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CHINA, XINJIANG, AND THE GENOCIDE CONVENTION: THE
FRAGILITY OF INTERNATIONAL LAW

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By Lucy Kate Herron

A thesis presented in partial fulfillment of the requirements for completion
Of the Bachelor of Arts degree in International Studies
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Abstract:

This paper examines China's actions through the lens of the Genocide Convention to examine the whether the crimes of genocide are being committed against the Uyghur population. It contends that according to the Genocide Convention, China is committing genocide, and particularly through conditions, torture, and rape, against the Uyghur population. However, prosecuting a genocide in court would prove difficult due to China's laws and actions that can be used to defer accusations of genocide and problems with the Genocide Convention in the context of China and the Uyghurs.

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Introduction

“In addition, after careful examination of the available facts, I have determined that the PRC, under the direction and control of the CCP, has committed genocide against the predominantly Muslim Uyghurs and other ethnic and religious minority groups in Xinjiang. I believe this genocide is ongoing, and that we are witnessing the systematic attempt to destroy Uyghurs by the Chinese party-state.”- Former Secretary of State Mike Pompeo¹

For decades, the Uyghurs in China have experienced discrimination by the Chinese government, which in recent years has escalated, taking the form of more violent and repressive actions. Discrimination against the Uyghurs in China has been going on since as early as 1931, stepping up in the 1950s and 1970s, and coming to their crux in the 2000s and 2010s. Early reports of reeducation camps and intense surveillance of the Uyghurs in 2015 made it to mainstream media but were otherwise forgotten about by the public and governments alike. Only as increasingly horrific reports continue to flow out of China has the international community begin to voice criticism. It has become widespread knowledge that China’s Uyghur “reeducation camps” more resemble prison camps, but little in the way of international action has been taken. Recent governmental reports, witness testimonies, and scholarly literature show the scale of the atrocities currently being committed in Xinjiang.

This paper examines China’s actions through the lens of the Genocide Convention to examine the whether the crimes of genocide are being committed against the Uyghur population. It contends that according to the Genocide

¹ Pompeo, Michael. Determination of the Secretary of State on Atrocities in Xinjiang, U.S. Department of State, 19 Jan. 2021.

Convention, China is committing genocide, and particularly through conditions, torture, and rape, against the Uyghur population. However, prosecuting a genocide in court would prove difficult due to China's laws and actions that can be used to defer accusations of genocide and problems with the Genocide Convention in the context of China and the Uyghurs.

The Xinjiang Conflict is unique in the sense that it is not an obvious genocide. The conflict has not created a rapid death rate or high number of asylum seekers. While the actions of the Chinese government may not be as forceful or obvious as previously identified genocides such as the Holocaust, the genocide against the Bosnian Muslims, and the genocide in Rwanda, they nevertheless appear to meet the criteria for genocide laid out in the Genocide Convention.

The first chapter of this paper provides context, background, and factual information on the Xinjiang Uyghur population and the history of relations between the Chinese government and Uyghurs. It will discuss historical aspects of the conflict as well as data on the current environment for Uyghurs in Xinjiang, including conditions inside and outside the “reeducation camps” as well as surveillance and cultural destruction. This section is intended to help understand the who, why, and how in the legal matter of genocide.

The second chapter is a legal analysis of the facts presented in the first, and intends to elaborate on the conditions within Xinjiang as well as examining the facts alongside the Genocide Convention. Previous case law and international law (including excerpts from cases dealing with the Rwandan Genocide and

Holocaust) are used to further examine the situation in Xinjiang. Secondary scholarly literature is also used as a supplement to better understand the situation at hand.

The third chapter will analyze how China is legitimizing its actions in Xinjiang, as well as deferring legal pressure. It will discuss how China attempts to use post-911 anti-terrorism sentiment and a reservation to Article IX of the Genocide Convention to defer inquiry into the actions of Beijing in Xinjiang. It will also examine the use of soft power in deflecting accusations.

Chapter One: Background

The Uyghurs

The Uyghurs have lived in the Kashgar region (Xinjiang, or East Turkestan) since the sixth century, and are among the oldest Turkic-speaking people of Central Asia. The region is currently the only region in China with a Muslim majority and is bordered by multiple Islamic countries.

The Turkic Uyghur Empire began in the eighth century in the region nearest Mongolia. It comprised multiple Sufi city-states under the Naqshbandi Sufi Order, where the Uyghur identity developed over centuries in oasis towns.² Over time, the many Uyghur settlements became predominant in Xinjiang. Some Uyghurs assimilated into the local Buddhist culture, but a strong majority maintained their religion and culture. The region was completely Islamized by the fourteenth century. In 1679, the legendary Apaq Khoja³, descendant of the Sikhs of Samarkand, took power in Xinjiang and ruled the region until the Qing Dynasty took control for strategic purposes in 1759. The Qing government began to call the region Xinjiang, which means *new dominion* or *new frontier*, and exerted their rule through puppet governments.⁴

There were many attempted revolts against Qing leadership. The most successful was in 1867 and led by Yakub Beg, who based his legitimacy on

² "Uyghur." *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 2020, www.britannica.com/topic/Uyghur.; Shiel, Fergus. "China Cables: Who Are the Uyghurs and Why Mass Detention?" *ICIJ*, International Consortium of Investigative Journalists, 25 Nov. 2019, ³ Waite, Edmund. "From Holy Man to National Villain: Popular Historical Narratives About Apaq Khoja amongst Uyghurs in Contemporary Xinjiang." *Inner Asia*, vol. 8, no. 1, 2006, pp. 5–28. JSTOR, www.jstor.org/stable/23615516.

⁴ Dillon, Michael. "A Uyghurs' History of China." *History Today*, History Today: Volume 70 Issue 1, Jan. 2020, www.historytoday.com/archive/behind-times/Uyghurs%E2%80%99-history-china.

Naqshbandi tradition. His regime was overthrown in 1878 by Zuo Zongtang, who had already suppressed a rising of Hui Muslims in China. Xinjiang was formally incorporated into China in 1884.⁵

After the Qing Dynasty fell in 1911, the Chinese warlord government of Xinjiang was de facto independent. Three main Islamic states were created in the region at this time during an intertwinement between Xinjiang and the USSR. In 1933, the Xinjiang governor accepted military assistance from the USSR, and during the last decade, accepted much “economic and cultural assistance” from the USSR.⁶ In 1943, the VKP(b) CC Politburo decreed USSR support for non-Chinese rebels (including the Uyghurs) “in their struggle against the repressive colonialist policy of the Governor.”⁷

Conflict between the Chinese government and the Xinjiang autonomous region started in earnest in the 1950s, when the government began strongly promoting Chinese unity and slashing the autonomy the region had held under the Soviet-aligned East Turkestan Republic.⁸ This autonomy is alive in the memory of many people who live in the region, and they are still inspired by Pan-Turkic ideals.

⁵ Ibid.

⁶ RGASPI F. 17, Op. 162, D. 37, ll. 76-78. Obtained by Jamil Hasanli and translated by Gary Goldberg.

⁷ The VKP(b) CC Politburo was a provision of the Political Bureau of the Central Committee of the Communist Party of the Soviet Union, it listed multiple ways the USSR was prepared to help Xinjiang, including but not limited to: “a) for the equal rights of all ethnic minorities of Xinjiang; b) for the free development of the culture of each ethnic group, and for primary and secondary education in their native language at government expense; c) against religious oppression; ...“ Ibid.

⁸ "Borders | Uyghurs and The Xinjiang Conflict: East Turkestan Independence Movement". apps.cndls.georgetown.edu.

In 1949, after Chiang Kai-Shek was defeated and Mao came into power, Mao and his government attempted to incorporate the region into the People's Republic of China. The government implemented moderate policies towards minorities, and Xinjiang was established as an autonomous region of China in 1955.⁹ The Uyghur people countered with armed resistance; however, the beginning of the Cultural Revolution in 1966 ultimately quashed the Uyghur rebellion.

As a result of Xinjiang's historical isolation from Chinese culture, Xinjiang remains an outpost of China, lacking the socio-economic and cultural power of Eastern China. Xinjiang, in addition, is the only province with a Muslim majority. Tibet and Xinjiang are the only regions in China where ethnic Chinese are a minority. The Uyghurs make up 45% of around twenty million people in the region while around nine million others are non-Chinese Muslims.¹⁰

Ethnic Policy in China and the Xinjiang Conflict

Ethnic policy in China has frequently changed since the establishment of the PRC in 1949, swinging between protection and destruction of ethnic minorities. Mao Zedong's transformation of China required the Chinese population to be racially, socially, ideologically, and politically homogeneous. To institute this, drastic and violent measures were used to unify the Chinese

⁹ "History of Xinjiang." *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 2018, www.britannica.com/place/Xinjiang/History.

¹⁰ 2000年人口普查中国民族人口资料 [Year 2000 China census materials: Ethnic groups population]. Nationalities Publishing House. September 2003. ISBN 7-105-05425-5.

population. During Mao's Cultural Revolution, these measures included closing churches, mosques and temples, and forcing clergy into re-education¹¹. Monks were beaten or killed, and the possession of religious texts was criminalized.¹²

The Xinjiang conflict started in earnest in the 1950s, when the government began strongly promoting Chinese unity and slashing the autonomy the region had held under the Soviet-aligned East Turkestan Republic.¹³ This autonomy is alive in the memory of many people who live in the region, and they are still inspired by Pan-Turkic ideals.

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The perception of "regional autonomy" has been one of the main sources of conflict for Xinjiang.¹⁵ Extreme policy swings have had a significant effect on the region; relatively tolerant policies throughout the 1950s were replaced with

¹¹ Buang, Sa'eda; Chew, Phyllis Ghim-Lian (9 May 2014). *Muslim Education in the 21st Century: Asian Perspectives*. Routledge. p. 75. ISBN 9781317815006.

¹² Pittman, Don Alvin (2001). *Toward a Modern Chinese Buddhism: Taixu's Reforms*. University of Hawaii Press. ISBN 9780824822316.

¹³ "Borders | Uyghurs and The Xinjiang Conflict: East Turkestan Independence Movement". apps.cndls.georgetown.edu.

¹⁴ "History of Xinjiang." *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 2018, www.britannica.com/place/Xinjiang/History.

¹⁵ Bovingdon, Gardner. "Autonomy in Xinjiang: Han Nationalist Imperatives and Uyghur Discontent." *Washington, D.C.: East-West Center*, vol. 11, 2004. *Policy Studies*.

strongly repressive and assimilationist ones during the Great Leap Forward in 1958. However, policies returned to moderation in the 1960s and then reversed again to repressive policies during the Cultural Revolution in 1966. Deng Xiaoping's loosening of cultural and economic policies in the early 1980s gave Xinjiang extra autonomy in these areas, but did not do much to relax political controls. After demonstrations in 1988 and 1989, and a violent uprising in 1990, a political crackdown on Xinjiang was enacted; this included new cultural and religious regulations that have remained in place to-date.¹⁶

In addition to Uyghur discontent, the collapse of the Soviet Union in 1991 showed Beijing the effect liberal policies could have; as a result, Beijing swung away from policies similar to those of the USSR and Mikhail Gorbachev.¹⁷

After the collapse of the Soviet Union, Turkic people in Central Asia states of Uzbekistan, Kazakhstan, and Kyrgyzstan gained independence, but the Uyghurs did not receive this liberation. The collapse of the Soviet Union raised fears in Beijing that Uyghur ethno-nationalists would be inspired by their newly independent Asian neighbors. Under Beijing policy, many Han Chinese began immigrating to the region, which the non-Chinese felt would endanger their culture, economy, and politics.

¹⁶ Ibid.

¹⁷ Gorbachev instituted glasnost and perestroika, which was the opening of the Soviet Union and the reformation of the economic system to end central planning- arguably, the relaxing of rules could be viewed as bringing the downfall of the USSR. Dillon, Michael.; David S. Mason. "Glasnost, Perestroika and Eastern Europe." *International Affairs* (Royal Institute of International Affairs 1944-), vol. 64, no. 3, 1988, pp. 431–448. JSTOR, www.jstor.org/stable/2622850.

This led to the rise and fall of two Uyghur clandestine militant groups in Xinjiang and the Kyrgyzstan, Kazakhstan, Pakistan diaspora.¹⁸ After demonstrations in 1995, Beijing responded with the “Strike Hard” campaign and began to violently suppress demonstrations. The government began punishing certain expressions of Uyghur identity, such as their religion and language.¹⁹

The “Strike Hard” campaign was the beginning of the permanent religious suppression and persecution in Xinjiang. Now, anyone in the region suspected of sympathies for ‘separatism’ or illegal religious activity is subject to detainment without trial.

Beijing also stepped up efforts to increase economic growth in Xinjiang, leading to the building up of infrastructure in the province and mass Han migration there, as part of China’s “Go West” campaign. The “Go West” plan was launched in 2000 to build the economies of comparatively under-developed western provincial-level regions.²⁰ Beijing saw ramping up economic projects in Xinjiang as a way to increase integration from across China and therefore reduce local nationalism in Xinjiang. These economic gains were unevenly distributed and benefited Han-Chinese migrants to the region over ethnic Uyghurs, leading to an exacerbation of inequality and marginalization.²¹

¹⁸ On the rise of militant nationalism among young Uyghurs, see also the study by Joanne Smith, “Four Generations of Uyghurs: the Shift towards Ethno-political Ideologies among Xinjiang’s Youth”, *Inner Asia*, Vol. 2, No. 2, 2000, pp. 195-224.; Gardner, Bovington. “The Not-So-Silent Majority: Uyghur Resistance to Han Rule in Xinjiang”, *Modern China*, Vol. 28, No. 1, January 2002, pp. 39-78.; *Ibid*.

¹⁹ Human Rights Watch Special Report: Devastating Blows Religious Repression of Uyghurs in Xinjiang. New York, NY: Human Rights Watch, April 2005.

²⁰ Singh, Arvinder. “Understanding China’s ‘Go-West’ Campaign.” *China Report*, vol. 38, no. 1, 2002, pp. 121–127., doi:10.1177/000944550203800117.

²¹ Dillon, Michael.

Xi Jinping came into power in 2013, succeeding Hu Jintao. Xi's father, Xi Zhongxun, who became prominent in the CCP around 1952, had left a comparatively more liberal legacy towards reformation than his peers. After the Communist victory in 1949, Zhongxun became the head of the Northwest Bureau. This department managed the Northwest section of China, including Xinjiang. The process of incorporating the Northeast into China was not a peaceful one; however, Zhongxun believed that "ethnic work" needed a soft touch and was a strong advocate for this idea.²²

This left Xi Jinping at a crossroads of debate over ethnic policy: his father's more liberal methods versus the desire to not repeat the mistakes of the USSR. Beijing saw ethnic division as one of the main factors impacting the USSR, and as a result, wanted to remove ethnic division as a possible threat. To do this, Xi emphasized the "four identifications" which include the Chinese race, Chinese culture, the socialist road, and collective belonging through Mandarin instruction and patriotic education. Under Xi Jinping, the Party emphasizes integration instead of ethnic diversity²³ as the backbone of its political stability.

²² "Incorporating the Northwest into the People's Republic of China (PRC) was far from peaceful – about 90,000 so-called bandits were eliminated through defeat, surrender, or killing, and the famous Kazakh leader Osman Batur was executed."; "In 1952, the two top leaders in Xinjiang, Wang Zhen and Deng Liqun, rejected the Northwest Bureau's decision not to pursue major reform in nomadic areas. Zhongxun, their boss as leader of the Northwest Bureau, was furious...Zhongxun believed that Wang and Deng had made a series of mistakes that were linked by "incorrect adventurist-radical thinking." He concluded that attacks on "Greater Turkestan" (a call for all Turkic people to be linked together politically) had led to the wrongful arrests of many people. In the future, "oppose Greater Turkestan" would no longer be used as a slogan. Both Wang and Deng were fired." Torigian, Joseph. "What Xi Jinping Learned-And Didn't Learn-From His Father About Xinjiang." *The Diplomat*, The Diplomat, 3 Dec. 2019, thediplomat.com/2019/11/what-xi-jinping-learned-and-didnt-learn-from-his-father-about-xinjiang/.

²³ Leibold, James. "China's Ethnic Policy Under Xi Jinping." *Jamestown*, 18 Nov. 2016, jamestown.org/program/chinas-ethnic-policy-under-xi-jinping/.

Since Xi came into power, China has seen “a broader tightening of CCP control over civil society.”²⁴ The goal of this policy is to control dissent.

The most current, most pressing, and most dramatic cultural and anti-religious campaign is against Uyghur Muslims in the western Xinjiang Province, where the population of the Uyghur people is concentrated, in an attempt to stifle the culture of any group in China other than the majority ethnicity--Han Chinese. This campaign is a weapon against the culture of Western China under the guise of anti-terrorism and nationalism. Beijing wants to unify the culture of China by making Chinese culture equivalent to Han culture as a way to maintain totalitarian control over the country. Border cultures, such as the Uyghurs, threaten the control of the government by seeking autonomy from the majority Han. To stifle Uyghur culture and separatism and to erase Uyghur ethnic identity, Beijing is working to eradicate religion and to displace the non-Han population.

The Xinjiang Data Project views 2017 as the turning point in these hardline policies.²⁵ This turning point came after a peak in violence involving Uyghurs in 2014 and 2015; data compiled based on newspaper reports indicated that there were a total of 19 incidents of Uyghur-perpetrated violence across China from 2014 to 2015, resulting in nearly 440 fatalities and 460 injuries.²⁶ In contrast, in 2016 and 2017, there have been only three cases of such violence that killed 14 and injured 15 others.²⁷ This turning point also coincides with the

²⁴ Cook, Sarah. “A Freedom House Special Report.” *The Battle for China's Spirit*, Feb. 2017.

²⁵ Ruser, Nathan. “Exploring Xinjiang's Detention System.” *Xinjiang Data Project*, Sept. 2020.

²⁶ Soliev, Nodirbek. “China: Xinjiang Province.” *Counter Terrorist Trends and Analyses*, vol. 10, no. 1, 2018, pp. 53–56. JSTOR, www.jstor.org/stable/26349855. Accessed 10 Apr. 2021.

²⁷ *Ibid.*

Trump administration's de-emphasis on human rights as a component of foreign policy.

Inside the Xinjiang Camps

The detaining of Uyghurs and other Muslim minorities in internment camps is estimated to have begun in April of 2017, based on information from the China Cables, which was released in 2017.²⁸ There are no clear estimates of how many Uyghurs are being detained; however, the UN estimates that at least one million and up to two million out of the ten million total population are in camps.²⁹ Intelligence reports show that most people being held are not charged and information about their detainment is not shared, so there is also no way to contest detainment. In urbanized areas, most camps are converted schools or official buildings; however, in rural areas, many camps have been built specifically for the purpose of "re-education."³⁰

Beijing considers these "internment camps" to be vocational education and training facilities that are necessary to counter terrorism and alleviate poverty.

²⁸ Shiel, Fergus. "China Cables: Who Are the Uyghurs and Why Mass Detention?"; "Data Leak Reveals How China 'Brainwashes' Uyghurs in Prison Camps." *BBC News*, BBC, 24 Nov. 2019, www.bbc.com/news/world-asia-china-50511063.

²⁹ Nebehay, Stephanie. "U.N. Says It Has Credible Reports That China Holds Million Uyghurs in Secret Camps." *Reuters*, Thomson Reuters, 12 Aug. 2018.; DeHahn, Patrick. "How Did We Get to the Number of 1.5 Million Muslims Imprisoned in China?" *Quartz*, Quartz, 4 July 2019, qz.com/1599393/how-researchers-estimate-1-million-uyghurs-are-detained-in-xinjiang/.

³⁰ Phillips, Tom. "China 'Holding at Least 120,000 Uyghurs in Re-Education Camps!'" *The Guardian*, Guardian News and Media, 25 Jan. 2018.

The Chinese government has stated that “vocational training” has increased job opportunities and helped combat poverty in the region.³¹

The Australian Strategic Policy Institute has identified 380 detention camps across the region, with more currently under construction, ranging from low security camps (Security Tier 1) to fortified prisons (Security Tier 4). Chinese media has stated the re-education programs are winding down; however, aerial photography and studies show that through 2019 and 2020 there was significant investment put into building camps.³² At least 61 facilities were constructed between July 2019 and July 2020, with at least 14 still under construction. Most of these new facilities are high-security facilities. Tier 4 camps are guarded by armed forces and special police and are equipped with multiple layers of perimeter barriers, high walls, no outside yards, police facilities, guard rooms, security fences, surveillance, and watchtowers.³³ Videos claimed to have been shot within the camps show jail-like cells that match the descriptions of former detainees.³⁴

³¹ “Xinjiang: China Defends 'Education' Camps.” *BBC News*, BBC, 17 Sept. 2020, www.bbc.com/news/world-asia-china-54195325#:~:text=China%20has%20long%20insisted%20that,%22re%2Deducation%22%20centres.

³² Graham-Harrison, Emma. “China Has Built 380 Internment Camps in Xinjiang, Study Finds.” *The Guardian*, Guardian News and Media, 23 Sept. 2020, www.theguardian.com/world/2020/sep/24/china-has-built-380-internment-camps-in-xinjiang-study-finds.

³³ “关于《阿图什市职业技能教育培训服务中心建设项目环境影响报告表》的审批意见。” *阿图什市人民政府*, 新疆阿图什市人民政府办公室, 21 Feb. 2018,

web.archive.org/web/20180706221430/http://www.xjats.gov.cn/P/C/1736.htm.; Ruser, Nathan. “Exploring Xinjiang's Detention System.” *The Xinjiang Data Project*, Australian Strategic Policy Institute, 24 Sept. 2020, xjdp.aspi.org.au/explainers/exploring-xinjiangs-detention-facilities/.

³⁴ Introvigne, Massimo. “Yingye'er Re-Education Camp Managed Like Prison.” *Bitter Winter*, 18 Jan. 2019, bitterwinter.org/yingyeer-re-education-camp-managed-like-prison/.

U.S. intelligence states that the majority of people being detained at these camps are members of the Uyghur minority group.³⁵ In 2018, The China Human Rights Defenders group along with Xinjiang's Uyghur residents conservatively estimated that around ten percent of the Uyghur population is being held in these camps³⁶, which is approximately 1.1 million people. Similar numbers have been found by other sources, and this also falls within the United States estimate of 800,000 to two million.³⁷ There are no clear updated numbers, but as the number of camps built are increasing rapidly, it is safe to assume so is the number of Uyghurs being detained.

An anonymous police officer in a village in Xinjiang reported that some police departments had a quota of how many people from the local population they were to detain--his particular department's quota was forty percent of the local population. The officer is quoted saying that he and the rest of his department "were told to target people who are religious...for example, those who grow beards despite being young."³⁸ Many officers have also gone on record saying these orders are made through online conferences, never by formal documentation.³⁹

³⁵ Gaouette, Nicole, and Jennifer Hansler. "US Human Rights Report Notes Khashoggi Killing, Avoids Mention of Saudi Prince." *CNN*, Cable News Network, 13 Mar. 2019, www.cnn.com/2019/03/13/politics/human-rights-2018-state-department/index.html.

³⁶ Hurd, Hilary. "China's Human Rights Abuses Against Uyghurs in Xinjiang." *Chinese Human Rights Defenders*, 2018, www.nchr.org/2018/12/chinas-human-rights-abuses-against-Uyghurs-in-xinjiang/.

³⁷ Gaouette, Nicole, and Jennifer Hansler.

³⁸RFA Staff. "Nearly Half of Uyghurs in Xinjiang's Hotan Targeted For Re-Education Camps." *Radio Free Asia*, Radio Free Asia, 9 Oct. 2017, www.rfa.org/english/news/uighur/camps-10092017164000.html.

³⁹ Ibid.

A resident of Luopo Country in southern Xinjiang says her province has a saying: “If you go into a concentration camp in Luopu, you never come out.”⁴⁰ While this phrase seems to ring true for most Xinjiang detention camps, some few who have made it out have spoken about what they saw and experienced.

Sayragul Sautbay, an ethnic Kazakh, claims to be a previous employee of one of the detention camps in Xinjiang. She said those who do not learn fast enough were deprived of food and were subject to sleep deprivation.⁴¹ A daily food ration was a piece of bread and one ladle of rice porridge three times a day. Inmates wear bright blue uniforms issued by the camp. All the men are forced to shave their heads against their religious custom.⁴²

On the specific conditions of the camps, Sautbay described sleeping rooms as overcrowded and unsanitary. A bucket to be used as a toilet was kept in the same room used for sleeping, and when it was full, no one would empty it. Private use of the toilet was not allowed.⁴³

⁴⁰Kuo, Lily. “If You Enter a Camp, You Never Come out’: inside China’s War on Islam.” *The Guardian, Guardian News and Media*, 11 Jan. 2019, www.theguardian.com/world/2019/jan/11/if-you-enter-a-camp-you-never-come-out-inside-chinas-war-on-islam.;

⁴¹Sleep deprivation has been proven to cause anxiety, depression, and heart disease, and increase risks of cancer, stroke, and dementia.Lindholm, Marika, et al. “How Sleep Deprivation Hurts Your Mental Health.” *Talkspace*, 28 Sept. 2018, www.talkspace.com/blog/sleep-deprivation-hurts-mental-health/#;Regencia, Ted. “Escape from Xinjiang: Muslim Uyghurs Speak of China Persecution.” *China | Al Jazeera*, Al Jazeera, 10 Sept. 2018, www.aljazeera.com/indepth/features/escape-xinjiang-muslim-Uyghurs-speak-china-persecution-180907125030717.html.

⁴² Regencia, Ted.

⁴³ Not being able to use the bathroom privately strips people of their sense of dignity and dehumanizes them. Conditions like this have been proven to destabilize people’s mental state, and may cause PTSD.

National Collaborating Centre for Mental Health (UK). *Post-Traumatic Stress Disorder: The Management of PTSD in Adults and Children in Primary and Secondary Care*. Leicester (UK): Gaskell; 2005. (NICE Clinical Guidelines, No. 26.) 2, Post-traumatic stress disorder.; Novgorodoff, Danica, and Ben Mauk.

Sometimes at night, according to Sautbay, guards would take away young, unmarried girls for a prolonged time and bring them back, often in the middle of the night. When the girls return, "any normal person can see what kind of torture they have been through. When they come back, they turn into a different person. I think they do all kinds of torture to them and sexually abuse them."⁴⁴ Other women have reported being raped.⁴⁵

Outside the Camps

Surveillance

The Uyghurs are living in an advanced police state; every aspect of life is monitored (for example: business, family, religion). Xinjiang has been split into a grid system, with every bloc having about 500 residents. Each bloc has a police station that closely monitors inhabitants by regularly scanning their identification cards, faces, DNA samples, fingerprints, and cell phones. Surveillance cameras are placed throughout Xinjiang and in privately owned shops, even in the few remaining mosques, so that the government can watch all parts of cities at all times. China uses a special monitoring system in Xinjiang called the Integrated Joint Operations Program (IJOP), which aggregates data and alerts authorities when it deems someone or something suspicious. What data does it use? Some

⁴⁴Rivers, Matt. "Former Xinjiang Teacher Claims Brainwashing and Abuse inside Mass Detention Centers." CNN, Cable News Network, 10 May 2019, www.cnn.com/2019/05/09/asia/xinjiang-china-kazakhstan-detention-intl/index.html.

⁴⁵Ferris-Rotman, Amie. "Abortions, IUDs and Sexual Humiliation: Muslim Women Who Fled China for Kazakhstan Recount Ordeals ." The Washington Post, WP Company, 5 Oct. 2019.

examples include but are not limited to: blood type, height, electricity usage, gas usage, package deliveries, and internet history. The IJOP is also connected to CCTV cameras enabled with facial recognition and night vision.⁴⁶

Systems are used to analyze behavior, anticipate crime, protests, and violence, and recommend which security forces to deploy. The cameras in Xinjiang track Uyghurs while ignoring the Han, and suggest which citizens to send to detention camps based on the government's criteria.⁴⁷ Police and monitors question Uyghurs and search their homes at any time they please. Citizens are also graded for reliability; if a citizen has a low score they could be sent to detention. The social credit system in China is a nation-wide system; however, it is more heavily implemented in Xinjiang and also includes the threat of internment.⁴⁸

In addition to constant surveillance, the Uyghurs and other Muslims of Xinjiang are often subject to home stays from Chinese officials in a program called the "Becoming Family" Campaign. During these home stays, families are forced to house and feed Chinese officials, as well as provide information about their lives and political views.⁴⁹

⁴⁶ "Interview: China's 'Big Brother' App." *Human Rights Watch*, 28 Oct. 2020, www.hrw.org/news/2019/05/01/interview-chinas-big-brother-app.

⁴⁷ Buckley, Chris, and Paul Mozur. "How China Uses High-Tech Surveillance to Subdue Minorities." *The New York Times*, The New York Times, 22 May 2019.

⁴⁸ Buckley, Chris, and Austin Ramzy. "Inside China's Push to Turn Muslim Minorities Into an Army of Workers." *The New York Times*, The New York Times, 30 Dec. 2019, www.nytimes.com/2019/12/30/world/asia/china-xinjiang-muslims-labor.html.

⁴⁹ Wang, Maya. "China: Visiting Officials Occupy Homes in Muslim Region." *Human Rights Watch*, 28 Oct. 2020, www.hrw.org/news/2018/05/13/china-visiting-officials-occupy-homes-muslim-region.

Cultural Destruction

In addition to camps and monitoring, Xinjiang is facing cultural destruction. Since 2017, an estimated 16,000 mosques have been destroyed or damaged as a result of government policies, 65% of the total mosques in the province. It is estimated more than half have been completely destroyed. Included in the destruction is the culturally protected 16th century Grand Kargalik Mosque. In 2019, it was replaced with a miniature recreation of its original entrance. Before it was destroyed, a banner was hung on the front of the mosque that read “爱党爱国” in both Chinese and Arabic, which translates “love the Party, love China.” Due to government policies enacted since 2017, The Xinjiang Data Project estimates the number of mosques in Xinjiang is at its lowest level since the Cultural Revolution, when over 26,500 mosques were destroyed.⁵⁰

In addition, even though many Uyghur sacred sites are protected under Chinese law, 30% of the sites across Xinjiang have been demolished and another 28% damaged or altered since 2017. These sites included the sacred pilgrimage site of Ordam Mazar, where the grandson of the first Muslim Uyghur king died in battle. The same month, leading Uyghur anthropologist and Xinjiang sacred site expert, Rahile Dawut, went missing. He is just one of over 386 Uyghur intellectuals who have been detained since 2017.⁵¹

In May of 2018, the “four entrances” or “four requirements” campaign was launched in China to promote the “Sinicization” of religion. This campaign

⁵⁰ Ruser, Nathan, et al. “Cultural Erasure.” *The Xinjiang Data Project*, 25 Sept. 2020, xjdp.aspi.org.au/explainers/cultural-erasure/.

⁵¹ Ibid.

requires that religious communities adapt to four requirements: “ritually raising the national flag, often while singing the national anthem; teaching believers about, and promoting, the Chinese Constitution, laws, and regulations; preaching and promoting the ‘Core Socialist Values’; and promoting ‘China’s excellent traditional culture.’”⁵² This involves the removal of Islamic architecture, such as: calligraphy, domes, the star and crescent and other symbols the government deems “foreign”. All these traditional symbols of Islamic architecture must be replaced with traditional Chinese styles.

The Uyghurs of Xinjiang are currently living in a police state where their culture is being destroyed around them and internment is a constant threat. This situation has evolved from years of conflict between the Chinese state and the Uyghur minority group. The currently situation of the Uyghurs has brought about debate over whether this treatment is or is not a genocide. In the following chapter, the facts of the conflict will be analyzed against the Genocide Convention and case law to determine the viability of a genocide argument in court.

⁵² 荣启涵. “中国伊斯兰教协会‘四进’清真寺活动在京启动.” *澎湃, 澎湃新闻*, 18 May 2018, www.thepaper.cn/newsDetail_forward_2138855; Lin, Yijiang. “Sinicization Turns Churches into CCP Clubs.” *Bitter Winter*, 17 Mar. 2019, bitterwinter.org/sinicization-turns-churches-into-ccp-clubs/.

Chapter Two: According to the Law

The Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), which entered into force in January 1951, was the first time the crime of genocide was codified. It recognizes that “at all periods of history genocide has inflicted great losses on humanity” and that international cooperation is required to “liberate humankind from such an odious scourge”. According to the Convention, genocide is a crime that can take place both in time of war as well as in time of peace.

This was the first human rights treaty to be adopted by the General Assembly of the United Nations, signifying the International Community’s commitment to ‘never again’ allow genocide after the atrocities committed during the Second World War.⁵³

The prohibition on genocide is *jus cogens* norm (a peremptory norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character).⁵⁴ Consequently, while the Genocide Convention codifies and elaborates what constitutes genocide, even in the absence of the treaty, genocide is always a violation of international law.

⁵³ https://www.un.org/en/genocideprevention/documents/Appeal-Ratification-Genocide-FactSheet_final.pdf

⁵⁴ <https://legal.un.org/ilc/reports/2019/english/chp5.pdf>

The Xinjiang Crisis According to the Genocide Convention

Article II of the Convention on the Prevention and Punishment of the Crime of Genocide lays out the definition of genocide as:

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

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.⁵⁵

The Uyghur people are an ethnic and religious group, and are currently at the mercy of China's policies.⁵⁶ Under the guise of anti-terrorism, they are being eliminated "as such", which falls within the protections of the Genocide Convention.

This chapter analyzes the Xinjiang Conflict through the lens of the Genocide Convention. First, it analyzes the component of intent, which is required for there to be Genocide. Then it examines each subsection of Article II to see whether this applies to the situation of the Uyghurs.

⁵⁵ UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, vol. 78.

⁵⁶ <https://www.cfr.org/backgrounder/chinas-repression-uyghurs-xinjiang>

Intent to destroy an ethnic and religious groups

The Genocide Convention states the definition of genocide is “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group”. The addition of “in whole or in part” emphasizes the meaning of ‘intent to destroy’. The perpetrator may have more intent than means to commit; as a result, the actions committed may seem less genocidal in nature than the intent. However, this does not mean that the perpetrator is absolved of the crime of genocide, only that their intent was greater than the action.

In the ICTY case, *Prosecutor v. Zoran Kupreskić*, the tribunal states that the intent to destroy turns genocide into “an extreme and most inhumane form of persecution.”⁵⁷ Proving intent is necessary to proving genocide. It could be argued that intent is the most important requirement of genocide; to prove genocide the court only needs to prove intent in conjunction with one other provision of genocide. It is not necessary to prove every provision listed in the Convention.

While clearly genocide is a physical crime, intent is the non-physical element of the crime. The non-physical crime of genocide is comprised of two points: the “general intent” and “intent to destroy”. “General intent” has been defined in international criminal law by Article 30 of the Statute of the International Criminal Court (ICC) as a cognitive process by which the

⁵⁷ *Prosecutor v. Kupreskić et al.* (Trial Judgement), IT-95-16-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 14 January 2000, available at: <https://www.refworld.org/cases,ICTY,40276c634.html>

perpetrator decided on a particular course of action and/or had cognitive knowledge of the actions taking place.⁵⁸ However, the meaning of “intent to destroy” is more subjective and goes beyond the objective elements of the offense definition.⁵⁹ To look at the “intent to destroy” practically, it is helpful to look for a “surplus of intent”; in layman terms, this means to look for multiple sources of intent.⁶⁰

The pivotal *Prosecutor v. Akayesu* judgement defined “intent to destroy” as “the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged”⁶¹, or that the perpetrator has “the clear intent to cause the offense”.⁶² Genocidal intent was described as the “key element” of the offense.⁶³ The International Criminal Tribunal for Rwanda (ICTR) required, in addition, the aim to destroy a protected group.⁶⁴

⁵⁸ Art. 30(1) reads: ‘Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.’; Art. 30(3) reads: ‘For the purposes of this article, “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. “Know” and “knowingly” shall be construed accordingly.’

⁵⁹ Otto Triffterer, ‘Kriminalpolitische und dogmatische Überlegungen zum Entwurf gleichlautender ‘Elements of Crimes’ für alle Tatbestände des Völkermords’, in Bernd Schünemann et al. (eds.), Festschrift für Claus Roxin zum 70. Geburtstag am 15. Mai 2001, Beck, Munich, 2001, pp. 1438ff.

⁶⁰ *Prosecutor v. Milomir Stakić*, Trial Judgement, Case No. IT-97-24-T, 31 July 2003, para. 520. See also *Prosecutor v. Omar Hassan Ahmad Al Bashir*, above note 1, paras 119ff, which, in essence, characterizes genocide as a crime of (concrete) endangerment (para. 124: ‘completed when the relevant conduct presents a concrete threat to the existence of the targeted group ...’).

⁶¹ *Prosecutor v. Jean-Paul Akayesu*, Trial Judgement, Case No. ICTR-96-4-T, 2 September 1998, para. 498

⁶² *Ibid*, para. 518.

⁶³ *Ibid*.

⁶⁴ *Prosecutor v. Goran Jelisić*, Prosecutor’s Pre-Trial Brief, Case No. IT-95-10-PT, 19 November 1998, para. 3.1 (perpetrator ‘knew the likely consequence’ that the committed acts would destroy a group in whole or in part); *Prosecutor v. Radislav Krstić*, TJ, above note 29, para. 569 (‘consciously desired’ the destruction of the group or ‘knew his acts were destroying’).

According to the United Nations, to prove intent, an investigation and subsequent examination must be conducted “by a competent international or national court of law with the jurisdiction to try such cases.”⁶⁵

In addition to intent, the crime of genocide requires that a national, ethnical, racial or religious group be targeted for destruction. On how to define a group as a national, ethnical, or racial group, the tribunal in *Prosecutor v. Goran Jelisić* stated:

. . . it is more appropriate to evaluate the status of a national, ethnical or racial group from the point of view of those persons who wish to single that group out from the rest of the community. The Trial Chamber consequently elects to evaluate membership in a national, ethnical or racial group using a subjective criterion. It is the stigmatization of a group as a distinct national, ethnical or racial unit by the community which allows it to be determined whether a targeted population constitutes a national, ethnical or racial group in the eyes of the alleged perpetrators.⁶⁶

According to this judgment, what is most important to the definition of a group is the identification of this group as separate by the perpetrators. In response to a 2014 Uyghur militant stabbing, President Xi called for a “struggle against terrorism, infiltration and separatism” using the “organs of dictatorship,” to show “absolutely no mercy.”⁶⁷ He also urged the party to use ideas derived

⁶⁵ United Nations Office on Genocide Prevention and the Responsibility to Protect. “Guidance Note 1: When to Refer to a Situation as ‘Genocide’.” United Nations.

⁶⁶ *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-T, Judgement (TC), 14 December 1999, para. 70.; The same conclusion is found in *Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, Judgement (TC), 7 June 2001, para. 65: “[...] Moreover, the perpetrators of genocide may characterize the targeted group in ways that do not fully correspond to conceptions of the group shared generally, or by other segments of society. In such a case, the Chamber is of the opinion that, on the evidence, if a victim was perceived by a perpetrator as belonging to a protected group, the victim could be considered by the Chamber as a member of the protected group, for the purposes of genocide.”

⁶⁷ Ramzy, Austin, and Chris Buckley. “‘Absolutely No Mercy’: Leaked Files Expose How China Organized Mass Detentions of Muslims.” *The New York Times*, The New York Times, 16 Nov. 2019, www.nytimes.com/interactive/2019/11/16/world/asia/china-xinjiang-documents.html.

from the United States’ “war on terror”.⁶⁸ Chinese officials were told to tell people who asked if detention of their family members were the result of a crime they had committed that “it is just that their thinking has been infected by unhealthy thoughts.”⁶⁹

The Uyghurs can be defined as an ethnic group (the Uyghurs), or a religious group (Muslims). In a statement accusing China of genocide in Xinjiang, former Secretary of State Mike Pompeo states that recently “local authorities dramatically escalated their decades-long campaign of repression against Uyghur Muslims and members of other ethnic and religious minority groups, including ethnic Kazakhs and ethnic Kyrgyz.”⁷⁰

Four hundred pages of internal Chinese files on the Xinjiang camps were leaked to the New York Times in November of 2019 by a member of the Chinese political establishment. Within these documents, evidence of the planned and systematic elimination of the Uyghurs is clear. These documents also supply coached responses for officials to answer questions that people will have when they discover their family and friends have been taken. Chen Quanguo, Party Leader for Xinjiang, told officials in 2016 to “round up everyone who should be rounded up.”⁷¹

These factors of intent and the classification of a specific group are necessary to prosecute genocide. These two factors in addition to any of the

⁶⁸ Ibid.

⁶⁹ “Document: What Chinese Officials Told Children Whose Families Were Put in Camps.” *The New York Times*, The New York Times, 16 Nov. 2019.

⁷⁰ Pompeo, Michael. “Determination of the Secretary of State on Atrocities in Xinjiang.” U.S. Department of State, 19 Jan. 2021.

⁷¹ Ramzy, Austin, and Chris Buckley.

subsections in Article II of the Genocide Convention individually are enough to constitute genocide. The following subsections will analyze which provisions are viable in the case of Xinjiang.

Killing members of the group

United Nations General Assembly Resolution 96 (I) of 1946, issued during the first session of the United Nations, affirmed that genocide was a crime under international law and defined genocide as “a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings.”⁷² By this definition, and the definition of genocide in the Genocide Convention, there is no minimum number of deaths required for there to be genocide.

What is necessary to constitute genocide is that the killings that do happen are done with the motive of destroying a human group in whole or in part. As has been argued, “[genocide] is a consistently controversial topic, one that often leads to questions over whether the violence was indeed coordinated or random, whether the killing was discriminatorily motivated or simply arbitrary, whether the death toll was grossly overestimated or underestimated.”⁷³

There is no list or database confirming the number of people who have died in the Xinjiang detention camps or post-detention due to trauma and illness

⁷² United Nations Resolution 96 (I). “The Crime of Genocide.” 11 December 1946.

⁷³ Ethan R. Ice, Book Note, *International Criminal Law in the 21st Century: The Crime of Genocide in Darfur*, 38 *Denv. J. Int'l L. & Pol'y* 193 (2009).

resulting from imprisonment. However, there are numerous reports of deaths of detained Uyghurs.

In 2019, a Chinese police officer confirmed the deaths of at least 150 detainees in Akesu, Xinjiang. That figure could be more than 200 in a single internment camp, according to Radio Free Asia. There have been multiple reports of alleged deaths from mistreatment within the camps.⁷⁴ A government official in Xinjiang recently reported that in his county, the Uyghur population was 92,000 in 2016, but as of August 2020 only 20,000 of them remained. In only four years, that is the loss of more than 80% of the population; however, the official stated no reason for this dramatic reduction.⁷⁵

While there is no minimum number of deaths required for genocide, individual deaths that may result from other causes would be difficult to attribute genocidal intent to. There has been no obvious intent to kill or systematic killings of Uyghurs. As a result, it may be hard to prove this provision in court.

China has made no comment on these alleged deaths beyond formally confirming to the UN the death of a Uyghur man whose family believe had been

⁷⁴RFA Staff. "At Least 150 Detainees Have Died in One Xinjiang Internment Camp: Police Officer." *Radio Free Asia*, Radio Free Asia, 29 Oct. 2019, www.rfa.org/english/news/uyghur/deaths-10292019181322.html.; "Uyghur Muslims Die in Re-Education Camps, Go Crazy in Psychiatric Hospitals." *Asia News*, 26 Apr. 2018, asianews.it/news-en/Uyghur-Muslims-die-in-re-education-camps,-go-crazy-in-psychiatric-hospitals-43612.html.; Aytikin, Emre. "Chinese Torture Allegedly Kills Islamic Scholar." *Anadolu Ajansı*, 6 Aug. 2018, www.aa.com.tr/en/asia-pacific/chinese-torture-allegedly-kills-islamic-scholar/1169454.

⁷⁵ Werleman, CJ. "Death Is Everywhere': Millions More Uyghurs Missing." *Byline Times*, 25 Aug. 2020, bylinetimes.com/2020/08/24/death-is-everywhere-millions-more-uyghurs-missing/.

held in a Xinjiang internment camp since 2017.⁷⁶ Officials maintained that these camps are for the sole purpose of reeducation.⁷⁷

Causing serious bodily or mental harm to members of the group;

Unlike killings, which clearly require death, the category of "causing serious bodily or mental harm to members of the group" is broad and can include almost any type of mental and/or physical torture. Cases that have used this section of the Genocide convention to determine genocide have defined bodily and mental harm in very loose terms. It has been found to include torture (mental and physical) without limits to the means or torture and/or treatment that can be defined as degrading or persecution. In *Prosecutor v. Jean-Paul Akayesu*, the ICTR Tribunal defined this subsection of the Convention further by explaining:

For purposes of interpreting Article 2 (2)(b) of the Statute, the Chamber takes serious bodily or mental harm, without limiting itself thereto, to mean acts of torture, be they bodily or mental, inhumane or degrading treatment, persecution.⁷⁸

This Article has been used before to describe the specific instance of serious bodily and/or mental harm within detention camps, such as in *Prosecutor v. Radoslav Brđanin*, where the Tribunal extensively detailed instances of serious bodily and/or mental harm that took place in a variety of camps and detention

⁷⁶ Davidson, Helen. "China Confirms Death of Uyghur Man Whose Family Says Was Held in Xinjiang Camps." *The Guardian*, Guardian News and Media, 2 Oct. 2020, www.theguardian.com/world/2020/oct/02/china-confirms-death-of-uyghur-man-whose-family-says-was-held-in-xinjiang-camps.

⁷⁷ Maizland, Lindsay. "China's Repression of Uyghurs in Xinjiang." *Council on Foreign Relations*, Council on Foreign Relations, 1 Mar. 2021, www.cfr.org/backgrounder/chinas-repression-uyghurs-xinjiang.

⁷⁸ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998, para. 504.

facilities, “in relation to which [the Tribunal] is satisfied beyond reasonable doubt that serious bodily and/or mental harm was inflicted ...and, further, that it was inflicted intentionally.”⁷⁹

For ease of analysis, the subsequent discussion will be divided into three sections: general torture , rape and forced abortion, and involuntary organ harvesting. These are some of the main categories of actions that would fall under the serious bodily and mental harm prong.

A. Torture

On the conditions of detainees who are exposed to the death of fellow detainees while in internment, the International Court of Justice (ICJ) judgement of *Bosnia and Herzegovina v. Serbia and Montenegro* states:

Constantly being exposed to the death and suffering of fellow prisoners made it impossible for anyone over any period of time to forget in what setting he or she was.⁸⁰

When living in an environment of torture, prisoners have no moment of relief from that torture. This kind of environment wears on detainees physically and mentally, whether they are actively being tortured or not.

⁷⁹ Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-T, Judgement (TC), 1 September 2004, para. 744.

⁸⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)); Order of the Court on Provisional Measures*, International Court of Justice (ICJ), 13 September 1993, available at: <https://www.refworld.org/cases,ICJ,3ae6b6721c.html>.

Mihrigul Turson, a Uyghur from Xinjiang who later immigrated to Egypt, was detained and separated from her triplets upon arrival in Xinjiang in 2015.⁸¹ Turson was retaken to a detention center in 2017. She claimed she saw nine detainees die due to the severe conditions in the camp.⁸² Turson recounted a time she was tortured through electroshock. She said she was strapped to a chair and a helmet put on her head, and then she was electrocuted until froth came from her mouth. She does not remember most of the experience, but she does remember a guard telling her that "...being a Uyghur is a crime."⁸³ Tursunay Ziawudun, who fled Xinjiang after her release and is now in the US, reported "they had an electric stick, I didn't know what it was, and it was pushed inside my genital tract, torturing me with an electric shock."⁸⁴ Former detainees report four kinds of electric shock: "the chair, the glove, the helmet, and anal rape with a stick."⁸⁵

Twenty other prisoners that the Chinese government moved to a psychiatric institution have reported similar torture. They were accused of being politically active professionals and were detained and then deprived of sleep and bathroom usage and forced to wear helmets that produced noises for 21 hours

⁸¹ After three months of detainment, Turson was told that one of her sons had died in a hospital, but was given no reason as to why he was admitted to the hospital in the first place. Watson, Ivan, and Ben Westcott. "Uyghur Refugee Tells of Death and Fear inside China's Xinjiang Camps." CNN, Cable News Network, 21 Jan. 2019, www.cnn.com/2019/01/18/asia/uighur-china-detention-center-intl/index.html.

⁸²Watson, Ivan, and Ben Westcott.

⁸³ Danilova, Maria. "Woman Describes Torture, Beatings in Chinese Detention Camp." AP NEWS, Associated Press, 27 Nov. 2018, apnews.com/61cdf7f5dfc34575aa643523b3c6b3fe.

⁸⁴ Gunter, Joel, et al. "Their Goal Is to Destroy Everyone': Uyghur Camp Detainees Allege Systematic Rape." *BBC News*, BBC, 2 Feb. 2021, www.bbc.com/news/world-asia-china-55794071.

⁸⁵ Ibid.

each day. Reports indicate they cried and screamed all day. At the time of the reporting, these prisoners had been held at a psychiatric facility for three months and forced to pay for their stay.⁸⁶

Other prisoners report being waterboarded and strapped to a “tiger chair,” which is a metal chair-like structure used for torture. Some inmates have committed suicide as a result of this torture, according to reports. The guards reportedly ordered other detainees to see if people were dead, and if they were, the guards would drag the dead body out by their feet.⁸⁷

Sautbay, whose experiences were previously discussed above, reported that one of her friends on the nursing staff gave medications and injections to those who fought back or were not easily taught. Sautbay never saw this with her own eyes but remembers inmates being taken and then returning dazed and more pliable. Others report cognitive decline in inmates after medical procedures.⁸⁸ An Amnesty International spokesperson said they heard similar claims of forced injections.⁸⁹ Another ex-detainee said he was forced to stand for hours on end, chanting “long live Xi Jinping.” Detainees have also been forced to eat pork and drink alcohol, which is not Halal and against the Muslim faith.⁹⁰ China has not

⁸⁶“Uyghur Muslims Die in Re-Education Camps, Go Crazy in Psychiatric Hospitals.” *Asia News*.

⁸⁷ Goldfarb, Kara. “China Has Been Forcing Muslims To Drink Alcohol And Eat Pork In ‘Reeducation Camps.’” *All That's Interesting*, All That's Interesting, 18 May 2018, allthatsinteresting.com/reeducation-camps-muslims-china.

⁸⁸ Novgorodoff, Danica, and Ben Mauk. “Weather Reports: Voices from Xinjiang.” *Believer Magazine*, 1 Oct. 2019, believermag.com/weather-reports-voices-from-xinjiang/.

⁸⁹ Rivers, Matt. “Former Xinjiang Teacher Claims Brainwashing and Abuse inside Mass Detention Centers.” *CNN*, Cable News Network, 10 May 2019, www.cnn.com/2019/05/09/asia/xinjiang-china-kazakhstan-detention-intl/index.html.

⁹⁰ Goldfarb, Kara.

directly responded to torture allegations, and Beijing maintains these camps are strictly for re-education.

B. Rape of Detained Women

Within international humanitarian law, serious sexual assault is prohibited under the Geneva Conventions and its additional protocols, which apply during armed conflict.⁹¹ Serious sexual assault and rape was also first classified as a crime against humanity under Article II of Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, which was the basis for the Nuremberg Military Tribunals, and which states: “Crimes against Humanity. Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.”⁹² Rape is also covered in the ICTY Statute, the ICTR Statute, and most extensively, the ICC Rome Statute (Control Council Law 10 was the first instance, but subsequent statutes have codified it as well).

⁹¹ Art. 3, which prohibits “outrages upon personal dignity, and in particular, humiliating and degrading treatment”; Art. 147 of Geneva Convention IV; Art. 85(4)(c) of Additional Protocol I; and Arts. 4(1) and 4(2)(a) of Additional Protocol II. In an aide-memoire of 3 Dec. 1992 and in its recommendations to the Conference on the Establishment of an International Criminal Court in Rome, July 1998, the ICRC has confirmed that the act of “wilfully causing great suffering or serious injury to body or health”, categorised as a grave breach in each of the four Geneva Conventions, does include the crime of rape.

⁹² Trials of war criminals before the Nuernberg Military Tribunals under Control Council law no. 10 Nuernberg, October -April 1949. [Washington, D.C.: U.S. G.P.O., to 1953, 1949] Web.. Retrieved from the Library of Congress, <lccln.loc.gov/2011525364>.

The ICTR case *Prosecutor v Jean-Paul Akayesu*, discusses rape in the context of genocide and underlines that rape is a method of committing genocide.⁹³ It defines rape as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.”⁹⁴ The prosecuted, Akayesu, was the mayor of Taba, Rwanda during the 1994 genocide where Tutsi women were systematically raped by troops. Akayesu was present at some of these acts. During this case, the ICTR recognized that rape and sexual violence can amount to genocide when committed with the intention of destroying a particular group in whole or in part.

This was the first case to define rape in the context of international law, and further found rape as a tool of genocide. The key is "they constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such. Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways of inflict harm on the victim as he or she suffers both bodily and mental harm."⁹⁵

The Tribunal in *Prosecutor v Akayesu* provided an expansive definition of sexual violence, in addition to its definition of rape, finding it to be:

...any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to

⁹³ Prosecutor v. Anto Furundzija (Trial Judgement), IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998.

⁹⁴ Case No. ICTR-96-4-T, para. 598.

⁹⁵ Case No. ICTR-96-4-T, para. 731.

physical invasion of the human body and may include acts which do not involve penetration or even physical contact ... coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or the military presence of Interahamwe among refugee Tutsi women at the bureau communal.⁹⁶

Akayesu further describes rape as "[l]ike torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity"⁹⁷

Scientific studies show the mental harm associated with rape. Rape victims have one of the highest risks of developing PTSD or related conditions when compared to other trauma victims. Without treatment, the symptoms of PTSD, such as depression, severe anxiety, and numbness, can last for years to a lifetime and amplify as time goes on. Rape victims are more likely to experience long lasting mental and physical problems than those who experienced trauma in combat, an assault, or a life-threatening accident.⁹⁸

Applying this analysis to the situation in Xinjiang, anecdotal evidence paints a picture of extensive, systematic rape against Uyghur women. Previous

⁹⁶ Case No. ICTR-96-4-T, para. 688.

⁹⁷ Case No. ICTR-96-4-T, para. 597.

⁹⁸Vartan, Starre. "The Lifelong Consequences of Rape." Pacific Standard, 15 Dec. 2014, psmag.com/social-justice/lifelong-consequences-rape-96056.

detainees have mentioned that they noticed guards coming to take girls in the night, with one woman reporting being tortured and gang raped on multiple occasions, each time by two or three men. This woman stated that women were removed from their cells “every night”; she said some women never returned and those that did were threatened against telling others what happened.⁹⁹

A Kazakh woman who was detained for 18 months reported being forced to "...remove [women's] clothes above the waist and handcuff them so they cannot move...then I would leave the women in the room and a man would enter - some Chinese man from outside or policeman. I sat silently next to the door, and when the man left the room I took the woman for a shower."¹⁰⁰ She said that Chinese men "would pay money to have their pick of the prettiest young inmates."¹⁰¹

Qelbinur Sedik, a Chinese language teacher brought into the camps who has since fled, reports that when asking a Chinese policewoman about systematic rape she said “...the rape has become a culture. It is gang rape and the Chinese police not only rape them but also electrocute them. They are subject to horrific torture.”¹⁰²

In separate testimony to the Uyghur Human Rights Project, Sedik described the public gang rape of a female inmate (who was about 20 years old)

⁹⁹ She also says "they don't only rape but also bite all over your body, you don't know if they are human or animal. They didn't spare any part of the body, they bit everywhere leaving horrible marks. It was disgusting to look at. I've experienced that three times. And it is not just one person who torments you, not just one predator. Each time they were two or three men." Gunter, Joel, et al.

¹⁰⁰ Ibid.

¹⁰¹ Ibid

¹⁰² Ibid.

in front of 100 detainees, she was forced to make a confession and "after that, in front of everyone, the police took turns to rape her...While carrying out this test, they watched people closely and picked out anyone who resisted, clenched their fists, closed their eyes, or looked away, and took them for punishment."¹⁰³

These and other multiple reports of rape and how it is carried out in the Xinjiang camps implies that it is systematic and against the Uyghur ethnic minority. Consequently, the raping of Uyghur women being held in detention camps is arguably, in itself, a crime of genocide.

Akayesu qualified rape was genocide because it was committed "solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public, in the Bureau Communal premises or in other public places, and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole."¹⁰⁴ This is an extremely similar story to the above mentioned reports from Xinjiang.

The Chinese government has not responded directly to questions about rape and torture of inmates. To amount these rapes to genocide, the rapes would have to be proven to be undeniably systematic, which would require further

¹⁰³ Ibid.

¹⁰⁴ Case No. ICTR-96-4-T, para. 731.

evidence to prove. For this reason, these rapes alone may not qualify genocide but do qualify crimes against humanity.¹⁰⁵

C. Organ Harvesting¹⁰⁶

In accordance with the United Nations Trafficking in Persons, The American Society of Transplantation and the American Society of Transplant Surgeons, organ trafficking is defined as:

the recruitment, transport, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, of a position of vulnerability, of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation by the removal of organs, tissues or cells for transplantation.¹⁰⁷

Organ harvesting violates this subsection of the Genocide Convention as it causes serious bodily harm to its victims.

The organ trafficking industry has benefited from the ever increasing need for transplants and the shortage of organs in many countries, especially in China where they have one of the lowest organ donation rates in the world.¹⁰⁸

¹⁰⁵ “For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;” Rome Statute of the International Criminal Court, United Nations, Treaty Series, vol. 2187, No. 38544.

¹⁰⁶ “Bloody Harvest/The Slaughter: An Update” p.424 Authors: David Kilgour, Ethan Gutmann, and David Matas, June 22, 2016.

¹⁰⁷ Budiani-Saberi, D. A., and F. L. Delmonico. “Organ Trafficking and Transplant Tourism: A Commentary on the Global Realities.” *American Journal of Transplantation*, vol. 8, no. 5, 2008, pp. 925–929., doi:10.1111/j.1600-6143.2008.02200.x.

¹⁰⁸ Xu, Hailin. “China's Organ Donation Rate One of the World's Lowest.” *Global Times*, 2 Aug. 2018, www.globaltimes.cn/content/1113632.shtml.

China is no stranger to organ harvesting; decades of research has shown that Beijing is systematically killing prisoners on demand to supply its organ transplant industry. People from all over the world come to China to have transplants.¹⁰⁹ Reports indicate that over ninety five percent of organ donors in China are prisoners.¹¹⁰

The China Tribunal, led by prominent lawyers, human rights experts, and a transplant surgeon has determined that China continues to harvest organs from prisoners and dissidents. China has an exceptionally short waiting time for organs, suggesting they have a large supply. In addition, it is reported that doctors have been instructed to cut out organs from live patients. It is speculated that much of this organ harvesting is happening within the Xinjiang Camps.¹¹¹

Ethan Gutmann, Nobel Peace Prize nominee and author of “The Slaughter: Mass Killings, Organ Harvesting, and China’s Secret Solution to Its Dissident Problem,” says this is not a new issue. According to Gutmann, surgeons have been extracting organs from Uyghur prisoners since 1994. He believes that the Communist Party is now amping up their organ harvesting efforts once again in Xinjiang. “Over fifteen million Uyghurs, Kazakhs, Kyrgyz and Hui have been blood tested, compatible with tissue matching. Over one

¹⁰⁹ Rhodes R, Schiano T. Transplant tourism in China: a tale of two transplants. *Am J Bioeth.* 2010 Feb;10(2):3-11. doi: 10.1080/15265160903558781. PMID: 20131159.

¹¹⁰ Biggins, Scott W et al. “Transplant tourism to China: the impact on domestic patient-care decisions.” *Clinical transplantation* vol. 23,6 (2009): 831-8. doi:10.1111/j.1399-0012.2008.00949.x

¹¹¹Dockrill, Peter. “Worst Fears About China's Organ Transplants And Prisoners Were Just Confirmed.” *ScienceAlert*, 19 June 2019, www.sciencealert.com/our-worst-fears-about-where-china-s-human-organs-come-from-were-just-confirmed.

million are in camps. So yes, the CCP has created a policy of ethnic cleansing – a potentially very profitable one.”¹¹²

Some scholars and activists have argued that China's organ harvesting constitutes genocide. But arguably this lacks intent because China is doing this to other groups - Falun Gong, dissidents of various sorts, etc. Because of this, it is hard to argue that this is genocide since the intent component is lacking. Despite the possibility that this might be used as ethnic cleansing and the abhorrent nature of these types of actions, this would be harder to prove in court.

Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part

According to Akayesu, this phrase means “methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction.”¹¹³ This includes, “*inter alia*, subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement.”¹¹⁴

Kayishema and Ruzindana, from the International Criminal Tribunal for Rwanda, describes “deliberately inflicting on the group conditions of life

¹¹² Stavrou, David. “China's 'XXX Files': '25 Thousand People Disappear Each Year, Their Organs Are Harvested'.” *Haaretz.com*, Haaretz, 4 Dec. 2020.; 黄洁夫：死囚可否捐器官是伪命题 《北京青年报》，2015年11月23日。

¹¹³ *Akayesu*, (Trial Chamber), September 2, 1998, para. 505-506.

¹¹⁴ *Ibid.*; See also *Rutaganda*, (Trial Chamber), December 6, 1999, para. 52; *Musema*, (Trial Chamber), January 27, 2000, para. 157.

calculated to bring about its physical destruction in whole or in part”¹¹⁵ as “includ[ing] circumstances which will lead to a slow death, for example, lack of proper housing, clothing, hygiene and medical care or excessive work or physical exertion”¹¹⁶ and “methods of destruction which do not immediately lead to the death of members of the group. [T]he conditions of life envisaged include rape, the starving of a group of people, reducing required medical services below a minimum, and withholding sufficient living accommodation for a reasonable period.”¹¹⁷

As seen, the intent behind China’s actions in Xinjiang shares the same *mens rea* as the crimes of murder or extermination. These harmful conditions and abuses constitute the definition of genocide and fall under the provision of deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

The internment conditions and torture of the Uyghurs falls directly under “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.” China could claim that these deaths were not “deliberate”; however, If officials see that the conditions they placed these people in are killing them, and then do nothing to change those conditions, that is purposeful murder by conditions.

“In part” needs to be emphasized, as many abuses such as rape, sleep deprivation, and starvation may not always kill inmates (though sometimes they

¹¹⁵ *Kayishema and Ruzindana*, (Trial Chamber), May 21, 1999, para. 115-116.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

do), but certainly they significantly damage the physical and mental well-being of members of the group and for the rest of their lives. In addition, it would be nearly impossible for the group to be destroyed “in whole”. This again emphasizes the intent needed to commit genocide that the Genocide Convention states. While a country may not be able to destroy a group “in whole”, their intent to do so and destruction of a group “in part” is still considered genocide.

Imposing measures intended to prevent births within the group;

According to Akayesu, “[I]mposing measures intended to prevent births within the group” includes: “sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages. In patriarchal societies, where membership of a group is determined by the identity of the father, an example . . . is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother’s group.”¹¹⁸ The Chamber noted that the measures may be mental as well as physical. “For instance, rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate.”¹¹⁹

Birth prevention and abortion can be directly used to commit genocide, and it can be one of the main tactics used to bring about the destruction of a group. In addition to the previously discussed rape and abortions within the

¹¹⁸ Case No. ICTR-96-4-T, para. 507.

¹¹⁹ Case No. ICTR-96-4-T, para. 508.

Xinjiang camps, China has also used forced sterilization and IUDs to prevent births within the Uyghur group.

After a visit to Kazakhstan, Gulzira Mogdyn was detained in Xinjiang. She reported that after doctors discovered she was pregnant, they cut her fetus out without giving her anesthesia.¹²⁰ One woman reports being repeatedly raped, and as a result, becoming pregnant twice.¹²¹ Both times she was forced to terminate her pregnancy.¹²² Another woman reports being forced to have two abortions while living in Xinjiang. Two other foreign national husbands have spoken out, saying their Uyghur wives who were in a detention camp in Xinjiang were forced to terminate their pregnancies. Multiple women have reported being forced to have abortions within the camp.¹²³ Other women who have now fled to Kazakhstan report having contraceptive devices implanted against their will while held in detention.¹²⁴

Adrian Zenz calls the Xinjiang Conflict a genocide due to issues of birth suppression. His findings provide some of the strongest evidence yet that Beijing's policies in Xinjiang meet the genocide criteria cited in the Genocide

¹²⁰ Ferris-Rotman, Amie.

¹²¹ A former detainee reports that at night, guards will take away young, unmarried girls for a prolonged time and bring them back, often in the middle of the night. When the girls return, "any normal person can see what kind of torture they have been through. When they come back, they turn into a different person. I think they do all kinds of torture to them and sexually abuse them." Rivers, Matt. "Former Xinjiang Teacher Claims Brainwashing and Abuse inside Mass Detention Centers." CNN, Cable News Network, 10 May 2019, www.cnn.com/2019/05/09/asia/xinjiang-china-kazakhstan-detention-intl/index.html.

¹²²Ioanes, Ellen. "Rape, Medical Experiments, and Forced Abortions: One Woman Describes Horrors of Xinjiang Concentration Camps." Business Insider, Business Insider, 22 Oct. 2019, www.businessinsider.com/muslim-woman-describes-horrors-of-chinese-concentration-camp-2019-10.

¹²³ Ibid.

¹²⁴ Ferris-Rotman, Amie.

Convention; however, his research alone is not grounds enough to prove the validity of birth suppression equaling genocide. He cites the drop of the growth rate in Xinjiang, as well as plans for mass female sterilization, birth control violations that are punishable by internment, forced IUDs and sterilization, and the rapid growth rate of the Han in Xinjiang.¹²⁵

Witness testimonies show that Xinjiang authorities have been administering drugs and injections to women in internment without their knowledge of the drugs or their consent, forcibly implanting intrauterine contraceptive devices (IUDs) prior to internment, coercing women to be surgically sterilized, and using internment as punishment for birth control violations, as mandated by government documents. In 2018, 80% of all IUD placements in China were performed in Xinjiang. Xinjiang planned to subject at least 80% of minority prefecture women to birth prevention surgeries by 2019.¹²⁶

Using XUAR Statistical Yearbooks, Dr. Adrian Zenz showed that the natural population growth rate in Xinjiang's minority regions have fallen by 84% in the two largest Uyghur prefectures between 2015 and 2018, and declined further in several regions in 2019. In 2020, one Uyghur region had a birth rate of almost zero.¹²⁷

Contrary to Zenz's assertion, the Chinese Embassy tweeted that "[t]he [Uyghur] population grew from 10.2 million in 2010 to 12.7 million in 2018, an

¹²⁵ Zenz, Adrian. "Sterilizations, IUDs, and Coercive Birth Prevention: The CCP's Campaign to Suppress Uyghur Birth Rates in Xinjiang." *Jamestown*, 22 July 2020, [jamestown.org/program/sterilizations-iuds-and-mandatory-birth-control-the-ccps-campaign-to-suppress-uyghur-birth-rates-in-xinjiang/](https://www.jamestown.org/program/sterilizations-iuds-and-mandatory-birth-control-the-ccps-campaign-to-suppress-uyghur-birth-rates-in-xinjiang/).

¹²⁶ Ibid.

¹²⁷ Ibid.

increase of more than 25 percent...the population of Han people in the region increased by just 2 percent to 9 million over the same period."¹²⁸ China has strongly denied claims of forced sterilization and argues that “[i]n the process of eradicating extremism, the minds of Uyghur women were emancipated and gender equality and reproductive health were promoted, making them no long baby-making machines, women have since been striving to become healthy, confident and independent.”¹²⁹

In some situations this forced abortion and birth prevention could rise to the level of genocide; however, given the cultural and historical particularities of Chinese family planning policies it may be hard to prove in this context.

While forced abortion is not explicitly legal in China, it has de facto legality according to provincial family planning laws. Xinjiang Province family planning laws only mention abortion once, and that is to ban women from having selective-sex based abortions. These laws do not say a woman will be forced to terminate an illegal pregnancy, but strongly encourage it and have legal consequences for women who do not pursue abortion, such as internment. Chinese officials have forced women to terminate pregnancies since the implementation of the original One-Child Policy. China has not avoided the topic of state-mandated birth control, saying on Twitter in January of 2021 that Uyghur

¹²⁸ Ordonez, Victor. “Chinese Embassy Tweet about Uighurs and Birth Rate Draws Instant Condemnation.” *ABC News*, ABC News Network, 8 Jan. 2021, abcnews.go.com/International/chinese-embassy-tweet-uighurs-birth-rate-draws-instant/story?id=75118569.

¹²⁹ *Ibid.*

women had been “emancipated” and were “no longer baby-making machines.”¹³⁰ Because of this cultural context, it would be hard to prove genocidal intent based on birth laws.

Forcibly transferring children of the group to another group

The *Convention on the Rights of the Child*, which the Chinese government ratified, defines children as persons under the age of 18. The Convention asserts that the family is the natural environment for the growth and well-being of children. This convention requires governments to ensure that a “child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”¹³¹

In the ICTY case *Prosecutor v. Milorad Krnojelac*, forcible transfer of children has been found to apply within, as well as outside of, national boundaries. As the ICTY found in that case, it is “well established that forcible displacements of people within national boundaries are covered by the concept of forcible transfer.”¹³²

When authorities detain the parents of an Uyghur child in Xinjiang, this child would normally be cared for by his or her extended family. However,

¹³⁰ Hui, Mary. “China Praised Itself for Saving Uyghur Women from Being ‘Baby-Making Machines.’” *Quartz*, Quartz, 8 Jan. 2021, qz.com/1954520/china-says-it-saved-uyghur-women-from-being-baby-making-machines/.

¹³¹ UN Commission on Human Rights, *Convention on the Rights of the Child.*, 7 March 1990, E/CN.4/RES/1990/74

¹³² *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Judgement (TC), 15 March 2002, para. 476.

officials have started finding these children and removing them from their families to be placed in state institutions. In 2016, the Chinese Communist Party Secretary in Xinjiang, Chen Quanguo, ordered that officials place all Xinjiang orphans into state institutions by 2020.¹³³ This essentially places Uyghur children into the hands of the Han Chinese to be raised as Han. The government encourages locals to send children whose parents cannot be found to these state orphanages. With a million people or more in detainment, the number of children that have missing parents is very high. The government's stated goal is to have all these children placed in institutions by 2020. Some areas even have quotas of children that must be sent to these state institutions.¹³⁴

All the crimes being committed against the Uyghurs of Xinjiang constitute crimes against humanity; however, due to the issue of explicit proof for many subsections of the Genocide Convention it seems improbable that a genocide conviction could be proven in court. Beijing seems to be committing many of the actions prohibited in Article II against the Uyghur population, but the intent component for many of these is hard to prove, such as birth prevention and killing members of the group. The following chapter will explore methods of deferring accusations and the weaknesses of the Genocide Convention in this situation.

¹³³ Zenz, Adrian. "Break Their Roots: Evidence for China's Parent-Child Separation Campaign in Xinjiang." *Journal of Political Risk*, vol. 7, no. 7, 4 July 2019.

¹³⁴ "China: Children Caught in Xinjiang Crackdown." *Human Rights Watch*, 16 Oct. 2018, www.hrw.org/news/2018/10/16/china-children-caught-xinjiang-crackdown#.

Chapter Three: Justifications for China's Actions

Like the US, China has passed certain measures to protect against terrorism, both external and internal. It also wields considerable soft power on the international scene. In the context of the allegations of genocide, China is able to utilize these pre-existing tools as a defensive strategy to protect against such allegations. The methods that will be discussed are: 1) China's laws and actions that can be used to defer accusations of genocide, and 2) problems with the Genocide Convention in the context of China and the Uyghurs. China has employed all these tactics to legitimize the state's actions and relieve legal pressures. The layering of these tactics has created an invisible, but palpable protective shield for the Chinese government.

China's Laws and Actions that Can Be Used to Defer Accusations of Genocide

Counter-Extremism in China

In 2018, China declared that Xinjiang needed to be stopped from becoming "China's Syria or China's Libya".¹³⁵ In 2014, China launched the "Strike Hard Campaign against Violent Terrorism," after four attacks that took place between 2009 and 2014.¹³⁶ This was the beginning of the Xinjiang police

¹³⁵ "Protecting Peace, Stability Is Top of Human Rights Agenda for Xinjiang." *Global Times*, 12 Aug. 2018, www.globaltimes.cn/content/1115022.shtml.

¹³⁶ Wang, Maya. "Eradicating Ideological Viruses." *Human Rights Watch*, 3 Aug. 2020, www.hrw.org/report/2018/09/09/eradicating-ideological-viruses/chinas-campaign-repression-against-xinjiangs.

state with rapid police recruitment, establishment of police stations, and the grid-based security system.¹³⁷

The People's Republic of China passed the Anti-Terror Law of 2016, months before the Xinjiang Camps were estimated to have begun in earnest. The law defines extremism as “the ideological basis of terrorism” or, more broadly, “inciting hatred, discrimination, or agitating violence through distorting religious doctrines or other means.”¹³⁸ Separatism, terrorism, and extremism were listed as the “three evil forces”.¹³⁹ China describes these actions as preventative measures against terrorism. The emphasis on religious separatism and extremism underscores the government's actions in Xinjiang to date. This emphasis is justified and provoked by the government's perception of domestic terrorism in China.

In 2017, China published a list of illegal extremist activities. By these regulations, it is forbidden to use one's “appearance, clothing and personal adornment, symbols, and other markings to disseminate religious fanaticism, disseminate religious extremist ideologies, or coerce others to wear extremist

¹³⁷ Zenz, Adrian. “Xinjiang's Rapidly Evolving Security State.” *Jamestown*, 15 Mar. 2017, jamestown.org/program/xinjiangs-rapidly-evolving-security-state/; Zenz, Adrian. “Chen Quanguo: The Strongman Behind Beijing's Securitization Strategy in Tibet and Xinjiang.” *Jamestown*, 21 Sept. 2017, jamestown.org/program/chen-quanguo-the-strongman-behind-beijings-securitization-strategy-in-tibet-and-xinjiang/.

¹³⁸ 中华人民共和国. 第十二届全国人民代表大会. 中华人民共和国反恐怖主义法, 2016年1月1日.

¹³⁹ 孙, 玉庆. “Related Stories.” *Xinjiang to Crack down on 'Three Evil Forces'* / *Politics* / chinadaily.com.cn, 6 Mar. 2012, www.chinadaily.com.cn/china/2012-03/06/content_14766900.htm.

clothing or religious extremist symbols.”¹⁴⁰ The state has also listed “unusual behaviors” that are considered signs of extremism and require monitoring. These include storing large amounts of food, quitting smoking or drinking, and not crying at funerals.¹⁴¹

China uses two tactics to achieve their goals according to their definition of extremism: “de-extremification” (去极端化) and “counter-extremism” (反极端化).¹⁴² Counter-extremism tactics are the prevalent method for Chinese officials; these tactics focus on removing the problem by removing the community as a whole rather than removing individual people. As a local Xinjiang official stated, “[y]ou can’t uproot all the weeds hidden among the crops in the field one by one — you need to spray chemicals to kill them all.”¹⁴³

China’s current campaign is an attempt to remove extremist tendencies from the “souls” of the Uyghurs.¹⁴⁴ This centralized focus paves the way for the government to intervene in Xinjiang’s culture, customs, daily life, and thought process.

¹⁴⁰ People’s Republic of China, Standing Committee of the Twelfth People’s Congress for the Xinjiang Uyghur Autonomous Region, *Xinjiang Uyghur Autonomous Region Regulation on De-extremification*, March 29, 2017.

¹⁴¹ Wang, Maya.

¹⁴² Doyon, Jerome. “Counter-Extremism’ in Xinjiang: Understanding China’s Community-Focused Counter-Terrorism Tactics.” *War on the Rocks*, 14 Jan. 2019, warontherocks.com/2019/01/counter-extremism-in-xinjiang-understanding-chinas-community-focused-counter-terrorism-tactics/.

¹⁴³ Hoshur, Shohret. “Chinese Authorities Jail Four Wealthiest Uyghurs in Xinjiang’s Kashgar in New Purge.” *Radio Free Asia*, 5 Jan. 2018, www.rfa.org/english/news/uyghur/wealthiest-01052018144327.html.

¹⁴⁴ Di, Lan. “论我国《反恐怖主义法》中的‘去极端化与反极端化.’” *铁道警察学院学报*, 31 May 2017, pp. 50–56., doi: 10.3969/j.issn.1009-3192.2017.01.006.

Use of Extremism Terminology

The September 11, 2001 attacks on the United States were a political boon for Beijing; China sided with the U.S. and rode the highly emotional wave of anti-terrorism, claiming to be a victim of international terrorism. Authorities immediately asserted that Xinjiang opposition was connected to greater international terrorism. Beijing stated that “Osama bin Laden and the Taliban in Afghanistan had provided the ‘Eastern Turkestan’ (another name for the Xinjiang Province) terrorist organizations with equipment and financial resources and trained their personnel,” and that one particular organization, the “Eastern Turkestan Islamic Movement” (ETIM) was a “major component of the terrorist network headed by Osama bin Laden.”¹⁴⁵

In October 2001, China’s Foreign Minister declared that “efforts to fight against East Turkistan terrorist forces should become a part of the international efforts and should also win support and understanding.”¹⁴⁶ China released a number of documents detailing purported “bombings and assassinations” by Xinjiang separatist groups.¹⁴⁷ However, these documents have numerous inconsistencies and lack corroborating, independent intelligence.¹⁴⁸ The United

¹⁴⁵Terrorist Activities Perpetrated by "Eastern Turkistan" *Organizations and Their Links with Osama bin Laden and the Taliban*, Permanent Mission of the People's Republic of China to the UN, November 29, 2001.

¹⁴⁶ “China Asks Help Against Muslims,” Associated Press, October 11, 2001.

¹⁴⁷ “East Turkestan’ Terrorist Forces Cannot Get Away with Impunity,” January 21, 2002, issued by the State Council Information Office, [online] <http://www.china-un.ch/eng/23949.html>. [国务院新闻办, “东突”恐怖势力难脱罪责,”2002年1月21日, <http://news.sohu.com/74/76/news147717674.shtml>].

¹⁴⁸ Ibid.

States even publicly emphasized that the international war on terror should not be used by China to justify internal repression against political opponents or minorities.¹⁴⁹ China continued to use this rhetoric, especially internally, to stir up anti-Muslim and anti-separatist sentiment.

The use of anti-terrorism language is politically beneficial on a global scale to legitimize China's actions in Xinjiang. By calling their actions anti-terrorism efforts and stressing the need for such, Beijing diminishes the extent of their actions and implies they are necessary, domestic protection efforts. China's Ministry of Foreign Affairs explains: "The relevant practices in China are no different from those in the UK, France and the US. They are all the active efforts we have made to prevent terrorism and eliminate extremism with the view to nipping the evil in the bud."¹⁵⁰ However, this statement came two months after a senior Chinese Communist Party official stated "there is no such thing as re-education centers." The centers were quickly exposed by aerial imagery.¹⁵¹

As a result, China's use of anti-terrorism propaganda has already given Beijing years to deal with the Uyghurs however they like. By using the blanket excuse of anti-terrorism, the global community's focus was diverted from what was actually happening to the Uyghurs.

¹⁴⁹ "U.S., China Stand Against Terrorism: Remarks by President Bush and President Jiang Zemin," press conference at the Western Suburb Guest House in Shanghai, People's Republic of China.

¹⁵⁰ People's Republic of China, Ministry of Foreign Affairs. "Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference." Ministry of Foreign Affairs of the People's Republic of China, 24 October 2018.

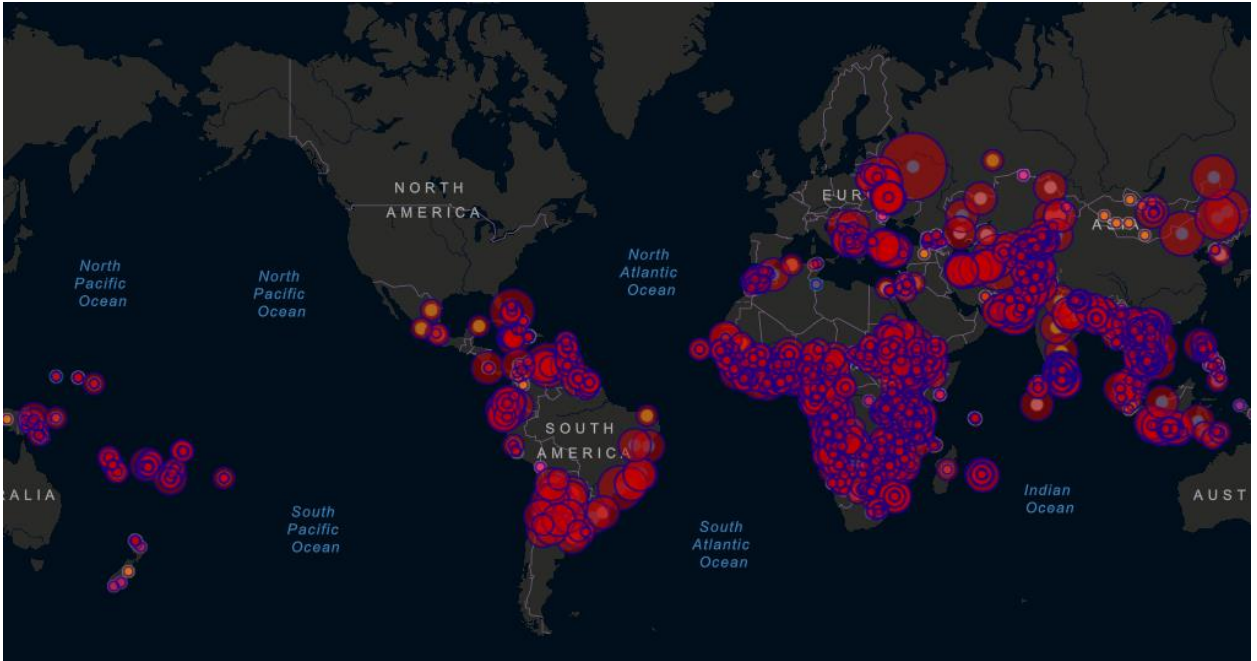
¹⁵¹ Cumming-bruce, Nick. "No Such Thing': China Denies U.N. Reports of Uyghur Detention Camps." *The New York Times*, The New York Times, 13 Aug. 2018, www.nytimes.com/2018/08/13/world/asia/china-xinjiang-un.html.

China's Soft Power

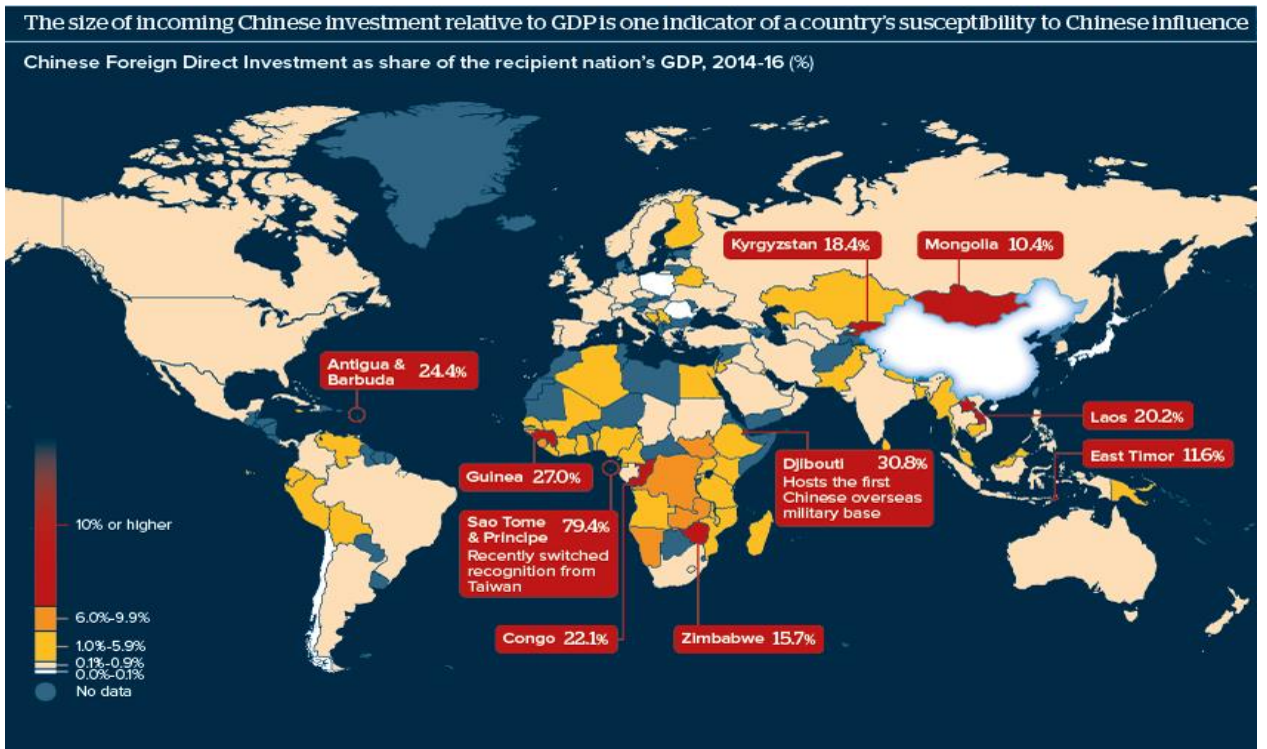
A recent example of how prosecuting genocide before the ICJ can be seen in the ongoing case of Myanmar. Under Article IX of the Genocide Convention, Myanmar was accused of genocide by The Gambia before the ICJ because of its treatment of the Rohingya. Due to the relatively small amount of influence Myanmar has over The Gambia, The Gambia faced little pressure from consequences that would disrupt their country. As a result, it was safe for The Gambia to file against Myanmar. This facet of the Genocide Convention works if no consequences will be brought against the accusatory country, but due to China's significant soft power, the process is not as simple in this case.

The Belt and Road Initiative, China Pakistan Economic Corridor, treaty ports, and big ticket global infrastructure and energy projects have given China significant political and economic influence in Asia, The Middle East, Africa, and Latin America. Many countries currently rely on China for infrastructure, energy, and trade.

The following two maps show (1) the location of thousands of Chinese-funded development projects across the globe using data from AidData's Geocoded Global Chinese Official Finance Dataset released September 11, 2018 and (2) the size of incoming Chinese investment relative to GDP.



(1) Map by Soren Patterson for AidData. (2) Source: China Global Investment Tracker, World Bank



China's global soft power significantly inhibits the number of countries that have the inclination to criticize China. As a result of its global influence, it is unlikely that accusations of genocide would be filed against China.

This shows another relative weakness of the Genocide Convention: it lacks a neutral body in charge of holding countries responsible for genocide, and consequently countries that are economically dependent on a more powerful country will be less likely to speak up against atrocities being committed there.

Turkey's reaction to the Uyghur Crisis is a clear example of how China's soft power has directly impacted a country's response. In 2009, the Turkish President Erdogan called China's repression of Uyghurs a "genocide".¹⁵² The Uyghur people are ethnically Turkish and share a similar language, so escaping to Turkey seemed to be the best option for many Uyghur's in Xinjiang. Turkey had offered asylum to the Uyghurs since 1952.¹⁵³

However, economic and political difficulties led Turkey to depend on China. In 2018, China loaned Turkey \$3.6 billion, and another \$1 billion in 2019.¹⁵⁴ Gradually, the Turkish government began raiding Uyghur homes and coordinating deportations with Beijing. In 2020, Turkey ratified an extradition

¹⁵² Altay, Kuzzat. "Why Erdogan Has Abandoned the Uyghurs." *Foreign Policy*, Foreign Policy, 3 Mar. 2021, foreignpolicy.com/2021/03/02/why-erdogan-has-abandoned-the-uyghurs/?utm_source=PostUp&utm_medium=email&utm_campaign=30788&utm_term=Editors+Picks+OC&%3Ftpcc=30788.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

deal with China in order to ‘combat terrorism’.¹⁵⁵ This drastic change in Turkish policy has made the Uyghurs’ historical asylum an unsafe haven.¹⁵⁶

China’s soft power has also been exerted through the media. Nine minutes into the credits of the film *Mulan*, Disney thanked the publicity department of the CPC Xinjiang Uyghur autonomous region committee, which is exactly where the atrocities against the Uyghurs are taking place and where the movie was filmed. This was used to bring positive media to China’s actions in Xinjiang.¹⁵⁷

China’s soft power is not only preventing nations from bringing formal accusations against China, but is also being directly used against non-supportive countries, such as Turkey. Without a safe way for countries to speak against China, it is doubtful that they will. This limits the power that the ICJ or other bodies may have to prosecute genocide under the Genocide Convention.

¹⁵⁵ Huang, Kristin. “China Ratifies Turkey Extradition Deal in Push to ‘Combat Terrorism’.” *South China Morning Post*, 29 Dec. 2020, www.scmp.com/news/china/diplomacy/article/3115592/china-ratifies-turkey-extradition-deal-push-combat-terrorism.

¹⁵⁶ Turkey is scared of separatist movements itself - the Kurdish population has been trying to declare independence for decades, and with the political instability in Iraq and Syria which also have significant Kurdish populations, the worry of a separatist Kurdish movement has been growing in Turkey. Bradshaw, James. “Turkey’s Thirty-Year Genocide.” *MercatorNet*, 8 Apr. 2021, mercatornet.com/turkeys-thirty-year-genocide/71203/.

¹⁵⁷ Meesala, Shriya. “The Muslim Uyghur Devastation and Cultural Genocide in the Xinjiang Province of China.” *UAB Institute for Human Rights Blog*, 30 Oct. 2020, sites.uab.edu/humanrights/2020/11/09/the-muslim-uyghur-devastation-and-cultural-genocide-in-the-xinjiang-province-of-china/.

Problems with the Genocide Convention in the Context of China and the Uyghurs

Nature of Genocide and Cultural Genocide

While the Holocaust was the catalyst for the Genocide Convention, genocide has not been restricted to the scale and level of atrocities committed during the Holocaust. Since the Holocaust, the world has witnessed the Cambodian Genocide, the Rwandan Genocide, the Bosnian Genocide, and the Darfur Genocide. However, in these applications of the Genocide Convention, the explicit intent to kill and physical killings were much more obvious than in Xinjiang. As a result, it is unclear how to apply the Convention in the context of Xinjiang.

This issue is currently playing out on the geopolitical scale. Former Secretary of State Pompeo, in January of 2021, was the first American diplomat to call what is happening in Xinjiang a genocide.¹⁵⁸ However, his statement was quickly backpedaled by the State Department, claiming there was insufficient evidence to conclude that genocide was happening; the State Department came to this conclusion due to the high threshold needed to prosecute genocide (as has been seen in the prosecution of previous genocides such as the Holocaust, the Bosnian Genocide and the Rwandan Genocide). Countering the State Department's judgement, in February of 2021, the Dutch parliament passed a

¹⁵⁸ Borger, Julian. "Mike Pompeo Declares China's Treatment of Uighurs 'Genocide'." *The Guardian*, Guardian News and Media, 19 Jan. 2021, www.theguardian.com/world/2021/jan/19/mike-pompeo-china-uighur-genocide-sanctions-xinjiang.

non-binding motion declaring that the treatment of the Muslim Uyghur minority in China amounted to genocide.¹⁵⁹

Arguably, this back and forth is caused by the fact that the Uyghur Genocide lacks rapid extermination, a main trait of all previous genocides prosecuted under international law. Extermination is happening in Xinjiang; it is just happening more gradually than in previous cases. Based on current knowledge, most Uyghur deaths are a by-product of torture or inhumane conditions. This is why many scholars use forced sterilization statistics to qualify the Uyghur Genocide, as previously discussed. However, the legitimacy of this argument can also be debated. Birth prevention and forcible transfers of Uyghur children have already heavily impacted the Uyghur population. Even if these points are unlikely to succeed as a claim under international law because of the difficulty of proving intent with respect to the Uyghurs specifically, this practice if continued will have significant negative impacts on the Uyghur population.

This brings up concerns when it comes to the definition of genocide. While the definition laid out in the Genocide Convention has been adequate when prosecuting previous, rapid genocides, there is no guidance on a genocide conviction outside of that context. There are also many genocides that have not been prosecuted; for example, nothing happened internationally about the Cambodian Genocide.

¹⁵⁹ “Dutch Parliament Says China's Treatment of Uyghurs Is Genocide.” *Human Rights News / Al Jazeera*, Al Jazeera, 26 Feb. 2021, www.aljazeera.com/news/2021/2/26/dutch-parliament-says-chinas-treatment-of-uyghurs-is-genocide.

In an ever-evolving modern world, the means to commit genocide is also ever-changing. By using the Holocaust as a basis, which the Genocide Convention was created in reaction to, all undefined forms of genocide are theoretically non-prosecutable. To modernize genocide legislation, a modern precedent needs to take place. This can only be created through new trials and case law, such as with the expansion of the understanding of rape as a means of genocide in the *Akayesu* case. If perpetrators of modern genocides are never convicted because their crimes do not meet Holocaust-era standards, the Genocide Convention will eventually be rendered useless.

Cultural genocide (also known as ethnocide or cultural cleansing), distinguished by lawyer Raphael Lemkin in 1944, is the most widely discussed subset of genocide. It is defined by the Armenian Genocide Museum as “acts and measures undertaken to destroy nations' or ethnic groups' culture through spiritual, national, and cultural destruction.” Article 7 of a 1994 draft of the United Nations Declaration on the Rights of Indigenous Peoples used the term “cultural genocide” but did not include a definition. Cultural genocide has been present in previously prosecuted genocides, but has never been used as a stand-alone concept. There is no current legal basis to render a conviction of cultural genocide other than convicting all crimes separately; however, this method does not make the true weight of a cultural genocide known.

Using cultural genocide as a stand-alone concept would open up the door for this more modern version of genocide to be prosecuted. The concept covers not only the physical destruction of a group, but the intent to destroy a culture.

This would provide an avenue to protect these marginalized groups where other forms of law may not work to protect them.

Due to the before mentioned cultural destruction, transfer of children, birth prevention and forced migration¹⁶⁰ of Xinjiang's Uyghurs, numerous scholars have claimed the Uyghurs are experiencing a cultural genocide.¹⁶¹

Reservations to Article IX of the Genocide Convention

Under the Genocide Convention, one of the avenues used to prosecute states relies on signatory states in order to invoke the jurisdiction of the ICJ. This allows states that are not party to genocide to bring claims against states that they view as being responsible for violating the Genocide Convention. In 2019, it was the Gambia who formally filed a claim against Myanmar, citing the *erga omnes* character of the obligations enshrined in the Genocide Convention. While the case is still ongoing, "the Court is of the opinion that the Rohingya in Myanmar

¹⁶⁰ Leaked official documents indicate Chinese officials are forcing Uyghurs who currently live in Xinjiang to relocate across the country. This is an attempt to remove Uyghur influence in Xinjiang and "assimilate Uyghur minorities." There is no estimate on how many Uyghurs have been moved and the Chinese government has refused to comment. Bostock, Bill. "Leaked Chinese Report Suggests It Is Forcing Uyghurs to Take Jobs Thousands of Miles Away to Change the Demographics of Their Homeland." *Business Insider*, 3 Mar. 2021, www.businessinsider.in/politics/world/news/leaked-chinese-report-suggests-it-is-forcing-uyghurs-to-take-jobs-thousands-of-miles-away-to-change-the-demographics-of-their-homeland/articleshow/81313419.cms.

¹⁶¹ Roberts, Sean R. "The Roots of Cultural Genocide in Xinjiang." *Foreign Affairs*, 10 Feb. 2021.; Holdstock N. Long march towards cultural genocide: As news emerges of the present horrors happening in Xinjiang, an expert on the region looks at its recent history. *Index on Censorship*. 2020;49(4):56-60. doi:10.1177/0306422020981277; Cronin-Furman, Kate. "China Has Chosen Cultural Genocide in Xinjiang-For Now." *Foreign Policy*, 19 Sept. 2018, foreignpolicy.com/2018/09/19/china-has-chosen-cultural-genocide-in-xinjiang-for-now/.; Meesala, Author Shriya. "The Muslim Uyghur Devastation and Cultural Genocide in the Xinjiang Province of China." *UAB Institute for Human Rights Blog*, 30 Oct. 2020.

remain extremely vulnerable, observing in particular that the Fact-Finding Mission concluded in September 2019 that the Rohingya people remained at serious risk of genocide.”¹⁶²

The ability for states to bring claims against other states for violation of the Genocide Convention comes from Article IX of the Genocide Convention, which states: “Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”¹⁶³

Multiple states, including China, have made reservations to Article IX, either limiting the applicability of the provision to situations where both parties consent, or, like China, explicitly denying its applicability entirely.¹⁶⁴ As a result of this reservation, there is less opportunity to bring China to court, narrowing the possibility for investigation, trial, and conviction. wWith the reservation, even if other countries weren't influenced by China's soft power, they'd have no recourse to bring a claim against China before the ICJ.

There have been many objections to the reservation of Article IX, namely the dissenting opinion of Judge Koroma, who discussed this reservation in context

¹⁶² International Court of Justice. Unofficial Press Release: Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar). 23 Jan. 2020.

¹⁶³ UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277, available at: <https://www.refworld.org/docid/3ae6b3ac0.html> [accessed 5 March 2021]

¹⁶⁴ "2. The People's Republic of China does not consider itself bound by article IX of the said Convention." Reservations and Declarations, UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 18 April 1983, United Nations, Treaty Series, vol. 78.

of the Rwandan Genocide. He argues that the reservation of Article IX is functionally against the Genocide Convention as a whole due to the fact that “reservations to a clause concerning dispute settlement are contrary to the object and purpose of the treaty if the provision is the *raison d’être* of the treaty – The object and purpose of the Genocide Convention is the prevention and punishment of the crime of genocide, and this encompasses holding a state responsible for violating its obligations under the Convention.”¹⁶⁵

Despite such objections, given that a number of states have reservations to Article IX, this has been at least tacitly accepted by the international community. By limiting the ability to bring China to the jurisdiction of the ICJ, China is protecting itself from facing prosecution. This is in no way completely protects China from the jurisdiction of the court; however, it does create limitations, since it forecloses the ability of neutral States to bring claims against China before the ICJ.

While the Genocide Convention isn't necessary to hold a country responsible for genocide, because genocide is a *jus cogens* norm, the problem of enforcement is always going to be an issue, especially when dealing with a powerful state with the resources to resist any attempt to hold it responsible.

¹⁶⁵ Koroma, Abdul G. Convention on the Prevention and Punishment of the Crime of Genocide, Dismissing Opinion of Judge Koroma, <https://www.legal-tools.org/doc/34abef/pdf>.

Final Observations

Crimes against humanity that could be considered genocidal in nature are being carried out within Xinjiang, although proving in court that China is actively committing a genocide seems currently unfeasible. By effectively making Xinjiang a prison-state, China has kept foreign media out and kept Uyghur testimonies locked inside. In addition, China is using a highly sophisticated media strategy to legitimize actions that aligns domestic and trans-national anti-terrorism legislation, anti-terrorism language, modern genocidal strategies, and exertion of soft power to keep countries from speaking out against China.

Although representatives from multiple countries have called this situation a genocide, the nature of genocide in the law and previously convicted genocides set a precedent that the situation in Xinjiang does not meet. This, in addition to the reservation to Article IX, makes it hard to provide a substantial, legal basis to accuse China of genocide. A modernized definition of genocide that included cultural genocide would be necessary to be able to attempt a prosecution against China for the Uyghur Genocide.

Nevertheless, the Uyghurs are facing severe persecution that could, in time, destroy the population of this minority group. Outside of the Xinjiang camps, Uyghur women are being sterilized, preventing them from bearing offspring. Children are removed from their families and transferred to non-Uyghurs, and adults are being forced to move from their homeland to locations across the country in an attempt to diasporize the Uyghurs. Historically protected mosques and religious buildings have been completely destroyed and replaced

with government-approved architecture. Uyghurs are constantly monitored and can be subject to police investigation at any time.

Inside the re-education camps, extreme conditions cause the death of inmates. The Uyghurs are forced to strip themselves of their religion, culture, language, and identity. If they refuse, they are subjected to torture and forced injections. Their organs are being harvested and their labor exploited. Uyghur women are raped and forced to have abortions.

Previous examples have shown what happens when states fail to act against genocide. Overt action may be politically and economically inconvenient for nations, but continuing to allow these atrocities undermines not only the effectiveness of international law, but also the value of human life for the convenience of a few. “Never again” became the slogan against genocide after the Holocaust, and yet genocide continues to occur again and again. The world community must step in to confront China.

Bringing formal accusations against China does not guarantee an investigation, and an investigation does not guarantee China’s conviction or liberation for the Uyghurs. Such litigation would involve jurisdictional and interpretational complexities; however, with the help of governments and the global population, these complexities can be overcome with an updated approach to modern genocide.

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