

Second Prize
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*The Mighty are Exempt: United Nations Response to Unlawful
Actions by Great Power States*

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Introduction

The Genocide Convention was created in 1948 in response to the atrocities committed during World War II.¹ Since its conception, the convention has been used to indict and prosecute perpetrators of the Rwandan Genocide, the Cambodian Genocide, the Darfur Genocide, and more.² Although the convention has been utilized to indict

¹ United Nations Office on Genocide Prevention and the Responsibility to Protect, "Legal Framework," n.d.

² Outreach Programme on the 1994 Genocide Against and the Tutsi in Rwanda and the United Nations. "Preventing Genocide." United Nations, n.d.; John D. Ciorciaria and Anne Heindel, "Case 002 - the Centerpiece Case Against Senior Leaders: 'Cutting the Head to Fit the Hat,'" In *Hybrid Justice* (Michigan: University of Michigan Press, 2014), p. 136.; International Criminal Court, "Darfur, Sudan," pp. 2002-2005.

perpetrators of genocide in developing countries, it appears the convention has ‘met its match.’ Great power states pose unique challenges to the Genocide Convention and international law. Holding significant power within the international system while also sustaining powerful alliances, great power states such as the United States of America (US/USA), Russia, and, more recently, China have all enjoyed a sense of invincibility regarding adherence to international law. The United Nations is responsible for maintaining and facilitating cooperation, peace, and security throughout the international system. Through a series of laws and treaties, members are expected to adhere to the UN’s oversight. But what happens when states are so powerful that instruction from the UN can be essentially ignored?

Recent events in China’s Xinjiang region indicate that the Uyghur and other ethnic Turkish populations may be the victims of genocide. This article’s sections will build upon each other to create a full picture of how genocide is defined and, importantly, why this article chooses to classify it according to the Genocide Convention. To ensure clarity, a brief overview of China’s position in the international system will provide insight into why the country can seemingly perpetrate genocide with impunity. The bulk of this article will focus on the empirical data that supports the claim that the CCP is perpetrating genocide. UN and CCP responses will illustrate the international conversations and actions that have been taken, further illustrating why China’s position in the international system permits it to commit genocide. To close, a recap of the article will be framed within the conclusion to demonstrate that UN and international action against China in the face of genocide is vastly different than other, less powerful states within the international system.

Definitions and Concepts

Genocide

Consisting of 19 articles, the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (UNGC) outlines the conditions that constitute genocide. For the sake of time and space, this overview of the UNGC will highlight the ‘most important’ parts of the UNGC as it applies to the Uyghur case study.

The second article of the UNGC defines genocide through acts that, if committed with the “intent to destroy in whole or in part, a national, ethnical, racial or religious group...” are considered genocide.³ All crimes (domestic and international) are composed of two elements: the mental element or *mens rea* and the physical element, the illegal act.⁴ The defining feature of the UNGC’s definition of genocide is the specific intent element or *dolus specialis*. In the 1947 UNGC draft, the rationale for including this specific intent in the convention was to separate the act of genocide from other acts that also resulted in the destruction of non-combatants and civilians.⁵ The perpetrator’s state of mind must be attached to two acts: a specific act listed in Article II of the UNGC and that these acts were part of a wider plan to destroy a protected group in whole or in part. In the initial 1947 draft of the UN Genocide Convention, motive was a considered provision.⁶

It is challenging in many instances to find direct evidence of an intent to destroy a group in whole or in part, as was the case in the Holocaust, the Srebrenica Massacre, or the Rwandan Genocide. By objective standards, intent can be measured through official statements, state policy, a “general plan,” a pattern of conduct, repeated destructive acts, or a “strategically planned policy, manifested in actions which had a logical and coherent sequence.”⁷ If this evidence is not available, intent can be derived from the perpetrator’s action, such as inferring intention from words or deeds to illustrate a “pattern of purposeful action.”⁸ In the alleged genocide against Uyghurs, there have been a handful of documents that can illustrate intent. This article will rely on both explicit intent and inferred. This approach draws on examples from the International Criminal Tribunal for Rwanda (ICTR) for identifying and prosecuting genocide. The Judgement/Sentence Chamber of the ICTR found that actions such as the “physical targeting of the group or their property; the use of derogatory language toward members of the targeted group;

³ United Nations, Convention on the Prevention and Punishment of the Crime of Genocide.

⁴ “*Dolus Specialis*,” *Guide to Latin in International Law* (Oxford University Press, 2021).

⁵ Hiram Abtahi and Philippa Webb, *The Genocide Convention*, 1st ed. 2 (Boston: BRILL, 2008), pp. 230-231.

⁶ Abtahi and Webb, *The Genocide Convention*, pp. 978-990.

⁷ “*Bosnia and Herzegovina v Serbia and Montenegro*,” International Court of Justice (26 February 2007), pp. 142-143 & 196-197.

⁸ Helen Fein, “Genocide, Terror, Life Integrity and War Crimes: The Case for Discrimination,” In *Genocide: Conceptual and Historical Dimensions*, edited by George J Andreopoulos, 95-X (Philadelphia: University of Pennsylvania Press, 1997), p. 97.

the weapons employed and the extent of bodily injury; the methodical way of planning, the systematic manner of killing” could be indicative of a genocidal intent to destroy a group.⁹ However, for the aforementioned actions to be considered intent, the Chamber found that the number of victims must be considered.¹⁰ Devrim Aydin’s 2014 article adds insight to the question of intent. ---Aydin examines the means by which courts have proved genocidal intention. One method is the quantitative characteristics of the destroyed part of the group. Was it obvious that the violence was directed specifically towards a particular group?¹¹ Another way to determine intent is by the “repetition of the destructive and discriminating acts.”¹² The destruction of cultural manifestations has also been considered an indicator of genocidal intent by ad hoc courts.¹³

The second act (Article II (b)), causing serious bodily or mental harm to members of the group, has, however, posed challenges to the determination of genocide in terms of what specifically rises to the level of ‘serious...harm,’ as the UNGC does not outline specific ‘serious’ acts nor a threshold for such acts.¹⁴ An example of Article II(b) can be found in the proceedings of the Extraordinary Chambers in the Courts of Cambodia in reference to the Cambodian Genocide of 1975. The trial of Nuon Chea and Khieu Samphan, high-ranking leaders of the Khmer Rouge, illustrates that these individuals were complicit in genocide as they were aware of the serious harm Khmer Rouge cadres caused through general meetings, reports and involvement in the decision-making process¹⁵—widespread torture,¹⁶ sexual violence, forced marriage, imposed starvation¹⁷

⁹ Kayishema and Ruzindana, No. ICTR-95-01 (International Criminal Tribunal for Rwanda 21 May 1999), p. 43.

¹⁰ Ibid., p. 43.

¹¹ Aydin, “The Interpretation of Genocidal Intent under the Genocide Convention and the Jurisprudence of International Courts,” p. 438.

¹² Ibid., p. 438.

¹³ Ibid., p. 439.

¹⁴ Nema Milaninia, “Understanding Serious Bodily or Mental Harm as an Act of Genocide,” *Vanderbilt Journal of Transnational Law* 51, no. 5 (2018): p. 1383.

¹⁵ Nil Nonn and others, Case 002/01 Judgement (Extraordinary Chambers in the Courts of Cambodia August 7, 2014), 98., You Bunleng and Marcel Lemonde, Closing Order, No. 002/19-09-2007-ECCC-OCIJ (Extraordinary Chambers in the Courts of Cambodia 15 September 2010), p. 245.

¹⁶ Bunleng and Marcel Lemonde, Closing Order, No. 002/19-09-2007-ECCC-OCIJ, pp. 347-348

¹⁷ Ibid., pp. 303.

and other instances of severe inhumane treatment¹⁸ were routinely practiced as a form of discipline and interrogation.¹⁹ Evidence of similar inhumane treatment in CCP Vocational Schools can be found in the reports done by Amnesty International, Human Rights Watch and the Office of the High Commissioner of Human Rights.²⁰

The UNGC, as of 2024, has been ratified by 153 states, including China, which ratified the Convention in 1983.²¹ However, China's ratification came with *reservations*²² as the country does not consider itself bound by Article IX of the Convention.²³ Article IX specifies that the International Court of Justice is the judicial body tasked with resolving legal disagreements between two states regarding the UNGC. Article XI works in conjunction with Article VI to ensure that both individual perpetrators *and* perpetrator states *can* be held responsible for genocide. China's rejection of Article XI means that if China were to be formally accused of genocide through a petition, similar to what South Africa has done against Israel, they would neither recognize the inquiry nor participate in it.

¹⁸ Nonn and others, Case 002/01 Judgement (Extraordinary Chambers in the Courts of Cambodia 7 August, pp. 295-296.

¹⁹ Bunleng and Marcel Lemonde, Closing Order, No. 002/19-09-2007-ECCC-OCIJ, pp. 26, 107, 165.

²⁰ Amnesty International, "China: Draconian Repression of Muslims in Xinjiang Amounts to Crimes Against Humanity" (2021).; "Break Their Lineage, Break Their Roots: China's Crimes against Humanity Targeting Uyghurs and Other Turkic Muslims" (United States of America: Human Rights Watch, 2021).; "China's Algorithms of Repression: Reverse Engineering a Xinjiang Police Mass Surveillance App," United States of America: Human Rights Watch, 2019).; "Eradicating Ideological Viruses: China's Campaign of Repression Against Xinjiang's Muslims," (United States of America: Human Rights Watch 2018).; Office of the United Nations High Commissioner for Human Rights. "OHCHR Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China," (2022).

²¹ "Chapter IV Human Rights: 1. Convention on the Prevention and Punishment of the Crime of Genocide," United Nations Treaty Collection, 19 January 2024), p. 1.

²² According to the Vienna Convention on the Law of Treaties of 1969, Article 2(1)(d): a unilateral statement, however, phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State. The purpose of a reservation is to allow states to participate in treaties even if they have objections to specific provisions, leading to wider acceptance and participation in multilateral treaties.

²³ "Chapter IV Human Rights: p. 1. Convention on the Prevention and Punishment of the Crime of Genocide," p. 3.

Great Power State

Defining a great power state is vital as China's military and economic transformation has elevated its international status. In the early 1990s, articles increasingly highlighted China's rise, with the Journal on Foreign Affairs dubbing a 2002 collection "Rising China."²⁴ The focus shifted from whether China would challenge US hegemony to *when* it would do so.²⁵ The *China Threat* theory emerged, reflecting Western fears that China, viewed as a revolutionary state, might replace the American-led liberal democratic system. China's economic strength, military capabilities, and political orientation classify it as a great power state. G.R. Berridge and John W. Young define a great power state with four characteristics: 1) a strong economic base, 2) the ability to use force or soft power diplomacy to influence lesser states, 3) the capability to project power globally, and 4) a strong position in the international political system. These criteria are crucial in identifying a great power state.²⁶

Analyzing China's position in the 1990s reveals significant shifts in military and economic power. Economic reforms under Deng Xiaoping in the 1980s boosted China's economy, while its military expanded, notably with nuclear weapons development. Concurrently, the (CCP) shifted its international behaviour from bilateralism and rejecting American hegemony to embracing multilateralism.²⁷ China adhered to great power norms and enhanced its global influence by integrating into global institutions and taking on leadership roles. This strategic shift allowed China to assert its authority and grow its impact on the world stage.²⁸

Background to the Alleged Genocide of Uyghurs

This section begins with the rising tensions after the USSR's collapse in the 1990s, with growing unrest among Uyghurs and other ethnic groups against the CCP. The 9/11

²⁴ Manjari Chatterjee Miller, "The Active Rise of China," In *Why Nations Rise: Narratives and the Path to Great power state* (New York: Oxford University Press, 2021), p, 98.

²⁵ Miller, "The Active Rise of China," p. 98.

²⁶ G. R. Berridge and John W. Young, "What Is 'a Great Power State'?" *Political Studies* (1988): p. 234;

²⁷ Miller, "The Active Rise of China," p. 99.

²⁸ *Ibid.*, 99-100.

attacks in 2001 further fueled global Islamophobia, exacerbating tensions.²⁹ Throughout the 2000s and 2010s, riots erupted in Xinjiang's major cities.³⁰ By 2014, the CCP intensified surveillance and enacted laws targeting Uyghurs and their cultural and religious expressions.³¹ In 2017, independent investigations exposed widespread human rights abuses in Xinjiang.

The 1990s

The collapse of the USSR in 1991 sparked public unrest in Xinjiang against the Chinese Communist Party (CCP).³² Central Asian republics, once funded by Moscow, had criticized Chinese policies in Xinjiang. After the USSR's fall, surrounding central Asian countries gained their independence, giving rise to hopes for an independent 'Uyghuristan' in Xinjiang.³³ However, this regional independence motivated the CCP to tighten its grip on Xinjiang. The CCP's market expansions, like the trans-Eurasian railway and the "Develop the Great Northwest" campaign, fueled separatist sentiments.³⁴ The Baren uprisings in the 1990s highlighted the growing unrest. These protests, beginning in April 1988 in Ghulji and culminating in an armed uprising on 5 April 1990, in Baren township, saw protesters calling for Xinjiang's independence and attacking Han Chinese residents. These events underscored the escalating tensions between the CCP and the Uyghur population.³⁵

²⁹ Michael Dillon, "Escalation of Violence in the 1990s," In *Xinjiang in the Twenty-First Century: Islam Ethnicity and Resistance* (New York: Routledge, 2019), p. 34.

³⁰ Chien-peng Chung, "China's Uyghur Problem after the 2009 Urumqi Riot: Repression, Recompense, Readiness, Resistance," *Journal of Policing, Intelligence and Counter Terrorism* 13, no. 2 (2018): p. 185.

³¹ Chris Buckley, "China Is Detaining Muslims in Vast Numbers. The Goal: 'Transformation,'" *New York Times* (8 September 2018).

³² Dillon, "Escalation of Violence in the 1990s," p. 34.

³³ Dru C. Gladney, "Responses to Chinese Rule: Patterns of Cooperation and Opposition," In *Xinjiang: China's Muslim Borderland*, edited by S. Frederick Starr (Oxon: Routledge, 2004), p. 377.

³⁴ Gladney, "Responses to Chinese Rule: Patterns of Cooperation and Opposition," p. 377.

³⁵ Brent Hierman, "The Pacification of Xinjiang: Uighur Protest and the Chinese State, 1988-2002," *Problems of Post-Communism* 54, no. 3 (2007): p. 49.; Erkin Alptekin, "The April 1990 Uprising in Eastern Turkestan," *Journal - Institute of Muslim Minority Affairs* 11, no. 2 (1990): p. 254.

2000s

11 September 2001, marked a pivotal moment in American history, showing that the US was vulnerable to attacks on its most vital points. The terror attacks led the US to overhaul its domestic security and initiated an armed conflict against transnational terrorist organizations.³⁶ President George W. Bush responded with a *War on Terror*, during which fear of Middle Eastern and Muslim countries surged.³⁷ This period saw the conflation of *Muslims* and *terrorists* in public perception due to the language used by the US that targeted Islam rather than the individuals responsible for the attacks.³⁸ Before 2001, China labelled Uyghur rebellions in Xinjiang as separatist movements. Post-9/11, China joined other nations in branding its Muslim population, especially in Xinjiang, as terrorists.³⁹ The Chinese Communist Party (CCP) linked Uyghurs to Al-Qaeda, aligning this narrative with the Global War on Terror.⁴⁰ Five weeks after 9/11, a Chinese Foreign Ministry spokesperson declared Uyghurs a terrorist organization seeking to split China.⁴¹ In 2002, the PRC pushed for international recognition of the Uyghur-Al-Qaeda connection, asserting that 1990s rebellions in Xinjiang were terrorist attacks.⁴² However, these rebellions began as peaceful protests and did not meet the international definitions of terrorism at the time.⁴³

The CCP's handling of the *Shaoguan factory incident*⁴⁴ reignited discontent among the Uyghur population and sparked the infamous Ürümqi riots.⁴⁵ After the 2009 Ürümqi

³⁶ Jason Ralph, "The Use of Force after 9/11," In *America's War on Terror: The State of the 9/11 Exception from Bush to Obama* (Oxford: Oxford University Press, 2013), p. 22.

³⁷ *Ibid.*, 22-23.

³⁸ Kimberly A. Powell, "Framing Islam: An Analysis of U.S. Media Coverage of Terrorism Since 9/11," *Communication Studies* 62, no. 1 (2011):p. 96.; Angel M. Rabasa and others, *The Muslim World After 9/11* (California: RAND, 2004), p. 18.

³⁹ Sean R. Roberts, "How the Uyghurs Became a 'Terrorist Threat,'" In *War on the Uyghurs: China's Internal Campaign Against a Muslim Minority*, (Princeton: Princeton University Press, 2020), p. 69.

⁴⁰ *Ibid.*, pp. 66-67.

⁴¹ Roberts, "How the Uyghurs Became a 'Terrorist Threat,'" p. 69.

⁴² *Ibid.*, p. 72.

⁴³ *Ibid.*, p. 74.

⁴⁴ The Shogun Factory Incident occurred in the early morning hours of June 26. Han employees of the factory attacked Uyghur staff under false allegations of the sexual assault of a Han woman. 118 people were injured, most being Uyghur. The police disproportionately reprimanded Uyghur participants, and only punished Han participants 10 days later after civil pressures.

⁴⁵ Joanne Smith Finley, "'No Rights without Duties': Minzu Pingdeng [Nationality Equality] in Xinjiang since the 1997," *Inner Asia* 13 (2011): p. 74.

riots, ethnic cleavages between the Han Chinese and Uyghur populations escalated. A new aura of Han ethnic superiority had infected the Xinjiang region due to the media's constant depiction of the conflict between the Uyghurs and the CCP as a conflict among the region's people. Negative stereotypes that had remained relatively dormant since the 1997 Ghulja uprisings resurfaced in light of the Ürümqi riot. Uyghurs were painted as sexual predators, *barbaric*, *savage*, and religious extremists.⁴⁶

2010s

The CCP's response to terrorist events in China between 2014 to 2017 led to extreme measures against the Uyghur people, the "Strike Hard" campaign.⁴⁷ This included widespread surveillance, mass internment in camps, forced sterilization, and coerced labour.⁴⁸ A series of laws and ordinances provided vague justifications for detentions and punishments.⁴⁹

Since 2017, scholars have noted similarities between the situation in Xinjiang and the cultural genocide of Indigenous populations around the world in the 19th and 20th

Figure 1 — Mosque Destruction 2017 to 2019



Note: Lily Kuo. "Revealed: New Evidence of China's Mission to Raze the Mosques of Xinjiang." *The Guardian*, 7 May 2019.

⁴⁶ Ibid., 82-83.

⁴⁷ James A. Millward, "Colonialism, Assimilationism and Ethnocide (2000s–2020s)," In *Eurasian Crossroads: A History of Xinjiang* (London: C. Hurst & Co., 2021), pp. 864.-865.

⁴⁸ Paul Mozur and Nicole Perloth, "China's Software Stalked Uighurs Earlier and More Widely, Researchers Learn," *New York Times* (1 July 2020).

⁴⁹ "OL CHN 18/2019," Office of the High Commissioner of Human Rights (1 November 2019).; "OL CHN 21/2018," Office of the High Commissioner of Human Rights (12 November 2018).; Laney Zhang, "China: Revised Regulations on Religious Affairs," *Library of Congress*, 2017.

centuries.⁵⁰ The 2014 “People’s War on Terror” laid the groundwork for current policies targeting Uyghurs by associating their culture and religion with terrorism. Initially appearing to target the expression of Islam, this campaign evolved into an ideological struggle beyond Uyghur culture and calls for independence.⁵¹ Signs of mass internment emerged through reports of re-education centres (once used for hardened criminals) being repurposed to house Islamic ‘extremists.’⁵² In 2017, the CCP began destroying Islamic religious sites, including the Kargilik Grand Mosque in 2018⁵³ (see Figure 1), as a part of a campaign to suppress Uyghur culture, akin to acts deemed genocidal by the ICJ in *Bosnia v. Serbia*.⁵⁴

In 2019, over 400 pages of internal Chinese documents were leaked, revealing the crackdown on ethnic minorities in Xinjiang.⁵⁵ These documents detailed President Xi Jinping’s directives for the crackdowns.⁵⁶ Xi’s speeches called for an uncompromising struggle against terrorism and separatism.⁵⁷ The leaks included internal speeches, surveillance reports,⁵⁸ and photos of prisoners arrested for reasons ranging from reading Islamic scripture to wearing Muslim attire.⁵⁹

In 2021, Amnesty International (AI) and Human Rights Watch (HRW) conducted independent investigations in the Xinjiang region upon increased reports of human rights violations, and several confidential documents were leaked. HRW and AI found examples of mass arbitrary detention and arrest, torture, forced disappearances, mass

⁵⁰ Roberts, “Cultural Genocide, 2017-2020,” p. 200.

⁵¹ *Ibid.*, 201.

⁵² Roberts, “Cultural Genocide, 2017-2020,” p. 202.

⁵³ Lily Kuo, “Revealed: New Evidence of China’s Mission to Raze the Mosques of Xinjiang,” *The Guardian* (May 7, 2019).

⁵⁴ “*Bosnia and Herzegovina v Serbia and Montenegro*,” pp. 185-186.; Nathan Ruser and others, “Cultural Erasure: Tracing the Destruction of Uyghur and Islamic Spaces in Xinjiang,” Australian Strategic Policy Institute (2020): pp. 10-27.

⁵⁵ Austin Ramzy and Chris Buckley, “‘Absolutely No Mercy’: Leaked Files Expose How China Organized Mass Detentions of Muslims,” *The New York Times* (16 November 2019).

⁵⁶ Ivan Watson and Ben Westcott, “Watched, Judged, Detained: Leaked Chinese Government Records Reveal Detailed Surveillance Reports on Uyghur Families and Beijing’s Justification for Mass Detentions,” *CNN* (2020)

⁵⁷ Ramzy and Buckley, “‘Absolutely No Mercy’: Leaked Files Expose How China Organized Mass Detentions of Muslims.”

⁵⁸ *Ibid.*

⁵⁹ “The Xinjiang Police Files,” n.d.

surveillance, cultural genocide, forced labour, and sexual violence committed against the Uyghur population.⁶⁰

CCP Actions that Constitute Genocide

Using the information provided from private investigations done by AI and HRW in conjunction with the report released by the OHCHR in 2021 to verify other reports, personal testimonials, academic investigations, and media, this section will use the Genocide Convention to illustrate the specific actions that the PRC has executed that can be considered genocidal. Using the Genocide Convention as a blueprint, this section will analyze each element listed in the convention as it applies to the Xinjiang region in China. See Table 1 for a brief overview of the genocidal actions and how actions taken in the Xinjiang region can be categorized.⁶¹ It is important to note that each element of the

Table 1 – CCP Acts that Constitute Genocide

Intent	High-level CCP official's orders	<i>Strike Hard Campaign</i>	Forced family planning campaign	Destruction of culturally significant spaces and sites
Protected Group	The Uyghurs and Muslim minorities in Xinjiang are being targeted based on both their religion and ethnicity .			
Killing members of the group	Causing serious bodily or mental harm to members of the group	Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part	Imposing measures intended to prevent births within the group	Forcibly transferring children of the group to another group
<ul style="list-style-type: none"> - Prominent Uyghur leaders sentenced to death - Reports of mass deaths due to imprisonment 	<ul style="list-style-type: none"> - Systematic torture and cruel treatment, specifically in VETC facilities - Sexual Violence, exploitation and humiliation, specifically in VETC facilities - Psychological torture 	<ul style="list-style-type: none"> - Forced labour - unsanitary conditions in VETC facilities that promote disease - lack of medical care - cramped accommodations - Inadequate food 	<ul style="list-style-type: none"> - Forced Sterilization - Forced Birth Control - Forced abortion - Men of childbearing age are targeting for internment at VETC facilities 	<ul style="list-style-type: none"> - Transfer of children to state-run facilities - A vast network of highly securitized boarding schools and orphanages for Uyghur children across Xinjiang

genocide convention does not have to be acted upon. Rather, if one element is committed,

⁶⁰ *Break Their Lineage, Break Their Roots: China's Crimes against Humanity Targeting Uyghurs and Other Turkic Muslims* (United States of America: Human Rights Watch, 2021).; Amnesty International, "China: Draconian Repression of Muslims in Xinjiang Amounts to Crimes Against Humanity" (2021).

⁶¹ In the interest of space, each element of the UNGC's Article II (b) will *not* be elaborated upon; rather, this research will highlight the most blatant examples.

the event can be considered genocide. Firstly, this section will address the physical elements (Article II) constituting genocide under the Genocide Convention, then it will address the mental element of genocide, *dolus specialis*, the intent to destroy a protected group in whole or in part.

The second element listed under the genocide convention considers “causing serious bodily or mental harm to members of the group” a genocidal action.⁶² There has been an abundance of reports that demonstrate the extreme conditions within the Xinjiang region. During AI and HRW’s investigations, several instances of torture and ill-treatment were discovered. Systematic torture was reported to be rampant throughout detention centres, daily dehumanization and physical torture such as beatings, electric shocks, solitary confinement, deprivation of water, sleep, and food, exposure to extreme cold, and the use of restraints and torture tools such as tiger chairs.⁶³

The other method by which Article II (b) of the Genocide Convention has been fulfilled is through systematic mass surveillance throughout the Xinjiang region and surrounding areas. China has blanketed the country with closed-circuit surveillance televisions (CCTV), allowing state officials to monitor Chinese citizens nearly 24/7.⁶⁴ Integrated Joint Operations Platforms (IJOP) have been integral to the Chinese state’s mass surveillance operation. IJOP apps give authorities access to an individual’s private information. HRW found that IJOP systems were particularly involved in the Xinjiang region, collecting massive amounts of data on everyone.⁶⁵ Apps on the IJOP network contain facial recognition software, allowing authorities to verify individuals and their documents.⁶⁶ The IJOP also allows Chinese authorities to access wireless networks, giving them access to private chat communications.⁶⁷ Another method of Chinese mass surveillance unique to the Xinjiang region is the system of “convenience police

⁶² General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide (1948), Article II.

⁶³ Amnesty International, “China: Draconian Repression of Muslims in Xinjiang Amounts to Crimes Against Humanity,” 2021.

⁶⁴ “China’s Algorithms of Repression: Reverse Engineering a Xinjiang Police Mass Surveillance App,” (United States of America: Human Rights Watch, 2019), p. 12.

⁶⁵ *Ibid.*, p. 2.

⁶⁶ *Ibid.*, p. 21.

⁶⁷ *Ibid.*, p. 22.

stations.”⁶⁸ These stations are erected on nearly every street corner in Xinjiang, creating a dense control network. This research is convinced that the role technology plays in conducting invasive surveillance and the threat of punishment classifies it as “serious mental harm,” within the context of the UNGC.

Genocidal intent may be determined through the acts of the perpetrator.⁶⁹ This can be done through quantitative characteristics of the destroyed part of the group. For example, during the proceedings at the International Criminal Tribunal for Rwanda, *Kayishema-Ruzindana* (95-01-T, Judgement), the specific intent was proven by the amount of Tutsi people killed in proportion to other ethnicities.⁷⁰ A similar situation can be found in China concerning the disproportional amount of Uyghur people who have been detained, and their detainment has resulted in death.⁷¹ Another method to prove genocidal intent can be done through the repetition of destructive and discriminating acts.⁷² As mentioned in the background section of this article, discriminatory measures against the Uyghurs have been occurring for decades. Restrictions to travel, discriminatory practices from Han Chinese residents of the Xinjiang region, and profiling by Chinese authorities.⁷³ Largely, the systematic mass arbitrary arrests reflect the deeply rooted discriminatory practices against the Uyghur people and the Muslim minority as a whole.⁷⁴ Finally, genocidal intent can also be proven through systematically directed atrocities against a protected group. The ICC has accepted this method of determining intent in the case against Omar Hassan Ahmed Al-Bashir.⁷⁵ In conjunction with the discrimination faced by the Uyghur people in the Xinjiang region, the Uyghurs have

⁶⁸ “China’s Algorithms of Repression: Reverse Engineering a Xinjiang Police Mass Surveillance App,” p, 15.

⁶⁹ This is a controversial approach to proving a perpetrator's intention to destroy a group in whole or in part through genocidal means. However, this approach is still used by international lawyers.

⁷⁰ *Kayishema and Ruzindana*, No. ICTR-95-01 (International Criminal Tribunal for Rwanda 21 May 1999), pp. 197-198.

⁷¹ *Radio Free Asia*, “At Least 150 Detainees Have Died in One Xinjiang Internment Camp: Police Officer,” (29 October 2019).; “The Xinjiang Police Files,” n.d.

⁷² Aydin, “The Interpretation of Genocidal Intent under the Genocide Convention and the Jurisprudence of International Courts,” p. 438.

⁷³ Roberts, “Cultural Genocide, 2017-2020,” p. 200.

⁷⁴ Roberts, “Introduction,” p. 2.

⁷⁵ Aydin, “The Interpretation of Genocidal Intent under the Genocide Convention and the Jurisprudence of International Courts,” pp. 439-440.

endured systematic human rights violations such as arbitrary arrest, cultural destruction, forced labour, and more.⁷⁶

Finally, it is essential that the victims of genocide are deliberately targeted due to their real or *perceived* membership to a protected group: national, racial, ethnic and religious.⁷⁷ As detailed by the Genocide Convention, genocide can be committed against only a part of a group, but it *must* be identifiable and substantial. To satisfy this requirement of the Genocide Convention, this article has illustrated the clear target group are the Uyghurs present and, on a wider scale, the Muslim community in the Xinjiang region.⁷⁸

The CCP has committed several violations of the UNGC, illustrating the Party's continued intentions to continue its genocidal behaviour. As explained, the CCP has been long engaged in a systematic plan to eradicate Uyghurs into Chinese culture. As briefly touched on through the OHCHR's report on the subject, the UN is aware of the situation, but what is the extent of their response if the CCP continues its behaviour into 2025?

United Nations Response to Chinese Genocidal Behaviour

The UN has responded in a few ways in light of increased allegations from private investigations, individuals, advocacy groups, and the media. Although the UN response has lacked action, statements and one assessment have been released detailing the human rights situation in the Xinjiang region. This section will examine four UN documents released within the last five years. The first report was released in 2022 by the OHCHR. After significant pushback from the CCP, the report was finally published and detailed extensive human rights violations. The report concluded with a list of recommendations for the international community and China. Second, the brief discussion at the fifty-first UN Human Rights Council session. Third, fifty countries made a joint statement on behalf of the UN General Assembly on 31 October 2022. Finally, the United Nations Committee

⁷⁶ Amnesty International, "China: Draconian Repression of Muslims in Xinjiang Amounts to Crimes Against Humanity," (2021).

⁷⁷ General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide (1948), Article II.

⁷⁸ "Uyghurs in China," *Congressional Research Service* (2021): p. 1.

on the Elimination of Racial Discrimination called for further investigation into human rights violations in the Xinjiang region.

The Office of the High Commissioner of Human Rights

On August 31, 2022, the OHCHR released its assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region in China. In 2017, the OHCHR began to receive an influx of concerning reports and allegations regarding the treatment of Uyghur people and other Muslim ethnic minority communities. In 2018, the UN Working Group on Enforced or Involuntary Disappearances reported a dramatic increase in cases from the Xinjiang region with the introduction of “re-education” facilities.⁷⁹ The UN Working Group on Enforced or Involuntary Disappearances called attention to the alarming reports of the mass detention of ethnic Uyghurs and other Muslim minorities under the pretext of countering religious extremism and terrorism in Xinjiang.⁸⁰ The official Chinese explanation for the “re-education” was to rehabilitate minor offenders back into Chinese society. In light of the 2017 rise in allegations and the reports submitted by the UN Working Group on Enforced or Involuntary Disappearances, the OHCHR embarked on its own investigation of the human rights situation in the Xinjiang region of China.⁸¹ The OHCHR report used OHCHR standard methodology to investigate the allegations by conducting forty in-depth interviews with individuals with first-hand knowledge and experience in the situation; twenty-six were former detainees.⁸²

The OHCHR report begins with addressing China’s conceptualization of *terrorism* and *extremism*. The report noted that China’s definitions seem to be purposefully broad and lack a clear definition of objectives.⁸³ To further the ambiguity of China’s counter-terrorism approach, the activities that constitute genocide are equally broad and open-

⁷⁹ Office of the United Nations High Commissioner for Human Rights, “OHCHR Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China” (31 August 2022), p. 1.

⁸⁰ Information Office of the People’s Government of and Xinjiang Uyghur Autonomous Region, “Fight against Terrorism and Extremism in Xinjiang: Truth and Facts,” (August 2022), p. 2.

⁸¹ Office of the United Nations High Commissioner for Human Rights, “OHCHR Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China,” p. 1.

⁸² *Ibid.*, p. 2.

⁸³ Standing Committee of the National People’s Congress, “Counter-Terrorism Law of the People’s Republic of China” (China Law Translate, 2015), Article 3.; “Xinjiang Implementing Measures for the P.R.C. Counter-Terrorism Law (2018)” (China Law Translate, 2018), Article 3.

ended, such as the organization of, planning, preparing for or conducting activities that will cause or attempt to cause “casualties, property loss, damage to public facilities, disruption of social order and other serious social harm.”⁸⁴ Other activities include advocating for terrorism or instigating terrorism, the organization of terrorist organizations, providing funds, material or services to terrorist organizations, and “other terrorist activities.”⁸⁵ China’s definition of *extremism* also lacks specificity. The Xinjiang Religious Affairs Regulation defines *extremism* as “the distortion of religious teachings and the promotion of extremism, as well as other extremes of thought, speech and behaviour such as the promotion of violence, social hatred and anti-humanity.”⁸⁶ The OHCHR called attention to the ambiguity of China’s definition to illustrate how Chinese authorities can arbitrarily label innocent religious practices as extremist and terrorist activities. Listed within the OHCHR report are actions that are considered to be “primary expressions of extensification.”⁸⁷ Many of these actions were considered to be conduct that falls within the fundamental freedoms and are not necessarily linked with extremism. Actions include not listening to the radio or watching TV, fasting, growing long beards, and not smoking or drinking.⁸⁸ The OHCHR also found examples of coercive family planning measures detailed in the *Learning and Identifying 75 Religious Extreme Activities in Parts of Xinjiang* documents.⁸⁹ The report continues to affirm the results of other investigations performed by HRW, AI, news media and individual reports.⁹⁰

The report then moves into its investigation of specific allegations made by independent investigations such as HRW, AI, news media, and other individual reports. The accusation of arbitrary mass arrests and the use of “Vocational Education and Training Centres” (VETC) was the first allegation detailed in the report. OHCHR found numerous examples of mass detentions in the Xinjiang region through interviews and

⁸⁴ Xinjiang Implementing Measures for the P.R.C. Counter-Terrorism Law (2018)” (China Law Translate, 2018), Article 6.

⁸⁵ *Ibid.*, Article 6.

⁸⁶ Office of the United Nations High Commissioner for Human Rights, “OHCHR Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China,” p. 7.

⁸⁷ *Ibid.*, p. 8.

⁸⁸ Xinjiang Documentation Project, “Learning and Identifying 75 Religious Extreme Activities in Parts of Xinjiang” (The University of British Columbia, 2017), pp. 2-4.

⁸⁹ *Ibid.*, p. 5.

⁹⁰ Office of the United Nations High Commissioner for Human Rights, “OHCHR Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China,” pp. 8-15.

investigation.⁹¹ VETC facilities were described as being temporary and voluntary facilities to rehabilitate minor criminal offenders. Through OHCHR's investigation, it was apparent that these facilities were hardly vocational and temporary. Individuals interviewed reported being taken to VETC facilities by armed authorities without access to a lawyer through due process.⁹² Once in the facilities, interviewees reported occasional visits and phone calls to the family under strict supervision. Detainees were not told the duration of their stay in the facilities and were expected to participate in re-education activities.⁹³ OHCHR raised concern as the lack of due process and legal representation was a clear violation of international human rights law, and the arbitrary and unclear nature of the arrests. Furthermore, OHCHR expressed concern regarding the nature of the education programmes in VETC facilities. As described by Chinese officials, these facilities are designed to rehabilitate people who have been influenced by "extremism." However, the means by which the "re-education" is delivered has suggested to the OHCHR that the Uyghur and Muslim cultures are being deliberately eradicated by limited cultural expression.⁹⁴

OHCHR found evidence of torture and ill-treatment in the VETC facilities reporting that detainees were subjected to electroshock and shackling as a means to elicit information. Interviewees reported having to take shifts sleeping to ensure their cell-mates were not praying or performing religious practices.⁹⁵ The interviewees reported instances of rape and sexual violence during their time at VETC facilities. The OHCHR stated that there is enough evidence to assert that there is a pattern of arbitrary mass arrests that disproportionately affects the Uyghur and Muslim populations in the Xinjiang region. At the time of the report, the CCP had indicated that VETC facilities were closed and all "trainees have graduated," suggesting to the OHCHR that the facilities are no longer in use. However, OHCHR was not in a position to confirm this assumption.⁹⁶ Today, reports continue to leak from the Xinjiang region, demonstrating that VETC

⁹¹ Ibid., p. 12.

⁹² Ibid., pp, 12-13.

⁹³ Ibid., p. 13.

⁹⁴ Ibid., p. 16.

⁹⁵ Ibid., p. 22.

⁹⁶ Ibid., p.18.

facilities have continued to ‘admit new students and have increased their operations.’⁹⁷ The report transitioned towards prison sentences and criminal arrests, as evidence indicated that there had been an influx of Uyghur and Muslim minority arrests that have led to lengthy prison sentences throughout the Xinjiang region.⁹⁸

The assessment found evidence of coercive family planning and the restriction of reproductive rights that targeted Uyghur and Muslim people. Interviews reported forced abortions, forced birth control, and coercive measures to minimize Uyghur and Muslim birth rates.⁹⁹ Young Uyghur adults were offered educational benefits to partner with Han Chinese to create a blended family.¹⁰⁰ The OHCHR assessment found that the Uyghur birth rates in the region had dropped by about 12 percent between 2016 and 2018.¹⁰¹ The assessment then looked at the increasing reports of forced labour. OHCHR found that while in VETC facilities, people were being sent throughout the Xinjiang region as a part of “surplus labour” and “labour transfer” schemes.¹⁰² The OHCHR also found evidence that the CCP had intentionally made job opportunities scarce for Uyghur and Muslim people, forcing them to take work within the VETC system.¹⁰³ The assessment examined reports of family separations due to the mass arrests and the heightened security around the Xinjiang region. As a result of the mass arrests, thousands of children have been left ‘parentless.’ Traditionally, the child is supposed to be rehoused with extended family. However, the OHCHR assessment increasingly found that children were being sent to state-run facilities.¹⁰⁴

The ramifications of High Commissioner Michelle Bachelet’s report prompted China to release a detailed report of its own, *Fight against Terrorism and Extremism in Xinjiang: Truth and Facts*, which will be discussed in the following section.¹⁰⁵ Although

⁹⁷ Lauren Baillie and Matthew Parkes, “Don’t Look Away from China’s Atrocities Against the Uyghurs,” *United States Institute of Peace* (6 April 2023).

⁹⁸ Office of the United Nations High Commissioner for Human Rights, “OHCHR Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China,” pp. 20-21.

⁹⁹ *Ibid.*, p. 35.

¹⁰⁰ *Ibid.*, p. 33.

¹⁰¹ *Ibid.*, p. 34.

¹⁰² *Ibid.*, p. 37.

¹⁰³ *Ibid.*, p. 38.

¹⁰⁴ *Ibid.*, p. 41.

¹⁰⁵ Information Office of the People’s Government of and Xinjiang Uyghur Autonomous Region, “Fight against Terrorism and Extremism in Xinjiang: Truth and Facts,” (August 2022).

the OHCHR report was a step in the right direction in regard to the situation in Xinjiang, it did not prompt action from the international community. Bachelet was careful not to mention the term 'genocide' as it could have triggered the UN, member states, and China into action. Although the assessment ended with several recommendations: China to release all individuals arbitrarily arrested; clarify the location of missing individuals and aid in reunification; conduct a review of the legal framework that governs national security, counter-terrorism and minority rights in Xinjiang; conduct human rights investigations; cooperate with the International Labour Organization; review the legality of surveillance measures; provide reparations to the victims; clarifies the alleged destruction of Islamic religious sites; cease all intimidation methods; ratify the International Covenant on Civil and Political Rights, among other international conventions; invite UN and advocacy groups to conduct an unrestricted country visit; and continue to work with OHCHR.¹⁰⁶ China has yet to satisfy any of the above recommendations set out by the OHCHR.

United Nations Human Rights Council and the United Nations General Assembly

At the 39th meeting on 7 July 2022, representatives from the United States and Norway spearheaded the introduction of a draft debate concerning the human rights situation in Xinjiang at the UN Human Rights Council. This draft, supported by a coalition of 35 countries, aimed to address the concerning findings highlighted in an OHCHR assessment.¹⁰⁷ During the session, American Ambassador Michèle Taylor delivered a poignant speech, emphasizing the imperative nature of the Council's responsibility in confronting human rights violations globally.¹⁰⁸ Despite objections from the Chinese delegation, Taylor reiterated the significance of the OHCHR report and urged the Council to prioritize the protection of human rights universally, without discrimination.¹⁰⁹ However, despite the advocacy efforts and the gravity of the situation, the draft debate was ultimately rejected. The voting outcome saw 19 countries against,

¹⁰⁶ Office of the United Nations High Commissioner for Human Rights, "OHCHR Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China," pp. 43-45.

¹⁰⁷ United Nations Human Rights Council, "Report of the Human Rights Council on Its Fifty-First Session" (United Nations Human Rights Council, 6 December 2022), p. 19.

¹⁰⁸ Michèle Taylor, "Introducing Draft Decision L.6 'Debate on the Situation of Human Rights in the Xinjiang Uyghur Autonomous Region, China' Statement by Ambassador Michèle Taylor" (51st Session. United Nations Human Rights Council, 2022).

¹⁰⁹ Ibid.

17 in favour, and 11 abstentions, effectively halting further deliberation on the matter within the UN.¹¹⁰ Simultaneously, fifty member countries of the United Nations expressed profound apprehension regarding the plight of Uyghur and other minority populations in Xinjiang. They echoed support for the OHCHR's findings, denouncing the widespread human rights violations, including arbitrary detentions, invasive surveillance, torture, cultural suppression, and forced labour. In a joint statement, these nations criticized China's dismissive stance towards the OHCHR report and urged compliance with international human rights standards.¹¹¹ They called upon the Chinese government to not only implement the OHCHR's recommendations but also to release all arbitrarily detained individuals and provide information on missing family members.¹¹²

United Nations Committee on the Elimination of Racial Discrimination

On 24 November 2022, the UN Committee on the Elimination of Racial Discrimination (CERD) urged China to investigate alleged human rights abuses in Xinjiang, including torture, forced labour, and disappearances.¹¹³ CERD demanded the immediate release of arbitrarily detained individuals and the cessation of intimidation tactics against Uyghurs and Muslims. Recommendations were made for a comprehensive review of China's legal framework governing national security and minority rights in Xinjiang to ensure compliance with international conventions.¹¹⁴ CERD emphasized states' responsibility to end genocide, war crimes, and ethnic cleansing through lawful means.¹¹⁵

¹¹⁰ United Nations Human Rights Council, "Report of the Human Rights Council on Its Fifty-First Session" (United Nations Human Rights Council, 6 December 2022).; Emma Farge, "U.N. Body Rejects Debate on China's Treatment of Uyghur Muslims in Blow to West," *Reuters* (6 October 2022).

¹¹¹ "Joint Statement on Behalf of 50 Countries in the UN General Assembly Third Committee on the Human Rights Situation in Xinjiang, China" (Government of Canada, 2022).

¹¹² *Ibid.*

¹¹³ "China: UN Committee on the Elimination of Racial Discrimination Calls for Probe into Xinjiang Rights Violations" (24 November 2022).

¹¹⁴ Committee on the Elimination of Racial Discrimination, "Prevention of Racial Discrimination, Including Early Warning and Urgent Action Procedure" (108th Session, 2022), p. 2.

¹¹⁵ *Ibid.*, p. 3.

The UN responses, as detailed above, have lacked enforcement. Although a series of UN bodies have put forward a series of recommendations, there has been little improvement in the Xinjiang region. Even with several organizations urging the UN to act in response to the human rights violations in Xinjiang, the UN has yet to call upon members to take action. Rather, in each UN report, the bodies urged the CCP to investigate the allegations, release imprisoned individuals, and cease all alleged human rights violations.¹¹⁶ The problem that has risen, as briefly mentioned by American Ambassador Taylor, is that as a powerful nation, China has been able to avoid much discussion on the matter and has faced virtually no UN-encouraged repercussions for its actions.

When it comes to Genocide, the UN has a habit of merely naming and shaming the perpetrators without imposing real consequences for despicable actions. Especially when navigating great power states. Examples are seen when the US flagrantly ignored the UN and engaged in an unsanctioned invasion of Iraq in 2003. The UN's Secretary-General at the time, Kofi Annan, deemed that the invasion was not in line with the UN Charter.¹¹⁷ Even with a blatant violation of international law, the UNSC did not pass any resolution to directly penalize the US as the US and its allies (UK and France) hold permanent seats. Further, the US has not ratified the Rome Statute; thus, Americans are generally not subject to its jurisdiction.¹¹⁸ Although the *naming and shaming* tactic is not limited to great powers, it also targets middle and low powers with similar results. Myanmar, a low-power state, has been able to commit genocide for the last several years with little serious consequence from the international system. The UN and wider international community have condemned the actions of the Myanmar military, calling for accountability and justice. The International Court of Justice ordered Myanmar to take provisional measures to protect the Rohingya, and the ICC is currently (as of 2024) conducting a preliminary investigation into the alleged crimes.¹¹⁹ In the face of ongoing genocide, Myanmar enjoyed China's UNSC veto of a 2007 draft resolution to permit humanitarian aid and general conflict resolution in the country.¹²⁰ It was only in 2022 that

¹¹⁶ *International Service for Human Rights*, "Despite States' Failure, Uyghurs and Rights Groups Won't Give up Efforts to Hold China Accountable at the UN" (October 2022), p. 2.

¹¹⁷ *UN News*, "Lessons of Iraq War Underscore Importance of UN Charter - Annan" (16 September 2004).

¹¹⁸ Rome Statute of the International Criminal Court (2002), p. 3.

¹¹⁹ "Information for Victims: Bangladesh/Myanmar," (International Criminal Court, 2019).

¹²⁰ "S/PV.5619," 62. United Nations: United Nations Security Council (12 January 2007).

the UNSC was able to pass Resolution 2669 (China abstained from voting, as did Russia and India).¹²¹ A significant challenge that faces the UN, ICC, and ICJ is the lack of *real* enforcement mechanisms and states abilities to skirt punishment by leveraging their power. The following section will navigate this question as it relates to China.

Great Power States, Genocidal Behaviour and the UN

The information discussed throughout the article leads to the overarching question of this article: why has the UN responded the way it has to genocidal behaviour in China? With any piece of customary law, there are limitations to what it can and cannot enforce, prevent or prosecute. Firstly, the definition of genocide has caused problems for several years preceding the alleged Uyghur Genocide in China and continues to create problems for the UN. The definition has been considered too narrow for the modern manifestations of genocide.¹²² In concordance with the definition of genocide, *proving* that a genocide has occurred is extremely difficult, as it comes to proving intent and that all required elements of the definition have been satisfied: the target being a protected group, the intent is proven, and one act of genocide is present.¹²³ Second, the position of a great power gives a state more bargaining power within the international system on the merit of its political influence, military capacity, and economic role. Finally, if China is formally accused of committing genocide, the international system would *ideally* be required to intervene, which in turn could cause major ramifications, as China has made it clear it does not accept the accusation. A conflict of a Sino-US war could have repercussions that are echoed through many facets of society: economically, politically and militarily.¹²⁴

¹²¹ "Resolution 2669," United Nations: United Nations Security Council (21 December 2022).; Abdul Ghafur Hamid, "Security Council Resolution 2669 (2022) on the Situation in Myanmar: Too Little, Too Late?" *EJIL: Talk* (4 January 2023).

¹²² Peter Quayle, "Unimaginable Evil: The Legislative Limitations of the Genocide Convention," *International Criminal Law Review* 5, no. 3 (2005): p. 367.

¹²³ General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide (1948), Article II.

¹²⁴ James Dobbins and others, "What's the Potential for Conflict with China, and How Can It Be Avoided?" (Santa Monica: RAND Corporation, 2012).

Complications and shortcomings within the definition of Genocide have been the baseline rationale for the UN response to Chinese genocidal behaviour in the Xinjiang region. Unsurprisingly, the UN may be reluctant to accuse the CCP of genocidal behaviour for fear that the actions do not exactly fit into the UN definition of genocide. Although not an excuse for the inaction, a lack of concrete evidence can put the legitimacy of the UN and the ICC in jeopardy. Further, as mentioned in the ‘CCP Actions that Constitute Genocide,’ section of this article, there was very little activity that would be considered the “direct killing of ethnic and religious members.”¹²⁵ This could also lend to the challenge of the situation, as generally, during genocidal events, the murder of the target group is explicit. Proving that genocide has occurred is also very difficult, as touched on in the previous paragraphs. This is due to the definition and the regimented elements required to prove genocide in a court. Proving intent has become an issue for many prosecutors, as the intent is a psychological condition and is not always explicitly expressed.¹²⁶ “Intent to destroy” fails to recognize the fact that proving intent in practice is very difficult, often resulting in the perpetrator escaping conviction for genocide.¹²⁷

In the case of China and the alleged genocide of Uyghurs and other Muslim minorities in the Xinjiang region, the UN has avoided using the word genocide. Instead, as reflected through the documents released regarding the situation, the UN has considered it *grave human rights violations, systematic violations of human rights*, and more.¹²⁸ These terms, although powerful, do not invoke the same response that *genocide* does. China has also been able to keep the situation in Xinjiang relatively quiet. The OHCHR High Commissioner was allowed to access the region for an investigation after months of pushing China to allow it.¹²⁹ In the media, there has been very little information released aside from leaked documents, a few independent investigations, and open-source intelligence tools such as geographic information system (GIS) mapping. Because

¹²⁵ United Nations, Convention on the Prevention and Punishment of the Crime of Genocide, Article II.

¹²⁶ Aydin, “The Interpretation of Genocidal Intent under the Genocide Convention and the Jurisprudence of International Courts,” pp. 431-432.

¹²⁷ Ratner, “The Genocide Convention after Fifty Years,” 2.; Although perpetrators are rarely accused of genocide, perpetrators are often charged with other international crimes such as Crimes Against Humanity or War Crimes.

¹²⁸ Office of the United Nations High Commissioner for Human Rights, “OHCHR Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China,” p. 43.

¹²⁹ Farge, “Exclusive China Seeks to Stop UN Rights Chief from Releasing Xinjiang Report - Document.”

of this, it is difficult to confirm the reports of potentially genocidal behaviour. China's closed system of communications stands as a strong border between the international community and the Xinjiang region. To accuse a state of committing genocide is not taken lightly by UN bodies. Therefore, when a country is accused of it, UN members *must* be certain of their classification.

Treatment of great power states and small states differ within the international system due to several factors. First and foremost, great power states possess the ability to impose influence and control decision-making, particularly through their votes in the UNSC. In the UNSC, there has yet to be a direct inquiry into the situation in China's Xinjiang that is of no fault. Instead, the extensive lobbying campaign propagated by the CCP. Chinese representatives have demonstrated that the CCP will spare no expense (figuratively) to eradicate any inquisition into the affairs of the state regarding the Xinjiang region.

In June, news leaked that Chinese representatives had circulated a letter expressing "grave concern" about an upcoming UN report on Xinjiang, attempting to prevent its release.¹³⁰ According to sources, China claimed the report would politicize human rights issues and harm cooperation with the UN.¹³¹ Despite China's lobbying efforts, the report was released on August 31, 2022.¹³² Shortly after, the CCP published a 120-page document titled "Fight Against Terrorism and Extremism in Xinjiang: Truth and Facts," detailing terrorist attacks in Xinjiang, justifying counter-terrorism measures, and refuting accusations of ethnic discrimination, suppression of minorities, concentration camps, forced labour, and massive human rights violations.¹³³ The document criticized the UN assessment and urged a focus on human rights abuses by the US and Western countries. The CCP rejected the OHCHR findings and indicated no intention to change its Xinjiang policies.¹³⁴

China's relentless campaign to stop UN discussion and potential investigation into their alleged human rights abuses was successful, and in 2022, the UN Human Rights

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Information Office of the People's Government of and Xinjiang Uyghur Autonomous Region, "Fight Against Terrorism and Extremism in Xinjiang: Truth and Facts," (August 2022), p. 3.

¹³³ Ibid., 117-119.

¹³⁴ Ibid., 120.

Council voted against discussing allegations of China's abuses against Uyghurs and ethnic Turks in Xinjiang with 19 votes to 17 with 11 abstentions.¹³⁵

Finally, accusing a great power state of committing genocide can cause significant issues within the international system. As established in the *Definitions and Concepts* portion of the article, China is considered a great power state. Being a great power state used to rely on the state upholding the legitimacy of the international system, setting the standard for other developing states. In recent years, this standard has shifted from being a beacon to follow. Now, great power states have abused the power endowed to them by the international system. Examples of this are found in the US when they invaded Iraq without UNSC approval, which was technically a violation of international law.¹³⁶ Additionally, the US used Agent Orange in the Vietnam War, a chemical agent designed for foliage that caused devastating health problems for those exposed.¹³⁷ Like the US and Russia, China possesses a veto power in the UNSC. This power also adds to the challenge of accusing a great power state of genocide. According to R2P, if peaceful means do not work to remedy a situation of atrocity crimes, war crimes, ethnic cleansing, genocide, and crimes against humanity, it is the responsibility of actors to engage by other means.¹³⁸ These means can be military intervention, which then requires states to gain approval from the UNSC.¹³⁹ If approval is sought to intervene in China's Xinjiang region, the chance that China and/or Russia veto it is very high, according to the countries' track records.¹⁴⁰

At present, the ICC is conducting investigations into allegations of genocide, crimes against humanity, war crimes and more in countries such as Myanmar and Sudan. These countries would be classified as small states according to Raimo Väyrynen's diagnostic properties.¹⁴¹ Overall, it is clear that China is in a league of its own as a great

¹³⁵ *Al Jazeera*, "Outrage as UN Debate on China's Alleged Xinjiang Abuses Rejected," (7 October 2022).

¹³⁶ Ronald Kramer, Raymond Michalowski, and Dawn Rothe, "'The Supreme International Crime': How the U.S. War in Iraq Threatens the Rule of Law," *Social Justice* 32, no. 2 (2005): p. 57.

¹³⁷ Ashish Kumar Sen, "Addressing the Harmful Legacy of Agent Orange in Vietnam," United States Institute of Peace (2022).

¹³⁸ Office on Genocide Prevention and the Responsibility to Protect, "Responsibility to Protect."

¹³⁹ *Ibid.*

¹⁴⁰ Dag Hammarskjöld Library, "Security Council - Veto List."

¹⁴¹ Raimo Väyrynen, "On the Definition and Measurement of Small Power Status," *Cooperation and Conflict* 6, no. 2 (1971): pp. 92-98.

power and, therefore, has experienced different consequences from the UN. Myanmar and Sudan are currently being investigated by the ICC; they have both experienced some degree of international intervention. In response to Myanmar, the UN General Assembly and Human Rights Council have passed multiple resolutions condemning the violence against the Rohingya. Unfortunately, intervention has been stalled by China and Russia's vetoes in the UNSC.¹⁴² In Sudan, the UN deployed the African Union-United Nations Hybrid Operation in Darfur, the UNSC has passed resolutions, and imposed sanctions on individuals and entities responsible for violence in Darfur.¹⁴³

If a state is accused of committing genocide by the UN, it becomes the responsibility of member states to act, according to R2P. Engaging in a military intervention in China (assuming UNSC-approved intervention) could have devastating results. China has made it clear that it sees all Uyghur-related allegations as the West enacting a plot to minimize China's growth.¹⁴⁴ Although this only exists in the hypothetical, credence must be given to this possibility. As China has adamantly refuted and dismissed UN recommendations to remedy the situation in Xinjiang, these recommendations have gone unheeded. The prospect of war between China and the US has brought fear to many as the situation in Taiwan intensifies. Projections based on this conflict can be used to project the fallout that would result from UN intervention in the Xinjiang region. Academics and experts on Sino-US relations have suggested that China would "probably" launch a lightning air, sea, and cyber assault to gain control of key American strategic interests in Taiwan before the US could react.¹⁴⁵ Experts assume that to combat American military supremacy in conventional war, China would engage in a broad type of warfare that would affect American society through political and cyber

¹⁴² "S/PV.5619," 62, United Nations: United Nations Security Council (12 January 2007), pp. 2-3.

¹⁴³ "Resolution 2676," United Nations: United Nations Security Council (8 March 2023).; "Resolution 1769," United Nations: United Nations Security Council (21 July 2007).; "Resolution 2296," United Nations: United Nations Security Council (29 June 2016).; "Resolution 2429," United Nations: United Nations Security Council (13 July 2018).; "Resolution 2559," United Nations: United Nations Security Council (22 December 2020).; "Resolution 2579," United Nations: United Nations Security Council (3 June, 2021).; "Resolution 2676," United Nations: United Nations Security Council (8 March 2023).

¹⁴⁴ "Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland" (31 August 2022), pp. 1-2.; *United Nations*, "U.S. Leads Attack on China at UN over Xinjiang Genocide" (2021).

¹⁴⁵ Ricardo Tomás, "A War With China Would Be Unlike Anything Americans Faced Before," *The New York Times* (27 February 2023).

warfare.¹⁴⁶ These cyber offensives would likely target electric, gas, water, transport, healthcare and other vital public services.¹⁴⁷ In short, a war with China could have devastating results at home and abroad.

Conclusion

The creation of the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide* has resulted in the indictment of several perpetrators of genocide. However, in recent years, the Genocide Convention has shown flaws. China's genocidal behaviour towards the Uyghur and Muslim population in the Xinjiang region has put a mirror on the UN and the laws in place to prevent this situation. As a great power state, China has enjoyed seeming invincibility to the consequences of its actions—an invincibility that has been enjoyed by the US and Russia for decades. The UN's lack of action can be attributed to a few reasons: the narrow definition of genocide and the difficulty in proving genocidal intent, China's status as a great power state acting as a metaphorical shield from international law, its position on the UNSC giving it a veto vote, and the potential repercussions of intervention in China may have convinced the UN to reserve action in the Xinjiang region. The problems that arise from the UN's approach to the current situation in China is that it has made it increasingly obvious that countries are held to different standards in proportion to their international status. What does this mean for the UN institution? Considering this article and what has been explored, it seems apparent that UN genocide law is only as powerful as the great power states allow it to be.

¹⁴⁶ Ibid.

¹⁴⁷ Tomás, "A War With China Would Be Unlike Anything Americans Faced Before."

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