

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

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Role of International Organisations in Protecting the Uyghur Muslims

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ABSTRACT

Maintenance of peace and security is the major goal of the United Nations and while it has worked tremendously in the furtherance of the same, the plight of the Uyghur Muslims in China cannot be ignored. Amongst the Xinjiang province of China, the Uyghur community is leading a desolate and miserable life. The Chinese authorities are violating the human rights of this community through demographic genocide. In doing so, they are violating international treaties and conventions along with their own Constitution. The Uyghur community is facing a continuing violation of human rights in the form of internment camps, birth control measures and high surveillance. These acts are also falling under the definition of 'genocide' under various international treaties. The authorities assert that the outside world does not understand the internal issues of Xinjiang as the Uyghur community is creating unrest and spreading violence for their demand for an independent state. Under the existing structure of the UN, an effective remedy to this minority community cannot be available as the jurisdiction of the concerned international courts does not lie in the said matter.

In this paper, the author analyses the condition of the Uyghur community and the various international treaties and conventions which are being violated by the Chinese authorities. The author further provides for reform in the existing structure of the international organisations with a change in the geopolitical realities of the present.

I. INTRODUCTION

Today, the Uyghur Muslims of China are living in a dystopian era. China was paranoid that militants might get into China from Afghanistan and force the Uyghur Muslims of China to follow an extremist ideology. In order to prevent the rise of terrorism, in January 2018, China announced that it will make a counter-terrorism base in northern Afghanistan in the Badakhshan Province by providing financial support to build the base. The purpose of this was to block the cross-border infiltration of the ethnic Chinese Uyghur Muslims. The detention

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camps are still being expanded by the Chinese government to curb the Uyghur Muslim population in Xinjiang. The Chinese government has denied the existence of any camps for Uyghurs. But since 2017, more than 85 camps have been discovered where approximately 1 million Uyghur Muslims have been confined inside Xinjiang alone. These camps have been reportedly constructed between 2017 and 2018. These camps have been termed as “Re-Education Centers” by the official Chinese spokespersons, which show the camps equipped with watchtowers and barbed wire fences. The members of the minority clarify that these camps were not used for re-education rather they were interned, detained, beaten and interrogated solely based on their religion.²

II. WHO ARE UYGHUR MUSLIMS

Uyghur Muslims are a Turkic ethnic group present in the Xinjiang province of China, and East and Central Asia. They primarily live in the Xinjiang Uygur Autonomous Region in the People’s Republic of China and are approximately 12 million in number³. The Xinjiang territory of China is the largest province in the north-eastern region of China bordered by 8 countries which include the Soviet Central Asian Republics, Mongolia, Afghanistan, Pakistan and India. It is often referred to as Uyghurstan or East Turkestan. It predominantly comprises the Uyghur Muslim population. The Xinjiang Uygur Autonomous Region (XUAR) was formed in 1955. This is an autonomous region only in theory but not in practice.⁴ The Xinjiang province is rich in natural resources and the economic development in the area has been accompanied by large-scale immigration of Han Chinese.

(A) Background

The Uyghurs majorly populated the Xinjiang region, where their main economy comprised trade and agriculture for centuries. One of their towns like Kashgar benefited from the Silk Road Trade route. Their community is not restricted to China but extends to Kazakhstan, Kyrgyzstan, Uzbekistan and thousand others living in Australia. They speak their language, aptly called Uyghur. But China has enforced upon those confined to the camps to be proficient in Mandarin⁵.

²Bryan Wood, *What is happening with the Uighurs in China*, PBS NEWSHOUR, (Dec 20, 2020, 10:03 AM), <https://www.pbs.org/newshour/features/uighurs/>

³Rachel Harris, *Securitisation and mass detentions in Xinjiang: How Uyghurs became quarantined from the rest of the world*, QUARTZ, (Dec 20, 2020, 11:01 AM) AM), <https://qz.com/1377394/securitization-and-mass-detentions-in-xinjiang-how-uyghurs-became-quarantined-from-the-outside-world/>

⁴ *The Uighurs and the Chinese state: A long history of discord*, BBC News, (Dec 21, 2020, 07:00 PM), <https://www.bbc.com/news/world-asia-china-22278037>

⁵ Michael Clarke, *China’s Integration of Xinjiang with Central Asia: Securing a “Silk Road” to Great Power Status?*, 6 CEF 89, 90-111 (2008).

In 1911, the Qing Dynasty subsided, but Xinjiang stayed a province under the freshly pronounced Republic of China, which was still frail. Later on, there were occasional ventures to form separate Muslim states, i.e., the First and Second Eastern Turkestan Republic. The Uyghurs were able to declare independence with the help of Joseph Stalin, the Soviet Communist Leader. The First Eastern Turkestan Republic was but a brief effort of gaining independence, but it was destroyed at the Battle of Kashgar by the Chinese Muslims. Whereas, the Second Eastern Turkestan Republic was a Soviet-supported Communist state.

In 1949, when the Chinese Civil War ended and the People's Republic of China was proclaimed, the Second Eastern Turkestan Republic was 'liberated in a peaceful fashion' and merged into a whole another state. Even though in southern Xinjiang often armed resistance carried on till the 1950s. Then, the People's Republic of China created the Xinjiang Autonomous Region in 1955. Today, Xinjiang is considered a Chinese autonomous region similar to Tibet, but in reality, there is little autonomy from China for Xinjiang.

During the Cultural Revolution⁶ in the 1960s started by Mao Zedong where his aim was to annihilate all other cultures from China to uphold the Chinese culture, his wife Jiang Qing asserted Uyghur Muslims to be "foreign invaders and aliens"⁷. During this period thousands of mosques were closed or destroyed and some were used for pig breeding, Qurans were burnt and circumcision was banned. 29,545 mosques in the whole of Xinjiang in 1949 were reduced to just 1,400 after the Cultural Revolution.

(B) Demographic Genocide

In 1979, China started One Child Policy and in the Xinjiang Uyghur Autonomous Region. In 1981, provincial regulations were issued under Article 15 of Chapter 3 of XUAR for family planning, which stated that minorities in urban areas can have two children, while those in rural areas can have up to 3 children which were implemented on them from 1983. As a result of this policy, protests broke out across Uyghur students in Beijing as they feared this would lead to demographic alteration of their land and they demanded the concerned family planning regulation to be scrapped off. It also led to Uyghur women being forced to abort a third child, or they were forced to pay heavy fines. Such women kept secret the birth of their child and were forced to refrain from availing medical services and resorted to help of traditional midwives. The conduct of Chinese authorities at this point is against the essence of CEDAW,

⁶ Kenneth G. Lieberthal, *Cultural Revolution*, BRITANNICA, (Dec 15, 2020, 09:13 AM), <https://www.britannica.com/event/Cultural-Revolution>

⁷ Ayjaz Wani, *How Beijing targets Uyghur Women*, ORF, (Dec 15, 2020, 11:32 AM), <https://www.orfonline.org/expert-speak/beijings-aggression-by-design-towards-uyghur-women/>

which stresses that women shall not be discriminated against based on their role in reproduction.

In 2013, the inauguration of the Belt and Road Initiative took place and 3 out of 6 BRI land runs through Xinjiang. This caused an influx of Han population thus further alienating the Uyghur population. In 2014, knife attacks took place at the Kunming Railway Station, which was linked to Xinjiang separatists. After these attacks, the CCP restarted the demographic genocide after Xi Jinping stressed the integration of Uyghurs with the dominant Han culture. This was done in the form of exploitation of the Uyghur population, repressive Sinicization, re-education camps, high surveillance, etc.

While in 2016, China abolished its one-child policy, the Uyghurs were subjected to forced sterilisation, abortion and implantation of contraceptive devices, as well as women, were forced medication that stopped the menstrual cycle.

(C) Reasons for the persecution of Uyghur Muslims

A large number of the Uyghur population has reported instances of discrimination such as job discrimination and surveillance and marginalisation by the Chinese authorities. This crisis is a result of growing discontent among the Uyghur population, which was fueled by China's domestic policy in the region. Many Uyghurs face grievances driven by the ethnic, religious and cultural factors.

However, China has denied for a long time the operation of internment camps and it asserts that the outside world does not understand the situation in Xinjiang. China asserts that the Uyghur Muslims are plotting bombs, sabotaging and creating unrest for their demand for an independent state⁸. Any expression of Muslim identification for the Chinese government is synonymous with extremism. Moreover, access in Xinjiang is restricted and only highly controlled visits by foreigners which are state-managed diplomatic visits are allowed.

III. CHINA'S OBLIGATIONS UNDER INTERNATIONAL LAW

China has ratified certain treaties like Universal Declaration of Human Rights (UDHR); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

⁸ *The Uyghurs and the Chinese state: a long history of discord*, BBC News, (Dec 17, 2020, 10:27 PM) <https://www.bbc.com/news/world-asia-china-22278037>

(UNCAT). China is a state party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Article I of this Convention states that the Contracting Parties shall undertake to prevent and punish the crime of genocide.

China is legally bound to adhere to the main purpose of these treaties as well as its provisions and reservations. However, China is violating the *jus cogens* as its conduct towards the Uyghurs has reached the extent of genocide and crimes against humanity.

Article 1 of ICERD which condemns the impairment of human rights and fundamental freedoms in political, social, cultural spheres or on the basis of colour, descent, race, or national or ethnic origin, has been flagrantly violated by China through forced internment of the Uyghurs based on their ethnicity and religion. Article 12 of UNCAT provides that the State must conduct a prompt and impartial investigation if there are reasonable grounds to believe that torture has been committed under its jurisdiction is also violated by the Chinese Government. The Chinese government is also violating Article 1 of CEDAW as well as Article 12 of ICESCR through discriminatory acts such as forced obstruction of the reproductive autonomy of the minority Uyghur women.

Apart from these treaties, China is also blatantly violating its own constitution. Article 4 of the Chinese Constitution provides that discrimination against and oppression of any nationality along with any act which undermines unity or instigates division of nationality is prohibited. Article 22 provides for the protection of the historical and cultural heritage of China. Article 35 ensures freedom of speech as well as freedom of procession and demonstration. Article 36 provides that a state organ cannot compel the individuals to believe in any religion and protects religious activities. The right to religious, cultural and social self-determination is also envisaged in Article 1,2 and 15 of ICESCR, Articles 18-20 of the UDHR and Articles 2 and 5 of ICERD. Moreover, Article 37 of the Chinese Constitution prohibits the unlawful detention or deprivation or restriction of citizens' freedom of the person by other means as well as an unlawful search of a citizen. However, the 2016 Counterterrorism Law⁹ of China permits the mass arrest of citizens who are practising their religion. China's counterterrorism policies also put sanctions on the freedom of movement of the Uyghurs, thus violating Article 5 of ICERD and Article 13 of the UDHR.

Articles 12,16 and 26 of the UDHR, as well as Article 10 of ICESCR, provide for violations of family life which are breached by the Chinese government. Also forcing the transfer of

⁹ *Anti-terrorism Law of the People's Republic of China*, (Jan 20, 2021, 10:42 PM), http://www.gov.cn/xinwen/2015-12/28/content_5028407.htm

children of one group into another is a potential form of committing genocide as per Article 2 of the Genocide Convention which is violated by the Chinese government. The serious mental and bodily harm causing to the Uyghur Muslims is violative of Article 5 of ICERD and the UDHR as well as Article 2 of the Genocide Convention lists is as a potential means of committing genocide.

IV. CRITICAL ANALYSIS OF THE ROLE OF INTERNATIONAL ORGANISATIONS

(A) United Nations and International Criminal Court

The ICC or the International Criminal Court prosecutes crimes which affect the international community as a whole such as genocide, crimes against humanity, war crimes and crimes of aggression. But for the decision of ICC to be binding on a State, the State must accept the jurisdiction of ICC.

As per Article 12(2) of the Rome Statute, for the ICC to exercise jurisdiction, the State must accept the jurisdiction. But, as per Article 13 (b) of the Rome Statute, the ICC may exercise its jurisdiction if such crimes were referred by the UNSC to the ICC prosecutor under a resolution adopted under Chapter VII of the UN Charter.

Neither of these two pathways is available to prosecute China against the crimes against the Uyghur population as firstly, China does not accept the jurisdiction of ICC. Secondly, China being a permanent member of the UNSC will exercise its veto power and won't allow a resolution for prosecution against itself.¹⁰ Similarly, this is the reason why the decision of the International Court of Justice cannot be binding in this case as the decisions of the ICJ are enforced only through UNSC Resolution.

The ICC will have to take an indirect approach to establish jurisdiction over the matter. Reference can be made to a precedent set by the ICC in the Myanmar case in Rohingya genocide. In 2018, a request was made to the ICC by prosecutor Fatou Bensouda to exercise jurisdiction over crimes committed against Rohingya Muslims during their deportation to Bangladesh from Myanmar. The prosecutor emphasised that although the crimes were committed in Myanmar, which does not accept the jurisdiction of ICC, Bangladesh accepts the jurisdiction of ICC. Since the crimes were committed when the Rohingyas were forced to move across the border into a state which accepts the jurisdiction of ICC, i.e. Bangladesh, this was held by the Pre-Trial Chamber I to be enough to justify the jurisdiction of ICC in the matter¹¹.

¹⁰ Alina Rizvi, *Uighur Crisis Highlights Flawed Structure of United Nations Security Council*, JURIST, (Dec 10, 2020, 10:08 AM), <https://www.jurist.org/commentary/2020/07/alina-rizvi-uns-c-reform-uighurs/>

¹¹ *ICC judges authorise opening of an investigation into the situation in Bangladesh/Myanmar*, ICC-CPI-

However, the ICC refused to investigate the alleged detention and genocide of Uyghur Muslims in China as Prosecutor Fatou Bensouda said that China is not a party to the ICC and the alleged crimes which occurred in a part of the territories of ICC State parties Cambodia and Tajikistan against the Uyghur Muslims were not crimes against humanity. Thus, they would not fall within the jurisdiction of the ICC.¹²

(B) Organisation of Islamic Corporation

The foreign ministers of the OIC ignored the plight of Uyghur Muslims as well. Rather than condemning the acts done by the Chinese government such as outlawing the practice of Islam in the Muslim predominant province¹³, mass surveillance, arbitrary detention of a Muslim minority population, the OIC passed a resolution on 1st March 2019 praising China's efforts in providing care to Muslim citizens¹⁴. One of the key objects laid down in the OIC Charter is to safeguard the rights, dignity, religious and cultural identity of the Muslims communities and minorities in the non-member States. However, the OIC has abandoned its founding principles to maintain diplomatic and trade relations with China.

(C) Need for Reform of the UN Structure

The United Nations was established in 1945 after the end of the Second World War, and since then, the geopolitical realities of the world have changed. The UN has been buffeted by unprecedented technological and environmental changes. Some permanent members of the UNSC like France and the UK are no longer pre-eminent powers in the world today. There is a need that the UNSC needs to become more geographically balanced, and there is a need for it to reflect realities of the 21st century. There is a need for urgent expansion of the number of permanent seats in the UNSC.

India is also a Nuclear Weapon State (NWS) and has one of the most powerful militaries in the world and is a democratic republic and strictly follows a 'rules-based international order'. Nuclear weapons are a currency of global power. The five permanent members (P5) of the UNSC, i.e., USA, Russia, UK, France and China also possess nuclear weapons.

Even though India is a non-signatory to anti-proliferation treaties like the Nuclear Non-

20191114-PR1495, <https://www.icc-cpi.int/Pages/item.aspx?name=pr1495>

¹²*International Criminal Court refuses to probe China on alleged detention, genocide of Uighur Muslims*, SCROLL (Dec 06, 2020, 05:40 PM), <https://scroll.in/latest/981393/international-criminal-court-refuses-to-investigate-china-on-detention-genocide-of-uighur-muslims>

¹³ *UN experts call for repeal of 'de-extremification' regulations in Xinjiang*, (Dec 03, 2020, 11:40 PM), <https://www.ishr.ch/news/china-un-experts-call-repeal-de-extremification-regulations-xinjiang>

¹⁴ "Resolutions On Muslim Communities And Muslim Minorities In The Non-OIC Member States" OIC/CFM-46/2019/MM/RES/FINAL

Proliferation Treaty (NNPT) where the Non-Nuclear Weapons States (NNWSs) signed away their right to develop nuclear weapons forever, India has an impeccable record on non-proliferation. It has never allowed its nuclear weapons technology to be transferred to other countries, and it has always performed its responsibilities as a member of the UN with assurance. It has regularly contributed personnel for various UN peacekeeping missions in the world. India has laws that protect the human rights of both citizens as well as non-citizens. Bodies like the National Human Rights Commission uphold all the human rights of the citizens. India is one of the most prominent leaders that advocates sustainable development and reversing climate change.

For the reform process of the United Nations, support of members of the P5 will be needed as they enjoy the power to veto any proposal in the UNSC. The P5 members need to overlook their own national interest. In this regard, the veto power of the P5 is an anachronism presently. Their focus must be to make the UN stronger and more relevant and a pioneer of global peace, stability and cooperation in the decades ahead. Thus, there is a need for the structure of UNSC to be more democratic and representative. Therefore, the structure of the UN needs a reformation to reflect the geopolitical realities of the 21st century in order to stay relevant.

V. CONCLUSION

In Xinjiang, the Uyghur Muslims live in a wretched, dehumanised society and lead fearful lives. The Chinese government with the intention to curb the Uyghur Muslims population started various detention camps where they are being interned, detained, beaten, subject to forced sterilisation and abortion. Even though China denies the operation of such internment camps and calls them ‘re-education camps for the Uyghur Muslims as they are a threat to national security. It asserts that the outside world does not understand the internal issues of Xinjiang as the Uyghur Muslims are creating unrest and spreading violence for their demand for an independent state. Moreover, access to Xinjiang is highly restricted and controlled by the State and the Uyghur Muslims are subjected to high surveillance.

China is violating *jus cogens* as its conduct towards Uyghurs has reached the extent of genocide and crimes against humanity. Carrying out forced internment of Uyghurs based on their ethnicity and religion, discriminating against Uyghur women by taking away their reproductive autonomy, violating the right to self-determination of Uyghurs, subjecting them to physical and mental abuse and detaining them without due process are violative of the international treaties like UDHR, CEDAW, ICESCR, ICERD, UNCAT along with the Chinese Constitution. International organisations like the UN and ICJ under the existing structure will remain

ineffective as any Resolution of UNSC will not be passed against China as it is a permanent member of the UNSC and will exercise its veto power. Moreover, the OIC ignored the plight of Uyghur Muslim and passed a Resolution praising China's efforts in providing care to Muslim citizens thus abandoning its key objective that is to safeguard the dignity, religious and cultural identity of Muslim communities and minorities in the Non-member States. In doing so, the OIC gave priority to its diplomatic and trade relations with China.

The UN no longer reflects the geopolitical realities of the present and there is an urgent need for reform of the UN structure for it to stay relevant. Also, the UNSC needs to be more geographically balanced. At present, the veto power of the permanent members of the UNSC is an anachronism. Due to China's veto power, no action is possible against it even though it is acting against the major role of the UN, i.e. maintenance of peace and security. Thus, the international community must decide how far they will allow China to violate the human rights of a minority community in its country without facing any global repercussions.
