

Indo-Pacific Security Program Memorandum

XINJIANG AND THE GENOCIDE QUESTION

By Michael Sobolik and David Knapp

BOTTOM LINE

Measured by the standards outlined in Article II of the Genocide Convention, it becomes clear that Chinese authorities are, at a minimum, guilty of three separate acts of genocide in Xinjiang.

By its nature, international law is not self-executing. The preservation of norms, customs, and treaties depends upon adherence and enforcement by nation-states.

The United States has a moral responsibility, legal obligation, and geopolitical interest in preventing and punishing the genocide in China.

For over a decade, China's western province of Xinjiang has been the site of growing domestic unrest. Typified by demonstrations, ethnic tensions and sporadic incidents, this disorder has been classified as "terrorism, separatism and religious extremism" by regional officials, who have instituted extensive security measures in response.¹ They have done so with the official support of national authorities, with no less senior a person than Chinese General Secretary Xi Jinping² himself instructing party officials to "show no mercy" in pacifying Xinjiang.³

Chinese officials have proceeded accordingly. From 2013 to 2017, arrests in the region surged, from approximately 14,000 to 228,000 annually.⁴ Beginning in 2017, new laws created to "Sinicize" the Uyghurs (i.e., assimilate them into Han Chinese society) kicked off a new and more intense phase of repression, including the imposition of restrictions on clothing and grooming practices, prohibitions on adherence to Islamic dietary laws, and other assorted measures deemed dangerous by authorities.⁵ At the same time, thousands of mosques in the region were damaged or destroyed, with many Islamic and Arabic writings removed or otherwise obscured.⁶ Additionally, security and surveillance

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of the local population increased dramatically, with more extensive internet monitoring, collection of biometric data, and even the forcible quartering of Chinese officials from outside the province in Uyghur homes.⁷

China's crackdown has subsequently progressed well beyond religious restrictions and high-tech surveillance, however. Authorities have also taken draconian measures to curb birth rates among the Uyghurs while simultaneously encouraging Han Chinese to have more children. Uyghur women who have not abided by birth control policies often face severe penalties (including potential internment or coerced abortions).⁸ Additionally, Uyghur women have often been found to be forcibly sterilized or outfitted with intrauterine devices to prevent future pregnancies.⁹ These measures, all part of an official government campaign to reduce the birthrate of Uyghurs, have had dramatic results. According to one report, between 2015 and 2018 natural population growth in the region's two largest Uyghur prefectures declined by a staggering 84%.¹⁰

Detention and reeducation are at the center of China's Xinjiang campaign. Since 2017, an estimated 1.5 million Turkic Muslims and other minority populations (specifically Kazakhs, Kyrgyz, and Hui)¹¹ have been dispatched to a network of facilities designed to fundamentally alter their belief system.¹² Officially, China describes these camps as vocational education and training centers, where trainees learn law and Chinese, jobs skills, and undergo behavior rehabilitations.¹³ In reality, however, detainees are reportedly compelled to denounce their faith and customs, and are prohibited from leaving until they agree to do so.¹⁴ Many of those detained also go missing – a fact attested to by reports from frantic relatives.¹⁵ Additionally, China is said to use collective deterrence and blackmail as part of its detention efforts via a scoring system for local families where the actions of one family member can raise or lower the score of a person who is seeking to be released from detention.¹⁶

At the same time, family separations have become a hallmark of official Chinese policy. Reports have referred to instances where Uyghur children, often of those who have been arbitrarily detained, have been separated from their parents and relocated in "child welfare" institutions and boarding schools.¹⁷ At those facilities, children are taught Chinese, and sing and dance to propagandistic songs.¹⁸ While foreign journalists are prohibited from visiting and entering the schools, the facilities are surrounded by barbed wire, fencing and surveillance – indicating that the facilities are intended more for detention than for child safety.

When they are released, many detainees are transported into textile apparel and other labor-intensive industries within Xinjiang and across the country.¹⁹ There, they are coerced into forced labor via the threat of further detention.²⁰ Even Uyghurs who have yet to be detained are often forced into these industries under similar threat. Uyghurs are involved in producing an assortment of different products that are subsequently sold by well-known international brands around the world.²¹ In addition to involuntary and forced labor, former detainees are heavily monitored and required to attend classes for further indoctrination.²²

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The scope and nature of this clampdown have led many politicians to conclude that China is engaged in genocide in Xinjiang. Most notably, a July 2020 congressional letter to Secretaries Pompeo and Mnuchin, led by Senators Marco Rubio (R-FL) and Bob Menendez (D-NJ), and Representatives James McGovern (D-MA-2nd) and Chris Smith (R-NJ-4th), requested "an official determination as to whether the Chinese government is responsible for perpetrating atrocity crimes, including genocide."²³ Senator Rick Scott (R-FL) subsequently weighed in on the matter with the State Department in December



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2020.²⁴ Most recently, Representatives Jim Banks and Joe Wilson have formally written in recent days “to request that the Department of State classify these actions as genocide.”²⁵

But does China’s persecution of the Uyghurs rise to the level of genocide? And, if so, what are America’s obligations in response, both as a matter of international law and of public policy? The answers to those questions have profound ramifications for U.S. policy toward China, as well as its broader approach to human rights on the world scene.

DEFINING THE STANDARD

Although academics, nongovernmental organizations, and nation-states have all attempted to provide their own definitions of genocide, the most widely accepted one is encapsulated in the *1948 Convention on the Prevention and Punishment of the Crimes of Genocide* (hereinafter the Genocide Convention).²⁶ Nearly 75 years after its formulation, the Convention stands as a definitive source of law on the subject. The International Court of Justice (ICJ) has repeatedly argued that the Convention reflects customary international law and, as such, the norms it codifies are preemptory in nature and cannot be derogated in any form.²⁷ This means, as a practical matter, that the tenets of the Genocide Convention are universal in nature, and are binding on nations whether or not they are signatories to it.

Under Article I of the Genocide Convention, “[t]he Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”²⁸ Article II of the Genocide Convention defines genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”²⁹ The acts enumerated include:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of

life calculated to bring about its physical destruction in whole or in part;

- Imposing measures intended to prevent births within the group; or
- Forcibly transferring children of the group to another group.³⁰

Enforcement of this standard, however, is a controversial issue. Under the Convention itself, Contracting Parties are required to call upon the competent organs of the United Nations to take action to prevent and suppress incidents of genocide.³¹ However, the International Court of Justice (ICJ) has interpreted state responsibilities much more broadly. In a 1996 opinion relating to the genocide in Bosnia, the Court argued that the obligations enshrined in the Convention are not territorially bounded, and that states are required to prevent and punish crimes of genocide regardless of where they occur.³² The ICJ further elaborated on this issue in 2007, when it suggest that if a state has the means to deter a serious risk of genocide from occurring, that state has a duty to use those means when the state learns of serious risk.³³ The implication here is that states are not simply obligated to prevent genocide while it is occurring, but also to step in when there is a serious risk that a genocide might occur.

CASE STUDIES

While the legal definition of genocide is clear, application of the standard has tended to vary greatly, based on the proclivities of the administration then in power in Washington. Several cases illustrate this dynamic.

The first is Bosnia. The United States began receiving reports of the atrocities committed in Bosnia beginning in 1992, including systematic efforts by Serbian forces to execute prisoners, detain men in abusive conditions, and permit rape camps.³⁴ After nearly two years of political pressure to define the events in Bosnia as genocide, then-Secretary of State Warren Christopher acquiesced and did so.³⁵ Thereafter, the United States participated in two significant actions designed to punish the Serbian side for genocide already committed in Bosnia, and to prevent further atrocities.



The first was the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) under United Nations Security Council Resolution 808.³⁶ That resolution tasked the ICTY with “prosecution of the persons responsible for serious violations of international humanitarian law,” using the Genocide Convention as a basis.³⁷ The United States, as permanent member of the Security Council, played a vital role in establishing the ICTY.

The second significant action taken by the United States was to conduct air strikes against the Serbian forces utilizing the NATO alliance. While NATO played a relatively minor role in peacekeeping since 1992, in 1995 the Alliance significantly ramped up its presence by launching an aggressive US-led air campaign.³⁸ This kinetic action had a demonstrable effect: just a few months later, the parties to the conflict met in Dayton, Ohio to sign a peace treaty known as the Dayton Accords.³⁹ The Accords, in turn, gave NATO a mandate to provide a substantial peacekeeping force in the region thereafter.

Another relevant case revolves around the events in Rwanda. In April of 1994, Hutu militias in the African nation began a systematic effort to kill ethnic Tutsi and moderate Hutu citizens. Much like the situation in Bosnia, political pressures sought to compel the U.S. government to make a genocide determination, while bureaucratic pressures sought to resist stating broad determinations. In May of 1994, the United States produced the only available public memorandum on the process used by the State Department in making a genocide determination.⁴⁰ The memo noted that making a determination that genocide had indeed occurred would “not have any particular legal consequence,” but could “increase pressure for [United States government] activism.”⁴¹ It concluded that the U.S. lacked jurisdiction over the individuals involved, and that only an international penal tribunal or competent court within the state of Rwanda could prosecute the individuals.⁴² Thereafter, little action was taken. Though the State Department did label the atrocities in Rwanda as genocide, there was

little appetite on the part of the Clinton administration to take concrete steps to prevent further such acts from occurring. The United States did not intervene militarily, as it had in the Balkans. Though the U.S. maintained a right to act to prevent genocide in Rwanda, it ultimately elected not to do so.

A final instance – one of more recent vintage – is the campaign of destruction waged by the Islamic State (ISIS) in the Middle East. The group’s rapid rise to power in 2013-2014 included its capture of large parts of Iraq and Syria. ISIS occupation, in turn, began to yield evidence of forcible religious conversions, tortures, kidnappings, murders and the sexual enslavement of women.⁴³ Of these, the most egregious was the ISIS campaign against the Yazidis. In August of 2014, approximately 50,000 ethnic Yazidis in Iraq fled to the Sinjar Mountains to escape ISIS forces.⁴⁴ After ISIS laid siege to the area, the Yazidi people were trapped in the mountains without food, water, and medical care.⁴⁵ Hundreds were killed as a result.⁴⁶

The United States, after learning of the situation, began conducting air strikes in the region – a military intervention authorized by President Obama to prevent a “potential act of genocide” against the Yazidi people.⁴⁷ Secretary of State John Kerry similarly argued that the violence contained “all the warning signs and hallmarks of genocide.”⁴⁸ In both statements, the operative view was that the United States was able to act militarily in order to prevent genocide from occurring, regardless of whether it had already occurred. The military strikes at Sinjar, along with the broader military action to eradicate ISIS, demonstrate the lengths the United States can take in order to prevent genocide.

LAW AND POLICY

As the foregoing analysis makes clear, China’s actions towards the Uyghurs do indeed meet the legal definition of genocide. This, however, does not mean that China is committing genocide in the common colloquial understanding. Indeed, China is not actively executing Uyghurs and other minorities in circumstances similar to



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the genocides in Bosnia, Rwanda, or Iraq. However, the definition is still apt because it encompasses a variety of acts intended to destroy the ethnic culture of a group. The reports out of Xinjiang indicate that China is deliberately inflicting conditions of life on the Uyghurs calculated to bring about the physical destruction, in whole or in part, of this ethnic group. These range from imposing measures intended to reduce Uyghur births to the forcible transfer of Uyghur children to families of other ethnicities. All of these acts amount to genocide under international law.

The intent element is also clear. China's actions are not merely an attempt to render Xinjiang ethnically homogenous. Rather, they are designed to physically eradicate the Uyghurs from the region. Policies such as the forced sterilization of Uyghur women and the imposition of birth quotas for Uyghur families reflect a clear attempt by the Chinese government to erase the Uyghur people, while child separations and the placement of Uyghur children into Han Chinese "child welfare" camps are clearly intended to destroy the Uyghur ethnicity.

POTENTIAL RESPONSES

The United States possesses a variety of policy options by which to prevent and punish genocide in Xinjiang. These options range in intensity from punitive to coercive, and vary in nature from unilateral action to multilateral cooperation. As the foregoing case studies make clear, the historical nature of America's response to genocide has largely been a function of political will. By its nature, international law is not self-executing. The preservation of norms, customs, and treaties depends upon adherence and enforcement by nation-states.

As policymakers weigh these courses of action, each with its own trade-offs, officials will need to consider the second- and third-order effects of America's response – namely, disrupting relations and escalating tensions with China, and pressuring nations caught between the U.S. and China to make politically difficult choices. Policy-

makers should also assess the material cost of invoking its commitments under the Genocide Convention: does the United States have the political will to marshal requisite resources to respond appropriately?

Making a public declaration of genocide

Most directly and forcefully, the U.S. government has the authority to make a formal determination that China is committing genocide against the Uyghurs. As the analysis above demonstrates, there is ample evidence to support such a conclusion. The process for making such a determination has changed from administration to administration, but the decision is ultimately made by the President through the Secretary of State. A genocide determination would send a powerful signal to the international community that the United States will not remain silent in the face of such atrocities, and by extension apply pressure to other nations to follow suit.

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The public policy case for such a determination is compelling. Any step short of one that explicitly labels the PRC's Xinjiang campaign as a genocide risks weakening the Genocide Convention, and by extension the willingness of its signatories to address instances of genocide in the future. It could also weaken global norms against committing genocide while emboldening the Chinese Communist Party to continue and perhaps even expand its current atrocities against the Uyghurs. Moreover, a tepid response could open the door for future U.S. administrations to shift bilateral relations with the PRC toward unprincipled engagement. This, in turn, would risk ignoring the reality of "great power competition" with a rising, and increasingly aggressive, China.

Building international consensus

Beyond issuing a formal determination, the United States



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must act on that finding and take concrete steps to prevent the Uyghur genocide and punish its perpetrators. Under the Genocide Convention, the first step toward this end is establishing an international tribunal to investigate and prosecute responsible individuals. Under the Article VI of the Genocide Convention, disputes are initially supposed to be resolved via an international tribunal. As noted, in the instances of both the Bosnian and Rwandan genocide, international tribunals were created to investigate and prosecute the individuals responsible for those genocides. That precedent can be followed in this case as well, with the United Nations Security Council creating a similar mechanism to hold responsible Chinese officials to account.

To be sure, such a development remains highly unlikely. China's status as a permanent member to the UN Security Council affords it the power to veto any such move. However, even simply putting forth a resolution attempting to establish such a tribunal would have concrete effects, forcing Security Council members to choose sides (with all of the attendant reputational risk that carries), and demonstrate to global publics that the United States has effectively exhausted its options to stop the genocide multilaterally, thereby lending credibility to any subsequent unilateral responses from Washington.

Protecting persecuted Uyghurs

The United States should likewise consider granting refugee status to Uyghurs who are fleeing persecution from China due to their ethnic and religious background. In keeping with existing immigration law, the U.S. has the option to extend refugee status to people who are unable or unwilling to return to their home country because of a well-founded fear of persecution based on a variety of immutable personal characteristics, such as ethnicity or religion – a standard that clearly applies in this case. Granting Priority 2 status⁴⁹ visas to Uyghurs, a category is specifically designed for groups of humanitarian concern as determined by the State Department, would be in line with prior treatment of persecuted persons from the former Soviet Union, Burma, and Iraq.⁵⁰

Pressuring China's One Belt, One Road initiative

The United States can help force China to change its behavior toward the Uyghurs by pressuring China's signature foreign policy initiative, the One Belt One Road (OBOR) initiative. This is because complete control of Xinjiang is essential to OBOR's success, with at least three of the initiative's planned land routes passing through Xinjiang.⁵¹ Accordingly, the Chinese government has invested billions of dollars to develop the Xinjiang region with the infrastructure necessary to operate as a central hub for OBOR.⁵² In addition, many of the steps it is now taking to assume control of Xinjiang, including population control measures that amount to genocide, are designed to promote OBOR by repressing the Uyghurs, who Chinese authorities view as a threat to their control of Xinjiang and to stability in the region.

Accordingly, the United States should make clear to the rest of the world that the OBOR initiative is inextricably linked to the genocide that is occurring in Xinjiang. Moreover, it should make the case that any country supporting OBOR as it currently operates is implicitly supporting the genocide of Uyghurs in Xinjiang. To that end, America's obligation to punish the perpetrators of genocide must also account for responding to those who are enabling it. This can take the form of sanctioning the commercial flow on OBOR routes that pass through Xinjiang.⁵³

AMERICA'S DUTY

By all accounts, China is committing genocide against the Uyghurs. The United States has a moral responsibility, legal obligation, and geopolitical interest in preventing and punishing these acts. Yet, based on public statements to date from a cross-section of foreign governments, many of whom are beneficiaries of China's OBOR initiative, it is unlikely that China will face any meaningful opposition from most Eurasian nations.⁵⁴ It is also unlikely, in light of the recent European Union-China investment agreement, that the EU would take meaningful action on behalf of the Uyghurs, absent U.S. leadership and pressure.⁵⁵



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It thus falls to the United States to address what U.S. officials have called “the stain of the century.”⁵⁶ Washington must act accordingly. 

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