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## **Bolstering the Role of U.N. Treaty Bodies: A Possible Solution to the Chinese Uighur Crisis with Potentially Far-Reaching Implications**

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# **Bolstering the Role of U.N. Treaty Bodies: A Possible Solution to the Chinese Uighur Crisis with Potentially Far-Reaching Implications**

*Ayat G. Hamza*<sup>†</sup>

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## **I. Introduction**

China’s relationship with the United Nations (“U.N.”) can be best described as one of growing tension and constant apprehension.<sup>1</sup> This tension stems from China’s divergent attitude toward human rights, which stands in stark contrast to the United

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<sup>1</sup> See Sonya Sceats & Shaun Breslin, *China and the International Human Rights System*, CHATHAM HOUSE 1 (Oct. 2012), [https://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/r1012\\_sceatsbreslin.pdf](https://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/r1012_sceatsbreslin.pdf) [https://perma.cc/8Y5Y-LRP8] (“[T]here is still intense speculation and some concern, within Western states and elsewhere, about the extent to which China is bringing this economic power to bear in other areas of the international system and about its plans in this regard.”).

Nations' dedication to international human rights.<sup>2</sup> While many of the United Nations' more prominent member states maintain a strong commitment to international human rights, China views human rights as a subsidiary foreign policy issue.<sup>3</sup> From China's perspective, state sovereignty takes precedence over international human rights.<sup>4</sup> Consequently, the Chinese government maintains a defensive position in the face of human rights criticism and often speaks out against any interference with its internal affairs.<sup>5</sup> China is especially hostile to criticism coming from other states in the U.N. General Assembly.<sup>6</sup> According to a 2017 Human Rights Watch report:

China has worked consistently and often aggressively to silence criticism of its human rights record before U.N. bodies and has taken actions aimed at weakening some of the central mechanisms available in those institutions to advance rights.<sup>7</sup>

To that end, China has used different U.N. political bodies, like the Human Rights Council, to pursue its state-sovereignty agenda.<sup>8</sup> This trend has become more pronounced in recent years,<sup>9</sup> indicating that China's assertiveness within the Human Rights Council may be linked to its growing political clout. As China continues to solidify its position as a global powerhouse, it threatens to substantially

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<sup>2</sup> See *id.* at 4 (“China has no objection to the United Nations expressing concern in a proper way over consistent and large-scale human rights violations in a given country, but it opposes the interference in other countries’ internal affairs under the pretext of defending human rights.”) (citation omitted).

<sup>3</sup> *Id.* at 1–2.

<sup>4</sup> Abbas Faiz, *China Is Building a Global Coalition of Human Rights Violators to Defend Its Record in Xinjiang – What Is Its Endgame?*, THE CONVERSATION (July 18, 2019), <https://theconversation.com/china-is-building-a-global-coalition-of-human-rights-violators-to-defend-its-record-in-xinjiang-what-is-its-endgame-120546> [<https://perma.cc/7ZPJ-PEVR>].

<sup>5</sup> Sceats & Breslin, *supra* note 1, at 1.

<sup>6</sup> *Id.* at 37.

<sup>7</sup> HUM. RTS. WATCH, THE COSTS OF INTERNATIONAL ADVOCACY: CHINA’S INTERFERENCE IN UNITED NATIONS HUMAN RIGHTS MECHANISMS 1 (2017), [https://www.hrw.org/sites/default/files/report\\_pdf/chinaun0917\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/chinaun0917_web.pdf) [<https://perma.cc/9YHL-WVB7>].

<sup>8</sup> See *id.* at 9 (“Within the Human Rights Council, China often advances its positions as part of a group of countries that refer to themselves as the Like-Minded Group. . .”).

<sup>9</sup> See Sceats & Breslin, *supra* note 1, at 2 (“In the past year [China] has also emerged as a leader of a grouping within the Human Rights Council seeking to reassert the power of the state in the face of the popular uprisings that have swept many Arab countries and the new threats to social control posed by the internet age.”).

weaken the international human rights system.<sup>10</sup>

China's recent treatment of the Uighur Muslims in Xinjiang Province epitomizes the tension between the United Nations' global mission to protect human rights and China's focus on state sovereignty.<sup>11</sup> The Chinese government obstinately resists U.N. efforts to hold it accountable for human rights violations in Xinjiang and uses state sovereignty as an excuse to justify non-compliance with U.N. investigation requests.<sup>12</sup> By rebuffing international criticism of its human rights violations in Xinjiang and refusing to cooperate with the United Nations, China further weakens the international human rights system by exploiting limitations inherent in the system.<sup>13</sup> However, the United Nations is not left without recourse; at its disposal are several enforcement mechanisms that it can use to strengthen its position as an effective intergovernmental entity and to compel greater compliance from China.

One of the more powerful enforcement mechanisms in the United Nations' repertoire is its ability to monitor and report on individual states' compliance through treaty bodies.<sup>14</sup> Treaty bodies are monitoring entities composed of independent experts tasked with conducting unbiased periodic reviews of state efforts to comply with particular treaties. In contrast to U.N. political bodies, which are composed of representatives acting on behalf of a particular state's interests, treaty body experts are un beholden to any state or its political agenda. The nonpartisan nature of treaty bodies

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<sup>10</sup> See HUM. RTS. WATCH, *supra* note 7, at 1 ("Because of China's growing international influence, the stakes of such interventions go beyond how China's own human rights record is addressed at the U.N. and pose a longer-term challenge to the integrity of the system as a whole.").

<sup>11</sup> See Faiz, *supra* note 4 ("China's approach has been to engage with the U.N.'s human rights bodies to impose its own narrative, which misinterprets sovereignty as being distinct and above human rights... In doing so, it ignores repeated emphasis in international human rights law that human rights depend on one another. The exercise of one right, such as the right to sovereignty, cannot allow the violation of another, such as the right not to be tortured.").

<sup>12</sup> *Id.*

<sup>13</sup> See generally HUM. RTS. WATCH, *supra* note 7 (describing various actions China has taken to weaken the U.N. system).

<sup>14</sup> See ANN KENT, CHINA, THE UNITED NATIONS, AND HUMAN RIGHTS: THE LIMITS OF COMPLIANCE 9–10 (1999) ("The strength of the U.N. human rights regime lies chiefly in its monitoring powers, with its strongest 'enforcement' power being a critical public resolution or reports. Exposure is the main instrument at the United Nations' disposal for the protection of human rights.").

means that these bodies cannot be influenced by a state's economic and military leverage in the same way that U.N. political bodies, like the Human Rights Council and the General Assembly, have been. This gives treaty bodies an impartiality that is, by design, impossible to attain in U.N. political arenas. What is more, “the monitoring processes of the treaty bodies are the principal means through which states are held accountable at the international level for compliance with their international human rights treaty obligations.”<sup>15</sup> It therefore follows that the United Nations could increase state accountability by bolstering the role of its treaty bodies. Since treaty bodies take a non-adversarial approach to monitoring state compliance<sup>16</sup> and are unencumbered by political pacts, they could potentially prove more effective in handling resistance from powerhouse nations than U.N. political bodies do. In light of China’s manipulation of U.N. political mechanisms, the Uighur crisis in Xinjiang may be better addressed through this non-partisan approach.

It is imperative that the United Nations intervene in the Chinese Uighur crisis, not only because it is of the most egregious human rights violations of the past decade,<sup>17</sup> but also because it underscores a larger problem with the U.N. system: namely, the United Nations’ struggle to enforce human rights laws, particularly when dealing with powerful nations such as China. One of the most ubiquitous critiques of international law is that it is unenforceable and therefore, pointless.<sup>18</sup> This is particularly troubling in the present

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<sup>15</sup> Sceats & Breslin, *supra* note 1, at 36. Each treaty has a group of independent experts that assess compliance with the treaty. This group makes up what is referred to as a treaty body. See *Monitoring the Core International Human Rights Treaties*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/EN/HRBodies/Pages/WhatTBDo.aspx> [<https://perma.cc/Z2UY-MF2Z>] (last visited Feb. 19, 2021).

<sup>16</sup> KENT, *supra* note 14, at 14.

<sup>17</sup> See *US Bars China Officials over Uighur Crackdown in Xinjiang*, AL JAZEERA (Oct. 9, 2019), <https://www.aljazeera.com/news/2019/10/bars-china-officials-xinjiang-crackdown-191009025000362.html> [<https://perma.cc/YBV8-L2GT>] [hereinafter *US Bars China Officials*] (“Pompeo has previously called China’s treatment of Uighurs one of the ‘worst stains on the world’ and likened the camps to actions by Nazi Germany.”).

<sup>18</sup> See Frederic L. Kirgis, *Enforcing International Law*, AM. SOC’Y OF INT’L L. INSIGHTS (Jan. 22, 1996), <https://www.asil.org/insights/volume/1/issue/1/enforcing-international-law> [<https://perma.cc/X2EV-QSDC>] (“Nearly always, the first question asked about international law is, how can it be law if it cannot be enforced? To experienced international lawyers, it is an old and rather tiresome question, not only because it is asked so often, but also because of the crucial assumption it contains. The assumption, of course,

context “[b]ecause of China’s growing international influence, the stakes of such interventions go beyond how China’s own human rights record is addressed at the United Nations and pose a longer-term challenge to the integrity of the system as a whole.”<sup>19</sup> The existing literature is as saturated with warnings about China’s adverse influence on the United Nations as it is with criticisms of the United Nations itself.<sup>20</sup> However, while it appears that scholars have reflected on both the Chinese Uighur crisis and the United Nations’ enforcement issue (often independently of each other), none have suggested a solution that could resolve both problems.

Using the Chinese Uighur crisis as a case study, this paper examines the existing human rights machinery and recommends a solution that may prove effective beyond the problem at hand. More specifically, it analyzes the potential efficacy of a shift in focus from the political enforcement mechanisms frequently employed in the U.N. human rights context to the non-political methods used by treaty bodies. Non-political enforcement mechanisms are an undervalued strength of the U.N. enforcement scheme, one which may confer strategic advantages. This paper ultimately argues that U.N. treaty bodies may be better poised to manage resistance from China because of their independent and objective nature.

Part II of this paper presents a detailed account of the Uighur crisis in Xinjiang, China’s violations of human rights laws, and the current international response. Part III discusses why China presents a special case that necessitates a shift from political enforcement mechanisms to non-political methods and why, in this case, it may be more effective to support U.N. treaty bodies rather than continuing to rely on U.N. political bodies. It further addresses how the role of treaty bodies can be strengthened within the U.N. system and possible counter-arguments to this proposed solution.

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is that international law cannot be enforced.”).

<sup>19</sup> HUM. RTS. WATCH, *supra* note 7, at 1.

<sup>20</sup> See Faiz, *supra* note 4 (warning that China’s mobilization of like-minded governments is a dangerous development for the international human rights system); see also Kirgis, *supra* note 18 (explaining there is a general assumption that international law cannot be enforced). See generally HUM. RTS. WATCH, *supra* note 7 (arguing China has deliberately weakened the U.N. system).

## II. Uighur Case Study

### A. *The Current Situation in Xinjiang*

Under the guise of counter-terrorism, the Chinese government has arbitrarily detained upwards of two million Muslims in China's Xinjiang province since April 2017.<sup>21</sup> The majority of detainees belong to the Uighur ethnic group, a Turkish-speaking community largely located in Xinjiang<sup>22</sup> that makes up less than one percent of China's total population.<sup>23</sup> The Chinese government uses the terms "reeducation camps" and "vocational training centers" to refer to the interment-style camps used to detain Uighur Muslims en masse.<sup>24</sup> Officials claim that the camps exist to prevent the spread of terrorism and to help Uighur Muslims assimilate to Chinese culture.<sup>25</sup> However, a closer look into the severe methods employed at these camps reveals an ethnic cleansing campaign that can only be likened to the Holocaust.<sup>26</sup>

Though the Chinese government has consistently maintained a

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<sup>21</sup> See Lindsay Maizland, *China's Repression of Uighurs in Xinjiang*, COUNS. ON FOREIGN REL., <https://www.cfr.org/backgroundunder/chinas-repression-uighurs-xinjiang> [https://perma.cc/ZW5C-XVGK] (last updated June 30, 2020).

<sup>22</sup> Other detained Muslim ethnic groups include Kazakhs and Uzbeks. *Id.*

<sup>23</sup> Nick Schiffrin & Dan Sagalyn, *China Calls It Re-education, but Uighur Muslims Say It's 'Unbearable Brutality'*, PBS NEWS HOUR (Oct. 4, 2019), <https://www.pbs.org/newshour/show/china-calls-it-re-education-but-uyghur-muslims-say-its-unbearable-brutality> [https://perma.cc/9KUB-9PVN].

<sup>24</sup> Maizland, *supra* note 21; see Omer Kanat, *Outrage over China's Uyghur Crisis Is Not a Western Conspiracy*, GLOBE POST (Aug. 22, 2019), <https://theglobepost.com/2019/08/22/outrage-uyghur-crisis/> [https://perma.cc/VJZ9-BQFQ] ("[T]wo million subjected to 're-education camps' for political and cultural indoctrination.' . . . This was the first time that the mass-internment camps had been raised anywhere in a U.N. forum.").

<sup>25</sup> Maizland, *supra* note 21 ("Chinese officials maintain that the camps have two purposes: to teach Mandarin, Chinese laws, and vocational skills, and to prevent citizens from becoming influenced by extremist ideas, to 'nip terrorist activities in the bud,' according to a government report.").

<sup>26</sup> See Telephone Interview by Scott Simon with Adrian Zenz, Senior Fellow in China Studies, Victims of Communism Memorial Foundation (July 4, 2020), transcript available at <https://www.npr.org/2020/07/04/887239225/china-suppression-of-uighur-minorities-meets-u-n-definition-of-genocide-report-s> [https://perma.cc/E2L8-BSR6] ("A new report in Foreign Policy says that China's suppression of Uighurs, Kazakhs and other chiefly Muslim ethnic minorities in northwest China now meets the United Nations definition of genocide, mass sterilization, forced abortions and mandatory birth control part of a campaign that has swept up more than 1.5 million people and what researcher Adrian Zenz calls probably the largest incarceration of an ethnoreligious minority since the Holocaust.").

narrative that only mild interventions are used at the camps to combat “Islamic extremism,” leaked internal government documents indicate otherwise.<sup>27</sup> According to the New York Times, “[e]ven as the government presented its efforts in Xinjiang to the public as benevolent and unexceptional, it discussed and organized a ruthless and extraordinary campaign in these internal communications.”<sup>28</sup> Indeed, the Chinese government has engaged in a targeted campaign to crack down on anti-government and anti-Chinese sentiments among the Uighur population in Xinjiang.<sup>29</sup>

Tensions between Uighurs and the Chinese government can be traced back to 2009, when a Uighur-led political demonstration in Xinjiang’s capital turned into a riot that resulted in significant casualties.<sup>30</sup> What started as a demonstration protesting “state-incentivized Han Chinese migration in the region and widespread economic and cultural discrimination”<sup>31</sup> against Uighur Muslims in Xinjiang became the catalyst for what is now one of the most egregious discriminatory campaigns by a government entity against an ethnoreligious minority since the Holocaust.<sup>32</sup>

In the decade since the 2009 riot, the Chinese government has come to associate any expression of Islam in the Xinjiang region with Islamic extremism and political separatism—<sup>33</sup> two ideologies that the government fears could pose a significant threaten to the Chinese Communist Party’s image of strength, control, and

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<sup>27</sup> See Austin Ramzy & Chris Buckley, ‘*Absolutely No Mercy*’: *Leaked Files Expose How China Organized Mass Detentions of Muslims*, N.Y. TIMES (Nov. 16, 2019), <https://www.nytimes.com/interactive/2019/11/16/world/asia/china-xinjiang-documents.html> [<https://perma.cc/LH9X-QWW9>] (providing, among other things, “a rare, unfiltered look at the origins of the crackdown and the beliefs of the man who set it in motion” in a series of secret speeches).

<sup>28</sup> *Id.*

<sup>29</sup> See *id.* (“Beijing has sought for decades to suppress Uighur resistance to Chinese rule in Xinjiang. The current crackdown began after a surge of antigovernment and anti-Chinese violence . . . Since 2017, the authorities in Xinjiang have detained many hundreds of thousands of Uighurs, Kazakhs and other Muslims in internment camps. Inmates undergo months or years of indoctrination and interrogation aimed at transforming them into secular and loyal supporters of the party.”).

<sup>30</sup> Maizland, *supra* note 21.

<sup>31</sup> *Id.*

<sup>32</sup> Telephone Interview by Scott Simon with Adrian Zenz, *supra* note 26.

<sup>33</sup> See Maizland, *supra* note 21 (“Chinese officials are concerned that Uighurs hold extremist and separatist ideas, and they view the camps as a way of eliminating threats to China’s territorial integrity, government, and population.”).

domestic stability.<sup>34</sup> The government's fears are so pronounced that one simply has to practice Islam to be perceived as a threat of national importance requiring the most drastic government "interventions."<sup>35</sup> The current landscape is such that,

Most people in the camps have never been charged with crimes and have no legal avenues to challenge their detentions. The detainees seem to have been targeted for a variety of reasons, according to media reports, including traveling to or contacting people from any of the twenty-six countries China considers sensitive, such as Turkey and Afghanistan; attending services at mosques; having more than three children; and sending texts containing Quranic verses.<sup>36</sup>

Officials have also criminalized acts of worship, such as abstaining from alcohol and fasting during Ramadan, banned certain Muslim baby names, and demolished mosques.<sup>37</sup> The government has even gone as far as enlisting Chinese Communist Party members to live with Uighur families inside their homes to report on extremist behavior.<sup>38</sup> What falls within the ambit of "extremist behavior" is entirely up to the Chinese government and can include basic acts of worship like fasting or wearing a veil in public.<sup>39</sup>

For the majority of detainees imprisoned in the camps, the only crime committed was being born into the wrong household—one where Islam is practiced instead of any of the other religions that the Chinese government finds to be more palatable—and the punishment for such a crime is exacting.<sup>40</sup> Uighur Muslims who

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<sup>34</sup> See Ramzy & Buckley, *supra* note 27 ("Mr. Xi warned that the violence was spilling from Xinjiang into other parts of China and could taint the party's image of strength. Unless the threat was extinguished, Mr. Xi told the leadership conference, 'social stability will suffer shocks, the general unity of people of every ethnicity will be damaged, and the broad outlook for reform, development and stability will be affected.'").

<sup>35</sup> See Maizland, *supra* note 21 ("In March 2017, Xinjiang's government passed an anti-extremism law that prohibited people from growing long beards and wearing veils in public. It also officially recognized the use of training centers to eliminate extremism . . . Often, their only crime is being Muslim, human rights groups say, adding that many Uighurs have been labeled as extremists simply for practicing their religion.").

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> See *id.* ("In the eyes of Beijing, all Uighurs could potentially be terrorists or terrorist sympathizers . . . Following the 9/11 attacks, the Chinese government started

fled the camps reported that detainees were subjected to extremely harsh and inhumane conditions including: twenty-four-hour surveillance; torture; sleep deprivation; involuntary abortions and sexual abuse of women; forced labor; renunciation of Islam, Uighur culture, and language; separation of children from their parents, leaving children in the care of state-run orphanages;<sup>41</sup> organ harvesting;<sup>42</sup> and mass sterilization of women without their consent.<sup>43</sup>

For the eleven million non-detained Uighur Muslims living in Xinjiang outside of the camps, the circumstances are not much better.<sup>44</sup> The Chinese government has transformed the entire Xinjiang province into a surveillance state,<sup>45</sup> using facial recognition technology and overhead drones to heavily monitor resident Uighur Muslims.<sup>46</sup> In some Xinjiang cities, the government has installed QR codes outside Uighur residents' homes to facilitate easier access to individuals' personal information.<sup>47</sup> At the ground level, local police subject residents to intrusive acts including, but not limited to, regular scanning of identification cards, cell phone searches, forced fingerprinting, DNA and blood sample collections, photographs and voice sample collections, and frequent check-point inspections.<sup>48</sup>

The Chinese government also requires that Uighur Muslims provide biometric data in a program advertised as “Physicals for

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justifying its actions toward Uighurs as part of the Global War on Terrorism. It said it would combat what it calls “the three evils”—separatism, religious extremism, and international terrorism—at all costs.”)

<sup>41</sup> Maizland, *supra* note 21.

<sup>42</sup> Will Martin, *China Is Harvesting Thousands of Human Organs from Its Uighur Muslim Minority*, *UN Human-Rights Body Hears*, *BUS. INSIDER* (Sept. 25, 2019), <https://www.businessinsider.com/china-harvesting-organs-of-uighur-muslims-china-tribunal-tells-un-2019-9> [<https://perma.cc/X3EM-RZLC>].

<sup>43</sup> Telephone Interview by Scott Simon with Adrian Zenz, *supra* note 26.

<sup>44</sup> See Maizland, *supra* note 21 (“Even before the camps became a major part of the Chinese government’s anti-extremism campaign, the government was accused of cracking down on religious freedom and basic human rights in Xinjiang.”).

<sup>45</sup> *Id.*

<sup>46</sup> Sigal Samuel, *China Claims It’s Released Most Muslims from Internment Camps. That’s Doubtful.*, *VOX* (July 30, 2019), <https://www.vox.com/future-perfect/2019/7/30/20747028/china-uighur-muslims-internment-camps-forced-labor> [<https://perma.cc/8P5L-5URC>].

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

All.”<sup>49</sup> The information gathered is then entered into a robust database called the Integrated Joint Operations Platform that uses artificial intelligence to produce lists of “suspicious people.” These lists then serve as the basis for further subjugation of Muslim residents.<sup>50</sup> In fact, “[c]lassified Chinese government documents released by the International Consortium of Investigative Journalists (ICIJ) in November 2019 revealed that more than fifteen thousand Xinjiang residents were placed in detention centers during a seven-day period in June 2017 after being flagged by the algorithm.”<sup>51</sup>

Despite the existence of incriminating evidence detailing China’s appalling actions in Xinjiang, the Chinese government has repeatedly tried to control the narrative by shrouding the entire ordeal in secrecy.<sup>52</sup> This, in turn, underscores China’s larger aim of maintaining a positive public image while continuing to engage in crimes against humanity.<sup>53</sup> Leaked government documents also reveal the Chinese government’s fear that general public perception may shift in favor of Uighur liberation. If, for example, Uighur students returning home from college find their family members detained, they might use social media platforms to create a narrative that would be “widespread and difficult to eradicate.”<sup>54</sup> The Chinese government’s preoccupation with public opinion may be indicative of a deeper insecurity that mounting domestic pressure might force the government’s hand into ending their genocidal crusade against Uighur Muslims. Given the right circumstances, China’s insecurity could be taken advantage of to “name and shame” it into human rights compliance.

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<sup>49</sup> Maizland, *supra* note 21.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> See Ramzy & Buckley, *supra* note 27 (“Of the 24 documents, the directive on how to handle minority students returning home to Xinjiang in the summer of 2017 offers the most detailed discussion of the indoctrination camps—and the clearest illustration of the regimented way the party told the public one story while mobilizing around a much harsher narrative internally.”).

<sup>53</sup> See *id.* (“Beijing has sought for decades to suppress Uighur resistance to Chinese rule in Xinjiang.”); see also HUM. RTS. WATCH, *supra* note 7, at 43 (“China regards it as important to look good.”).

<sup>54</sup> Ramzy & Buckley, *supra* note 27 (“‘Returning students from other parts of China have widespread social ties across the entire country,’ the directive noted. ‘The moment they issue incorrect opinions on WeChat, Weibo and other social media platforms, the impact is widespread and difficult to eradicate.’”).

### *B. The Human Rights Violations in Xinjiang*

According to a Foreign Policy report released in the summer of 2020, “China’s suppression of Uighurs, Kazakhs and other chiefly Muslim ethnic minorities in northwest China now meets the U.N. definition of genocide.”<sup>55</sup> For the first time, there is evidence that the Chinese government has engaged in actions that directly violate one of the five criteria set forth by the United Nations Convention for the Punishment and Prevention of the Crime of Genocide from 1948, namely, the suppression of birth.<sup>56</sup> Actions by the Chinese government also likely amount to human rights violations, including:<sup>57</sup> discriminating against Uighur Muslims; restraining their basic freedoms of assembly and religion; disallowing them to express their language or culture; depriving them of liberty without due process; forcing them to perform manual labor; constraining their freedom of movement; and inflicting serious bodily harm. These rights are also enshrined in five U.N. treaties that China has signed and ratified, including:<sup>58</sup> the International Convention on the Elimination of All Forms of Racial Discrimination;<sup>59</sup> the Convention on the Elimination of All Forms of Discrimination Against Women;<sup>60</sup> the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;<sup>61</sup> the International Covenant on Economic, Social and Cultural Rights;<sup>62</sup> and the Convention on the Rights of the Child.<sup>63</sup> By violating human rights

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<sup>55</sup> Telephone Interview by Scott Simon with Adrian Zenz, *supra* note 26.

<sup>56</sup> *Id.*

<sup>57</sup> See generally *UN Treaty Bodies and China*, HUM. RTS. IN CHINA (2013), <https://www.hrichina.org/en/un-treaty-bodies-and-china> [<https://perma.cc/N9B3-7277>] (describing the rights protected by each treaty that China has signed and ratified).

<sup>58</sup> See *id.* (listing and describing the six U.N. human rights treaties that China is party to).

<sup>59</sup> International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, T.I.A.S. 94-1120, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).

<sup>60</sup> Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

<sup>61</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987).

<sup>62</sup> International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976).

<sup>63</sup> Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990).

expressly protected in the U.N. treaties it has signed and ratified,<sup>64</sup> China continues to demonstrate a blatant disregard for the concept of human rights.

China is also signatory to the International Covenant on Civil and Political Rights (“ICCPR”), though it has not yet ratified the treaty.<sup>65</sup> This, in effect, means that China has not yet enacted domestic laws implementing the treaty and is therefore not legally bound by its specific provisions. Regardless of this fact, however, China’s position as a signatory obligates it to act in good faith and to avoid circumventing the directives of the ICCPR.<sup>66</sup> The ICCPR aims to preserve human dignity by protecting civil and political rights, as well as economic, social, and cultural rights.<sup>67</sup> It explicitly mandates that ethnic, religious, and linguistic minorities “not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”<sup>68</sup> Not only do China’s actions in Xinjiang run contrary to the purpose of the ICCPR, but they violate almost all of the rights protected by the treaty.<sup>69</sup>

### C. *The International Response to China’s Actions*

The initial global response to reports of human rights abuses in Xinjiang was one of condemnation and intense criticism.<sup>70</sup> Among other reactions,

The U.N. human rights chief and other U.N. officials have

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<sup>64</sup> See generally *UN Treaty Bodies and China*, *supra* note 57 (listing and describing the six U.N. human rights treaties that China is party to).

<sup>65</sup> *Id.*; International Covenant on Civil and Political Rights art. 27, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

<sup>66</sup> See generally *UN Treaty Bodies and China*, *supra* note 57.

<sup>67</sup> International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

<sup>68</sup> *Id.*; John H. Knox, *Climate Change and Human Rights Law*, 50 VA. J. INT’L L. 163, 185 (2009).

<sup>69</sup> See generally International Covenant on Civil and Political Rights, art. 127 Dec. 16, 1966, S. EXEC. DOC. E, 95-2 (1978), 999 U.N.T.S. 171; Knox, *supra* note 68, at 185.

<sup>70</sup> Maizland, *supra* note 21; see also Elizabeth Paton & Austin Ramzy, *Coalition Brings Pressure to End Forced Uighur Labor*, N.Y. TIMES, <https://www.nytimes.com/2020/07/23/fashion/uighur-forced-labor-cotton-fashion.html> [<https://perma.cc/B9TV-6TYM>] (last updated Aug. 10, 2020) (“[M]ore than 190 organizations spanning 36 countries issued a call to action, seeking formal commitments from clothing brands to cut all ties with suppliers implicated in Uighur forced labor and to end all sourcing from the Xinjiang region of China in the next twelve months.”).

demanded access to the camps. The European Union has called on China to respect religious freedom and change its policies in Xinjiang. And human rights organizations have urged China to immediately shut down the camps and answer questions about disappeared Uighurs.<sup>71</sup>

A group of twenty-two U.N. Human Rights Council member nations signed a letter in July 2019 reprimanding China for its treatment of Uighur Muslims in Xinjiang.<sup>72</sup> Within days, however, the global response shifted in a different direction.<sup>73</sup> China quickly amassed a “global coalition of human rights violators to defend its record in Xinjiang.”<sup>74</sup> This coalition of thirty-seven nations signed a different letter endorsing China’s actions in Xinjiang.<sup>75</sup> Among those supporting China were nations with similar repressive regimes, including the Muslim-majority nations of Saudi Arabia and Pakistan.<sup>76</sup> With the exception of Turkey—whose Foreign Minister spoke out against the Chinese government’s oppression of Uighur Muslims—other Muslim nations have been notably silent, preferring instead to maintain a strong strategic and economic relationship with China.<sup>77</sup>

The support of these thirty-seven nations, coupled with China’s vast economic power, has allowed China to continue its operations in Xinjiang unhindered.<sup>78</sup> Despite widespread recognition that China’s actions in Xinjiang violate numerous human rights laws, the U.N. Human Rights Council is powerless to enforce international human rights laws.<sup>79</sup> The Human Rights Council’s system is political in nature and requires member states’

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<sup>71</sup> Maizland, *supra* note 21.

<sup>72</sup> Faiz, *supra* note 4.

<sup>73</sup> *See id.* (“A few days later, a second letter emerged.”).

<sup>74</sup> Kanat, *supra* note 24.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Maizland, *supra* note 21.

<sup>78</sup> *See* Faiz, *supra* note 4 (“China’s economic might and worldwide influence enable it to deflect international criticism of its poor human rights record. With a growing army of like-minded governments behind it, international human rights safeguards have never been so dangerously exposed.”).

<sup>79</sup> *See* HUM. RTS. WATCH, *supra* note 7, at 4 (“Unless the U.N. and concerned governments can halt such efforts to manipulate or weaken U.N. human rights mechanisms, the U.N.’s ability to help protect rights around the globe is at risk not only in Geneva.”).

cooperation to implement substantive corrective action or pass meaningful mandates.<sup>80</sup> China is one of the U.N. Security Council's five permanent members<sup>81</sup> and as a permanent member, China can—and likely will—veto any measure that the Security Council might propose to address the situation in Xinjiang.<sup>82</sup> Thus, any measures taken by U.N. political bodies, like the Human Rights Council or the Security Council, will likely not prove effective in holding China accountable<sup>83</sup> for what could conceivably become the most egregious human rights crisis of our lifetime.<sup>84</sup>

Outside of the U.N. apparatus, the United States has taken a surprisingly<sup>85</sup> firm stance against China's persecution of Uighur Muslims. In a series of power moves, the United States has leveraged its position as China's strongest economic rival to mount increasing pressure on the Chinese government to curtail its oppressive regime in Xinjiang. Not only has the United States restricted visas for Chinese officials and blacklisted companies directly involved with the Chinese Uighur Crisis,<sup>86</sup> it has also passed a law that levies heavy sanctions on any individual or company whose activities contribute to the human rights violations in Xinjiang.<sup>87</sup> Given the United States' position as an international

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<sup>80</sup> See generally Faiz, *supra* note 4 (explaining the efficacy of the United Nations and, by extension, human rights laws depend on the cooperation of countries).

<sup>81</sup> *United Nations Security Council Fast Facts*, CNN WORLD (Apr. 2, 2019), <https://www.cnn.com/2013/09/03/world/united-nations-security-council-fast-facts/index.html> [<https://perma.cc/CZ37-KWLT>] (last updated Apr. 9, 2020).

<sup>82</sup> See *id.* (“A ‘NO’ vote from one of the five permanent members kills the resolution. There is no such thing as a ‘VETO’ vote in formal U.N. rules, though a ‘NO’ vote from a permanent member has the effect of vetoing a resolution.”).

<sup>83</sup> See Faiz, *supra* note 4 (“China is recruiting like-minded governments to push its line on sovereignty . . . The stronger this menacing form of solidarity grows, the less effective human rights safeguards will be in these countries.”).

<sup>84</sup> See *US Bars China Officials*, *supra* note 17 (“Pompeo has previously called China's treatment of Uighurs one of the “worst stains on the world” and likened the camps to actions by Nazi Germany.”).

<sup>85</sup> In light of allegations by President Trump's former National Security Advisor that the President initially supported China's crackdown on Uighur Muslims, the United States' staunch stance against Uighur subjugation is a rather surprising development. For more information, see Steven Lee Myers, *China Lashes Out at U.S.'s Action Against Mass Incarcerations*, N.Y. TIMES (June 18, 2020), <https://www.nytimes.com/2020/06/18/world/asia/china-trump-pompeo-xinjiang-uighurs-bolton.html> [<https://perma.cc/QR5J-UL5N>].

<sup>86</sup> See *id.*

<sup>87</sup> Maizland, *supra* note 21; see also Ana Swanson, *Nike and Coca-Cola Lobby*

powerhouse and the United Nations' inherent limitations as an intergovernmental organization, the United States' actions hold promise. However, this type of bilateral state intervention "should be seen as only an indirect or, at the very most, a supplementary agent of change" because it "lacks international authority and legitimacy."<sup>88</sup> Additionally, the restrictions implemented by the United States are vulnerable to verbal counter-attacks from China that they are unauthorized and illegitimate, as well as potential retaliatory legislation aimed at economically crippling the United States.<sup>89</sup>

### III. Bolstering the Role of U.N. Treaty Bodies

Every major human rights treaty has a corresponding committee or treaty body tasked with interpreting the treaty and monitoring states' compliance.<sup>90</sup> Treaty bodies are staffed with a team of independent experts that assess states' reports of their respective compliance and conduct periodic reviews of each state that has ratified the treaty.<sup>91</sup> Treaty bodies also oversee country inquiries, review individual complaints, and issue "general comments" interpreting various treaty provisions.<sup>92</sup> The reporting system

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*Against Xinjiang Forced Labor Bill*, N.Y. TIMES, <https://www.nytimes.com/2020/11/29/business/economy/nike-coca-cola-xinjiang-forced-labor-bill.html> [<https://perma.cc/5U8Z-DZ8V>] (last updated Dec. 15, 2020) ("The bill, which would prohibit broad categories of certain goods made by persecuted Muslim minorities in an effort to crack down on human rights abuses, has gained bipartisan support, passing the House in September by a margin of 406 to 3. Congressional aides say it has the backing to pass the Senate, and could be signed into law by either the Trump administration or the incoming Biden administration. But the legislation, called the Uyghur Forced Labor Prevention Act, has become the target of multinational companies including Apple whose supply chains touch the far western Xinjiang region, as well as of business groups including the U.S. Chamber of Commerce. Lobbyists have fought to water down some of its provisions, arguing that while they strongly condemn forced labor and current atrocities in Xinjiang, the act's ambitious requirements could wreak havoc on supply chains that are deeply embedded in China.").

<sup>88</sup> KENT, *supra* note 14, at 12.

<sup>89</sup> See Sceats & Breslin, *supra* note 1, at 12 ("China's strongest counter-attacks are, however, directed at the United States."); see also Myers, *supra* note 85 (detailing China's counterattack following U.S.-imposed sanctions on Chinese officials involved in Uighur subjugation).

<sup>90</sup> See HUM. RTS. WATCH, *supra* note 7, at 7.

<sup>91</sup> *Id.*

<sup>92</sup> *Monitoring the Core International Human Rights Treaties*, *supra* note 15.

serves as the treaty bodies' primary supervisory mechanism,<sup>93</sup> so it is critical that treaty bodies produce accurate reports untainted by political influences. Staffing treaty bodies with independent experts safeguards the process from governmental interference and political pressure.

For treaty bodies to function as intended, states need to provide their consent and continued cooperation, which makes treaty bodies non-adversarial by design.<sup>94</sup> Treaty bodies predominantly exist to help states meet compliance goals, not to criticize poor performance.<sup>95</sup> This is exemplified in the treaty bodies' four central objectives:

1. To make states accountable for their human rights to the international community;
2. To encourage them to review measures to bring national law and policy in line with the conventions;
3. To monitor states' progress made in the de jure and de facto implementation of rights; and
4. To facilitate public scrutiny of government policies and [Non-Governmental Organization] participation.<sup>96</sup>

*A. China, a Special Case Necessitating a Shift from the Enforcement Mechanisms of U.N. Political Bodies to Non-Political Methods*

China presents a special case “[b]ecause of its ascribed superpower status, its economic and strategic muscle, and particularly its position as a Permanent Member of the Security Council.”<sup>97</sup> The situation is further complicated by China's reticence to accept human rights criticism, its distinctive position that state sovereignty precludes U.N. interference with domestic affairs, and its willingness to manipulate U.N. political bodies in furtherance of its state sovereignty agenda. Understanding the interplay of these complex factors better informs considerations of a possible solution to the Chinese Uighur crisis and explains why recent U.N. interventions have been unsuccessful. The solution

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<sup>93</sup> KENT, *supra* note 14, at 14.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 15.

<sup>96</sup> *Id.* at 14.

<sup>97</sup> *Id.* at 2.

proposed here is tailored with those facts in mind: namely, that China's unique situation necessitates greater reliance on the United Nations' non-political methods. Bolstering the role of U.N. treaty bodies may prove more effective in garnering China's compliance with human rights laws than current methods of intervention.

To fully appreciate the potential advantages of the proposed treaty body approach, one must first understand why recent political efforts to address the Chinese Uighur crisis have failed. To date, the overwhelming international response to China's internment of Uighur Muslims has been one of criticism and admonishment. Various nations on the Human Rights Council, as well as U.N. officials, have openly and publicly condemned China's actions. The United States has taken things a step further by actively imposing restrictions on Chinese companies and government officials involved in Uighur subjugation. The predominant effect of these collective efforts is to *demand* that China stop oppressing Uighur Muslims "or else." Typically, a strong no-bull approach carries weight because it is inherently backed by the political clout of the state(s) involved. The more powerful the state doing the condemning, the more likely the accused state will modify its behavior to better conform with human rights norms for fear of the consequences they may face otherwise.<sup>98</sup> Though this approach is generally effective with most offender states, it has not been particularly fruitful when dealing with China.<sup>99</sup> The political and adversarial nature of this strategy has thus far led only to China responding by flexing its muscles. This has been true in the past<sup>100</sup> and it still rings true today. Instead of modifying its treatment of Uighur Muslims in response to intense international pressure, China has used its own political influence to reshape the discourse.<sup>101</sup> For

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<sup>98</sup> See HUM. RTS. WATCH, *supra* note 7, at 77–79 (discussing how, as one of the world's most powerful nations, China often uses its political power to shape the behavior of smaller nations that cannot afford to be foreclosed from conducting trade with China).

<sup>99</sup> See Sceats & Breslin, *supra* note 1, at 11–12 ("Although these and other episodes of repression have made international headlines, the situation of human rights in China has remained firmly off the Council's agenda. Clearly this reflects the new balance of power within the Human Rights Council, but there is also a sense of defeatism among many Western diplomats about the utility of using even an unsuccessful China resolution as a lever.").

<sup>100</sup> See KENT, *supra* note 14, at 234 (explaining that, in response to intense political pressure from the United Nations for the Tiananmen Square killings, China's reaction was total disownment of U.N. authority).

<sup>101</sup> See Faiz, *supra* note 4 (describing how China secured the support of thirty-seven

this reason and others discussed below, efforts to hold China accountable in U.N. political arenas will likely continue to fail and should be approached with caution.

Foremost among these reasons is that China's immense political power and resources make it almost untouchable in U.N. political arenas like those of the Human Rights Council and General Assembly. In spite of compelling evidence of grave human rights violations, China's human rights record has garnered relatively little attention from the Human Rights Council.<sup>102</sup> The Council has avoided addressing certain Chinese human rights abuses, even if those abuses were the subject of considerable public outcry.<sup>103</sup> Human rights experts at the Royal Institute of International Affairs, also known as the Chatham House, noted that this pattern:

Reflects the new balance of power within the Human Rights Council, but there is also a sense of defeatism among many Western diplomats about the utility of using even an unsuccessful China resolution as a lever. One senior European diplomat in Geneva said that these days 'no one would dare' table a resolution on China and another that the Chinese government has 'managed to dissuade states from action—now people don't even raise it.'<sup>104</sup>

As such, China will likely continue to wield its power as a shield against political pressure from other members of the U.N. Human Rights Council.

China approaches human rights issues within the General Assembly in largely the same way that it does those arising in the U.N. Human Rights Council.<sup>105</sup> That is, it uses General Assembly committees to advance its own human rights agenda in a similar fashion.<sup>106</sup> One notable difference, however, is how China reacts to criticism from the two U.N. political bodies. Though it can be said that China is always sensitive to criticism of its human rights activities, it is particularly "sensitive to human rights criticism from other states in the General Assembly, which probably reflects that body's higher institutional standing and broader membership

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nations with regard to the Uighur crisis).

<sup>102</sup> Sceats & Breslin, *supra* note 1, at 11.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 12.

<sup>105</sup> *Id.* at 37.

<sup>106</sup> *Id.*

compared with the Human Rights Council.”<sup>107</sup>

In general, efforts to strongarm China through political means should proceed with caution because U.N. political entities are especially vulnerable to Chinese manipulation. China’s ultimate objective is to eliminate U.N. interference with its domestic human rights record.<sup>108</sup> It employs several manipulative tactics to achieve this goal and engineer desired outcomes within U.N. political bodies. First, China exercises restraint with respect to the matters it engages in, while also working tirelessly to undermine U.N. accountability mechanisms through underhanded means.<sup>109</sup> One of the ways through which China accomplishes this task is by signing onto positions proposed by countries of the “Like-Minded Group,” a self-proclaimed indeterminate group of countries within the Human Rights Council that regularly support each other’s political aims and have a shared goal of undermining the human rights system.<sup>110</sup> In this way, China lets other members of the Like-Minded Group take the assertive leadership position, while it plays a passive role,<sup>111</sup> which allows it to simultaneously keep a low profile and maintain a position of power.<sup>112</sup> By strategically supporting the positions of numerous countries sharing its views, China evades criticism whilst achieving its own objectives.<sup>113</sup>

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<sup>107</sup> *Id.* at 37.

<sup>108</sup> Sceats & Breslin, *supra* note 1, at 55.

<sup>109</sup> *Id.*

<sup>110</sup> See HUM. RTS. WATCH, *supra* note 7, at 9 (“Within the Human Rights Council, China often advances its positions as part of a group of countries that refer to themselves as the Like-Minded Group (LMG), an amorphous group that has usually included Algeria, Bangladesh, Belarus, Bhutan, China, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Myanmar, Nepal, Pakistan, the Philippines, Russia, Sri Lanka, Sudan, Syria, Venezuela, Vietnam, and Zimbabwe. These countries have demonstrated political solidarity in the Council and have worked together to weaken the universality of human rights standards and resist the Council’s ability to adopt country-specific approaches.”).

<sup>111</sup> *Id.* (“As one diplomat noted, in the Council, Chinese diplomats “don’t take the leadership. They have others to play this game. . . . Other actors are in charge of the dirty work.”).

<sup>112</sup> See Sceats & Breslin, *supra* note 1, at 55 (“China is remarkably judicious about the issues on which it engages and has for the most part cultivated a low profile, forgoing leadership even on its preferred issues including socio-economic rights. This back-seat role almost certainly reflects China’s success in the late 1990s in deflecting discussions with Western states about its human rights record into bilateral fora in which it increasingly holds the upper hand.”).

<sup>113</sup> See HUM. RTS. WATCH, *supra* note 7, at 9.

Another way in which China manages to contemporaneously keep a low profile and strengthen its power within the United Nations is by encouraging the use of bilateral human rights dialogues, or private one-on-one negotiations.<sup>114</sup> The Chinese government rewards countries that agree to resolve human rights issues through the use of bilateral dialogues, instead of by engaging public human rights mechanisms.<sup>115</sup> These dialogues serve as “an insurance policy of sorts” against Council resolutions on human rights concerns in China.<sup>116</sup> Little is known about what goes on during these bilateral dialogues, as they are part of the diplomatic process and are private by design, but they have been described as “notoriously problematic.”<sup>117</sup> More specifically, bilateral dialogues have been repeatedly criticized by several countries and Non-Governmental Organizations (“NGOs”) for being inherently non-transparent and potentially ineffectual, particularly because they have consistently failed to produce tangible results with respect to China’s human rights abuses—<sup>118</sup> which is likely why China prefers them to other U.N. interventions.

Second, China has taken a strategic position as the “champion of developing countries” in an effort to expand its support base within the United Nations.<sup>119</sup> In its role as “champion,” China comes to the defense of certain developing countries—typically members of the Like-Minded Group—and supports their issues of interest.<sup>120</sup> It defends even the worst human rights abusers by arguing against country-specific actions at the Human Rights Council.<sup>121</sup> China’s stance against country-specific actions is likely

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<sup>114</sup> See Sceats & Breslin, *supra* note 1, at 30 (“China had assiduously avoided any demonstration of leadership within the Council, maintaining a low-profile during negotiations and preferring to raise its concerns privately and bilaterally.”).

<sup>115</sup> HUM. RTS. WATCH, *supra* note 7, at 80.

<sup>116</sup> Sceats & Breslin, *supra* note 1, at 18.

<sup>117</sup> *Id.* at 39.

<sup>118</sup> See *id.* (“Because the dialogues are for the most part a diplomatic process (there are often other parts of the programme involving academic and other expert participants), they are non-transparent by nature. This has long been a source of criticism by human rights NGOs. On a more fundamental level, serious questions have been raised both within and outside Western governments about whether the dialogues have delivered any tangible outcomes.”).

<sup>119</sup> HUM. RTS. WATCH, *supra* note 7, at 77.

<sup>120</sup> *Id.* See also *supra* note 110 and accompanying text (listing countries China supports as part of the Like-Minded Group).

<sup>121</sup> HUM. RTS. WATCH, *supra* note 7, at 82 (“China has long argued against country-

the result of its own fear of being singled out for human rights abuses. This strategy is also strategically advantageous for China because it allows the powerhouse nation to garner the support of developing countries and foster an environment of political solidarity, all while undermining the Human Rights Council.<sup>122</sup> Moreover, China works in tandem with other countries from the Like-Minded Group to forestall the passage of initiatives aimed at protecting individual rights, especially those pertaining to political and civil rights.<sup>123</sup>

Third, China often praises “the human rights records of countries that have been supportive of [it]. At the same time, the Chinese government, like other major powers at the United Nations, seeks to exert economic and political pressure on countries to obtain its goals.”<sup>124</sup> China has been known to threaten punitive actions, such as implementing a diplomatic freeze or blocking a country from participating in the Chinese market, to manipulate affairs on the Human Rights Council.<sup>125</sup> This often leads countries, including those from the West, to alter their behavior in ways that better conform to China’s wishes.<sup>126</sup> In addition to wielding its market and political power, China also uses developmental aid to obfuscate U.N. resolutions and sway public opinion in its favor.<sup>127</sup> It has become “a major lender to developing and developed states” alike,<sup>128</sup> and it does so without any strings attached.<sup>129</sup> While seemingly altruistic, China’s “no strings attached” approach is actually cause for concern. Many Western countries use aid packages to encourage international human rights compliance in developing countries.<sup>130</sup> Without the economic pressure of aid

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specific action at the Human Rights Council, even for the worst abusers of human rights.”).

<sup>122</sup> *Id.* at 77.

<sup>123</sup> *Id.* at 77–78.

<sup>124</sup> HUM. RTS. WATCH, *supra* note 7, at 78.

<sup>125</sup> *Id.* at 79.

<sup>126</sup> *See id.* (“China’s threats of punitive action, such as shutting out a country from the Chinese market or subjecting it to a diplomatic freeze—long a staple of China’s international interactions in other spheres—result in some delegations on the Council, even from Western countries, choosing to tone down or dispense with criticism rather than face China’s ire.”).

<sup>127</sup> *Id.*

<sup>128</sup> Sceats & Breslin, *supra* note 1, at 42.

<sup>129</sup> *See id.*

<sup>130</sup> *Id.*

packages, dictators can thwart demands to improve their human rights records.<sup>131</sup> China's no strings attached lending effectually reinforces the idea that there is no real downside to crimes against humanity, so long as you have the powerhouse nation as an ally.

Lastly, when faced with criticism, China often attempts to change the narrative by attacking other countries' human rights records.<sup>132</sup> For instance, after the European Union spoke out about China's mistreatment of Uighur protesters in July of 2009, China responded by labeling the protests "violent crimes organized by separatists" and redirected attention to the European Union's own discriminatory practices perpetrated in the fight against terrorism.<sup>133</sup> This type of behavior is harmful because "the Human Rights Council cannot be an effective inter-governmental body if countries respond to a human rights critique by attacking those raising concerns for also having human rights problems."<sup>134</sup>

Therefore, attempts to use political power to induce Chinese cooperation may actually spur an antithetical result. China has generally maintained a defensive stance within the international human rights system.<sup>135</sup> Over the last decade, it has not been receptive to visits by U.N. human rights personnel like the High Commissioner for Human Rights, preferring to limit its approval to only those visits that would result in positive reviews.<sup>136</sup> It has been particularly resistant to U.N. political mechanisms,<sup>137</sup> most likely

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<sup>131</sup> *See id.* ("For example, a leaked diplomatic cable from the US embassy in Colombo in 2007 exposed a concern that Western donors were being displaced by China and other developing-world donors offering 'aid without conditions': 'As Sri Lanka taps into new sources of assistance, the Tokyo and other Western donors are at risk of losing leverage with the Rajapaksa government, making it harder for us and others to prod the government toward a peaceful solution to Sri Lanka's ethnic conflict, and address such concerns on human rights and corruption.'").

<sup>132</sup> *See id.* at 18 ("China's immediate objective is for its delegates to minimize criticism within the Council . . . the overriding nature of this specific objective is demonstrated by China's departure from its opposition in principle to attacks on the human rights records of other states when it comes to retaliating against those that criticize China.").

<sup>133</sup> *Id.* at 12.

<sup>134</sup> HUM. RTS. WATCH, *supra* note 7, at 80.

<sup>135</sup> Sceats & Breslin, *supra* note 1, at 55.

<sup>136</sup> HUM. RTS. WATCH, *supra* note 7, at 61.

<sup>137</sup> *See id.* at 82–87 (explaining how China has resisted certain political mechanisms, including opposition to country-specific mandates from the Human Rights Council, efforts to avoid human rights resolutions, and manipulation of the U.N. political processes).

due to its desire to retain political control in the global arena and provide social stability domestically.<sup>138</sup> Hence, China has demonstrated firm hostility to U.N. actions that it perceives as being more political in nature.<sup>139</sup>

Part of the reason for China's hostility concerns its own past experiences with the United Nations.<sup>140</sup> Following China's crackdown on a Democratic Movement in June 1989, in what is referred to as the "Tiananmen Square Killings," U.N. delegates applied "rigorous, overt, and sustained multilateral and bilateral pressures."<sup>141</sup> China was then intensely monitored by the United Nations<sup>142</sup> and became the focus of strict sanctions from both financial institutions and other nations.<sup>143</sup> This resulted in China taking a strong stance against U.N. human rights norms, ultimately rejecting them entirely.<sup>144</sup> It deflected international criticism by reasserting its standpoint that state sovereignty precludes U.N. interference, arguing that its sovereign acts do not require justification. State sovereignty has always been a staple of China's disposition towards the United Nations.<sup>145</sup> However,

From [the Tiananmen Square incident] onwards it became a central plank of [China's] general agenda within the U.N. to promote ultra-statist conceptions of sovereignty and the principle of non-interference. Thus, China rejected outright the legitimacy of resolutions on its domestic situation, arguing that they 'constituted interference in China's affairs and an attempt to exert pressure on China' and were 'incompatible with the purposes and principles of the Charter of the United Nations.'<sup>146</sup>

The Chinese government cites its experience in the aftermath of

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<sup>138</sup> Sceats & Breslin, *supra* note 1, at 55.

<sup>139</sup> *See id.* at 19 ("China is particularly hostile to country mandates, which it describes as 'the most politicized aspect of the Council.'").

<sup>140</sup> *See id.* at 3–7 (explaining how China's engagement within international human rights system and how it responded to increased pressure from the UN).

<sup>141</sup> KENT, *supra* note 14, at 15.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 233–34.

<sup>144</sup> *Id.* at 234.

<sup>145</sup> *Id.* at 6 ("Chinese commentators agree that the 'sovereignty-bound' approach to international relations and international law is rooted in the period of China's subjugation to European powers following the Opium War (1839–42) and the unequal treaties it was forced to sign, granting concessions and various other privileges to these powers.").

<sup>146</sup> *Id.*

the Tiananmen Square crackdown as coloring its perception of the international human rights system.<sup>147</sup> Even now, it continues to affect China's standpoint on U.N. interference in domestic affairs.<sup>148</sup> Therefore, this paper advocates for a divergence from the methods historically used to address China's human rights violations to ones not marred by decades of tension and power struggles.

*B. Greater Emphasis on Non-Political Enforcement Mechanisms Like Those of U.N. Treaty Bodies*

According to Ann Kent, author of *China, The United Nations, and Human Rights: The Limits of Compliance*, "the strength of the U.N. human rights regime lies chiefly in its monitoring powers, with its strongest 'enforcement' power being a critical public resolution or reports. 'Exposure' is the main instrument at the United Nations' disposal for the protection of human rights."<sup>149</sup> In fact, the primary tool used to hold states accountable for their compliance with international human rights laws is the treaty bodies' monitoring processes.<sup>150</sup>

Treaty bodies may be better equipped to handle resistance than U.N. political bodies because of their objective nature. That is to say, treaty bodies are isolated from other political processes within the United Nations, which enables them to work effectively even in the face of intense opposition. Although treaty bodies require state cooperation to carry out certain functions,<sup>151</sup> they can still condemn a state's actions irrespective of its acquiescence or position of power.<sup>152</sup> This allows treaty bodies to be bold in a way that U.N. political bodies cannot afford to be when bringing attention to an

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<sup>147</sup> See *id.* ("Today memories of this era in Geneva are still very strong within Chinese foreign-policy circles and continue to influence attitudes towards the international human rights system.").

<sup>148</sup> See *id.* (explaining how this event relates to China's current perspective on U.N. interference).

<sup>149</sup> KENT, *supra* note 14, at 10.

<sup>150</sup> Sceats & Breslin, *supra* note 1, at 36.

<sup>151</sup> See KENT, *supra* note 14, at 13–14.

<sup>152</sup> See Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Fourteenth to Seventeenth Periodic Reports of China (including Hong Kong, China and Macao, China), paras. 40–41, U.N. Doc.CERD/C/CHN/CO/14-17 (Sept. 19, 2018), <https://undocs.org/en/CERD/C/CHN/CO/14-17> [<https://perma.cc/TKH9-8Z7C>] (acknowledging China's denials about mistreatment of Uighur Muslims, but still reporting on the matter and recommending that China make certain policy changes).

issue. Due to the nature of U.N. political bodies as inter-governmental entities dependent on multi-national cooperation, these bodies are heavily influenced by political clout. The ability to bring attention to an issue serves a valuable standard-setting function, whereby standards are set and countries that do not comply are “named and shamed” into changing their behavior. The Chinese government’s avoidance of criticism makes it particularly sensitive to naming and shaming tactics.<sup>153</sup>

Though naming and shaming has not been a viable strategy for addressing China’s human rights abuses in the U.N. political arenas, it may be more effective when employed by treaty bodies for the following reasons. It is no secret that China is heavily invested in controlling its public image, both globally and domestically. As discussed above, China typically reacts to public admonishment in one of the four following ways: (1) deflection (*i.e.*, pointing to the accusing nation’s own human rights abuses); (2) manipulation (*i.e.*, using its political might to influence the actions and opinions of other countries); (3) changing the narrative to paint itself in a favorable light (*i.e.*, drumming up support for its actions among the Like-Minded nations); or (4) claiming state sovereignty (*i.e.*, refusing to justify its actions on the grounds that it does not have to answer to anyone). While China will always be able to claim state sovereignty regardless of which entity is criticizing it, three of the four tactics are only useful insofar as other nations are involved and China is able to wield its political power to influence the outcome. This means that the majority of China’s go-to tactics are only useful in U.N. political arenas, making them completely ineffectual when the source of the criticism is not another nation but is, in fact, a treaty body. Therefore, placing greater reliance on treaty bodies may prove fruitful in nudging China towards reforming its actions in Xinjiang and increasing its compliance with human rights laws.

Moreover, China’s past experiences with treaty bodies indicates that these bodies may be a better alternative to U.N. political body enforcement mechanisms. China has routinely demonstrated hostility to initiatives proposed by U.N. political bodies, but its

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<sup>153</sup> See Sceats & Breslin, *supra* note 1, at 5–6 (“When, in the aftermath of the Tiananmen Square killings, it became clear that China might be the subject of formal censure by the Sub-Commission, the government’s opposition to ‘naming and shaming’ approaches crystallized.”).

resistance to treaty body actions has been less pronounced.<sup>154</sup> That is not to say that U.N. treaty bodies do not experience difficulties dealing with China. To the contrary, China has pushed back against U.N. treaty bodies much like it has other U.N. bodies. However, China's reaction to treaty bodies' inquiries has varied considerably based on how threatening it perceived an issue to be.<sup>155</sup> In select cases, "China has been described as taking its reviews before the committees seriously and engaging earnestly without significant problems, while in other cases the Chinese delegation's actions have been described as marred by bullying, harassment, and interference."<sup>156</sup> China's need to minimize criticism and maximize positive public opinion appear to be the reasons behind its antagonistic behavior.<sup>157</sup> China's preoccupation with public opinion means that it is naturally less inclined to cooperate with treaty bodies on some sensitive issues for fear of being perceived negatively,<sup>158</sup> while also feeling the need to improve public perception by thoroughly preparing for its reviews and fully participating in the monitoring process on less sensitive issues.<sup>159</sup> Notwithstanding this level of resistance, U.N. treaty bodies have continued to uphold their "standards and their rigor."<sup>160</sup> Overall, although China has had mixed responses to treaty bodies, its cooperation in certain situations shows a greater likelihood of compliance than has been the case with traditional U.N. political mechanisms which have consistently failed.

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<sup>154</sup> *See id.* at 35 ("China's compliance record with the treaties to which it is party is generally satisfactory in procedural terms. It submits its periodic reports, though—as is the case for many other states—they are sometimes very late, and fields large, well-prepared delegations to participate in examinations.").

<sup>155</sup> *See* HUM. RTS. WATCH, *supra* note 7, at 9 ("[China] appears to allow visits primarily by independent experts on topics that it sees as nonthreatening.").

<sup>156</sup> *Id.*

<sup>157</sup> *See id.* at 43 ("Incidents of harassment or manipulation appear driven by China's desire to deter criticism. As one U.N. expert observed, 'First and foremost, I think it's fair to say that China regards it as important to look good—to get a good report from a number of United Nations committees.'").

<sup>158</sup> Sceats & Breslin, *supra* note 1, at 35.

<sup>159</sup> HUM. RTS. WATCH, *supra* note 7, at 43 ("China is often described as preparing for and participating in its reviews in a serious, thorough manner.").

<sup>160</sup> KENT, *supra* note 14, at 250 ("Since 1997, the U.N. Human Rights Commission and Sub-Commission have become less effective in dealing with China. However, even at this difficult time, the U.N. treaty bodies, thematic special rapporteurs and working groups, and specialized agencies have continued to maintain their standards and their rigor.").

*C. Strengthening the Role of Treaty Bodies Within the United Nations*

There are several ways to strengthen the role of treaty bodies within the United Nations. Emphasizing the importance of the treaty bodies' standard-setting abilities could increase available funding for treaty body initiatives. Treaty bodies play a critical role in motivating countries to comply with human rights laws<sup>161</sup> and, unlike the enforcement mechanisms of political bodies, they are unbiased and impervious to manipulation. When U.N. political bodies are at a standstill, treaty bodies can fill the gap by issuing public condemnation, making them a vital part of the human rights enforcement machinery. As such, their processes should be accorded more weight and should not be constrained by limited funding.

With extra resources, treaty bodies can conduct their work more effectively, extending their reach to include a wider range of issues. A raise in funding would mean additional independent experts, ultimately leading to increased attentiveness to state monitoring, inquiries, reports, general comments, and reviews of individual complaints. It would also enable treaty bodies to issue detailed special reports for egregious human rights violations, bringing attention to situations that are too grave to overlook. In turn, serious human rights violations would be given additional exposure—even if they are not attended to in the United Nations' political arenas—which would reinforce the United Nations' shaming powers. Special reports also legitimize individual states' initiatives to address another state's misconduct. In cases where a human rights violator's political authority commands a larger group of supporters than those condemning its human rights violations (*e.g.*, China mobilizing a group of 37 countries to defend its human rights violations in Xinjiang), a special report would strengthen the impact of initiatives undertaken by states independently (*e.g.*, the United States' restrictions on Chinese officials and blacklist of Chinese companies).

An inherent limitation of treaty bodies is that they rely heavily on state cooperation to carry out some of their more important functions,<sup>162</sup> like state periodic reviews and reviews of individual

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<sup>161</sup> See Sceats & Breslin, *supra* note 1, at 18.

<sup>162</sup> See KENT, *supra* note 14, at 14 (“[T]reaty and thematic bodies . . . depend to a

complaints. Minimizing this limitation would go a long way towards strengthening the role of treaty bodies within the United Nations. To that end, treaty bodies should conduct periodic reviews and hear individual complaints independent of a state's actions. Even when a state fails to produce a report for its periodic review, NGOs should still present information on its human rights conditions and the committee should assess its human rights compliance. Reviews of individual complaints should be treated similarly. Not only would this bolster the work that treaty bodies have already done, but it would give credence to future recommendations by reinforcing the idea that states cannot avoid compliance with human rights obligations. Injustices do not stop existing just because a state evades its duties, and it is important for the United Nations to underscore that message.<sup>163</sup>

#### *D. Potential Counter Arguments*

One potential counter argument to this proposed solution is that treaty bodies cannot actually compel states to fulfill their international human rights obligations, making them potentially less effective in garnering state compliance than entities with stronger enforcement mechanisms like sanctions or embargos. Although treaty bodies cannot levy strong enforcement mechanisms in the traditional sense, their standard-setting and shaming abilities are powerful compliance motivators. Notwithstanding their non-coercive nature, treaty bodies can apply intense pressure on states to conform with international human rights norms.<sup>164</sup> In China's case,

[T]he most significant effect of the U.N. regime has not derived from its supervision of the implementation of China's domestic human rights obligations, since U.N. monitoring on Chinese soil has required a Chinese consent that, with respect to the case studies, has been withheld. Rather, it has been located in the standard setting and promotional aspects of the U.N. regime at the international level.<sup>165</sup>

In addition, China's aversion to criticism likely means that it

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large extent on the continuing cooperation of the state involved.”).

<sup>163</sup> See HUM. RTS. WATCH, *supra* note 7, at 92–94 (discussing a list of possible recommendations the United Nations could utilize).

<sup>164</sup> KENT, *supra* note 14, at 10–11.

<sup>165</sup> *Id.* at 247.

becomes more hostile to stronger displays of public condemnation, thereby making it less amenable to modifying its behavior. China has yet to modify its behavior in Xinjiang in response to U.S. restrictions.

One can also argue that a treaty body's efficacy is limited by its reliance on state consent. It is true that states can dampen the impact of the treaty body system by withholding their approval.<sup>166</sup> However, his paper argues that state non-compliance can be overcome, in certain cases, if treaty bodies are given the ability to perform more functions with or without a state's cooperation.<sup>167</sup> For instance, treaty bodies should be able to conduct periodic reviews even if a state decides not to participate in the process. However, because it is not possible for treaty bodies to accomplish all of their responsibilities without state approval, this limitation cannot be dismissed entirely.

#### IV. Conclusion

The gravity of the Uighur crisis in Xinjiang necessitates U.N. intervention. However, China's position as a powerful player in the United Nations and the global arena generally makes international intervention a difficult feat. This paper recommends a solution for the Chinese Uighur crisis that may also prove effective beyond this specific controversy. China's propensity to manipulate U.N. processes using its political power means that the United Nations must look outside of its political bodies for a resolution. This paper argues that, by strengthening the role of treaty bodies, the United Nations may have a better chance of encouraging powerful states like China to comply with human rights obligations.

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<sup>166</sup> See Sceats & Breslin, *supra* note 1, at 36 ("To date, China has refused to allow application to China of any of the treaty bodies' stronger enforcement tools. Most importantly, it has not accepted any of the individual complaints or dispute resolution mechanisms provided for in the treaties."); *see also* HUM. RTS. WATCH, *supra* note 7, at 54 ("China often fails to respond to treaty body requests for information and also withholds relevant information from civil society groups, citing unsubstantiated state secrets concerns . . . . These objections prevented them from fully assessing Chinese compliance with the relevant conventions and hindered their ability make a full range of recommendations.").

<sup>167</sup> *See supra* note 163 and accompanying text.

