

CONFRONTING THE BEHEMOTH: CHINA, HUMAN RIGHTS, AND THE UNITED NATIONS.

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I. INTRODUCTION

Human rights abuses have plagued humanity almost since the beginning of recorded history. In 539 B.C., the first known human rights instrument was drafted when Cyrus the Great conquered Babylon and handed down a series of decrees known as the Cyrus Cylinder,² which has since been widely recognized as the first human rights charter in the world.³ Human society continued to develop other documents that ultimately laid the foundation upon which the modern international human regime would be built. In thirteenth century England, the Magna Carta placed limits on the powers of the government.⁴ The United States Declaration of Independence of 1776, and the 1789 French Declaration des droits de l'Homme et de du citoyen, built upon the Magna Carta, and aimed to protect future generations from governmental abuses.⁵

At the Nuremberg Trials of 1945 and 1946, the allied powers brought charges of war crimes and crimes against humanity against

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² Kimberly Halkett, *The Story behind the Cyrus Cylinder*, AL JAZEERA (Apr. 25, 2013), available at <https://www.aljazeera.com/features/2013/4/25/the-story-behind-the-cyrus-cylinder> (last visited Nov. 14, 2021) (Cyrus the Great, after conquering Babylon, issued a decree that recognized the rights of enslaved and exiled peoples and also recognized religious freedom.).

³ See Sonia Narang, *This 2,600-year-old clay cylinder is bringing tears, and pride, to Iranians in the US*, THE WORLD (Dec. 7, 2013, 9:00 PM), available at <https://www.pri.org/stories/2013-12-07/2600-year-old-clay-cylinder-bringing-tears-and-pride-iranians> (last visited Nov. 14, 2021).

⁴ Frans Viljoen, *International Human Rights Law: A Short History*, U.N. CHRON. (n.d.) available at <https://www.un.org/en/chronicle/article/international-human-rights-law-short-history> (last visited Nov. 14, 2021).

⁵ *Id.*

several Nazi officials for their involvement in the systematic genocide of the Jews of Europe and other minority groups during the Holocaust. The Nuremberg Trials revolutionized the field of international law through holding individuals, and not just sovereign states, responsible for atrocities committed during wartime.⁶

Contemporaneously with the Nuremberg Trials, fifty nations convened in San Francisco to erect a new international legal order, which culminated in the ratification of the United Nations Charter (“Charter”).⁷ The “promotion and protection of human rights” was a central motivating factor for the creation of the United Nations,⁸ a concept that was enshrined in the preamble to the Charter⁹ and the Universal Declaration of Human Rights.¹⁰

However, the international human rights regime is unable to hold the permanent members of the Security Council (“P5 States”) and other powerful nations accountable, while unequally holding poorer states from the Global South, particularly African states, accountable for human rights violations.¹¹ This contradiction is inherent in the international human rights regime and reinforced through the barring of non-P5 States from amending the Charter without the consent and ratification of the P5 States.¹² Even though P5 States had an influential role in drafting human rights treaties, specifically the Rome Statute, they were not required to ratify such treaties, which has resulted in P5 States functionally writing the rules for others, not themselves.¹³

⁶ See Orlando Crowcroft, *Nuremberg trials: 75 years on from the world's first war crimes tribunal*, EURONEWS (Nov. 20, 2020), available at <https://www.euronews.com/2020/11/20/75-years-ago-the-world-s-first-war-crimes-trial-began-in-nuremberg> (last visited Nov. 14, 2021).

⁷ *History of the United Nations*, U.N. (n.d.), available at <https://www.un.org/en/about-us/history-of-the-un> (last visited Nov. 14, 2021).

⁸ *Protect Human Rights*, U.N. (n.d.), available at <https://www.un.org/en/our-work/protect-human-rights> (last visited Nov. 14, 2021).

⁹ See U.N. Charter pmb1 [hereinafter Charter].

¹⁰ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

¹¹ See Callum Ross, *Selective Justice and Persecution? The African View of the ICC-UNSC Relationship* (Sept. 16, 2018) (unpublished Ph.D. thesis, University of Liverpool) (on file with author) (“The contrast between ICC involvement in African situations and lack of involvement in non-African situations displays what the AU considers a neo-colonial agenda.”).

¹² Charter, *supra* note 9.

¹³ See Curtis A. Bradley, *U.S. Announces Intent Not to Ratify International*

This Note will use the Chinese government's alleged human rights violations in the Inner Mongolia Autonomous Region ("Inner Mongolia"), as well as against the Uyghur Muslims in Xinjiang Autonomous Region ("Xinjiang"), as a proxy to show the identified contradiction in the international human rights regime: the powerful States live by a separate and unequal standard, that is not applied to less powerful States. In other words, the United Nations is not currently a democratic form of governance, but instead is a dictatorship of the minority. This "dual-standard system of international criminal justice" has emerged as the United Nations has matured.¹⁴ As Professor Zolo argues, the major world powers operate under an international justice system that is separate and more forgiving than the justice system for the "defeated and downtrodden."¹⁵

This Note will also argue that the traditional enforcement methods used by states, namely military intervention and economic sanctions, to address human rights violations and enforce human rights treaties, are ineffective when confronting China's human rights violations. The enforcement of human rights treaties and norms through economic sanctions and military intervention has resulted in the United Nations operating more like a neo-imperialist organ of western P5 States; used to exert control over less powerful states and exploit such States for economic gain.¹⁶ In addition, such tools will not be useful when addressing the human rights abuses occurring in both Inner Mongolia and Xinjiang because of China's unique position in the international order.

Finally, this Note will offer alternative solutions to the current human rights crises in China. Additionally, this Note will assert that fundamental changes should be made to the United Nations and the

Criminal Court Treaty, AM. SOC'Y OF INT'L L. INSIGHTS (May 11, 2002), available at <https://www.asil.org/insights/volume/7/issue/7/us-announces-intent-not-ratify-international-criminal-court-treaty> (last visited Nov. 17, 2021) ("Although initially a supporter of the proposed Court, the Clinton Administration did not sign the treaty at the Rome conference because of a variety of concerns, including a concern that the treaty contained insufficient protection against politicized prosecutions.").

¹⁴ DANILO ZOLO, *VICTORS' JUSTICE: FROM NUREMBERG TO BAGHDAD* 37-9 (M. W. Weir trans., Verso 2020) (2009).

¹⁵ *Id.* at 30.

¹⁶ See Christopher Wall, *Human Rights and Economic Sanctions: The New Imperialism*, 22 *FORDHAM INT'L L. J.* 577 (1998); see also Margot Tudor, 'This delicate mosaic may be shattered at any time': *The ICC, technocracy and the liberal West's moral imperialism*, 3 *RESP. TO PROTECT STUDENT J.* 33 (2018).

international human rights regime to address future human rights violations more effectively.

In addition to being an economic superpower, China is a member of the P5, and under the current international legal order is unlikely to be held to account for prima facie human rights abuses in Inner Mongolia and Xinjiang, even though China's actions have been met with criticism by its fellow P5 States.¹⁷ Additionally, the mechanisms for combatting violations of international law outside of an ICC prosecution, such as economic sanctions and military intervention, are ineffective against a powerful nation such as China because it is heavily relied upon for global trade,¹⁸ and such actions could lead to global economic catastrophe.

II.BACKGROUND

China has a complicated history with the United Nations and, as a result, the Security Council.¹⁹ During World War II, China was instrumental to the allied powers' fight in the Pacific theater against Imperial Japan.²⁰ Even though China was far from a major world power in 1945, the Allied powers "rewarded [China] with a seat on the Security

¹⁷ Edward Wong & Chris Buckley, *U.S. Says China's Repression of Uyghurs Is 'Genocide'*, N.Y. TIMES (Jan. 19, 2021), available at <https://www.nytimes.com/2021/01/19/us/politics/trump-china-xinjiang.html> (last visited Nov. 17, 2021).

¹⁸ See Yasmeen Serhan & Kathy Gilsinan, *Can the West Actually Ditch China?*, ATLANTIC (Apr. 24, 2020), available at <https://www.theatlantic.com/politics/archive/2020/04/us-britain-dependence-china-trade/610615/> (last visited Nov. 17, 2021) (discussing western nations' dependence on Chinese supply chains in many economic sectors, paying particular attention to the dependence on China for medical supplies during the COVID-19 pandemic.).

¹⁹ See Xue Lei, *China as a Permanent Member of the United Nations Security Council*, FRIEDRICH EBERT FOUND. (April 2014), available at <http://library.fes.de/pdf-files/iez/10740.pdf> (last visited Nov. 17, 2021).

²⁰ See Thomas Scott-Bell, *The Forgotten Ally: China's Unsung Role in World War II*, CHINA FOCUS (May 8, 2020), available at <http://www.cnfocus.com/the-forgotten-ally-china-s-unsung-role-in-world-war-ii/> (last visited Nov. 17, 2021) ("China's efforts however ensured that the hardened perimeter envisaged could never be created. Against all odds, China's resistance succeeded in keeping 80 percent of Japan's entire troops locked in battles within the country, stalling them from reinforcing their defensive wall).

Council . . . but no role in constructing a new world order.”²¹ In 1949, China declared independence and Mao Tse-tung’s Communist Party formed a government. Many western powers viewed this independence movement, and movement towards socialism, as a “loss of China.”²² As a result, the newly formed People’s Republic of China was not granted “its lawful representative seat at the UN as the legitimate government of China until 1971.”²³

A. CHINESE ETHNIC HOMOGENIZATION POLICIES.

China has been attempting to suppress, sometimes forcefully, ethnic minority populations.²⁴ The suppression of ethnic cultures has been accompanied by the rise of the so-called “second generation” ethnic policy.²⁵ The policy aims to unite fifty-six “nationalities” into one Chinese culture, to prevent national disintegration, such as the disintegration seen in the Soviet Union and Yugoslavia.²⁶ James Leibold has cautioned that the “ethnic blending theory” that is promoted by such a policy could “lead to ideological confusion and social unrest, and actually work against or even harm” China.”²⁷ The policy has been

²¹ *Id.*

²² See Noam Chomsky, ‘*Losing*’ the world: American decline in perspective, part 1, *GUARDIAN* (Feb. 14, 2012), available at <https://www.theguardian.com/commentisfree/cifamerica/2012/feb/14/losing-the-world-american-decline-noam-chomsky> (last visited Nov. 15, 2021) (“ . . . China declared independence, an event known in Western discourse as “the loss of China” – in the US, with bitter recriminations and conflict over who was responsible for that loss.”).

²³ See Lei, *supra* note 18.

²⁴ *Ethnic minorities and rural migrants suffer discrimination and oppression in China*, *IRISH TIMES* (Sept. 8, 2001), available at <https://www.irishtimes.com/culture/ethnic-minorities-and-rural-migrants-suffer-discrimination-and-oppression-in-china-1.326352> (last visited Nov. 15, 2021); see also Hum. Rts. in China, *China: Minority Exclusion, Marginalization and Rising Tensions*, MINORITY RTS. GROUP INT’L (2007), available at <https://minorityrights.org/wp-content/uploads/old-site-downloads/download-165-China-Minority-Exclusion-Marginalization-and-Rising-Tensions.pdf> (last visited Nov 15, 2021).

²⁵ James Leibold, *Toward A Second Generation of Ethnic Policies?*, 12 *CHINA BRIEF* 7 (Jul. 7, 2012), available at https://jamestown.org/wp-content/uploads/2012/07/cb_07_02.pdf?x11990 (last visited Nov. 15, 2021).

²⁶ *Id.*

²⁷ *Id.* at 9.

championed by a rising tide of academics, known as “Statists,” who view state authority as expansive, and believe that a nation can only thrive when stability in the nation exists.²⁸

Under the leadership of President Xi, China has committed itself to “eradicat[ing] absolute poverty in ethnic minority areas.”²⁹ For example, the Chinese government has erected “vocational training programs” in Xinjiang, and other ethnic minority regions, to teach the local populations “new skills to enable them to increase their incomes and improve their livelihoods.”³⁰ While China has been successful in efforts to alleviate poverty,³¹ this policy seeks to eradicate local ethnic minority cultures and achieve cultural homogenization of China, to unite the nation under a single banner and culture, in the name of “poverty alleviation.”³²

To fully examine the situation in Inner Mongolia, it is necessary to examine the material conditions in Xinjiang, where the Chinese government has placed Uyghurs into internment camps. The situation in Xinjiang is more advanced than the situation in Inner Mongolia but suggests what the Chinese government may do in Inner Mongolia.

B. RECENT ACTIONS TAKEN BY THE CHINESE GOVERNMENT TOWARDS UYGHURS IN XINJIANG.

The Chinese government has taken steps to eradicate Uyghur culture, and to suppress the practice of Islam, which has ultimately led to the deportation of Uyghur to so-called “re-education” camps.³³ The Chinese government has attempted to justify these actions, stating that it is in a fight against “terrorism, separatism, and religious extremism,”³⁴

²⁸ Chang Che, *The Nazi Inspiring China's Communists*, ATLANTIC (Dec. 1, 2020), available at <https://www.theatlantic.com/international/archive/2020/12/nazi-china-communists-carl-schmitt/617237/> (last visited Nov. 15, 2021).

²⁹ Bertil Lintner, *Xi's masterplan for a homogeneous new China*, ASIA TIMES (Nov. 30, 2020), available at <https://asiatimes.com/2020/11/xis-masterplan-for-a-homogeneous-one-china/> (last visited Nov. 15, 2021).

³⁰ *Id.*

³¹ See Bilal Amodu, *Innovations in Poverty Eradication in China*, BORGEN PROJECT (Oct. 3, 2020), available at <https://borgenproject.org/poverty-alleviation/> (last visited Jan. 20, 2022).

³² Lintner, *supra* note 28.

³³ Hum. Rts. in China, *supra* note 23.

³⁴ *Id.*

and it has used rhetoric developed by the United States during the “War on Terror” to justify the detainments.³⁵ China has drawn a link between Uyghur separatist movements and Islamist extremist groups such as al Qaeda,³⁶ even though such Uyghur separatist movements are largely defunct,³⁷ or have been forced to move to other regions.³⁸ To “cure” the Uyghurs who are “infected” with the “wrong kind of thinking,” China implemented restrictions on, among other things, the “length of men’s beards, regulate[d] women’s clothing in public spaces and discourage[d] the use of Muslim names.”³⁹

The Chinese government also constructed an intrusive surveillance state in Xinjiang.⁴⁰ In 2018, Huawei, a prominent Chinese telecommunications enterprise, tested an “AI-powered camera system that could attempt to identify the age, sex and ethnicity of people in a crowd,” in Xinjiang.⁴¹ When this technology identified a Uyghur

³⁵ Akbar Shahid Ahmed, *China Is Using U.S. ‘War On Terror’ Rhetoric To Justify Detaining 1 Million People*, HUFFINGTON POST (Dec. 2, 2018, 9:07 PM), available at https://www.huffpost.com/entry/china-is-justifying-its-biggest-human-rights-crisis-in-decades-with-made-in-the-usa-war-on-terror-rhetoric_n_5bae375be4b0b4d308d2639c (last visited Nov. 15, 2021) (“In the months after Sept. 11, China began presenting nearly all Uyghur resistance as connected to Islam and the global networks of groups like al Qaeda . . .”).

³⁶ *Id.*

³⁷ See Sha Hua, *Chinairate After U.S. Removes ‘Terrorist’ Label From Separatist Group*, WALL ST. J. (Nov. 6, 2020), available at <https://www.wsj.com/articles/china-irate-after-u-s-removes-terrorist-label-from-separatist-group-11604661868> (last visited Nov. 15, 2021) (discussing the State Department’s decision to remove ETIM from its list of terrorist organizations after the State Department stated that there has been “no credible evidence that ETIM continues to exist.”).

³⁸ Beina Xu, Holly Fletcher, & Jayshree Bajoria, *The East Turkestan Islamic Movement (ETIM)*, COUNCIL ON FOREIGN REL. (Sept. 4, 2014), available at <https://www.cfr.org/backgrounder/east-turkestan-islamic-movement-etim> (last visited Nov. 15, 2021) (“ . . . ETIM has received ‘training and funding’ from al-Qaeda and has fought in the group’s ranks against the U.S. troops during Operation Enduring Freedom in Afghanistan.”).

³⁹ Ahmed, *supra* note 33.

⁴⁰ Kenneth Roth & Maya Wang, *Data Leviathan: China’s Burgeoning Surveillance State*, HUM. RTS. WATCH (Aug. 16, 2019), available at <https://www.hrw.org/news/2019/08/16/data-leviathan-chinas-burgeoning-surveillance-state#> (last visited Jun. 8, 2021) (“Yet today, in Xinjiang, a region in China’s northwest, a new totalitarianism is emerging—one built . . . on the state’s intrusive collection and analysis of information about the people there.”).

⁴¹ Igor Bonifacic, *Huawei tested facial recognition that targeted Uyghurs in China*,

individual, it would trigger a “Uyghur alarm,” which was then transmitted to the police.⁴² The surveillance program, known as the Integrated Joint Operations Platform,⁴³ has been used to “arbitrarily” select Muslims for detention for behaviors such as “wearing a veil, studying the Quran or going on the Hajj pilgrimage . . .”⁴⁴

As China’s crackdown on Uyghurs in Xinjiang intensified, the government began to deport an estimated one million Uyghurs,⁴⁵ to 380 newly-constructed internment camps.⁴⁶ In these camps, Uyghurs have been subjected to forced sterilization, torture, and political indoctrination.⁴⁷ Additionally, Uyghurs have been used as slave labor, with an estimated 570,000 Uyghurs forced to pick cotton “under a labor program meant to target minority groups.”⁴⁸ Survivors of such

ENGADGET (Dec. 8, 2020), available at <https://www.engadget.com/huawei-facial-recognition-Uyghurs-172304197.html> (last visited Nov. 15, 2021).

⁴² *Id.*

⁴³ Nazish Dholakia & Maya Wang, *Interview: China’s ‘Big Brother’ App*, HUM. RTS. WATCH (May 1, 2019), available at <https://www.hrw.org/news/2019/05/01/interview-chinas-big-brother-app>. (last visited Nov. 15, 2021) (“The IJOP is a system of systems. It gathers information from, but not limited to, gas stations, checkpoints on the street, and access-controlled areas such as communities and schools. It pulls information from these facilities, as well as CCTV cameras, integrates them, and monitors them for ‘unusual’ activity or behavior that triggers alerts that authorities then investigate.”).

⁴⁴ *China uses big data to select Muslims for arrest in Xinjiang: HRW*, AL JAZEERA (Nov. 9, 2020), available at <https://www.aljazeera.com/news/2020/12/9/china-uses-big-data-to-select-muslims-for-arrest-in-xinjiang-hrw>. (last visited Nov. 15, 2021) (“[T]he rights group said it [analyzed] a leaked list of more than 2,000 detainees in Xinjiang’s Aksu prefecture and found that the [program] . . . also flagged people for their relationships, their communications, their travel histories, or for being related to someone the authorities consider suspicious.”).

⁴⁵ Yasmeen Serhan, *Saving Uyghur Culture From Genocide*, ATLANTIC (Oct. 4, 2020), available at <https://www.theatlantic.com/international/archive/2020/10/chinas-war-on-Uyghur-culture/616513/>. (last visited Nov. 15, 2021).

⁴⁶ Emma Graham-Harrison, *China has built 380 internment camps in Xinjiang, study finds*, GUARDIAN (Sept. 23, 2020), available at <https://www.theguardian.com/world/2020/sep/24/china-has-built-380-internment-camps-in-xinjiang-study-finds>. (last visited Nov. 15, 2021).

⁴⁷ Serhan, *supra* note 43.

⁴⁸ Natalie Colarossi, *More Than Half a Million Uyghurs Forced to Pick Cotton in China, Report Alleges*, NEWSWEEK (Dec. 15, 2020, 2:47 PM), available at <https://www.newsweek.com/more-half-million-Uyghurs-forced-pick-cotton-china-report-alleges-1554960>. (last visited Nov 15, 2021).

internment camps have also reported that “they experienced or saw evidence of an organized system of mass rape, sexual abuse and torture.”⁴⁹

The Chinese government has denied that any human rights abuses are occurring in Xinjiang and stated that most people that were sent to these internment camps have “returned to society.”⁵⁰ But China has not allowed “journalists, human rights groups or diplomats” to visit the camps, and “visitors to the region face heavy surveillance.”⁵¹

Inner Mongolian Crackdown

In the summer of 2020, the Chinese government implemented a set of measures to curtail the use of the Mongolian language in Inner Mongolian schools and replace it with Mandarin Chinese, the dominant language in China.⁵² The new rules mandate that courses in literature, politics, and history be taught in Mandarin Chinese.⁵³ China only announced the policy to Inner Mongolians days before it was implemented.⁵⁴ Similar restrictions were utilized in Tibet and Xinjiang to suppress local ethnic groups and their cultures.⁵⁵

The new “bilingual education” program sparked outrage among the Inner Mongolian community. The local community distributed online

⁴⁹ Matthew Hill et al., *‘Their goal is to destroy everyone’: Uyghur camp detainees allege systemic rape*, BBC (Feb. 3, 2021), available at <https://www.bbc.com/news/world-asia-china-55794071>. (last visited Nov. 15, 2021).

⁵⁰ Michael Martina, *China says most people in Xinjiang camps have ‘returned to society’*, REUTERS (July 30, 2019), available at <https://www.reuters.com/article/us-china-xinjiang/china-says-most-people-in-xinjiang-camps-have-returned-to-society-idUSKCNIUP15F>. (last visited Nov. 15, 2021).

⁵¹ Graham-Harrison, *supra* note 44.

⁵² *Rare rallies in China over Mongolian language curb*, BBC (Sept. 1, 2020), available at <https://www.bbc.com/news/world-asia-china-53981100>. (last visited Nov. 15, 2020).

⁵³ Graceffo, *supra* note 17.

⁵⁴ Alice Su, *China cracks down on Inner Mongolian minority fighting for its mother tongue*, L.A. TIMES (Sept. 3, 2020, 10:21 AM), available at <https://www.latimes.com/world-nation/story/2020-09-03/china-inner-mongolia-bilingual-education-assimilation-xinjiang-resistance-crackdown>. (last visited Nov. 15, 2020).

⁵⁵ Antonio Graceffo, *Why critics are asking if Inner Mongolia is the next Tibet or Xinjiang*, INTELLINEWS (Feb. 25, 2021), available at <https://www.intellinews.com/comment-why-critics-are-asking-if-inner-mongolia-is-the-next-tibet-or-xinjiang-203735/> (last visited Nov. 10, 2021).

petitions in opposition to the program that gained thousands of signatures by teachers, students, and parents.⁵⁶ This outrage was not confined solely to Inner Mongolia as the Southern Mongolian Human Rights Information Center, which operates out of New York, quickly posted videos of students protesting and parents clashing with police forces while they tried to pick up their children from school.⁵⁷

Protests over the new language mandate grew quickly, and eventually led to a strike of more than 300,000 students.⁵⁸ In coordination with local authorities, the national government banned automobiles from the roads of Tongliao, a city of three million people, in an effort to stop parents from congregating and discussing the mandate and protests.⁵⁹ To further quell dissent, the government offered preferential access to government aid programs to parents who sent their children to school.⁶⁰ When children did go to school they were greeted by a slogan from President Xi painted onto the wall in Mandarin: "All ethnic groups must embrace tightly like the seeds of a pomegranate."⁶¹

Additionally, law enforcement authorities entered the homes of ethnic Mongolians, and forced them to sign "pledges to not speak against the bilingual program anymore."⁶² If the resident failed to sign the pledge, authorities detained them and marked them in police databases as "key individuals," which flagged the person as a threat to security who required targeted surveillance and control.⁶³

The Chinese government also cracked down on journalists in Inner Mongolia covering the protests. *The Los Angeles Times* reported that one of its journalists was detained by police, and then expelled from Inner Mongolia while covering the protests.⁶⁴ The reporter was visiting a

⁵⁶ Su, *supra* note 52.

⁵⁷ *Id.*

⁵⁸ Graceffo, *supra* note 53.

⁵⁹ Emily Feng, *Parents Keep Children Home As China Limits Mongolian Language In The Classroom*, NPR (Sept. 16, 2020), available at <https://www.npr.org/2020/09/16/912623822/parents-keep-children-home-as-china-limits-mongolian-language-in-the-classroom> (last visited Nov. 10, 2021).

⁶⁰ *Id.*

⁶¹ Su, *supra* note 52.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *US paper says reporter was held in China's Inner Mongolia*, AP NEWS (Sept. 4, 2021), available at <https://apnews.com/article/ca-state-wire-international-news-business-asia-pacific-02719922d056023257c5508acd75b287> (last visited Nov. 10, 2021).

Mongol school in Hohhot and was “surrounded by plainclothes men who put her into a police car.”⁶⁵ Despite the journalist identifying herself as such, she was confined to a back room in a police station, interrogated by the authorities, and separated from her belongings.⁶⁶ During the approximately four-hour detention, she was forbidden from contacting the U.S. Embassy, assaulted, and battered when “one officer grabbed her throat with both hands and pushed her into a cell.”⁶⁷

When protests failed to subside, the police released lists of wanted protestors (using photos allegedly procured through security camera footage) and offered a reward for information about them.⁶⁸ Authorities also targeted users of the messaging app “WeChat” for dispersing “fake news” regarding the textbook requirement, and for organizing the spread of petitions.⁶⁹

Similar surveillance tactics were also deployed in Xinjiang against the Uyghur community. There, the police set up checkpoints to search people’s personal phones through the use of devices known as a “counterterrorism sword” or “anti-terrorism sword.”⁷⁰ A counterterrorism sword allows law enforcement officials to plug a device into an individual’s phone or computer and scan all the files.⁷¹ Such devices are capable of finding all files, even if the individual had previously deleted them, and searching for 50,000 different “markers” of Islamic or political activity.⁷² Currently there is no evidence of such

⁶⁵ Su, *supra* note 52.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Christian Shepherd & Emma Zhou, *Authorities quash Inner Mongolia protests*, FIN. TIMES (Sept. 10, 2020), available at <https://www.ft.com/content/c035c3d7-0f96-4e23-b892-2666bc110e20> (last visited Nov. 15, 2021); see also Yael Grauer, *Revealed: Massive Chinese Police Database*, INTERCEPT (Jan. 29, 2021, 3:00 AM), available at <https://theintercept.com/2021/01/29/china-uyghur-muslim-surveillance-police/> (last visited Nov. 15, 2021) (discussing the usage of a massive police database to surveil Uyghur Muslims in Xinjiang, a similar tactic that is now being used in Inner Mongolia.).

⁶⁹ Shepherd, *supra* note 66.

⁷⁰ Jeremy Scahill, *Intercepted with Jeremy Scahill: Inside China’s Police State Tactics Against Muslims* [hereinafter *Intercepted*], INTERCEPT (Feb. 3, 2021), available at <https://theintercept.com/2021/02/03/intercepted-china-uyghur-muslim-surveillance-police/> (last visited Nov. 14, 2021) (quoting Darren Byler, anthropologist at the University of Colorado at Boulder).

⁷¹ *Id.*

⁷² *Id.*

devices being used against Inner Mongolians. However, it is possible that the Chinese government could use, or is currently using, such tactics to quash any protests regarding in Inner Mongolia.

C. REACTIONS OF THE INTERNATIONAL COMMUNITY TO CHINA'S ACTIONS.

The international community has reacted to accusations of human rights abuses in China in varying ways. To hold China accountable, Uyghurs living in exile requested that the prosecutor of the International Criminal Court (“ICC”) open an investigation into the treatment of Uyghurs in Xinjiang; but this request did not lead to any prosecutions or ICC action because China is not a State Party to the Rome Statute.⁷³

I. Actions taken by individual states.

The United States responded to reports of human rights abuses in Xinjiang by passing the Uyghur Human Rights Policy Act of 2020, which condemns “gross human rights violations of ethnic Turkic Muslims in Xinjiang,” and calls “for an end to arbitrary detention, torture, and harassment of these communities inside and outside China.”⁷⁴ This Act seeks to rectify the situation in Xinjiang by directing the Secretary of State to “coordinate closely with the international community” to apply targeted sanctions and visa restrictions against individuals or entities responsible for the violations.⁷⁵

In the waning days of the Trump administration, the State Department declared that the Chinese government was actively “committing genocide and crimes against humanity” in Xinjiang against the Uyghurs and “other Muslim ethnic minorities.”⁷⁶ Secretary of State

⁷³ *ICC will not open investigation into treatment of Uyghur Muslims in China*, ROYAL NEWS (Dec. 15, 2020), available at <https://en.royanews.tv/news/24180/ICC-will-not-open-investigation-into-treatment-of-Uyghur-Muslims-in-China> (last visited Nov. 15, 2021); see generally *How the Court Works*, ICC, available at <https://www.icc-cpi.int/about/how-the-court-works> (last visited Nov. 15, 2021) (the Court can only exercise jurisdiction over a State Party “that has accepted the jurisdiction of the Court.”).

⁷⁴ Uyghur Human Rights Policy Act of 2020, Pub. L. No. 116-145, 648 Stat. 134.

⁷⁵ *Id.*

⁷⁶ Edward Wong & Chris Buckley, *U.S. Says China's Repression of Uyghurs Is 'Genocide'*, N.Y. TIMES (Jan. 19, 2021), available at

Mike Pompeo announced that the State Department had determined this via his Twitter account on the final full day of President Trump's presidency.⁷⁷

In Canada, the House of Commons passed a unanimous motion declaring that China's treatment of the Uyghurs amounts to genocide.⁷⁸ The Dutch parliament became the first European country to declare the treatment of Uyghurs to be genocide when it passed a non-binding motion to that effect.⁷⁹ However, other states were less willing to declare China's treatment of the Uyghurs a genocide, with both Australia and Turkey rejecting such motions.⁸⁰

Mongolia itself is unable to take a stand for the people of Inner Mongolia because of Mongolia's complete dependence on China.⁸¹ However, individual Mongolians created a petition to the White House and held protests in Washington, D.C., and Tokyo.⁸²

The international community will have difficulties addressing China's alleged human rights abuses.

<https://www.nytimes.com/2021/01/19/us/politics/trump-china-xinjiang.html> (last visited Nov. 15, 2021).

⁷⁷ Alex Ward, *US: China is committing genocide and crimes against humanity against Uyghur Muslims*, VOX (Jan. 19, 2021, 1:50 PM), available at <https://www.vox.com/2021/1/19/22238962/china-genocide-Uyghur-muslims-xinjiang-biden-pompeo> (last visited Nov. 15, 2021).

⁷⁸ *Canada's parliament declares China's treatment of Uyghurs 'genocide'*, BBC (Feb. 23, 2021), available at <https://www.bbc.com/news/world-us-canada-56163220> (last visited Nov. 10, 2021).

⁷⁹ *Dutch parliament: China's treatment of Uyghurs is genocide*, REUTERS (Feb. 25, 2021), available at <https://www.reuters.com/article/us-netherlands-china-Uyghurs/dutch-parliament-chinas-treatment-of-Uyghurs-is-genocide-idUSKBN2AP2CI> (last visited Nov. 10, 2021).

⁸⁰ Paul Eckert, *Dismaying Uyghurs, Legislatures of Australia and Turkey Reject Motions on China Genocide Label*, RADIO FREE ASIA (Mar. 15, 2021), available at <https://www.rfa.org/english/news/uyghur/turkey-australia-genocide-03152021185120.html> (last visited Nov. 10, 2021).

⁸¹ Antonio Graceffo, *Why critics are asking if Inner Mongolia is the next Tibet or Xinjiang*, INTELLINEWS (Feb. 25, 2021), available at <https://www.intellinews.com/comment-why-critics-are-asking-if-inner-mongolia-is-the-next-tibet-or-xinjiang-203735/> (last visited Nov. 10, 2021).

⁸² *Id.*

It will likely be difficult for P5 States to address the human rights abuses in both Xinjiang and Inner Mongolia by using tools traditionally used to address human rights violations—such as interventionist military operations and economic sanctions—against China.⁸³ China is a major world power and relied upon by many states for trade.⁸⁴ Efforts to halt China's human rights violations could lead to the state halting exports,⁸⁵ which would have devastating impacts on an already weak global supply chain. Additionally, the remaining four P5 States are all experiencing varying levels of domestic political turmoil,⁸⁶ and the body politic of

⁸³ See Cissy Zhou, *US financial sanctions against China 'suicidal' for Washington, former Chongqing mayor Huang Qifan says*, S. CHINA MORNING POST (Oct. 12, 2020, 6:15 PM), available at <https://www.scmp.com/economy/china-economy/article/3105141/us-financial-sanctions-against-china-suicidal-washington> (last visited Nov. 10, 2021).

⁸⁴ See *Percent of world exports – Country rankings*, GLOBAL ECON., available at https://www.theglobaleconomy.com/rankings/share_world_exports/ (last visited Nov. 10, 2021) (in 2018, China's accounted for 10.86% of world exports, the most of any country); see also Tianlei Huang & Nicholas R. Lardy, *China goes from strength to strength in global trade*, PETERSON INST. FOR INT'L ECON. (Nov. 16, 2020, 10:30 AM), available at <https://www.piie.com/blogs/china-economic-watch/china-goes-strength-strength-global-trade> (last visited Nov. 10, 2021) (discussing that China's merchandise trade has recovered from the downturn caused by the COVID-19 pandemic quicker than the rest of the world, as demand for Chinese goods increases).

⁸⁵ See Helen Davidson, *China's trade halt with Lithuania over Taiwan ties sends warning to Europe*, GUARDIAN (Aug. 25, 2021), available at <https://www.theguardian.com/world/2021/aug/26/chinas-trade-halt-with-lithuania-over-taiwan-ties-sends-warning-to-europe> (last visited Jan. 21, 2022) (“China's use of trade as a weapon in diplomatic disputes appears to be now targeted at Lithuania . . . after the Baltic nation agreed to exchange diplomatic offices with Taiwan.”).

⁸⁶ In France, the resurgence of the far-right National Rally (formerly the National Front) party, under the leadership of Marine Le Pen, has led to members of the French military penning an open letter to Emmanuel Macron's government accusing the government of “cowardice, deceit, perversion,” and threatening that the country is heading for a civil war. See Kim Wilsher, *French soldiers accuse government of trying to 'silence' warnings of civil war*, GUARDIAN (May 10, 2021), available at <https://www.theguardian.com/world/2021/may/10/french-soldiers-accuse-government-of-trying-to-silence-warnings-of-civil-war> (last visited Nov. 10, 2021); In the United Kingdom, Brexit has created a tense situation in Northern Ireland with Unionists and Republicans clashing in the streets. See Zeeshan Aleem, *Northern Ireland is in the midst of its heaviest unrest in years. Here's why.*, Vox (Apr. 10, 2021), available at <https://www.vox.com/2021/4/10/22377216/northern-ireland-belfast-riots-violence->

those P5 States may not support efforts to rectify human rights abuses in China.

D. CHINA'S REACTIONS TO ACCUSATIONS.

China responded to such accusations of genocide by telling the Human Rights Council that the accusations were “fabricated out of ignorance and prejudice.”⁸⁷ China's Foreign Minister Wang Yi also stated that “[t]here never has been so-called genocide, forced labor or religious oppression in Xinjiang.”⁸⁸

III. CHINA'S HUMAN RIGHTS VIOLATIONS

China's actions in Inner Mongolia and Xinjiang are contrary to China's obligations under international human rights treaties that it has signed or ratified.

A. CHINA'S VIOLATIONS OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.

protests (last visited Dec. 21, 2021); In the United States, the Republican Party has been taken hostage by conspiracy theories that resulted in a violent insurrection at the Capitol. See Drew Harwell et al., *QAnon reshaped Trump's party and radicalized believers. The Capitol siege may just be the start.*, WASH. POST (Jan. 13, 2021, 11:00 AM), available at <https://www.washingtonpost.com/technology/2021/01/13/qanon-capitol-siege-trump/> (last visited Dec. 21, 2021); In Russia, the military has assembled on the Ukrainian border and, at the time of this writing, seems poised to invade Ukraine in the winter of 2022. See *Putin Warns of 'Military-Technical' Response to Western 'Aggression'*, MOSCOW TIMES (Dec. 21, 2021), available at <https://www.themoscowtimes.com/2021/12/21/putin-warns-of-military-technical-response-to-western-aggression-a75891> (last visited Dec. 21, 2021).

⁸⁷ Richard Bravo & Kitty Donaldson, *China Denies Uyghur Abuse Claims as International Pressure Grows*, BLOOMBERG (Feb. 22, 2021), available at <https://www.bloomberg.com/news/articles/2021-02-22/china-denies-Uyghur-abuse-claims-as-international-pressure-grows> (last visited Nov. 10, 2021).

⁸⁸ *Id.*

The International Covenant on Civil and Political Rights (“ICCPR”) is a “foundational treaty” in the international human rights law system; protecting, among other things, individuals’ “freedom of speech, assembly, and religion.”⁸⁹ China has signed onto the ICCPR but has not ratified it.⁹⁰

The Chinese government’s actions in Xinjiang and Inner Mongolia are actively undermining the object and purpose of the ICCPR.⁹¹ Even though Article 18 of the Vienna Convention on the Law of Treaties (“VCLT”) mandates that China does not take any action that would defeat the object and purpose of the ICCPR, the Chinese government has disregarded that Article and decided that it need not observe the ICCPR’s object and purpose. By removing the native Mongolian language from schools, and mandating children learn core subjects in Mandarin Chinese, the government seeks to crush the Mongolian culture out of existence inside China’s borders. These actions contradict the object and purpose of the ICCPR.

Article 1 of the ICCPR clearly asserts that all peoples have the right to control their own lives as well as the right to freely “pursue their economic, social and cultural development.”⁹² The people of Inner Mongolia are being denied the right to control their own lives, and the lives of their children, as China seeks to exterminate their culture. By removing the Mongolian language from Inner Mongolian schools, China is abridging Inner Mongolian children’s right to freely pursue their cultural development. While it may be important for Inner Mongolian children to learn Mandarin Chinese to be successful in predominately Mandarin speaking state; removing the Mongolian language from schools will likely lead to Inner Mongolian children being unable to effectively communicate within their communities.⁹³

⁸⁹ International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

⁹⁰ *Id.*

⁹¹ Under Article 18 of the Vienna Convention on the Law of Treaties, a State, if it has signed, but has not yet ratified, is obligated to refrain from taking action that would “defeat the object and purpose of [the] treaty.” See Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, art. 18, 1155 U.N.T.S. 331.

⁹² ICCPR, *supra* note 88.

⁹³ See *The Importance of Culture, Language and Identity*, RACISM NO WAY (n.d.), available at <https://racismnoway.com.au/about-racism/understanding-racism/the-importance-of-culture-language-and-identity/> (last visited Nov. 15, 2021); see also Alex Shashkevich, *The power of language: How words shape people, culture,*

The ICCPR was designed to protect the exact rights that are being denied to Inner Mongolians. Instead of abiding by the object and purpose of the ICCPR – and allowing Inner Mongolian children to freely pursue their cultural development – China is denying them that protected right by unilaterally deciding which culture the children will pursue.

B.CHINA’S VIOLATIONS OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The United Nations Convention on the Rights of the Child (“CRC”) was drafted to establish global standards “to ensure the protection, survival, and development of all children, without discrimination.”⁹⁴ The treaty has been ratified by 194 countries, including China.⁹⁵

During the early twentieth century, there was minimal protections afforded to children, who were frequently working in unsafe factory conditions alongside adults in industrialized nations.⁹⁶ The rights of children first came into focus in 1924 when the League of Nations adopted the Geneva Declaration on the Rights of the Child, which afforded children basic rights.⁹⁷ More than sixty years later, in 1989, the United Nations General Assembly adopted the CRC, which marked a watershed moment for international human rights, as it recognized the role of children as “social, economic, political, civil and cultural actors.”⁹⁸

In 1992, China ratified the CRC but entered a reservation as to the legal effect of Article 6, which requires states parties to “recognize that every child has the inherent right to life,” and to ensure “to the maximum

STAN. NEWS (Aug. 22, 2019), *available at* <https://news.stanford.edu/2019/08/22/the-power-of-language-how-words-shape-people-culture/> (last visited Nov. 15, 2021).

⁹⁴ Hum. Rts. Watch, *25th Anniversary of the Convention on the Rights of the Child*, HRW (Nov. 17, 2014, 11:50 AM), *available at* <https://www.hrw.org/news/2014/11/17/25th-anniversary-convention-rights-child> (last visited Nov. 15, 2021).

⁹⁵ The only countries to not ratify the CRC are Somalia, South Sudan, and the United States. *See id.*

⁹⁶ *History of child rights*, U.N. CHILDREN’S FUND (n.d.), *available at* <https://www.unicef.org/child-rights-convention/history-child-rights> (last visited Nov. 15, 2021).

⁹⁷ *Id.*

⁹⁸ *Id.*

extent possible the survival and development of the child.”⁹⁹ However, China only entered a reservation to Article 6 as a “prerequisite that the Conventions accords with the provisions of Article 25 concerning family planning of the [Chinese] Constitution¹⁰⁰ ... and in conformity with the provisions of Article 2 of the Law of Minor Children¹⁰¹ ...”¹⁰² By ratifying the CRC, China consented to be bound by the treaty and is expected to not derogate from the terms of the treaty. The actions taken by the Chinese in Inner Mongolia against school-aged children, however -- namely stripping them of their language within schools -- directly violates the CRC and amounts to a derogation of China’s legal obligations under the CRC.

The CRC contains four principles that “contribute to a general attitude towards children and their rights,” which are “based on the notion that children too, are equal as human beings.”¹⁰³ These four principles are: (i) non-discrimination, (ii) best interests of the child, (iii) the right to survival and development, and (iv) the views of the child,¹⁰⁴ each of which will be addressed individually. By denying Inner Mongolian children’s ability to be educated in a language they are familiar with, the

⁹⁹ Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC] (China’s reservation states in full: “[T]he People’s Republic of China shall fulfil its obligations provided by article 6 of the Convention to the extent that the Convention is consistent with the provisions of article 25 concerning family planning of the Constitution of the People’s Republic of China and with the provisions of article 2 of the Law of Minor Children of the People’s Republic of China.”).

¹⁰⁰ Xianfa, art. 25 (2004) (China) (“The State promotes family planning so that population growth may fits the plans for economic and social development.”).

¹⁰¹ *Law of the P.R.C. on the Protection of Minors, Art. II* (中华人民共和国未成年人保护法), China, *available at* <https://www.chinalawtranslate.com/en/protection-of-minors-2020/> (last visited Nov. 14, 2021) (determining that a minor is any citizen below the age of eighteen).

¹⁰² *Convention on the Rights of the Child (CRC)*, Hum. Rts. in China (n.d.), *available at* <https://www.hrichina.org/en/convention-rights-child-crc#:~:text=At%20the%20time%20of%20its,and%20development%20of%20the%20child.> (last visited Nov. 14, 2021).

¹⁰³ *Four principles of the Convention on the Rights of the Child*, U.N. CHILDREN’S FUND (June 24, 2019), *available at* <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child> (last visited Nov. 14, 2021).

¹⁰⁴ *Id.*

Chinese government has violated all four principles that are central to the CRC.

I. Non-Discrimination.

The language policy adopted by China is discriminatory against Inner Mongolian children. Parties to the CRC are required to ensure the rights set forth in the treaty, regardless of factors such as the child's race, *language*, religion, political opinion, or *ethnic or social origin*.¹⁰⁵ The language policy is likely not harming Han Chinese children in Inner Mongolia who presumably speak Mandarin Chinese in their homes. The constant exposure to Mandarin Chinese at home and within their communities is likely to lead to an advantage in the classroom because Inner Mongolian children who speak Mongolian at home will have a harder time understanding the material being taught. By directing this policy solely towards Inner Mongolian children, China has discriminated against Inner Mongolian children and has failed to ensure the rights granted to Inner Mongolia under the CRC.

II. Best interests of the child.

Through its language policy, China has undermined the rights of Inner Mongolian children articulated in Article 8 of the CRC, which provides that states parties must “respect the right of the child to preserve his or her identity . . .”¹⁰⁶ China is, in essence, stripping a piece of the children's identity from them.¹⁰⁷ The damage caused by the policy will not be confined to the halls of Inner Mongolian schools. By not being exposed to their native language in school, where children spend most of their week, Inner Mongolian children will only have exposure to their native tongue while at home, making it harder for them to become proficient in the language and communicate with members of the Inner Mongolian community. This is violating the best interests of the child by

¹⁰⁵ CRC, *supra* note 99, at art. 2.

¹⁰⁶ *Id.* at art. 8.

¹⁰⁷ See Kahar Zalmay, *Language and identity*, NEWS (Feb. 11, 2017), available at <https://www.thenews.com.pk/print/185439-Language-and-identity> (last visited Nov. 14, 2021) (“Language is not simply an assortment of words but an entity that connects an individual to his family, identity, culture, music, beliefs, and wisdom. It is the carrier of history, traditions, customs and folklore from one generation to another. Without language, no culture can sustain its existence. Our language is actually our identity.”).

making it harder for the child to communicate with others in the community and abridging the ability of the child to learn about their culture.

III. The right to survival and development.

It might be argued that mandating Inner Mongolian children be taught Mandarin Chinese is in Inner Mongolian children's best interest in terms of their survival and development. Because China predominately speaks Mandarin Chinese,¹⁰⁸ it makes sense that learning Mandarin Chinese would lead to better opportunities for Inner Mongolian children in Chinese society. However, taking away the opportunity for Inner Mongolian children to learn in their native language harms their ability to survive and develop in their community. As stated above, Inner Mongolian children would be inhibited from learning about their culture and communicate with members of the Inner Mongolian community if they are not learning in Mongolian or able to speak Mongolian fluently.

Not only is the loss of cultural identity directly harmful to Inner Mongolian children, but it can also indirectly harm their descendants. When a group within society experiences such a trauma, that trauma is often not isolated within the generation that experienced it first-hand and, instead, is often passed down to subsequent generations.¹⁰⁹ Such intergenerational trauma can directly impact Inner Mongolian children's right to survival and development, as intergenerational trauma can lead to, among other things, the neglect of future generations.¹¹⁰ Therefore, China's language policy would not only directly harm current Inner

¹⁰⁸ See Kiril Bolotnikov, *The Many Dialects of China*, ASIA SOC'Y (n.d.), available at <https://asiasociety.org/china-learning-initiatives/many-dialects-china> (last visited Nov. 14, 2021) (discussing the many dialects spoken in China and stating that Mandarin Chinese is the official language of China).

¹⁰⁹ See Melissa C. Kahane-Nissenbaum, *Exploring Intergenerational Transmission of Trauma in Third Generation Holocaust Survivors* (June 23, 2011) (Ph.D. dissertation, University of Pennsylvania) (discussing intergenerational trauma and its effects on the descendants of Holocaust survivors.).

¹¹⁰ See William Aguiar & Regine Halseth, *Aboriginal Peoples and Historic Trauma: The process of intergenerational transmission*, NAT'L COLLABORATING CTR. FOR ABORIGINAL HEALTH (2015), available at <https://www.ccnsa-nccah.ca/docs/context/RPT-HistoricTrauma-IntergenTransmission-Aguiar-Halseth-EN.pdf> (last visited Jan. 21, 2022) (discussing the effects of intergenerational trauma on Aboriginal communities in Canada because of residential schools.).

Mongolian children but may also lead to the violation of future children's rights under the CRC.¹¹¹

IV. The views of the child.

The language policy has not taken the views of the child into account. It has not considered a child's desire to be able to identify with their culture through language or their ability to be an active member in their community. The policy is not optional; children and their parents are not allowed to choose whether they are taught in Mandarin Chinese or Mongolian. Instead, the state, not the child or the child's parents, has decided what is the best path forward for the child.

IV.RECOMMENDATIONS FOR HOW TO EFFECTIVELY ADDRESS CHINA'S HUMAN RIGHTS VIOLATIONS IN INNER MONGOLIA, AND WHY "TRADITIONAL TOOLS" OF CONFRONTING HUMAN RIGHTS VIOLATIONS ARE INEFFECTIVE.

The "traditional tools" usually relied upon to address non-complying States, such as economic sanctions and military intervention, are unlikely to be effective when addressing China's human rights violations because of the importance of China in the global economy, its position as a permanent member on the Security Council, and its influence on other States. This section will convey two points: first, it will show how such traditional tools of addressing human rights violations are ineffective in addressing human rights violations in China; and second, it will provide alternative ways of addressing such violations.

¹¹¹ Brent Bezo, *A Child's Rights Perspective on Intergenerational Trauma*, 2017 CAN. J. CHILD. RTS. 71 (2017); see also Tori DeAngelis, *The legacy of trauma*, AM. PSYCHOL. ASS'N (Feb. 2019), available at <https://www.apa.org/monitor/2019/02/legacy-trauma> (last visited Nov. 14, 2021) ("The investigators also observed indirect effects, such as how the genocide affected the second generation through changes including heightened poverty, greater family work burden and compromised parenting.").

A. OFTEN UTILIZED TOOLS IN CONFRONTING HUMAN RIGHTS VIOLATIONS ARE INEFFECTIVE IN ADDRESSING CHINA'S VIOLATIONS.

P5 States, particularly the United States, often utilize tools such as economic sanctions and military intervention are often utilized in confronting human rights violations.¹¹² Because of China's large role in the world and its economic and military power, such traditional tools of addressing human rights violations will most likely not be effective.

I. Economic Sanctions

Economic sanctions have been favored by states, particularly the United States,¹¹³ in recent years. Such sanctions offer states a mechanism to coerce other states into compliance, without having to resort to conventional warfare.¹¹⁴

¹¹² See Christopher Wall, *Human Rights and Economic Sanctions: the New Imperialism*, 22 FORDHAM INT'L L.J. 577 (1998) (“[The United States] uses . . . a limited range of economic sanctions to police human rights in other countries.”); see also Noam Chomsky, *Humanitarian Intervention*, BOSTON REV. (Dec. 1993 – Jan. 1994), available at https://chomsky.info/199401__02/ (last visited Jan. 27, 2022) (discussing how states utilize human rights abuses in other states as a basis for imperialist intervention and arguing that this is rooted in the view of the state as a moral actor.).

¹¹³ *Embargoed and Sanctioned Countries*, U. PITT. OFF. TRADE COMPLIANCE (n.d.), available at <https://www.tradecompliance.pitt.edu/embargoed-and-sanctioned-countries> (last visited Jan. 27, 2022) (listing all states that the United States has placed various types of economic sanctions upon.); see also Kathy Gilsinan, *A Boom Time for U.S. Sanctions*, ATLANTIC (May 3, 2019), available at <https://www.theatlantic.com/politics/archive/2019/05/why-united-states-uses-sanctions-so-much/588625/> (last visited Jan. 27, 2022) (“The United States, as of this writing, has 7,967 sanctions in place.”).

¹¹⁴ Justin D. Stalls, *Economic Sanctions*, 11 U. MIAMI INT'L. & COMP. L. REV. 115, 116 (2003) (“Economic sanctions are generally considered a nonviolent form of coercion because they do not involve military warfare.”).

Economic sanctions rely “on the expectation that economic punishment can overwhelm a state’s commitment to pursue important policy goals.”¹¹⁵ In other words, economic sanctions are only beneficial if the sanctioning state believes that the sanctions will change the behavior of the sanctioned state. However, economic sanctions are not simply economic in nature – they also carry social and political implications – and therefore, can destabilize a society and further infringe on human rights, instead of curing such abuses.¹¹⁶ Therefore, Professor Richard Wolff¹¹⁷ argues that such economic sanctions can *never* work.¹¹⁸ For example, sanctions levied against Russia did not halt its invasion of Ukraine, but did have the effect of destabilizing Russian society.¹¹⁹ The

¹¹⁵ Robert A. Pope, *Why Economic Sanctions Do Not Work*, 22 INT’L SEC. 90, 93 (Fall 1997).

¹¹⁶ See Stalls, *supra* note 112, at 118 (“Economic sanctions are not as harmless as they appear at first glance; they may involve the deprivation or infringement of human rights.”); Adam Smith, *A High Price to Pay: The Costs of the U.S. Economic Sanctions Policy and the Need for Process Oriented Reform*, 4 UCLA J. INT’L L. & FOR. AFF. 325 (2000) (discussing how economic sanctions increase suffering of large populations within a sanctioned country and concluding that the practice of economic sanctions should be limited.); see, e.g., Steve Ellner, *US Sanctions on Venezuela Are Deadly – and Facing Mass Resistance*, JACOBIN MAG. (Oct. 26, 2020), available at <https://jacobinmag.com/2020/10/sanctions-venezuela-maduro-guaido-trump> (last visited Nov. 15, 2021) (discussing the stiffening of economic sanctions on Venezuela by the Trump administration and the political consequences that have flowed from such action.); see also Dursun Peksen, *Socio-Economic and Political Consequences of Economic Sanctions for Target and Third-Party Countries*, OFF. U.N. HIGH COMM’R HUM. RTS. (n.d.), available at

<https://www.ohchr.org/Documents/Events/Seminars/CoercitiveMeasures/DursunPeksen.pdf> (last visited Nov. 15, 2021) (“Economic sanctions fail between 65-95% of the time in achieving their intended goals.”).

¹¹⁷ Visiting Professor in the Julien J. Studley Graduate Programs in International Affairs at the New School, and Professor Emeritus of Economics at the University of Massachusetts, Amherst.

¹¹⁸ See Democracy at Work, *Global Capitalism: March 2020-2021: Covid and the Crash*, YOUTUBE (Mar. 10, 2021), available at https://www.youtube.com/watch?v=GE6s9HK_F6o&ab_channel=DemocracyAtWork (last visited Nov. 15, 2021).

¹¹⁹ See Bob Needham, *Financial sanctions against Russia will create wide-ranging impact*, UNIV. MICH. (Mar. 3, 2022), available at <https://news.umich.edu/financial-sanctions-against-russia-will-create-wide-ranging-impact/> (last visited Mar. 4, 2022).

same noncompliance is likely – if not more likely – to happen in China if sanctions were levied against it.

The entire world is dependent on China for trade, relying on Chinese industry for cheap consumer goods.¹²⁰ Economic sanctions, or threats of economic sanctions, directed towards China may not have the desired outcome of curbing its actions in Inner Mongolia and Xinjiang. Instead, the Chinese government could portray the sanctions as another example of Western imperialism and American aggression, which could embolden the state to continue on with its path of human rights abuses.

Additionally, if sanctions were to be placed on China, or individual members of China's government, it is possible that China would retaliate with sanctions of its own.¹²¹ If China were to levy sanctions of its own, and disrupt exports out of China, such action could lead to a worsening of an already intolerable global supply chain crisis. In 2020, China accounted for “more than 17 percent of the world's economy.”¹²² China is a dominant player in global trade, and its dominance was only strengthened by the impact of the COVID-19 pandemic.¹²³

¹²⁰ See Jacob Goldstein, *How Much Do We Buy From China?*, NPR (Aug. 10, 2011), available at <https://www.npr.org/sections/money/2011/08/10/139388532/only-a-tiny-sliver-of-americans-personal-spending-goes-to-china> (last visited Nov. 15, 2021) (discussing why it feels like almost everything Americans buy comes from China. Argues that Americans spend more money on American made goods, but because of the volume of cheap goods bought from China, it feels like Americans are constantly buying Chinese made goods.); see also Yasmeen Serhan & Kathy Gilsinan, *Can the West Actually Ditch China?*, ATLANTIC (Apr. 24, 2020), available at <https://www.theatlantic.com/politics/archive/2020/04/us-britain-dependence-china-trade/610615/> (last visited Nov. 15, 2021) (discussing western nations' deep reliance on Chinese supply chains.).

¹²¹ China has indeed retaliated against sanctions placed on it by the United States with sanctions of their own. On January 20, 2021, in response to sanctions placed on China by the US through the Uyghur Human Rights Policy Act, China placed sanctions on twenty-eight U.S. Citizens, including former Secretary of State Mike Pompeo. See Brian Wong, *The Future of China-US Sanctions Diplomacy*, DIPLOMAT (Jan. 29, 2021), available at <https://thediplomat.com/2021/01/the-future-of-china-us-sanctions-diplomacy/> (last visited Mar. 14, 2021).

¹²² *China's GDP makes up over 17% of the world economy in 2020: NBS*, GLOB. TIMES (Feb. 28, 2021), available at <https://www.globaltimes.cn/page/202102/1216746.shtml> (last visited Nov. 15, 2021) (China was the “sole economy” to record positive growth during 2020 and achieved “an increase of 2.3 percent in 2020 despite the impact of COVID-19.”).

¹²³ See Tianlei Huang & Nicholas R. Lardy, *China goes from strength to strength*

China is rapidly becoming the world's most dominant economic power and placing economic sanctions on it for human rights abuses in Xinjiang and Inner Mongolia will only harm the States that sanction China. Economic sanctions levied should not be an option in addressing China's violations of international law; not because such sanctions will likely not hurt China, but because they could hurt the rest of the world which relies on China for the manufacture of goods. If China were to retaliate with sanctions of its own, it could further disrupt overburdened global supply chains which could lead to global shortages of goods, including medical equipment needed during a pandemic.¹²⁴ Once again, such a move would likely not have a negative impact on China, but could negatively impact billions of people around the world.

II. Military Intervention

Like economic sanctions, military intervention is another coercive tool in a state's toolbox when it comes to addressing human rights violations. Currently, the risk of an armed conflict between China and western powers, particularly the United States, is "higher than ever."¹²⁵ Of course, a military conflict between China and western powers should be avoided at all costs, as China is a nuclear power.

The United States has begun to supply states neighboring China with arms, including sending weapons systems to Taiwan, a region that considers itself independent but is seen as a rogue province by the Chinese.¹²⁶ In addition to supplying arms to American allies in the

in global trade, PETERSON INST. INT'L ECON. (Nov. 16, 2020), available at <https://www.piie.com/blogs/china-economic-watch/china-goes-strength-strength-global-trade> (last visited Nov. 15, 2021).

¹²⁴ Serhan & Gilsinan, *supra* note 17 (China produces half the world's medical masks and is a "major source of pharmaceuticals and protective equipment.").

¹²⁵ Laura Zhou, *Risk of military conflict between US and China higher than ever, experts say*, S. CHINA MORNING POST (June 24, 2020), available at <https://www.scmp.com/news/china/diplomacy/article/3090314/risk-military-conflict-between-us-and-china-higher-ever> (last visited Nov. 14, 2021).

¹²⁶ *US approves \$1.8bn weapons sale to Taiwan*, BBC (Oct. 22, 2020), available at <https://www.bbc.com/news/world-asia-54641076> (last visited Nov. 14, 2021) (discussing the United States' supplying of arms to Taiwan, a region which considers itself a country but is considered a "renegade province" by China.); see also Wajahat Khan & Ken Moriyasu, *US arms sales in Indo-Pacific pick up as China tensions build*, NIKKEI ASIA (Aug. 21, 2020), available at <https://asia.nikkei.com/Politics/International-relations/US-arms-sales-in-Indo-Pacific-pick-up-as-China-tensions-build> (last visited Nov. 14, 2021).

region, the United States has also intensified its rhetoric towards China, seemingly bringing Cold War rhetoric back from the dead.¹²⁷

Not only does China have a stockpile of 350 nuclear warheads,¹²⁸ but China also has one of the world's largest militaries,¹²⁹ including the world's largest naval forces.¹³⁰ A military conflict with China, either directly or through proxy, would likely not be confined to the chosen theater, and instead could spark a global conflict. In addition to the possible disaster that an armed conflict with China could bring about, it likely would not provide any relief to the Inner Mongolians or Uyghurs. When states are engaged in armed conflict, human rights infringements become more prevalent.¹³¹ While humanitarian law restricts the actions of the parties engaged in armed conflict, and protects civilians,¹³² it does not protect civilians from other consequences of armed conflict.

¹²⁷ Berkley Sanders-Velez, *Cold War Rhetoric*, COLUM. POL. REV. (Mar. 31, 2018), available at <http://www.cpreview.org/blog/2018/4/cold-war-rhetoric-china-and-the-us-today> (last visited Nov. 14, 2021); see also *As CIA Ramps Up Anti-China Actions, Why Doesn't Congress Oppose Biden's "New Cold War"?*, DEMOCRACY NOW! (Oct. 18, 2021), available at https://www.democracynow.org/2021/10/18/china_taiwan_us_conflict_part_2 (last visited Nov. 14, 2021) ("CIA Director William Burns has described China as 'the most important geopolitical threat facing the United States.'").

¹²⁸ Mike Yeo, *Report estimates Chinese nuclear stockpile at 350 warheads*, DEF. NEWS (Dec. 14, 2020), available at <https://www.defensenews.com/global/asia-pacific/2020/12/14/report-estimates-chinese-nuclear-stockpile-at-350-warheads/#:~:text=These%20weapons%20include%20hypersonic%20missiles,2020%20report%20on%20China's%20military>. (last visited Nov. 14, 2021).

¹²⁹ See David Lague, *How China is replacing America as Asia's military titan*, REUTERS (Apr. 23, 2019), available at <https://www.reuters.com/investigates/special-report/china-army-xi/> (last visited Nov. 14, 2021) (asserting that the People's Liberation Army, China's military, contained an estimated two million soldiers.).

¹³⁰ John Grady, *Pentagon Report: China Now Has World's Largest Navy as Beijing Expands Military Influence*, USNI NEWS (Sept. 1, 2020), available at <https://news.usni.org/2020/09/01/pentagon-report-china-now-has-worlds-largest-navy-as-beijing-expands-military-influence> (last visited Nov. 14, 2021).

¹³¹ *Human Rights and Armed Conflict*, ICELANDIC HUM. RTS. CTR. (n.d.), available at <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/human-rights-in-relation-to-other-topics/human-rights-and-armed-conflict> (last visited Nov. 14, 2021); see also U.N. OFF. HIGH COMM'R HUM. RTS., INTERNATIONAL LEGAL PROTECTION OF HUMAN RIGHTS IN ARMED CONFLICT, U.N. Doc. HR/PUB/11/01, U.N. Sales No. E.11.XIV.3 (2011).

¹³² *Id.*

If an armed conflict were to commence in China, it is likely that Inner Mongolians and Uyghurs could have their homes destroyed, farms leveled, and other important resources destroyed.

B.RECOMMENDATIONS FOR CONFRONTING CHINA'S VIOLATIONS

Any effort to address the human rights abuses occurring in Inner Mongolia and Xinjiang should be rooted in a love for the people of those regions, and not in a disdain or distrust of the Chinese government. As global citizens, we should express solidarity with the people of Inner Mongolia and Xinjiang and offer aid in any way possible. While doing so, the Chinese world view must also be accounted for and not minimized.¹³³

1.Offering refuge to Inner Mongolians and Uyghurs

Expressing solidarity with the people of Inner Mongolia and Xinjiang can take many forms. However, offering refuge to Uyghurs and Inner Mongolians would be a sign of solidarity that could have an immediate impact in relieving them of oppression. While European nations may be less willing to agree to such a remedy due to their current influx of refugees,¹³⁴ the United States has the ability, the mechanisms, and the resources to accommodate Uyghur and Inner Mongolian refugees.¹³⁵

¹³³ See MICHAEL BROOKS, *AGAINST THE WEB: A COSMOPOLITAN ANSWER TO THE NEW RIGHT* (Zero Books, ed., John Hunt Publishing 2020) (discussing the concept of cosmopolitan internationalism).

¹³⁴ See UNHCR, *Refugee Crisis in Europe*, U.N. OFF. HIGH COMM'R HUM. RTS. (n.d.), available at <https://www.unrefugees.org/emergencies/refugee-crisis-in-europe/> (last visited Nov. 9, 2021); see also Gareth Evans, *Europe's migrant crisis: The year that changed a continent*, BBC (Aug. 31, 2020), available at <https://www.bbc.com/news/world-europe-53925209> (last visited Nov. 9, 2021).

¹³⁵ Olivia Enos & Hardin Lang, *The United States Should Give Fleeing Uyghurs a Home*, FOREIGN POL'Y (Feb. 12, 2021), available at <https://foreignpolicy.com/2021/02/12/united-states-Uyghurs-persecution-china-refugees-resettlement/> (last visited Nov. 9, 2021) (arguing that the United States should grant Uyghurs "Priority 2" status in its refugee program by naming them a group "of special humanitarian concern").

Anti-immigration policies perpetuated under the Trump administration,¹³⁶ and xenophobic tendencies among segments of the American population,¹³⁷ have led to the slowing down of asylum-seeking processes.¹³⁸ However, the Biden administration can reverse those policies, work through xenophobic biases, and make it easier for Uyghurs and Inner Mongolians to apply and receive political asylum. An offer of political asylum to these affected groups would provide them with much needed relief and could positively impact the United States.

1. Offering political asylum and adopting a new Homestead Act

Rural areas of the United States have been devastated by neo-liberal policies,¹³⁹ trade agreements such as NAFTA,¹⁴⁰ and the takeover

¹³⁶ James T. Areddy & Michelle Hackman, *China's Muslim Uyghurs Are Stuck in U.S. Immigration Limbo*, WALL ST. J. (Jul. 28, 2020), available at <https://www.wsj.com/articles/chinas-muslim-uyghurs-are-stuck-in-u-s-immigration-limbo-11595937603> (last visited Nov. 9, 2021).

¹³⁷ See Taylor McNeil, *The Long History of Xenophobia in America*, TUFTSNOW (Sept. 24, 2020), available at <https://now.tufts.edu/articles/long-history-xenophobia-america> (last visited Nov. 9, 2021).

¹³⁸ Lindsay M. Harris, *Asylum Under Attack: Restoring Asylum Protection in the United States*, 67 LOY. L. REV. 121 (2020); Thomas M. McDonnell & Vanessa H. Merton, *Enter at Your Own Risk: Criminalizing Asylum-Seekers*, 51 COLUM. HUM. RTS. L. REV. 1 (2019) (analyzing the Trump administration's breaches of international law through its policies and practices that penalize asylum-seekers, notably the policies' contradiction with the United States' obligations under the 1967 Refugee Protocol to the 1951 Refugee Convention.); Emily J. Johanson, *The Migrant Protection Protocols: A Death Knell for Asylum*, 11 U.C. IRVINE L. REV. 873 (2021); Kari Hong, *Weaponizing Misery: The 20-Year Attack on Asylum*, 22 LEWIS & CLARK L. REV. 541 (2018).

¹³⁹ See Marc Edelman, *How Capitalism Underdeveloped Rural America*, JACOBIN MAG. (Jan. 26, 2020), available at <https://jacobinmag.com/2020/01/capitalism-underdeveloped-rural-america-trump-white-working-class> (last visited Nov. 9, 2021) ("Since the turn to more cutthroat free-market policies in the 1980s, American capitalism has systematically underdeveloped rural and small-town regions of the United States. The 2008 crash poured gasoline on the fire. Mutual savings banks and credit unions, cooperatives, mom-and-pop businesses, local industries and newspapers, health and elder care facilities, schools, and libraries have all fallen victim to relentless austerity policies or private-equity raiders").

¹⁴⁰ Jeff Faux, *NAFTA's Impact on U.S. Workers*, ECON. POL'Y INST. (Dec. 9, 2013), available at <https://www.epi.org/blog/naftas-impact-workers/> (last visited Nov. 9, 2021) ("[NAFTA] caused the loss of some 700,000 jobs as production moved to Mexico. Most of these losses came in California, Texas, Michigan, and other states where manufacturing is concentrated. To be sure, there were some job

of farmland by corporations and billionaires.¹⁴¹ If the United States were to be willing to take in political asylum seekers from China, Congress could pass legislation, like the Homestead Act of 1862,¹⁴² to utilize its eminent domain powers¹⁴³ to take vacant houses to utilize as housing for political asylum seekers.¹⁴⁴ This would not only allow Uyghurs and Inner Mongolians to escape persecution in China but could also lead to the revitalization of rural America through increased population, increased demand for work and goods, and a boost to local economies.

As of early 2019, there were nearly 1.5 million homes in the United States¹⁴⁵ Currently, those homes are not serving their purpose – to provide

gains along the border in service and retail sectors resulting from increased trucking activity, but these gains are small in relation to the losses, and are in lower paying occupations The vast majority of workers who lost jobs from NAFTA suffered a permanent loss of income”).

¹⁴¹ See J.D. Scholten, *Washington Is Failing Rural America: We Need a Change*, AM. PROSPECT (Aug. 4, 2020), available at <https://prospect.org/power/washington-is-failing-rural-america-we-need-a-change/> (last visited Nov. 9, 2021); see also Rebecca Heilweil, *The controversy over Bill Gates becoming the largest private farmland owner in the US*, VOX (June 11, 2021), available at <https://www.vox.com/recode/22528659/bill-gates-largest-farmland-owner-cascade-investments> (last visited Nov. 9, 2021) (discussing Bill and Melinda Gates’ acquisition of more than 269,000 acres of farmland in the United States over the past ten years and the criticisms against them, such as worries over the concentration of land ownership).

¹⁴² See *About the Homestead Act*, NAT’L PARK SERV. (n.d.), available at <https://www.nps.gov/home/learn/historyculture/abouthomesteadactlaw.htm> (last visited Nov. 9, 2021).

¹⁴³ See Elizabeth F. Gallagher, *Breaking New Ground: Using Eminent Domain for Economic Development*, 73 FORDHAM L. REV. 1837, 1842 (2005) (noting that the U.S. Supreme Court has approved of two circumstances when eminent domain that results in private ownership of seized land satisfies the public use requirement, including “remedying a skewed housing market”).

¹⁴⁴ While not within the scope of this article, the proposed solution of the government taking vacant homes through eminent domain for political asylum seekers should also consider the drastically large population of unhoused Americans, including unhoused military veterans. See generally Indigo Olivier, *The System That We Have to Respond to Homelessness Is Not One That Was Designed to Help People*, JACOBIN MAG. (Feb. 16, 2020), available at <https://www.jacobinmag.com/2020/02/nithya-raman-los-angeles-city-council-candidate> (last visited Nov. 9, 2021).

¹⁴⁵ See *About the Homestead Act*, Nat’l Park Serv. (n.d.), available at <https://www.nps.gov/home/learn/historyculture/abouthomesteadactlaw.htm> (last visited Nov. 9, 2021).

people with safe and reliable housing and protection from the elements. Not only would such legislation allow Inner Mongolians and Uyghurs to escape persecution and seek refuge in the United States, but it could also be of benefit to the United States. Numerous cities in America were socially and economically devastated when manufacturing jobs left metropolitan and rural areas, particularly in the Midwest region known as the Rust Belt.¹⁴⁶ Using such vacant homes to house political refugees from China would not only bring a steady population to cities and towns devastated by the loss of such jobs, but it would also bring jobs back to the region. An influx of political refugees would necessitate schooling for children, grocery stores, clothing stores, etc. This would create good paying jobs in a region of the United States that desperately needs it.

This has been done before. When faced with an explosion in the number of migrants seeking safety, Greek activists turned a deserted hotel into housing for nearly 400 refugees and migrants when Greece experienced an influx of refugees and migrants.¹⁴⁷ Unlike conventional refugee camps, the utilization of the deserted hotel led to refugees being integrated within society, instead of being isolated outside of the city with no access to social services, and out of sight of Greeks.¹⁴⁸ Unlike the project in Greece, the proposed solution would be managed by the federal government and its vast resources. By housing Chinese political refugees within already existing cities and towns, not only would vacant homes be utilized, but the stigma that often faces refugees and immigrants may be reduced. In other words, if political asylum seekers were placed into already existing communities, the “otherizing” effects of asylum can be significantly diminished because they will be viewed as members of that community.¹⁴⁹

¹⁴⁶ See Michael Collins, *The Abandonment of Small Cities in the Rust Belt*, INDUS. WK. (Oct. 10, 2019), available at <https://www.industryweek.com/talent/article/22028380/the-abandonment-of-small-cities-in-the-rust-belt> (last visited Nov. 18, 2021).

¹⁴⁷ Patrick Strickland, *Greek leftists turn deserted hotel into refugee homes*, AL JAZEERA (July 3, 2016), available at <https://www.aljazeera.com/features/2016/7/3/greek-leftists-turn-deserted-hotel-into-refugee-homes> (last visited Nov. 18, 2021).

¹⁴⁸ *Id.*

¹⁴⁹ See generally Tabitha A. Baker, *The othering of migrants has negative consequences for society at large*, LONDON SCH. ECON. & POL. SCI. (Aug. 19, 2020), available at <https://blogs.lse.ac.uk/brexit/2020/08/19/the-othering-of-migrants-has-negative-consequences-for-society-at-large/> (last visited Jan. 27,

This suggestion is likely to be met with hostility in the United States. Immigration has been a heated topic in American political discourse for years. American government officials have argued against taking in immigrants out of the need to “protect finite resources,”¹⁵⁰ used immigrants as scapegoats,¹⁵¹ and have deployed racist tropes against immigrants.¹⁵² But America is a nation of immigrants, and this is not a question about allowing so-called “illegal” immigrants into the United States – it is a question of following international law and providing refuge to those who need it.

The United States, as well as the other P5 States, has a responsibility to provide refuge to such political refugees under the Protocol relating to the Status of Refugees.¹⁵³ While that Protocol does not require the kind of treatment described above, it does require that state parties provide refuge to individuals who are in fear of being persecuted for reasons including race or nationality.¹⁵⁴ While the United States does have a responsibility to provide refuge to Inner Mongolians and Uyghurs, if they seek it; the above recommendations could make such refuge beneficial to both parties. American politicians would have to make this clear to the American public. However, the political strategy of “selling” such a policy to the American people is beyond the scope of this Note.¹⁵⁵

2022).

¹⁵⁰ Annie Lowrey, *Are Immigrants a Drain on Government Resources?*, ATLANTIC (Sept. 29, 2018), available at

<https://www.theatlantic.com/ideas/archive/2018/09/are-immigrants-drain-government-resources/571582/> (last visited Nov. 18, 2021) (quoting former DHS Secretary Kirstjen Nielsen) (“Those seeking to immigrate to the United States must show they can support themselves financially . . . [which would] promote immigrant self-sufficiency and protect finite resources by ensuring that they are not likely to become burdens on American taxpayers.”).

¹⁵¹ Eric Lach, *Trump’s Dangerous Scapegoating of Immigrants at the State of the Union*, NEW YORKER (Feb. 5, 2019), available at

<https://www.newyorker.com/news/current/trumps-dangerous-scapegoating-of-immigrants-at-the-state-of-the-union> (last visited Nov. 18, 2021).

¹⁵² See Bruce Y. Lee, *Trump Once Again Calls Covid-19 Coronavirus The ‘Kung Flu’*, FORBES (June 24, 2020), available at

<https://www.forbes.com/sites/brucelee/2020/06/24/trump-once-again-calls-covid-19-coronavirus-the-kung-flu/?sh=43e9fd001f59> (last visited Nov. 18, 2021).

¹⁵³ See generally Protocol relating to the Status of Refugees, *opened for signature* Jan. 31, 1967, 606 U.N.T.S. 267.

¹⁵⁴ *Id.* at art. 1.

¹⁵⁵ While the political strategy of achieving such a program is beyond the scope of this Note, recent actions taken against Russian oligarchs, and the political

II. Punishing corporations that utilize Uyghur forced labor

Multinational corporations (“MNCs”) have been some of the largest beneficiaries of the new supply of forced labor in Xinjiang.¹⁵⁶ MNCs have been able to exploit Uyghurs that are held within such concentration camps for extremely cheap – or free – labor.¹⁵⁷ Utilization of such forced labor has been particularly prevalent in the “technology, clothing and automotive sectors.”¹⁵⁸ Thus far, MNCs have been largely unwilling to admit that human rights abuses are occurring in their production chains; however, even when it is admitted to, empathy for the plight of the Uyghurs is less than forthcoming.¹⁵⁹

In response, the United States House of Representatives passed the Uyghur Human Rights Policy Act of 2020¹⁶⁰ that would “ban goods made using forced labor by [Uyghurs] and other Muslim minority groups in China’s Xinjiang region.”¹⁶¹ Congress found that numerous MNCs were

strategies to justify seizure of oligarch assets, may be provide insight. *See, e.g.,* Juliana Kaplan et al., *Congress tees up a plan to seize Russian yachts and properties in the US – and sell them for Ukraine aid*, BUS. INSIDER (Mar. 3, 2022), available at <https://www.businessinsider.com/congress-bill-seize-russian-yachts-sell-for-ukraine-aid-2022-3> (last visited Mar. 4, 2022).

¹⁵⁶ Vicky Xiuzhong Xu et al., *Uyghurs for sale: ‘Re-education’, forced labour and surveillance beyond Xinjiang*, AUSTL. STRATEGIC POL’Y INST. (Feb. 2020), available at <https://www.aspi.org.au/report/uyghurs-sale> (last visited Jan. 27, 2022) (identifying that Uyghurs are “working in factories that are in the supply chains of at least 82 well-known global brands . . .”).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Murtaza Hussain, *Contra a Billionaire Bro: Why We Should Care About China’s Rights Violations in Xinjiang*, INTERCEPT (Jan. 18, 2022), available at <https://theintercept.com/2022/01/18/uyghurs-china-chamath-palihapitiya-warriors/> (last visited Jan. 27, 2022) (“[Billionaire investor Chamath] Palihapitiya said he did not care about the Uyghur’s predicament – and that this sentiment was broadly shared by elites who were simply unwilling to be as bold as him and just say it. ‘Let’s be honest, nobody cares about what’s happening to the Uyghurs, OK?’ he told his visibly surprised co-hose, Jason Calacanis, on their podcast over the weekend.”).

¹⁶⁰ Uyghur Human Rights Policy Act of 2020 [hereinafter Uyghur Act], Pub. L. No. 116-145, 134 Stat. 648 (2020).

¹⁶¹ *Major U.S. Corporations Oppose Bill Banning Goods Produced by Forced Labor in China*, DEMOCRACY NOW! (Dec. 1, 2020), available at

directly or indirectly relying on forced labor to produce goods in Xinjiang, which led MNCs to oppose the bill.¹⁶² Even though the bill was met with corporate opposition, both chambers of Congress passed the legislation and it eventually became law.¹⁶³

The Parliament of the United Kingdom has also proposed similar legislation.¹⁶⁴ In a report that recommended the UK government amend and strengthen the Modern Slavery Act 2015, MPs recommended the creation of whitelists and blacklists “of companies which do and do not meet their obligations to uphold human rights throughout their supply chains.”¹⁶⁵ It has been suggested that financial penalties should be levied against companies that are found to be in violation of an updated Modern Slavery Act.¹⁶⁶

The rest of the international community should respond in kind and place bans on goods made using forced labor by Uyghurs and, if such labor should be used in the future, Inner Mongolians. If the international community were to block MNCs from selling goods made by forced laborers, the MNCs would have an incentive to not use such labor. If such labor is not being used by MNCs, and MNCs are required to look elsewhere for labor, China may be forced to reverse course to prevent capital flight.

While similar to targeted sanctions, penalizing MNCs that utilize forced labor may have less severe consequences for the Chinese people. Economic sanctions fail at holding parties responsible because such sanctions are directed at states and individuals directly involved in human rights violations.¹⁶⁷ Those states and individuals are still able to do

https://www.democracynow.org/2020/12/1/headlines/major_us_corporations_oppose_bill_banning_goods_produced_by_forced_labor_in_china (last visited Nov. 19, 2021).

¹⁶² *Id.*

¹⁶³ See Uyghur Act, *supra* note 131.

¹⁶⁴ *Uyghur abuse: MPs criticise companies over China forced labour*, BBC (Mar. 17, 2021), available at <https://www.bbc.com/news/business-56423366> (last visited Mar. 17, 2021).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ See generally Pape, *supra* note 112; Barry E. Carter, *International Economic Sanctions: Improving the Haphazard U.S. Legal Regime*, 75 CAL. L. REV. 1159 (1987) (concluding that economic sanctions for human rights purposes have a forty percent success rate); Cassandra LaRae-Perez, *Economic Sanctions as a Use of Force: Re-Evaluating the Legality of Sanctions from an Effects-Based Perspective*,

business within the state they are operating in. If individual members of the Chinese government are sanctioned, they can continue to do business in China, one of the world's strongest economies,¹⁶⁸ and therefore such individuals may not feel any substantial effect. But if a MNC is banned from selling goods made with forced labor in certain markets, or has hefty financial penalties levied against it, utilizing such forced labor becomes less profitable than it would be if such ban were not implemented. Because MNCs are driven by a profit motive,¹⁶⁹ they may be forced to look elsewhere to produce goods, even if producing goods elsewhere costs more.

If MNCs are forced to look elsewhere for labor, China's use of forced labor in internment camps would diminish. China seeks to become the world's most powerful economy,¹⁷⁰ and foreign MNCs leaving, coupled with Chinese state- and privately-owned enterprises not being able to sell goods in foreign markets, would restrain the possibility of that goal being achieved. However, because China is already one of the world's most powerful economies, such capital flight may not deter

20 B.U. INT'L L.J. 161, 162 (2002) ("Economic and trade sanctions have the potential to devastate a civilian population and to rock the economic and political stability of a developing state."); *see also* Richard N. Haass, *Economic Sanctions: Too Much of a Bad Thing*, BROOKINGS INST. (June 1, 1998) ("Yet all too often sanctions turn out to be little more than expressions of U.S. preferences that hurt American economic interests without changing the target's behavior for the better.").

¹⁶⁸ *See generally* Gerry Shih, *China's economy is growing faster now than before the coronavirus pandemic*, WASH. POST (Jan. 18, 2021), available at https://www.washingtonpost.com/world/asia_pacific/china-economy-growth-coronavirus/2021/01/17/2138ef2c-5935-11eb-a849-6f9423a75ffd_story.html (last visited Oct. 14, 2021) ("Economic data published [January 18th] showed that China logged 2.3 percent growth for 2020, becoming the only major economy that grew during a year when the virus exacted a devastating global toll.").

¹⁶⁹ *See* Julia Kagan, *Profit Motive*, INVESTOPEDIA (Nov. 23, 2020), available at <https://www.investopedia.com/terms/p/profit-motive.asp> (last visited Mar. 15, 2021) ("Profit motive can also be construed as the underlying reason why a taxpayer or company participates in business activities of any kind.").

¹⁷⁰ China seeks to become more competitive than it already is through a plan known as "Made in China 2025." This plan "seeks to boost China's economic competitiveness by advancing China's position in global manufacturing value chain, leapfrogging into emerging technologies, and reducing reliance on foreign firms." *See* KAREN M. SUTTER, CONG. RESEARCH SERV., IF10964, "MADE IN CHINA 2025" INDUSTRIAL POLICIES: ISSUES FOR CONGRESS (Aug. 11, 2020).

Chinese state- and privately-owned enterprises from utilizing forced labor.

V. REFORM THE UNITED NATIONS TO MAKE IT A DEMOCRATIC INSTITUTION.

The present method of selection by government appointment does not leave any real freedom to the appointee. Furthermore, selection by governments cannot give the peoples of the world the feeling of being fairly and proportionately represented. The moral authority of the UN would be considerably enhanced if the delegates were directly elected by the people. If the General Assembly were responsible to an electorate, they would have much more freedom to follow their consciences.¹⁷¹

In 1947, Albert Einstein detected a critical flaw in the construction of the United Nations: the undemocratic nature of the institution. The United Nations asserts that democracy is a core value of its mission.¹⁷² But in reality, the current construction of the United Nations is

¹⁷¹ Letter from Albert Einstein to the U.N. General Assembly (Oct. 1947), available at <http://neutrino.aquaphoenix.com/un-esa/ws1997-letter-einstein.html> (last visited Nov. 15, 2021).

¹⁷² *Democracy*, U.N. (n.d.), available at <https://www.un.org/en/sections/issues-depth/democracy/index.html> (last visited Nov. 15, 2021) (“Democracy is a core value of the United Nations.”).

undemocratic. This contradiction can be resolved through reforms to the various bodies of the United Nations, but specifically, the General Assembly.

I. *The Security Council*

The Security Council (“UNSC”) is often pointed to as the reason for the undemocratic nature of the United Nations. There is good reason for this assertion, as the UNSC is the only body within the United Nations with the authority to issue legally binding resolutions and to back up such resolutions with sanctions and the use of force.¹⁷³ Because the UNSC is the only organ with power to issue legally binding resolutions, it is nearly impossible to address violations of international law, when committed by P5 States. Recently, the UNSC was unable to adopt a resolution condemning Russia’s invasion of Ukraine because Russia is a permanent member of the UNSC, with veto powers, and Russia was chairing the meeting of the UNSC.

The undemocratic nature of the UNSC is further illustrated by the fact that it is firmly within the control of the P5 States – even though non-permanent members are rotated through the UNSC every two years.¹⁷⁴ The literature on UNSC reforms is vast, and thus this Note does not concern itself with reforms to the UNSC.¹⁷⁵

Additionally, the UNSC has not expanded with the rest of the world. When the UN was established, there were only seventy-four countries in existence,¹⁷⁶ compared to the 195 countries that currently exist. The world has changed since the UN was created, yet no reforms to include newly established states as full members within the UNSC have come to fruition, further diminishing the UN’s claim of democratic governance.¹⁷⁷

¹⁷³ See, e.g., Ian Hurd, *Legitimacy, Power, and the Symbolic Life of the UN Security Council*, 8 GLOB. GOVERNANCE 35 (2002).

¹⁷⁴ Charter, *supra* note 11, at art. 23(2).

¹⁷⁵ See, e.g., Amber Fitzgerald, *Security Council Reform: Creating a More Representative Body of the Entire U.N. Membership*, 12 PACE INT’L L. REV. 319 (2000).

¹⁷⁶ See *The World in 1945*, U.N. (n.d.), available at <https://www.un.org/Depts/Cartographic/map/profile/world45.pdf> (last visited Nov. 12, 2021).

¹⁷⁷ See generally Amber Fitzgerald, *Security Council Reform: Creating a More Representative Body of the Entire U.N. Membership*, 12 PACE INT’L L. REV. 319, 328 (2000); John Quigley, *The United Nations Security Council: Promethean Protector or Helpless Hostage?*, 35 TEX. INT’L L.J. 129 (2000) (examining four categories have situations that have arisen that reflect the Security Council’s

II. The General Assembly

Efforts to reform the UNSC, however, should not overshadow the need to also democratize the main deliberative organ of the United Nations, the General Assembly. Democratizing the General Assembly would allow individual citizens of each member state to be more involved in the international political process. By allowing citizens to become involved in the process of electing their representation in the United Nations, some of the feelings of mistrust towards the international order¹⁷⁸ might be dispelled, as citizens become more involved in, and learn about, the process of international governance.

If people are more willing to trust the United Nations and believe that it is a legitimate authority in the world, the United Nations would be in a better position to address human rights abuses. If people in a member state are more trusting of the United Nations and view it as a critical player in international politics, they might be more likely to put pressure on their domestic government to adopt human rights treaties, even if this is done with the selfish interest of protecting themselves from human rights abuses.

A.MODES OF DEMOCRATIZATION OF THE GENERAL ASSEMBLY

This note identifies two modes of democratization of the General Assembly. The first pathway is for each member state to pass domestic legislation to allow citizens to elect UN representatives. The second mode of democratization is adopting an amendment to the Charter that would require each member state to hold popular elections to determine who will represent the member state in the General Assembly.

inability to fulfill its functions properly); Jessica Elbaz, *International Stalemate: The Need for a Structural Revamp of the U.N. Security Council*, 15 CARDOZO PUB. L. POL'Y & ETHICS J. 211 (2016); Bardo Fassbender, *All Illusions Shattered? Looking Back on a Decade of Failed Attempts to Reform the UN Security Council*, 7 MAX PLANCK Y.B. OF U.N. L. 183, 210-211 (2003) (discussing efforts to reform the Security Council's veto power).

¹⁷⁸ See Charles T. Call et al., *Is the UN a friend or foe?*, BROOKINGS INST. (Oct. 3, 2017), available at <https://www.brookings.edu/blog/order-from-chaos/2017/10/03/is-the-un-a-friend-or-foe/> (last visited Nov. 12, 2021) (reviewing data from polling that suggests that the public have "middling to negative views" of the United Nations).

I. Individual Member States Passing Domestic Legislation

The Charter is silent on the mode of appointing representatives of individual member states to the General Assembly.¹⁷⁹ In fact, the composition of the General Assembly is only mentioned in two brief sentences of Article 9 of the Charter, asserting that all members of the United Nations are to be represented in the General Assembly and that each member can have no more than five representatives in the General Assembly.¹⁸⁰ This silence leaves the decision of how to appoint representatives to each individual member, so direct election of General Assembly representatives is a possibility.

The United States allows the President to appoint the United States' representative to the General Assembly¹⁸¹ and for the Senate of the United States to confirm the representative.¹⁸² In theory, the people of the United States indirectly choose the representative to the General Assembly by electing the President and their two Senators, but this presupposes that American citizens knowingly vote for a presidential candidate with the implication of who represents them in the United Nations in mind. This is unlikely; for example, in 2020 only forty-two percent of Americans stated that they followed national politics "very closely,"¹⁸³ let alone international politics. Additionally, the number of people reporting that they follow national politics "very closely" is likely exaggerated because 2020 was a presidential election year in the United States.

If the General Assembly representative were to be elected by the people of a member state, citizens would have the opportunity to research the candidates' positions on topics of global importance, including human

¹⁷⁹ See Charter, *supra* note 11, at art. 9.

¹⁸⁰ *Id.*

¹⁸¹ The United States names the General Assembly representative the Ambassador to the United Nations. See Brandon Baker, *The role of UN ambassador, explained*, PENN TODAY (Jul. 11, 2019), available at <https://penntoday.upenn.edu/news/role-un-ambassador-explained> (last visited Nov. 12, 2021).

¹⁸² See John Hudson & Anne Gearan, *Senate confirms Biden's nominee for ambassador to United Nations*, WASH. POST (Feb. 23, 2021, 3:54 PM), available at https://www.washingtonpost.com/politics/senate-united-nations-biden-thomas-greenfield/2021/02/23/08bed6f4-7600-11eb-8115-9ad5e9c02117_story.html (last visited Nov. 12, 2021).

¹⁸³ Mohamad Younis, *In U.S., Attention to Politics Shows Typical Election Year Surge*, GALLUP (Sept. 23, 2020), available at <https://news.gallup.com/poll/320738/attention-politics-shows-typical-election-year-surge.aspx> (last visited Nov. 12, 2021).

rights. Citizens would then be more aware of who is representing them at the United Nations. While this, in theory, would work to boost citizen involvement in international politics, including matters concerning human rights, it is possible that citizens would continue to be disillusioned with current political systems, including international politics. However, the effort should still be undertaken because it creates the opportunity for citizen involvement in the United Nations, something that is lacking presently. Citizen involvement is a core tenet of democracy, and this form of popular election would allow for the democratization of the General Assembly.

II. Amendment to the Charter.

Article 108 of the Charter allows for amendments to be made to the Charter.¹⁸⁴ If an amendment proposing the addition of language that provides that General Assembly representatives are to be elected directly by citizens of each Member State, it would only require a vote of two-thirds of the members of the General Assembly.¹⁸⁵ However, this might not achieve the desired goal of democratization because General Assembly representatives have a desire to keep their seats in the General Assembly and would be politically motivated to vote against such an amendment. But the larger problem with using Article 108 to democratize the General Assembly is that all permanent members of the Security Council must vote in favor of the amendment.¹⁸⁶ Permanent members of the Security Council, including China, almost certainly would stifle such efforts at democratization because they would diminish their power in the international arena.

The oppression of Inner Mongolians and Uyghur Muslims by the Chinese government, which has stood in defiance of international human rights laws and norms, serves as the latest illustration of the need for democratization. The Inner Mongolians and Uyghurs are Chinese citizens yet have no representation advocating for them at the United Nations.

¹⁸⁴ Charter, *supra* note 11.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

VI. CONCLUSION.

China's actions in Inner Mongolia and Xinjiang show that China is committed to homogenizing China and limiting ethnic minorities' right to self-determination and their right to pursue their own culture. Through these actions and policies, China has violated international law, including the CRC, which China has ratified, and the ICCPR, to which China is a signatory, albeit without ratification.

At the time this note was written, the situation in Xinjiang differs from the situation in Inner Mongolia, as the human rights violations there are more egregious and therefore harder to leave unaddressed. However, the actions in Xinjiang may foretell the future for Inner Mongolians if the international community fails to act.

The international community finds itself in a difficult position when it comes to addressing China's alleged human rights violations. China is a major world power, both economically and militarily, making traditional remedies, such as economic sanctions and military intervention, ineffective. The response to China's human rights violations requires a nuanced and measured response, not a rush to armed conflict or sanctions.

The United Nations should be democratized if it wishes to address future human rights violations in an effective manner. By democratizing the United Nations, the body politic of the various member states will be brought into the fold, become more invested in international politics and jurisprudence, and demand that their member states protect their collective rights as humans.

These proffered solutions are of little help to the people of Inner Mongolia and Xinjiang, who are currently experiencing persecution and discrimination simply because they speak another language, practice a different religion, or profess cultural values that conflict with the dominant Han Chinese culture. But while we, as international citizens, work towards aiding the Inner Mongolians and Uyghurs in their plight; we can learn from the situation in China and improve our international legal system to be better equipped to confront such violations of humanity.