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Sterilizations, IUDs, and Mandatory Birth Control:

The CCP's Campaign to Suppress Uyghur Birth Rates in
Xinjiang

By Adrian Zenz

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By way of preamble, it is important to emphasize that the point here is not to prove or disprove the reality of Zenz's allegations.

The point here is to inquire whether his accusations are supported by the facts and the arguments as he presents them.

In other words, has Zenz proved his case?

My answer is that he has not proved his case.

Does that mean that "genocide" is not occurring in Xinjiang? No, but it does mean that it remains for the accusers to prove their case.

Whether the acts alleged by Zenz might amount to "crimes against humanity" is not discussed below because Zenz does not make that accusation. While "crimes against humanity" are reprehensible, they nevertheless do not rise to the level of gravity of "genocide".

1. - Introduction

While Zenz is often cited as accusing China of "genocide",¹ in fact, even he is more guarded.

Zenz himself concludes that his findings "raise concerns as to whether Beijing's policies in Xinjiang represent, in fundamental respects, what might be characterized as a demographic campaign of genocide".²

But, as will be argued below, Zenz does not even attempt to prove all the elements of the crime of "genocide". (2)

Furthermore, his presentation of the facts is so one-sided and incomplete as to amount to a prosecution more than a judgment. (3)

In any event, though China has ratified the Convention on the Prevention and Punishment of the Crime of Genocide (the Geneva Convention),³ it has filed a reservation, excluding its submission to the jurisdiction of the International Court of Justice in connection with "disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including

¹ The author, Webliography on Xinjiang, www.lapres.net/xinjiangweb.html.

² Page 21.

³ The Convention was approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 and it entered into force on January 12, 1951, in accordance with its article XIII, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en

those relating to the responsibility of a State for genocide."⁴

Since China is a permanent Member of the Security Council of the United Nations, it would obviously use its veto against any resolution declaring it responsible for "genocide".

Still, the accusation of "genocide" has value in the strategic contest with China apart from any significance in law.⁵

The recognition of acts of "genocide" and the imputation of responsibility for such conduct is also necessary for moral reasons.

And, even if no legal actions are likely to be decided when a credible charge of "genocide" arises, the resulting discussions among scholars may be valuable "jurisprudence" as a subsidiary source of public international law.⁶

2. - On the law

⁴ Genocide is also a crime under article 6 of the Rome Statute of the International Criminal Court, but China has not ratified that Convention, https://treaties.un.org/pages/ViewDetails.aspx?src=TR EATY&mtdsg_no=XVIII-10&chapter=18&lang=en.

⁵ Such considerations may have motivated the assumption for its own account by the Biden Administration of the designation of China by the Trump Administration (on the day before its term of office expired) for committing "genocide" against Muslim ethnic groups in Xinjiang, David Brunnstrom, Humeyra Pamuk, U.S. secretary of state nominee Blinken sees strong foundation for bipartisan China policy, Reuters January 19, 2021, <https://www.reuters.com/article/us-usa-biden-state-china/u-s-secretary-of-state-nominee-blinken-sees-strong-foundation-for-bipartisan-china-policy-idUSKBN29O2GB?il=0>.

⁶ Article 35 of the Statute of the International Court of Justice.

In the article under review, Zenz accuses China's population policies in Xinjiang of meeting:

one of the genocide criteria cited in the U.N. Convention on the Prevention and Punishment of the Crime of Genocide, namely that of Section D of Article II: "imposing measures intended to prevent births within the [targeted] group" (United Nations, December 9, 1948).⁷

That is the sum total of his argument in law to justify his accusation.

So, it is important to note that article II, in its complete enunciation, provides as follows:

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

(d) Imposing measures intended to prevent births within the group.

In other words, for whatever reason, be it ignorance of the law or deliberate distortion or some other circumstance, Zenz exempts himself from the burden of proving the "intent to destroy" element of the crime of "genocide".

Indeed, in summarizing his findings, Zenz mentions none which address the question of "intent to destroy". Subject to more detailed analysis below, his findings concern:

- population growth rates, and natural population growth rates,
- the punishment of birth control violations,

⁷ Pages 3 and 20.

- mass female sterilization,
- intrusive birth prevention surgeries,
- shares of women aged 18 to 49 who were either widowed or in menopause.⁸

The word "intent" does not even appear in his text, nor does the word "destroy".

So, even granting Zenz all of his claims of fact, he advances not even a premise of argumentation in support one of the elements of the crime of "genocide".

Even more, in making his case for the element that he does mention, namely the conduct consisting in "imposing measures intended to prevent births within the [targeted] group", Zenz cites a number of officials and official documents that do address the element of "intent".

Nowhere is there any suggestion by Zenz that any of those statements amount in and of themselves, or even can be interpreted as implying, an "intent to destroy" the Uyghur minority or other Muslim minorities in Xinjiang.

Indeed, in summarizing his findings concerning the officially announced objectives of the policies accused of carrying out a "genocide", Zenz imputes to the authorities the objective that "population control must be at the heart of the CCP party-state's social re-engineering project."⁹

To explain the nature of the "social re-engineering project", Zenz cites at length Li Xiaoxia, Director of the Institute of Sociology at the Xinjiang Academy of Social Sciences, whom he quotes as holding that:

Chinese "academic and government circles have consistently described minority

⁸ Pages 2-3.

⁹ Page 7.

population growth as 'excessive' (过分, *guofen*)",

"Uyghur population growth rates in regions that have been traditionally dominated by Uyghurs have exacerbated spatial ethnic segregation,

with rising population shares, 'three types of factors—ethnic, religious and territorial—are becoming superimposed, strengthening the viewpoint that one ethnic group owns a [particular] land area',

this concentration in turn "weakens national identity and identification with the Chinese Nation-Race (中华民族, *Zhonghua Minzu*), [thereby] impacting long-term rule and stability (长治久安, *changzhi jiu'an*)".¹⁰

Two other sources on the question of the "intent" of the incriminated policies refer to the need to control high birth rates as a manifestation of adherence to radical Islam.¹¹

In his conclusion, Zenz writes that

The population control regime instituted by CCP authorities in Xinjiang aims to suppress minority population **growth** while boosting the Han population

¹⁰ Page 7, (PKU Thesis, 2017).

¹¹ Page 7, "high birth rates in southern Xinjiang are connected with religious beliefs, such as that "the fetus is a gift from Allah, and you cannot control birth and abortion at will" (Northwest Population, 2019); "it is undeniable that the wave of extremist religious thinking has fueled a resurgence in birth rates in Xinjiang's southern regions with concentrated Uyghur populations" (Journal of Ethnology, 2016).

through increased births and in-migration. Draconian measures that impose surgical birth control methods enable the state to increase or decrease minority population growth at will, akin to opening or closing a faucet. Additionally, regional authorities actively encourage interethnic marriages (SupChina, August 7, 2019), in an effort to dilute Uyghur cultural identity and promote assimilation into the 'Chinese Nation-Race' (中华民族, Zhonghua Minzu). In tandem, these three strategies appear to undergird a wider game plan of ethno-racial domination.¹² (emphasis added)

In short, what Zenz alleges to exist is a plan to impose a rebalancing of the composition of the population in favor of its Han component and at the expense of its Uyghur component (whether this applies to other Muslim minorities is not made clear in Zenz's text).

Whatever might be one's opinion of such a policy, to prove a violation of Article II (D) of the Genocide Convention, it must also be demonstrated that the means to implement that policy aimed at or brought about the "destruction, in whole or in part", of the Uyghur people and other Muslim minorities.¹³

In the case concerning application of the Convention on the prevention and punishment of the.

¹² Pages 20-21.

¹³ For instance, the United States attached an "understanding to its Ratification of the Convention that "the term 'to destroy , in whole or in part, a national, ethnical, racial, or religious group, as such" means the specific intent to destroy, in whole or in substantial part, a national ethnical, racial or religious group as such", Covey T. Oliver, Edwin B. Firmage, Christopher L. Blakesley, Richard F. Scott, and Sharon A. Williams, The International Legal System, The Foundation Press Inc., New York, 1995, page 761.

crime of genocide (Bosnia and Herzegovina v. Serbia and Montenegro), the Bosnia Herzegovina Case) the International Court of Justice (ICJ)¹⁴ discussed in detail the significance of this mental element of the crime and noting that "Great care must be taken in finding in the facts a sufficiently clear manifestation of that intent".¹⁵

More specifically, the ICJ recalls that it

has long recognized that claims against a State involving charges of exceptional gravity must be proved by evidence that is fully conclusive.¹⁶ The Court requires that it be fully convinced that allegations made in the proceedings, that the crime of genocide or the other acts enumerated in Article III have been committed, have been clearly established.¹⁷

The mental element has two dimensions: a "discriminatory intent" targeting a specific group "as such" and the intent to "destroy it in whole or in part".

As to the discriminatory aspect, the ICJ recalled that:

the essence of the intent is to destroy the protected group, in whole or in part, as such. It is a group which must have particular positive characteristics – national, ethnical, racial or religious – and not the lack of them. The intent must also relate to the group "as such". That means that the crime

¹⁴ February 26, 2007, <https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>.

¹⁵ Ibid, page 83.

¹⁶ cf. Corfu Channel (United Kingdom v. Albania), Judgment, I.C.J. Reports 1949, p. 17.

¹⁷ Idem.

requires an intent to destroy a collection of people who have a particular group identity.

With respect to the meaning of the word "destroy", ICJ explained that this element

requires the establishment of the "intent to destroy, in whole or in part, . . . [the protected] group, as such". It is not enough to establish, for instance in terms of paragraph (a), that deliberate unlawful killings of members of the group have occurred. The additional intent must also be established, and is defined very precisely. . . . It is not enough that the members of the group are targeted because they belong to that group, that is because the perpetrator has a discriminatory intent. Something more is required. The acts listed in Article II must be done with intent to destroy the group as such in whole or in part. The words "as such" emphasize that intent to destroy the protected group.¹⁸

The ICJ cited the etymology of the word "genocide":

Raphael Lemkin has explained that he created the word from the Greek *genos*, meaning race or tribe, and the termination "-cide", from the Latin *caedere*, to kill (Axis Rule in Occupied Europe (1944), p. 79). In 1945 the word was used in the Nuremberg indictment which stated that the defendants "conducted deliberate and systematic genocide, viz., the extermination of racial and national groups . . . in order to destroy particular races and classes of people and national, racial or

¹⁸ Ibid, at page 82.

religious groups . . .” (Indictment, Trial of the Major War Criminals before the International Military Tribunal, Official Documents, Vol. 1, pp. 43 and 44).¹⁹

Citing the International Criminal Tribunal for Yugoslavia in the Krstic case,²⁰ the ICJ distinguishes the “dissolution” of a group from its “destruction”,

while “there are obvious similarities between a genocidal policy and the policy commonly known as ‘ethnic cleansing’” yet “[a] clear distinction must be drawn between physical destruction and mere dissolution of a group. The expulsion of a group or part of a group does not in itself suffice for genocide.”²¹ In other words, whether a particular operation described as “ethnic cleansing” amounts to genocide depends on the presence or absence of acts listed in Article II of the Genocide Convention, and of the intent to destroy the group as such. In fact, in the context of the Convention, the term “ethnic cleansing” has no legal significance of its own. That said, it is clear that acts of “ethnic cleansing” may occur in parallel to acts prohibited by Article II of the Convention, and may be significant as indicative of the presence of a specific intent (*dolus specialis*) inspiring those acts.

The meaning of the word “part” seems to refer to “constituent” part, not some numerical fraction of the whole. So, “genocide” may be committed by destroying the part of targeted group that is located

¹⁹ *Idem.*

²⁰ IT-98-33-T, Trial Chamber Judgment, 2 August 2001, para. 562.

²¹ Staki, IT-97-24-T, Trial Chamber Judgment, 31 July 2003, para. 519.

in a specific location, or that enjoys a special role within the group, even if that part constitutes a small numerical fraction of the whole.

With that legal framework in mind, attention may be turned to the background to the events in question as Zenz describes them:

Prior to 2015, it was common practice for Uyghurs to have children in excess of state-mandated limits. Population planning offices were understaffed and local Uyghur officials frequently flouted birth quotas themselves. When caught, Uyghurs simply paid fines. As Xinjiang's surveillance state grew and state intrusion into Uyghur families deepened, all this changed drastically. In July 2017 Xinjiang reformed its family planning policy (Xinjiang Health Commission). Previously, urban Han Chinese were permitted to have one child, while urban minorities could have two. Rural residents could have one additional child: two for rural Han, and three for rural minorities. The new policy removed this ethnic distinction, permitting the Han to have the same number of children as the minorities, while leaving the urban-rural distinction and minority birth quotas unchanged.²²

Zenz does not criticize the imposition of population controls on the entire Chinese population.²³

²² Page 10.

²³ But in other contexts, Zenz has advocated for fundamentalist Christian values in family-related policies, see www.lapres.net/xinjiangweb.html.

Nor does he cite any international legal source that has condemned China for such policies, though they do exist.²⁴

What Zenz actually argues is that the population policies in Xinjiang have caused the rates of **growth** of “minority” ethnic groups to decrease.

Zenz’s headline information is that this trend has gone from “excess” to “near-stagnation”.²⁵

Of course, “near stagnation” is not “destruction”.

Zenz does not argue that the policies have caused the birth rate of Muslim minority women to fall below the rate required to maintain the population constant, i.e. two children per woman.²⁶

Indeed, as Zenz himself observes, the vast majority of the Muslim minority populations being rural, most of their families would have the right to have three children.²⁷

²⁴ See, for instance, International Justice Resource Center, Forced Sterilization as a Human Rights Violation, <https://ijrcenter.org/forced-sterilization/>

²⁵ Page 3.

²⁶ Bonnie Kavoussi, U.S. Birth Rate Not High Enough To Keep Population Stable, Huffpost, August 15, 2012, https://www.huffpost.com/entry/us-birth-rate_n_1779960?guccounter=1&guce_referrer=aHR0cHM6Ly9mci5zZWYy2gueWFob28uY29tLw&guce_referrer_sig=AQAAAE-vSAZ9jBTzwpOCYJzjMn-gjK-m6Vvk9bR4SIDlPuNLNYBW-aMlQdQcHaFf3-7jFIUGL1C8FoZleFgdEK8ibMaQ4g_EuVohTxyBXTFK86dgP02i5ot-J6wmTwEHOh79m-G7wEVFGj16C-xcPrlKjslwYDPTIvc7VdhgEzThCIC_.

²⁷ The overall distribution between urban and rural populations in Xinjiang is close to 50/50, but minority groups are mostly rural. China Statistical Yearbook, 2019, table 2-8, <http://www.stats.gov.cn/tjsj/nds/2019/indexch.htm>.

In other words, according to Zenz's own argumentation, the incriminated population policy does not target the destruction of the Muslim ethnic groups; on the contrary, it has built into it a growth factor for the Minorities populations.

Of course, if a family already had its quota of children at the time of implementation of the uniform national quotas, then it could not have more children. So quite predictably after the implementation of lower birth quotas, the natural population growth rates have gone down. But Zenz himself writes that:

In 2018, natural population growth plummeted: to 4.06% in all minority regions and 2.58% in Kashgar and Hotan.²⁸

So, according to Zenz himself, even if population growth has decelerated in recent years, it has not gone negative, and the population policies have not "destroyed, in whole or in part" the Muslim ethnic minorities.

Nor does Zenz argue that the incriminated measures were either intended to cause, or did cause, the birth quotas of the Muslim minorities in Xinjiang to fall below those set down in the national family planning policy, or below those applicable to any other ethnic minority in China.

But article II of the Genocide Convention does impose that a particular ethnic group be targeted by the measures intended to destroy it in whole or in part.²⁹

In short, Zenz does not even address the legal test set down in the Convention for proving "genocide" under its sub-section (D).

²⁸ Page 12.

²⁹ For instance, as specified by the United States in its statement of "Understandings" with respect to the Convention.

So, even if Zenz were granted all the facts as he asserts them, he has not even attempted to prove either of the elements of the crime of "genocide" under the article of the Geneva Convention that he invokes to justify the accusation.

3. – On the facts

While leaving aside, at least for purposes of this review, the verification of Zenz's citations of his sources,³⁰ it is apparent that

- his interpretations of the population trends he alleges are debatable (3.1.),
- he does not show that the population trends he alleges were caused by government policies (3.2), and
- he does not show that the incriminated policies in caused the population trends he alleges caused (3.3.).

3.1. – On the trend of ethnic population growth in Xinjiang

To prove his point, Zenz calls attention to the evolutions of the Han and minority ethnic groups in Xinjiang as represented in a graph (his Figure 5), and he asserts that:

A detailed examination of Xinjiang's natural population growth³¹ shows that

³⁰ Although, as revealed in the critique of Zenz's article in the November 2019 issue of the Journal of Political Risk, the reliability of his sources, and even their identification, can be seriously defective.

³¹ Put simply, natural increase is the difference between the numbers of births and deaths in a population; the rate of natural increase is the difference between the birthrate and the death rate.

rates across all minority counties began to decline in 2015—the very year that the government began to single out the link between population growth and “religious extremism”.³²

But, even a mere visual examination of his graph reveals that the downward trend for the “minority” population (i.e. those in Muslim-dominated counties) began two years earlier, and, in matters of population, the decisions about having children would have been made about a year earlier.

Be that as it may, the downward trend of the **rate of natural population growth** did accelerate in 2015, which obviously means that the total population thus continued to increase throughout the entire period represented in Zenz’s graph (2005–2018).

Given the fertility and mortality characteristics of the human species (excluding incidents of catastrophic mortality), the range of possible rates of natural increase is rather narrow. For a nation, it has rarely exceeded 4 percent per year; the highest known rate for a national population—arising from the conjunction of a very high birthrate and a quite low death rate—is that experienced in Kenya during the 1980s, in which the natural increase of the population approximated 4.1 percent per annum. Rates of natural increase in other developing countries generally are lower; these countries averaged about 2.5 percent per annum during the same period. Meanwhile the rates of natural increase in industrialized countries are very low: the highest is approximately 1 percent, most are in the neighbourhood of several tenths of 1 percent, and some are slightly negative (that is, their populations are slowly decreasing), Encyclopedia Britannica, <https://www.britannica.com/science/population-biology-and-anthropology/Natural-increase-and-population-growth>

³² Page 8.

Otherwise, to prove the trends he alleges, Zenz makes several claims of fact, some of which are obviously erroneous, others misleading, and none of which prove an intent to “destroy in whole or in part” the Xinjiang Muslim minorities.

For instance, Zenz states that:

Future developments look bleak. Kizilsu Prefecture, a region dominated by Uyghurs and Kazakhs, set its target birth rate for 2020 at a mere 1.05‰, to be achieved through “family planning work.”³³

But in the footnote supporting that allegation, he writes:

Given that the region’s 2019 birth rate stood at 8.18 per mille (<http://archive.is/APGgL>), the mandated 7.13 per mille reduction results in a 2020 target birth rate of 1.05 per mille. Source: www.xjkz.gov.cn. Archived download at <https://bit.ly/2CbUaIz>.³⁴

Clearly, Zenz has mistaken the reduction in birth rate of 1.05 per mille (i.e. 8.18 per mille minus 7.13 per mille) for the mandated target of 7.13 per mille.

Zenz attaches importance to the decrease he claims to observe in the relative rates of natural population growth of Xinjiang Han populations and its Muslim minorities’ populations. Thus, in Han regions of the Xinjiang

Region, over the 2013–2018 period, the rate of minority natural population growth fell from 15.44 to 4.06 per mille (a drop of some 75%).

But in that same table presented by Zenz, it appears that the rate of natural population growth in

³³ Page 9.

³⁴ Page 25.

Han areas fell over the same period from 7.74 to 2.44 (that is, a 69% drop).

So, Zenz's claim that the Muslim populations in Xinjiang are being destroyed is not proved, but furthermore, he himself demonstrates that they have experienced a trend in the rate of natural population growth that is only 6% different from that experienced by the Han populations in Xinjiang.

As if to try to produce some negative numbers for the trends of population growth, Zenz refers to trends in total population. But as he himself admits, those trends include emigrations from the Region as well as immigrations into the Region.³⁵

According to Zenz's table, the total minority population in Xinjiang would have dropped from 2017 to 2018 by 0.25 per mille.

Leaving aside that such a number is no more significant than a rounding error, it might readily be explained as resulting from emigration of Xinjiang Muslims toward other Provinces in China.

Furthermore, even without questioning whether the sources on which Zenz bases his estimates of population trends actually stand for what he claims, their validity has been challenged by Chinese academic sources.

For instance, Lin Fangfei, an associate professor from Politics and Public Administration College under Xinjiang University, has asserted that

the natural population growth rate in Xinjiang did drop slightly during the period, but it was not a 'sharp' decline as Zenz described. In 2018, Xinjiang's natural population growth rate was 6.13%,

³⁵ Page 9.

which was higher than the national natural population growth rate of 3.81%.³⁶

3.2. - What caused the trends of population evolution?

Whatever the actual significance of the trends highlighted by Zenz, he does not prove that Government policies caused them. Thus, he observes that:

In Xinjiang government circles, the relationship between "religious extremism" and population growth appeared to come to the forefront in the summer of 2015. The timing may be linked to the start of the village-based work team campaign in early 2014 (as mentioned above), as well as the fact that Xinjiang's reported natural population growth rate for 2014 was the highest since the year 2000. A May 2015 government teaching broadcast on ethnic unity stated that "religious extremism begets re-marriages and illegal extra births" (Ili Prefecture Government, May 21, 2015). That same month, a speech given in the context of Hotan Prefecture's family planning meeting stated that "de-extremification is an opportunity to eliminate the influence and interference of religion on family planning" (Hotan Prefecture Government, April 16). This "interference" is also mentioned in the Xinjiang White Paper (新疆白皮书, Xinjiang Baipishu), one of Beijing's key propaganda documents, which mandates that "religion must not be used

³⁶ Six lies in Adrian Zenz's Xinjiang report of 'genocide', CGTN, September 14, 2021, <https://news.cgtn.com/news/2020-09-14/Six-lies-in-Adrian-Zenz-s-Xinjiang-report-of-genocide--TMIV2qWemA/index.html>.

to interfere in...family planning" policies (PRC Central Government, July 21, 2019).

Thus, in that explanation, Zenz does not actually cite any policy, law, or regulation expressly related to population control, that would have caused a decrease in the rates of population growth among Muslim minorities in Xinjiang.

Zenz explicitly recognizes that

the centralized inception of these campaigns in 2017 is not clearly reflected in any publicly-available policy document, their continuation and expansion is based on a regionwide directive issued in early 2018, titled "Autonomous Region Health and Family Planning Committee Notice Regarding Continuing to Deeper Implement the Special Campaign to Control Birth Control Violations" (自治区卫生计生委《关于持续深入开展违法生育专项治理工作的通知》/ *Zizhiqu Weisheng Jishengwei Guanyu Chixu Shenru Kaizhan Weifa Shengyu Zhuanxiang Zhili Gongzuo de Tongzhi*). [22] Related county-level "implementation schemes" (实施方案, *shishi fang'an*) were issued in April and May 2018.³⁷

Obviously, facts arising in 2015 or before cannot have been caused by rules adopted in 2017 and 2018.

Upon examination of the graph used by Zenz to make his point, it may be observed that the decline of the population growth rate among "minority communities", which had already begun around 2014, accelerated significantly after 2015, and accelerated again, but slightly, after 2017.

Perhaps, Zenz would argue, though he does not actually do so in the article under review here, that the policies formalized in 2017 and 2018, had been

³⁷ Page 10.

implemented, or "experimented" in the manner typical of the Chinese Government, as early as 2013.

Such speculation might be worthwhile in a number of other contexts, but in connection with proving a crime of "genocide", it does not amount to evidence of the existence of government or CCP policies that caused the declines in the rates of population growth among minorities.

In short, even assuming that the Muslim minority populations are experiencing a deceleration of their population growth, Zenz does not even attempt to prove how the policies he incriminates have caused or are causing that trend to occur.

3.3. - Do the policies implemented in Xinjiang discriminate against Muslim minorities?

Even though he does not criticize the imposition of quotas of children on families throughout China, Zenz does attack the policies intended to enforce the quotas among the Xinjiang Muslim populations.

But, he makes no attempt to show that the enforcement measures in Xinjiang, however harsh or disproportionate or even inhumane, are any different from those applied elsewhere in China, i.e. how they discriminate against, target, the Muslim minorities in Xinjiang.

Zenz highlights three policies in particular as amounting to "imposing measures intended to prevent births within the [targeted] group":

- fines (3.3.1.),
- implants of intrauterine devices IUDs (3.3.2.),
- sterilizations (3.3.3.), and
- internment (3.3.4.).

3.3.1. - Fines

First, it is to be observed that the imposition of fines for violations of birth quotas is provided in Article of 41 of the Population and Family Planning Law:

Citizens who give birth to babies not in compliance with the provisions of Article 18 of this Law shall pay a social maintenance fee prescribed by law.

Citizens who fails to pay the full amount of the said fees payable within the specified time limit shall have to pay an additional surcharge each in accordance with relevant State regulations, counting from the date each fails to pay the fees; with regard to ones who still fail to make the payment, the administrative department for family planning that makes the decision on collection of the fees shall, in accordance with law, apply to the People's Court for enforcement.³⁸

So, the question is whether the sanctions provided in the national law are applied in a manner that discriminates against Xinjiang Muslims.

Zenz cites a few individual cases illustrating the sanctions applied in Xinjiang (again assuming that the accounts are reliable), but no legal source setting down the sanctions applicable in that Region.

³⁸ The Law was adopted at the 25th Meeting of the Standing Committee of the Ninth National People's Congress of the People's Republic of China on December 29, 2001, was promulgated and entered into effect on September 1, 2002, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/76101/79578/F163106897/CHN76101%20Eng.pdf>.

Nor does Zenz provide any legal sources or even anecdotal evidence of how the sanctions for birth quota violations are applied elsewhere in China.

Thus, Zenz makes no effort to prove that Xinjiang Muslims are suffering from discrimination in the application of birth quota violations.

But even the examples Zenz does cite lack credibility. He observes that "fines for birth control violations were increased, totaling 3-8 times the average annual disposable income (e.g. Qapqal County, March 9, 2018; Changji Prefecture, October 23, 2018)".³⁹ But he does not state the amount of those fines. Elsewhere, he does cite the case of a fine of RMB 17,500 in Qapqal county.⁴⁰

But, according to Statistica, the "per capita disposable income of Xinjiang province" in 2019 amounted to around RMB 23,100.⁴¹

Furthermore, there is ample and readily available evidence that the fines applied in Xinjiang are in line with, or even much lower than, those applied elsewhere.

For instance, in its 2016 Annual report on human rights in China, the American Congressional Executive Committee on China (CECC), stated:

Officials continue to enforce compliance with population planning targets using methods including heavy fines, job termination, arbitrary detention, and coerced abortion... 'Language used in official speeches and government reports from jurisdictions across China continued to reflect an emphasis on the harsh enforcement of family planning measures. During this reporting year, as in

³⁹ Page 12.

⁴⁰ Page 11.

⁴¹ <https://www.statista.com/statistics/804759/china-per-capita-disposable-income-of-xinjiang/>

previous years, official reports from several provinces across China –including Anhui, Fujian, the Guangxi Zhuang Autonomous Region, Henan, Hubei, Hunan, Shandong, and Shanxi – continued to promote “family planning work” that entailed harsh and invasive family planning measures.⁴²

In its 2016 the United States State department observed that:

Under the law and in practice, there continued to be financial and administrative penalties for births that exceed birth limits or otherwise violate regulations. The National Health and Family Planning Commission announced it would continue to impose fines, called “social compensation fees,” for policy violations. The law as implemented requires each woman with an unauthorized pregnancy to abort or pay the social compensation fee, which can reach 10 times a person’s annual disposable income. The exact level of the fee varied widely from province to province. Those with financial means often paid the fee so that their children born in violation of the birth restrictions would have access to services. Some parents avoided the fee by hiding a child born in violation of the law with friends or relatives.⁴³

⁴² Pages 147, 149–150), October 6, 2016, <http://www.cecc.gov/sites/chinacommission.house.gov/files/2016%20Annual%20Report.pdf>.

⁴³ 2016 Country Report on Human Rights Practices’, Section 6: Discrimination, Societal Abuses, and Trafficking in Persons – Women: Reproductive Rights, March 3, 2017, , <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dclid=265328>.

The New York Times reported in 2016 that a family in Beijing was made to pay RMB 300,000 in order for their son born outside the quota to be included on their hukou.⁴⁴

More generally, the fines for birth quota violations provide a significant source of revenue for China's local family planning commissions. According to State news media reports in 2013, such fines amounted to some RMB 20 billion a year.⁴⁵ Considering that there are "hundreds of thousands" of children born every year in violation of the birth quotas,⁴⁶ national average fines of some RMB 20,000 per violation are credible.

In short, Zenz focuses exclusively on the level of fines in Xinjiang for violations of birth quotas, but he fails to even attempt to prove the one element of the crime of "genocide" that he does purport to take into account.

3.3.2. - Sterilizations

Sterilizations, even forced, are not identified as acts amounting to "genocide", though of course they could be part of a plan to "destroy in whole or in part" the Muslim minorities.

But, as argued above, Zenz does not prove that there is any such intent to "destroy in whole or in part" the Muslim minorities.

On the other hand, "forced sterilizations" are identified as amounting to "crimes against humanity"

⁴⁴ Kiki Zhao, Chinese Who Violated One-Child Policy Remain Wary of Relaxed Rule, NYT, February 8, 2016 <https://www.nytimes.com/2016/02/09/world/asia/china-one-child-policy-hukou.html?auth=login-email&login=email>.

⁴⁵ Idem.

⁴⁶ Home Office, Country Policy and Information Note China: Contravention of national population and family-planning laws, November 2017, page 6, <https://www.refworld.org/pdfid/5a099d044.pdf>.

under article 7(g) of the Statute of Rome establishing the International Criminal Court, provided the acts were "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack".

But, Zenz does not accuse China of "crimes against humanity", which is after all of less gravity, or less exceptional, than "genocide". In any event, the crime requires proof of "mental" element akin the intent "to destroy in whole or in part", but involving an intent that Zenz does not try to prove.

In any case, Zenz never makes clear how many of the sterilizations he alleges to occur in Xinjiang are "forced", implicitly denying that any whatsoever are voluntary.

Still, that some part of the sterilizations would be voluntary is not unrealistic, in particular among poor families having already reached the birth quota.

Furthermore, as Zenz does not provide any information on sterilizations outside Xinjiang, there is no reference by which to gauge whether the Xinjiang Muslims are suffering discrimination in their enforcement.

Still, the available statistics do indicate that sterilizations, including against the will of the woman, have been, since the 1970s and across the country, a key sanction of violations of the birth quotas.

According to reports in the Financial Times, since 1971, Chinese doctors have performed 196 million sterilizations⁴⁷ and every year Chinese doctors sterilize almost two million men and women.⁴⁸

Zenz himself writes that:

⁴⁷ Data reveal scale of China abortions
<https://www.ft.com/content/6724580a-8d64-11e2-82d2-00144feabdc0>

⁴⁸ Idem.

Overall, it is possible that Xinjiang authorities are engaging in the mass sterilization of women with three or more children. Nilka County's family planning policy for floating populations in 2019 stated that women with three or more children should be sterilized (Nilka County, November 20, 2019). In past decades, women throughout China were pressured to submit to sterilization procedures once they had the maximum permitted number of children (e.g. Washington Post, October 29, 2015).⁴⁹

Zenz at no point even attempts to demonstrate that the rates of sterilization among Muslim minorities in Xinjiang resulted from disproportionate, discriminatory application of the national policy of birth quotas.

Even the numbers cited by Zenz are of dubious reliability.

According to Zenz, the HZenz does not provide a screenshot of the "Table 8-8-2" in question, and his footnotes do not lead there either. China Daily claims to have posted a screenshot of the "Table 8-8-2" referred to by Zenz. It shows a number for sterilizations in Xinjiang in 2018 of 941.⁵¹

⁴⁹ Page 18.

⁵⁰ Reproduced here: www.lapres.net/figure9.pdf.

⁵¹80% of IUD placements in China preformed in Xinjiang? China Daily, September 15, 2020, <https://www.chinadaily.com.cn/a/202009/15/WS5f602278a3101ccd0bee06bf.html>.

8-8-2 2018年各地区计划生育手术情况

地区	节育手术 总例数	放置节育 器例数			取出节育 器例数			输精管 结扎人数	阴囊 横痃	感染
		子宫 穿孔	感染	感染	子宫 穿孔	感染				
总计	18424866	3774318	88	502	3474467	203	119	53128		3
北京	195122	15921	1		34834			6		
天津	135628	12004			26615			1		
河北	716982	295684			111425	2		163		
山西	321525	74529		1	76172			95		
内蒙古	295607	64011			66618			116		
辽宁	488056	83151	2	2	146614	3	2	67		
吉林	235472	49435		1	64691	1		12		
黑龙江	287938	64698			85328	1		1		
上海	309948	33827			83102	3		34		
江苏	1257806	158055			336786	1		13		
浙江	1190295	154067	1	8	261087	8	17	50		
安徽	661522	159695	5	2	154419	12	4	98		
福建	518246	70346			75270	3		104		
江西	527489	135698	1	3	76938	2		20		
山东	1182011	216840	3	11	258511	1	8	919		
河南	1088840	342451	4	39	136170		10	48256		
湖北	659853	112976	16	7	169535	26		175		
湖南	747022	213745	4	16	119794	4		15		
广东	1759871	188863	18	267	217477	34	35	776		3
广西	643288	92399	1	14	83915	2		55		
海南	148130	42593	1	4	16297			51		
重庆	449827	70836	1		99937	4	2	376		
四川	1216073	203268	6	12	264301	19	4	219		
贵州	378498	174608	16	11	65587	5		341		
云南	838146	209555	2	3	182582	9		122		
西藏	46485	9405	3	12	4536		3	19		
陕西	426183	86145		6	80013	39	3	46		
甘肃	229746	51324	1	30	40088		17	36		
青海	96148	27954			21249		9	1		
宁夏	128223	31960			25558					
新疆	1244886	328475	2	53	89018	21	5	941		

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Presumably, Zenz is aware of the criticism in China Daily, but he has apparently not made public any evidence that his "Table 8-8.2" shows numbers other than those in China Daily's.

But, for the case of "genocide" or "crime against humanity", whether there were in Xinjiang in 2018 some 60,000 sterilizations as he asserts or only 961 does make a difference.

In the end, the question which should be discussed is the legitimacy of a régime involving forced sterilizations at all, or except limited to such cases as required to avoid dangers to others. But that question is not addressed by Zenz, though it

is discussed elsewhere as a matter of international law.⁵²

3.3.3. - *Insertion of IUDs*

Zenz claims that the Government implemented a policy of forced insertions of contraceptive devices to "prevent births" as understood under article II (d) of the Genocide Convention.

But, unless such acts were committed as part of a plan to "destroy in whole or in part" the Uyghur and other Muslim minorities in Xinjiang, even if Zenz's allegations were true, they would not justify a charge of "genocide".

And Zenz adduces no evidence of how the national laws are applied elsewhere in the country, such that it is impossible to know, based on his assertions, whether there was any discrimination against the Uyghur or other Muslim minorities.

As so often, even the reliability of Zenz's numbers is dubious.

Zenz asserts that:

In 2018, 80 percent of all net added IUD placements in China (calculated as placements minus removals) were performed in Xinjiang, despite the fact that the region only makes up 1.8 percent of the nation's population."⁵³

52 International Justice Resource Center, *Forced Sterilization as a Human Rights Violation: Recent Developments*, [HTTPS://IJRCENTER.ORG/2019/03/21/FORCED-STERILIZATION-AS-A-HUMAN-RIGHTS-VIOLATION-RECENT-DEVELOPMENTS/](https://ijrccenter.org/2019/03/21/forced-sterilization-as-a-human-rights-violation-recent-developments/). In 1927, a United States Supreme Court judgment led to 70,000 forced sterilizations, NPR, March 7, 2016, <https://www.npr.org/sections/health-shots/2016/03/07/469478098/the-supreme-court-ruling-that-led-to-70-000-forced-sterilizations>.

⁵³ Page 3.

Zenz does not cite a specific source for this information.

But, the "Table 8-8-2" cited by Zenz, though presented only by China Daily, based on article of Professor Lin Fangfei of Xinjiang University,⁵⁴ shows that:

according to China Health Statistics Yearbook 2019 officially published by the National Health Commission, the number of new surgeries of IUD placement in Xinjiang in 2018 was 328,475, and the number of new surgeries nationwide was 3,774,318. It is easily estimated that the number of Xinjiang's new surgeries of IUD placements accounted for only 8.7% of the national number. Obviously, the percentage Zenz concluded is far from the real data.⁵⁵

These same Chinese sources claim, in contradiction with Zenz's allegations, that

The number of new surgeries of IUD placements in Xinjiang did not show obvious fluctuations from 2015 to 2018, and actually, the number of new surgeries of Xinjiang in 2018 decreased, compared with 2015 (See the table "Family planning operations in various regions" Selected from China Health and Family Planning Statistical Yearbook 2016 and China Health Statistics Yearbook 2019.).

⁵⁴ Responding to Adrian Zenz's Lies on Xinjiang's Birth Control: A Survey on Fertility Willingness of Ethnic Minority Women in Xinjiang
Lin Fangfei, , (in Chinese,
[athttps://www.xju.edu.cn/info/1023/8072.htm](https://www.xju.edu.cn/info/1023/8072.htm)).

⁵⁵ 80% of IUD placements in China preformed in Xinjiang?, China Daily, September 15, 2020,
<https://www.chinadaily.com.cn/a/202009/15/WS5f602278a3101ccd0bee06bf.html>

To the current author's knowledge, Zenz has not responded to this challenge to the statistics he relies upon.

But, for the reasons indicated above, even if Zenz's allegations of fact were true, they would not in and of themselves prove either element of the crime of "genocide".

3.3.4. - Placement in detention

According to Zenz,

Government documents bluntly mandate that birth control violations are punishable by extrajudicial internment in "training" camps. This confirms evidence from the leaked "Karakax List" document, wherein such violations were the most common reason for internment" citing his own article in the Journal of Political Risk of February 2020).

But, according to the Shahit Data Base, violation of birth quotas were the reason for placing 150 people in detention out of the 1480 surveyed.⁵⁶

In any event, as Zenz does not connect the alleged detentions to any plan to "destroy in whole or in part" the Muslim minorities, the excesses in detentions, assuming them to exist, would not be sufficient to prove "genocide".

4. - Conclusion

Zenz's own equivocation as to the existence of a "genocide" based on his allegations turns out to have been amply justified.

⁵⁶ Issues related to religion and heterodox views were the most frequently indicated (297 and 255 respectively). <https://shahit.biz/eng/#stats>.

Zenz never asks the question whether the Chinese Government, or the CCP, or anyone else, had an "intention to destroy in whole or in part" the Muslim minorities.

Even granting Zenz's assertion that there were policies implemented that prevented births among Xinjiang Muslims, he does not attempt to show that people in similar situations elsewhere in China would have obtained more favorable treatment, in particular under the family planning laws and regulations.

Finally, the usual doubts remain as to the authenticity of the documents relied upon by Zenz, as well as to the general reliability of his sources.