously discuss the “rule of

law” in China so long as the Chinese Communist Party remains above the law in all respects, both in theory and in practice.

In short, Jiang Zimin has been able to impose his will in implementing the mass murder and torture of Falungong practitioners simply because in reality, the old emperor system of government continues today in the modern form of the Party Dictatorship.

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[1] This effectively means control by the Communist Party, because the Party is in total control of the National People’s Congress.

[2] Organic Law of the People’s Procuratorate, Article 5(4).

[3] The average salary of a Chinese “judge” is about US\$250 per month, or \$3,000 per annum. But his annual income is often more than \$120,000.

[4] I use the word “virtually” because this statement is only about 99% true. The absolutely accurate statement is that made earlier: 100% of all “judgements” are politically, rather than judicially, driven. There are rare occasions on which a victory for a foreign litigant is needed because the credibility of the “court” system is under attack. The Party communicates this to the “court” and the foreign party will then win irrespective of the legal merits of his case. But these victories are invariably small, or involve very special circumstances.

[5] Obviously, there have been instances of fairly high ranking leaders being convicted by “courts” and in some cases even executed. But it must be understood that without exception these cases have all been ones in which the politician ran afoul of more powerful leaders. The Party leadership then decided on the punishment and simply used the “courts” to legitimize their decision. It is utterly impossible for a prosecutor to charge a leader unless the Party has so ordered, and it would be equally impossible for a “court” to try a leader without a directive from the Party.

[6] Even by the standards of the Communist dictatorship, the decision to physically eliminate the adherents of Falun Gong was extraordinarily authoritarian. It appears that Jiang’s motion to launch this persecution was overwhelmingly opposed within the Politburo and not one other leader supported him in the vote which was taken. However, being a minority of one did not prevent Jiang from imposing his will on the Politburo and on the Chinese people. Jiang quickly ordered the media to demonize Falun Gong and a torrent of vilification poured forth from the media monopoly controlled by the Communist Party, which has not abated to this day. It is a smear campaign reminiscent of many others in which the press has been ordered to vilify a particular individual or organization with lurid (and unsubstantiated) tales of sexual degradation, disembowelling and myriad other horrific monster tales. All with no chance for reply from the victims of the defamation.

## State Terrorism And Genocide

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Ladies and Gentlemen,

As a Human Rights Fighter it is my duty to inform you about the cruel, ugly, and inexcusable treatment which the People’s Republic of China (“PRC”) exercises against many of its own people: against the Falun Gong, the Uighurs, the Tibetans and many different religious groups. These people are – it can be fairly said - terrorized by their own national government.

It must be said again and again: The People’s Republic of China exercises brutal state terrorism against many of its own people.

We normally think of terrorists as a group of individuals who use violent methods to terrorize a state into submitting to their demands.

State terrorism is when a whole nation’s resources are harnessed to terrorize its individuals into submitting to the will of the ruling party or leader. This is standard dictatorial and especially Communist practice, not only in China. The description fits exceptionally well the brutal persecution which the former Chinese President Jiang Zemin unleashed against Falun Gong practitioners in China.

Falun Gong, Falun Dafa as it also known, is a practice of meditation and exercises to the personal well being of the individual practitioner. A very private affair indeed. The guiding principles are Truthfulness, Compassion, and Forbearance – to me as a non-practitioner this is an admirably peaceful motto. Falun Dafa went public in 1992, and their popularity increased rapidly. In 1999, the Chinese government officially estimated the number of practitioners to be at least 70 million in China alone.

Falun Gong’s fast growing popularity – together with its ability to suddenly appear in public in great numbers - aroused the suspicion and jealousy of Jiang Zemin. He noticed the inner strength of Falun Gong practitioners and feared they were immune to the propaganda of the

Communist Party. Consequently, he ordered the elimination of Falun Gong. State terrorism against Falun Gong started immediately.

The persecution of Falun Gong practitioners is systematic, wide-scale, and brutal. The PRC uses all means of state power and force, be it physiological or psychological, usually both together. Once a person is known as a practitioner there is no pardon or escape.

The architect and motor of this terror campaign is the former Chinese President Jiang Zemin. The great man himself formulated the policy of “extinguishing the Falun Gong” and put the notorious - very much Gestapo and Stasi-like - “6-10 Office” into operation. It uses a three-prong tactic consisting of violence, high-pressure propaganda and brainwashing

Here are Jiang Zemin’s directives for “Office 6-10”:

1. Destroy Falun Gong practitioners physically through systematic, forced-labour, torture, and starvation, attrition by forcible reduction of sleep, no medical treatment, and direct killing. Include mental torture through widespread usage of brainwashing, forced conversion, pressure on relatives and friends, and incarceration in mental hospitals topped by the use of nerve-damaging drugs.

2. Destroy Falun Gong reputation by means of a worldwide media campaign in order to demonise Falun Gong and falsely depict its practitioners as dangerous ‘cult’ members and a menace to society.

3. Destroy Falun Gong practitioners financially and socially by denying employment and housing, salaries and pensions, in addition to wide-spread extortion, confiscation of property and state-enforced fines when detained by the police. Quite often relatives and friends of practitioners are also threatened if not punished.

By issuing these orders, Jiang Zemin put himself above the law, above all constitutional and legal jurisdiction. But then, he was above the law anyway, ever since he became a party funk. The retrospective introduction of an “anti-heretical” law to justify the banning of Falun Dafa in October 1999 was only fodder for the blind. But it was also a very clever move by Jiang Zemin because he thus tightened the already melting grip of the Communist Party over the whole nation – or at least he tried to. There are sufficient signs now that it may not last.

For the moment no method is considered too extreme or barbaric in achieving Jiang’s goal of eliminating Falun Gong. In addition, Jiang Zemin has corrupted the whole nation by forcing people to betray their own family members, friends, and colleagues to save themselves from the fate of Falun Gong. The threat of being sent into one of the many laogai camps is a

daily reality and enough to make most people succumb. Thus almost everybody is corrupted. The old methods still work and have the usual willing helpers, civil servants, judges (if they are involved at all), police, security forces, laogai wardens, military, trade unions, businesses, and above all as always the Communist Party and its affiliate organisations. Even other laogai inmates are used to torment Falun Gong people in the camps. We are now awaiting confirmation that Falun Gong practitioners have been killed just because their organs were wanted by the Organ Trade.

Jiang Zemin’s terrorist methods are no longer confined to China. In Sweden, the Chinese Embassy recently tried to pressurize a local radio station into stopping their Falun Gong broadcasts. I do not recall similar incidents in Germany, but it was bad enough to see how fast our civil servants changed into servile servants during Jiang Zemin’s state visit two years ago - despite our experiences with such despicable German figureheads like the Kaiser, Hitler, Ulbricht, and Honecker.

In summary: Every day the PRC commits an enormous number of Crimes against Humanity plus Genocide against the Tibetians, the Uighurs. She did so under Mao, Deng, Jiang Zemin, and continues to do so under the new president Hu Jintao, who - it is often forgotten - thrashed the Tibetan uprising in 1968 with brutal force. But can we also speak of genocide in the case of the Falun Gong? Human rights people will readily agree because the PRC’s terror against the Falun Gong seems to fit the conditions of Article 6 of the ICC respectively, and the Rome Statute perfectly. There it says “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:

- 1. Killing members of the group;**
- 2. Causing serious bodily or mental harm to members of the group;**
- 3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;**
- 4. Imposing measures intended to prevent births within the group;**
- 5. Forcibly transferring children of the group to another group.”**

A look at some of the definitions also supports this view:

**Causing serious bodily or mental harm includes inflicting trauma on members of the group through widespread torture, rape, sexual violence, forced or coerced use of drugs, and mutilation.**

**Deliberately inflicting conditions of life calculated to destroy a group includes the deliberate deprivation of resources needed for the group's physical survival, such as clean water, food, clothing, shelter or medical services. Deprivation of the means to sustain life can be imposed through confiscation of harvests, blockade of foodstuffs, detention in camps, forcible relocation or expulsion into deserts.**

The Rome Statute protects four groups: national, ethnical, racial or religious groups. Does Falun Gong fit into the definition of "A Religious group is a set of individuals whose identity is defined by common religious creeds, beliefs, doctrines, practices, or rituals"? It ought to.

But another aspect raises doubts. By semantic tradition the word Genocide implies a certain magnitude. As terrible as it may sound, a "bigger number" of killings is needed to make it genocide. The Holocaust was without doubt genocide, the eradication of the Armenian people was, and ethnic slaughters in Rwanda and Serbia were, the war in Chechnya is, and the Israeli repression of the Palestinians is not far from it. Or isn't it the other way round? But the persecution of Falun Gong? This congress must pave the way to the right, universally acceptable interpretation.

Anyway, the prosecution of Jiang Zemin is a severe test for international law because he is well hidden behind the Chinese Government, because the full scales of his crimes are difficult to uncover and even more difficult to prove, and - worst of all - he is well protected by the fact that the PRC has not signed the Rome Statute of the ICC.

But we have to bring this perpetrator and his helpers to justice. More than a dozen lawsuits have already been issued in countries around the world against Jiang Zemin and his accomplices for crimes against humanity, torture and genocide. In Belgium, the lawsuit was led by the well-known human rights attorney Georges-Henri Beauthier who has said that "the terror of genocide committed by Jiang lies not only in the fact that practitioners were killed, but also beliefs were destroyed. Such acts of terror should not exist in modern society. Such acts must be punished according to law."

The recent progress made internationally in bringing dictators and their accomplices to justice for perpetrating hideous crimes against human beings is encouraging and we hope to add Jiang Zemin to this list soon.

It is therefore imperative that the international community always speaks out clearly against the crimes committed against Falun Gong practitioners by Jiang Zemin and others. It is this very exposure that dictators fear most, and it is this very exposure that can help to stop the genocide and save lives. In other words no gov-

ernment, especially the Chinese Communist dictators, like to lose face in public. We must make sure they do. Publicity is our most effective tool.

IGFM will therefore say it again and again:

**The People's Republic of China exercises brutal state terrorism against many of its own people.**

# Immunity, Impunity And Genocide In the New Era

*Attorney Carlos Iglesias Jiménez,  
Spain*

## Introduction

At the beginning of the twenty-first century, we are now living in the new age of globalization, with important advances in the technological sector and telecommunications, which shortens even more the distances between countries and between continents, making possible the coming together of economic, cultural and even legal and judicial exchanges.

Today, jurists and lawyers around the world can, through the Internet, have immediate access to the constant and many changes taking place in the different national judicial systems. And in this moment of history, the flow of information from lawyers is practically unlimited, and of easy, fast, and convenient access. This situation can, without a doubt, enable and promote developments in the global policy of the protection of international human rights.

However, we can't fail to realize that, in spite of the important advances in the struggle against impunity, one of the most notable milestones being the creation of a permanent International Criminal Court, the most severe crimes and violations in the arena of human rights and of International Criminal Law remain unchanged in different parts of the world, and have not received an acceptable response from International Law itself. Unfortunately, in some cases, International Law remains unmoved in the face of the horrors of murder and terrible crimes that are taking place against thousands of human beings.

At this very moment, countless people are being tortured and murdered. Unfortunately, human morality and consciousness hasn't evolved at the same pace as that of technological advances; human consciousness and morality have in many respects declined at a time where we've seen the growth in knowledge and intellect of our human society. One could even state that today, such sophisticated and refined methods employed by criminals and torturers around the world to produce crimes on a larger scale have no precedents in recent human history.

In the face of this, and despite the important advances of International Criminal Law, the commit-

ment and admirable effort of numerous nations, non-governmental organizations, public institutions and people who fight and defend human rights have proven to be insufficient to prevent and to punish many of the most serious crimes against humanity.

We can state that the basic goal of the international community in the defence and respect of human rights is two fold:

On the one hand, it seeks to prevent these types of crimes from occurring in any country of the world, regardless of ideology, race, sex, political situation, social, cultural, religious or personal belief; this could be classified as preventive work. Equally important, on the other hand, it seeks to avoid the impunity of those crimes, that is that these crimes do not go unpunished, and that those responsible, the criminals and torturers, should be held accountable for their crimes in front of justice.

The victims, and their family members, of crimes such as genocide, torture and crimes against humanity, could never understand how those responsible for such horrendous crimes are able to go unpunished, and how in many cases, with the complicity of high officials of certain nations, they can lead a tranquil and respectable life.

There is therefore a clear objective to try to eliminate what authors label as the so called "impunity loopholes", meaning ways to circumvent or avoid impunity or punishment of these crimes. These loopholes unfortunately, despite unquestionable advances made so far in International Criminal Law, do exist, and in many instances are due to the complicity of certain political and judicial powers of the respective nations.

Certain of these loopholes include issues such as the "Immunity" of Heads or former Heads of State, or Ministers of Foreign Affairs, when they are prosecuted by other countries of different nationality or territory. In other cases there are restrictive or limitative interpretations of Universal Justice or Universal Jurisdiction, and there also exist "impunity loopholes" in International Criminal Law itself. These gaps are taken advantage of by the very criminals and genocide committers themselves, allowing them to avoid prosecution for their crimes.

## Genocide And Immunity

We have the firm conviction that diplomatic immunities are not applicable when we are in the arena of International Criminal Law. Any interpretation to the contrary would be facilitating "impunity loopholes" and it would go against the very principles that govern International Humanitarian Law and International Common Law. Just as stated by the Secretary General of the United Nations in a report elaborated for the

Security Council on May 3rd of 1993, about the Statute of the Tribunal for the former Yugoslavia, it would consider as International Humanitarian Law the Geneva Convention of 1949, the Convention for Prevention and Sanction of the Crime of Genocide of December 1948 and the Letter of the International Military Tribunal of Nuremberg of 1945, all of which must be respected “jus cogens”.

In the principles of International Law recognized by the Statute of Nuremberg and Sentences of the Tribunal of Nuremberg that were confirmed by the General Assembly of the United Nations, it stated that “the fact that the person committed a crime of international law and acted as Head of State or as the State Authority, does not exempt him from responsibility in accordance with International Law.”

In the same way, Article 7 of the Statute of the International Criminal Court for the former Yugoslavia states that “the official position held by the accused, be it Head of State or Government, or of a responsible official of the Government, will not exempt him of responsibility and neither will it reduce the sentence.” Likewise, Article IV of the Convention for the Prevention and Sanction of the Crime of Genocide, clearly states that “the persons that have committed genocide will be punished, regardless of whether they are rulers, officials or individuals”.

Finally, the very Statute of Rome, which gave origin to the present International Criminal Court, states that “1. - The present Statute will be applicable equally to all without any distinction based on official position. In particular, the official position of a person, such as Head of State or Head of Government, member of a government or parliament, elected representative or government civil servant, in no case will be exempt of criminal responsibilities, neither will it constitute reason to reduce his sentence 2. - The immunities and norms of special procedures that come with the official position of a person, with respect to internal law or international law, won't prevent the court from exerting its competence upon that person.”

We therefore find ourselves with a principle that is applicable to all International Criminal Law, regardless of whether it is Common Law or Treaty Law. We understand that the concept of immunity comes as a result of the principle of equality of sovereign nations, meaning that the acts of any country which can be considered “governmental actions” or internal actions, cannot be investigated by foreign tribunals. The immunity of Heads of State is defined or recognized in two different ways: “ratio personae” and “ratio materiae”. In the first way, the ruler is exempted for being who he is, that is, the Head of State. It is a kind of courtesy that a nation gives to another to prevent their tribunals from being

used to decide private matters or matters that may damage the relations among different countries. Under the second way, immunity is maintained after he has ended his position as Head of State, but only in regards to “acts of government” that the Head of State carried out during his rule, not in regards to private actions.

Can the most severe crimes against humanity such as genocide, torture or the extermination of a group of people, be considered government actions? This is not defensible under any law or human conscience. In this aspect, the sentence pronounced more than 55 years ago by the Nuremberg International Military Tribunal is historic, in which it stated:

*“Men are those who commit the crimes against International Law, not abstract entities. The goals of international law will only be effective if the individuals that commit those crimes are punished... It has been suggested that... if the action itself is an act of the State, the ones who do it are not personally responsible, but are protected by the doctrine of sovereignty of the State. In the opinion of the Tribunal this position should be rejected... The principle of international law that, in certain circumstances, protects the person that represents a State, cannot be applied to acts considered criminal by international law. The authors of these actions cannot seek protection in their official position and be exempt of punishment through the due legal process.”*

From our point of view, the principles of International Criminal Law, including Common Law, recognize that the functions of a head of State cannot include actions such as tortures, or practices of genocide and extermination, since it should be understood that any human must have a conscience and know perfectly well that certain things are abominable, and obviously cannot be done under the protection the power of an official office or under the umbrella of “government actions”.

### **Immunity In the International Criminal Courts And In Universal Jurisdiction**

It is generally accepted that one cannot allege immunity for Heads of State, Former-Heads of State or members of Government when facing prosecution in an International Criminal Court for these crimes. However, there is still debate within legal circles whether immunity remains applicable when a national foreign state, basing itself on the principle of Universal Jurisdiction, assumes jurisdiction over those who hold or previously held official positions.

For example, in the case of Spain requesting Senator Pinochet's extradition from England, it was a subject of debate whether to grant immunity as a Former Head of State regarding the criminal actions he was accused of in Spain. The resolution of the English House of Lords was

highly clarifying in this respect, by deciding that Former Heads of State do not enjoy immunity for cases of torture or for other atrocious crimes. Lord Nicholls stated, *“Senator Pinochet was accused, not of personally torturing his victims or causing their disappearances, but for utilizing the power of the State that he held... and it is hardly necessary to state that the torture of his own people or foreigners, cannot be considered as a role of a Head of State according to international law... But International Law makes quite clear that certain kinds of behaviour, including torture and the taking of hostages, do not constitute acceptable behaviour for anyone. This is applicable more so to Heads of State, as well as to anybody else, and coming to the opposite conclusion would make a mockery of International Law.”*

*On his part, Lord Steyn was even more conclusive in stating that if the actions Senator Pinochet was accused of were to be considered “official acts of government”, then we would have to say that when “Hitler ordered the ‘final solution’, his action should be considered as an official act derived from exercising his role as head of State.”*

*“Considering the state of International Law, it is difficult for me to hold that committing such serious crimes could be considered actions carried out as part of the duties of a head of State... and general Pinochet does not have rights of immunity.”*

It can be interpreted from this precedent that for certain more serious actions in violation of human rights, ones that are repulsive and offensive to the human conscience, one cannot argue the immunity of Head or Former Head of State, because death, torture or extermination are not among the roles of a ruler, have no justification whatsoever, and likewise could never be considered official acts or acts of government.

### **Sentence Of the International Court Of Justice Of the Hague: The Case Of the Democratic Republic Of Congo Against Belgium**

As one example to illustrate the different opinions regarding the application of immunity when a foreign national state prosecutes another Head of State or government official, we have the case of the Republic of Congo against Belgium. In this case, Belgium issued an arrest warrant for the Minister of Foreign Affairs of the Republic of Congo for crimes he committed prior to coming to office. On February 14 2002 the International Court of Justice of The Hague condemned Belgium and granted immunity to an active Foreign Minister. In this ruling the Court asserted that in cases of high Government positions, in order to ensure the effective fulfilment of their roles as officials of their state, they should enjoy immunity. They argue that official positions are of such a high transcendence, that

during the period when an official holds their official post, you can't differentiate between which acts of theirs are official in character and those that are private in nature, and so that immunity will apply to both.

In this sentence by the International Court of Justice, it grants the absolute nature of criminal immunity for Ministers of Foreign Affairs (as well for the Prime Ministers and Heads of State), with the following exceptions:

First, not all official positions can be considered immune: only Heads of State, Prime Ministers and Ministers of Foreign Affairs who are active in office are considered immune. Therefore, immunity would not be recognized once they leave office for their private acts, as long as one other condition is met, which is that the foreign national state must base itself on International Law.

The second exception exists when the prosecutor is the International Criminal Court, in which case immunity would therefore not exist.

And the third exception occurs when the official does not enjoy immunity in his own State of origin, or if immunity was withdrawn by the State. These two circumstances in practice are rarely if ever applicable.

The Congo sentence deserves harsh criticism for being a serious obstacle to the implementation of Universal Justice, since on the one hand it implies that a Head of State or a Prime Minister or Minister of Foreign Affairs actively in office cannot be prosecuted in another national foreign state. Even if the doctrine of Universal Justice is invoked, these cases would enjoy immunity. Therefore, the only way to prosecute would be through the International Criminal Court. We will see later, however, that this presents a serious obstacle for certain countries that did not subscribe to the Statute of Rome and that also have veto power in the Security Council of the United Nations.

So when can a foreign national court prosecute these rulers, namely Heads of State, Prime Minister or Minister of Foreign Affairs, who are active in office? The answer is that this can only be done when they have left office or are no longer active in their post. An additional requirement however, for this condition to be met, is that the acts must be private in nature and not official acts of state. At the same time, the foreign state that is carrying out the prosecution must base itself on international law and not its internal or national laws.

The Congo sentence mentioned above allows for an “impunity loophole” for Heads of State, Prime Ministers and Ministers of Foreign Affairs by recognizing immunity to these officials, thereby limiting the application of the principle of universal justice when they are prosecuted by a foreign state, even in cases of extremely serious human rights violations such as the case of genocide.

As conclusions regarding the specific issue of immunity of Heads and Former Heads of State or Ministers of Foreign Affairs, in terms of the Congo decision and taking it concretely to the case of genocide, we do not agree with this sentence. First of all, a Head of State who is active in office can't enjoy immunity to commit genocide and tortures by basing himself on the importance or necessity of his official role in his country's government. Simply stated, in cases of the gravest crimes against humanity, absolutely no form of immunity can be granted. This was already stated in the sentence of the Nuremberg Tribunal of 1946, where if a crime of international law is committed by a head of state, he is not exempt from criminal responsibility according to international law. Secondly, foreign national courts must complement the role of the International Criminal Court, and therefore their ability to intervene should not be limited, especially in those countries that have not ratified the Statute of Rome. Thirdly, it is totally unrealistic to think that a state is not going to recognize or is going to withdraw immunity from its own head of state. Lastly, one additional "impunity loophole" exists in the cases of countries who do not recognize the jurisdiction of the International Criminal Court, but who are permanent members of the Security Council of the United Nations and have the power to veto any proposal. This case applies specifically to China in regards to the persecution of Falun Gong, which we will see following.

### **Concrete Analysis Of the Situation Of Genocide In China Of the Persecution Of Falun Gong**

At present, and for more than four and a half years since July 1999, one of the cruellest and bloodiest genocides of the history of humankind is taking place in Mainland China. It has as its head culprit the Former Chinese Head of State Jiang Zemin, who methodically organized the persecution of this popular Qigong practice, known as Falun Gong, and the extermination of its practitioners who do not renounce their own personal beliefs.

It is difficult to find a case where one can see with greater clarity the concept of genocide than in the persecution of Falun Gong, where government officials are attempting to eliminate and root out the embedded personal beliefs of millions of people who act according to their hearts, following ancient traditional and spiritual practices from China.

The following are some specifics regarding the current legal situation of the case of Falun Gong:

In order to bring Jiang Zemin, the mastermind behind the persecution of Falun Gong, to justice, there are many legal obstacles and issues to consider. Of the various potential ways of prosecuting Jiang, one may

first argue that he should be prosecuted in his country of origin for the crimes he has committed against his own people. China is in fact a signatory of the Convention for the Prevention and Sanction of the Crime of Genocide of 1948. However, it has never passed into its internal law the contents of this Convention, and therefore the crime of Genocide does not exist in the Chinese Criminal Code, and China does not recognize or punish the crime of genocide. The prosecution and punishment of this crime in China is therefore not viable. Also, it is important to emphasize that there is no independence in the Chinese legal system, meaning that the judicial system is just an extension of the regime, and is simply a tool at the disposition of the Chinese regime.

The other alternatives to prosecute Jiang therefore lie in the foreign national courts and international legal bodies. Since Jiang is no longer President or Head of State of China, at this present moment he does not enjoy immunity, and can be prosecuted by Foreign Criminal Courts based on the principles of Universal Justice and International Law. There is more than sufficient evidence that he is directly responsible for the persecution of Falun Gong, evidence that includes thousands of cases of torture and murders. These abuses can't be considered, under any circumstance, to have been carried out under "government actions" while he was in power. Various lawsuits in countries around the world are currently using national foreign courts to prosecute Jiang Zemin. His status as former Head of State also makes it possible to file civil lawsuits against Jiang Zemin, as is the case of the United States, for economic damages his crimes have caused victims of this persecution. As for other government officials in China responsible for this persecution, they do not enjoy immunity and can be prosecuted in foreign states.

The international body that should take responsibility for prosecuting Jiang Zemin for the crime of Genocide, were it not for the existence of "impunity loopholes", is the International Criminal Court. The Statute of Rome, on which the ICC is based, is an extremely important tool in the fight against impunity, yet a major loophole lies in that those countries who have not signed the Statute do not recognize the legitimacy of the International Criminal Court.

This is the specific case of China. Another unlikely possibility, is that the Security Council of the United Nations may present the case directly to the International Criminal Court, but at this time that would in fact be futile given that China is a permanent member of the Security Council of the UN and any initiative presented to the ICC by the Security Council would simply be vetoed by China. Although these loopholes exist, we see the existence of the ICC in a very pos-

itive light and do not feel there are legal impediments to bring the case of Falun Gong to the Court, given that it is the international legal body of most importance created specifically to prosecute the gravest crimes against humanity. The Court must know of this genocide in China.

As a final conclusion, loopholes of impunity must be eliminated by means of the coordinated function of Universal Justice, applied through foreign national countries, and the International Criminal Court, complementing each other in order to grant justice and prevent the concepts of immunity and impunity from existing in cases of genocide. In this way, those responsible for cruel persecutions, as is the case of Falun Gong, will be accountable for their crimes and receive due punishment. To be able to achieve this we need a will to act and courage from judges, the judicial bodies and world nations, in front of great political power and economic pressures, as is the case of China, eliminating any type of obstruction or interference that limits or prevents the implementation of the principles that the international community recognizes for these severe violations of the most basic human rights. The victims cry in their hearts for justice and we must fight for it.

“Justice and history will judge us all for what we do and for what we should have done and did not.”

## China Mental Health Watch Report

*Viviana Galli, M.D.*

China Mental Health Watch is a new international organization composed of psychiatrists, physicians, lawyers, mental health professionals, hospital staff, and victims of the persecution, their families and friends in and outside China. This is a non-governmental organization whose purpose is to investigate and bring to light the on-going persecution of Falun Gong practitioners, with particular focus on the harmful effects of psychiatric abuse and psychological torture.

The systematic persecution launched by the Chinese government in July 1999 has used all known, as well as new methods of torture and abuse. This persecution, unlike many others in history, is aimed directly and indirectly at the human conscience. It aims to extinguish belief in Falun Gong and violates the very basic human rights of freedom of thought and belief. This does not only affect Falun Gong practitioners (about 100,000,000 in China) but also affects those who execute the orders of persecution. It includes all level of government, public security, media, medical personnel and all corners of society, including international communities. Over 800 practitioners have already been killed, and the moral conscience of millions has also been affected. Falun Gong practitioners who refuse to give up their beliefs face intense defamation and propaganda campaigns directed to turn public opinion, expulsion from education and jobs, extortion, arbitrary arrest, kidnapping, physical torture, financial bankruptcy, psychiatric and psychological torture, forced labour, sexual assault, etc., with the sole goal to destroy the conscience of practitioners and the public.

This persecution is also causing a large number of psychiatric casualties. After being tortured, mentally healthy practitioners suffer Post Traumatic Stress Disorder, Psychosis, Depression, or other emotional conditions. We have been collecting evidence through face-to-face interviews with the victims of labour camps and brainwashing classes, as well as family members who lost their loved ones by the persecution. Lin Shenli, once a high-functioning person, was persecuted with physical and mental torture that has left definite sequelae. When Lin Shenli went to Beijing in December 1999 to appeal for Falun Gong, he was arrested and

held for forty days. He was then transferred to a detention centre for two months and finally sentenced to one and half years in a forced labour camp. He was told that if he did not change [his beliefs] he would never be released. The Chinese authorities extended his imprisonment by half a year, resulting in two years in a forced labour camp. Lin Shenli was placed with the most dangerous criminals because he took a letter to the appeal office in Beijing.

Lin Shenli was fed mouldy rice, which had different colours of mould growing on it. It wasn't edible, but without some sustenance his body could not survive. There were periods of several days when the police forced him to sit all day from 7AM to 9PM on a 6-inch bench with his hands on his lap, without moving or talking. He was beaten on his hands, knees and legs. Most days he was forced to work long hours making basketballs by hand, and at times he was forced to carry 140 lbs on his back. They placed a basketball between his legs to which he tied pieces together with waxed leather strings. This forced labour for long hours without rest or adequate nutrition caused the skin of his fingers to break and bleed. He received no medical treatment.

As a result of severe malnutrition his body began to bleed all over. Every time he pulled down his pants, the skin peeled off of his legs, back, etc. The pain became intolerable - the pain of this skin coming off, the pain of the endless hours sitting on the small bench, the pain of pulling the leather string with his bloody fingers, the pain of the beatings, etc. From day to day, there was no time for his body to heal. Every day he endured this treatment because he refused to renounce Falun Gong; because he would not "transform", they beat him. He could hardly sleep because of the pain. The little time that he slept was full of nightmares about being beaten. He had vivid dreams of the person who arrested him. His sleep was continuously interrupted.

Other prisoners had the right to have visitors, but Lin Shenli was totally isolated and no one was allowed to visit him. He was not allowed to receive letters, not even the letter his wife sent via The Red Cross. He was prohibited all communication with the world. He was forced to watch government propaganda videos full of deception. Three other prisoners were with him to make sure that he watched the videos. Not only did the police beat him but other prisoners were told to beat him, too.

Finally, the day he had been waiting 1 1/2 years for was about to arrive, but that afternoon, without warning, the police announced that he could not be released. He said, "They wanted to destroy the spirit. When a person's spirit is destroyed, the person can't live any longer. I could not believe this was happening. This cannot be! It is so hard to stay here! No reason at all! I feel

I can't go on any longer!"

After Lin Shenli returned to Canada in 2002, he continued to have nightmares full of the terror of torture, the police who arrested him, the beatings, etc. Even now he still has occasional recurrent memories and nightmares of his persecution. These are flashbacks of vivid moments like the iron doors closing and echoing throughout the labour camp.

Lin Shenli has become a nervous person. He is hyper-vigilant especially when he sees a policeman or when the media in Vancouver, Canada interviews him. He became fearful of the media due to experiencing the Chinese propaganda against Falun Gong that incites hatred in people's hearts. If he hears a siren, he startles, shivers, and develops heart palpitations and a racing heart. Sirens at night keep him from sleeping. He feels his energy diminishing and cries especially when reading about those who are dying, or being tortured to death. He has little enjoyment for things he used to do. When in the labour camp, he had suicidal thoughts and wanted to cut his arteries with the sharp tools he used to make basketballs. He denies any suicidal thoughts since he has been released.

Mr. Lin has an education equivalent to an Associate degree in Architecture, but he is presently unemployed. At the time of interview, he met DSM-IV diagnostic criteria for Post Traumatic Stress Disorder and Major Depression.

The Chinese authorities seek to "change" people who practise Falun Gong. This process, referred to as "transforming", is commonly known as brainwashing. As a form of torture, brainwashing is the infliction of mental abuse in the hope of producing confusion and instability of the mind. Such practices entail one or more of the following: intimidation, threats of terror, forced repetition of detailed information, bribery, and deprivation of sleep & food sometimes through the use of loud high pitch sounds for long periods of time. In addition, many other physical forms of torture such as beatings, electrocution and rape are used to facilitate brainwashing. Under these circumstances some victims then denounce Falun Gong and sign documents known as "repentance statements" along with other related papers. The majority of those who sign these papers do so against their own will to avoid further torture. The ultimate result has had different outcomes, all of which have been negative in one way or another. Some practitioners repent and then continue practising Falun Gong in hiding once released. Others come to believe the opposite of their personal beliefs prior to brainwashing. Not only do their beliefs oppose their previous ones but they often do not correlate with reality. On a further extreme others have left the practice of Falun Gong and participated in the persecution by beating and torturing

steadfast practitioners in labour camps and detention centres for their own personal gain such as early release, recognition and fame.

The perpetrators use forced labour and physical torture to control their bodies and minds. Defamation of their victims to take away any credibility among their peers and the enrolment of persons with authority or in positions of power to support their dogma are done to create confusion in their victims. The victims are forced to watch movies of government propaganda for many hours a day, or made to read such books and other materials. They are required to write their understanding of this forced study. Along with this method many are being physically tortured or beaten almost everyday, sometimes tied in odd and painful positions. Some are tied up outside exposed to the extreme weather - either hot sun or extreme cold - driving them to physical exhaustion. It is understood that the victims are isolated from their families and friends. They have no information of their families or of their own destiny. They do not know when their torture will end and if they will be released or killed. They are watched at every moment.

These techniques create fear, hopelessness and destroy their dignity and confidence such that the victims would rather die than continue enduring such unending torture. At times when they become almost insane or delirious, the psychological survival of the self is tied to holding on to their own thoughts, because by that time their own thoughts are being manipulated and become derailed. They have almost no more control of their own thinking. During a delirious state, in the midst of nonsense thoughts, or in a dream-like state, with hallucinations, the only hope they have is to keep a clear thought for a short while. Finally, it is much easier to give in to what their perpetrators want in exchange for a moment of ease or the promise of an hour of sleep. In the end "brainwashing" occurs in this psychological chaos and a mental breakdown is soon to follow.

There are many sad stories about Falun Gong practitioners who have been brainwashed. For example, a young couple in China, Lin Chengtao and his wife, practised Falun Gong until they were arrested and sent to Tuanhe Labour Camp in October 2001. Lin Chengtao was 37 years old, held a Masters Degree and worked as an assistant research scientist in the Fundamental Research Institute of Concord at the University of Medical Science in China. The couple were separated then physically and mentally tortured. They were forced to attend brainwashing classes. Though both resisted for some time, but his wife gave in to the brainwashing and eventually turned against her husband. She, who through Falun Gong practised and strove to be compassionate, wrote a letter to the labour

camp officials where her husband was being tortured, requesting them to torture her husband further and even gave personal examples of how he ought to be tortured in order to force him to denounce Falun Gong as she had done. This was a happy and peaceful couple before they were detained, but the wife turned into a cold-hearted person with these cruel requests against her husband who later became mentally ill. After a long period of torture by the police, he became distant and removed, and he wouldn't speak. Sometimes he was seen rushing into the hallways, shouting loudly and having hallucinations. Lin Chengtao has been released and presently takes antipsychotic medication for hallucinations.

Through the control of information and communication, the Chinese authorities have attempted to justify these crimes by vilifying Falun Gong to the Chinese people and the international community, often effectively intimidating people into cooperating by remaining silent. Through phone, fax, Internet, email, television, radio, print media and foreign relations, this constant denigration is thrust into people's minds thus hindering international intervention and deceiving and pressuring the Chinese people and others to knowingly and unknowingly aid in these crimes against humanity.

### **Abuse Of Psychiatry**

The persecution of mentally healthy Falun Gong practitioners is unprecedented in terms of the number of victims, hospitals involved, the brutality of methods used and the severity of the consequences. According to incomplete data, over 1,000 healthy Falun Gong practitioners were involuntarily admitted to mental institutions, many of whom were forcibly injected with psychotropic drugs. They received electro-shock and some were tied up and force-fed for long periods of time.

Many of these practitioners were held in hospitals for as long as two and half years. Based on human rights organizations' reports, over 100 mental institutions in China participated in this particular form of the persecution. At least 11 practitioners have died from this type of maltreatment. The first reported death as a consequence of psychiatric abuse was in The Washington Post on June 23, 2001.

The story of 32-year-old computer engineer Su Gang, who was repeatedly arrested by the security department of his company because he refused to give up practising Falun Gong, was especially shocking. After he protested the ban on Falun Gong in Beijing on April the 25th, Su Gang was arrested for the second time. On May the 23rd, the Alkene Plant of Qilu Petro-Chemical Company where he worked authorized the police to have him involuntarily admitted to a mental hospital.

According to Su Gang's father, the doctor gave Su Gang forced injections twice a day, every day, of unknown drugs that damaged his central nervous system. When he left the hospital one week later, Su Gang could not eat or move his limbs. On June the 10th 2001, the formerly healthy young man died of heart failure.

Mental health hospitals frequently administer heavy doses of anti-psychotic medications and other unknown substances by force-feeding through nasal-gastric tubing or mixing them into practitioners' food. As a result, many practitioners suffer loss of memory, severe headaches, tremors, nausea, vomiting, seizures, loss of consciousness, etc. Some severe cases resemble Neuroleptic Malignant Syndrome. They also handcuff or bind practitioners into very painful postures for long periods of time, insert acupuncture needles deep into the muscles and apply electric current to produce excruciating pain, and burn detainees' skin with electric batons. Typically, the practitioners meet the criteria for discharge only when they stop doing the exercises, or if they sign a pledge to renounce their belief in Falun Gong. In the more unfortunate cases, they were discharged because they were close to dying from the abuses. Some psychiatric hospitals rate themselves as being successful in "converting" Falun Gong practitioners.

The Chinese government labels mentally healthy Falun Gong practitioners with mental illness and by using the state-owned media creates misunderstanding, confusion, prejudice, discrimination and even hatred toward Falun Gong practitioners among the people, which allows them to promote and sustain the persecution of Falun Gong.

In order to discredit Falun Gong, the government regularly takes actual cases of suicide, homicide, or psychotic behaviour, and then attributes these incidents to the practice of Falun Gong. As an example, the homicide case of Fu Yibin was used in this hate campaign. In November 2001 Fu Yibin killed his wife and father, and severely injured his mother during a psychotic episode. According to his relatives, prior to this breakdown, Fu Yibin had an eight-year long history of psychotic episodes, some of which included violent outbursts. There was no evidence that he had ever been a Falun Gong practitioner as the government propaganda claims. No forensic psychiatric exam of Fu Yibin was performed, and no third party investigation was allowed.

China's growing cases of appalling psychiatric abuse blatantly violate the United Nations Declaration of Human Rights, Assembly 1948, to which China is a signatory. International organizations such as the World Psychiatric Association, American Psychiatric Association, The Royal College of Psychiatry, the

Geneva Initiative on Psychiatry, Human Rights Watch, Amnesty International, and others are presently joining the common effort to stop this on-going human rights violation.

Despite the efforts of the WPA and other international organizations to stop the abuse of psychiatry in China, we continue to receive news of deaths in psychiatric facilities. The last death known to our Information Centre was in October 2003 when Liu Tongling, from Rang district, Daqing city, was declared dead at the Harbin Rehabilitation Centre. She was arrested three times for appealing for Falun Gong to officials and in August of 2003. She was arrested one last time for clarifying the facts of the persecution to several leaders at her workplace. She was taken to Daqing Hong Wei Xing brainwashing classes. She started a hunger strike to protest the brainwashing and was transferred to Harbin Rehabilitation Centre. At the rehabilitation centre she was confined to a small compartment. She started another hunger strike to protest that treatment. Soon her health deteriorated and she developed a heart condition. When her family visited her at the end of September, her legs were swollen and her thinking was confused. Although the police were aware that she was not mentally sound, they did not want to send her for a psychiatric exam since they did not want to be blamed for causing such a state.

Her family paid 3,000 Yuan to the person in charge (called Yang), and asked him to help to get Liu Tongling released for medical treatment. Yang accepted the money and asked for 30,000 more Yuan. However, before the family could gather enough money to pay Yang, on October the 12th 2003, Liu Tongling died. An eyewitness reported that two days before her death she was extremely weak, yet she was forced to sit on an iron chair (a form of torture) in an empty room for punishment. The authorities tried to conceal the crime by refusing to let the family see her body, but they were able to see it after they protested. Her face appeared abnormal, the area around her eye appeared dark, her nose was injured due to force-feeding, and her mouth had lacerations. Her body had a lot of bruises, her wrists had deep marks from handcuffs, her ankles were swollen, and her chest had marks left by electric shocks. The director, Chen, told the family that they did not want to keep Liu Tongling in the facility but Chang Guojun, a 610 officer of the Daqing Petrolium Management Company, told him he had to keep her.

According to unofficial Chinese estimates, thousands of Falun Gong practitioners have died as a result of this persecution and to date at least 841 people have been confirmed dead. All of these events, including the constant threat of maltreatment, have caused mental anguish and forced even more practitioners to hide their

true beliefs and practice. The extent of the psychological ramifications both on the practitioners and the world at large, has surely not yet been realized. As concerned world citizens we can make a difference and help end this suffering.

For more information, please contact Dr. Sunny Lu (513) 759-6218, Dr. Viviana Galli (513) 535-4468, Dr. Michael Yang (215) 219-8745, or Tanya Harrison (605) 716-1575 or by e-mail at: CMHW@innoport.com or fax (866) 832-1786.

Sincerely,  
China Mental Health Watch

## Case Studies: From Victims Of Denial Of Rights In China

*Zhao Ming, former "Prisoner of Conscience"*

I am a Chinese national, but now I am stateless and holding refugee status in Ireland. I am still studying. As a Falun Gong practitioner, I was persecuted in a Chinese labour camp for nearly two years. Due to the diligent efforts of many kind-hearted people, human rights organisations and the Irish government, I was released in March 2002. I am lucky to have been rescued and freed. Today I am speaking here not on behalf of myself but on behalf of millions of Falun Gong practitioners who are being persecuted in China. I would like to share with you some very personal experiences about my suffering in China's labour camps.

Once in Haidian District Detention Centre of Beijing, a police guard told the inmates in the cell to force-feed me in a very brutal way when I was on hunger strike. One of the inmates held my nose tightly so that I had to open my mouth to breathe. At the same time, another inmate poured liquid food into my mouth continuously. I tried my best to turn my head to breathe in some air, but my head was held very tightly by them and it was not possible for me to turn my head at all. When I opened my mouth to breathe, they put a tooth brush in to keep my mouth open and poured in liquid very quickly. I hardly had any chance to breathe, liquid got into both my bronchi and oesophagus. I coughed very violently and felt very painful in my lungs for many days after. It was actually a very dangerous procedure. Quite a few practitioners recorded on our websites were tortured to death in this way.

Several practitioners in the labour camps were tortured into losing their sanity. During the Chinese New Year of 2002, a section chief of Beijing Labour Camp Bureau whose surname was Luo came to Tuan He Labour Camp to see me. He said nothing really meaningful except one sentence, "I hope that you will not become like Wu Jun." Wu Jun was a Falun Gong practitioner who was tortured into losing his sanity. Some practitioners told me that they once saw Wu Jun lick saliva off the ground. Another practitioner told me that some gangsters sexually abused him. Now this section chief Luo was directly referring to Wu Jun to threaten me. I knew that they would torture me sooner or later.

About two weeks before the end of the one year and ten months extended labour camp period, they finally started. Firstly they did not allow me to sleep for forty eight hours. Very exceptionally, on the evening of the second day of depriving me of sleep, one policeman told me to watch TV. While I was watching, he rushed into the room suddenly, grabbed me and pushed me all the way along the corridor to a police office. When I got into the room, I saw a bed board on the ground and some straps torn from the bed sheets. Five policemen were standing in the room including three section chiefs of Tuan He Labour Camp. I knew they would torture me using electric batons. They pressured me to renounce Falun Gong. I refused. Then they put me on the bed board and started to bind all parts of my body on the board to prevent my body from going into spasm during the shocking. They bound my ankles, my thighs, my upper body, my arms and across my mouth. Afterwards, they asked me to renounce Falun Gong again. I refused again. Then one police guard took out a bundle of electric batons, which were about half a metre long, and distributed them to the others. They started to shock me all over my body simultaneously. My body was trembling very violently and was completely out of control. I heard the sound of very intensive electric sparks. One police guard took one baton in each hand and started to shock my chest. He moved the two batons in circles in parallel to my body to shock me with the metal winding around the baton. That shocking made me breathe rapidly. My throat was dry with a burning sensation. They continued shocking me while pressuring me to renounce my faith from time to time. I said nothing but was breathing deeply and rapidly. I tried my best to endure, but suddenly one of my legs went into spasm. The pain was huge. I just could not think rationally any more. At that moment I agreed to sign the things they requested.

During the days after that I could not sleep well. I often woke up suddenly at night. When I was awake, I nearly went crazy. A big opposition was in my mind. I could not agree with what I had done at all. But it was not the end. Days later, the police got a CCTV journalist into the labour camp to interview me. That female journalist had made a lot of programmes slandering Falun Gong. Actually, she had interviewed me once before. In a previous interview she pretended to be very supportive to Falun Gong and asked me about all the experiences and benefits I got from this practice. But her real aim was to get some footage to show that I was living very well in the labour camp so as to deny the torture and cheat the public. But this time, she was not friendly at all. Her face looked dark and evil in the shadow of the window light. She asked me while holding in hand the paper that I signed, "What do you think of

Falun Gong now?" I knew very clearly that if I said anything complying with her, it would be broadcast to cheat more than a billion people all over the country. I definitely would not do that. I gathered all my courage and rationality and answered all her questions by saying repeatedly "I have nothing to say." Maybe because of the strong international pressure, they did not torture me any more.

Days later, I was released. I stepped out of the labour camp without any happiness, hope or relief, because my spirit had been murdered. I was not free at all. I was closely followed by secret agents every day after being released.

Some commonly known genocides in history aimed at eliminating a racial group. But this on-going genocide against Falun Gong practitioners in China is aiming at completely eradicating a spiritual system. The police guards are committing torture to force Falun Gong practitioners to renounce our belief in Falun Gong. Over the twenty two months of detention, I was transferred back and forth between two cities, three detention centres, two labour camps, three police stations and one drug rehabilitation centre. On different occasions, I tried to appeal to higher officials to complain about the abuses committed by some police guards or inmates, but I found more and more clearly that the torture, brainwashing and different kinds of illegal treatment were actually planned, instigated and admitted by high levels. The persecution against Falun Gong is being implemented by the whole police system all over the country. What is happening in this persecution of Falun Gong in China has met with the definition in the current International Convention against Genocide. Now the number of verified death cases in this persecution has reached more than eight hundred. The death toll has not reached millions at the moment, but all the characteristics of commonly known genocides have manifested in this persecution of Falun Gong:

- The policy to target a specific group was made by top-level government;
- All levels of government, the whole police system and the secret police system have been ordered to implement the persecution;
- A big population of innocent people is being persecuted;
- The whole country's propaganda machine is used to incite hatred among people, silence the international community and justify the persecution;
- All the most inhumane atrocities have occurred: rape, torture, abuse using psychiatric drug, murder etc.;

- There is no possibility in a domestic judicial system to seek justice or to restrict the atrocities.

If there had not been strong resistance, exposure of this persecution by the Falun Gong practitioners and big concern from the international community, a holocaust would have happened much earlier in this persecution. I learned that in the official meeting of this forum many people are discussing the definition of “Genocide”. I do not think this is the main topic to discuss. Now there is already an on-going genocide that we can identify. What should be discussed is what we should do about it. Now is the time to act!

I believe this conference “Genocide in the New Era” is a very historical one because it is the first time that lawyers from different countries who are filing lawsuits to sue the Chinese perpetrators have come together to discuss this issue. I have acted as a plaintiff in a series of these cases. I want to take this chance to thank my lawyers. You are not only helping me or other plaintiffs but also upholding justice for the tens of millions of Falun Gong practitioners being persecuted in China. I understand that there are a lot of technical difficulties attached to these lawsuits. But I believe that law should be a tool to assist in seeking justice, instead of preventing people from seeking justice. I believe there will come a day when the Chinese dictator Jiang Zemin, who instigated the persecution of Falun Gong, will be brought to justice in a court in China. On that day, people will all find that what you are doing today is very, very meaningful.

Thank you.

## The Belgian Law Of 5th August 2003 Concerning Serious Violations Of International Humanitarian Law [1]

*Barrister Mr Georges-Henri Beauthier, Belgium*

### **A. The Universal Jurisdiction In Belgium Till 2003**

#### **1. The laws of the 16th of June 1993 and the 10th of February 1999 A domestic application of the principle of universal jurisdiction**

Let’s remind ourselves that the principle of universal jurisdiction is based on the notion that certain crimes are so harmful to international interests that states are entitled – and even obliged – to bring proceedings against the perpetrator, regardless of the location of the crime or the nationality of the perpetrator or the victim. This is therefore jurisdiction based solely on the nature of the crime.

In 1993, Belgium adopted the law on “Universal Jurisdiction” that was directed at the repression of serious violations of the Geneva Conventions of 12th August 1949 and brought the obligation contained in these conventions to search and punish the authors of war crimes into play.

This avant-garde legislation didn’t require the presence of the accused on the Belgian territory to pursue him. In 1999 the law was significantly amended:

- Implementing the Geneva Convention on Genocide (1948), the law extended the universal jurisdiction to the crime of genocide;
- The incrimination of crimes against humanity was introduced in the text;
- The law provided that “immunity attaching to the official capacity of a person shall not prevent the application of the present law.”

Belgium was then cited as an example on the international scene.

## 2. The restrictive jurisprudence

The international arrest warrant against Augusto Pinochet in April 2000 and the trial of the four Rwandans condemned for genocide in April-May 2001 before the Court of Assises of Brussels were important steps towards the recognition of universal jurisdiction in Belgium. At the same time, several complaints were introduced in Belgium against the former Congolese President Laurent-Désiré Kabila, the former Congolese Minister for Foreign Affairs Yérodiá, the President of the Ivory Coast Laurent Gbagbo, the Israeli Prime Minister Ariel Sharon, and the former President Georges Bush Senior. There were also complaints against the leaders of Cambodia, Chad, Guatemala and Congo-Brazzaville.

The decision on the 14th of February 2002 of the International Court of Justice in Den Haag, in the case of the arrest warrant against the former Congolese Minister for Foreign Affairs Yérodiá has tempered the application of the Belgian law. The Court concluded that:

“The circulation of the warrant constituted a violation of an obligation of Belgium towards the Congo, in that it failed to respect the immunity of the incumbent Minister for Foreign Affairs of the Congo and, more particularly, infringed the immunity from criminal jurisdiction and the inviolability then enjoyed by him under international law.”

The scope of the Belgian law of universal jurisdiction is again restricted by the court of appeal of Brussels that declared the proceedings inadmissible against Yérodiá[2] and Ariel Sharon and Israeli leaders[3], because they weren't found on Belgian territory. The court of cassation amended the decision in the Sharon case and substituted the grounds of the first court for one sole cause of inadmissibility, namely the immunity attached to the quality of Head of State[4].

## B. The law of 5th August 2003

The law of the 5th of August 2003 abrogated the law of the 16th of June 1993. It has modified the criminal code and the criminal procedure code and has permitted the pursuit of serious violations of international humanitarian law. However the admissibility of complaint directed against persons suspected of War Crimes, Crimes Against Humanity or Genocide is henceforth subordinated to the existence of links.

### 1. The new conditions

The new law maintains the incriminations of international humanitarian law but considerably limits the competence of the Belgian judge: the admissibility of the complaint depends henceforth on the fact that the violation has to be committed against “a person who is,

at the moment of the facts, a Belgian national or a person living in Belgium effectively, usually and legally, for three years at least” (new article 10 of the criminal procedure code).

As part of this examination, the Federal Prosecutor has to verify if:

- 1 the complaint is manifestly justified; or
- 2 the facts mentioned in the complaint correspond to the qualification of the infractions included in the Criminal code; or
- 3 an admissible legal action can result from this complaint; or
- 4 it didn't emerge from the circumstances of the case that in the interest of a good administration of justice and according to Belgium international obligation, this case should be handled by international courts or by the courts in the country of which the author is a national or those of the place where he can be founded and this only if this court presents the qualities of independence, impartiality and equity, as it emerges from the relevant international engagements binding Belgium and this country.

In this case, the Federal Prosecutor demands the judge of inquiry to set up the concerned complaint. Otherwise, he closes the file.

The new law forbids also the injured parties to become civil party by the judge of inquiry. Only the Federal Prosecutor exercises the public action for those violations.

### 2. In practice

The new law has planned transitory measures for the complaints introduced upon the former legislation. Concerning the cases pending at the “information stage” when the law entered in force, the Federal Prosecutor closes these files if they don't respect the aforesaid criteria of admissibility. On the basis of this provision, the Federal Prosecutor closed the file against the American general Tommy Francks. The appeal of the plaintiffs before the court of appeal was declared inadmissible on 23rd September 2003 because the law doesn't plan any appeal against the decision of the Federal Prosecutor.

The court of cassation, that verifies the admissibility of the cases pending at the inquiry stage, closed the files against Ariel Sharon on the 24th of September 2003, because this complaint had no link with Belgium.

Except for three files related to Chad, Congo and Guatemala, the Federal Prosecutor closed all the files

based on universal jurisdiction.

As for the only complaint introduced on the basis of the August the 5th 2003 law, against the former Chinese President Jiang Zemin and two Chinese high ranked leaders, the file has been closed on 25th September 2003 by the Federal Prosecutor for the reason that the victims (Belgian or resident in Belgium) couldn't pretend to be personal victims of a serious violation of international humanitarian law.

Such a decision is surprising: the Federal Prosecutor has no competence to pronounce the "quality" of victim of the plaintiffs. The law states that the Federal Prosecutor has only to evaluate if the complaint corresponds to a serious violation of international humanitarian law and if the victims have a link with Belgium, which is the case in these circumstances. In this case, the Federal Prosecutor has thus overstepped his competence.

The August the 5th 2003, law explicitly excludes all appeals against the decision of the Federal Prosecutor to close a file: an appeal to Strasbourg seems to be the only way remaining to the injured parties to have their elementary rights of access to a tribunal and of an effective appeal respected.

About the link of the victim with Belgium, the court of cassation decided on the 17th of December 2003 that "the condition of residence has to exist for the victim against whom the serious violation of international humanitarian law has been committed and not for the plaintiff." Does that mean that only the person personally and directly victim of a serious violation can file a complaint in Belgium? Can't the parent of a direct victim who has been murdered in consequence of a serious violation of international humanitarian law be considered as a plaintiff?

At this occasion, the court of cassation refused to ask the court of arbitrage a question about the compatibility of the law of August the 5th 2003 with the Belgian Constitution because it doesn't allow the victims of serious violations of international humanitarian law to request the judge of inquiry for a constitution on civil party, whereas any "common" victim has this right.

### 3. Consequences

The law of August the 5th 2003 gives the Federal Prosecutor power without control because whatever his decision, it isn't open to any appeal. Even if the Federal Prosecutor oversteps his competence, as in the scope of the complaint against Jiang Zemin and others, his decision couldn't be called into question.

However, the plaintiffs who filed the complaint in Belgium tried to make an appeal against the Federal Prosecutor's decision to close their file. They took the advice of the President of the Bar Association of the

court of cassation, Me Gérard and asked him if it was possible to make an appeal. He answered that:

- An appeal before the chambre des mises en accusation, which is the court controlling the inquiry, is not possible because the decision of the Prosecutor to close the file took place before the beginning of the inquiry;

- An appeal before the court of cassation raises many procedural questions: for instance, where can one register this appeal since the Federal Prosecutor has no registrar office?

After many hesitations, the plaintiffs filed an application before the European Court of Human Rights in Strasbourg, against the decision of the Federal Prosecutor. They alleged that this decision constituted a violation of the European Convention of Human Rights, and particularly the article 6, §1 (right for a fair trial), article 13 (right for an effective remedy) and article 14 (prohibition of discrimination). They requested that their case should be examined by an independent and impartial court in Belgium.

#### ***Violation of article 6, §1***

*The plaintiffs who have introduced a complaint before the federal prosecutor, who is not a jurisdictional institution and who, in essence, doesn't have the mission to be independent and impartial, are totally dependent on the decision of this prosecutor regarding the acceptance of the complaint. The plaintiffs thus didn't have the possibility to see their complaint proceeded by an independent and impartial judge. In fact, the law of the 5th of August 2003 entrusts exclusively to the federal prosecutor the task to actually start the legal action. Therefore, it excludes the possibility for the plaintiffs to stand before an examining magistrate as a civil party.*

*Apart from that, the law of the 5th of August 2003 excludes all resorts against the federal procurator's decision to classify a complaint as not entitled to proceed. Consequently this constitutes a violation of the access to the juridical system. Once the decision is taken, no mechanism has been established for the case to be accessible, even after all procedures have been completed. The plaintiffs cannot assert their civil right, which is the right to obtain repair for the damage caused to them by the author of the serious violation of international human right in front of a court.*

*The plaintiffs' complaint aims at starting criminal prosecution in order to obtain a decision of guilt, which can lead to the application of their civil right, such as the compensation of their detriment. The issue of the criminal prosecution is therefore decisive for the establishment of the right of indemnification[5]. The decision of the federal prosecutor to classify the complaint of the plaintiffs as not entitled to proceed deprives them of all possibilities to exercise their right of indemnification in front of the jurisdiction.*

### **Violation of article 13**

*The law of the 5th of August 2003 excludes every legal remedy against the decision of the federal prosecutor to classify a complaint as not entitled to proceed.*

*Thus, there does not exist any effective further appeal for the plaintiffs to have their rights validated in a court, even if the federal prosecutor clearly went beyond his power by giving a judgement on the essence of the case. After all, he should have limited his investigation to the verification of the admissibility of the complaint, concerning article 10, 1st Ibis of the preliminary title of the Code of Criminal Procedure. The fact of making a decision whereby he judges if the plaintiffs have indeed been victims of serious violations of international humanitarian law, as referred to in book II, title Ibis of the preliminary title of the Code of Criminal Procedure is a jurisdictional task that consequently belongs to a court.*

### **Violation of article 14**

*That disposition safeguards the guarantee for everyone to enjoy the allowed rights and freedoms acknowledged by the Convention without being discriminated.*

*In the exercise of their right to a tribunal, the plaintiffs experienced a double discrimination since, in the case that the federal prosecutor decides to classify the complaint as not entitled to proceed, they cannot bring the complaint directly in front of the examining magistrate, whereby every plaintiff in Belgium can do that by putting himself as civil party, and also people who have submitted a complaint of international crime against human rights before the law of the 5th of August 2003 came into force, saw their complaint examined by the court of cassation. There does not exist any acceptable justification for this double difference:*

*1. In the Belgium law, everyone, harmed through a crime or an offence, can take legal action by putting himself civil party before a qualified examining magistrate (art. 63 of the code of criminal instruction), but a person who is harmed by international crime against human rights doesn't have this opportunity.*

*2. The law of 5 August 2003 provided that persons who introduced their complaint before it came into force could see their complaint examined by the court of cassation, whereby a person whose complaint is based on this law does not have that possibility*

*It is appropriate to remind ourselves that Belgium has signed protocol n°12 of the European Convention of Human Rights and Fundamental Freedoms, accepted by the Commission of Ministers of the European Council on the 26th of June 2000. Through this the Belgium Government has proclaimed its intention to accept a protec-*

*tion that is broader and more universal against every form of discrimination. Even if the Belgium nation isn't yet officially bound through the obligations created by the Protocol, from now on it can not negate its intention to extend the notion of discrimination in every different treatment in the tenure of the rights recognized by the Belgium law.*

*As a consequence the implementation of the law of the 5th of August 2003 makes a distinction between the people who bring a complaint for international human rights violations and every other plaintiff of common right or the person who has submitted a complaint for serious violations of international humanitarian law before the law of the 5th of August 2003 came into force. This distinction is not justified in an objective and reasonable manner.*

The restrictive jurisprudence of the Belgian courts about the victim is an additional obstacle for the application of the universal jurisdiction in Belgium.

Excepted the three cases I mentioned above, the Belgian Government seems to have decided to put the law of universal jurisdiction into brackets along with the international obligations of Belgium. It will be particularly difficult to pass the filter of the Federal Prosecutor. It is, apparently, a necessary condition for the restoration of good diplomatic relations with the United States, notably.

However, it is still possible to make application of the universal jurisdiction in Belgium:

- For the foreign victims the possibilities are very tenuous but they exist - the victims have to meet the requirement of residence in Belgium for three years at the moment of the violations;

- In the case of the arrest warrant issued by Belgium against the former Congolese Minister of Foreign Affairs, the International Court of Justice concluded that the Minister of Foreign Affairs enjoys full immunity from criminal jurisdiction because of his functions. In fact, the Court observed that a Minister of Foreign Affairs is in charge of his Government's diplomatic activities and generally acts as its representative in international negotiations and intergovernmental meetings, and thus must be in a position to freely do so whenever the need should arise. Thus, foreign officials, except the Minister of Foreign Affairs, are not totally immunized and could be arrested in Belgium if they aren't on an official tour, as well as former members of a government. The only negative point of the decision of the international court is that it didn't recognize, contrary to the general thought, that the immunity of the Minister of Foreign Affairs stops when he is no more in function.

### C. Conclusion

Belgium was the pioneer in this field and it has become the worst student in the pursuing of the authors of serious violations of international humanitarian law. It is submissive to international pressures and imperatives other than humanitarian ones.

The example of Belgium teaches us one thing: domestic application of the principle of universal jurisdiction works only if a lot of states implement international obligation to search and punish the perpetrators of serious violations of international humanitarian law.

Instead of flattering itself, Belgium should have tried to convince other countries to respect the engagement taken in 1949 and thus apply the Geneva Conventions.

It is up to us, jurists, to work and innovate together to convince our governments to implement their international obligations concerning humanitarian law and universal jurisdiction. Because we know that one day in Belgium or in another country, we will judge Jiang Zemin and other instigators of genocide on behalf on the international community. We know also that, after a fair trial, they will be condemned.

Law is only a tool: let's use it together, as a preventive measure, to impede the coming of these criminals to our countries to look after their economical interests or, maybe later, to judge them. But for this, we have to break up false and hypocrisy.

Neither political nor economical interest will stop the Universal Jurisdiction that has been implemented by History.

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[1] Published in the Moniteur Belge of 08/07/2003.

[2] Arrêt de la Chambre des mises en accusation de la Cour d'appel de Bruxelles du 16 avril 2002.

[3] Arrêt de la Chambre des mises en accusation de la Cour d'appel de Bruxelles du 26 juin 2002.

[4] Arrêt du 12 février 2003.

[5] 18 Aït-Mouhoub c. France, arrêt du 28 octobre 1998, Recueil 1998-VIII, P3226, § 45 ; Tomasi c. France, arrêt du 27 août 1992, série A n°241-A, p.43, § 121, Helmers c. Suède, arrêt du 29 octobre 1991, série A n°212-A, p.14, § 29.

## A Tribute to Chinese Mainland Falun Gong Practitioners Dedicated to the Chinese Falun Gong practitioners' courage and nobility

Attorney Terri E. Marsh, Esq., USA

In the *Differend*, by Jean-Francoise Lyotard [1], an injury of great magnitude occurs - something as serious as the Holocaust, an example used by the author throughout his poignant essay. Unlike the Holocaust in Germany, the holocaust as "*differend*" cannot be expressed. It occurred but no one knows about it, because no believes it could have occurred or because no one wants to believe it occurred, or because other 'so called' more important matters do not permit it to be discussed.

The victims, thousands upon thousands or perhaps millions upon millions, cannot speak, and even if they could speak no one would hear what they say. There is not a shred of evidence. Indeed no one knows of the holocaust, the terror or the tragedy. If asked, many would claim that it did not occur precisely because of the silence which surrounds it. But of course it did occur. It's just that it occurred within the context of what Jacques Lyotard terms "*The Differend*": an injury that renders the victims voiceless because they do not have the means to report it or to seek redress in a court of law.

Lyotard's point is especially important today, because the fictive holocaust which he describes is actually occurring today in China. The perpetrators' names are real, as are those of the victims. The goal of the holocaust is not merely the physical death of millions, but the psychological death of the person, his belief, his principles, and his conscience. To date hundreds of thousands of persons have been jailed illegally, placed in labour camps without trial, force fed with saline solutions, which rupture lungs and tear stomach walls, injected with psychotropic drugs, which kill the person while leaving the body intact, and subjected to a huge number of other tortures of frightening and terrible inhumanity. As Barrister Theresa Chu observed in her talk, by forcing persons to renounce their beliefs or else endure what no living person can endure, the genocide in China today is a deadly assault that, whether or not

it results in physical death, aims to kill the person.

Surely there must be legal redress for these injuries in a court of law in China. But as many have observed, the holocaust in China continues without legal redress. Indeed the attorneys who have filed complaints on behalf of the victims have themselves been arrested and tortured, with many disappearing. Lawyers are not permitted to represent practitioners of Falun Gong. When trials do occur, and even that is rare, they are a sham.

In China today, the law is viewed and used as an instrument of power and political control, and its application is always subject to the dictatorship of the Party, which has established a public security system independent of the official legal system. It has used this independent system to detain hundreds of thousands of political prisoners by administrative action alone.[2] Many judges are former Party officials, many are not trained in law at all, and many are openly corrupt. Political leaders still use the criminal process to advance their own policies and personal agendas.[3]

Many third party reports disclose the lack of a rule of law in China. For example, Amnesty International's report for the year 2002 states that political trials are conducted well beyond the standards set by international law for a fair trial, since the judgments are drawn up by authorities before the trial begins.[4] In its reports for 2001 and 2002, Human Rights Watch points to the increase in human rights violations in China in recent years, including arbitrary arrests and executions following a trial with no guarantee of fairness or impartiality.[5] Among the recommendations of the International Centre for Human Rights and Democratic Development (Rights and Democracy) to the United Nations Commission on Human Rights can be found the request to the Chinese authorities to guarantee that the right to a fair trial is upheld for all citizens in China.[6]

Enshrouded in silence, the genocide against Falun Gong in China continues, in spite of the principles of Nuremberg, which have been reaffirmed in international law, in court decisions and the practices of nations; all of which assert, affirm, and re-affirm the principle that all individuals notwithstanding their position are subject to suit for acts of torture, genocide and other *ius cogens* crimes.

*Le differend* as an injury that renders the victims voiceless because they do not have the means to report it or to seek redress in a court of law, characterizes well the situation in China in some but not all respects.

In fact, practitioners of Falun Gong in China and abroad have managed to find their voice and to break through the silence of *le differend*. By their persistence, determination and courage they have managed to tell

their story: by the filing of lawsuits in domestic federal courts outside China; by interrupting cable signals on the state-owned television stations in China; by an array of other creative and courageous techniques.

Lawsuits have been filed against Jiang Zemin, the architect and founder of the campaign of genocide and torture in China today, in courts around the globe. In Spain, Carlos Iglesias filed a criminal lawsuit under the principles of universal jurisdiction; in Taiwan, Theresa Chu helped to file a criminal lawsuit under Taiwan criminal law; lawsuits have also been filed in France, Belgium, Iceland, Finland, Germany, Moldova, Armenia, Cyprus, and South Korea. The lawsuit filed against Jiang Zemin in the United States in October of 2002 is now on appeal before the 7th Circuit Court of Appeals. And the law is on our side. Not even *le differend* can silence practitioners of Falun Gong. In time the persecution will end because we, the disciples, by our voices, our innovation and our sheer persistence, shall end it.

In the words of Justice Jackson, the distinguished United State Prosecutor at Nuremberg, not even a King is above God and the law... If certain acts in violation of [the law] are crimes, they are crimes no matter who commits them.

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[1] *The Differend: Phrases in Dispute*. Trans. George Van Den Abbeele. Minneapolis: University of Minnesota Press, 1988

[2] See, A.C. Grayling, "When China Cracks," *Prospect*, June 2002, p. 62.

[3] See, "Not Welcome at the Party: Behind the 'Clean-Up' of China's Cities," a report published by Human Rights Watch, October 1999. Also see, "Prominent Chinese Lawyer Detained by Police Since Early May," *The Washington Post*, June 7, 2002, p. A20; *The Tiananmen Papers*, compiled by Zhang Liang, edited by Andrew J. Nathan and Perry Link (Public Affairs, 2001).

[4] See Amnesty International, ASA 17/052/2002.

[5] See: HRW World Report 2001: China; Human Rights Watch World Report 2002: 7 Asia: China and Tibet; see also, "China: Human Rights Constitutions and U.S. Policy," Statement by Mike Jendrzeczyk to the Congressional Human Rights Caucus

[6] Commission on Human Rights, fifty-ninth sessions, E/CN.4/2003/NGO/73, 5 March 2003. See also, Jerome Cohen, Roundtable Discussion On "Challenges for Criminal Justice in China," Statement by Jerome A. Cohen, School of Law, New York University Council on Foreign Relations, "The Plight of Criminal Defense Lawyers," for a similar analysis.

# Press Freedom And Human Rights League, USA

Lea Zhou

Ladies and Gentlemen,

I'm very honoured to be speaking to you at this conference. Let me begin with a very personal story, which happened while I was still a small child.

Early one evening as I was doing my homework, I was called for dinner. My homework was not so complicated. All I needed to do was write an article that criticised someone, like all children had to do every week during the Cultural Revolution. As a child of 8 years, I was not able to write articles like this on my own so I just copied the text from a newspaper. After dinner I tried to continue copying from the newspaper but I ran into a problem. I couldn't find the place where I stopped writing before dinner. The newspaper was covered with articles criticising this person! His name was everywhere on the newspaper in front of me.

The name of this person was Confucius. Like most children at that time, I didn't know who Confucius was, what he had really done or what he said. What I learned from school and newspapers was that he was a very bad person and that his words were poison. We were told nothing about the values that Confucius left to our Chinese people. After the Cultural Revolution, which costs tens of millions of lives, Chinese people mouthed the same words that were on the lips of people in the rest of the world after the Second World War – "Never Again". But it happened again.

March 2000: I almost thought that it was a bad joke as I read in a Chinese newspaper that groups of little children from Chinese schools had to sign their signature on banners criticizing Falun Gong, a cultivation way from China which was well known for having positive effects on mental and physical health. It was not difficult for me to imagine what kind of homework these kids have to do. History repeats itself, while we think that we have learned a lot from the past. Books about Falun Gong have been burned. The state-run media in China broadcasts demonising reports on Falun Gong day after day. Campaigns against Falun Gong are so similar to the ones I know from my childhood in the Cultural Revolution: Culture is politicised; innocent

people are defamed; children and adults are brain-washed.

But there are still some big differences. When the persecution of Falun Gong began, China was no longer an isolated country but a big market in the eyes of people all over the world. China is a member of the Security Council, which has a lot of political influence on international affairs. The Chinese government needs more investments from foreign countries than ever before to keep legitimacy for the leadership. While the people in and outside of China see that more Chinese people can move freely over the country's boundaries, it is often ignored that these people's spirits are being destroyed due to the lack of freedom in the press.

As we know from history, genocide and massive human right violations begin with hate speeches. Media control in a dictatorship is one of the biggest dangers that we are facing. It is important to be aware of the development of media control by countries with bad human rights records like China.

The Press Freedom and Human Right League, which I represent now, is a young non-governmental organization based in the USA. Its aim is to support the freedom of speech, press freedom and related human rights issues in China. According to our observations, the Chinese Government is not relaxing media control inside China, like many people expected it to. To the contrary, it has made big efforts to strengthen the control of Chinese language media, both in China and abroad. To increase control over the media in China, the Chinese Government has already spent RMB 600 million (about 70 million US Dollars) on research for the Golden Shield Project, known as the biggest firewall on the Internet. The total amount spent could in reality be many times more than that. The Golden Shield Project, according to information on its website, is focused on the following fields of security: "access control, anti-hacker intrusion, communication security, computer accessories & software, decryption & encryption, e-commerce security, extranet & intranet security, firewalls, networking communications, network security & management, operation safety, smart card security, system security, virus detection, IT-related services and others." It must be one of the world's most ambitious projects in the field of Internet control.

Let's take a look at some reports about media control by the Chinese Government outside of Mainland China. In November 2001, the Jamestown Foundation in the U.S. published an article in the China Brief entitled, "How China's Government Is Attempting To Control Chinese Media In America". According to this article, "four main tactics characterize the Chinese government's efforts to influence Chinese media in America. First is the attempt to directly control newspa-

pers, television stations and radio stations through complete ownership or owning major shares. Second is the government's use of economic ties to influence independent media who have business relations with China. This leverage has had major effects on the contents of broadcasting and publishing, effectively removing all materials considered unfavourable by the Chinese government. Third is the purchasing of broadcast time and advertising space (or more) from existing independent media. Closely related to this is the government's providing free, ready-to-go programming and contents. Fourth is the development of government personnel to work in independent media, achieving influence from within their ranks."

The Jamestown Foundation also states, "Four major Chinese newspapers are found in the U.S. – World Journal, Sing Tao Daily, MingPao Daily News and The China Press. Of these four, three are either directly or indirectly controlled by the government of Mainland China, while the fourth (run out of Taiwan) has recently begun bowing to pressure from the Beijing government."

According to our research, in the Boston area of Massachusetts State five out of the eight local Chinese language newspapers are either controlled by, or under heavy influence of, the Chinese Government. The Sino American Times is a free weekly newspaper previously called the Boston Journal. It is believed that the Chinese Government funded its expansion in August 2002. The director of this newspaper worked for Xinhua News Agency for many years before he and his wife came to the United States. Our source also revealed that the editing and typesetting of the main pages of the Sino American Times are created in Mainland China and then forwarded to Boston for publishing.

The China Press is a daily newspaper funded by the Chinese Government. Its news comes directly from Xinhua News Agency or China News agency, the two official major news agencies of the Chinese Government. Local organizations that are sympathetic with Falun Gong cannot even purchase advertisement space in this newspaper.

Mingpao and Singtao Daily are two daily newspapers in the Boston area that are under indirect control of the Chinese Government. They cannot report on Hong Kong's Article 23 legislation or SARS in a timely and objective manner. Certain news is censored, such as Jiang Zemin and other Chinese Government officials being sued in the U.S. and in other countries. Some of the senior staff of these newspapers told an MIT Falun Dafa club member that they were ordered not to show the word "Falun Gong" on the local community bulletin board or allow Falun Gong practitioners to put advertisements in their newspapers.

The Chinese Government also builds up a "united front" by inviting selected overseas media organisations to oversee Chinese media forums. "The Second Worldwide Chinese Media Forum" hosted by the China News Agency, Changsha City Government in Hunan Province and the Office of Overseas Chinese Affairs in Hunan Province took place in Changsha City from September the 22nd to the 24th 2003. Around 180 overseas Chinese media organisations from six continents, including North America, Europe and Asia, attended the forum. No independent overseas Chinese media organisations were invited to the forum. The main topic on the agenda was how overseas Chinese media organisations can cooperate with the media in Mainland China and report news related to China.

We found that the method of control in Chinese language media has two main strategies: One is to sponsor local Chinese media who are registered as independent and impose censorship through direct and indirect financial control or ownership; the other is to suppress independent Chinese language media in the U.S. through political and economic pressure. Facing new independent Chinese media organisations like NTDTV, which has broadcast reports on the SARS disease, the AIDS problem, and human rights violations, such as the persecution of Falun Gong and Christians in China, the Chinese Embassy in Australia even used their influence on a local Chinese newspaper to publish an open letter to the Chinese community, warning Chinese residents in Australia not to join the NTDTV New Year Gala celebration.

Therefore, I was not surprised when I heard some Chinese people saying that Saddam Hussein should be declared a hero, because that was the message sent out by the state-controlled Chinese media during the Iraq-War. The purpose of the Chinese Government's media control is quite clear. On one hand, the Communist Party intends to extend their full control in the ideological field from Mainland China to abroad. Secondly, there is a demand to reimport self-made news from abroad back to Mainland China, since readers in China are losing trust in the state-run media. Thirdly, the Chinese Government needs to reduce public pressure on the human rights issue abroad.

China has also developed a suitable strategy aimed at foreign reporters. Foreign reporters are invited to China, where they are introduced to Window Projects, such as Shanghai and Beijing. Foreign reporters or correspondents who are not under state control are denied the right to work in China or even visit the country.

Mrs. He Qinglian, a famous scholar from China, recently said, "If we want to stop evil, then we have to expose this evil." Before the world can awaken, there need to be people to keep the flame burning. We hope

that the media will play its righteous role in preventing genocide and other human rights violations.

Thank you very much for your attention.

Lea Zhou  
Press Freedom and Human Right League

## **Strengthening the Tools To Prevent And Punish Genocide**

*Morton Sklar, Executive Director of the World Organization for Human Rights USA and Judge of the Administrative (Labour) Tribunal of the Organization of American States*

The understanding of the international and human rights communities about the nature of the crime of genocide has been changing radically in recent years, in recognition that the international treaty prohibiting this practice covers a much broader range of abuses than previously believed. The treaty prohibiting genocide and making it an international crime was first adopted in 1948 in direct response to the Holocaust - a widespread campaign by the government of Germany to eradicate an ethnic and religious minority group through a carefully planned and executed campaign of extermination, which resulted in the death of over 6 million Jewish people. What we have come to experience and to understand is that many of the more modern forms of the most serious human rights abuses that have been taking place, for example in Bosnia, Kosovo, Rwanda, East Timor, Sierra Leone, Burma, China, Mexico and Iraq, do not have to involve the killing of millions of people on the scale of the Holocaust in order to be recognized as involving the international crime of genocide. Nor do they require specific laws and policies of a national government mandating the abuses of the type used by the German Government to authorize the internment and execution of Jews. Instead, it is recognized that genocide can be carried out by private and paramilitary groups and individuals, not just government officials.

Fortunately, the Genocide Convention was written broadly enough to cover these newer versions of genocide. The definition was not limited to the extermination or attempted mass extermination of whole groups of people, but covers the abuse or killing of portions of groups as well, with the purpose of seeking their destruction. In addition, the Genocide Convention incorporates a number of other very forward thinking elements not always typical of international human rights instruments, including a specific provision pro-

hibiting immunity claims of heads of state and other officials, and providing for coverage of private as well as governmentally sponsored abuses.

But while the definition of genocide in the treaty is very broad, our understanding of what constitutes genocide certainly has expanded considerably in recent years in response to a wide variety of new types of practices aimed at persecuting and eliminating different groups of people. The concepts of ethnic cleansing and the use of rape as a form of intimidation and population control in Bosnia, forced relocation in Kosovo, the "killing fields" in Cambodia and the amputation of the arms and hands of suspected political opponents in Sierra Leone may be of more recent vintage, but they must be recognized as acts of genocide.

The evolution in our understanding of what constitutes genocide is important because it allows, indeed requires, the international community and every national government to act to prevent and prosecute an ever expanding range of actions and abuses that must be properly recognized as constituting genocide. National governments and international organizations no longer have the prerogative of sitting idly by while paramilitary groups in former Yugoslavia, Rwanda or East Timor commit atrocities against members of ethnic groups whose views they oppose, or while a campaign of intimidation and executions against ethnic minorities or political opposition groups is carried out in Burma or Sierra Leone. Once these atrocities are recognized as constituting genocide, every government and every international organization is put on notice that under the terms of the Genocide Convention they are responsible to act to prevent and punish these international crimes. The painfully slow response of the Western governments, NATO and the United Nations to the campaign of ethnic cleansing and forced relocation in former Yugoslavia, and the non-response for too long a period of time to the atrocities in Rwanda and Sierra Leone, for example, hopefully will be less likely to be tolerated or repeated, once everyone recognizes that the Genocide Convention is being violated.

Sadly, however, though our understanding of genocide has broadened and evolved over recent years, the difficulties that were experienced in former Yugoslavia and Rwanda in getting governments and the international community to become involved at an early enough stage to prevent these tragedies from taking place still have not been completely overcome. Indeed, this was also a problem in the Holocaust itself, where many national governments, for a variety of reasons, were reluctant to become involved and to speak out against the genocide that was taking place, despite its massive scale, and the clear evidence that a campaign of extermination of the Jewish people was taking place in

Germany and the territories they captured. The core of the problem is that a host of political, economic and foreign policy reasons make it difficult for one country, or the international community as a whole, to intervene in the internal affairs of another country, even when the most heinous atrocities are being committed.

What the Genocide Convention and the growing body of experience the international community has developed since the 1950s in the adoption and enforcement of international human rights standards has taught us is that the traditional principle in international law of non-intervention in the internal affairs of governments does not apply to questions involving major violations of human rights, and most specifically to the prevention and prosecution of genocide. The reason the principle of non-intervention does not apply, as the situation in former Yugoslavia and Rwanda demonstrated so well, is that major human rights abuses no longer can be considered purely internal or domestic matters. They necessarily involve and threaten international peace and security because the consequences and reactions to these atrocities inevitably spill over beyond the borders of the country where they are taking place. Genocide in Bosnia or Iraq or Rwanda threatens the peace in neighbouring states, and is highly likely to cause reactions and problems on a much broader international basis.

But, while the international community understands and recognizes this reality, and in fact has used it as the basis for very tardy interventions in former Yugoslavia, Rwanda and elsewhere, including military action and the establishment of international criminal tribunals to prosecute the oppressors, we are still intolerably slow to recognize and act to prevent genocide and other major human rights abuses in their early stages, when we still may have an opportunity to prevent their progression to the massive proportions of the Holocaust, the ethnic cleansing campaign in former Yugoslavia, and the mass executions in Rwanda.

A case in point is what is taking place right now in the People's Republic of China regarding the campaign of persecution that has been mounted there against the Falun Gong spiritual movement and its practitioners. It is a campaign of persecution that has involved the arbitrary arrest, unlawful imprisonment and torture of many thousands of Falun Gong practitioners, and their execution in substantial numbers, in an organized effort by some of the highest officials of the Chinese Communist Party, including former President Jiang Zemin, to end and exterminate the Falun Gong movement because it is seen as a threat to the hegemony of the communist system. These policies and practices very clearly meet the definition of genocide as set out in the Genocide Convention, because they seek the extermination or elimination of all or part of a group of people

based on their religious and spiritual beliefs and practices. Yet most governments, while condemning these actions as human rights violations like the United States Department of State has done for example in its annual country reports on human rights and on international religious persecution, have not met their obligations under the Genocide Convention by recognizing this campaign of persecution for what it is: a campaign of genocide prohibited under the Genocide Convention. In fact, the U.S. government, while condemning these abuses in its human rights reports, has actually come to the defence of some of the key perpetrators of the genocide by seeking dismissal of civil lawsuits that have been filed against them in U.S. courts by victims of the persecution seeking civil damages and restitution for the abuses.

The reason why the U.S. and other governments have not recognized the persecution as genocide, and why they have defended the abusers in court in violation of their obligations under the Genocide Convention, is the same reason that the international community has been so slow to respond to other instances of genocide in former Yugoslavia, Rwanda and elsewhere. There are strong political and economic reasons why moving against the government of the People's Republic of China is considered undesirable. For example, in the case of the United States, trade with China has become such a major element of the U.S. economy that the U.S. government is reluctant to take any action that would jeopardize these economic relations. On the political side, on more than one occasion, regarding the situation in Afghanistan and Iraq, for example, the U.S. has found itself dependent upon China's good will and support in the U.N. Security Council to prevent their veto or resolutions authorizing military action against supporters of terrorism. China is also seen as a vital ally in the effort to deal with the problem of nuclear proliferation in North Korea.

These are the geo-political realities that we face in trying to obtain a more effective response to the campaign of genocide taking place in China, or major human rights violations taking place in other parts of the world. The key question is: How do we overcome these economic and political reasons that prevent the U.S. and other governments from taking more concrete and effective action to prevent and punish genocide?

Two key parts of the answer are to:

1. Support compliance efforts that can be initiated directly by the victims of genocide and other major human rights abuses themselves, so that we do not have to rely solely on individual governments or international organizations to take action in circumstances that may

be politically or economically difficult;

2. Clarify and institutionalize the emerging understanding that many of the newer forms of persecution and repression, such as ethnic cleansing and the persecution of Falun Gong in China, constitute forms of genocide prohibited by the Genocide Convention that must be therefore be universally condemned, prevented and punished.

Especially important is the need to support the development and use of private remedies: methods that allow victims of genocide and their representatives to initiate complaints and compliance actions in their own behalf rather than relying on government action. The history of the development of human rights law in the past several decades demonstrates the vital role that private remedies, and the right of victims to initiate compliance actions, play in promoting human rights compliance. Over the years a variety of steps have taken place broadening the enforcement options, and giving private individuals more of a role in the process. Initially only governments or international organization monitoring agencies could initiate compliance actions. Now, private individuals are empowered to file complaints and initiate legal action before the Inter-American Commission on Human Rights, the European Court on Human Rights, and under many of the major human rights treaties. The Genocide Convention is one of the few human rights treaties that still keeps enforcement primarily in the hands of governments and international agencies, and does not authorize private victims to initiate compliance action. This oversight needs to be remedied by the adoption of a protocol, similar to the ones adopted as part of the European Convention on Human Rights and the Torture Convention, for example, that authorize private complaints as an alternative means for initiating compliance action.

As part of this strengthened private enforcement approach, methods for expanding the ability of private victims and their representatives to file legal actions seeking civil damages and restitution against their abusers in national courts should be supported. Right now the United States is one of the few countries that have adopted legislation authorizing this type of private civil remedy for major human rights abuses taking place in foreign countries that can be accessed in national courts. Even in the U.S., the government has been seeking to restrict the availability of this type of remedy. These private legal actions provide an important means for victims not only to obtain civil damage awards against their abusers, but to hold persecutors accountable for their actions. They therefore provide an important supplement to the more traditional forms of inter-

national enforcement mechanisms that are more dependant upon support from national governments and international agencies.

The principle of restitution for victims, and their right to initiate action to secure restitution, needs to be supported and expanded, instead of being restricted as the U.S. government has been trying to do recently.

In summary, the international community has begun to recognize and understand that genocide as a type of human rights violation is taking place on a much broader basis than originally believed, and that persecution does not have to take place on the scale of the Holocaust to be considered genocide. This broader understanding needs to be supported with more prompt and effective enforcement action to help assure that national governments and international organizations will act to prevent and punish genocide violations. One of the key methods for promoting these reforms is to strengthen the ability of victims of genocide violations and other major human rights abuses to initiate compliance and enforcement actions in their own right, instead of having to rely on governments or international agencies to begin the compliance process, which is the more traditional approach. Expanding the availability of civil damage or restitution remedies in national courts is one step that can be taken. Another is to include restitution remedies and the right of victims to initiate complaints as part of the international compliance mechanisms. The Genocide Convention needs to be amended to include this option, or at least interpreted to make clear that these types of privately initiated remedies are covered by the provision of the Convention (Article V) authorizing national legislation "to provide effective penalties for persons guilty of genocide...."

In a very real and dramatic way, the plight of Falun Gong practitioners in China provides a very effective example of why these reforms are needed, and how they can help promote compliance with core international human rights standards. It has taken too long for the campaign of persecution against Falun Gong in China to be recognized for what it is by national governments and the international agencies - a system of genocide prohibited under the Genocide Convention. Given the reluctance of the United States and other governments, for political and economic reasons, to properly call the responsible officials of the government of the People's Republic of China to account for these violations, the victims of the persecution, through private legal actions and other means, have initiated a number of very creative efforts to secure international attention and compliance with Genocide Convention requirements. These efforts, most especially the private legal actions filed in national courts seeking restitution from the abusers, should be supported.

Genocide continues to be a major problem in many countries of the world, taking many new forms different in scope and form from the original Holocaust model. If we are to effectively prevent and punish these major abuses, the international community needs to recognize them as genocide, and to take action against them more quickly. A key element in this process is to strengthen and expand the ability of victims of genocide to bring attention to the problems and to seek redress for violations in their own right, without having to rely solely on national governments and international enforcement agencies to initiate enforcement action. Whether this is done by amending the Convention with a protocol to this effect, or more simply by somehow making clear that Article V of the existing Convention authorizes these private approaches, the right of victims to initiate enforcement actions needs to be recognized and made more widely available.

# RESOLUTION OF INTERNATIONAL CONFERENCE “GENOCIDE IN THE NEW ERA

STOCKHOLM, SWEDEN JANUARY 26 – 28, 2004

More than 130 nations have signed the Convention on the Prevention and Punishment of the Crime of Genocide; and thereby agreed to “prevent and punish” the perpetrators of the crime of genocide irrespective of their title, status, or rank. Nonetheless the crime of genocide continues to occur around the globe without adequate mechanisms for prevention and legal redress. In 1999, Jiang Zemin, the former President of China initiated a campaign of genocide and torture in China to eradicate the wide spread belief in and practice of Falun Gong in the People’s Republic of China. Jiang Zemin has co-extensively sponsored an international campaign of persecution, including direct interference in the domestic policies of democracies around the globe in conjunction with the deployment of threats, hate crime, propaganda, slander and defamation on an international scale – all geared to eliminate the practice of Falun Gong around the world.

As part of a worldwide tribute to the global recognition of human rights, and independent from the Intergovernmental Conference on Preventing Genocide, Friends of Falun Gong Europe and the International Advocates for Justice have been joined by 17 NGO’s to sponsor “Genocide in the New Era,” an international conference attended by human rights attorneys and NGOs from Sweden, Belgium, Spain, Canada, Finland, Denmark, Taiwan, Germany, the United Kingdom, the United States and other nations to address the widespread phenomena of genocide in China and the international persecution of practitioners of Falun Gong around the globe. Conscious of our obligations as human rights attorneys and NGOs, we are committed to doing our utmost to stop the campaigns of genocide and persecution of Falun Gong around the globe. To this end, we declare:

1. We are committed to supporting the Declaration of the Stockholm International Forum 2004 and the particular resolutions included therein. For example, we shall:

Cooperate in the search for effective measures against genocidal dangers with all members of the family of

nations, with the United Nations and other relevant global and regional organizations as well as with non-governmental organizations, labor organizations, the media and with business and academic communities.

Cooperate in the use and development of practical tools and mechanisms to identify as early as possible and to monitor and report genocide threats to human life and society in order to prevent the recurrence of genocides and mass murders.

Support the use and development of tools and mechanisms to identify and prevent the crime of genocide. These include the identification of the multiple forms and modalities of genocide – including not only physical death but the eradication of commonly held belief of religious and cultural groups, education through formal and informal structures, the dissemination of knowledge to those involved in government, international organizations, non-governmental organizations, humanitarian and peace support operations and the media, the support of survivors of genocide to rebuild their communities, and the insurance that the perpetrators of genocidal acts are brought to justice.

2. We are committed to exploring the options presented at this Forum for action against the genocide and international persecution of Falun Gong in China and elsewhere around the globe, and hope to have opportunities to share with the participants of the Stockholm International Forum the information and ideas of the many NGOs and human rights attorneys on an ongoing basis.

3. We agreed that the continuing persecution of some hundred million Chinese citizens by the government of the People’s Republic of China for their moral beliefs is a most serious manifestation of genocide as defined in Article 2 of the 1948 Genocide Convention and is unacceptable in the world today, prejudices the development of cooperation and trust between nations and warrants further efforts by governments with a view to its termination.