

SILENCING XINJIANG: THE CHINESE GOVERNMENT’S CAMPAIGN AGAINST THE UYGHURS

Connor W. Dooley*

TABLE OF CONTENTS

I.	INTRODUCTION	235
II.	CHINA’S CAMPAIGN AGAINST THE UYGHURS IN CONTEXT	236
	A. <i>History of Xinjiang: Before, Under, and After Mao</i>	236
	i. <i>Xinjiang from the Early to Mid-Twentieth Century</i>	237
	ii. <i>Xinjiang Under Mao</i>	238
	iii. <i>Xinjiang from Deng to Xi</i>	239
	B. <i>Tensions: Cultural and Political Interests at Play in Xinjiang</i>	240
	i. <i>Uyghur Interests in Xinjiang</i>	240
	ii. <i>Beijing’s Agenda for Xinjiang</i>	241
	iii. <i>Justifying the Campaign</i>	243
	C. <i>The Campaign Against the Uyghurs</i>	244
	i. <i>A Dragnet Like No Other: The Xinjiang Surveillance State</i>	245
	ii. <i>Da Fa Meaning “Strike Hard”</i>	247
	iii. <i>Xinjiang’s Internment Camps</i>	248
III.	COVENANTS AND COMMUNISM: INTERNATIONAL AND DOMESTIC LAW IN XINJIANG.....	250
	A. <i>The 1965 Convention on the Elimination of All Forms of Racial Discrimination</i>	250
	i. <i>To End Racial Discrimination: Relevant Background on the Racial Discrimination Convention</i>	251
	ii. <i>Provisions Relevant to Xinjiang</i>	252
	iii. <i>Ensuring Compliance: The Committee on the Elimination of Racial Discrimination</i>	254
	iv. <i>China’s 2018 Periodic Report to the Racial Discrimination Committee</i>	255

*J. D. Candidate, University of Georgia School of Law, 2020. B.A., Southern Methodist University, 2017.

B.	<i>The 1966 International Covenant on Economic, Social and Cultural Rights</i>	257
i.	<i>Background to the ESCR Covenant and the Rights Therein</i>	258
ii.	<i>An Emergent Interdependence: Relevant Portions of the ESCR Covenant</i>	259
iii.	<i>The Committee on Economic, Social and Cultural Rights and its Optional Protocol</i>	260
C.	<i>Chinese Domestic Law</i>	262
i.	<i>Problems with Chinese Constitutional Law</i>	262
ii.	<i>Developments in Chinese Criminal Law</i>	263
iii.	<i>China's Counter-Terrorism Framework</i>	264
IV.	SUPPRESSED IN XINJIANG	266
A.	<i>A Right to Be Free from Surveillance?</i>	266
i.	<i>Xinjiang's Surveillance System as a Violation of the Racial Discrimination Convention</i>	266
ii.	<i>Xinjiang's Surveillance System as a Violation of the ESCR Covenant</i>	267
iii.	<i>Applying Chinese Domestic Law</i>	268
B.	<i>Strike Hard Under International Law</i>	268
i.	<i>Strike Hard Analyzed Under the Racial Discrimination Convention</i>	268
ii.	<i>Strike Hard Under the ESCR Covenant</i>	269
iii.	<i>Strike Hard and Chinese Law</i>	270
C.	<i>The Xinjiang Internment Camps</i>	270
V.	CONCLUSION	272

I. INTRODUCTION

Over the last several years, the People's Republic of China, under the leadership of President Xi Jinping, has launched two interrelated campaigns which pose a novel problem for the international legal system. The first of these campaigns is an ambitious endeavor aimed at increasing China's influence internationally.¹ The second is a domestic effort aimed at stifling dissent and cementing the governing Chinese Communist Party's control over its citizenry.² In the Xinjiang Uyghur Autonomous Region (hereafter Xinjiang), these two campaigns intersect in such a way as to pose a new and weighty problem for the international system of human rights, namely, how can the international system respond when a nation undertakes to forcibly destroy a minority culture without resorting to forced migration or mass murder?

Xinjiang is China's northwest-most region and is home to the Uyghurs (also spelled Uighurs), an ethnically Turkic people who practice Islam and are culturally, ethnically, and linguistically distinct from China's Han majority.³ The Communist government has made the elimination of Uyghur culture, and its replacement with an iteration of Han-Chinese culture more in line with the Party's sensibilities, part of its domestic agenda for the region.⁴ This effort at sinicizing the Uyghur people makes use of an expanding system of reeducation camps accompanied by an extremely sophisticated and high-omniscient surveillance apparatus.⁵ Estimates vary as to how many people have been sent into these camps, but they range from several hundred thousand to over a million.⁶ This campaign includes numerous violations of both Chinese domestic law and international agreements to which China is a party.

¹ *Is China Challenging the United States for Global Leadership?*, ECONOMIST (Apr. 1, 2017), <https://www.economist.com/china/2017/04/01/is-china-challenging-the-united-states-for-global-leadership>.

² See Tom Phillips, *Chairman Xi Crushes Dissent but Poor Believe he's Making China Great*, THE GUARDIAN (Oct. 14, 2017), <https://www.theguardian.com/world/2017/oct/14/xi-jinping-crushes-dissent-but-making-china-great-again>.

³ Matthew Moneyhon, *Controlling Xinjiang: Autonomy on China's "New Frontier"*, 3 ASIAN-PAC. L. & POL'Y J. 120, 120-122 (2002); Aurora Elizabeth Bewicke, *Silencing the Silk Road: China's Language Policy in the Xinjiang Autonomous Region*, 11 SAN DIEGO INT'L L. J. 135, 138-39 (2009).

⁴ Ann Scott Tyson, *Xinjiang: Beijing's Chilling Attempt to Erase and Replace Uyghur Identity*, CHRISTIAN SCI. MONITOR (Jan. 7, 2019), <https://www.csmonitor.com/World/Asia-Pacific/2019/0107/Xinjiang-Beijing-s-chilling-attempt-to-erase-and-replace-Uyghur-identity>.

⁵ *China Has Turned Xinjiang Into a Police State Like No Other*, THE ECONOMIST (May 31, 2018), <https://www.economist.com/briefing/2018/05/31/china-has-turned-xinjiang-into-a-police-state-like-no-other> [hereinafter *Like No Other*].

⁶ Editorial, *China's Repugnant Campaign to Destroy a Minority People*, WASH. POST (May 20, 2018), https://www.washingtonpost.com/opinions/chinas-repugnant-campaign-to-destroy-a-minority-people/2018/05/20/9fe061b4-5ac0-11e8-b656a5f8c2a9295d_story.html.

This Note aims to analyze the Chinese government's actions in Xinjiang in the context of international law as it applies to China. It proceeds in three parts. Part I introduces the relevant historic background. Part II will discuss relevant facts, including the historical context of the campaign, the various cultural-political interests at play in Xinjiang, and the process by which the Chinese government suppresses the Uyghur people. Part III will begin by discussing two of the international agreements violated by the Chinese government's campaign against the Uyghurs in Xinjiang and end with an examination of key Chinese laws. Part IV will first examine the Chinese government's failure to meet its obligations under the aforementioned international agreements then examine the extent to which China's domestic laws contribute to the present situation in Xinjiang. This Note concludes that the People's Republic of China is in violation of its treaty obligations and that the Chinese legal system has not only allowed, but enabled, these violations.

II. CHINA'S CAMPAIGN AGAINST THE UYGHURS IN CONTEXT

The Xi Administration's campaign against the Uyghurs takes place against a complicated backdrop of historic and socio-political tensions. Historically, Northwest China, and Xinjiang in particular, is a very different place from China's political power centers along its East Coast, and Han Chinese iterations of nationalism predate even Mao Zedong's Communist Revolution.⁷ The situation is complicated by the fact that Xinjiang has been made into the world's largest police state.⁸ This part of the Note first provides the necessary historical background to the situation in Xinjiang. It will then explore the various cultural and political interests at play. After the necessary context is provided, this part will discuss the campaign itself.

A. History of Xinjiang: Before, Under, and After Mao

Xinjiang has a long, complicated relationship with the Chinese interior,⁹ and the Communist Party has made incorporating Chinese national identity in more isolated regions like Xinjiang a priority.¹⁰ Understanding the current plight of the Uyghurs requires some understanding of this history and how the relationship between the Uyghurs and the Chinese government has developed over time. More specifically, a historical understanding requires an

⁷ Rian Thum, *The Uyghurs in Modern China*, in OXFORD RESEARCH ENCYCLOPEDIA OF ASIAN HISTORY (Apr. 26, 2018), <http://asianhistory.oxfordre.com/view/10.1093/acrefore/9780190277727.001.0001/acrefore-9780190277727-e-160>; *Like No Other*, *supra* note 5.

⁸ See *Like No Other*, *supra* note 5.

⁹ Thum, *supra* note 7.

¹⁰ Moneyhon, *supra* note 3, at 131.

appreciation of Xinjiang's history prior to the Communist Revolution, under Mao, and in the Post-Mao Era.

i. Xinjiang from the Early to Mid-Twentieth Century

The history of Xinjiang prior to Mao Zedong's Communist Revolution is complicated, and to this date there are still disagreements of fact between Uyghur historians and the Chinese government.¹¹ What is Xinjiang today has, at various times, been ruled by larger Chinese states, divided into smaller states, ruled as an independent region, and partially unified as a series of independent republics under various names, most notably the First East Turkestan Republic.¹² This tumultuous history of varying different governments, revolution, and outside influence is largely reflected in the social tensions rife in Xinjiang today.

At the start of the twentieth century, Xinjiang was a part of the Qing Empire, which was, at the time, still struggling to integrate the region with the rest of China.¹³ Due to a combination of factors, including the efforts to integrate Xinjiang with the rest of China and the emergent Uyghur nationalism movements toward regional autonomy, the collapse of the Qing Empire did not change the political makeup of the region; former Qing officials stepped in to rule the region even as the Qing Empire disintegrated into a number of successor states.¹⁴ In the following decades, various entities competed for power and influence in Xinjiang including the Soviet Union, outside Muslim armies, the Chinese Nationalist government, and Uyghur nationalists who sought to unite various Turkic groups in the region under a unified Uyghur identity.¹⁵ This competition resulted in a chaotic period which saw the creation of two different East Turkistan Republics, multiple Soviet interventions, and a rise in Uyghur nationalist sentiment.¹⁶ In spite of the chaos, the Chinese Communist Party emerged victorious when the portions of the region controlled by the Nationalists surrendered to Communist forces bloodlessly, and the last vestiges of the East Turkestan Republic agreed to be absorbed into the People's Republic of China.¹⁷

¹¹ Elena Caprioni, *Daily Encounters Between Hans and Uyghurs in Xinjiang: Sinicization, Integration, or Segregation?*, 84 PAC. AFF. 267, 268 (2011).

¹² Thum, *supra* note 7.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

ii. *Xinjiang Under Mao*

Mao declared the birth of the People's Republic of China in October 1949, and his approach to Xinjiang initially involved a relatively light touch.¹⁸ A migration program brought many Han Chinese into the region.¹⁹ The Islamic Court system was disassembled,²⁰ and the new Communist government seized and redistributed land.²¹ Although these would normally be considered massive reforms, when compared with Mao's subsequent programs, these policies were mild.

Mao's Great Leap Forward and Anti-Rightist Campaigns, both of which began in the late 1950s, brought sweeping change to Xinjiang, with disastrous consequences.²² Forced collectivization ravaged the Chinese farm economy and radically reshaped socioeconomic institutions, all while new settlers and refugees resettled in the region.²³ The Communist government began stifling religious practice early on, but it was during these campaigns that such persecutions and likely related unrest began to affect Xinjiang.²⁴ Communist officials shuttered Islamic schools, took mosques to serve as their offices, and destroyed religious texts.²⁵ Forced social reforms upended the social structure in Xinjiang to such an extent that public religious expression was nearly impossible.²⁶ Simultaneously, the Anti-Rightist Campaign purged over one thousand Uyghur officials.²⁷ Han Chinese Communists were placed in positions of authority, and the local economy and regional security forces were placed under their control.²⁸ During the Cultural Revolution, Han Communists took control of every aspect of life in Xinjiang. They dismantled Uyghur social institutions, took control of the local economy, and established a firm grip on power in the region.²⁹ Even though many Uyghurs, likely fueled by religious grievances, pushed back against Mao's policies,³⁰ the great

¹⁸ *Id.*

¹⁹ Michael Dillon, *Muslim Communities in Contemporary China: The Resurgence of Islam After the Cultural Revolution*, 5 J. ISLAMIC STUD. 70, 82 (1994).

²⁰ Thum, *supra* note 7.

²¹ Dillon, *supra* note 19, at 82.

²² Thum, *supra* note 7.

²³ *Id.*

²⁴ Yitzhak Shichor, *Blow Up: Internal and External Challenges of Uyghur Separatism and Islamic Radicalism to Chinese Rule in Xinjiang*, 32 ASIAN AFFAIRS: AN AM. REV. 119, 127 (2005).

²⁵ Thum, *supra* note 7.

²⁶ *Id.*

²⁷ *Id.*

²⁸ See Dillon, *supra* note 19, at 82.

²⁹ *Id.*

³⁰ Shichor, *supra* note 24, at 127.

campaigns of the Mao era were largely successful in repressing Uyghur religious and cultural practices.³¹

iii. *Xinjiang from Deng to Xi*

The post-Mao era in Xinjiang saw a resurgence of Uyghur nationalism as well as the emergence of a new problem in the region: Islamic extremism. Deng Xiaoping took power after Mao's death, and his efforts toward a more open China were reflected in Xinjiang where there was a rapid restoration of Uyghur cultural identity.³² However, in the face of concerns about renewing Uyghur nationalist movements, reformist policies were quickly abandoned.³³ These nationalists were motivated in part by Beijing's continued push to encourage Han immigration to Xinjiang which Uyghur nationalists perceived as a strategy to dilute local culture and ensure Han control of the region.³⁴ Tensions continued to mount after once-peaceful protests became violent.³⁵ Assimilationist policies fueled rising Islamic radicalism which took root in the region and elevated tensions even further.³⁶ Thousands of Uyghurs, now allowed to freely travel to Mecca for the Hajj, returned with fundamentalist literature and videocassettes.³⁷ Several Uyghur nationalist groups, labelled terrorists by the Chinese government, incorporated Islamic fundamentalism into their messages.³⁸ One group even called for a holy war against the Han and their perceived backers in Beijing.³⁹

Though few Uyghurs have taken the radical steps called for by some of the most extreme groups in Xinjiang, terrorism has nevertheless become a defining issue in the Xi administration's approach to Xinjiang. Riots struck Xinjiang's capital, Urumqi, in 2009 and left nearly 200 dead and over 1,000 injured.⁴⁰ Outbursts of violence have plagued the region, leading the Xi administration to wage what China's state media has called its own "war on terror" against the perceived Uyghur threat.⁴¹ As this note will show, the

³¹ Thum, *supra* note 7.

³² *Id.*

³³ See Dillon, *supra* note 19, at 83.

³⁴ *Id.* at 84.

³⁵ Thum, *supra* note 7.

³⁶ Shichor, *supra* note 24, at 122; Dana Carver Boehm, *China's Failed War on Terror: Fanning the Flames of Uighur Separatist Violence*, 2 BERKELEY J. MIDDLE E. & ISLAMIC L. 61, 83-84 (2009).

³⁷ Shichor, *supra* note 24, at 122.

³⁸ *Id.* at 122-23.

³⁹ *Id.* at 123.

⁴⁰ Reza Hasmath, *What Explains the Rise of Majority-Minority Tensions and Conflict in Xinjiang?*, 38 CENTRAL ASIAN SURV. 46, 46 (2018).

⁴¹ Phillip Wen, *Terror Threats Transform China's Uighur Heartland into Security State*, REUTERS (Mar. 30, 2017), <https://www.reuters.com/article/us-china-xinjiang-security-ins>

government's actions in this "war" have significant implications in international law and beyond.

B. Tensions: Cultural and Political Interests at Play in Xinjiang

The two primary actors in Xinjiang's present situation are the region's Uyghur population and the Chinese government. The Communist Party's policy toward Xinjiang centers on an effort to sinicize the region and the Uyghurs who live there and, in doing so, bring them more into line with the Communist Party's vision of a more unified China.⁴² This policy has been in place for some time, and has led to an exacerbation of tension in the region,⁴³ culminating in the campaign against the Uyghurs in place today. Uyghur interests have clashed with the government's agenda. Under President Xi, the government has used this clash, and the conflicts therein to justify its actions in Xinjiang. Understanding the campaign itself requires one to examine both Uyghur interests in the region and the government's agenda, as well as the Xi Administration's underlying justification for the campaign.

i. Uyghur Interests in Xinjiang

While Xinjiang is the traditional homeland of the Uyghur people, prior to the last century, few in Xinjiang would have identified with the term "Uyghur."⁴⁴ In fact, Uyghur identity is a relatively new cultural phenomenon, one that began only in the early twentieth century.⁴⁵ During this time period, many Uyghur writers and politicians began to explore their Islamic heritage as well as a shared, ethnonational sense of self, and Uyghur identity spread from there.⁴⁶ This identity was shaped by two key components: Islam and Uyghur autonomy.

Like most Turkic peoples, almost all Uyghurs practice Islam.⁴⁷ For much of Uyghur history, Islam has been a part of daily life and has shaped Uyghur culture.⁴⁸ By contrast, the Communist Party remains a staunchly atheistic

ight/terror-threats-transform-chinas-uyghur-heartland-into-security-state idUSKBN173A S.

⁴² Liu Caiyu, *Islamic Communities Urged to Uphold Sinicization, Improve Political Stance*, GLOBAL TIMES (Jan. 6, 2018), <http://www.globaltimes.cn/content/1134757.shtml> (note that GLOBAL TIMES is owned by the Chinese Communist Party's Central Committee).

⁴³ *Id.*; Boehm, *supra* note 36.

⁴⁴ Thum, *supra* note 7.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Dillon, *supra* note 19 (explaining the influence of Islam on the Uyghurs).

organization.⁴⁹ Following Deng's rise to power and the subsequent easing of many of the Communist Party's more repressive policies, Islam in China experienced something of a renaissance.⁵⁰ Religion returned to prominence in the region, and assumed many of its previous functions in Uyghur society.⁵¹ Under President Xi, however, the government's approach to Islam has swung back toward repression.⁵²

Of equal importance to Islam's role in Uyghur identity is the idea of Uyghur autonomy. The Chinese government designates Xinjiang an autonomous region, which should in theory grant it some measure of self-rule, but this is still a far cry from the self-governance that the Uyghurs have held at various times throughout history.⁵³ There is some evidence to suggest that many Uyghurs today view Chinese rule in the region as illegitimate.⁵⁴ China has responded by cracking down on separatist sentiment, but in the past, crack-downs have led to further calls for independence.⁵⁵ Calls for separatism are voiced internationally by a growing number of Uyghur diaspora organizations as well.⁵⁶

ii. *Beijing's Agenda for Xinjiang*

The current situation in Xinjiang is part of a broader agenda by President Xi which seeks to recentralize and cement power in the hands of the Communist Party while projecting a powerful image of unity and strength both domestically and abroad.⁵⁷ The policy of objectives entailed in this broader agenda have large implications in Xinjiang as well. Appreciating how this agenda has sharpened the government's actions in Xinjiang requires one to examine the intersection of traditional Han culture and communism, the nature of Chinese governance, and the agenda itself.

Over the last several decades, the Chinese Communist Party has effectively replaced many aspects of what one might call traditional Han culture

⁴⁹ Hasmath, *supra* note 40, at 46.

⁵⁰ Dillon *supra* note 19, at 71.

⁵¹ *Id.*

⁵² Thum, *supra* note 7.

⁵³ *Id.*; Moneyhon, *supra* note 3, at 126, 136.

⁵⁴ *Id.*

⁵⁵ Boehm, *supra* note 36, at 66.

⁵⁶ Shichor, *supra* note 24, at 126.

⁵⁷ Banyan, *Can Xi Jinping Make Use of the Power he has Accumulated?*, *ECONOMIST* (Mar. 31, 2018), <https://www.economist.com/china/2018/03/31/can-xi-jinping-make-use-of-the-power-he-has-accumulated>; Editorial, *China's President Just Laid Out a Worrying Vision for the World*, *WASH. POST* (Oct. 18, 2017), https://www.washingtonpost.com/opinions/global-opinions/xi-jinpings-ambitions-ought-to-concern-the-worlds-democratic-nations/2017/10/18/53c8c9d8-b41c-11e7-a90a3470754bbb9_story.html.

with its values.⁵⁸ Despite the West's perception of Chinese culture as being ancient and spread throughout China, the idea of a China unified by Han culture is relatively modern, dating to the end of Qing rule (in the early twentieth century).⁵⁹ By incorporating Chinese myth with ethnonationalist rhetoric, the idea of a Han ethnicity gained significant traction early on.⁶⁰ Chinese intellectuals, inspired in part by Western conceptions of ethnicity, endeavored to unify China under the umbrella of Han ethnicity.⁶¹ During the Cultural Revolution, however, the Communist Party denounced what it called "Han chauvinism [sic]"⁶² and sought to destroy many elements of traditional Chinese culture.⁶³ However, after Mao's death, the Communist Party embraced and co-opted Han nationalism as a way to maintain political legitimacy as it pivoted away from Mao's immensely destructive policies.⁶⁴ Deng Xiaoping and his successors combined Han nationalism with Maoist rhetoric and remade the Party's image from top to bottom, paying rhetorical lip service to Marxist thought while adopting a more pragmatic system under the guise of Han ethnic identity.⁶⁵ Xi Jinping has taken this one step further by using Han ethnonationalist arguments to take an expansive view of Chinese sovereignty.⁶⁶

China's governing structure renders it effectively a one-party state in which the Communist Party, which includes about 70% of its legislature's delegates and almost all of the government's senior officials, exerts almost total control over the government.⁶⁷ Policy formulated by those at the very top of the Communist Party who serve on the Politburo and is then approved by the National People's Congress.⁶⁸ The Politburo is elected by the Communist Party's Central Committee, which is controlled by Xi Jinping, who, in addition to his role as President, serves as the Communist Party's General Secretary.⁶⁹ In recent years Xi has consolidated authority even further, launching an anti-corruption campaign which he has used to remove potential rivals and

⁵⁸ Hayden Windrow, *From State to Nation: The Forging of the Han through Language Policy in the PRC and Taiwan*, 37 N.Y.U. J. INT'L L. & POL. 373, 397-98 (2005).

⁵⁹ *Id.* at 382-83.

⁶⁰ *Id.* at 385-86.

⁶¹ *Id.* at 384.

⁶² Thum, *supra* note 7.

⁶³ Windrow, *supra* note 58, at 397.

⁶⁴ John M. Friend & Bradley A. Thayer, *The Rise of Han-Centrism and What It Means*

⁶⁵ Windrow, *supra* note 58, at 399-400.

⁶⁶ *Id.*; Boehm, *supra* note 36, at 77.

⁶⁷ *National People's Congress*, BBC: How China is Ruled, http://news.bbc.co.uk/2/shared/spl/hi/in_depth/china_politics/government/html/7.stm (last visited Sept. 24, 2019).

⁶⁸ *Id.*

⁶⁹ *Politburo*, BBC: How China is Ruled, http://news.bbc.co.uk/2/shared/spl/hi/in_depth/china_politics/government/html/4.stm (last visited Sept. 24, 2019); Li Xia, *Xi Focus: Xi Requires Deepening CPC's Self-Reform*, XINHUANET (June 25, 2019), http://www.xinhuanet.com/english/2019-06/25/c_13817_3020.htm (note that Xinhua is the official state-run press agency of the PRC, subordinate to the Chinese government).

install loyalists in high ranking positions.⁷⁰ He has also created new bureaucratic agencies to continue this mission outside of the halls of power with the express goal of cementing the Communist Party's grip on power for years to come.⁷¹ In both name and function, therefore, Xi Jinping wields more authority than any one person in the Communist Party since Mao Zedong.

The agenda President Xi has pursued is reflected in his policies and rhetoric. His government has taken great care in crafting an agenda aimed at recentralizing power in the hands of the Communist Party.⁷² He has used populist appeals in rallying support for an expansive view of Chinese territorial sovereignty internationally.⁷³ Domestically, his government has cracked down on dissidents and made extensive use of nationalistic rhetoric to sell his "China Dream" to the Chinese people.⁷⁴ This rhetoric is backed by assimilationist policies in Xinjiang.⁷⁵ The chauvinistic policies eschewed by the Communist Party's founder have become part of a national agenda aimed at sinicizing minority ethnicities.

iii. Justifying the Campaign

In contrast to the relatively complex interplay of ideas forming the foundation of the Xi administration's national agenda, the justification for the campaign against the Uyghurs is relatively simple. The *Global Times*, which is owned by the Central Committee of the Communist Party of China, has written that policies in the region "have given priority to anti-secession and counter-terrorism so as to maintain stable development, and Western media should see the situation themselves before accusing China."⁷⁶ The Communist Party of China's news agency has also attributed the following statement regarding the reasons for what it calls a "vocational education and training program" (the government's preferred term for its internment camps) to Xinjiang official Shohrat Zakir: "The move aims to prevent the majority of those who committed petty crimes from becoming victims of terrorism and extremism."⁷⁷

⁷⁰ Banyan, *supra* note 57.

⁷¹ *Id.*

⁷² *Id.*

⁷³ See Editorial, *supra* note 57.

⁷⁴ Friend & Thayer, *supra* note 64.

⁷⁵ Mark D. Kielsgard & Tam Hey Juan Julian, *The Second Front – Again? The Rising Tide of Global Jihadism in East and Southeast Asia*, 13 *INTERCULTURAL HUM. RTS. L. REV.* 131, 162 (2018).

⁷⁶ Liu Xin, *Xinjiang Policies Justified*, *GLOBAL TIMES* (Aug. 13, 2018), <http://www.globaltimes.cn/content/1115202.shtml> (note that this statement is attributed to "Chinese experts" without the use of quotations).

⁷⁷ Liu Caiyu, *Xinjiang Stability on the Rise*, *GLOBAL TIMES* (Oct. 16, 2018), <http://www.globaltimes.cn/content/1123155.shtml> (note that this statement is attributed without the use of quotations).

Claims of a terrorist threat in Xinjiang are not unfounded, but should be treated with skepticism. The Chinese government often restricts access to information when it has the potential to reflect poorly on its agenda, but bombings have occurred in Xinjiang, a series of which took place in 1992 targeting buses and more attacks on January 22, 2005 which killed thirteen people.⁷⁸ A terrorist organization calling itself the Organization for Turkestan Freedom claimed responsibility for a Beijing bus bombing in 1997.⁷⁹ While credible, precise data on the number of attacks and the number of casualties inflicted is unavailable, there is ample evidence to support the claim that separatist and extremist terrorism has been a problem in Xinjiang in the past.⁸⁰ However, other clashes between Uyghurs and the Han government in Xinjiang reveal another side to this narrative. In February 1997, hundreds of Uyghur protestors marched in the streets demanding the release of imprisoned clerics and better employment opportunities.⁸¹ After their violent dispersal by police, approximately 300 were rounded up and summarily executed, though official reports number the total deaths at nine.⁸²

Examination of how the Communist Party's media apparatus has approached the threat of separatism and extremism underscores a connection between the government's agenda in Xinjiang and the harsh measures used to implement it. The threat of terrorist activity in Xinjiang, while certainly a real issue, is being used as justification for an overwhelming government response. The Global Times echoes this justification with statements such as: "Authorities in Hami, Northwest China's Xinjiang Uyghur Autonomous Region, urged suspects of violence and terrorism and those influenced by the three evil forces of separatism, extremism and terrorism to surrender within 30 days for leniency."⁸³ Using these "three evil forces" as justification has become an integral part of a campaign that goes well beyond merely combatting extremist activities.

C. *The Campaign Against the Uyghurs*

The broader agenda in Xinjiang is pursued through a campaign unlike anything that has come before it. In years past, most attempts at purging a

⁷⁸ Boehm, *supra* note 36, at 108, 110.

⁷⁹ *Id.* at 106, 110.

⁸⁰ Enshen Li, *China's New Counterterrorism Legal Framework in the Post-2001 Era: Legal Development, Penal Change, and Political Legitimacy*, 19 *NEW CRIM. L. REV.* 344, 346 (2016); Justine Drennan, *Is China Making Its Own Terrorism Problem Worse?*, *FOREIGN POL'Y* (Feb. 9, 2015), <https://foreignpolicy.com/2015/02/09/is-china-making-its-own-terrorism-problem-worse-uyghurs-islamic-state/>.

⁸¹ Boehm, *supra* note 36, at 65, 109 n.280.

⁸² *Id.*

⁸³ Zhang Hui, *Xinjiang City Urges Terrorists to Turn Themselves in Within 30 Days*, *GLOBAL TIMES* (Nov. 19, 2018), <http://www.globaltimes.cn/content/1128030.shtml>.

perceived dissident population were made by either forcibly removing them from the country, murdering members of the group *en masse*, or some combination of the two.⁸⁴ The Xi administration's (and by extension the Communist Party's) agenda for Xinjiang seeks to accomplish the same basic goal of removing dissidents and potential dissidents belonging to an ethnic group without the international condemnation and internal strife involved in forced migration and genocide. The result is what a sort of genocide of the mind wherein the perceived source of the dissidence, here Uyghur culture, is eliminated via forced indoctrination into another culture, in this case the Communist Party's iteration of Han ethnonationalism. In Xinjiang this effort has three key components. The first is a vast surveillance network which combines a large and extremely active police presence with cutting edge technology designed to monitor the populace at all times. The second is the *da fa*, meaning "strike hard," campaign which arrests dissidents and anyone with even a remote connection to dissident activity. The third is the internment camps themselves which forcibly re-educate those arrested.

i. A Dragnet Like No Other: The Xinjiang Surveillance State

The campaign against the Uyghurs makes use of a vast surveillance network unlike anything that has existed before it. Xinjiang and its capital, Urumqi, have been made what has been called a twenty-first century police state⁸⁵ and the world's most heavily guarded place.⁸⁶ Indeed if one defines a "police state" as a state in which a repressive government uses police force to control all aspects of life,⁸⁷ it can be argued that there is no better modern example than Xinjiang today. In building a sophisticated police state of this size and scope, the Chinese government has combined more traditional policing tactics like roadblocks and checkpoints with an extremely sophisticated surveillance apparatus which makes use of cutting-edge technology to constantly monitor the populace.

Even without the use of technology, Xinjiang might still be considered one of the most tightly monitored areas in the world. Police are almost everywhere in the region, particularly in more urban areas, where many shop assistants

⁸⁴ Consider as examples the Soviet Union's policy of dekulakization, genocide against the Tutsi and Twa during the Rwandan Civil War, Darfur genocide, and ongoing conflict in Myanmar's Rakhine State.

⁸⁵ *Like No Other*, *supra* note 5.

⁸⁶ Josh Chin & Clément Bürge, *Twelve Days in Xinjiang: How China's Surveillance State Overwhelms Daily Life*, WALL ST. J. (Dec. 19, 2017), <https://www.wsj.com/articles/twelve-days-in-xinjiang-how-chinas-surveillance-state-overwhelms-daily-life-151370035>

⁸⁷ *See Police State*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/police%20state> (last visited Jan. 7, 2019) (definition given is a paraphrase of Merriam-Webster's).

have joined the police force to meet the requirement that all shops and restaurants have a part-time officer on duty.⁸⁸ In some cities, there are police checkpoints virtually everywhere, with as many as four or five every kilometer.⁸⁹ Police regularly take fingerprints and blood samples, and use paper forms to collect personal information from Uyghurs.⁹⁰ Roving, six-person teams of police and local officials go door to door “compiling dossiers of personal information.”⁹¹ Among the information Xinjiang’s residents are required to disclose is their religious faith along with where and how often they worship.⁹² Police also require residents to disclose any foreign contacts, their relationship to those contacts, and whether they have any relatives who have been detained.⁹³ Additionally, travel for Uyghurs has been made almost impossible because in addition to having to leave their passports with local public safety bureaus, many have found it difficult to book hotels or buy tickets for rail or air transportation.⁹⁴ All of these measures are supplemented by human intelligence as well. Chinese officials have attempted to intimidate Uyghurs living abroad by threatening family members who remain in the region.⁹⁵ Some Uyghurs cannot even escape the police presence at home as the government has created a program in which local families adopt officials, who visit regularly to teach Mandarin and to verify information given to the police.⁹⁶ In effect, police are present nearly at every possible moment in Xinjiang.

The physical police presence in Xinjiang today is pervasive, but what makes Xinjiang’s surveillance network special is its use of technology. Though not for lack of effort, police and other officials would not realistically be able to surveil Xinjiang’s populace at every waking moment without the aid of perhaps the most technologically sophisticated and pervasive digital surveillance system anywhere in the world.⁹⁷ Uyghurs in the region can face arrest for failing to download smartphone applications that enable authorities to constantly track their location.⁹⁸ Police officers carry handsets that can scan

⁸⁸ *Like No Other*, *supra* note 5.

⁸⁹ *Id.*

⁹⁰ Chin & Bürge, *supra* note 86.

⁹¹ *Like No Other*, *supra* note 5.

⁹² Chin and Bürge, *supra* note 86.

⁹³ *Id.*

⁹⁴ Rowan Callick, *China Delete App: Cutting Edge of Uighur Suppression*, UYGHUR AM. ASS’N (July 22, 2017), <https://uyghuramerican.org/article/china-delete-app-cutting-edge-uighur-suppression.html>.

⁹⁵ Peter Apps, *Commentary: China’s Muslim Minority Faces a Modern Orwellian Nightmare*, REUTERS (May 24, 2018), <https://www.reuters.com/article/us-apps-china-commentary/commentary-in-chinas-northwest-a-hidden-high-tech-orwellian-nightmare-idUSKCN11F27B>.

⁹⁶ *Like No Other*, *supra* note 5.

⁹⁷ Apps, *supra* note 95.

⁹⁸ *Id.*

phones to instantly determine whether the appropriate applications have been installed.⁹⁹ At checkpoints, police seize phones and download the phone's data for subsequent analysis.¹⁰⁰ Even if one does not own a smartphone, the network is essentially built into government records, so a simple scan of an identification card or even the use of an iris-recognition program can provide information as well.¹⁰¹ The Xinjiang surveillance network also includes a massive DNA database containing tens of millions of samples.¹⁰² The surveillance network continually monitors people by using cameras and microphones equipped with sophisticated facial and vocal recognition software.¹⁰³ By using these technologies in conjunction with a massive police presence, government officials in Xinjiang have created a dragnet surveillance apparatus capable of constantly monitoring the Xinjiang's Uyghurs to an extent almost unimaginable in previous decades.

ii. *Da Fa Meaning "Strike Hard"*

Surveillance is only part of the reason for the size and scope of police presence in Xinjiang. Police force is also used in implementing the government's "strike hard" tactics. As a police tactic, Strike Hard was first implemented as part of a crackdown on crime across China in Spring 1996.¹⁰⁴ Under the leadership of Xinjiang's new Party Secretary, Chen Quanguo, the renewed campaign in Xinjiang has seen a surge in both the number of personnel involved and the aggression with which these security forces operate.¹⁰⁵ Police conduct the individual strikes with little regard for discipline, and police have shot those who refuse to cooperate.¹⁰⁶ The raids target Uyghur neighborhoods and frequently uncover materials of which Beijing does not approve.¹⁰⁷ The strikes

⁹⁹ Callick, *supra* note 94.

¹⁰⁰ *Like No Other*, *supra* note 5.

¹⁰¹ *Id.*

¹⁰² Nithin Coca, *China's Xinjiang Surveillance is the Dystopian Future Nobody Wants*, ENGADGET (Feb. 2, 2018), <https://www.engadget.com/2018/02/22/china-xinjiang-surveillance-tech-spread/>.

¹⁰³ Mamtimin Ala, *China's Use of Psychological Warfare Against Uyghurs*, FOREIGN POL'Y J. (Sep. 21, 2018), <https://www.foreignpolicyjournal.com/2018/09/21/chinas-use-of-psychological-warfare-against-uyghurs/>.

¹⁰⁴ Michael Dillon, *Ethnic, Religious, and Political Conflict on China's Northwestern Borders: The Background to the Violence in Xinjiang*, IBRU BOUNDARY & SECURITY BULL. 80, 83 (1997).

¹⁰⁵ Adrian Zenz & James Leibold, *Chen Quanguo: The Strongman Behind Beijing's Securitization Strategy in Tibet and Xinjiang*, JAMESTOWN FOUND. (Sept. 21, 2017), <https://jamestown.org/program/chen-quanguo-the-strongman-behind-beijings-securitization-strategy-in-tibet-and-xinjiang/>.

¹⁰⁶ Jelil Kashgary et al., *China Steps up 'Strike Hard' Campaign in Xinjiang*, RADIO FREE ASIA (Luisetta Mudie trans.) (Jan. 9, 2014).

¹⁰⁷ *Id.*

also target Uyghur literature, music, religious texts, and the Uyghur language, and any material teaching these subjects is seized and burned.¹⁰⁸

Strike Hard can be seen as both supplementing and being bolstered by the surveillance network. Arrests can be made through individual strikes against those found by the surveillance network to espouse politically incorrect beliefs. These arrests can also create reasons for further arrests when someone is found to be in possession of materials labelled by the government as propagating extremism, so the Strike Hard campaign can cut both ways.

iii. Xinjiang's Internment Camps

In terms of achieving Beijing's agenda in Xinjiang, the surveillance system and Strike Hard are best seen as tools used to facilitate the process by which the government exorcises Uyghur culture from its practitioners. The principle tool by which the Chinese government actually achieves this goal is a growing array of what the Chinese government euphemistically refers to as "vocational skill education training centers."¹⁰⁹ It is inside these facilities where the actual process of re-education occurs.

Some have reported that they were first jailed locally before being transferred to these centers that now dot the region, and at least one man, a citizen of Kazakhstan who the Chinese government believed was helping some Uyghurs to escape China, was interrogated and tortured extensively before ever setting foot in a reeducation camp.¹¹⁰ Though the Chinese government has attempted to shroud much of what it does in these camps in secrecy, a number of former internees have described the inner workings of these camps despite threats made by the government against their families.¹¹¹

Once inside the camps, internees are kept in overcrowded cells with poor sanitary conditions.¹¹² Their living situation is made worse by restrictions on bathing and on the religious washing required of practicing Muslims.¹¹³ When not in their cells, their new teachers require them to sing songs praising the Communist Party or memorize Confucian texts, and they are regularly tested on their knowledge of Mandarin and on how well they can recite the assigned

¹⁰⁸ Boehm, *supra* note 36, at 82.

¹⁰⁹ Ben Westcott, *China Legalizes Xinjiang Re-Education Camps After Denying They Exist*, CNN (Oct. 11, 2018), <https://www.cnn.com/2018/10/10/asia/xinjiang-china-reeducation-camps-intl/index.html>.

¹¹⁰ Gerry Shih, *'Permanent Cure': Inside the Re-Education Camps China is Using to Brainwash Muslim*, BUS. INSIDER (May 17, 2018), <https://www.businessinsider.com/what-is-life-like-in-xinjiang-reeducation-camps-china-2018-5>.

¹¹¹ William Yang, *How China Intimidates Uighurs Abroad by Threatening Their Families*, DEUTSCHE WELLS (July 11, 2019) <https://www.dw.com/en/how-china-intimidates-uighurs-abroad-by-threatening-their-families/a-49554977>.

¹¹² Shih, *supra* note 110.

¹¹³ *Id.*

Communist propaganda.¹¹⁴ The internees are not simply forced to embrace Han culture, they are required to denounce their own and repudiate the “three evil forces.”¹¹⁵ All internees are required to stand at the front of a group of their peers while they profess their admiration for the Party and their disdain for their own religious and cultural practices.¹¹⁶ They are rewarded if they mirror official lines well or if they criticize others particularly harshly for their asserted wrongdoings.¹¹⁷ This can be a difficult task, as some internees are farmers who are there simply for failing to speak Mandarin, a language they may have never learned.¹¹⁸ Any semblance of religious behavior is banned, and anyone who fails to comply with this and other rules can be locked in so-called tiger chairs, which restrain arms and legs for a full day.¹¹⁹

Still, what several of those who have spoken about the camps have described as the worst part of the experience is the psychological pressure stemming from the repetitiveness of their “lessons.” For months or potentially years on end, internees repeat the humiliating process of being forced to denounce and denigrate their own culture while receiving constant political indoctrination.¹²⁰ The psychological pressure placed on them is enormous, intentional, and aimed directly at eradicating any potentially dissident thought.¹²¹ Their words and actions are closely monitored for even a semblance of politically incorrect behavior, and anyone who violates the rules is swiftly punished.¹²² The pressure is so great that multiple internees reported either having attempted or considered suicide, and while the chief goal does seem to be indoctrination, most of those who have spoken about their experiences report witnessing brutal beatings at the hands of the security forces that guard the facility.¹²³ The entire process is designed to sever the connection between the internees and their culture. One document obtained by journalists asserted that the camps must “break their lineage, break their roots, break their connections, and break their origins.”¹²⁴

Those who have “graduated” (word used in statements from “graduates” of the camps) are used as forced labor in factories that have been built inside

¹¹⁴ Ben Dooley, *Inside China's Internment Camps: Tear Gas, Tasers, and Textbooks*, AFP (Oct. 24, 2018), <https://www.afp.com/en/news/717/inside-chinas-internment-camps-tear-gas-tasers-and-textbooks-doc-1a73p63#.W9BWJqX-ciY.twitter>.

¹¹⁵ *China's Repugnant Campaign to Destroy a Minority People*, *supra* note 6.

¹¹⁶ Dooley, *supra* note 114.

¹¹⁷ Shih, *supra* note 110.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Shih, *supra* note 110.

¹²¹ Ala, *supra* note 103.

¹²² *Id.*

¹²³ Shih, *supra* note 110.

¹²⁴ Dooley, *supra* note 114 (quoting an unnamed Chinese government document).

the camps.¹²⁵ The facilities are referred to as “black factories” because they offer little pay and difficult conditions.¹²⁶ Details from inside these factories are as tightly controlled as information from inside the internment camps, and there is some dispute as to whether the workers are paid at all, but employment does not appear to be optional.¹²⁷

III. COVENANTS AND COMMUNISM: INTERNATIONAL AND DOMESTIC LAW IN XINJIANG

International law and Chinese law are both implicated by the policies China’s government has implemented in Xinjiang. Numerous international agreements prohibit policies aimed at suppressing ethnic and religious minorities. Of particular relevance to the situation in Xinjiang today are the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Economic, Social and Cultural Rights, both of which have been ratified by the Chinese government.¹²⁸ These two agreements both impose affirmative obligations on China’s government, so an overview of relevant Chinese law is required as well.

A. The 1965 Convention on the Elimination of All Forms of Racial Discrimination

The Racial Discrimination Convention defines racial discrimination as:

[A]ny distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights

¹²⁵ Emily Feng, *Forced Labor Being Used in China’s ‘Re-Education’ Camps*, FIN. TIMES (Dec. 15, 2018), <https://www.ft.com/content/eb2239aa-fc4f-11e8-aebf-99e208d3e521>; Chris Buckley & Austin Ramzy, *China’s Detention Camps for Muslims Turn to Forced Labor*, N.Y. TIMES (Dec. 16, 2018), <https://www.nytimes.com/2018/12/16/world/asia/xinjiang-china-forced-labor-camps-ughurs.html>.

¹²⁶ Feng, *supra* note 125; Buckley and Ramzy, *supra* note 125.

¹²⁷ See Feng, *supra* note 125.

¹²⁸ *Ratification Status for CERD - International Convention on the Elimination of All Forms of Racial Discrimination*, U.N. COMM. ON THE ELIMINATION OF RACIAL DISCRIMINATION, <https://treaties.un.org/Pages/showDetails.aspx?objd=0800000280008954&clang=en> (last visited Oct. 13, 2019); *Ratification Status for CESC - International Covenant on Economic, Social and Cultural Rights*, U. N. COMM. ON ECON., SOC. AND CULTURAL RIGHTS, https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CESCR&Lang=en (last visited Oct. 13, 2019).

and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹²⁹

States parties to the Racial Discrimination Convention are obligated to implement a policy of eliminating racial discrimination in all forms.¹³⁰ In order to understand this obligation and others in the Convention it is necessary to appreciate the genesis of the Convention, the relevant obligations under it, how those obligations are monitored, and the relevant enforcement body's observations on China's compliance with the Convention.

i. To End Racial Discrimination: Relevant Background on the Racial Discrimination Convention

The influences on the Racial Discrimination Convention are varied and complicated, and they underscore a general attitude of opposition toward racial discrimination in the international community which has grown stronger over time.¹³¹ Of equal import in assessing Xinjiang under the Racial Discrimination Convention is an understanding of China's approach to the Convention and the reservations it made when China ratified the Convention in 1981.¹³²

The Racial Discrimination Convention was born of a desire to put an end to discrimination against nonwhite persons.¹³³ When the United Nations began to seriously consider the issue of continued manifestations of racial hatred and discrimination in 1960, the idea of an international convention to end racial discrimination had not yet gained serious traction.¹³⁴ However, the next year, the Commission on Human Rights' Sub-Committee on Prevention of Discrimination and Protection of Minorities suggested that just such an instrument be created.¹³⁵ Over the course of the next several years, delegates from various countries debated the idea, with a large number voicing support, but the issue of whether religious discrimination should be addressed via the same

¹²⁹ International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter Racial Discrimination Convention], *available at* <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>. This treaty, which entered into force on Jan. 4, 1969, has 179 parties. Both the United States, which ratified on Oct. 21, 1994, and China, which ratified on Dec. 29, 1981, are parties to the treaty.

¹³⁰ *Id.* at art. 2, para. 1.

¹³¹ *See id.* at Preamble (noting prior condemnations of racial discrimination).

¹³² Ratification Status for CERD, *supra* note 128.

¹³³ Theodor Meron, *The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination*, 79 AM. J. INT'L L. 283, 284 (1985).

¹³⁴ PATRICK THORNBERRY, *THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION* 24 (Oxford Univ. Press 2016).

¹³⁵ *Id.* at 25.

agreement posed a particular problem for several states, particularly majority-Muslim Arab countries.¹³⁶ The issue of racial discrimination was then severed from religious discrimination, meaning that while the Racial Discrimination Convention does encompass a variety of forms of discrimination distinct from race, it does not cover religious anti-Semitism or anti-Muslim policies insofar as they are unrelated to questions of race.¹³⁷ The Sub-Committee on Discrimination began work in January 1964, and the Convention was quickly adopted in December of the following year.¹³⁸ It entered into force in January 1969.¹³⁹

China's 1981 ratification of the Racial Discrimination Convention came with a reservation. China is not bound by Article 22 of the Convention,¹⁴⁰ which states that disputes which go unresolved by the procedures in the Convention may be settled by the International Court of Justice, unless otherwise agreed by the disputant parties.¹⁴¹ China's reservation simply means that should there be some dispute with another party, China cannot be forced to defend its policies in the International Court of Justice because of its obligations under the Racial Discrimination Convention.

ii. Provisions Relevant to Xinjiang

In addition to a sweeping definition of racial discrimination that includes discrimination on the basis of ethnicity¹⁴² and the imposition of an obligation to condemn and eliminate such practices, the Racial Discrimination Convention also contains an enumerated list of rights to which citizens are entitled to enjoy equally.¹⁴³ Of greatest relevance to the Chinese government's actions in Xinjiang are the obligation to eliminate racial discrimination contained in Article 2 and the equal protection of enjoyment with regard to certain rights enumerated in Article 5.¹⁴⁴

Keeping in mind the definition of racial discrimination laid out in Article 1¹⁴⁵, any inquiry as to whether a state is complying with its obligations under the Racial Discrimination Convention requires an assessment of the specific actions required by the Convention. Article 2 clarifies the obligation to end racial discrimination as defined in Article 1 by stating: "States Parties

¹³⁶ *Id.* at 28.

¹³⁷ Meron, *supra* note 133, at 284.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Reservation of the People's Republic of China to the International Convention on the Elimination of All Forms of Racial Discrimination (Jan. 13, 1982), *available at* <http://indicators.ohchr.org/>.

¹⁴¹ Racial Discrimination Convention, *supra* note 129, at art. 22.

¹⁴² *Id.* at art. 1, para. 1.

¹⁴³ *Id.* at 5(e)(i)-(v).

¹⁴⁴ *Id.* at arts. 2, 5.

¹⁴⁵ *Id.* at art. 1, para. 1.

condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races¹⁴⁶ States bound by the convention therefore must “undertake[] to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.”¹⁴⁷ Moreover, “Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.”¹⁴⁸ The Racial Discrimination Convention poses very clear requirements to directly confront and end all forms of racial discrimination, including those perpetuated by government bodies, without delay.¹⁴⁹

Article 5 is less clear cut, but the obligations it specifies are no less important.¹⁵⁰ Its chapeau states:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights¹⁵¹

The text of the chapeau would seem to indicate that the requirement is simply equality in enjoyment of those rights, which an illiberal state might interpret to be met if all groups are equally restricted in, for example, the free exercise of religion. While it cannot be said that Article 5 establishes a commitment on the part of a state party to guarantee one of the Article 5 rights, it has been increasingly interpreted to pose its enumerated rights not as being subsidiary to the right to equal treatment before the law but as requirements imposed on states parties as part of a necessary framework for measures to combat racial discrimination as defined in Article 1.¹⁵² To put it more simply, the human rights framework of the Racial Discrimination Convention effectively assumes recognition of the rights enumerated in Article 5.¹⁵³ Applied to

¹⁴⁶ *Id.* at art. 2, para. 1.

¹⁴⁷ *Id.* at art. 2, para. 1(a).

¹⁴⁸ *Id.* at art. 2, para. 1(c).

¹⁴⁹ *Id.* at art. 2, para. 1.

¹⁵⁰ *Id.* at art. 5.

¹⁵¹ *Id.*

¹⁵² THORNBERRY, *supra* note 134, at 393; *e.g.* Comm. on the Elimination of Racial Discrimination, Concluding Observations of the Comm. on the Elimination of Racial Discrimination: Malawi, at para. 7, U.N. Doc. C/63/CO.12 (Aug. 19, 2003).

¹⁵³ THORNBERRY, *supra* note 134, at 393.

Article 5 is “[t]he right to freedom of thought, conscience and religion”¹⁵⁴ Such an interpretation of Article 5 could be said to impose a freedom from religious discrimination, at least where it stems from racial discrimination as defined in Article 1.¹⁵⁵ Other included Article 5 rights include freedom of expression¹⁵⁶ and of peaceful assembly and association,¹⁵⁷ among others.

*iii. Ensuring Compliance: The Committee on the Elimination of Racial Discrimination*¹⁵⁸

Article 8 of the Racial Discrimination Convention establishes the Committee on the Elimination of Racial Discrimination, which serves as the Convention’s compliance mechanism.¹⁵⁹ Nothing in the Convention compels the states parties to comply, instead they are required to submit regular reports that the Committee weighs in on and offers its recommendations.¹⁶⁰ As such, its primary function is to report on the various measures states parties implement in meeting the Convention’s requirements.

Articles 8 and 9 of the Racial Discrimination Convention establish the committee, detail its composition, and provide its mandate.¹⁶¹ The first paragraph of Article 8 establishes that the committee shall be composed,

of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.¹⁶²

These experts are nominated by states parties and elected by secret ballot¹⁶³ to serve four year terms.¹⁶⁴ The bulk of the Racial Discrimination Committee’s work is composed of examining and issuing recommendations based on state reports on their progress towards the Convention’s goals.¹⁶⁵ Article 9 further empowers the Racial Discrimination Committee to examine state

¹⁵⁴ Racial Discrimination Convention, *supra* note 129, at art. 5(d)(vii).

¹⁵⁵ THORNBERRY, *supra* note 134, at 353.

¹⁵⁶ Racial Discrimination Convention, *supra* note 129, at art. 5(d)(viii).

¹⁵⁷ *Id.* at art. 5(d)(ix).

¹⁵⁸ Hereinafter Racial Discrimination Committee.

¹⁵⁹ Racial Discrimination Convention, *supra* note 129, at art. 8, para. 1.

¹⁶⁰ *Id.* at art. 9.

¹⁶¹ *Id.* at arts. 8, 9.

¹⁶² *Id.* at art. 8, para. 1.

¹⁶³ *Id.* at art. 8, para. 2.

¹⁶⁴ *Id.*

¹⁶⁵ THORNBERRY, *supra* note 134, at 45.

reports and issue suggestions and general recommendations on which states parties can issue comments.¹⁶⁶

The Racial Discrimination Committee is also empowered to resolve inter-state disputes regarding the actions of one state party referred from another state party. This process begins with an inter-state communication process in which one state details an allegation that another state party is not in compliance with its obligations under the Racial Discrimination Convention to which the other state party provides written statements clarifying the matter.¹⁶⁷ If this does not resolve the matter, by any negotiation procedure open to the states parties, within three months, an independent, ad hoc commission is formed to seek an appropriate conclusion acceptable to both parties.¹⁶⁸ This procedure has not yet been tested in practice.¹⁶⁹

iv. China's 2018 Periodic Report to the Racial Discrimination Committee

China has made a report to the Racial Discrimination Committee as recently as 2017.¹⁷⁰ China declined to issue comments on the concluding observations made by the Racial Discrimination Committee, so the relevant items for analysis are the portions of the state report, the submissions of various nongovernmental organizations, and the Committee's concluding observations pertaining to Xinjiang.

China's 2018 report to the Racial Discrimination Committee makes explicit reference to the Uyghurs and to Xinjiang.¹⁷¹ However, there is no mention of the typical euphemisms used when discussing the internment camps in the region.¹⁷² Instead, Xinjiang is largely discussed in the context of economic development,¹⁷³ protection of the Uyghur language,¹⁷⁴ or protections of religious exercise.¹⁷⁵ These assertions contradict numerous other reports, and

¹⁶⁶ Racial Discrimination Convention, *supra* note 129, at art. 9, para. 2.

¹⁶⁷ *Id.* at art. 11, para. 1.

¹⁶⁸ *Id.* at art. 12.

¹⁶⁹ *But see* Press Release, U.N. Human Rights Office of the High Comm'r, CERD Information Note on Inter-State Communications (Aug. 30, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23566%Lan dID=E> (concerning several cases pending examination).

¹⁷⁰ China, Fourteenth to Seventeenth Periodic Reports by States Parties under Article 9 of the Convention, U.N. Doc. C/CHN/14-17 (Apr. 18, 2017) [hereinafter Chinese Delegation's Racial Discrimination Report] (note that while China's report was received in January 2017, it was not considered until August 2018).

¹⁷¹ *See generally id.*

¹⁷² *Id.*

¹⁷³ *Id.* at paras. 19-21.

¹⁷⁴ *E.g., id.* at para. 66.

¹⁷⁵ *E.g., id.* at para. 95.

given the Chinese government's past rhetoric on Xinjiang,¹⁷⁶ merit significant skepticism. China's report highlights a fundamental problem with information about Xinjiang: the Chinese government is likely to maintain publicly that its policies on Xinjiang have brought prosperity and stability to a region once rife with terrorism, even if such a position is undermined by credible accounts of human rights abuses in the region.

The Chinese government's public position was, in fact, publicly disputed by several non-governmental organizations, many of which included descriptions of Xinjiang's internment camps.¹⁷⁷ Submissions from non-governmental organizations also included evidence regarding the prohibition of the Uyghur language,¹⁷⁸ systemic violations of China's criminal procedure law which target Uyghurs,¹⁷⁹ and the use of sophisticated mass surveillance techniques.¹⁸⁰ These reports and others are in stark contrast to the report filed by China as a state party, and several allege systemic suppression of Uyghurs in Xinjiang.¹⁸¹

The allegations made by non-governmental organizations and others are given weight in the Racial Discrimination Committee's concluding observations and recommendations. Taking care to note the Chinese delegation's statements the Committee expressed alarm at reports of detention centers¹⁸² and similar reports of mass surveillance targeting Uyghurs.¹⁸³ The Committee recommended that the Chinese government release those detained in extra-legal facilities and allow them opportunity for redress, investigate allegations

¹⁷⁶ *E.g.*, Liu, *supra* note 76; Li Qingping, *China Explores Effective Governance of Religion in Secular World*, GLOBAL TIMES (Jan. 6, 2019), <http://www.globaltimes.cn/content/1134750.shtml>.

¹⁷⁷ *E.g.*, AMNESTY INT'L SUBMISSION, CHINA: SUBMISSION TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 96TH SESSION, 6-30 AUGUST 2018 (2018), <https://www.amnesty.org/en/documents/asa17/8742/2018/en/> [hereinafter Amnesty Int'l Submission].

¹⁷⁸ ASIAN SOLIDARITY COUNCIL FOR FREEDOM & DEMOCRACY, SUBMISSION TO COMMITTEE ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION 4 (2018), <https://www.ecoi.net/en/document/1441796.html>.

¹⁷⁹ WORLD UYGHUR CONG., PARALLEL SUBMISSION TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD) FOR THE PEOPLE'S REPUBLIC OF CHINA (PRC) 1 (2018), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CHN/INT_CERD_NGO_CHN_31745_E.pdf.

¹⁸⁰ AMNESTY INT'L SUBMISSION, *supra* note 177, at 13.

¹⁸¹ *E.g.*, HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH SUBMISSION TO THE CERD REVIEW OF CHINA 1 (2018), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CHN/INT_CERD_NGO_CHN_31595_E.pdf.

¹⁸² Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Fourteenth to Seventeenth Periodic Reports of China (including Hong Kong, China and Macao, China), para. 40(a), U.N. Doc. CERD/C/CHN/CO/14-17 (Sept. 19, 2018).

¹⁸³ *Id.* at para. 40(b).

of “ethno-religious profiling,” and provide detailed information on detention facilities including the content of any political curriculum.¹⁸⁴

B. The 1966 International Covenant on Economic, Social and Cultural Rights

The 1966 International Covenant on Economic, Social and Cultural Rights¹⁸⁵ poses affirmative obligations on states parties. Given that the focus of this Note is not economic discrimination, discussion will be confined to two fundamental rights violated by the Chinese government’s actions in Xinjiang namely, the right to self-determination and the right to freely take part in cultural life. Discussion of this agreement will, therefore, not include a treatment of China’s reservations which do not directly pertain to these rights and nor affect their application.¹⁸⁶ Additionally, this Note will not explore in any depth China’s most recent periodic report which contains only a limited discussion on cultural rights as they pertain to the Uyghur language.¹⁸⁷ The right to self-determination is foundational to economic, social and cultural rights, and these rights can be seen as stemming from this foundational right.¹⁸⁸ Conversely, cultural rights only occupy a small portion of the ESCR Covenant, and have previously been viewed as something of a lost category.¹⁸⁹ Nevertheless, the Article 15 right “to take part in cultural life,”¹⁹⁰ can and should be discussed, particularly considering the international interest in the protection of minority cultures. In order to understand these rights and their application, one must consider the relevant background and context on the ESCR Covenant, which liberties it is meant to protect, and the mechanism by which it protects them.

¹⁸⁴ *Id.* at para. 41.

¹⁸⁵ International Covenant on Economic, Social and Cultural Rights, Jan. 16, 1966, 993 U.N.T.S. 3 [hereinafter ESCR Covenant]. This treaty, which entered into force on Jan. 3, 1976, has 169 parties. The United States, which signed Oct. 5, 1977, is a signatory and China, which ratified on Mar. 27, 2001, is a party.

¹⁸⁶ See Reservation of the People’s Republic of China to the ESCR Covenant (Mar. 27, 2001), available at <http://indicators.ohchr.org>.

¹⁸⁷ See Comm. on Economic, Social and Cultural Rights, Concluding Observations on the Second Periodic Report of China, including Hong Kong, China and Macao, China, U.N. Doc. C.12/CHN/CO/2 (2014).

¹⁸⁸ See ESCR Covenant, *supra* note 185, at art. 1.

¹⁸⁹ Dominic McGoldrick, *Culture, Cultures, and Cultural Rights*, in *ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN ACTION* 447, 453 (Mashood A. Baderin & Robert McCorquodale eds., 2007).

¹⁹⁰ ESCR Covenant, *supra* note 185, at art. 15, para. 1(a).

i. *Background to the ESCR Covenant and the Rights Therein*

Economic, social and cultural rights can be a difficult area in international law. These rights have been criticized as non-justiciable and seen merely as goals to be achieved at some undefined point in the future.¹⁹¹ This is partially because these rights can be seen as positive liberties stemming from an actual ability to self-determine as opposed to negative liberties stemming from the absence of outside impediments to self-determination.¹⁹² This distinction has generated problems for cultural rights enforcement in particular.

Part of the problem is that economic, social and cultural rights are often seen as being distinct from civil and political rights.¹⁹³ Moreover, in the past, some theorists have seen economic, social and cultural rights as coming second behind civil and political rights.¹⁹⁴ These rights were severed from an initial draft of rights that included civil and political rights early on in the drafting process.¹⁹⁵ In part because of this distinction, but despite this setback and others associated with drafting an agreement, these rights were eventually adopted into an international agreement in 1966.¹⁹⁶ The resulting Covenant still did not enter into force for another ten years after it was adopted owing in large part to the belief that while civil and political rights were fundamental liberties that could enter effect immediately, economic, social and cultural rights were aspirational and could only be achieved progressively.¹⁹⁷

Very little of the ESCR Covenant deals with cultural rights.¹⁹⁸ So, in an international agreement which has been often noted as inherently less justiciable and more aspirational than other international agreements, cultural rights may appear to be second-class rights even amongst other second-class rights.¹⁹⁹ However, the end of the international tensions surrounding the Cold War brought renewed appreciation for economic, social, and cultural rights, and today they receive much the same treatment as to other treaty obligations.²⁰⁰ The rise of multi-culturalist thinking in the new millennium has also

¹⁹¹ Baderin & McCorquodale, *Introduction to The International Covenant on Economic, Social and Cultural Rights: Forty Years of Development*, in Baderin & McCorquodale, *supra* note 189, at 10.

¹⁹² *Id.*; see generally *Positive and Negative Liberty*, STAN. ENCYCLOPEDIA OF PHIL. (2016), <https://plato.stanford.edu/entries/liberty-positive-negative/>.

¹⁹³ Baderin & McCorquodale, *supra* note 189, at 5.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 3.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 6.

¹⁹⁸ See generally ESCR Covenant, *supra* note 185.

¹⁹⁹ See McGoldrick, *supra* note 189, at 447 (noting cultural rights as “the failed Cinderella of the international human rights lexicon”).

²⁰⁰ MALCOLM LANGFORD ET AL., *THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A COMMENTARY 2* (Malcolm Langford et. al. eds., 2016).

fueled new scholarship on cultural rights; so while cultural rights, particularly the right of participation in culture, remain under studied, their rise in prominence has given them new weight at the international level.²⁰¹

ii. *An Emergent Interdependence: Relevant Portions of the ESCR Covenant*

Cultural rights under the ESCR Covenant, including the right to self-determination and cultural development, on their face, pose certain interpretive problems.²⁰² With regard to the right to self-determination, an issue exists as to the proper scope of a right that otherwise might be interpreted as encompassing many more freedoms than the ones enumerated in the Covenant itself. The right to take part in cultural life can appear to beg the question of what constitutes culture and whether that right functions as an individual or collective right. In order to properly apply these rights, it is therefore necessary to examine how each of them functions under the ESCR Covenant.

The very first Article of the ESCR Covenant provides: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”²⁰³ By the language of the Article, the right to self-determination serves as the foundation for the other rights provided in the Covenant, and the word “peoples” indicates that it is a group right, and it has largely been interpreted as such.²⁰⁴ Even as a group right, an expansive definition of self-determination would inherently bring the scope of such a right well beyond the rights enumerated in the Covenant, and without limitation, may serve as a right to revolution.²⁰⁵ Such an interpretation would be unacceptable to many states parties, so it is entirely logical that the right be interpreted as confined to the scope of the economic, social, and cultural rights in the Covenant.²⁰⁶ To put it another way, the right to self-determination, while foundational to the Covenant, is limited in practice to the scope of the other rights contained in the Covenant.

²⁰¹ McGoldrick, *supra* note 189, at 448.

²⁰² See Richard Burchill, *Democracy and the Promotion and Protection of Socio-Economic Rights*, in Baderin & McCorquodale, *supra* note 189, at 275; McGoldrick, *supra* note 189, at 449-450.

²⁰³ ESCR Covenant, *supra* note 185, at art. 1, para. 1.

²⁰⁴ See ESCR Covenant, *supra* note 185, at art. 1, para. 1; Malcolm Langford, *Substantive Obligations*, in MALCOLM LANGFORD ET AL., *supra* note 200.

²⁰⁵ U.N. Educ., Scientific, and Cultural Org., International Meeting of Experts on Further Study of the Concept of the Rights of Peoples: Final Report and Recommendations, ¶15, U.N. Doc. SHS-89/CONF.602/7 (Feb. 22, 1990).

²⁰⁶ Econ. and Soc. Council, Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, U.N. Doc. E/CN.4/1997/105 (Dec. 10, 1996).

The scope of the right to self-determination under Article 1 therefore creates interplay between self-determination and Article 15 which states: "The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life . . ." ²⁰⁷ For years the right to cultural participation resisted interpretation, ²⁰⁸ but, in 2009, the Committee on Economic, Social and Cultural Rights issued General Comment 21 clarifying its appropriate scope and function. ²⁰⁹ The resulting interpretation clarified that the right to take part in cultural life both obligates a state party to abstain from interference and take steps to promote cultural life. ²¹⁰ General Comment 21 further interprets the right to cultural participation as being applicable to individuals, associations of individuals, and communities or groups. ²¹¹ The Committee also took a very broad approach to the activities falling within the scope of "cultural life," including religion, beliefs systems, traditions, and non-verbal communication. ²¹² Critically, the committee affirmed an interdependence between the right to cultural participation and self-determination. ²¹³ An interdependence between self-determination and cultural participation strongly indicates a construction of the right to self-determination as both foundational to and stemming from the right to cultural participation.

iii. *The Committee on Economic, Social and Cultural Rights*²¹⁴ *and its Optional Protocol*

The Covenant meant to ensure economic, social, and cultural rights does not itself create an independent treaty body parallel to the Racial Discrimination Committee. The ESCR Covenant initially required the submission of periodic reports on states parties' progress under the Covenant to be made to the Economic and Social Council which, in turn, was empowered to establish a program to receive them. ²¹⁵ This process led to the creation of Sessional Working Groups, which were generally regarded as ineffective. ²¹⁶ One of these working groups eventually suggested that it should be made into a committee of independent experts, and with almost no opposition, the Economic and Social Council passed a resolution meeting the Working Group's

²⁰⁷ ESCR Covenant, *supra* note 185, at art. 15, para. 1(a).

²⁰⁸ McGoldrick, *supra* note 189, at 453.

²⁰⁹ Comm. on Econ., Soc. and Cultural rights, General Comment No. 21 The Right of Everyone to Take Part in Cultural Life, para. 6, U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009).

²¹⁰ *Id.*

²¹¹ *Id.* at para. 7.

²¹² *Id.* at para. 13.

²¹³ *Id.* at para. 2.

²¹⁴ Hereinafter ESCR Committee.

²¹⁵ ESCR Covenant, *supra* note 185, at art. 17, para. 1.

²¹⁶ Baderin & McCorquodale, *supra* note 189, at 8.

suggestion.²¹⁷ The end result was a committee which functions and is treated by states parties as an independent treaty body.²¹⁸ The ESCR Committee is composed of elected experts in much the same way as the Racial Discrimination Committee.²¹⁹ Despite similarities in form and function, the ESCR Committee is not truly independent, as it remains theoretically accountable to the Economic and Social Council.²²⁰

The ESCR Covenant also lacks a process for either inter-state communications or communications from individuals or groups regarding a state party's compliance.²²¹ This issue was addressed in the 2008 Optional Protocol to the ESCR Covenant.²²² However, the Committee is still not permitted to receive such communications regarding states parties to the Covenant if they are not also parties to the Optional Protocol.²²³ China is not a party to the Optional Protocol.²²⁴ As a member of the ESCR Covenant but not the Optional Protocol, China is not subject to the Optional Protocol's communications processes, rendering the Covenant's periodic report process the sole mechanism for pressing the Chinese government to meet its obligations.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ Compare U.N. Econ. and Soc. Council, Review of the Composition, Organization and Administration Arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights, U.N. Doc. S/RES/1985/17 (May 28, 1985) (requiring Committee members to be human rights experts among other minor differences), with Racial Discrimination Convention, *supra* note 129, at art. 8.

²²⁰ Baderin & McCorquodale, *supra* note 189, at 8.

²²¹ See ESCR Covenant, *supra* note 185.

²²² See Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights, U.N. Doc. A/RES/63/117 (Dec. 10, 2008) [hereinafter Optional Protocol].

²²³ *Id.* at art. 1, para. 2.

²²⁴ *Ratification Status for CESCR-OP - Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, U.N. COMM. ON ECON., SOC. AND CULTURAL RIGHTS, https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CERD&Lang=en (last visited Oct. 8, 2019).

C. *Chinese Domestic Law*²²⁵

The affirmative obligations imposed on states parties to the Racial Discrimination Convention and the ESCR Covenant make an inquiry into domestic laws critical in evaluating whether a state is in compliance with international law. In China, several different statutes are relevant to such an inquiry. Any discussion of Chinese domestic law should begin with an examination into its Constitution and then turn to other sources, such as domestic laws commonly cited in discussions of China's policies as they apply to international agreements. These include: the Criminal Law, the National Security Law, the Counter-Terrorism Law, and Xinjiang Uyghur Autonomous Region Regulation on De-Extremification.

i. *Problems with Chinese Constitutional Law*

Deciphering the Chinese Constitution to the extent necessary to examine its precise compliance with, and application to, China's international obligations highlights an interpretive problem in Chinese law. This problem is aptly illustrated by Article 4 of the Chinese Constitution which states:

All nationalities in the People's Republic of China are equal. The State protects the lawful rights and interests of the minority nationalities and upholds and develops a relationship of equality, unity, mutual assistance, and harmony among all of China's nationalities. Discrimination against and oppression of any nationality are prohibited; any act which undermines the unity of the nationalities or instigates division is prohibited.

The State assists areas inhabited by minority nationalities in accelerating their economic and cultural development

²²⁵ Sources of translated Chinese law are limited to Westlaw China which uses official translations provided by the Chinese Government. Where official translations are unavailable, as is the case with local laws, the Author has used China Law Translate, a website founded by Jeremy Daum of Yale Law School's Paul Tsai China Center, which relies on user driven translations. Translations from China Law Translate are cited in a manner consistent with Mr. Daum's instructions. Chinese Romanizations necessary for citation have been proofread by Willy Du, A Chinese Language Teaching Assistant at the University of Georgia's Franklin College of Arts and Sciences who has spoken Chinese since an early age. For an in-depth examination of China's counterterrorism framework broader in scope than the one in this note, see Enshen Li, *Fighting the "Three Evils": A Structural Analysis of Counter-Terrorism Legal Architecture in China*, 33 EMORY INT'L L. REV. 311 (2019).

according to the characteristics and needs of the various minority nationalities.

Regional autonomy is practised in areas where people of minority nationalities live in concentrated communities; in these areas organs of self-government are established to exercise the power of autonomy. All national autonomous areas are integral parts of the People's Republic of China.²²⁶

The apparent problem is that very little regarding China's policies toward ensuring non-discrimination can be gleaned from a plain reading of the text. Moreover, the prohibition of discrimination and oppression can easily come into conflict with punishment of actions that might undermine national unity or harmony. In its most recent report to the Racial Discrimination Committee, the Chinese delegation cited Article 4 as evidence of constitutional commitment to the rights of ethnic minorities.²²⁷ However, Article 4 was also noted in Amnesty International's report to the Racial Discrimination Committee in the context of highlighting discriminatory wording in the legal framework cited as evidence of equal treatment.²²⁸ To clarify, the problem is not that China does not have provisions in its Constitution that, at least nominally, would fulfill some international obligations, but that those provisions which would do so are often either contradicted, rendered ambiguous, or severely limited by the language immediately following it.²²⁹ Because the Chinese Constitution is rife with examples of such wording, one must look elsewhere in order to properly examine how Chinese law interacts with international law.

ii. Developments in Chinese Criminal Law

China's criminal law, like much of the country's law, comes in the form of a single, regularly amended statute. Article 4 of the Criminal Law reads: "The law shall be equally applied to anyone who commits a crime. No one shall have the privilege of transcending the law."²³⁰ This Article establishes that the provisions in the criminal law shall apply equally to all persons who

²²⁶ XIANFA art. 4 (2018).

²²⁷ Chinese Delegation's Racial Discrimination Report, *supra* note 170, at para. 7.

²²⁸ See AMNESTY INT'L SUBMISSION, *supra* note 177, at 1-2.

²²⁹ Compare, e.g. XIANFA art. 36, §1 (2018) (stating that citizens enjoy freedom of religious belief), with XIANFA art. 36, §3 (2018) (stating "the State protects normal religious activities").

²³⁰ Zhonghua Renmin Gongheguo Xingfa (中华人民共和国刑法) [Criminal Law of the People's Republic of China] (promulgated by the Nat'l People's Cong., Mar. 14, 1997; rev'd most recently Aug. 29, 2015, effective Nov. 1, 2015) art. 4, translated in Criminal Law of the People's Republic of China, Order No. 83 of the President of the People's Republic of China, Westlaw China 万律, (Westlaw China).

commit crimes. Since the criminal law was originally passed in 1997, the National People's Congress has passed nine amendments to it, with the most recent one entering into force in November 2015.²³¹ Amnesty International made note of the most recent set of amendments in its report: "These offences are open to subjective interpretation, violating the legality requirement for criminal offences, and increasing the possibility of abusive, arbitrary and discriminatory prosecution and conviction."²³² The amended Criminal Law included Article 120c, which states:

Whoever propagates terrorism or extremism by way of preparing or distributing books, audio and video materials or other items that propagate terrorism or extremism or by way of teaching or releasing information, etc. or instigates the terrorist activities shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights and concurrently sentenced to a fine. If the circumstances are serious, the person shall be sentenced to fixed-term imprisonment of not less than five years and concurrently sentenced to a fine or confiscation of property.²³³

More concisely put, Article 120c criminalizes the distribution of any media that propagates terrorism or extremism, and sets out punishments for doing so.²³⁴ 120c and several other Articles in the 2015 amendments impose criminal sentences for activity that is said to spread extremism, but fail to provide a definition for either terrorism or extremism.²³⁵ The Racial Discrimination Committee voiced concern in its closing observations on China regarding broad and vague language in Chinese laws,²³⁶ and recommended China review its existing laws to ensure that these terms are defined narrowly and the existence of safeguards against abuse.²³⁷

iii. China's Counter-Terrorism Framework

Relevant Chinese law on counter-terrorism contrasts with the Criminal Law in that it does not come in the form of a single piece of legislation, but from a framework of interconnected, sometimes overlapping laws functioning

²³¹ *Id.* at Revision History.

²³² AMNESTY INT'L SUBMISSION, *supra* note 177, at 3.

²³³ Criminal Law of the People's Republic of China, *supra* note 230, at art. 120c.

²³⁴ *Id.*

²³⁵ *E.g., id.* at art. 120d, art. 120e, art. 120f.

²³⁶ Comm. on the Elimination of Racial Discrimination, *supra* note 182, at para. 36.

²³⁷ *Id.* at art. 37.

at both the national and local levels.²³⁸ This network of laws does include a specific law dedicated to counter-terrorism, the Anti-Terrorism Law of the People's Republic of China, which creates a policy called "placement and education" that allows for the indefinite detention of criminals who have been convicted of crimes relating to extremism with some limitations.²³⁹ The Anti-Terrorism Law also creates a mechanism by which someone who has committed a lesser offense of extremism (which can mean as little as possessing an illegal book)²⁴⁰ may be detained for up to fifteen days without having technically committed a crime.²⁴¹ Local regulations enacted pursuant to the Anti-Terrorism Law have imposed specific laws targeting Islamic practices including: burqas,²⁴² irregular name selection,²⁴³ and any other speech or acts seen to be promoting radicalization.²⁴⁴ Still, the most integral provision comes in Article 2 of the National Security Law:

National security shall refer to the status whereby the State's political regime, sovereignty, unity and territorial integrity, the welfare of its people, its sustainable economic and social development, and other material national interests are relatively free from danger and international and domestic threats, and the ability to ensure the continuous status of security.²⁴⁵

²³⁸ E.g., Xinjiang Weiwuer Zizhiqu Qu Jiduan Hua Tiaoli (新疆维吾尔自治区去极端化条例) [Xinjiang Uyghur Autonomous Region Regulation on De-Extremification] (promulgated by the Standing Comm. of the People's Cong. Of the Xinjiang Uyghur Autonomous Region, Oct. 9, 2018) art. 1, *translated in Decision to Revise the "Xinjiang Uyghur Autonomous Region Regulation on De-Extremification"*, China Law Translate 中国法律翻译 (Oct. 10, 2018), <https://www.chinalawtranslate.com/关于修改《新疆维吾尔自治区去极端化条例》的决/?lang=en> (noting that, as a local regulation, it is drafted on the basis of several national laws including both the Anti-Terrorism Law and the Religious Affairs Regulation).

²³⁹ Zhonghua Renmin Gongheguo fan Kongbu Zhuyi Fa (中华人民共和国反恐怖主义法) [Anti-Terrorism Law of the People's Republic of China] (promulgated by the Standing Comm. of the Nat'l People's Cong., Dec. 27, 2015) art. 30, *translated in Anti-Terrorism Law of the People's Republic of China*, Order No. 36 of the President of the People's Republic of China, Westlaw China 万律, (Westlaw China).

²⁴⁰ *Id.* at art. 80(2).

²⁴¹ *Id.* at art. 80.

²⁴² Xinjiang Uyghur Autonomous Region Regulation on De-Extremification, *supra* note 238, at art. 9(7).

²⁴³ *Id.* at art. 9(8).

²⁴⁴ *Id.* at art. 9(15); *see also* WORLD UYGHUR CONG., *supra* note 179, at para. 13 (discussing the Xinjiang Regulation on De-Extremification in practice).

²⁴⁵ Zhonghua Renmin Gongheguo Guojia Anquan Fa (中华人民共和国国家安全法) [National Security Law of the People's Republic of China] (promulgated by the Standing Comm. of the Nat'l People's Cong., July 1, 2015) art. 2, *translated in National Security Law of the People's Republic of China*, Order No. 29 of the President of the People's Republic of China, Westlaw China 万律, (Westlaw China).

By this Article, Chinese law has, at least to an extent, defined national security in terms of the extent to which the political regime of the Chinese Communist Party is free from domestic threats to its sovereignty over a unified China.²⁴⁶

IV. SUPPRESSED IN XINJIANG

It may be tempting, considering the facts, to take a brief look at the Chinese government's campaign against the Uyghurs, briefly examine the international agreements to which China is a party, and quickly conclude that the Chinese government is failing to meet its obligations because, in many ways, if the Racial Discrimination Convention and the ESCR Covenant prohibit anything, they certainly prohibit mass surveillance, arrest, and internment of an ethnic and cultural minority. Nevertheless, a systematic violation of this magnitude warrants an inquiry beyond the text of the international agreements themselves, and a further inquiry as to how Chinese law contributes to racial and ethnic oppression.

A. A Right to Be Free from Surveillance?

Though the Xinjiang surveillance apparatus is unquestionably the least forceful aspect of the Chinese government's campaign against the Uyghurs, it is still discriminatory in a manner prohibited by the Racial Discrimination Convention and still violates the cultural rights guaranteed in the ESCR Covenant. These violations are compounded by the fact that Chinese law contributes to these violations and are made no less important by the absence of overt physical force from the surveillance campaign.

i. Xinjiang's Surveillance System as a Violation of the Racial Discrimination Convention

Discussion of the Racial Discrimination Convention thus far has elaborated on two key concepts: the right to be free from racial discrimination and the conception of the enumerated rights in Article 5 not as a right to equality in their exercise, but as part of a broader framework necessary to eliminate racial discrimination under Article 1.²⁴⁷

Examining the Xinjiang surveillance systems, which combines a massive police presence with sophisticated technology, in light of Article 1's expansive definition of racial discrimination and Article 2's iteration of the right to be free from racial discrimination, it is clear that the use of a mass surveillance

²⁴⁶ *Id.*

²⁴⁷ THORNBERRY, *supra* note 134, at 393.

system, which targets Uyghurs on the basis of their ethnic origin, constitutes a violation of the right to be free from racial discrimination.²⁴⁸ This is particularly apparent in the home visitation system which specifically targets Uyghur families for additional at-home monitoring.²⁴⁹ The program the government calls adoption is quite obviously an act of racial discrimination within the scope of Article 2.²⁵⁰

The government's use of mass surveillance violates Article 5 in much the same way. Conceived of as part of a necessary framework for eliminating racial discrimination, the Article 5 rights, most notably the right to freedom of thought, conscience, and religion, function as a right to equal protection from religious discrimination when religious discrimination stems from racial discrimination as defined by Article 1.²⁵¹ Given that the Uyghurs can be seen as an ethno-religious minority group,²⁵² religious discrimination against them fits within this framework, and is a violation of Article 5. Moreover, the existence of a surveillance system intended as a method of round-the-clock monitoring can be a barrier to the freedom of conscience that Article 5 is meant to protect. The general profiling of Muslims by Xinjiang's government by requiring them to fill out forms regarding frequency of religious practice, among other things,²⁵³ therefore breaches this framework.

ii. Xinjiang's Surveillance System as a Violation of the ESCR Covenant

Given the interconnectedness of the right to self-determination and the right to participation in cultural life, cultural rights as envisioned in General Comment 21 are best applied as two parts of the same whole.²⁵⁴ General Comment 21 takes a very broad interpretation of the cultural rights in the ESCR Covenant.²⁵⁵ Critically, the Comment interprets the Convention as embodying an obligation to ensure preconditions for participating in cultural life.²⁵⁶ The Comment, in turn, interprets cultural life to encompass a broad range of social behaviors and activities.²⁵⁷ Given that the surveillance state functions to ensure the exact opposite of Uyghur cultural participation, the surveillance state can and should be seen as a violation of cultural rights.

²⁴⁸ Racial Discrimination Convention, *supra* note 129, at arts. 1, 2.

²⁴⁹ *Like No Other*, *supra* note 5; WORLD UYGHUR CONG., *supra* note 179, at para. 29.

²⁵⁰ Racial Discrimination Convention, *supra* note 129, at art. 2, para. 1(a).

²⁵¹ THORNBERRY, *supra* note 134, at 393.

²⁵² Comm. on the Elimination of Racial Discrimination, *supra* note 182, at para. 36.

²⁵³ Chin & Bürge, *supra* note 86.

²⁵⁴ Comm. on Econ., Soc. and Cultural Rights, *supra* note 209, at para. 6.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.* at para. 11.

iii. *Applying Chinese Domestic Law*

The surveillance state actively violates rights outlined in the Racial Discrimination Convention and the ESCR Covenant.²⁵⁸ That being said, of all three aspects of the campaign, mass surveillance is the least controversial under Chinese law. Given the nature and makeup of Chinese legal and political system, the use and creation of a surveillance apparatus the size of the one in Xinjiang will not require much justification domestically, nor will justifying its existence on grounds of a terrorist threat from the Uyghurs. Moreover, because of the preoccupation with the more fundamentally discriminatory and overtly brutal aspects of the other phases of the campaign against the Uyghurs, it is unsurprising that the surveillance system, while mentioned briefly,²⁵⁹ has not been the center of the committees', or the international community's, attention.²⁶⁰ Nevertheless, it should be troubling that in a nation with a stated commitment to equal treatment under the law, a discriminatory surveillance apparatus has been allowed to do its work.

B. *Strike Hard Under International Law*

In the second phase of the campaign against the Uyghurs, the Strike Hard campaign, any pretense of potential legality under international law should begin to fall by the wayside. Strike Hard is historically a discriminatory tactic devoted largely to the suppression of cultural dissidents.²⁶¹ It is clearly illegal under both the international agreements and the integral rights implicated in Xinjiang.

i. *Strike Hard Analyzed under the Racial Discrimination Convention*

The core premise and motivating force behind Strike Hard is the elimination of dissidents, and the Uyghurs, who have been motivated by religious ideas and the distant memory of self-rule,²⁶² are its natural targets. As such, measuring Strike Hard under the Racial Discrimination Convention does not

²⁵⁸ *E.g.*, Racial Discrimination Convention, *supra* note 129 at art. 5(e)(vii) (ensuring equal treatment before the law in enjoying the right to "freedom of thought, conscience and religion"); *e.g.*, ESCR Covenant, *supra* note 185, at art. 15 para. 1(a) (recognizing the right "[t]o take part in cultural life").

²⁵⁹ AMNESTY INT'L SUBMISSION, *supra* note 177, at 13; Comm. on the Elimination of Racial Discrimination, *supra* note 182, at 36.

²⁶⁰ *See generally id.*

²⁶¹ Dillon, *supra* note 104, at 83; Kashgary, *supra* note 106.

²⁶² Thum, *supra* note 7.

require much analysis. Article 1 poses a wide definition of racial discrimination and Article 2 poses an interconnected fabric of human rights that serve as the framework for compliance with the Convention.²⁶³ Strike Hard involves conducting raids on the homes of a members of repressed ethnic group because of their belonging to that group and burning their cultural possessions,²⁶⁴ so strike hard does not comply with China's obligations under the Racial Discrimination Convention.

It is a titanic understatement to claim that Strike Hard violates the Racial Discrimination Convention. Campaigns like strike hard are antithetical to the principles that undergird the Racial Discrimination Convention and international law generally. The Racial Discrimination Convention is premised on the idea that racial minorities should not have to suffer the indignity of unequal treatment, much less overt persecution.²⁶⁵ That China has breached its obligations so wantonly is further evidence that it does not take them seriously.

ii. Strike Hard Under the ESCR Covenant

The positive nature of the interconnected cultural rights at issue in this Note renders them effectively incapable of being met in a situation in which strike hard tactics are employed. Strike hard is fundamentally aggressive and rooted partially in prejudice. As such, it is largely antithetical to the very idea of the sort of positive liberties laid out in the ESCR Covenant.

If a nation is responsible for ensuring the preconditions necessary for all ethnic groups, communities, and individuals to pursue their own cultural fulfillment, then that nation cannot be knocking down their doors and burning culturally important materials.²⁶⁶ The brazen nature of the Strike Hard campaign further demonstrates the Chinese government's lack of proper regard for international agreements and norms. Even as China has continued this campaign, it has publicly claimed that, "special attention is paid to their economic development and to their enjoyment of cultural and employment rights."²⁶⁷ It is hardly an exaggeration to say that such a statement is entirely contrary to reality in Xinjiang. In light of the strike hard campaign, it is more accurate to say that the complete opposite is true.

²⁶³ Racial Discrimination Convention, *supra* note 129, at art. 1, art. 2.

²⁶⁴ Boehm, *supra* note 36, at 82.

²⁶⁵ See Racial Discrimination Convention, *supra* note 129, at Preamble.

²⁶⁶ Boehm, *supra* note 36, at 82.

²⁶⁷ Comm. on Econ., Soc. and Cultural Rights, List of Issues in Relation to the Second Periodic Report of China (E/C.12/CHN/2), including Hong Kong, China (E/C.12/CHN-HKG/3) and Macao, China (E/C.12/CHN-Mac/2), add. Replies of China to the List of Issues, ¶53, U.N. Doc. E/C.12/CHN/Q/2/Add.1 (Jan. 27, 2014).

iii. *Strike Hard and Chinese Law*

Analyzing the Strike Hard campaign under the Racial Discrimination Convention and the ESCR Covenant is an insufficient method of analysis. Under either doctrine, the tactics used by strike hard are simply incompatible. Turning then to Chinese law, the question quickly becomes how it might be possible under the Chinese Constitution that such policies which specifically target Uyghurs,²⁶⁸ as an ethno-religious group, comport with Article 4 of the Chinese Constitution.²⁶⁹ This represents a disturbing trend in Chinese law as it pertains to Xinjiang. The Chinese government is effectively ignoring portions of its law in favor of other areas of the law that are more friendly to its policy objectives.

More specifically, the provisions in Chinese Law that supposedly protect the civil liberties of Chinese citizens have given way to provisions in its recently amended criminal law as well as the various counter-terrorism statutes.²⁷⁰ The 2015 Amendments to the Criminal Law criminalize numerous activities related to “extremism.”²⁷¹ However, given the Chinese government’s almost flagrantly pretextual use of a terrorist threat in Xinjiang to justify a massive campaign against Uyghur culture, any assertion that these laws are meant to do anything besides provide legal cover for the persecution of politically thorny ethnic minorities should strain credulity. It would be far more accurate to argue that these laws actually contribute to religious persecution in China. By criminalizing behavior associated with extremism, these laws effectively amount to a blank check to persecute religious minorities and associated dissidents. There is perhaps no greater example of this than the Xinjiang Regulation on De-Extremification, which all but expressly targets Uyghur culture,²⁷² and is drafted on the basis of the Anti-Terrorism Law.²⁷³

C. *The Xinjiang Internment Camps*

Turning to the Xinjiang internment camps, using the canons of interpretation focused on thus far in this Note, it is clear that Xinjiang’s internment camps depart significantly enough from the obligations in both the Racial Discrimination Convention or the ESCR Covenant to warrant focusing largely on

²⁶⁸ Chin & Bürge, *supra* note 86.

²⁶⁹ XIANFA art. 4, §1 (2018).

²⁷⁰ Compare, e.g., XIANFA art. 36 (2018) (supposedly preserving freedom of religion), with Criminal Law of the People’s Republic of China, *supra* note 230, at art. 120e (criminalizing dresses or symbols that propagate terrorism or extremism).

²⁷¹ Criminal Law of the People’s Republic of China, *supra* note 230, at arts. 120c, 120d, 120e.

²⁷² Xinjiang Uyghur Autonomous Region Regulation on De-Extremification, *supra* note 238, at art. 9.

²⁷³ *Id.* at art. 1.

Chinese domestic law, particularly China's stated justification under Chinese law, namely, fighting off a terrorist threat.²⁷⁴

As far as international law is concerned, the behavior of the Chinese government in Xinjiang is not merely unlawful under the Racial Discrimination Convention or the ESCR Covenant; it runs contrary to the core premises and rationale of international law as a whole. This is because, once again, if these agreements are to mean anything at all, they must mean that it is unacceptable for a national government to engage in vigorous persecution of an ethnic minority, or to otherwise oppress their culture for the purposes of forced assimilation.

That being the case, it would be too easy to simply reach such an obvious conclusion without digging deeper. Chinese domestic law, while at least nominally offering protection to ethnic minorities,²⁷⁵ is clearly not doing so. The nature and structure of Chinese law can shed some light on this quandary. China's definition of national security, for instance, has a considerable amount of explanatory power in this regard. The National Security Law articulates protection of the state's political regime, unified territorial integrity, and the leadership of the Communist Party as three of its primary prerogatives in ensuring national security.²⁷⁶ Such a position poses a problem in Xinjiang, where many Uyghurs have historically sought self-determination even as the Chinese government reasserts its commitment to maintaining its territorial integrity and sovereignty.²⁷⁷

China's definition of national security therefore renders some sort of conflict with the Uyghurs inevitable. As discussed previously, the Uyghur people are culturally, linguistically, and historically distinct from other nationalities in China,²⁷⁸ and given the rhetoric of the Xi administration,²⁷⁹ it may be unsurprising to see that the Chinese government has, in light of previous violent altercations with Uyghur nationalists and separatists, sought to reassert control over the region.²⁸⁰ In doing so, it has shrouded its actions in a veneer of legality under its counter-terrorism framework. While not expressly authorizing anything resembling the creation of mass internment camps, the Anti-Terrorism Law poses a framework that allows for even persons who have engaged in what it classifies as "extremist activities" that do not rise to the level of

²⁷⁴ Hui, *supra* note 83.

²⁷⁵ See XIANFA art. 4 (2018).

²⁷⁶ National Security Law of the People's Republic of China, *supra* note 245, at art. 2.

²⁷⁷ See Thum, *supra* note 7.

²⁷⁸ *Id.*

²⁷⁹ E.g., Zhang Hong, *President Xi Jinping Delivers Tough Message to 'Frontline of Terror on Visit to Xinjiang*, SOUTH CHINA MORNING POST (Apr. 29, 2014), <https://www.scmp.com/news/china/article/1499803/xi-makes-rare-visit-xinjiangs-restive-south-bolster-anti-terror-campaign> (discussing President Xi's statements on terrorism and separatism).

²⁸⁰ Thum, *supra* note 7.

criminal behavior to receive help and education.²⁸¹ Local regulations in Xinjiang are similarly euphemistic, if not more explicitly anti-Islam and anti-Uyghur.²⁸²

None of this is to say that the Chinese government has legalized these camps, or that they are mandated by law.²⁸³ Rather, the nature and structure of Chinese government at the national and local level render the need for specific legal authorization largely irrelevant because in the People's Republic, the state and political regime control the law as opposed to being controlled by the law.²⁸⁴ This system renders Messrs. Xi and Chen unbound by any legal framework that might foreseeably force them to end the campaign.

V. CONCLUSION

The situation in Xinjiang tends to call to mind dystopian images and bleak skies. This might be a fair appraisal if one examined only the facts. In examining the situation internationally, there is some solace to be taken in understanding the rights nations obligate themselves to under international agreements do not allow someone to be imprisoned for indoctrination. Conversely, there is little reason to believe that international legal frameworks will restrain the Chinese government going forward. Chinese domestic law offers little hope of salvation for Xinjiang. As new, horrific allegations²⁸⁵ seep forward from Xinjiang's re-education camps, it seems more international awareness may be coming even as the clocks have already struck thirteen in Urumqi.

²⁸¹ Anti-Terrorism Law of the People's Republic of China, *supra* note 239, at art. 29.

²⁸² See e.g., Xinjiang Regulation on De-Extremification, *supra* note 238.

²⁸³ For discussion of this point, see Donald Clarke, *No, New Xinjiang Legislation Does Not Legalize Detention Centers*, LAWFARE BLOG (Oct. 11, 2018), <https://www.lawfareblog.com/no-new-xinjiang-legislation-does-not-legalize-detention-centers>.

²⁸⁴ Cf. *The Rule of Law in Hong Kong*, ECONOMIST (June 13, 2019), <https://www.economist.com/leaders/2019/06/13/the-rule-of-law-in-hong-kong> (discussing the subjugation of the rule of law to that of the communist party as it applies to Hong Kong).

²⁸⁵ Benedict Rogers, *The Nightmare of Human Organ Harvesting in China*, WALL ST. J. (Feb. 5, 2019), <https://www.wsj.com/articles/the-nightmare-of-human-organ-harvesting-in-china-11549411056>.