



AN INTERNATIONAL PEOPLE'S TRIBUNAL

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1 **10th September 2021 (3:31:17 – 4:17:50)**

2 **David Tobin**

3
4 *[Technical issues in the first minutes of the expert witness' presentation.]*

5 *COUNSEL – You have noted that the Autonomous regions have remained directly*
6 *supervised by the state council, the highest level of central government, and are more*
7 *effectively monitored than the provinces. When you used the terms “supervision” or*
8 *“monitoring”, is that in the traditional sense of oversight over Xinjiang or is it more*
9 *active management?*

10 DAVID TOBIN – It is both. The institutional oversight has not changed in that the
11 regions must report to the state council, and the XUAR government policy
12 implementation must be explained to the state council, and the state council comment
13 back. Any regional government documents are entirely focused on how they have
14 successfully implemented policies, not how they create policy. It is publicly available,
15 but it is written to the centre, it is meant for the centre to read, and they comment on
16 the effectiveness of the implementation (for example Xi Jinping at the 2020 Xinjiang
17 Working Group meeting commented on how effectively they had been implementing
18 his policies, and how successful they had been). Looking at an institution like the
19 Bingtuan, that was presumed to be semi-autonomous, but looking at all the documents
20 posted on a daily basis on local government websites for cadres, about how they do
21 their daily work, the emphasis is on the monitoring and supervision mechanisms,
22 essentially the meetings between party and state representatives to justify how policy
23 is being implemented and whether it is being effectively implemented. There is
24 evidence on paper, and also in terms of how people's daily work operates.

25 COUNSEL – You have explained the direct connection between official ethnic policy
26 and national security, and you have also noted that some of the terminology of these
27 ethnic policies appear in documentation related to internment camps, transformation,
28 education and propaganda videos illustrating vocational training. Is it correct that we
29 can ascribe direct responsibility for these policies to Xi Jinping and to senior state
30 officials?

31 DT – Yes. The policy is clearly made by Xi, as Xi has obviously centralised power
32 within the party, hence why he is being seen as responsible for these policies in the
33 literature but also in China. He is responsible for *making* policy. Obviously, that is very
34 broad, there is therefore a debate about whether Xi is aware of some details. But of
35 course, these policies have been enacted for a number of years. Xi uses increased
36 monitoring and supervision mechanisms, which were already in use. Policy has always
37 been implemented by the government but made by the Party. So, even if Xi did not
38 make specific orders in 2015 or 2017, the feedback mechanisms are such that he is
39 very aware of every detail of these policies, and he would know about this before I
40 would. That relationship between regional government and Party-state is very
41 important because that feedback mechanism is really focused on assuring the centre,
42 assuring Xi that these policies are being implemented. So, even if he did not give very
43 specific orders to use specific torture methods, he knows about this now, through
44 these mechanisms. He has the oversight to change this. But it is important to remind
45 ourselves that this ethnic policy is seen as a security matter, hence why it goes to the
46 very top. It might be unusual for a British audience to think of things like a language
47 policy as pertaining to security, but in Chinese politics is very clear that all ethnic
48 policies pertain to national security and sovereignty. So, language policy, religious
49 repression, torture methods are all directly related to China's top leaders' thinking on

50 security, hence why there are many areas of life in China that have become more
51 open, but not this one. This is seen as a national security matter. That is why there is
52 increasing monitoring.

53 *COUNSEL – There are a number of allegations being made about the commission of*
54 *crimes against the Uyghurs in Xinjiang. To what extent, if at all, could such crimes be*
55 *committed without the consent of the XPCC or the central party structures?*

56 DT – I cannot conceive how they would not know. Even if the cadres kept this secret,
57 everyone kept it secret, it is in the global news. This issue is seen as an issue
58 pertaining to the survival of the Chinese state. The top leaders prioritise this, and even
59 if the cadres don't give them information, which would be risking their careers and their
60 life, they know about this, from other channels and are very concerned about these
61 issues.

62 *COUNSEL – Would it be possible for the central party or government structures to be*
63 *aware of alleged crimes but at the same time not to have any direct role in ordering,*
64 *planning, or conspiring to commit these alleged crimes in Xinjiang?*

65 DT – No, because Xi appoints... I mean, the way Chinese politics has worked out is
66 as if it is a courtly drama of these different personalities and there is no way of
67 analysing these concepts in political science. But looking at how the institutional
68 framework works: Xi Jinping appoints Chen Quanguo, he appoints him because he
69 knows his work in Tibet, he is aware of that, and he knows he will apply this and follow
70 orders. That is why Chen Quanguo was given the position in the first place, and he is
71 monitored and supervised. Then, the Politburo standing committee meetings include
72 some of these people who are making these decisions in the Bingtuan and regional
73 government. Therefore, it is conceivable that a top leader does not know what

74 happens at a specific time on a specific day, some minor details, but it is not
75 conceivable that he does not know how these policies are being implemented.

76 *COUNSEL – Is it possible that there may be broad pronouncements of policy goals*
77 *announced by the central party or government but that in no way the central party or*
78 *government will have directed that those goals be pursued through the commission of*
79 *crimes?*

80 DT – I do not see how because Xi keeps giving speeches to celebrate how well this is
81 working. So, even if he was not directing it, he now has the authority to stop it. In fact
82 it is illegal to say Xi is not in command of the party in China. It is his core role to know
83 about national security. All the debates in Chinese politics are about “we need to
84 change national ethnic policy. After the 2009 violence, Wang Yang says: “if we don’t
85 change these policies, there will be more violence.” Wang Yang is now on the Politburo
86 standing committee, he is in discussions pertaining to national security that are being
87 directed by the Politburo standing committee. They are giving orders to regional
88 governments at all times. If a cadre were to instigate an act of violence that was
89 considered irrational or unethical, or could damage China’s national security, that
90 would be stopped. That is what Xi wants to know: are cadres implementing policy
91 correctly? And he has said they are implementing it effectively.

92 *COUNSEL – Could it be plausible that local cadres or keen, eager local officials may*
93 *commit these alleged crimes in order to efficiently implement broad central policy*
94 *goals, but that in reality this is a local affair, not directed from above?*

95 DT – It is not local affair directed from above because of the structure of the party-
96 state. The party-state is in command. What the debates in Chinese politics in political
97 science are often about is “how much control does the centre have on the provinces?”

98 Of course, many reforms come from *ad hoc* experimentation. Deng Xiaoping said
99 “reform!” and then people start experimenting. But this is an area of national security
100 where you are told if you criticise ethnic policy, that is against national security, that
101 could threaten national sovereignty. So, at a sociological level there are limitless
102 incentives not to experiment in this area. You are risking so much: why would a local
103 cadre do something that could potentially be seen as jeopardising national security?
104 In the period between now and when Xi came to power, when things were being re-
105 thought, there was a lot of experimentation at the local level, with private companies
106 or hospitals putting up signs saying: “No beards” or “No praying in the hospital,” that
107 did not seem to be directly ordered. That was an example of experimentation, but that
108 is going back to 2012. Those mechanisms are now such that, and this is common
109 knowledge, they are now rolled out as a policy.

110 *COUNSEL – You have noted that Wang Junzheng is the Bingtuan Party Commission*
111 *Secretary, and he is also a Xinjiang regional government senior official. You have*
112 *noted that he is an example of a cross-posting, could you explain to us the rationale*
113 *to have cross-posted him in that particular way?*

114 DT – I cannot speak to the inner workings of these individuals and the relationships
115 at that level but I can explain the political rationale as it presents itself to me: So, the
116 purpose of cross-posting is to create an interlocking structure between party and state,
117 with people in party and state positions, so the party remains in command, not simply
118 in paper but every meeting is going to have someone from the Party in the room, and
119 that shapes the discussion and what can be done. That is the principle. In terms of this
120 specific case, the Bingtuan historically had an uneasy place in Chinese politics
121 because it was formed from different factions of the civil war. So, Xi Jinping was
122 concerned about both its capacity to separate from China at one point, or at least from

123 the party, but also that it may implement policies, including policies that would be too
124 chauvinistic and would create problems for the Party with Uyghurs. What Xi Jinping
125 has done, and what he stresses in his speeches on the Bingtuan is that that
126 relationship now should not be *ad hoc*. It needs to be formalised, drawn into the centre,
127 institutionalised and not treated specially. It should be seen as in control by the Party,
128 directed by the Party, and it has to meet the Party's goals. So, my reading is that the
129 reason to do that is to enmesh the Bingtuan in the Party-state so that it has less
130 autonomy on a daily basis.

131 *PANEL – You wrote that “frank discussions” have now ended in the Politburo Standing*
132 *Committee, indicative of increased personal control by Xi Jinping and presumably*
133 *meaning increased personal responsibility for the actions of that committee, which*
134 *basically controls everything else. How do you know that when you also tell us that all*
135 *the discussions are only held in secret?*

136 DT – First of all, the notion of what was called “democratic centrism” was seen widely
137 both in the literature in China and outside as the mechanism to contest policy, which
138 is why it is so significant. During Hu Jintao's era, this notion of the “factions” was widely
139 acknowledged. People like [Shengli] worked on this issue specifically, saying that
140 these factions (the “princelings,” and the “Communist Youth League”) are open. So,
141 we did not know that the “frank discussions” were, and generally speaking we leave it
142 at that. This has changed now: first of all, there is the signalling, the fact that there is
143 no more discussion of “factions,” the fact that all the mainstream literature agrees that
144 there are no alternative ideas on the big issues being promoted. People are being
145 silent, they are saying “we can't talk to the media anymore,” and so forth. In terms of
146 the mechanisms, we know that the key mechanism that sort of hamstrung Hu Jintao's
147 final session in power was that Xi Jinping ended presidential term limits. This is a very

148 important matter because the last years of Hu's reign were entirely dominated by the
149 discussion of "who comes next?" So, they knew he was going soon and there is going
150 to be a new leader, whereas with Xi, we know that as things stand he does not leave
151 power after two limits so how can you challenge that? Secondly, Xi, unlike Hu does
152 not have a balance in the Politburo Standing Committee. The balance between those
153 factions was visible, demonstrable: we knew who was trained by the Communist Youth
154 League, and who was associated with the Princelings. Now, that make-up is not there,
155 it is dominated by what would be called the Princelings, and those that, in Chinese
156 politics, would be seen more as nationalists than socialists.

157 *PANEL – With reference to the Supreme People's court, you said that in 2005 they*
158 *were granted the right to pronounce death penalties. Do you have any knowledge of*
159 *the number of death penalties that have passed in China each year?*

160 DT – I have no statistics to hand, but I remember that the last few years of statistics
161 being released that China was executing more people than almost every other state
162 combined. So, those numbers are publicly available. The significance of that was that
163 the centre believed that the provincial courts were executing too many people. They
164 called it "low-quality sentences," implicitly acknowledging that they were not sure if
165 these trials were fair. That was the thinking behind: that the provinces had too much
166 autonomy, so it is part of Xi's way of reigning things in, but that issue of "low quality"
167 sentences predated Xi.

168 *PANEL – And the current situation? Do we know who is passing most of the death*
169 *penalties? Are they occurring at the level of the XPCC are they still occurring at lower*
170 *regional courts?*

171 DT – There are people speaking today that know more on this, but as I know it is the
172 Supreme People’s court who is executing the sentences.

173 *PANEL – Related to that, do the Bingtuan courts pass these sentences?*

174 DT – They were, just like all provinces and autonomous regions governments were
175 doing. That is why it was formerly called a “state within a state.” Of course, now the
176 centralisation of the Bingtuan and its increased monitoring and supervision mean it is
177 not really a state within a state, but it is simply a parallel state institution to the
178 autonomous regional government and subservient to the Party.

179 *PANEL – You talk about Bingtuan’s 2000 year-long strategic mission to secure*
180 *frontier, territory and assimilate minority people. Have you come across other such*
181 *long-term plans? Specifically, something we have come across regarding a three-point*
182 *plan that extends into decades, one of which is specifying either the elimination of*
183 *Uyghur people or control or re-education?*

184 DT – I have not seen that document so I cannot comment on it. My professional opinion
185 is that I would like to see the document, but also, when you read official Chinese
186 documents, and particularly the narratives that you refer to, there are many things that
187 are not considered controversial in China but that could not be said in English. When
188 you translate them into English, it does sound shocking. Obviously, China praises the
189 PRC, certainly the CCP praises itself for not adopting Western policies of coercion and
190 colonialism, even when the Bingtuan says that China has a 2000 years-old secular
191 mission in Xinjiang. For me, in terms of what the intent is behind all this, announcing
192 a policy of fusion that means assimilation is a smoking gun. Prior to that, regarding the
193 intergenerational debate on ethnic policy that I discussed, I was surprised at the lack
194 of comment on that debate, because you had all the most influential intellectuals in

195 China on the subject, debating ethnic policy for the first time. The “second generation”
196 policies that we largely see today in the areas of language, education, the crackdown
197 on religion, promote the *Zhonghua Minzu* (shared national identity), they have all been
198 adopted. The first generation’s argument was not that this was ethically wrong, but
199 that this would be ineffective, and the current policy of regional autonomy and economic
200 development would naturally assimilate Uyghurs. So, for me the intent that we are
201 talking about is there, but I cannot comment on the specific documents you mentioned.

202 *PANEL – Regarding the legal framework governing both the ethnic minority regions*
203 *and peoples themselves, could you tell us what the Constitution of the PRC says about*
204 *ethnic minority peoples? And then can you say a little bit more about what the national*
205 *law and particularly the 1949 law on regional autonomy says?*

206 DT – I always say politics is in command, not law. Today, in China, the Party is in
207 command, not the rule of law. The rule of law, as I understand it, is when the law is
208 above politics. There may be some exceptions in extreme cases of national security,
209 but in China, politics is in command so many issues pertain to national security, and
210 they come first. The constitution is not usually taken with the same level of gravity as
211 in other countries, because people know that the party, the politics is in command, and
212 that the constitution is not above them. In the constitution itself though, it does make
213 it very clear that there is ethnic equality before the law. All groups have the right to
214 speak their own languages, to practice their own religion, to develop their cultures as
215 they see fit. When I think of the constitution, the first thing that comes to my mind is
216 my time in Urumqi where I remember seeing, outside Islamic colleges, large political
217 propaganda slogans about the constitution, saying “you must respect the constitution”;
218 and one minute away from that site there were employment adverts for small
219 businesses, saying “Han only” or “No minorities.” People don’t take the constitution

220 seriously, but yes it does guarantee ethnic equality and preservation of language and
221 religion. Regarding the regional autonomy law, it is not above the Party. The law was
222 made in 1949. Mao Zedong was genuinely concerned that Xinjiang and Tibet, and
223 places with concentrated minority populations, who were called “barbarians” until that
224 point, would separate. So, Mao had promised independence but when he came to
225 power, he said “independence within socialism is reactionary,” so it was suddenly a
226 crime. It uses the language of “modernisation” of the region, which obviously can
227 denote urbanisation and infrastructure and so forth, but in my work it denotes the
228 removal or limiting of the use of Uyghur language and of Uyghur religion. So, it is talked
229 about in terms of ethnic problem, it is not about giving people autonomy, it is about
230 maintaining China’s sovereignty in regions that they were specifically insecure about
231 because they had little or no political control over. This law was reformed with minor
232 changes in 1984, and it has not changed since then.

233 *PANEL – Since your presentation was frustrated by technical issues, do you have*
234 *anything else that you would like to tell us? Also, have you been provided with the*
235 *research product of our team, in the form of an organigram, is there anything about*
236 *that organigram that you would say was inaccurate?*

237 DT – The main points of my presentation were covered. I would simply restate that all
238 ethnic policies in the PRC are considered a national security matter pertaining to
239 sovereignty. Ilham Tohti, for example, was prosecuted under the anti-separatism law,
240 not extra-legally like in internment camps operations, for academic writings on ethnic
241 policies. Frankly, his writing is more moderate than mine, less critical, because he was
242 trying to stay out of trouble. He would say the Party is doing very well in Xinjiang, its
243 focus on development is astute, it is raising the advanced productive forces of the
244 people. But he said that for these policies to really work, and for Uyghurs to remain

245 satisfied, they would need to address ethnic discrimination. That was why he was
246 prosecuted under law: because commenting on discrimination is seen as a threat on
247 sovereignty. Fusion politics does need to be historicised within Chinese political history
248 and society. Xi did not invent this idea: 1950's debates between anthropologists called
249 fusion a form of assimilation. Xi Jinping makes the policy, he appoints the people to
250 implement the policy, and he monitors it to ensure that it achieves its intended goals.
251 With regards to the organigram, I chose not to go through every detail in my
252 submission because there is a lot of things that could be said. I did look at it and spoke
253 to the Panel to say, "this is sound," but what I want to add to it is: the Party is in
254 command. If there are additional questions about the specific institutions or actors, I
255 would be happy to comment in the future.