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Human Rights & Islam in North-Western China: The Effects of Minority & Religious Policy in the Xinjiang Uyghur Autonomous Region

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Declaration

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Abstract of Thesis

Human Rights & Islam in North-Western China: The Effects of Minority & Religious Policy in the Xinjiang Uyghur Autonomous Region

Submitted by

Ross Holder

For the Degree of Doctor in Philosophy

Trinity College Dublin

2015

The Uyghur, one of China's 55 officially recognised minority nationalities, bear a distinct ethno-religious identity that demarcates them from China's majority nationality, the Han. The Uyghurs' unique identity as a minority has resulted in the promulgation of laws and regulations in their homeland of Xinjiang that ostensibly seeks to integrate the Uyghurs into contemporary Chinese society.

Since long prior to the establishment of the People's Republic of China in 1949, the underlying cultural differences between the Uyghur and the Han have contributed to a perception of otherness, resulting in a source of ethnic tension. More recently, Xinjiang has experienced heightened restiveness, with claims by Uyghurs of increased government repression, and assertions by the Chinese Communist Party of the growing threat of religious extremism. As a result of the increasingly volatile nature of Uyghur-Han interrelations within Xinjiang and beyond, the government has brought into force a series of policies, at both the national and municipal level, with the overt aim of combatting religious extremism. However, many Uyghur activists, human rights organisations and scholars argue that such policies are discriminatory in nature, serving as a covert vehicle for cultural assimilation.

As one of the charter members of the United Nations, China has had an instrumental role in the emergence of the universal values and principles that are promoted by the United Nations. China is now party to several of the UN core treaties; formally binding its obligations to promote the rights and duties contained within.

Through an analysis of state and municipal law and policy, this research study seeks to explore the underlying causations for the existence of Uyghur unrest. This thesis will also examine the compatibility of such policies and legislation within the context of international human rights law; providing a lens with which to determine the efficacy of such policies within the framework of the various protections contained within the United Nations treaties that China is now party to.

In doing so, this study seeks to provide an understanding as to whether such laws and policies affecting the Uyghur fall under tension with the very international human rights norms that China has helped create.

Acknowledgements

First and foremost I would like to express my deepest gratitude to my doctoral supervisor and mentor, Dr Roja Fazaeli, whose expertise, patience and understanding made it possible for me to complete this fascinating research study. It was Roja's steadfast enthusiasm and encouragement that has guided me at every stage throughout this process, for which I am eternally grateful.

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I would also like to thank Dr Lorna Carson for inviting me to witness the development of the Trinity Centre for Asian Studies. Her support of my future studies is greatly appreciated, and I wish her every success with the Centre's incredibly exciting future.

Lastly, I am incredibly thankful to my family and friends for their constant encouragement. For my parents whose tireless support made it possible for me to reach this point. For my brother who has always looked out for me. And for Niamh whose support during the most difficult stages of this Ph.D. is so appreciated. Thank you.

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List of Abbreviations

AQIM	Al-Qaeda in the Islamic Maghreb
CASS	Chinese Academy of Social Sciences
CCP	Chinese Communist Party
CAT	Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCPR	International Covenant on Civil and Political Rights
CCPR-OP1	International Covenant on Civil and Political Rights – First Optional Protocol
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CEDAWComm	Committee on Convention on the Elimination of all Forms of Discrimination Against Women
CEDAW-OP	Convention on the Elimination of all Forms of Discrimination Against Women – Optional Protocol
CIA	China Islamic Association
CPPCC	Chinese People's Political Consultative Conference
CRC	Convention on the Rights of the Child
CRCComm	Committee on the Convention on the Rights of the Child
ECOSOC	Economic and Social Council
ETIM	East Turkestan Islamic Movement
GA	United Nations General Assembly
GLF	Great Leap Forward
HRComm	Human Rights Committee (CCPR)
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICERDComm	Committee on the International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights

ICESCRComm	Committee on the International Covenant on Economic, Social and Cultural Rights
ICESCR-OP	International Covenant on Economic, Social and Cultural Rights – Optional Protocol
KMT	Kuomintang Political Party
LMDC	Like Minded Group of Developing Countries
MOE	Ministry of Education
MONDIACULT	The World Conference on Cultural Policies, Mexico City
NGO	Non-Governmental Organisation
NPC	National People's Congress
NPC-SC	National People's Congress Standing Committee
PLA	People's Liberation Army
PRC	People's Republic of China
PSC	Politburo Standing Committee
RFA	Radio Free Asia
RNAL	Regional National Autonomy Law
ROC	Republic of China
SC	Security Council
SEZ	Special Economic Zone
SP	Special Procedures
SPC	Supreme People's Court
TEL	Terrorist Exclusion List
TIP	Turkestan Islamic Party
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHRC	United Nations Human Rights Council
UNPKO	United Nations Peacekeeping Operations

UDHR	Universal Declaration of Human Rights
UPR	Universal Periodic Review
USDOS	United States Department of State
VCLT	Vienna Convention on the Law of Treaties
WG	Working Group
WUC	World Uyghur Congress
XPCC	Xinjiang Production and Construction Corps
XUAR	Xinjiang Uyghur Autonomous Region
XUARPC-SC	Xinjiang Uyghur Autonomous Regional People's Congress Standing Committee
XUAR-RRA	Xinjiang Uyghur Autonomous Regions Regulations of Religious Affairs

A Note on Transliteration

Transliteration is often an issue in studies relating to the Uyghur, owing to the complex intersection of Uyghur and Chinese orthographies that together influence the Uyghur language as it is written today.

Regarding the Chinese language in particular; historically, much Western scholarly research on China has employed the use of the Wade-Giles system of Romanisation. However this has largely been succeeded by the Pinyin system of Romanisation that was first developed by the CCP. As a result, this thesis primarily incorporates Pinyin to describe Chinese names and locations. Quoted references to source texts that precede the standardisation of Pinyin will remain in the Wade-Giles format as they were originally written.

The Uyghur language differs from Chinese owing to its Turkic roots. The written form of Uyghur is predominantly done through Arabic script, although attempts by the state to reform its written language in both Cyrillic and Latin scripts within the last century have complicated matters considerably. For the purposes of consistency and ease of comparison with existing scholarly research, this thesis principally employs the use of Pinyin translations when using Uyghur names or locations within Xinjiang. This is true of the use of the officially adopted term Uyghur, rather than using "Uighur" or "Uygur" as are also used by some Western scholars and national institutions. The exception to this rule is in the spelling of the Xinjiang city of Ürümqi in preference of "Urumqi" or "Urumchi"; its spelling combines both Turkic and Pinyin, and is chosen in order to illustrate its city's historical importance to the region prior to the invention of the Pinyin system.

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Introduction

Many of the ideals enshrined within the human rights instruments of the United Nations (UN) remain stubbornly aspirational in practice. However, by ratifying the UN's human rights instruments, member states are not only explicitly recognising the rights therein, but are contractually obliged to facilitate their realisation. Despite the substantive progress made following the establishment of the UN, the issues that complicate the process of rights adoption remain numerous and complex. The intersection of international human rights norms with national or customary law is not only curtailed by the state's own abilities, but by the highly divergent cultures and societies that together constitute a member state's national identity. The existence of the multi-cultural state represents many of these challenges, raising issues concerning the compatibility of a monocultural national identity with a multicultural society as a result. The tensions that emerge as a result of these seemingly competing social constructs can often be seen within the relationship that exists between the majority and the minority populations of a nation state.

This thesis focuses on the existence of these issues within the context of one member state, China. It seeks to analyse how these tensions manifest and persist within Chinese society, and how international human rights law can provide a framework to help resolve many of the issues faced by China with respect to one of its most populous minorities, the Uyghur.

General Issues

Central Thesis Problem

The central problem that this thesis seeks to address is the issue concerning the role that law and policy plays in the continuing existence of Uyghur unrest. This thesis

seeks to provide a novel contribution to existing scholarly research on the Uyghur by addressing this problem through the comparative analysis of state law and policy with international human rights norms and protections. By exploring the efficacy of state law and policy within the context of international human rights law, this thesis will provide a unique insight into the underlying causalities of Uyghur unrest, and the issues that emerge as a result. Consequently, this thesis seeks to illustrate some of the grievances that have resulted in Uyghur-Han ethnic tensions, and to explore assertions that state law and policy is discriminatory towards the Uyghur in both its nature and application.

Thesis Questions

In order to address the central research problem there are a number of questions that will be addressed throughout this thesis, which are delineated as follows:

1. What is the socio-historic context for Uyghur unrest as it exists today?
2. What is the role of state law and policy in addressing the existence of this unrest?
3. How has the state integrated the Uyghur into wider Chinese society?
4. How has Xinjiang's autonomous status affected the Uyghur through the implementation of municipal law and policy?
5. How has the global war on terror impacted the Uyghur, and how has it influenced the state's views on religious freedom?
6. Is Uyghur separatism treated differently to religious extremism by the state in its policy and law?

Thesis Significance

This significance of this thesis can be demonstrated from the perspectives of the PRC policy makers, the Uyghur minority, human rights advocates, and knowledge about the intersection of law and policy and human rights within the context of Uyghur studies.

For policy makers within the PRC, this thesis seeks to provide an analysis of the compatibility of specific laws and policies – both at the national and municipal level – with the international human rights instruments that the PRC is party to. It is the intention of this research to provide valuable insights into the efficacy of such policies in light of the PRC's rights and duties as defined by its participation within the machinations of the UN. In doing so, this thesis also hopes to illustrate some of the underlying causalities of Uyghur unrest that emerge directly as a result of the laws and policies detailed within this thesis. It is the hope that this study will illustrate the incompatibilities that exist between state law and international human rights norms, and how those incompatibilities often result in the persecution and discrimination of those affected, culminating in the existence of Uyghur unrest.

To the Uyghur minority, and in particular its advocacy groups beyond China's borders, this research may provide further encouragement to address issues of discrimination or persecution through the legal framework of the UN. While Uyghur activist groups have actively contributed their efforts to the UN treaty implementation mechanisms in the past, this research may provide additional scope for further redress in its analysis of the applicability of the various protections contained within the UN treaties with respect to the Uyghurs' status as a cultural and religious minority.

For human rights advocates more generally, this thesis may provide key insights regarding the historical context of Uyghur unrest, and the role that state law and policy plays in its continuance. By comparing China's law and policy with the international human rights norms that it is party to, this research will provide advocates with an additional resource with which to raise awareness concerning the existence discriminatory policies and practices that the Uyghur are subjected to.

To conclude, this thesis is significant for expanding upon the pre-existing research on the Uyghur minority by framing China's laws and policies within the context of an

international human rights discourse. As a result, this research poses to explore the effects that law and policy has on the Uyghur minority, using international human rights law as a comparative means to determine the efficacy and validity of such policy and legislature in the process. In doing so, this thesis will provide a novel contribution to existing scholarly research on the Uyghur.

Basic Features of the thesis

Thesis Methodology

This thesis primarily incorporates a qualitative research methodology in order to determine the compatibility of China's national and municipal law with respect to relevant provisions contained within the UN core treaties.

Owing to the historical nature of Uyghur unrest, an in-depth understanding of the historical context behind the causes of Uyghur dissent and the state's relationship with minorities is vital. By incorporating a holistic approach to the research that supplements the central thrust of this thesis, it seeks to provide a deeper understanding of the potential causes and motivations for the existence of an anti-state sentiment among some Uyghurs, and also of the underlying state ideologies that heavily influence minority policy and law. Similarly, a fair appraisal of the contemporary Chinese jurisprudence requires a qualitative analysis of the changing character of Chinese law in order to better discern how the Chinese legal system has evolved over the preceding century.

As the unique character of the contemporary Chinese legal system requires an understanding of the dichotomy that frequently features in Chinese law as it is written, and in how it is implemented; it is necessary not only to analyse Chinese jurisprudence with respect to minorities, but to draw comparisons between policy and praxis. This thesis also applies a comparative approach in its document analysis of state law and

the protections defined within the international human rights instruments. It is this analysis that is used to support the findings of the thesis in circumstances where discrimination and other factors contributing to Uyghur unrest come as a result of the implementation of the Chinese legal system.

Engaging in comparative analysis of law and its implementation is beneficial for the purposes of this study in that it avoids some of the limitations that are otherwise inherent in a purely "black letter" legal analysis of state law, particularly with respect to determining the laws' efficacy in its implementation. Such analysis is important in order to achieve a more nuanced understanding of the sources of Uyghur unrest within China's existing national and municipal legal framework. It is also necessary in order to appraise the inconsistencies that are apparent between statements made by China within the various UN treaty implementation mechanisms in support of its treatment of minorities such as the Uyghur, and frequent reports by Uyghur activists, NGOs, foreign governments and scholars concerning the active and prosecutorial discrimination of the Uyghur minority by the Chinese state authorities.

Thesis Outline

The first chapter of this section provides a succinct overview of the recent history of Xinjiang, where the majority of the Uyghur population are situated. It also demonstrates the fundamental role that religion has played in both shaping the Uyghurs' identity as a minority, and how they have been perceived within the context of China as a whole. The second chapter concludes the context setting by providing an outline of China's recent legal history, charting the evolution of Chinese law and its philosophical underpinnings. The third chapter is devoted to Chinese law and policy with respect to the Uyghur specifically; it serves to demonstrate the importance of analysing both policy and practice when determining the effects of the Chinese legal system on the country's minorities. The fourth chapter details China's engagement with the United

Nations, particularly with respect to its human rights organs and treaty implementation mechanisms. The fifth chapter analyses several of the United Nations core treaties with respect to rights that are specifically relevant to the Uyghur minority, while engaging in a comparative analysis of those protections with many of the laws and policies discussed within chapter three. This thesis then concludes by providing some final remarks concerning the findings of the thesis, and suggests some potential areas for further research.

Other Issues That Have an Impact on the Thesis

The primary issue which has impacted this thesis is the politically sensitive nature of its subject matter. Xinjiang currently remains a difficult region to engage in scholarly research, with many thematic areas considered to be politically sensitive by the Chinese government. Evidence of this can be seen from the recent arrest and life sentencing of scholar Ilham Tohti by state authorities in 2014[1], the state issuance of travel bans to international scholars engaged in research related to Xinjiang[2], and an instance of vitriolic commentary by Chinese state media during an international academic conference directed towards the author of this thesis. The consequences of this is a relative chilling effect on any scholarly research on the Uyghur that may be perceived as politically sensitive; particularly when such studies may require an ethnographic approach that necessitates field research, or data collection that involves direct informant engagement. Owing to the legal nature of this research study, it has avoided the above issues due to its emphasis on state law and policy, and in its

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[1] Human Rights Watch, 2014. China: Xinjiang Verdict Upholds Unjust Life Sentence. Human Rights Watch. Available at: https://www.hrw.org/news/2014/11/21/china-xinjiang-verdict-upholds-unjust-life-sentence.

[2] The group of scholars that have faced travel restrictions are commonly referred to as the "Xinjiang 13". For further reading, see: Vise, D. de, 2011. U.S. scholars say their book on China led to travel ban. Washington Post. Available at: http://www.washingtonpost.com/local/education/us-scholars-say-their-book-on-china-led-to-travel-ban/2011/08/17/gIQAN3C9SJ_story.html.

comparative analysis of international human rights laws through extensive document analysis of UN literature and publicly available Chinese legislation.

However, there remains a key issue with respect to any legal study on sensitive aspects of Chinese law and policy which is the often opaque nature of the Chinese legal system. In particular, many of the documents referenced within this thesis are considered as state secrets by the Chinese government, and as a result were solely intended for internal use. In order to conduct this study in a sufficient manner, it has been necessary to examine leaked instances of such documents that have made available by international human rights NGOs.

Additionally, the relative paucity of relevant state publications necessary for any legal study of this kind requires a holistic approach that looks beyond publicly available documentation and towards policy implementation. The manner in which implementation is analysed is frequently through media reports by both state and international sources, along with reports issued by wide range of key actors including the PRC, UN, foreign government organisations, and NGOs. This is of particular relevance with regards to the events covered within chapter three; where by some of the incidents discussed have taken place in the weeks prior to the submission of this thesis. Owing to the timing of the subject matter covered and the resulting absence of available scholarly resources and government documentation has necessitated the use of media sources. While it is readily apparent that such sources are subject to particular biases, efforts have been made to provide as broad a collection as possible of both national and international sources from a diverse range of actors.

Chapter 1: The History and Religion of Xinjiang

1.1 Chapter Introduction

In order to understand the context behind the state's current policies towards the Uyghur, it is first necessary to appreciate the role that religion has had in defining the Uyghurs' identity as a minority, and also in shaping their relationship with the state. Similarly, any study on the implementation of law and policy in Xinjiang must first consider the region's historical context. Xinjiang's contentious history over the preceding century forms the basis behind the region's current autonomous status within China, while also serving to fuel nationalist sentiments and a desire for independence among a small, but persistent, minority of Uyghurs.

While it is beyond the scope of this thesis to provide a detailed study on the existence of Islam in China, the enmeshment of religiosity with the Uyghurs' identity as a minority necessitates an understanding of the role of religion, and Islam in particular, within Uyghur culture and Chinese society. As such, this chapter will provide a succinct overview of Uyghur religiosity; illustrating the emergence of Islam in China and amongst the Uyghur specifically, the influence of Sufism on the Uyghurs' cultural and religious practices, and the uniqueness of Uyghur religiosity.

This chapter will also provide a brief outline of Xinjiang's recent history, charting key points of China's dynastic period, the short-lived Republic of China (ROC), and China's current existence as the People's Republic of China (PRC) following its establishment by the Chinese Communist Party (CCP) in 1949. Given that the focus of this paper is on the intersection of Chinese law and policy with international human rights law, some selectivity will be required in documenting Xinjiang's history. Consequently, this chapter will centre on a number of defining events that occurred during several distinct periods of region's recent history, with the intention that it will serve to provide a context

necessary to appreciate the historical basis for the existence of Uyghur dissent, and will also illustrate that the currently fraught relationship that exists between the Uyghur and the PRC is not unique in China's recent history.

1.2 The Origins of Islam in China

The specific point at which Islam first entered China remains contested among scholars. While the majority suggest that Islam first took root following the establishment of the Tang Dynasty (618-907 AD)[3], many differ as to the manner in which Islam may have spread within China, and indeed Xinjiang. Gladney and Millward suggest that the origins of Islam in China may be from China's south-east[4]. Gladney supports this claim with reference to the archaeological discovery of Islamic artefacts on China's south-eastern coast, suggesting that China's earliest Muslim communities may have initially formed as a result of Muslim merchants and traders entering China by sea[5]. Others instead emphasise the silk route in China's north-west as an entry point for Islamic belief[6], and accord its emergence in China to the fable that Sa'd ibn Abī Waqqās, one of the first converts to Islam[7], may have taken this route in 651 AD order to invite the Emperor of China to embrace Islam[8].

Perhaps the most substantive point at which Islam can be seen to have existed within China can be traced back to the latter half of the Tang Dynasty. Broomhall, a Christian

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[3] Israeli, R., 2002. *Islam in China: Religion, Ethnicity, Culture, and Politics*, Lexington Books, p. 7; Frankel, J.D., 2009. Benevolence for Obedience: and Policies on Muslims in Late Imperial and Modern China. *ASIANetwork*, 16(2), p. 26.
[4] Dillon, M., 2013. *China's Muslim Hui Community: Migration, Settlement and Sects*, Taylor & Francis, pp. 11-12.
[5] Gladney, D.C., 2009. Islam in china: state policing and identity politics. In: Ashiwa, Y. & Wank, D.L., 2009. *Making religion, making the state: the politics of religion in modern China*, Stanford, CA: Stanford University Press, p. 153.
[6] Jones-Leaning, M. & Pratt, D., 2012. Islam in China: From silk road to separatism. *Muslim World*, 102(2), p. 308.
[7] Sa'd ibn Abī Waqqās is considered to have been a close companion of the prophet Muhammad, and was the 17th person to have converted to Islam.
[8] Jones-Leaning, M. & Pratt, D., 2012. op.cit., p. 308; Kerr, D., 2014. *China's Many Dreams: Comparative Perspectives on China's Search for National Rejuvenation*, Palgrave Macmillan, pp. 120-121.

missionary, charts the existence of naturalised Chinese Muslims some time later to 755 AD when a rebellion broke out in north-western China led by an army of Turks and Tartars under the control of their leader, An Lushan[9]. The success of the rebellion necessitated the Emperor's alleged appeal to Arabs for assistance in reclaiming the region. The appeal was met in 757 AD with reports that 4,000 Arab soldiers were sent to assist the emperor in reclaiming China's north-western border. The Arab troops were later said to have remained in China, intermarrying with the indigenous Chinese population[10], and perhaps giving rise to the existence of Chinese Muslims[11]. It is also worth noting however, that these events are also contested by some scholars, with Broomhall himself unsure of the numbers veracity[12], and Israeli questioning the credibility of the above historical account in his association of it with Chinese Muslim mythology[13]. None the less, the relationship between Muslims and the Tang dynasty is broadly considered to have been amicable in nature. On reference to the official Tang records, Broomhall noted a fascinating account of the prohibition of the slaughter of cattle on the agricultural grounds by Tang emperor Yung Chen in 1731. In response, the Muslims protested that with their existing dietary requirements, being unable to eat cattle would "subject them to unwarrantable restriction of diet"[14]. Consequently, the Emperor issued an edict stating:

> In every province of the empire, for many centuries past, have been found a large number of Mohammedans who form part of the people whom I regard as my own children just as I do my other subjects. I make no distinction between them and those who do not belong to their religion. I have received from certain officials secret complaints against the Mohammedans on the ground that their religion differs from that of the other Chinese; that they do not speak the same

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[9] Broomhall, M., 1910. *Islam in China: A Neglected Problem*, Morgan & Scott, Limited, pp. 25-26.
[10] Arnold, T.W., 1913. The Preaching of Islam: A history of the propagation of the Muslim faith, p. 223.
[11] Broomhall, M., 1910. loc.cit, pp. 25-26.
[12] Ibid.
[13] Israeli, R., 2002, op.cit., pp. 80-84.
[14] Broomhall, M., 1910. loc.cit, pp. 148-149.

> language, and that they wear a different dress to the rest of the people. They are accused of disobedience, haughtiness, and rebellious feelings, and I have been asked to employ severe measures against them.
>
> After examining these complaints and accusations, I have discovered that there is no foundation for them. In fact, the religion followed by the Mussulmans is that of their ancestors; it is true that their religion is not the same as that of the rest of the Chinese, but what a multitude of different dialects there are in China. As to their temples, dress, and manner of writing, which differ from those other Chinese, these are matters of absolutely no importance. These are matters of custom. They bear as good a character as my other subjects, and there is nothing to show that they intend to rebel.[15]

As will be demonstrated in chapter three, Yung Chen's edict demonstrates a level of accommodation towards Islamic cultural practices that contrasts starkly with the PRC's relationship with China's Muslims as it exists today. However, that is not to say that the level of accommodation towards cultural plurality that existed during the Tang dynasty was altruistic in nature. As the edict subsequently demonstrates, the Tang's pragmatic accommodation towards China's Muslims was predicated on their subservience to Tang rule:

> It is my wish, therefore, that they should be left in the free exercise of their religion, whose object is to teach men the observance of a moral life, and the fulfilment of social and civil duties. The religion respects the fundamental basis of Government, and what more can be asked for? If the Mohammedans will continue to conduct themselves as good and loyal subjects, my favour will be extended towards them just as much as towards my other children. From among them have come many civil and military officers, who have risen to the very highest ranks. This is the best proof that they have adopted our habits and customs, and have learned to conform themselves to the precepts of our sacred books. They pass their examinations in

[15] Broomhall, M., 1910. op.cit., pp. 149-150.

> literature just like everyone else, and perform the sacrifices enjoined by law. In a word, they are true members of the great Chinese family, and endeavour always to fulfil their religious, civil, and political duties. When the magistrates have a civil case brought before them, they should not concern themselves with the religion of the litigants. There is but one single law for all my subjects. Those who do good shall be rewarded, and those who do evil shall be punished.[16]

Another significant period in Chinese history during which Muslims significantly featured was during the Yuan Dynasty (1271-1368 AD). The Yuan Dynasty is considered one of the two Dynasties in China's history where by the ruling elite were considered foreign, or non-Han[17]. In this case, it was the Mongols, under the lead of Emperor Kublai Khan who conquered China and asserted complete dominance for almost a century through a campaign of violence[18]. While the Mongols of the Yuan Dynasty had not converted to Islam unlike their Western counterparts, they implemented a four-tiered class based hierarchical system of governance in China that was enumerated on the basis of ethnicity. The elite class were the Mongols themselves, the second class of citizens were what Jones-Leaning & Pratt describe as "unsinicised aliens", or rather certain non-Han minorities[19]. With the lower two tiers applied to predominantly Northern and Southern Han Chinese. This is significant in that it placed many of China's Muslim minorities above Han Chinese and as second only to the Mongols in terms of social status. Many of these Muslims had arrived during this period as travelling merchants, and as a result were well positioned to engage in administrative and trade roles within the Yuan's system of governance[20]. The preferred status of Muslims by the Yuan is further evidenced by reports of the assignment of

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[16] Broomhall, M., 1910. op.cit., pp. 149-150.
[17] The other was China's last Dynasty, the Qing. For further reading on the Qing dynasty, see *infra* section: 1.4 Political Islam in Xinjiang during the Qing Dynasty, 1644-1911
[18] Rossabi, M., 1988. *Khubilai Khan: His Life and Times*, University of California Press.
[19] Jones-Leaning, M. & Pratt, D., 2012. op.cit., p. 312.
[20] Israeli provides an example of this, noting that the Yuan Mongol's awarded a Muslim named Seyyid Edjel the role of the first governor of Yuan. See: Israeli, R., 2002, op.cit., p. 89.

Arabic names to Chinese places[21], awarding many Uyghurs the title of *bitikchi* or ministerial scribe[22], the familiarity of the Uyghur script within Egypt owing to Uyghur delegations trading on the Yuan's behalf[23], and the arrival of several thousand Muslims from Central Asia who eventually settled in China throughout this period[24].

Subsequent to the Mongols eventual expulsion from China was the establishment of the Ming Dynasty (1368-1644). While the arrival of Muslims from outside of China decreased dramatically during this period owing to the Ming's focus on domestic issues rather than territorial expansionism, the Muslims that had already settled in China were reported to have been held in a similarly high regard by the Ming as they were by the Yuan[25], with Arnold noting the large number of Mosques that were erected over this period[26].

1.3 The Religiosity of the Uyghurs in Xinjiang

Concerning the Islamic conversion of the Uyghurs in Xinjiang specifically, Dillon, who bases his view on the existence of copies of the Quran translated into the eastern Turkic language used by ethnic groups including the Uyghur, posits that Islam may have had a foothold among Uyghurs following the conversion of the leader of the Kara-Khanid Turkic tribes in 960 AD[27]. This is also supported by Millward, who accords

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[21] Israeli, R., 2002, op.cit., p. 60.
[22] Ostrowski, D., 2002. *Muscovy and the Mongols: Cross-Cultural Influences on the Steppe Frontier, 1304-1589*, Cambridge University Press, p. 45.
[23] This came largely as a result of the extensive trade links that were developed between the Near East and the Yuan Dynasty, of which Uyghur bitikchi's held a central role. See: Schacht, J. & Bosworth, C.E., 1979. *The Legacy of Islam*, Oxford University Press, p. 128.
[24] Armijo, J., 2003. Statement by the Acting Assistant Professor, Religious Studies, Stanford University Dr. Jacqueline Armijo to the Congressional-Executive Commission on China. Available at: http://www.cecc.gov/events/hearings/will-religion-flourish-under-chinas-new-leadership, p. 1.
[25] Poston, D.L., 2011. The Social Demography of China's Muslims. *Modern China Studies*, 18(1), pp. 22-23.
[26] Arnold, T., 1913, op.cit., p. 225.
[27] Dillon, M., 2004. *Xinjiang: China's Muslim far northwest*, London, UK: RoutledgeCurzon, p. 11.

Kara-Khanid's conversion to Islam as significant in the Islamisation of Xinjiang[28], while also considering the role of Muslim merchants for the successful propagation of Islamic doctrine within the region. It should also be noted that the emergence of Islam in Xinjiang did not occur immediately or uniformly, but instead manifested over a protracted period time from Xinjiang's western borders before continuing eastward[29], with Gladney asserting that self-identified Uyghurs in Turpan continued to practice Buddhism before their eventual conversion to Islam in the 16th century[30].

Prior to the Islamisation of Xinjiang, its population demonstrated a diverse range of beliefs that were illustrative of the region's highly pluralistic ethnologic composition, represented by religions including Buddhism[31], Manichaeism[32], Nestorian Christianity[33], Shamanism and Zoroastrianism[34]. The prevalence of Sufism was also well represented within China's north-west[35]. The existence of Sufi orders within Xinjiang can be considered as distinct from the other religions outlined as it has managed to co-exist with Islam, shaping the character of Chinese Islam and contributing to the ethnogenesis of the currently held conception of Uyghur identity. This complex entanglement of Islamic orthodoxy with mysticism within the wider region has been succinctly described by Bosworth as showing "a considerable elasticity in both belief

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[28] Millward, J.A., 2007. *Eurasian crossroads: a history of Xinjiang*, New York: Columbia University Press, pp. 51-52.
[29] Bellér-Hann, I., 2012. Feudal villains or just rulers? The contestation of historical narratives in eastern Xinjiang. *Central Asian Survey*, 31(3), pp. 313–314.
[30] Gladney, D.C., 1999. Central Asia and China. In J. L. Esposito, ed. *The Oxford History of Islam*. Oxford University Press, p. 442.
[31] Gladney, D.C., 1999. op.cit., p. 442.
[32] Lieu, S.N.C.L., 1998. *Manichaeism in Central Asia and China*, Brill, p. 5.
[33] Millward, J.A. & Perdue, P.C., 2004. Political and Cultural History of the Xinjiang Region through the Late 19th Century. In S. F. Starr, ed. *Xinjiang: China's Muslim Borderland*, pp. 40-41; Arnold, T.W., 1913. op.cit., p. 171.
[34] Han, P., 2014. Excavation "very likely" to redefine the Zoroastrianism's origin. *China Central Television*. Available at: http://english.cntv.cn/2014/08/12/VIDE1407843119676688.shtml.
[35] Sufism, often referred to as "Islamic mysticism", incorporates several aspects of Islam but is also considered as distinct from orthodox Islamic belief and praxis. While the practices of each Sufi order varies considerably, there remains considerable overlap with that the practices of orthodox Islam. An outward differentiation that exists between Sufism and orthodox Islam is evidenced from the veneration of saints that forms a key component of several Sufi orders.

and practice"[36], and draws parallels between the spread of Islam in China with that of India, Indonesia and Africa[37].

The existence of Sufi orders throughout north-west China is significant owing to a combination of their organisational structure, geographical proliferation and broad influence over the surrounding communities, which together provided a level of social integration for the otherwise disparate Muslim communities that were habituated throughout the region. Gladney posits that it is this organised structure, along with the inherent mysticism of Sufi belief that has made the most indelible mark on Islam in China[38]. Without this structure, Islam in Xinjiang would have otherwise been defined by the relative lack of an institutional hierarchy inherent in Islamic orthodoxy outside the existence of caliphates[39], and the nomadic nature of travelling Muslim merchants and tribesmen who migrated via the silk route. While the Sufi orders of the wider Central Asia region exhibited a wealth of diversity in customs, values and practices, the Sufi order which had the most influence in Xinjiang was the Naqshbandi order.

The Naqshbandi order in its original conception as it arrived in China, still featured the veneration of saints[40], which was characteristic of many of the Central Asian Sufi movements at the time. It also incorporated the use of remembrance of God by silent invocation[41], which proved to be one of the key features that differentiated it from subsequent Sufi incarnations which will be detailed subsequently. The prominence of the Naqshbandi order within the region, and its enmeshment with more orthodox forms

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[36] Schacht, J. & Bosworth, C.E., 1979. op.cit., p. 127.
[37] Ibid.
[38] Gladney, D.C., 1999. op.cit., p. 449.
[39] Lipman, J.N., 1998. *Familiar strangers: a history of Muslims in Northwest China*, University of Washington Press, p. 61; Tomeh, M.M., 2010. Persuasion and Authority in Islamic Law Persuasion and Authority in Islamic Law. *Berkeley Journal of Middle Eastern & Islamic Law*, 3, p. 141.
[40] Fletcher, J., 1995(a). The Naqshbandiyya in Northwest China. In B. F. Manz, ed. *Studies on Chinese and Islamic Inner Asia*. Variorum, p. 6.
[41] Zelkina, A., 2000. *In Quest for God and Freedom: The Sufi Response to the Russian Advance in the North Caucasus*, Hurst & Company, pp. 77-80.

of Islamic belief and praxis, provided a necessary structure that helped to facilitate the propagation of a syncretic form of Islam throughout much of China's north-west[42].

Somewhat paradoxically, many of Central Asia's Sufi orders were later converted into promoting a more traditional form of Islam by Muslim "reformers"[43], whose legitimacy was often predicated by their more recent exposure to the orthodox Islamic practices of the Middle East[44]. Among the orthodox forms of Islam to have reached Xinjiang allegedly include the existence of Wahhabism[45]; however it is important not to overstate its role within Uyghur religiosity as its existence has been marginal when compared to the general adherence to the more moderate Hanafi school of Islamic jurisprudence[46], which when combined with Sufi practice forms the antitheses of Wahhabist belief[47].

1.4 Political Islam in Xinjiang during the Qing Dynasty, 1644-1911

The existence of Naqshbandi Sufi order in China's north-west first began to have a substantial impact on the political landscape of the region during the 17th century following the establishment of the Qing Dynasty (1644-1911)[48], when a reformer named Ma Mingxin[49] returned from his teachings in Yemen in 1651[50]. While a follower

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[42] Zelkina, A., 2000. op.cit., pp. 61-62; Israeli, R., 2002. op.cit., p. 287.
[43] Islam contains several different schools of belief. Of particular relevance to this thesis the Wahhabi and Hanafi schools of Islamic thought. Both are branches of Sunni Islam, however they differ significantly from each other, with Hanafi generally perceived as a moderate and accommodating form of Islam that finds prominence within many Turkic Muslim societies. Conversely, Wahhabism is a highly conservative form of Islam found in Saudi Arabia, Qatar and the Emirates. It has been connected with several Islamic extremist movements, and is typically opposed to the legitimacy of Sufism.
[44] Gladney, D.C., 1999. op.cit., p. 450.
[45] Dillon, M., 2004. op.cit., p. 11; Waite, E., 2006. The impact of the state on Islam amongst the Uyghurs: religious knowledge and authority in the Kashgar oasis. *Central Asian Survey*, 25(3), pp. 251–265.
[46] Dillon, M., 2004. op.cit., p. 11; Waite, E., 2006. op.cit., p. 260.
[47] Kuo, K.T., 2012. Revisiting the Salafi-jihadist Threat in Xinjiang. *Journal of Muslim Minority Affairs*, 32(4), pp. 528–544.
[48] Fletcher, J., 1995(b). Central Asian Sufism and Ma Ming-Hsin's New Teaching. In B. F. Manz, ed. *Studies on Chinese and Islamic Inner Asia*. Variorum, p. 77.
[49] Within the context of the transmission of religious movements, the term reformer is used to describe those who open up religions to new values or systems of thought not incorporated previously.

of the Naqshbandi, Ma Mingxin promoted a politicised version (alternatively referred to as the *New School*, or *Jahriyya*) that demarcated itself from the traditionally practiced Naqshbandi order in the region by promoting vocal remembrance of God rather than silent prayer, and in its opposition of the veneration of saints[51]. Over the following 20 years, his fundamentalist teachings spread throughout what is now known as the Gansu region outside Xinjiang's eastern border, fomenting two Muslim rebellions against the Qing in 1781 and 1784[52]. The organised nature of these rebellions posed a significant enough threat to the Qing that they responded by imposing severe religious restrictions throughout north-western China, including the prohibition of Islamic conversion of non-Muslims, banning the construction of mosques and restricting the travel of Islamic clergy and worshippers[53].

Fletcher asserts that while the policies may have been directed against the dissentient reformist teachings espoused by Ma Mingxin, the effect of such restrictions resulted in the indiscriminate repression of all Muslims in the region and merely pushed Ma's teachings underground[54], further politicising them in the process. Despite Ming's death in the 1781 rebellion, his teachings survived and spread throughout north-western China, leading to the much larger Muslim rebellions during the latter part of the 19th century in Yunnan and Gansu which were instigated by one of Ma Mingxin's descendants[55]. While the spread of Mingxin's teachings is rightly accorded with the rise of the Muslim rebellions in China's north-west, it is important to appreciate the Qing's pre-existing repression of Muslims which popularised an anti-Qing sentiment among China's Muslim population. Indeed, Kwang-Ching notes that the heavy anti-Muslim bias that manifested within the Qing legal system existed for two decades prior to the first

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[50] Gladney, D.C., 1996. *Muslim Chinese: ethnic nationalism in the People's Republic*, Council on East Asian Studies, Harvard University. p. 48.
[51] Ibid., p. 50.
[52] Lipman, J., 1984. Ethnicity and Politics in Republican China. *Modern China*, 10(3), pp. 293–295.
[53]Bovingdon, G., 2010. *The Uyghurs: Strangers in Their Own Land*, Columbia University Press, pp. 32-33; Fletcher, J., 1995(b). op.cit., p. 76.
[54] Ibid.
[55] Gladney, D.C., 1999. op.cit., p. 50.

Muslim rebellion, with examples including heavier penalties towards Muslims than their Han counterparts for petty crimes, and preference shown towards Han Chinese during Han-Muslim arbitration in Qing courts[56].

The series of violent Muslim uprisings that took place in Gansu and Yunnan did not end outside Xinjiang's borders. Enabled by the Muslim rebellions that took place in Gansu and Yunnan[57], which effectively cut off the Qing's access to Xinjiang[58], in 1865 Yakub Beg, a military commander under the leadership of the Khojas, members of the Naqshbandi Sufi order from Kashgar in southern Xinjiang[59], forcefully established an independent state within Xinjiang from 1865 to 1877 which eventually spread over large swathes of the region. Following the consolidation of Xinjiang under his control, Yakub forcefully promoted himself as Emir in place of the Khojas that he was originally subordinate to[60].

It should be noted, that while Yakub Beg's initial leaders were members of the Naqshbandi order, he himself demonstrated little of the fundamentalist principles that characterised the movement at the time. This is illustrated in his pragmatic negotiation of Xinjiang's multi-faceted political landscape[61], an achievement that may explain how he managed to remain in control over much of Xinjiang for twelve years. Yakub Beg's opportunistic canny led to negotiations with Russia that resulted in an agreement to carve up control of Xinjiang for their mutual benefit which culminated in the Russian

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[56] Kwang-Ching, L., 1978. The Military Challenge: The North-West and the Coast. In *The Cambridge History of China: Late Ch'ing, 1800-1911, pt. 2.* p. 212.
[57] Fletcher, J., 1995(b). op.cit., p. 77.
[58] Fletcher, J., 1995(c). China and Central Asia, 1368-1884. In B. F. Manz, ed. *Studies on Chinese and Islamic Inner Asia.* Variorum, p. 223.
[59] The Khoja of Xinjiang were descendants of the Naqshbandi Sufi teachers, with Fletcher noting that they were also members of the Naqshbandi order, which further highlights the role of Sufism in the politicisation and organisation of Muslims in China against state actors. See: Fletcher, J., 1995(b). op.cit., p. 77. For further information on relations between the Khoja and the Qing, see: Fletcher, J., 1968. China and Central Asia, 1368-1884. In J. K. Fairbank, ed. *The Chinese World Order: Traditional China's Foreign Relations.* Harvard University Press, pp. 219-224.
[60] Fletcher, J., 1995(a). op.cit., p. 41.
[61] Many scholars describe the opposing forces of which Xinjiang was the geographical epicentre of as the "Great Game". For further reading on Sino-Russian relations during this period, see: Clubb, O.E., 1971. *China & Russia: The "Great Game,"* Columbia University Press.

occupation of Western Xinjiang for ten years[62]. During this period Yakub also gained recognition of his rule by the Ottoman Empire while also completing a commercial treaty with the British Empire which supplied his army with thousands of muskets[63]. The use of which, when combined with the hiring of non-Muslim Chinese soldiers, enabled Yakub to violently wrest control of the city of Ürümqi from its Muslim Chinese (Hui) inhabitants[64].

Yakub Beg's rule eventually ended in 1877 following a sustained effort by the Qing Dynasty with the support of Hui soldiers[65]. The role of Muslims in the fall of Yakub Beg's briefly held Islamic state reflects the fractious nature of the disparate Muslim groups in China at the time[66]. While scholars such as Israeli emphasise the military efforts by the Qing as the primary reason for the collapse of Yakub Beg's rule, others such as Eberhard argue that it was in fact a combination of factors which led to his eventual defeat, noting that the high taxes he imposed upon his own subjects may have eroded the internal support needed to resist the Qing's advances[67].

Despite Yakub Beg's rule being characterised as one that used religion for personal benefit rather than a principled adherence to Islamic doctrine, this period still features within the living memory of Uyghur nationalists[68], and is held up as a successful example of pan-Turkic, if not pan-Islamic, independence in a history otherwise dominated by Russian power and Chinese dynastic rule.

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[62] Clark, W. & Kamalov, A., 2004. Uighur migration across Central Asian frontiers. *Central Asian Survey*, 23(2), p. 168.
[63] Kwang-Ching, L., 1978. op.cit., p. 225; Clarke, M., 2007(b). The Problematic Progress of "Integration" in the Chinese State's Approach to Xinjiang, 1759 – 2005. *Asian Ethnicity*, 8(3), p. 268.
[64] Millward, J.A., 2007. op.cit., p. 120.
[65] The Hui, like the Uyghur, are one of China's 55 recognised minority nationalities. They are the largest of China's 10 Muslim minorities, and differ from the Uyghur owing to their relative assimilation into contemporary Chinese society. The Hui share no unique language, but instead adopt the local lingua franca wherever they reside. The Hui population are also far more dispersed than the Uyghur, with Hui populations found in many major cities.
[66] A reality that would result in the disintegration of the first East Turkestan Republic in the early 20th century which will be detailed later in the chapter.
[67] Eberhard, W., 1977. *A History of China*, University of California Press, p. 305.
[68] Rudelson, J., 1997. *Oasis identities: Uyghur nationalism along China's Silk Road*, New York: Columbia University Press, p. 27; Dillon, M., 2004. op.cit., p. 21.

Following the Qing's re-conquest of southern Xinjiang from Yakub Beg, the Qing proceeded to move to north-western Xinjiang, which during this period was under Russian control. The re-conquering of China's north-west by the Qing is one that involved the massacre of a large number of its indigenous Muslim population[69]. The Qing, who at this point sought to re-conquer Xinjiang in order to protect China's interior from further Russian expansionism, gained de-facto control of the region by 1878[70]. However, a small enclave of Russian soldiers maintained a presence in the north-western city of Khulja, close to the Russian border. After fraught negotiations and the Qing threat of Russian invasion, an eventual peace accord, called the Treaty of Saint Petersburg, was signed by the two powers[71], formalising the full return of Xinjiang back to the Qing.

1.5 Republic of China, 1912-1949

Despite the Qing having re-asserted control over Xinjiang, the Qing's power over China had continued to decline throughout this period, leading to the dynasty's eventual collapse in 1911. Several provinces announced their independence in rapid succession, quickly leading to the establishment of the ROC. Despite the ROC's attempts to unify the country between 1912 and 1928, much of China remained under the influence of disparate warlords with little allegiance to the ROC government[72].

However, the region of Xinjiang managed to avoid restiveness endured by inner China largely due to the governance of Yang Zengxin[73]; who arguably maintained harmony in

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[69] Doubrovskaya, D. V, 2014. Uyghur Initiative Papers Qing Dynasty and Uyghurs in the 19th Century (Controversy over the Question of Re- conquering Xinjiang). *Uyghur Initiative Papers*, (5), p. 5.
[70] Dillon, M., 1997. Ethnic, Religious and Political Conflict on China's Northwestern Borders: The Background to the Violence in Xinjiang. *IBRU Boundary and Security Bulletin*, 5(1), p. 80.
[71] Voskresenskiĭ, A.D., 1996. *The Sino-Russian St. Petersburg treaty of 1881: diplomatic history*, Michigan: University of Michigan.
[72] McCord, E.A., 1993. *The power of the gun: the emergence of modern Chinese warlordism*, University of California Press, pp. 267-269.
[73] Garnaut, A., 2008. Governor Yang Zengxin and his Dungan Generals. *Etudes Orientales*, 25(25), pp. 93–125.

the region by creating divisions between the region's ethnic groups, and co-opting prominent Uyghurs into sharing the spoils of his economic exploitation of the region[74]. Yang Zengxin's rule ended following his assassination by his subordinate, Fan Yeomen, in 1928[75]. The ensuing power struggle resulted in Fan's execution shortly after by another of Yang's subordinates, Jin Shuren.

Jin Shuren ruled as governor of Xinjiang from 1928-1933. His governance of the region was characterised by further corruption and an inability to maintain the level of social order achieved during Yang Zengxin's reign[76]. His poor governance and intolerance of the cultural traditions of Xinjiang's Muslim groups led to what is now known as the Kumul rebellion (1931-1934)[77], where a Uyghur group assisted by a Hui warlord named Ma Zhongying managed to overthrow Jin's garrison and take over the area of Kumul until Jin's government forces, with Soviet support, forced Ma's retreat back to his home territory of Gansu[78].

The cause of these rebellions can be attributed to a number of factors, including a number of discriminatory policies such as the prohibition of the Hajj and replacing local officials with Han counterparts[79]. It is worth noting that despite the demise of the Qing Dynasty, the three subsequent governors of the region (Yang Zengxin, Jin Shuren & Sheng Shicai) only received confirmation of their position's legitimacy from the ROC after they had already claimed the position of governor of Xinjiang, which is illustrative of the relative autonomy that the leaders had in the region. The resulting insulation from the administration of the ROC allowed the leaders to create policies that would

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[74] For more information of the governance of Xinjiang during the Republican period under Yang Zengxin, see Forbes, A.D.W., 1986. *Warlords and Muslims in Chinese Central Asia: a political history of Republican Sinkiang 1911-1949*, Cambridge University Press.), pp. 11-37.
[75] Ibid., pp. 36-37; Millward, J.A. & Perdue, P.C., 2004. Political History and Strategies of Control, 1884 - 1978. In S. F. Starr, ed. *Xinjiang: China's Muslim Borderland*. p. 72.
[76] Wood, F., 2004. *The Silk Road: Two Thousand Years in the Heart of Asia*, University of California Press, p. 272.
[77] Dickens, M., 1990. The Soviets in Xinjiang 1911-1949. p. 9.
[78] Clarke, M., 2004. In the Eye of Power : China and Xinjiang from the Qing Conquest to the "New Great Game" for Central Asia, 1759 - 2004. Griffith University, pp. 117-119.
[79] Millward, J.A. & Perdue, P.C., 2004. op.cit., p. 72.

marginalise the population in order to further personal gain. Examples of this practice included raising taxes on private trade, which was a huge source of wealth for the merchants along the spice route, along with forcibly relocating Uyghur farmers from their land in preference for Han Chinese who came from the governor's home province of Gansu[80]. This, coupled with a number of events strongly incensed the local Muslim population's sensitivities. One such event involved Cheng Mu, a Han Chinse official who used his position in government to coerce a Muslim family into allowing him to inter-marry their daughter, which proved to be one of the sparks that led to a rebellion that united both Uyghur and Hui against Jin Shuren's forces[81].

Despite the Kumul rebellion's brief nature, it proved to be a catalyst in kindling a rebellious fervour amongst Xinjiang's Muslims, leading to further erosion of Jin Shuren's authoritarian governance. In order to combat the increasingly popularised resentment of his rule, he increasingly solicited Soviet military support in exchange for lucrative trade concessions and co-ordinated attacks against Hui forces who had participated in the Kumul rebellion[82]. Jin Shuren's efforts proved in vain, leading to a coup that resulted in his replacement by his military leader Sheng Shicai[83].

Sheng Shicai was immediately faced with the indomitable task of quelling numerous rebellions that had occurred throughout Xinjiang during the period from 1931-1934. This was further compounded by the tribalistic divisions among the region's Muslims who were demarcated along both ethnic and religious lines. Perhaps as a result of this complex milieu, Sheng Shicai's rule was notable for his official recognition of 14 separate ethnic groups within Xinjiang, including the Uyghur specifically[84]. This was

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[80] Clarke, M., 2004. op.cit., p. 108.
[81] Forbes, A.D.W., 1986. op.cit., p. 48.
[82] Clarke, M., 2011. *Xinjiang and China's Rise in Central Asia - A History*, Taylor & Francis, p. 33.
[83] Rahman, A., 2005. *Sinicization beyond the Great Wall: China's Xinjiang Uighur Autonomous Region*, Troubador Publishing Ltd, p. 38.
[84] Hann, C., 2011. Smith in Beijing, Stalin in Urumchi: Ethnicity, political economy, and violence in Xinjiang, 1759–2009. *Focaal - Journal of Global and Historical Anthropology*, 2011(60), p. 112.

distinct from the ethnic taxonomy used by the ROC, which recognised five nationalities and arbitrarily combined all Chinese Muslims into one group[85]. Tellingly, the similarities that exist in both Sheng's and Stalin's minority policy indicates that Sheng Shicai may have been more influenced by Soviet Russia than Republican China[86].

Indeed, the manner in which Sheng Shicai ruled over Xinjiang during this period led many scholars to consider him a self-motivated warlord rather than to have held any allegiance to the ROC[87]. During his tenure he granted the Soviet Union significant levels of control over Xinjiang in exchange for personal wealth, while simultaneously representing the ROC as governor of Xinjiang. The extent of his interactions with Soviet Russia has been well researched by historians[88], however recently recovered "top secret" communiques from the Soviet archives further reveals the extent of Soviet influence over the region through his direct correspondence with Joseph Stalin, with one letter written June 1934 details his apparent pledge to Stalin's Soviet government and his contempt for the ROC:

> ...In spite of the fact that I still am not a member of the Communist Party I have engaged in the study of Marxism and my faith in the triumph of Communism was a consequence of the study of historical materialism, "Das Kapital", "The Communist Manifesto", and "Critique of the Gotha Program", which gives me the ability not to put myself in the ranks of blind imitators or collaborators.
>
> 4. Being a real follower of the teaching of Communism and desiring to completely eradicate the system (of rule) which now exists in China, to help and support the Chinese Soviet Government in Jiangxi, and to

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[85] For further reading on the ROC's ethnic taxonomy, see *infra* chapter: Chapter 3: The Effects of China's Law and Policy on Xinjiang's Uyghur.
[86] For further information of Stalin's minority policy, see *infra* section: 3.2 The Emergence of the CCP's Minzu Minority Policy.
[87] Hann, C., 2011. op.cit; McMillen, D.H., 1984. Xinjiang and Wang Enmao: New Directions in Power, Policy and Integration? *The China Quarterly*, 99, pp. 569-570; Lin, H.-T., 2009. War, Leadership and Ethnopolitics: Chiang Kai-shek and China's frontiers, 1941–1945. *Journal of Contemporary China*, 18, p. 202.
[88] Forbes, A.D.W., 1986. op.cit., pp. 115-117; Kuo, K.T., 2012. op.cit 32(4), p. 538; Dillon, M., 2004. op.cit., pp. 21-22.

begin building a new state based on the principles of Communism which would act as a united front with the Soviet government in the fight for a world revolution, I express my sincere desire to carry on my further work to govern Xinjiang under the leadership of the Comintern.

5. In spite of the fact that I am an official appointed by the Nanjing [ROC] Government, I not only do not intend to support this government but, on the contrary, I will exert every effort to overthrow it because the Nanjing Government has capitulated to British and Japanese imperialism, has transferred my dearly beloved homeland, Manchuria, to Japan, without any resistance, beats the most glorious and worthy soldiers of the 19th Army (the army of Cai Tingkai) and the army of Sun Dianying, who fought Japan, etc. etc. They are preparing themselves a grave with such acts.[89]

1.6 The First East Turkistan Republic, 1933-1933

Among the most notable of the rebellions that occurred in Xinjiang during the period of Sheng's rule was the establishment of the first East Turkestan Republic (ETR1)[90]. Proclaimed on 12 November 1933, the ETR1 was founded in Kashgar in southern Xinjiang by a group of Uyghur from Khotan[91]. Allegedly characterised by a fundamentalist pan-Turkic ideology, the leaders of the ETR1 sought to establish a Sharia state independent of the Soviet's control or influence. The existence of an Islamic state along Russia's borders, while in itself alarming, was given further cause for concern owing to the ETR1's government reportedly seeking assistance from the

[89] Shicai, S., 1934. *Letter of Governor Shicai Sheng to CDES. Stalin, Molotov, and Voroshilov (Translated by Gary Goldberg)*, Available at: http://digitalarchive.wilsoncenter.org/document/121894.
[90] Also referred to by some scholars as the Turk Islamic Republic of East Turkistan (TIRET).
[91] Dillon, M., 2004. op.cit., p. 20.

British Empire[92], and additional alleged contact with Imperial Japan and Nazi Germany[93].

The ROC at this point could exercise little control over Sheng, and despite still recognising him as the governor of Xinjiang they instead provided support to a rival Hui warlord called Ma Zhongying[94]. Despite being Muslim, Ma shared little in common with the pan-Turkic aspirations of the leaders of the ETR1, and also firmly opposed Soviet Russia after having survived Soviet orchestrated attacks previously[95].

In spite of the attempts by the ETR1 government to leverage support from Soviet Russia's enemies, its existence proved short-lived. Just three months after the ETR1's establishment, the Soviets successfully divided its leadership through selective negotiation with its key members, destabilising the ETR1's cohesion and making the fledgling state vulnerable to attack. Shortly after, Ma Zhongying and his Hui militias successfully attacked the ETR1's stronghold of Kashgar, massacring as many of 2,000 of its Uyghur inhabitants in the process[96], leading to the ETR1's collapse.

Given the ETR1's pan-Turkic leanings, its viability in a region dominated by vastly outmatched state powers and opposing ideologies could only be perceived as untenable. By virtue of its very being; it had positioned itself as a state with values that were inherently incompatible with those of its neighbours; the Soviet Union, the ROC, and even of the Hui. However unlikely its permanence was, it serves to highlight how great a perceived threat the spread of Islamic or Turkic nationalism was to Soviet Russia. The ETR1's demise also illustrates the fractious nature of Xinjiang's Muslim population, with Hui forces clashing with Uyghur separatists in numerous rebellions throughout this restive period. These deeply rooted divisions further emphasize how

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[92] Wang, D., 1998. East Turkestan Movement in Xinjiang. *Journal of Chinese Political Science*, 4(1), p. 2.
[93] Forbes, A.D.W., 1986. op.cit., p. 119.
[94] Dickens, M., 1990. op.cit., pp. 14-15.
[95] Forbes, A.D.W., 1986. op.cit., p. 120.
[96] Ibid., p. 121.

unlikely it would have been for the ETR1 to have been able to gain enough prominence to challenge the region's existing power structures.

1.7 The Second East Turkestan Republic, 1944-1949

The next period in Xinjiang's history with which the Uyghur held a central role took place in 1944 following the establishment of Xinjiang's second East Turkestan Republic (ETR2). A symbol of pan-Turkic nationalism that persists today, the ETR2 was ostensibly formed in reaction to the attempted re-appropriation by the Xinjiang government of 10,000 houses for military use[97], however its existence was long predicated upon the varying levels of oppression met out against Xinjiang's Turkic Muslims by Soviet backed Shang Shicai, or the ROC supported Hui militias.

The ETR2 differed from ETR1 in a number of ways; its capital was located in the city of Ürümqi in Xinjiang's north, and its leadership featured a diversity in both ethnicity and ideology that more broadly represented the peoples living within its administration[98]. The resulting plurality in the ETR2's leadership enabled reforms that went beyond the scope of the original ETR1, resulting in the creation of a functioning economy with its own currency, a fairer tax system[99], and even its own standing army[100].

However, some scholars consider that the ETR2 could not have existed without extensive Soviet support[101], a view which is given further credence upon the Soviet Union's leveraging of support for the ETR in exchange for trade concessions from the ROC at the time[102]. Furthermore, the recently published trove of previously top secret internal Soviet Union communiques provide further evidence of the extent with which the Soviet Union influenced and supported the ETR2:

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[97] Dillon, M., 2004. op.cit., p. 33.
[98] Millward, J.A., 2007. op.cit., pp. 202-203.
[99] Forbes, A.D.W., 1986. op.cit., p. 185.
[100] Ibid; Clarke, M.., 2004. op.cit., p. 209.
[101] Wang, D., 1998. op.cit., p. 3;
[102] Clarke, M., 2007(b). op.cit., pp. 274–275.

> The USSR Council of Ministers Economic Research Committee considers it necessary to carry out the following steps in order to prevent the defeat of the Muslim national liberation movement in Xinjiang and to consolidate the Muslim successes in the struggle against the Chinese [...]
>
> Use the mass arrests of Muslims in Kashgar by the Chinese authorities and also the ever-increasing arbitrary actions of these authorities with respect to the local population as a pretext to renew the struggle against the Chinese in the south of Xinjiang.
>
> Send former leaders of the insurgent movement there illegally who are temporarily living in the Uzbek and Tajik SSR's, (KARAVANSHO-BEK and AKYUL'BEK TAJIMULLAYEV, TAIRBEK MIRZA AHMEDOV, MUKHTAR ABDUKERIMOV, and others), to lead the partisan movement in the south of Xinjiang.[...][103]

In 1945, the ROC acquiesced from their previous position of overt hostility towards the existence of an independent state within Xinjiang and dispatched negotiators which resulted in the signing of a peace agreement between the ETR2 government and the ROC[104], forming a tentative coalition[105]. As a result of the peace accord, many of what were seen as "progressive" members of the ETR2 government maintained their positions, with the more conservative members removed in place of ROC representatives. Among those removed was the former ETR2 president Ali Khan Ture[106], a hard liner who declined any position within the coalition government, He promptly disappeared thereafter following a rumoured meeting with Soviet officers[107]. With minimal representation of conservative interests within the coalition government

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[103] Soviet Union Council of Ministers, 1947. *Proposals of the Economic Research Committee of the USSR Council of Ministers in Connection with the Situation in Xinjiang (Translated by Gary Goldberg)*, Available at: http://digitalarchive.wilsoncenter.org/document/121810.
[104] Forbes, A.D.W., 1986. op.cit., p. 190.
[105] Bovingdon, G., 2010. op.cit., p. 37.
[106] Wang, D.D., 1999. *Clouds over Tianshan: essays on social disturbance in Xinjiang in the 1940s*, NIAS, p. 24.
[107] Forbes, A.D.W., 1986. op.cit., p. 200.

due to their unwillingness to compromise, the coalition dissolved in 1947[108], leaving Xinjiang split between ROC and ETR rule along a north-south axis. Following the coalition government's dissolution, there were several small-scale rebellions within southern Xinjiang, which were reportedly both anti-ROC and anti-Soviet in character[109], which points to the role of conservative elements among the Uyghur population who had become disenfranchised by the now failed coalition government.

1.8 The People's Republic of China, 1949-

At this point in China's history, much like it had in Xinjiang, the ROC had continually struggled to assert its control over China's interior. This gave rise to the emergence of the CCP, and the ROC's eventual retreat to Taiwan. By the time its People's Liberation Army (PLA) had reached Xinjiang in 1949, the ROC had already surrendered control over southern Xinjiang. With northern Xinjiang still under the administration of the ETR2, its leadership were invited to Beijing to negotiate with the CCP leadership with regards to the level of autonomy that had been previously promised to them by the CCP leader Mao Zedong[110]. The ETR2's most prominent representatives travelled to Beijing by plane, which reportedly crashed killing all passengers on board[111]. This left still fledgling ETR2 without its most senior government officials and members of clergy, and placed the still fledgling republic in an undesirable position with regards to negotiating the terms of its future autonomy. A second group of delegates whom had made it safely by train after learning the news agreed to join the CCP's PRC, which was founded shortly after[112].

Following the formal establishment of the PRC in 1949, China was left ravaged by years of misrule by warlords, foreign invasion and the Chinese civil war (1927-1937,

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[108] Moneyhon, M., 2002. Controlling Xinjiang: Autonomy on China's New Frontier. *Asia-Pacific Law Policy Journal*, 3(120), p. 127.
[109] Forbes, A.D.W., 1986. op.cit., pp. 204-205.
[110] Gladney, D.C., 2009. op.cit., p. 156.
[111] Forbes, A.D.W., 1986. op.cit., p. 222.
[112] Millward, J.A. & Perdue, P.C., 2004. op.cit., p. 86.

1946-1951)[113]; the CCP arguably had more pressing matters than the integration of the remote and inherently hostile Xinjiang region into its new republic. However, despite this reality, the CCP were still keen to assert authority over the region, if only to mitigate the ever present threat of Soviet expansionism over what the CCP now considers as PRC territory[114]. In order to achieve this, the PLA [115], were deployed in the Xinjiang region under the orders of CCP General Wang Zhen[116]. This military authority was the first phase of the establishment of organizational control in Xinjiang, with many of the PLA's military leaders in the area later given administrative roles over Xinjiang's development within an organisation known as the Xinjiang Production and Construction Corps (XPCC)[117].

On 18 December 1949, the first provincial government was appointed (called the "Xinjiang Provincial People's Government", referred to henceforth as the XJPPG)[118]. At the time of its inception, the XJPPG consisted of 31 members with only nine of which being Uyghurs[119], falling far short of proportional representation at a time when only six percent of Xinxiang's population were Han. The majority of the members of the XJPPG were of Han ethnicity, and either former members of the ROC's regional administration or drawn in from the PLA[120].

The composition of members at the lower levels of XJPPG administration was notably different, with more positions given to minorities such as Uyghurs, Kazakhs & Mongolians[121]. Typical of the political structures seen in many authoritarian states, the

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[113] The Chinese civil war featured a period of détente during the time of WW2, when both forces focused on repelling the invasion of Imperial Japan.
[114] Clarke, M., 2004. op.cit., p. 204.
[115] For more information on the history of the PLA, see: Li, X., 2007. *A History of the Modern Chinese Army*, University Press of Kentucky.
[116] McMillen, D.H., 1979. *Chinese Communist power and policy in Xinjiang, 1949-1977*, Westview Press, p. 37.
[117] For more information on the XPCC, see *infra* section: 3.3.3 Economy and Employment.
[118] Ibid., p. 37.
[119] Ibid., p. 38.
[120] Millward, J.A., 2007. op.cit., pp. 238-239.
[121] Lee, J, R., 2006. The Islamic Republic Of Eastern Turkestan and The Formation Of The Modern Uyghur Identity In Xinjiang. Kansas State University, p. 11.

level of political representation held by ethnic minorities starkly declines in proportion to the influence of the position in question, with the upper echelons of both regional and state government being predominantly occupied by Han Chinese. Indeed, as will be demonstrated later[122], the Uyghurs' representation within the PRC's national and municipal governance remains disproportionately low[123].

Scholars such as McMillan have pointed out that even when nominal administrative positions were occupied by someone who was not of Han descent, there would often be a Han vice-president who would assert "de facto" authority over his non-Han superior[124]. This can be seen within the XJPPG, with the appointment of the Uyghur Saifudin as vice-chairman, and the appointment of a Han Chinese second vice-chairman from the PLA, Gao Jinchun[125].

In addition to the use of military personnel to fill in the administrative vacuum left after the departure of the ROC, the CCP established a process of gaining support from the local population by encouraging the different ethnic minorities to become members of regional party cadres[126]. This facilitated the spread of communist ideology amongst the ethnic minorities, and was a calculated move on the CCP's part who were keen to overcome the longstanding anti-state sentiment that many of the Muslim population had as a result of suffering from decades of exploitation. The ideological co-opting of Xinjiang's minority populace enabled the CCP to increase influence at the local level by giving the indigenous population the perception of being stakeholders in the political and economic development of Xinjiang, while in reality it allowed CCP to establish its authority over a population that is both ethnically and culturally distinct to the PRC's predominantly Han composition.

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[122] See *infra* section: 3.3.3 Economy and Employment.
[123] Chou, G., 2012. Autonomy in Xinjiang. *The Josef Korbel Journal of Advanced International Studies*, 4, p. 166.
[124] McMillen, D.H., 1979. op.cit., p. 39.
[125] Ibid., p. 40.
[126] Ibid., p. 85.

Aware that the stark cultural differences between the Han and Non-Han peoples of the region were often a source of tension, the CCP initially were cautious to implement any nationality policies that were would risk increasing friction between the minority groups[127]. However that soon began to change. On 1 October 1955, Xinjiang was reclassified from being a province and was proclaimed as the Xinjiang Uyghur Autonomous Region (XUAR)[128]. This period marked the reversal of the CCP's initially progressive approach to minorities, and also coincided with the run up to Mao's infamous Great Leap Forward (GLF)[129], precipitating the implementation of national cultural and economic policies that held scant regard to the particular socio-cultural conditions of regions such as Xinjiang[130], and would only serve to further distance Xinjiang's Muslim population from their traditionally held religious and cultural identity.

The spectre of Uyghur nationalism re-emerged in June 1958, where at a government conference it was admitted that there was still a level of support for an independent Uyghur state, leading to a crackdown on anyone in party cadres who were deemed to be sympathetic to Uyghur nationalists[131].

In an effort to mitigate some of the tensions among China's Muslims that were caused as a result of the excesses of the GLF policies, the CCP eventually made several concessions including the suspension of communal mess halls[132], which had previously forced Uyghurs and other Muslim minorities to forgo their religious dietary

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[127] Evidence of this can be found within the provisional constitution of the People's Republic of China, which featured an egalitarian approach to multiculturalism and contained an extensive range of cultural and religious freedoms that were absent from subsequent iterations of the constitution. For further reading on China's constitutions, see *infra* section: 2.4 The Struggle of Law under Communism, 1949-1976

[128] McMillen, D.H., 1979. op.cit., p. 46.

[129] For further information on the national history of the Great Leap Forward, please see Kataoka, T., 1968. *The Great Leap Forward: A Study of Chinese Communism*, University of Chicago, Department of Political Science.

[130] An example of the deleterious effects that the GLF had on Xinjiang's already precarious social order includes the organised mass migration of Han settlers into Xinjiang, which was further compounded by the ensuing re-appropriation of agricultural land from pastoral native Uyghurs to the newly arrived Han migrants. For further reading on the effects of Han migration on Uyghur-Han relations in Xinjiang, see *infra* section: 3.3.3 Economy and Employment.

[131] Clarke, M., 2004. op.cit., p. 258.

[132] McMillen, D.H., 1979. op.cit., p. 143.

requirements. However, such relief came too late and failed to prevent a mass exodus of Xinjiang's minorities to the then Soviet republic of Kazakhstan[133]. The number of émigrés from the region was significant enough for the CCP to close the border between Xinjiang and the Soviet Union in 1962[134]. The closure of the border led to riots by both Kazakhs and Uyghurs numbering in the thousands near Ghulja in Xinjiang, leading to several smaller riots in the surrounding areas[135]. The CCP's response to these riots was the further militarisation of the border areas between Xinjiang and the Soviet Union[136], perhaps revealing that the CCP's still considered foreign Soviet influence to be a greater catalyst to Uyghur unrest than its own discriminatory policies.

From 1964, the CCP again started to further tighten its policies concerning Xinjiang's Muslims as part of its drive to accelerate national unity and to combat the growing threat of ethnic nationalism. This included particular attention given to religion, with reports of mosque closures, and "guided worship" amongst party cadres[137]. This marked the beginning of prolonged period of strife that not only affected Xinjiang, but China as a whole. On 8 August 1966, the CCP initiated the "Great Proletarian Cultural Revolution" (referred to henceforth as the Cultural Revolution)[138], which aimed to cleanse any dissent that threatened Mao's hold on both the Party and country. This led to a massive power struggle between the various Party factions that had emerged within the CCP following the failure of the GLF[139], and led to the worst excesses of communist ideological dogmatism against any cultural aspects that could be construed as bourgeoisie.

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[133] McMillen, D.H., 1984. op.cit., p. 571.
[134] Millward, J.A., 2007. op.cit., p. 264.
[135] Hyer, E., 2006. China's Policy towards Uighur Nationalism. *Journal of Muslim Minority Affairs*, 26(1), p. 78; Bovingdon, G., 2010. op.cit., p. 176; Kuo, K.T., 2012. op.cit 32(4), p. 539.
[136] McMillen, D.H., 1979. op.cit., p. 123.
[137] Ibid., p. 126.
[138] For an in-depth analysis of the Cultural Revolution, see: Schwarz, H.G., 1966. *The great proletarian cultural revolution*, Far Eastern and Russian Institute, University of Washington.
[139] Dreyer, J.T., 1976. China's forty millions: minority nationalities and national integration in the People's Republic of China, Harvard University Press, p. 173.

With religion being regarded as both culturally backward and a mechanism of foreign influence, it was firmly in the firing line of Mao loyalists known as the Red Guard, who were permitted to openly engage in anti-religious activities[140], which led to further closures and looting of mosques and the arrests of Muslim clergy who were considered to be part of the "upper class" elite[141].

This had serious ramifications for ethnic minorities such as the Uyghur. It was no longer acceptable to treat China's minorities any differently to the Han, under the misguided assumption that any attempt to accommodate the special characteristics would restrict national development. As a result, Uyghurs caught engaging in religious practice were publicly humiliated[142], along with reports of the torture of Uyghur intellectuals such as Ibrahim Muttai, whose infraction was to have possessed multi-lingual dictionaries that he had helped to edit (with CCP assistance at the time), accounts of Uyghur men being forced to have their beards removed on the streets[143], and attacks on Imams[144].

Following the eventual end of the Cultural Revolution, a period of relative calm was restored in China. Within Xinjiang specifically, this was signified by the posting of Saifudin Azizi as the first Party secretary of Xinjiang[145], the first Uyghur to have held the position in the PRC's history[146]. The policies relating to China's minorities went through a period of relative moderation, with the reconstruction of mosques and holy sites[147],

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[140] FitzGerald, C.P., 2012. Religion and China's Cultural Revolution. *Pacific Affairs*, 40(1), p. 124.
[141] Gladney, D.C., 2003. *Islam in china: Accommodation or separatism?*. In: Overmyer, D.L., 2003. *Religion in China today*, Cambridge, UK: Cambridge University Press , p. 155
[142] Waite, E., 2006. op.cit., p. 254.
[143] Bovingdon, G., 2010. op.cit., p. 52.
[144] Zang, X., 2012. Uyghur Islamic Piety in Ürümchi, Xinjiang. *Chinese Sociology & Anthropology*, 44(4), pp. 84.
[145] Saifuden eventually held a position within the CCP's Central Committee, one of only five Uyghurs to have ever done so. See: Chou, G., 2012. op.cit., p. 166.
[146] Bo, Z., 2004. The 16th Central Committee of the Chinese Communist Party: formal institutions and factional groups. *Journal of Contemporary China*, 13(39), p. 228.
[147] Hann, C. & Pelkmans, M., 2009. Realigning Religion and Power in Central Asia: Islam, Nation-State and (Post) Socialism. *Europe-Asia Studies*, 61(9), p. 1526.

the lifting of travel restrictions necessary for Uyghur merchants[148], and the reestablishment of both primary and secondary education[149] which had largely ceased to operate during the time of the Cultural Revolution. As part of a state-wide drive to replenish party cadres after the purges of the Cultural Revolution, minorities were once again encouraged to join local cadres, this time with representation proportional to their percentage in the population[150].

The retrenchment and liberalisation of nationality policies continued in earnest following Mao's death in 1976[151]. Deng Xiaoping later took control of the CCP and started to implement sweeping reforms on long standing economic and social policies; further facilitating the revival of religious customs and practices by ethnic minorities[152]. However, despite the liberalisation of religious and cultural policies, long standing sources of tension remained such as systematic Han migration into Xinjiang, and several re-occurrences "Han-Chauvinism"[153]. This reached a boiling point in 1986 when there were mass protests by Uyghur over a range of economic and cultural issues implemented by the state. In response to the civil unrest, the CCP lost patience with the more accommodating policies that were implemented after the Cultural Revolution, ousting Hu Yaobeng[154], a member of the CCP's central committee, for his suggestion of granting Xinjiang greater autonomy and moving Han cadres out of Xinjiang[155].

It should be noted that during the 1980s that mass protests were an increasingly common phenomenon throughout China, and occurred as a result of a broad range

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[148] Millward, J.A., 2007. op.cit., p. 292.
[149] McMillen, D.H., 1979. op.cit., pp. 279 – 281.
[150] Ibid., p. 247.
[151] Nolan, P., 1993. China's Post-Mao Political Economy: A Puzzle. *Contrib. Pol. Economy*, 12(1), p .71.
[152] Clarke, M., 2004. op.cit., p. 300.
[153] "Han Chauvinism" is a term used to refer to a sino-centric perception of cultural or racial superiority. See: Finley, J.S., 2002. "Making Culture Matter": Symbolic, Spatial and Social Boundaries between Uyghurs and Han Chinese. *Asian Ethnicity*, 3(2), p. 157.
[154] Day, A.J., German, R. & Campbell, J.R.E., 1996. *Political parties of the world*, Stockton, p 144.
[155] Bovingdon, G., 2010. op.cit., p. 53.

economic and political issues affecting all nationalities in China[156]. Even religious protests were in some cases permitted, perhaps the most notable of which took place in Beijing in May 1989, where up to 3000 Muslims[157], both Hui and Uyghur[158], took to the streets in protest of the publication of a book titled "Sexual Customs", the content of which was highly inflammatory towards Muslim sensibilities. Perhaps what stood out the most from the May 1989 protest was the CCP's explicit support of it, with police facilitating the protest by closing roads and directing the marchers, and even treating isolated cases of violence with uncharacteristic leniency[159]. Gladney suggests that the visit of Iranian president Ali Khameini one day prior to the May 1989 protest may have influenced the CCP's leniency as a result[160].

The 1990s in Xinjiang were in part characterised by the resumption of mass migration policies into the region. While the policy of forced russification of Han youths that was employed during Mao's era still featured[161], economic incentive schemes were also used as a means to attract Han Chinese to move to both agricultural and urban areas in Xinjiang[162]. Such measures not only outraged the ethnic minorities living there but were also the ire of some Han Chinese who had long since established their livelihoods under much more austere conditions. Becquelin expands upon this by noting during his field research an account of Chinese farmers complaining of how the recent influx of Han Chinese had damaged the rapport that the established farmers had developed with the Uyghurs over a long period of time[163].

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[156] An example of which includes the pro-democracy protests which took place in 1989 before being brutally put down by PLA forces. For further reading, see: Zhang, L. et al., 2008. *The Tiananmen Papers*, PublicAffairs; Li, P., Li, M.H. & Mark, S., 2011. *Culture and Politics in China: An Anatomy of Tiananmen Square*, Transaction Publishers.
[157] Frankel, J.D., 2008. "Apoliticization": One Facet of Chinese Islam. *Journal of Muslim Minority Affairs*, 28(3), p. 432.
[158] Côté, I., 2015. The enemies within: targeting Han Chinese and Hui minorities in Xinjiang. *Asian Ethnicity*, 16(2), p. 145.
[159] Gladney, D.C., 1996. op.cit., pp. 3-4.
[160] Ibid.
[161] Becquelin, N., 2000. Xinjiang in the Nineties. *The China Journal*, 44(44), p. 76.
[162] Clarke, M., 2004. op.cit., pp. 75-76.
[163] Becquelin, N., 2000. op.cit., p. 85.

In addition to the resumption of mass migration policies in Xinjiang, was the carrying out of the regions first specialised anti-crime campaign styled initiative (referred to as a Strike Hard campaign) in 1996[164]. These factors all played a part in the increased ethnic unrest that took place in the latter half of the nineties, with several notable incidents directed against the state taking place shortly after, including the assassination of the vice president of the provincial Consultative Political Conference in 1996[165], the Yining riots, and a bus bombing in the city of Ürümqi[166].

Despite the continual economic investment in Xinjiang in recent years, there is little evidence of the liberalisation of CCP policies regarding nationality and religion that ethnic minorities enjoyed in the 1980s. This can be evidenced in the CCP using the formative events that took place on 11 September 2001 to equate Uyghur nationalism with international terrorism[167], which have resulted in the promulgation of some of China's most repressive laws and policies directed against Uyghurs[168].

More recently, Xinjiang has been witness to a dramatic escalation in anti-state violence, with the threat of attacks organised by Uyghur extremist groups of varying levels of sophistication becoming an increasing reality in China's interior. The emergence of global jihadist groups over the last 15 years has also led Chinese authorities to question their long held non-interventionist posture with respect to religious extremism outside its borders[169].

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[164] For further information on the Strike Hard campaign, see *infra* section: 3.3.4.1 The "Strike Hard" Anti-Crime Campaign and its implementation in Xinjiang.
[165] Becquelin, N., 2000. op.cit., p. 86.
[166] For further information on these events, and their relation to the Strike Hard campaign, see *infra* section: 3.3.4.1 The "Strike Hard" Anti-Crime Campaign and its implementation in Xinjiang.
[167] For further information on the emergence of the "international Uyghur terrorist" discourse post 911, see *infra* section: 3.3.4.2 The "Global War on Terror" and the Emergence of the "East Turkistan Islamic Movement" in China.
[168] For further information on such policies, see *infra* section: 3.3 Laws and Policy in Xinjiang and its Impact on the Uyghur.
[169] Martina, M., 2015. Draft Chinese law paves way for counter-terror operations abroad. *Reuters*. Available at: http://www.reuters.com/article/2015/02/27/us-china-military-idUSKBN0LV0PN20150227.

1.9 Chapter Conclusion

As this chapter has sought to illustrate, religion has played a defining role in shaping Uyghur minority identity as it is recognised today. Despite Xinjiang's apparent remoteness, the Uyghurs' religiosity has been infused by successive religious movements from Central Asia and the Middle East, each having contributed to the Uyghurs' unique identity, which is manifest in both in values and cultural traditions of the Uyghur.

Xinjiang's history too has been unmistakably shaped by religion, with the realisation of Islamic states within its borders in the last century having been made possible only through the shared aspirations and values of disparate peoples united under a shared religious identity. Conversely, religion has also played a role in the shifting ethnic divisions that have existed within Xinjiang, fomenting both ethnic hostility and conflict, and political union.

The region's complex history was also a product of its location at China's periphery, with its capital of Ürümqi situated closer to Baghdad than Beijing. Despite this distance, China's successive rulers have all sought its control, perceiving it as an inalienable part of China and key to their own legitimacy. As a result, Xinjiang has been witness to the power struggles of great colonial powers, dynastic rulers and warlords, frequently resulting in the repression of its inhabitants throughout the region's history.

Among those repressed are the Uyghur. Despite their populations' predominance within the region, their relatively small absolute population has made them unable to assert meaningful autonomy in a region that has been defined by conflict and conquest. It is the Uyghurs' existence along China's margins, both cultural and geographical, that has framed their existence as a minority within China, and forms the basis of their dissent.

Chapter 2: History of the Rule of Law in China's Last Century

2.1 Chapter Introduction

In order to gain an appreciation for the progress that has been made in Chinese law, examples of which include: the establishment of the Chinese constitution, the development of individual rights within China, the modernization of China's penal code and civil law, and engagement with international human rights bodies. It is important to understand the historical context in which current Chinese legal system was developed from. Knowledge of China's legal history is also important in order to gain an insight into the rationale behind the country's leaders which has led to the enactment of current policies concerning minority and religious rights[170].

In the past century alone, China was ruled by dynasties, an authoritarian Republican government, and most recently, the CCP. Each period of China's tumultuous recent history has left its mark on the codification of China's legal system, with each successive government bearing the legacy of its forbearer's legal framework.

As a result, China has gone through several periods of remarkable legal reform, with times of both progression and regression. China's legal system has developed in a manner that has managed to draw parallels with the development of the rule of law in Western states; while at the same time significantly diverging from what many regard as fundamental staples of contemporary law, including the independence of the judiciary, and the primacy of the constitution over the state's administrative and political organs.

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[170] A white paper published by the State Council in 1999 titled *National Minorities Policy and Its Practice in China* provides an additional insight into the CCP's rationale for current minority policy. An English translation can be found here: http://english.peopledaily.com.cn/whitepaper/1.html

This, what some scholars observe as "law with Chinese characteristics"[171], is something that is simultaneously as confusing as it is beguiling to foreign observers who have charted the rise of a legal system that borrows when necessary, but strikes its own path when possible, is what truly distinguishes China's legal system from that of its contemporaries.

This chapter, at the risk of generalisation of such a vast and storied history, seeks to provide a broad overview of the various contexts in which modern Chinese law has been forged, in order to provide a greater understanding of the current state of Chinese law for the subsequent chapters' focus on the existence of minority and religious rights in China, and the implementation of international human rights norms within Chinese law.

This will be achieved through a chronological qualitative examination of a selection of different legal codes promulgated throughout the last century, along with an analysis of existing scholarly literature in the rapidly developing field of Chinese legal studies. Where possible, specific policies and events will be examined in closer detail in order to help highlight the differences, and similarities, that exist between each respective period covered.

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[171] See: Kennedy, D. & Stiglitz, J.E., 2013. Law and Economics with Chinese Characteristics: Institutions for Promoting Development in the Twenty-First Century, OUP Oxford; Brown, R.C., 1997. Understanding Chinese Courts and Legal Process: Law with Chinese Characteristics, Kluwer Law International; Castellucci, I., 2010. Rule of Law with Chinese Characteristics. Annual Survey of International & Comparative Law, 13(1), pp. 35–92; Zhang, M., 2010. The Socialist Legal System With Chinese Characteristics: China's Discourse For The Rule Of Law And A Bitter Experience. Temple International and Comparative Law Journal, 24(1), pp. 1–64.

2.2 Characteristics of Law during late Qing China

The Qing dynasty (1644-1911) developed a legal system that bore the mark of Confucian ideology[172], espousing the family as the central unit of Chinese society during much of its rule prior to the raft of reforms it promulgated during the Dynasty's twilight years. The legal system as it existed for the majority of this period differed most markedly from its Western counterparts by the absence of any clear delineation between criminal law and civil law[173]. Rather, to assert that Chinese civil law existed in the sense that it is understood in the Western world would itself be a misnomer; owing to the fact that individuals were not recognised by the Qing Dynasty in the same manner that they are in the West, but instead as its subjects[174].

Much of the legal system was codified in what is known as The Qing Code[175]; a legal document which contains a diverse range of statutes and provisions concerning areas such as marriage, land ownership, ritual sacrifices[176]. Some of the statutes contained within the code were inherited from the preceding Ming Dynasty (1368-1644)[177], with others claiming a direct legal heritage extending as far back as the Tang Dynasty (618-907)[178].

In a manner that differentiated it from its Western analogues, the primary purpose of the Qing Code was to preserve the Qing's authoritative position in China's governance by providing it with the means to maintain social order[179]. An example of this is the

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[172] Bodde, D., 1963. Basic Concepts of Chinese Law: The Genesis and Evolution of Legal Thought in Traditional China. *Proceedings of the American Philosophical Society*, 107(5), p. 376.
[173] Liang, L., 2007. Delivering Justice in Qing China: Civil Trials in the Magistrate's Court, OUP/British Academy, pp. 12-13
[174] Jones, W.C., 1994. *The Great Qing Code*, Clarendon Press, p. 7.
[175] Ibid. Jones' English translation of the Qing Code will henceforth be the primary reference for the duration of this chapter unless explicitly noted (Example, see *infra* note 187).
[176] Ibid.
[177] Liang, L., 2007. op.cit., p. 4.
[178] Frankel, J.D., 2009. op.cit., p. 26.
[179] Huang, P.C.C., 1998. Civil Justice in China: Representation and Practice in the Qing, Stanford University Press, p. 223.

prevalence of positive law within the Qing Code; with the prescription of harsh punishments for a myriad of offences, the notion of which chaffs against the Confucian ideological preference of pursuing moral rehabilitation in preference of punitive justice.

While Bodde & Morris argue that the stated severity of such punishments within the Qing Code was intended more as a deterrent than to be interpreted in a literal sense[180], the very existence of such punitive deterrents goes against the Confucian principle maintaining social order through moral education[181]. None the less, the notion among Confucian scholars that the attainment of social harmony is dependent on the instilment of moral values through education over punitive punishment did have some influence within the Chinese legal system at the time, with Lang arguing that Qing legal literature "often criticized people for irresponsibly bringing lawsuits to court" and encouraged "education to persuade people to practice tolerance"[182]. While such anecdotes are not illustrative of Qing law as it is written, it does reveal the power of the Qing Court in its interpretation of the Code.

Of particular relevance to this thesis is the relative absence from the Qing Code of any statute concerning religions whose influences stem from outside of China. Conversely, the Qing Code contains provisions concerning shamanistic sacrifices[183], the private establishment of Buddhist and Taoist convents and the ordainment of Buddhist clergy[184]. This is particularly surprising given that some foreign religions, such as Christianity, were closely tied to foreign colonialism, and proved an effective tool in the

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[180] Bodde, D. & Morris, C., 1967. op.cit., p. 99.
[181] Chen, J., 1999. Chinese Law: Towards an Understanding of Chinese Law, Its Nature and Developments, Kluwer Law International, p. 7.
[182] Liang, L., 2007. op.cit., pp. 252-254.
[183] Jones, W.C., 1994. op.cit., pp. 169-174.
[184] Ibid., pp. 105-106. While the origins of Buddhism can be traced back to India, its existence in China considerably pre-dates the establishment of other foreign religions in China. As a result, Chinese Buddhism differs markedly from its Indian expression, and has been extensively acculturated within Chinese society to the extent that it is rarely considered foreign in the same manner as the Abrahamic religions are.

global expansion of Western spheres of influence inside China[185]. With the very real threat of foreign religious ideologies eroding the authority of the Qing Dynasty, the absence of any effort to impose constraints on foreign religious practice or proselytization within the Qing Dynasty raises questions regarding the role of the code itself.

However, it cannot be said that there was a complete absence of provisions in Qing law regarding foreign religion. Boulais[186], who was one of the first to take on the daunting task of translating Qing law in 1924[187], provided a French translation which included valuable sub-statutes that were not part of the Qing Code itself, but were also considered to be legal canon. Of particular note was a regulation referring to Muslims, of which Boulais notes that an order promulgated by the Qing Dynasties 9th emperor stated:

> Les musulmans des provinces seront aussi sous la surveillance et l'autorité des chefs de mosquée et de religion. Si l'un d'eux s'éloigne et fait quelque mal, le chef de religion sera puni en même temps que lui. [188]

The above paragraph, which emplaces the moral and social responsibility of the local Muslim populace to the local Mosque, is notable in that it differentiates the treatment of the Muslim population from that of other religious adherents who are subservient to the authority of the Qing Code. This difference is further highlighted at an earlier point within the same order, which provides that registration of "others", whom include

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[185] The CCP's official account on the history of religion notes that "If you look at the past 100 years when China was once reduced to a semi-feudal and semi-colonial society, you would find two striking features of Chinese religions -- the "patriarchal" nature deriving from its semi-feudal status and the "foreign" nature deriving from its being a semi-colony of many foreign powers."- Xiaowen, Y., 2001. China's Religions Retrospect and Prospect. *China.org*. Available at: http://www.china.org.cn/english/features/45466.htm.

[186] Boulais, G., 1924. Manuel Du Code Chinois - Variétés sinologiques n° 55, Shanghai.

[187] Note: While Jones' translation of the Qing Code is preferred for the purposes of this research (owing to the more complete translation of the Qing Code itself), Boulais' translation offers the advantage of its inclusion of sub-statutes which are not present in Jones' translation.

[188] Boulais, G., loc.cit., p. 205.

foreigners, travelling merchants and Buddhist monks be registered by the local administrative unit (kia, or 甲)[189].

By explicitly ceding administrative autonomy to the local Muslim clergy, it could be considered that the above example demonstrates a lack of authority that the Qing Dynasty had over its Muslim population. Alternatively, given the authoritarian nature of the Qing's governance, it could also imply a level of trust towards Muslims which is otherwise unique in the Qing's dealings with foreign religions.

Another example that illustrates this unique relationship is the Qing's eventual reaction to the emerging threat of Christianity, which was subsequently acknowledged through the promulgation of an additional sub-statute to Art. 126 of the Qing Code in 1826[190]. The sub-statute imposed severe penalties for those proselytizing or practicing Christianity. Maclay provides an English translation of the clause:

> People of the Western Ocean, [Europeans or Portuguese,] should they propagate in the country the religion of heaven's Lord [name given to Christianity by the Romanists,] or clandestinely print books, or collect congregations to be preached to, and thereby deceive many people, or should any Tartars or Chinese, in their turn propagate the doctrines and clandestinely give names, (as in baptism), inflaming and misleading many, if proved by authentic testimony the head or leader shall be sentenced to immediate death by strangulation. He who propagates the religion inflaming and deceiving the people if the number be not large and no names be given shall be sentenced to strangulation after a period of imprisonment. Those who are merely hearers or followers of the doctrine if they will not repent and recant shall be transported to the Mohammedan cities in Turkistan and given to be slaves to the beys and other powerful Mohammedans who are able to coerce them... [191]

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[189] Boulais, G., op.cit., p. 205.
[190] Maclay, R.S., 1861. Life Among the Chinese: With Characteristic Sketches and Incidents of Missionary Operations and Prospects in China, Carlton & Porter, p. 335.
[191] Ibid., pp. 335-336.

This is significant in a number of ways as it highlights how the Qing Code has adapted to maintain the absolute authority of the Qing dynasty through the promulgation of additional laws as needed in an effort to bolster its authority. Indeed, any concern for the rights of the Qing's subjects is entirely absent from the above sub-statute. It is also significant in that it sheds further light on the Qing's attitude towards the Muslims at the time, and also of how Turkestan was viewed (otherwise referred to as Xinjiang). By forcibly subjugating those who practice Christianity to the Muslims of Xinjiang, the Qing demonstrate a preference towards the region's Muslim populace, while at the same time revealing that being sent to the western periphery of Xinjiang is considered as a punishment in itself; a perception that continues to be held following the establishment of the PRC[192].

At the turn of the twentieth century, the Qing dynasty was facing a range of threats both internally through the emergence of foreign religions, and externally in the form of aggression by imperial powers[193]. The legal system of the Qing Dynasty during this period was going through a number of reforms in an attempt to adapt with the emerging pressures that were brought to the fore by the signing of the Boxer Protocol[194], which severely inhibited the Qing Dynasties ability to rule[195], and further signalled its eventual decline.

Perhaps one of the most far reaching consequences of the Qing's decline was its eventual willingness to consider the establishment of constitutional means of governance. This about-turn was largely precipitated by the Qing's ailing fortunes following colonial encroachment and Imperial Japan's outright victory during the first

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[192] For further information on the use of Xinjiang as a destination for prisoners, see *infra* section: 3.3.3 Economy and Employment.
[193] Examples of such aggression during this period include the Boxer Rebellion, for more information on the Boxer Rebellion, see: Clements, P.H., 1915. *The Boxer Rebellion: A Political and Diplomatic Review*, Columbia University.
[194] Ibid. A treaty signed between China and several Western colonial powers which provided the nations the legal means to establish troops within China and the distribution of much of the Qing's wealth to the colonial nations over a 39 year period.
[195] Hsü, I.C.Y., 1990. *The rise of modern China* 4th ed., New York: Oxford University Press, p. 405.

Sino-Japanese war[196]. Indeed, the Qing's repeated defeat against foreign powers that held a constitutional system of governance gave the Qing the belief that constitutionalism in itself was the key to regaining the losses incurred as a result of the Boxer Rebellion[197].

This drastic turnabout from dynastic rule towards constitutionality was complemented by an examination of foreign laws by China's ambassadors at the behest of the Qing Empress. Among the countries constitutions that China studied were Belgium, Britain, France, Germany and Imperial Japan[198]. Of the constitutions explored, the Qing decided upon selective adoption of both Imperial Japan's Meiji constitution and Germany's 1871 constitution[199]. Imperial Japan's Meiji constitution, which itself was heavily influenced by its German counterpart[200], was perceived to be the most preferable for adoption. This was due in part to the relative cultural similarities that both Japan and China shared, and in the manner in which the Meiji constitution preserved extensive political powers for the Japanese emperor[201]. Germany's constitution was also selected in preference to other Western constitutions owing in part to Germany's successes during the Franco Prussian War. It is also said that both the British and American constitutions were seen culturally incompatible in comparison[202].

This led to a review of the Qing's current laws in order to bring them closer in-line to the foreign models that they now aspired to emulate[203], resulting in the development of separate criminal and legal codes. Although never formally promulgated, provisions of

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196 For further reading on the first Sino-Japanese war, see: Paine, S.C.M., 2005. *The Sino-Japanese War of 1894-1895: Perceptions, Power, and Primacy*, Cambridge University Press.
197 Hsü, I.C.Y., 1990. op.cit., p. 405.
198 Zhang, J., 2014. *The Tradition and Modern Transition of Chinese Law*, Springer Berlin Heidelberg. p. 509.
199 Balme, R. & Lihua, Y., 2008. The Politics of Constitutional Reform in China: Rule of Law as a Condition or a Substitute for Democracy. In F. Grotz & T. F. . Toonan, eds. *Crossing Borders: Constitutional Development and Internationalisation: Essays in Honour of Joachim Jens Hesse*. Walter de Gruyter. p. 155.
200 Jansen, M.B., 1995. *The Emergence of Meiji Japan*, Cambridge University Press. p. xiii.
201 Tanner, H.M., 2010. *China: From the Great Qing Empire through the People's Republic of China 1644-2009*, Hackett Publishing Company. p. 101.
202 Zhang, J., 2014. loc.cit.
203 Chen, J., 1999. op.cit., pp. 18-19.

each code were put into effect and lead to a raft of administrative reforms[204], along with changes in the structures of the court system that included a reduction of court fees; which had the effect of making the courts more accessible to the peasant class, and the separation of the judiciary from the administrative class[205].

These attempts to modernise domestic administration came too late however, with the encirclement of foreign powers casting an ever tightening noose around the Qing Dynasty's control of China, it would be calls from within that gave rise to the 1911 revolution which led to the eventual collapse of China's last dynasty and the establishment of the ROC.

2.3 Legal Reforms during the Republic of China's rule, 1912-1949

The establishment of the ROC was fuelled in large part by the perceived decadence and administrative inefficiencies of the of the Qing's dynastic rule. In 1912 Sun Yat-Sen was elected as the first president of the burgeoning ROC, promoting a political ideology that demonstrated a strong desire to move beyond China's dynastic past to that of a constitutional republic, with an emphasis on equality, the development of a national identity, and the promotion of a general welfare[206]. Sun also shared some of the same Confucian ideals that were also venerated by his Qing predecessors, believing that to fully realise a constitutional republic he must first educate the people on how to participate in a constitutional government[207]. However, he did not believe that all people

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[204] Chen, J., 1999. op.cit., pp. 409-412.

[205] Huang, P.C.C., 2001. Code, Custom, and Legal Practice in China: The Qing and the Republic Compared, Stanford University Press, p. 31.

[206] These three values formed Sun Yat-Sen's core political doctrine, henceforth referred to as the "Three Principles of the People". For further reading on the topic, see Price's translation of the original article: Price, F.W., 2011. *The Three Principles of the People: San Min Chu I*, Soul Care Publishing.

[207] This notion of educating the public reflects Sun's Confucian grounding, he further elaborates on it in his *Theory of Revolution*, whereby he states that the second stage of the People's revolution is for the people to be educated about the concept of a constitutional government. Holcombe, A.N., 1946. Chinese Political Thought and the Proposed New Constitution. *The Journal of Politics*, 8(1), pp. 16-17.

were equal in political capacity[208], instead believing that only some people bore the political aptitude and intellect necessary to lead the country. While such a belief may seem to conflict with Sun's otherwise democratic values, once it is considered within the broader context of his ideology, and that of China's recent history, it can be argued that Sun's views on political ability stems from an ideological opposition to dynastic rule in preference of meritocracy.

During this period, the Republican leadership continued to seek guidance in modernising the Chinese legal system through the solicitation of Japanese legal experts, whom themselves had emulated Western legal models[209]. Chen notes that the actual initial legal reforms did not begin in earnest until 1927, after the establishment of a government in Nanking[210], China's capital during that period. The reforms included the establishment of several guiding principles which bore the mark of a cohesive ideology that differed from the vertical legal style promoted by the Qing[211]. Included among these principles were several which were collectively referred to as "rights over things"[212]; the promulgation of which illustrates the emergence of a rights based approach to Chinese law. In addition, the Republic's first Civil Code was promulgated in 1930 after a prolonged period of review of the unused Qing Civil Code with the help of Western legal scholars[213]. However, the emergence of the Western notion of a rights based law in China at the time existed largely as a conceptual ideal. Despite such references in both the Republican Civil Code and the constitution, both still deferred absolute powers to the Republican Government over the rights of its citizens[214].

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[208] Holcombe, A.N., 1946. op.cit., p. 17.
[209] Gilpatrick, M.P., 1950. The Status of Law and Lawmaking Procedure Under the Kuomintang 1925-46. *The Far Eastern Quarterly*, 10(1), pp. 38–39.
[210] Chen, J., 1999. op.cit., p. 23.
[211] Huang, P.C.C., 2001. op.cit., p. 50.
[212] Ibid.
[213] Lei, C., 2010. The historical development of the Civil Law tradition in China: a private law perspective. *The Legal History Review*, 78(1), p. 169.
[214] Lei, C., 2010. Op.cit., p. 169; Gilpatrick, M.P., 1950. op.cit., p. 45.

Sun Yat-Sen, the founder of the Republican movement, originally went about constructing the constitution of the Republic of China using three guiding principles, known as the "Three Principles of the People"[215], which were titled as *general welfare, democracy* and *nationalism*[216]. The first principle, *general welfare*, describes the need for material equality amongst all, and uses specific language to clearly define what standard that entails:

> The first principle of reconstruction is that of popular livelihood or the promotion of the general welfare. In order to meet the most urgent needs of the people for food, clothing, shelter, and communication with one another, the Government shall cooperate with the people in the improvement of agriculture so that all may have sufficient food, in the development of the textile industry so that all may have sufficient clothing, in the building of houses on a large scale so that all may have comfortable homes, and in the building and improvement of roads and waterways so that all may conveniently travel and transport their goods.[217]

The second guiding principle is *democracy*, which Sun uses to describe the necessity of educating the people about their rights so that they may politically engage with their government through voting and reform. In his own words:

> The next principle of reconstruction is democracy. In order that the people may be fitted for participation in government, the Government shall instruct them in the exercise of their rights of voting for public officers, and of initiative, referendum, and recall.[218]

The final guiding principle is *nationalism*, which Sun describes as:

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[215] See *supra* note 206.
[216] Sun, Y., 1923. Fundamentals of National Reconstruction, Taipei: China Cultural Service. English translation found in: Holcombe, A.N., 1930. Sun Yat-Sen's Outline or Fundamentals of National Reconstruction. In *The Chinese Revolution: A Phase in the Regeneration of a World Power*. pp. 352–355.
[217] Sun, Y., 1923. op.cit.
[218] Sun, Y., 1923. op.cit.

> The third principle of reconstruction is nationalism. The Government shall protect the racial minorities within the country and assist them so that they may become able to exercise their rights of self-determination and self-government. It shall also resist oppression from foreign Powers and at the same time shall revise the treaties with the Powers so as to secure national independence and equality with all nations.[219]

It is apparent that Sun's incorporation of nationalism is an inclusive one. As Holcombe astutely observes, Sun's *Nationalism* differs from other notions of nationalism that were taking root throughout much of Europe at the time by avoiding promoting the rights of one group at the expense of others. It also differs in its tone from many of the European nationalist movements during this period that often belligerently asserted the rightful dominance of one nation over another "lesser" nation[220]. Instead, Sun espouses equal rights for minorities, emphasizing nationalism with the intention of protecting China from foreign influence, demonstrating a desire to be treated as an equal nation.

Realising the need for strong governmental powers to fulfil his dream of a constitutional republic; while at the same time highly cognisant of corrupting nature of absolute power, Sun sought to expand on the Western concept of "separation of powers" in order to achieve his far reaching reforms[221]. The Western implementation of the theory of "separation of powers", as evidenced in the first three articles of the U.S. constitution[222], consists of three separate branches[223], which were devised in the belief

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[219] Sun, Y., 1923. op.cit.
[220] Holcombe, A.N., 1946. op.cit., p. 10.
[221] The theory of the need for "separation of powers" was first attributed to the French philosopher Baron Montesquieu, who believed it necessary that constitutional powers be both separated and balanced by separate branches of government. For additional reading on Montesquieu's political theory, see: Richter, M., 1977. *The Political Theory of Montesquieu*, Cambridge University Press, pp. 91-93.
[222] For images of the original U.S. constitution and an official transcription, see: The U.S. National Archives and Records Administration, Constitution of the United States. *The National Archives*. Available at: http://www.archives.gov/exhibits/charters/constitution.html. For additional reading on the creation of the US constitution, see: Tushnet, M., 2008. *The Constitution of the United States of America: A Contextual Analysis*, Bloomsbury Publishing.

that a balanced division of governmental power among the three separate branches would reduce the risk of corruption. Sun believed that that the additional administrative powers required to carry out the necessary reforms in China could only be safely obtained and wielded providing that such powers were divided among five separate branches (or *yuan*)[224]. The five separate branches, revealing their Western origins, consisted of a *Judicial*, *Executive* and *Legislative* yuan, with an additional two branches called the *Examination* yuan and *Control* yuan[225].

The first of the two additional branches, called the Examination yuan, differed from the Western heritage of the first three branches by reflecting the traditional Chinese practice of providing examinations for government officials[226]. The function of the Examination yuan served to determine the status of government officials by ascertaining their political capacity through examinations[227], which was a central tenet of Sun's philosophy. The Control yuan performs a supervisory role over the Republican government; providing the power to impeach officials and to perform audits on public accounts[228]. With governmental powers being spread across five separate branches, Sun believed that the Republican government could avoid the corruptive forces of absolute power, while at the same time benefitting from additional powers that were not available to Western governments. Examples of such powers included the lack of a popular vote for any members of the Republican government, and the non-existence of fixed terms of office for all but one branch of government[229]. This had the effect of insulating the Republican government from public participation and influence, blurring

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[223] In the Government of the United States, the three separate branches are the Legislative, the Executive and the Judicial branch. For more information see: Bondy, W., 1896. *The Separation of Governmental Powers in History, in Theory, and in the Constitutions*, Lawbook Exchange.
[224] Eastman, L.E., 1991. *The Nationalist Era in China, 1927-1949*, Cambridge University Press. p. 20.
[225] Ibid.
[226] Appointments into the civil service during both the Ming and the Qing dynasties were administered through state run examinations. For further reading, see: Elman, B.A., 2000. *A Cultural History of Civil Examinations in Late Imperial China*, University of California Press.
[227] Holcombe, A.N., 1930. The Chinese Revolution: A Phase in the Regeneration of a World Power. Harvard University Press, p. 257.
[228] Ibid., p. 267.
[229] Holcombe, A.N., 1930. op.cit., p. 257.

the lines between a constitutionally bound government and that of an authoritative regime using the constitution as a legal means to legitimise and secure its position.

That is not to say that there was no substantive progression in the Republic's legal system. Rights of the individual were increasingly emphasised in terms of gender equality, which can be seen to have manifested in many ways including succession, divorce and marriage rights[230]. Additionally, changes to the Criminal Code, which was a modified version of the one previously drafted by the Qing, removed many of the harshest punishments outright, electing to employ the deprivation of freedom through enforced incarceration instead as the most common punitive action[231]. Importantly, the Republican government emphasised moral rehabilitation for those incarcerated, promoting the role of different religions in order to aide in this process[232].

Despite the progress made, Sun Yat-Sen's aspirations of a fully constitutional Republic were never achieved. The Republican government of Nanking, having only been effectively established in 1928 following a protracted period of warlord rule throughout much of the country, failed to succeed in fully legitimising itself among the provinces outside its limited sphere of influence in China's interior[233]. Internally too there were malaises within the government which included the inefficient implementation of Sun's constitutional principles, inter-party factionalism[234], and corruption amongst government officials[235]. These factors, compounded by the constant threat of Japanese aggression[236], left the Republican government of China in a weakened state that would

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230 Holcombe, A.N., 1930. op.cit., pp. 59-62.
231 Fang, Q. & Forges, R.D.E.S., 2008. Were Chinese Rulers Above The Law? Toward A Theory of the Rule Of Law In China From Early Times To 1949 CE. *Stanford Journal of International Law*, 44, p.141.
232 Ibid.
233 Eastman, L.E., 1975. The Abortive Revolution: China Under Nationalist Rule, 1927-1937, Harvard University. p. 85.
234 Nathan, A.J., 1976. Peking Politics, 1918-1923: Factionalism and the Failure of Constitutionalism, University of California Press. p. 58.
235 Olson, J.S., 1998. *An Ethnohistorical Dictionary of China*, Greenwood Press. p. 125.
236 Hsü, I.C.Y., 1990. op.cit., pp. 545-542.

allow the Chinese Communist Party to overtly challenge the Republican governments authority.

2.4 The Struggle of Law under Communism, 1949-1976

After the peace agreement was signed between the CCP and the Republican government was finalised, the CCP sought to abolish the laws and statutes that were promulgated during the short-lived Republican era as part of the terms of the peace agreement[237]. This formed part of the CCP's initial focus, keen to avoid the mistakes made by its predecessor by successfully consolidating its power throughout China. Evidence of this can be seen within the "The Common Program of the Chinese People's Political Consultative Conference"[238], a temporary constitution enacted by the newly renamed Chinese People's Political Consultative Conference (CPPCC) in 1949[239]. The interim constitution, in Arts. 3 and 17, went further to ensure the abolishment of any remnants of the Republican government's legal legacy:

> Article 3. The People's Republic of China must abolish all the prerogatives of imperialist countries in China. It must confiscate bureaucratic capital and put it into the possession of the people's state. It must systematically transform the feudal and semi-feudal land ownership system into a system of peasant land ownership; it must protect the public property of the state and of the cooperatives and must protect the economic interests and private property of workers, peasant, the petty bourgeoisie and the national bourgeoisie. It must develop the people's economy of New Democracy and

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[237] Jihong, M., 2009. The Constitutional Law of the People's Republic Of China And Its Development. *Columbia Journal of Asian Law*, 23(1), p. 140.
[238] Chinese People's Political Consultative Conference, 1949. *The Common Program of the Chinese people's Political Consultative Conference*, Beijing. For an English translation of the document, see: Blaustein, A., 1962, Fundamental Legal Documents of Communist China. Available at: http://www.e-chaupak.net/database/chicon/1949/1949e.pdf.
[239] Chen, J., 1999. op.cit., pp. 18-19.

> steadily transform the country from an agricultural into an industrial one.[240]
>
> Article 17. All laws, decrees and judicial systems of the Kuomintang reactionary government which oppress the people shall be abolished. Laws and decrees protecting the people shall be enacted and the people's judicial system shall be established.[241]

The interim constitution, while serving as a temporary document during a transitional period for the CCP, was notable in that it also ensured individual rights including the right to elect[242], and freedom of religious belief[243], both of which were absent from the constitutions of the Republican era.

As a result of the CCP focusing its attention on power consolidation, the task of drafting laws to fill in the vacuum left by the now dismantled Republican legal system was largely left untouched[244]. Chen notes that the few temporary laws that were promulgated were largely done so in order to help facilitate the consolidation of the CCP's position[245]. These included some highly politicised penal codes, such as the "Regulations for the Punishment of Counter-Revolutionaries" which was promulgated in 1951[246]. The promulgation and application of such laws in order to further political ends of the CCP is ironically reminiscent of the very accusations that the CCP made of the Republican government in order to justify the abolishment of the Republican legal system, as can be found in Art. 2 of the "Instruction of the Central Committee of the CC to Abolish the Kuomintang Six Codes and to Define the Judicial Principles for the Liberated Areas":

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[240] Blaustein, A., op.cit., Art. 3.
[241] Ibid., Art. 17.
[242] Ibid., Art. 4.
[243] Ibid., Art. 5.
[244] Chen, J., 1999. op.cit., pp. 36-37.
[245] Ibid.
[246] Lo, C.W., 1995. China's Legal Awakening: Legal Theory and Criminal Justice in Deng's Era, Hong Kong University Press. p. 335.

> Law is the will of the state compulsorily and openly enforced through military forces by the ruling class. Law, like the state, is a tool for the protection of the interests of certain ruling classes. The Six Codes of the Kuomintang, like bourgeois law in general, were framed in such a way as to conceal their class character.[247]

As part of the CCP's efforts to consolidate its power and assert Mao's ideological doctrine on the population, efforts were also made to replace China's existing judges and legal clerks with members who were unwilling use the law to persecute "enemies of the people"[248].

During this period, the CCP also sought to politicise the population both collectively and individually. Large organizations were established along socio-economic lines that included professional groups such as the Medical Association and social groups like the Communist Youth League[249]. The purpose of such organisations was as an administrative tool and to allow for the effective dissemination of party policy and doctrine through both industry and society. The same could be said at the individual level too, with the establishment of small groups, or *xiaozu*, which were ostensibly designed to encourage discussion of party policy[250], but in effect were used merely for their announcement[251].

Once the CCP successfully consolidated its regime, it shifted its focus to legitimisation of the Party by way of rapid economic development through the establishment of the "Soviet model"[252]. In 1953, the first *Five Year Plan* was promoted[253]. Primarily a socio-

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[247]Chen, J., 1995. From Administrative Authorisation to Private Law: A Comparative Perspective of the Developing Civil Law in the People's Republic of China, M. Nijhoff. p 34.
[248] Lubman, S.B., 1999. *Bird in a Cage: Legal Reform in China After Mao*, Stanford University Press. p. 73.
[249] Dreyer, J.T., 2006. China's Political System: Modernization and Tradition, Pearson/Longman. p. 89.
[250] Dreyer, J.T., 2006. op.cit.
[251] LaFleur, R.A., 2003. *China: A Global Studies Handbook*, ABC-CLIO. pp. 136-137.
[252] The Soviet Model refers to the model of economic development that broadly characterised Soviet states, which typically included the centralisation of economic and agricultural planning according to macro production quotas. For further reading, see: Chubarov, A., 2001. Russia's Bitter Path to Modernity: A History of the Soviet and Post-Soviet Eras, Continuum. pp. 103-105.

economic initiative, it signalled the CCP's re-focus towards economic goals, with an emphasis on construction and development of heavy industry[254].

Consequently, it wasn't until 1954 that the task of establishing new laws and regulations for the running of China's new socialist legal system began in earnest. The first constitution of the People's Republic of China came into effect in September 1954[255]. It shared a similar overall structure with its predecessor; stating the country's guiding principles, state structure, the rights and duties of its people, and the country's flag and capital[256]. Notably, the 1954 constitution instituted an administrative structure that more closely mimicked the Soviet Union, emphasising the National People's Congress (NPC) and its Standing Committee as the highest organ of state and its sole legislator[257]. In doing so, the 1954 constitution strongly differed from the European influences of the Republican constitution by removing the notion of 'separation of powers', instead giving the NPC the authority to promulgate laws, amend the constitution and elect the head of the judiciary[258]. As such, the constitution serves to empower the governing authority, rather than restrain it.

The rapid establishment of laws and regulations within the PRC was short-lived however. Fostered by both the flurry of new legislature and the repressive rule that demarcated from the PRC's previous period of consolidation, a growing criticism began to emerge amongst China's intellectuals and a minority of Party members regarding the nature of the legal system and the country's socialist direction.

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253 Lin, J.Y., Cai, F. & Li, Z., 2003. *The China Miracle: Development Strategy and Economic Reform*, Hong Kong Centre for Economic Research and the International Center for Economic Growth. p. 36.
254 Ibid.
255 National People's Congress, 1954. *Constitution of the People's Republic of China of 1954: 中华人民共和国宪法, 1954 (宪法(1954))*., Beijing. English version of the text available at: http://e-chaupak.net/database/chicon/1954/1954bilingual.htm.
256 Ibid., Chapter 4.
257 Ibid., Arts. 21, 22.
258 Ibid., Arts. 21, 22, 27.

At first, Mao gave explicit consent to the increasingly vocal dissidence during his speech "On the Correct Handling of the Contradictions among the People"[259], under the presumption that by doing so it would serve as a relief valve to any pent up grievances resulting from increasingly strict ideological controls[260]. However, he miscalculated the sheer depth of public dissatisfaction and criticism of the status quo, which soon grew to a level of belligerence that was considered unacceptable[261]. In an effort to quash the increasing levels of subversion, Mao launched an *anti-rightist* movement in 1957, which amounted to an orchestrated attack on the same dissenting views that he initially accommodated. As a result, the legal progress made during the establishment of the 1954 constitution was all but nullified, with those who held dissenting views considered as "rightist" or "counter-revolutionary" vilified by the CCP and sent to re-education camps[262]. The ensuing damage caused by Mao's GLF campaign would continue the dismantling of the PRC's burgeoning legal system for years to come, characterised by a widespread disregard of any semblance of constitutionality in preference for expediency in executing Mao's economic policy[263].

Once the failings of the GLF became impossible to ignore, attempts were made to re-instate rule of law in order to assist the necessary economic reforms[264]. A divergence in opinion amongst senior members of the CCP on how to proceed became apparent,

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[259] Mao Tse-Tung, 27 February 1957, *On the Correct Handling of Contradictions Among the People*, English version available at: http://www.marxists.org/reference/archive/mao/selected-works/volume-5/mswv5_58.htm. For further analysis the speech and its revisions, see: Schoenhals, M., 1986. Original Contradictions - On the Unrevised Text of Mao Zedong's "On the Correct Handling of Contradictions among the People." *The Australian Journal of Chinese Affairs*, 16, p. 99–112.

[260] Dreyer, J.T., 2006. op.cit., p. 90.

[261] A flash point of this period was seen in Peking University, where students place anti-CCP posters on a 'democracy wall'. See: Mackerras, C., McMillen, D.H. & Watson, A., 2003. *Dictionary of the Politics of the People's Republic of China*, Taylor & Francis. p. 107.

[262] Hsiao, G.T., 1967. The Background and Development "The Proletarian Cultural Revolution." *Asian Survey*, 7(6), p. 393.

[263] For more information on the Great Leap Forward (1958-1961), see: Chan, A.L., 2001. Mao's Crusade : Politics and Policy Implementation in China's Great Leap Forward: Politics and Policy Implementation in China's Great Leap Forward, OUP Oxford.

[264] Chen, J., op.cit., p. 37.

which led to the onset of the Cultural Revolution[265]. Mao, who had come to view the Party leadership as an elitist ruling class, or bourgeoisie[266], sought to continue his policy of radical socialist reform. While leading members of the CCP, highly cognisant of the failures of the GLF, sought for more pragmatic reforms in order to address the damage caused by Mao's abortive socio-economic policies[267]. This ideological schism within the CCP led to a decade of widespread politically motivated violence, criminality, and the absence of law which would later characterise the darkest decade in the history of the PRC. Ultimately, the political turmoil within the CCP during this period resulted in Mao striking out a compromise by naming Hua Guofeng as his successor, a loyal follower of Mao but considered neither a moderate nor a radical Maoist[268], making him a compromise between the dominant factions of the time.

With Mao's death on the 9 September 1976, the battle for succession reignited, with the dividing ideological fault lines that existed during the Cultural Revolution coming to the fore once more. One faction, known as the "Gang of Four", consisting of senior politburo members and led by Mao's widow Jiang Qing[269], plotted to succeed Mao without regard for Mao's wishes by instigating a coup through the assassination of Hua and other senior politburo members[270]. However, at the final hour the "Gang of Four" was arrested at midnight 5 October[271], preventing the coup from taking place and allowing Hua to secure his position as premier.

Hsü notes that the power struggle which followed Mao's death was enabled due to the lack of a constitutional provision for peaceful power transfer[272], however the blatant

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[265] For further information on the Cultural Revolution, see : Schoenhals, M., 1996. *China's Cultural Revolution, 1966-1969: Not a Dinner Party*, M.E. Sharpe.
[266] Tsou, T., 1999. The Cultural Revolution and Post-Mao Reforms: A Historical Perspective, University of Chicago Press. p. 83.
[267] Hsü, I.C.Y., 1990. op.cit., p. 690.
[268] Dreyer, J.T., 2006. op.cit., p. 105.
[269] Lee, L.X.H. et al., 2003. *Biographical Dictionary of Chinese Women*, M. E. Sharpe. p 263.
[270] Lee, K.C., 2005. Pioneers of Modern China: Understanding the Inscrutable Chinese, World Scientific Pub. p. 196.
[271] Hsü, I.C.Y., 1990. op.cit., p. 770.
[272] Hsü, I.C.Y., 1982. *China without Mao*, Oxford University Press. p. 12.

disregard for constitutionality demonstrated in the previous decades makes for the possibility of a power struggle without regard for law all but certain. Indeed, it further reinforces the notion that the constitution existed largely to support Mao's leadership; the irreverence that was felt towards the constitution throughout the preceding decade led to open contempt of it following his death.

2.5 Deng's legacy: Selective Legal Reform, 1976-2015

Following the strife and political instability that followed Mao's death, a period of relative calm took place thanks in large part to the politburo members' reticence to ferment any additional unrest, lest they further risk the security of their own position of power. Hua, with his position seemingly secured, was now faced with the daunting task of charting China's future direction. As his own legitimacy was intertwined with the people's view of Mao, he staunchly defended Mao's actions and to set out to continue his revolutionary policies. Hua unveiled a Ten Year Plan in 1976 that sought to accelerate economic production, including the setting of lofty targets in production of steel and fossil fuels[273]. This overly ambitious plan, which required a level of capital investment that almost equalled the amount of investment spent in the previous three decades[274], left Hua's reputation vulnerable to attack from the more pragmatic members of the politburo. As the financial costs of the Ten Year Plan mounted, with output falling short of his production targets, Hua became increasingly isolated from policy making within the Party and was later ousted from the Premiership of the Communist Party in 1980[275].

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[273] MacFarquhar, R., 2011. The Politics of China: Sixty Years of The People's Republic of China, Cambridge University Press. p. 314.
[274] Ibid.
[275] Joseph, W.A., 2010. *Politics in China: An Introduction*, Oxford University Press. p. 107.

During Hua's period of gradual decline, the Third Plenary Session of the CCP's 11th Central Committee took place in 1978[276]. Viewed by some scholars as a historic moment that precipitated the economic reforms that were to follow[277], and others as "anticlimactic"[278], the meeting none the less demonstrated a new willingness amongst the Party to stabilise the country's economy and legal system:

> In order to safeguard people's democracy, it is imperative to strengthen the socialist legal system so that democracy is systematized and written into law in such a way as to ensure the stability, continuity and full authority of this democratic system and these laws; there must be laws for people to follow, these laws must be observed, their enforcement must be strict and law breakers must be dealt with. From now on, legislative work should have an important place on the agenda of the National People's Congress and its Standing Committee. Procuratorial and judicial organizations must maintain their independence as is appropriate; they must faithfully abide by the laws, rules and regulations, serve the people's interests, keep to the facts; guarantee the equality of all people before the people's laws and deny anyone the privilege of being above the law.[279]

As a sign of the Party's intent, *The Criminal Law of the People's Republic of China* was adopted on 1 July 1979[280], the first comprehensive criminal code to the promulgated since the creation of the PRC, initial drafting of the document began during the 1950s,

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[276] Central Committee of the Communist Party of China, 1978. *Communique of the Third Plenary Session of the 11th CPC Central Committee*. English version available at: http://www.bjreview.com.cn/special/third_plenum_17thcpc/txt/2008-10/10/content_156226_4.htm.
[277] Chen, J., op.cit., p. 40.
[278] Joseph, W.A., 2010. op.cit., p. 106.
[279] Central Committee of the Communist Party of China, 1978. op.cit.
[280] National People's Congress, 1979. *Criminal Law of the People's Republic of China*, Beijing. Available at: http://www.china.org.cn/english/government/207319.htm.

at a time when legal scholars were still heavily influenced by their Soviet counterparts[281].

It is also notable in that the Third Party Plenum raised the issue of "rule of law" in so far as it accords the responsibility of both the judicial and procuratorial organs to "deny anyone the privilege of being above the law"[282]. Chen notes that such a principle was included in the Criminal Procedure Law, but not in initial drafts of the Criminal Law itself[283]. The inconsistent application of the principle of "rule of law" reveals the persistence of ideological divisions that existed within the CCP. While aware of the need of a robust legal system; traditional Party policymakers were also keen that such provisions would not make the party beholden to the law. The pragmatists won out however, with subsequent revisions to the Criminal Code to include "The law shall be equally applied to anyone who commits a crime. No one shall have the privilege of transcending the law"[284].

This was quickly followed by the Administrative Procedure Law, which went into effect in 1990[285]. Of marked importance, it provided for additional protections for citizens against administrative organs, including the ability to appeal legislative decisions[286], which Joseph notes as effectively providing citizens with the legal means to sue the government[287]. In addition to the Administrative Procedure Law, a wide variety of other laws were enthusiastically promulgated in during the PRC's period of legal reform

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[281] Berman, H.J., Cohen, S. & Russell, M., 1982. A Comparison of the Chinese and Soviet Codes of Criminal Law and Procedure. *The Journal of Criminal Law and Criminology*, 73(1), p. 248.
[282] Central Committee of the Communist Party of China, 1978. op.cit.
[283] Chen, J., op.cit., p. 175.
[284] Ibid.
[285] National People's Congress, 1990. *Administrative Procedure Law of the People's Republic of China*, Beijing. Available at: http://www.china.org.cn/english/government/207335.htm.
[286] Ibid., Art. 37.
[287] Joseph, W.A., 2010. op.cit., p. 108.

including the Economic Protection Law, Customs Law and the General Principles of the Civil Law[288].

Legal education too was on the agenda once more, after the excesses of the Cultural Revolution effectively ceased the existence of legal education by targeting legal scholars who were considered as revisionists[289]. This had a significantly deleterious effect on the legal profession. In 1979, there were less than 20,000 lawyers left practicing throughout the country[290]. The significance of this issue is difficult to overstate, without the necessary number of competently trained lawyers, legislators and jurists to oversee the application of the reformed legal system, efforts to reinvigorate China's economic development and stabilisation would come to a standstill. What followed was the re-opening of law departments within universities, the production of legal educational materials, and the resumption of students leaving the country to study law abroad[291]. This has paved the way for a dramatic revitalisation of legal education within China, with a growth from virtually no students in 1976[292], to almost 370,000 students in 2007[293].

The economic reforms that Deng brought to the fore during this period were perhaps the most revolutionary in how they facilitated the transformation of China's fortunes,

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[288] National People's Congress, 1989. *Economic Protection Law of the People's Republic of China*, Beijing. For English translation, see: http://www.cecc.gov/resources/legal-provisions/prc-environmental-protection-law; National People's Congress, 1987. *Customs Law of the People's Republic of China*, Beijing. For English translation, see: http://english.mofcom.gov.cn/aarticle/policyrelease/internationalpolicy/200705/20070504715848.htmlhttp://english.customs.gov.cn/publish/portal191/tab47812/info391083.htm; National People's Congress, 1986. *General Principles of the Civil Law of the People's Republic of China*, Beijing. For English translation, see: http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/11/content_21898337.htm.

[289] Lubman, S.B., 1999. op.cit., p. 151.

[290] Hecht, J., 2002. *Can Legal Reform Foster Respect For Human Rights In China? Remarks to the Congressional-Executive Commission on China*, Washington, DC. Available at: http://www.cecc.gov/sites/chinacommission.house.gov/files/documents/hearings/2002/CECC%20Hearing%20Testimony%20-%20Jonathan%20Hecht%20-%204.11.02.pdf.

[291] Connor, A.W., 2012. China's Lawyers and their Training. In Lubman, S B., *The Evolution of Law Reform in China: An Uncertain Path*. p. 548.

[292] Mao, L., 2007. Clinical Legal Education and the Reform of the Higher Legal Education System in China. *Fordham International Law Journal*, 30(421), p. 422.

[293] Ding, X., 2010. The Reform of Legal Education in China and Japan : Shifting from the Continental to the American Model. *Journal of Civil Law Studies*, 3(1), p. 113.

and how the ideological underpinnings of these policies departed so markedly from Mao's philosophies. Rather than rely purely on domestic production and trade to generate capital, Deng embarked on an "open door" policy in order to attract foreign capital. This was achieved in part thanks to the establishment of Special Economic Zones (SEZ), designated urban centres for the facilitation of foreign trade and investment through preferential policies and financial incentives[294]. At first, SEZ's served as a test bed for Deng's experimental policies, once they were proved to be successful it was used as a model and duplicated in other cities throughout Eastern China[295].

There were structural changes to both China's agricultural and industrial production sectors too. On the agricultural front, Deng went to great lengths to move away from the collective communes that characterised some of Mao's most disastrous economic policies by promoting semi-privatisation of agricultural production. No longer were farmers restricted to selling their produce at arbitrary rates set by central authorities, now they were largely free to choose their own crops and sell on the private markets[296]. While not without teething problems, the incentivised approach to agricultural production dramatically increased the productivity of agricultural land[297], and helped to solve the long standing issue of insufficient grain supply that blighted the sector[298]. The reforms to the industrial sector were also far reaching. Factories now could keep their profits providing they paid the appropriate taxes and gone were subsidies on factories

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[294] Such incentives include lower tax rates and relaxed regulations, see: Chen, L. & Jameson, M., 2012. Rents, party cadres and the proliferation of Special Economic Zones in China. *Journal of Economic Policy Reform*, 15(3), pp. 207–221.
[295] China Internet Information Center, Opening to the Outside World - Special Economic Zones and Open Coastal Cities. Available at: http://www.china.org.cn/e-china/openingup/sez.htm.
[296] Dreyer, J.T., 2006. op.cit., p. 149.
[297] Dong, X., Song, S. & Zhang, X., 2006. *China's Agricultural Development: Challenges and Prospects*, Ashgate, pp. 47-50.
[298] Xu, X. et al., 2013. Entry of Chinese Small Farmers into Big Markets. *Chinese Economy*, 46(1), p. 9.

or enterprises that could not maintain a profit[299]. This had the knock-on effect of rejuvenating industrial production, increasing diversification and market expansion.

By instituting the principles of a market economy into both the rural and urban sectors, along with utilising the resulting increase in production through expanding foreign trade, Deng orchestrated the development of a functioning growth engine that bore many of the hallmarks of a well-oiled capitalist system, vastly increasing China's prosperity and transforming its fortunes.

In 1982, the fourth constitution of the PRC came into effect[300]. The CCP was keen to fully institutionalise the new direction set out at by Deng at the 5th session of the 5th National People's Congress[301], and to distance itself from the skeletal constitution that was adopted in the 1970s. Instead, the 1982 constitution adopted a structure that more closely resembled the 1954 constitution, while at the same time taking into account the shortcomings of Maoist philosophy. The substance of the statutes within de-emphasised much of the heavily classed based rhetoric that was a feature of the 1954 constitution[302]. However, despite the progressive strides made with the 1982 constitution, in reality the Party's authority remains above any constitutional constraints, where any threats, whether real or perceived, to the primacy of the Party's absolute power are still heavily clamped down upon. This was brought sharply into focus during the harsh repression of China's burgeoning democracy movement in the late 1980s, which came to a head during the brutal crackdown of the student led protests for democracy in Tiananmen Square on 4 June 1989.

2.6 Chapter Conclusion

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[299] Hsü, I.C.Y., 1990. op.cit., p. 850.
[300] National People's Congress, 1982. *Constitution of the People's Republic of China of 1982: 中华人民共和国宪法, 1982 (宪法 (1982))*. English translation available at: http://english.people.com.cn/constitution/constitution.html.
[301] Kapur, H., 1985. The End of an Isolation: China Affter Mao, M. Nijhoff Publishers. p. 300.
[302] Constitution of the People's Republic of China of 1954, op.cit., Art. 1.

In the past century China has been witness more strife and restiveness than it has peace and prosperity. Much of the of the last century's history is pockmarked with the terrors of foreign imperialism, debilitating famine and violent regime change. With each successive ruling ideologue at pains to assert its own legitimacy by striking its own unique path, China has seen seismic shifts in the structure of its society. Often the clearest historical reference of this is contained within the laws that existed during each period, each reflecting the vastly differing values and rules imposed on the people of China over the past hundred years.

If one characteristic is shared amongst each of the three discrete periods of rule in China over the past century, it would be of a shared desire for absolute authority. Both the Republican government and the CCP are the products of a shared history of prolonged dynastic control over China, leading to a common antipathy for the Qing's class-based rule while at the same time ironically preserving many of the same authoritarian characteristics in an attempt to insure their own survival.

Despite the issues covered in this chapter, China has been witness to progress too. The implementation of a constitution, developments towards a rights based approach to law and greater levels of self-determination are all irrefutably positive steps, and have resulted in the country's economic miracle, transforming the fortunes of millions.

It is the CCP's recent successes in accelerating China's economy that has served as a panacea for much of the social and political upheaval that has characterised much of the PRC's history, legitimising the Party's authoritative position as a result. As will be explored subsequently, the CCP's attempts to replicate its successes by exporting this economic-centric model westward to Xinjiang in order to abate the region's persistent ethnic tensions is demonstrative of the CCP's limitations, and reveals that the Party cannot rely solely on economic development as the basis for its own legitimacy.

Looking forward, there is cause for both enthusiasm and concern. The CCP has survived the tumultuous period of radicalism and internal divisions that have caused some of the most tumultuous periods in China's recent history, and has seen the success that comes with pragmatism and cautious reform. However, its desire for control remains absolute, and China's current economic power may embolden the CCP to renew its original desire for a truly Marxist state. How that may be realised, and what that means for the people of China and beyond, remains to be seen.

Chapter 3: The Effects of China's Law and Policy on Xinjiang's Uyghur Minority

3.1 Chapter Introduction

In order to obtain an understanding of the doctrinal philosophy that influences the CCP's current minority policy, it is first necessary to consider the complex historical background which has contributed to its formation.

Perhaps the most succinct metaphor for traditional China's views on culture and race can be found within the traditional translation of the word "China". Its Romanised pinyin translation is Zhōngguó, which is also expressed through Mandarin Chinese ideograms, or *hanzi*, as 中国. Each character represents a unique meaning, with 中 translating to "Middle" or "Central", and 国 translating as "kingdom", revealing China's literal translation as the "Middle Kingdom".

When considered metaphorically, the traditional translation of the word China as the Middle Kingdom provides a lens that serves to frame the interactions between China - which is perceived to be at the world's centre - with that of the external other, one that exists both physically and culturally outside China's centre[303]. It is this guiding notion that has characterised and shaped China's views on culture and race throughout its history[304]. This perception has also manifested within Chinese philosophy, the origins of which can be found within the ideological teachings of the Chinese philosopher, Confucius.

Throughout much of China's history of dynastic rule, Confucian ideological thought has pervasively featured within Chinese society. Fundamental to its ideology is its

[303] This inner-outer dichotomy is also referred to as "Sinocentrism". For further reading see: Mancall, M., 1963. The Persistence of Tradition in Chinese Foreign Policy. *The Annals of the American Academy of Political and Social Science*, 349(1), pp. 16-19.
[304] Cranmer-Byng, J., 1973. The Chinese View of Their Place in the World: An Historical Perspective. *China Quarterly*, 53(53), pp. 70-72.

veneration of the Confucian concepts of *harmony* and *culture*. In the Confucian ideal, harmony permeates and defines all forms of interaction between the self and the other[305]; from the inter-personal level to the social or communal level within Chinese society, and even in China's interactions with those existing outside of its borders. The desire to attain a state of harmony represents a normative pressure to resolve a state of disharmony, which may manifest in the form of conflict or social tension[306]. In order to achieve this in accordance with the Confucian emphasis of non-confrontation, the exportation and transmission of Confucian cultural values was seen as a necessary civilising process within Chinese society[307].

Confucian ideological thought also heavily centres on the notion of culture, considering it as the ultimate determinant of one's civility and status within Chinese society, centring Confucian thought and its value system considered as the pinnacle of Chinese culture[308]. Consequently, traditional Confucianism gives rise to a form of cultural stratification, promoting the notion that those who do not share traditional Chinese cultural values are to be perceived as "others" by virtue of their divergent values, and as uncivilised or barbaric in their practice[309]. It is important at this point to emphasise that Confucianism itself does not conflate culture with race or ethnicity, but instead considers culture as a malleable and thus changeable component of one's identity without regard to racial or ethnic background. This is perhaps best expressed through the Confucian proverb "By nature, men are nearly alike; by practice they get wide

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[305] For further reading on the importance of *harmony* within Confucian thinking, see: Yao, X., 2013. The way of harmony in the Four Books. *Journal of Chinese Philosophy*, 40(2), pp. 252–268; Wei, X. & Li, Q., 2013. The Confucian Value of Harmony and its Influence on Chinese Social Interaction. *Cross-Cultural Communication*, 9(1), pp. 60–66.

[306] Lim, L.L., 2009. The Influences of Harmony Motives and Implicit Beliefs on Conflict Styles of the Collectivist. *International Journal of Psychology*, 44(6), pp. 401–409.

[307] Harrell, S., 2013. introduction: Civilising Projects and the Reacion to Them. In *Cultural Encounters on China's Ethnic Frontiers*. University of Washington Press, pp. 3-8.

[308] Hammond, K.J. & Richey, J.L., 2014. *The Sage Returns: Confucian Revival in Contemporary China*, State University of New York Press, p. 56.

[309] Twitchett, D.C. & Fairbank, J.K., 1978. *The Cambridge History of China: Late Ch'ing, 1800-1911, pt. 2*, Cambridge University Press. pp. 182-183. For further reading on the Hua-Yi, or Civilised-Barbarian Discourse, see: Rawski, E.S., 2015. Identity Issues: the Civilised-Barbarian Discourse. In *Early Modern China and Northeast Asia*. Cambridge University Press, pp. 188–195.

apart"[310], or to elaborate; Confucian thought emphasises as its central tenet that people are inherently equal, and that any diversions from this inherent equality emerge as a result of the living experience. The Confucian consideration of cultural otherness represents this deviation, of which the normative forces of Confucian thought serve as a means of addressing this cultural otherness through the acculturation of Confucian values in order to achieve a harmonious society[311].

China's minorities were often perceived as an embodiment of this cultural other within traditional Chinese society, whose differing cultural practices were seen as a deviation from the values espoused within Confucianism. Consequently, China's minorities were treated with varying levels of suspicion throughout much of China's history. This pejorative consideration of the cultural other was further compounded by the territorial encroachment of foreign imperial powers[312], and the oppressive rule of the Yuan and Qing dynasties[313], which were both seen as foreign rulers[314]. These factors all contributed to the entrenched perception that otherness in itself stands in the way of the prosperity of a harmonious Chinese civilisation.

This conflation of cultural otherness with that being lesser developed or uncivilised has continued to feature within China's governance following the end of its dynastic period in 1912, after the founding of the ROC[315]. In order to gain the popular support needed by the ROC to succeed the Qing dynasty, the ROC's leader, Sun Yat-Sen, pragmatically leveraged minority support by giving them equal status within the ROC

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[310] Legge, J. & Ching, S., 1867. *The Chinese Classics: The life and works of Mencius*, J. B. Lippincott, p. 239.
[311] Baogang, H., 2004. Confucianism versus liberalism over minority rights: A critical response to Will Kymlicka. *Journal of Chinese Philosophy*, 31(1), p. 112.
[312] For additional information on the effects that foreign imperialism had on China, see *supra* section: 2.2 Characteristics of Law during late Qing China.
[313] For further information on the Qing Dynasty in Xinjiang, see *supra* section: 1.4 Political Islam in Xinjiang during the Qing Dynasty, 1644-1911. For additional reading on the Qing legal system, see *supra* section: 2.2 Characteristics of Law during late Qing China.
[314] Both the Yuan (Mongol) and Qing (Manchu) dynasties featured minority rulers.
[315] For further reading on the establishment of the ROC, see *supra* section: 1.5 Republic of China, 1912-1949

constitution as part of its multi-national republic[316]. However despite such constitutional equality, minorities during this period held little substantive influence within the ROC's government, which was predominantly Han orientated. As a result, many minorities within China felt a sense of political disenfranchisement, with many of the largest minority groups, including the Uyghur, choosing to live in varying levels of autonomy[317], outside of ROC de facto rule. The CCP capitalised upon the factionalised state of much of China during this period by seeking to gain support of the disparate minority groups in a manner not dissimilar to that of the initial approach of the KMT; by promising to recognise the divergent interests of minorities by way of real autonomy and equal political status.

Following the establishment of the PRC in 1949, the CCP sought to consolidate its power and shore up its territorial sovereignty in China's border regions through the formal establishment of its policies with respect to minorities. Such policies were given legal expression within the CCP's interim constitution which was published in 1949[318]. It included provisions regarding regional autonomy for what it referred to as "minority nationalities" and provided various cultural protections and the "freedom to develop their dialects and languages, to preserve or reform their traditions, customs and religious beliefs"[319]. The CCP during this period of power consolidation shared much of its ideology with the Soviet Union, and relied upon modelling its policies on those implemented by the Soviet Union in order to engage in the statecraft necessary to assert its dominance over China's territory. Like its Soviet counterpart, China contained

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316 The republic consisted of five nationalities which included Han, Manchu, Muslim/ Hui, Mongol and Tibetan nationalities.

317 The Uyghur achieved two short lived independent republics in Xinjiang during the period of ROC rule. Tibet and Outer Mongolia too were independent of the ROC's administration. For additional reading, see *supra* chapter:

Chapter 1: The History and Religion of Xinjiang.

318 For additional commentary on the interim constitution, also known as the *Common Program*, see *supra* section: 2.4 The Struggle of Law under Communism, 1949-1976.

319 Chinese People's Political Consultative Conference, 1949. *The Common Program of the Chinese people's Political Consultative Conference*, op.cit., Arts. 51,53.

areas of considerable size and strategic importance that were comprised of predominantly of populations that were culturally different from the Han majority.

At this point it's appropriate to examine the origins of the CCP's nationality policy specifically, which was heavily inspired by the nationality policy used by the Soviet Union[320]. The rationale behind the Soviet Union's implementation of its nationality policy shares similarities with the CCP's own motivations in so far as such policies were both necessitated by their expansionist desires in increasing territorial control[321]. As the Soviet Union increased its control over large regions which held culturally distinct populations each with their own independent history and identity[322], it became necessary for the Soviet Union to develop a model that would allow for sustainable expansion over geographically vast and culturally diverse regions which had historically defined territorial borders[323]. The model which emerged was to integrate the disparate minority populations into the Socialist system by providing them with official recognition and protections as a recognised minority nationality[324], which Stalin classified as a "nation is a historically evolved, stable community of language, territory, economic life and psychological make-up manifested in a community of culture"[325]. Once classified according to Stalin's four criterions, recognised minority nationalities would be provided with preferential policies including regional autonomy and the freedom to preserve their culturally distinct practices and beliefs[326]. The level of regional autonomy provided to recognised minorities was dependent on their relative size and geographical concentration. This resulted in the existence of as many as fifteen autonomous minority

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[320] Hsieh, J., 1986. China's Nationalities Policy: Its Development and Problems. *Anthropos*, (Bd. 81, H. 1./3.), p. 4.
[321] For further reading on Soviet Union's expansionist tendencies, see: Wolfe, B.D., 1985. *Communist Totalitarianism: Keys to the Soviet System*, Westview Press; Welch, W., 1971. Soviet expansionism and its assessment. *Journal of Conflict Resolution*, 15(3), pp. 317–327.
[322] Examples include the Ukrainians, Kazakhs and Uzbeks.
[323] Chamberlin, W.H., 1945. Soviet Race and Nationality Policies. *Russian Review*, 5(1), p. 5.
[324] Towster, J., 1951. Soviet Policy on Nationalities. *The Antioch Review*, 11(4), pp. 440–441.
[325] Stalin, J., 1947. *Marxism and the National and Colonial Question*, Lawrence & Wishart, p. 8.
[326] Such protections included the promotion of minority language education, see: Raffass, T., 2012. *The Soviet Union: Federation Or Empire?*, Routledge. pp. 148-149; Ornstein, J., 1959. Soviet Language Policy: Theory and Practice. *The Slavic and East European Journal*, 3(1), p. 2.

republics within the Soviet Union[327], each created as a result of the Soviets minority policy of regional autonomy.

While the Soviet Union ostensibly protected minority identity and provided minorities with a degree of autonomy; it simultaneously pursued policies that sought to assimilate the minority identity of these republics into a monocultural socialist state[328]. Hirsch refers to this system as one of "double assimilation", and considers that the delineation of groups into discrete national minorities complimented the Soviet Union's more overtly assimilationist policies, which together facilitated the emergence of an "empire of nations"[329].

While it would be reasonable to consider that the institutionalisation of minority identity with that of regional nationalism was contrary to the Soviet Union's assimilationist ambitions[330], such policies were largely driven by pragmatic necessity. In order to create the conditions necessary for a far reaching socialist state, the Soviet Union planners first felt it necessary that minorities were sufficiently invested in its realisation[331], while being fully cognisant of the risk of promoting separatist sentiments should a policy of outright cultural repression be adopted[332]. There were other potential benefits to the Soviet nationality policy too, including its use as a means of regime legitimisation by projecting an image of a tolerant socialist society, effectively serving as a soft power mechanism for the Soviet Union's unquenchable appetite for further ideological expansion over its neighbouring states.

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[327] Roucek, J.S., 1960. The Soviet Treatment of Minorities. *Phylon*, 22(1), p. 17.
[328] Also referred to as "Russification". For further reading on the term, see: Silver, B.D., 1974. Social Mobilization and the Russification of Soviet Nationalities. *The American Political Science Review*, 68(1), pp. 45–66; Anderson, B. a. & Silver, B.D., 1983. Estimating Russification of Ethnic Identity Among Non-Russians in the USSR. *Demography*, 20(4), pp. 461–489.
[329] Hirsch, F., 2000. Toward an Empire of Nations: Border-Making and the Formation of Soviet National Identities. *Russian Review*, 59(2), p. 204.
[330] Vardys, S. V, 1965. Soviet Nationality Policy Since the XXII Party Congress*. *Russian Review*, 24(4), pp. 323–324.
[331] Martin, T., 2000. Modernization or neo-traditionalism? Ascribed nationality and Soviet primordialism. In S. Fitzpatrick, ed. *Stalinism: New Directions*. New York: Routledge. pp: 354-355.
[332] Suny, R.G., 1989. Nationalist and Ethnic Unrest in the Soviet Union. *World Policy Journal*, 6(3), p. 506.

3.2 The Emergence of the CCP's Minzu Minority Policy

During the PRC's period of power consolidation, the CCP sought to address the herculean task of identifying and delineating minorities for the purposes of classification of minority nationality. Mullaney's research on ethnic classification during this period provides a keen insight to the extent of the challenge faced by party planners, noting that the CCP's first national census was used as a means for determining the number of nationalities within China by leaving the field for "nationality" unrestricted. The result of this approach of self-categorisation culminated in the recorded existence of as many as 400 unique nationalities[333]. Such an unwieldy number of disparate minority nationalities would have resulted in administrative upheaval in light of the guarantees of regional autonomy and cultural protections provided within the interim constitution. While many of these groups were of a reasonably large size and bore a discrete identity that separated them from the Han majority, some of the nationality entries within the census had a population as few as one[334]. Spurred by this challenge, the CCP subsequently implemented what is referred to as the *Nationality Classification Project* as a means to further refine the number of disparate nationalities to a more manageable figure[335]. Heavily inspired by the Stalinist model described earlier, the *Nationality Classification Project* eventually resulted in the current number of 56 nationalities, or *minzu*, with the Han minzu amounting to a sizable majority[336].

The formalised recognition of 55 minority nationalities, ten of which were identified as Muslim, provided the CCP with the means to form a unitary multi-national state. The guiding motivations behind the CCP's minority policy was the same as the Soviet Union's nationality policy, which was implemented partly as a means to mitigate the

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[333] Mullaney, T. & Anderson, B., 2010. *Coming to Terms with the Nation: Ethnic Classification in Modern China*, University of California Press. p. 34.
[334] Mullaney, T. & Anderson, B., 2010, op.cit., p. 37.
[335] Ryono, A. & Galway, M., 2014. Xinjiang under China: reflections on the multiple dimensions of the 2009 Urumqi uprising. *Asian Ethnicity*, 16(2), p. 244.
[336] As of China's 2010 population census, the Han Chinese account for close to 92% of the overall population.

risk of formal secession. Within China's context specifically, regions such as Xinjiang and Tibet represented the greatest risk of secession, both of which at this point were predominantly populated by non-Han minorities. True to the CCP's socialist ambitions, the CCP later orchestrated a program of ideological and cultural assimilation, attempting to co-opt and politicise the minority population through active participation in minority party cadres, land reforms and modernisation by way of economic development.

On reflection of the Confucian ideological thought that remains deeply rooted within Chinese society, it is apparent that the underlying ideologies that influence the CCP's minority policy in part emanates from the Confucian desire to form a state of harmony, one that by virtue of the Confucian normative value system is culturally homogenous in character. This Confucian desire remains complicated by the China's contemporary reality; one that exists as a diverse multi-cultural state consisting of a plurality of cultural and religious values and identities. The CCP's attempts to address this reality through the implementation of the Soviet minority policy further demonstrates its assimilationist motivations by replicating the policies of a state which saw autonomy and self-determination as a means with which it could ultimately assert total territorial and ideological control.

In spite the CCP's efforts to achieve its desires through its adoption of Soviet minority policy, it has also adopted the inherent flaws of such polices as a result. Despite the Soviet Union's intention that its minority policy would ultimately disarm minorities and pave the way to acculturation into a collective socialist identity, in practice such policies instead undermined the Soviet Union's ambitions by instilling a sense of national identity amongst its minority populations, empowering minority nationalism as a result[337]. This was later given full expression following the establishment of the

[337] James, A.P.P., 2001. National Identity between Tradition and Reflexive Modernisation: The Contradictions of Central Asia. *National Identities*, 3(1), pp. 31–33.

independent Central Asian states that emerged following the Soviet Union's dissolution[338].

The ultimate collapse of the Soviet Union that precipitated the establishment of independent Central Asian states along Xinjiang's borders has been the subject of great concern amongst Chinese policy makers and academics[339]. Moreover, the resurgence of national identity within these states represents some of the CCP's deepest insecurities regarding China's own territorial integrity along its periphery. The rapid and unexpected nature of this transformative reconfiguration of national borders has prompted a revaluation of minority policy within China itself. The existence of nationalist separatist movements within China, particularly in the ever restive regions of Xinjiang and Tibet, has only compounded the need for the Chinese government to take an introspective lens over the efficacy of its existing policies. This has led to the emergence of an increasingly lively discourse among some of China's most influential scholars on how to address China's increasingly fraught geo-political challenges on both sides of its borders.

Perhaps one of the most prominent voices on the matter is that of Ma Rong, a sociology professor at China's Peking University. Ma's central assertion is that the current Soviet influenced minority policy of minzu classification and regional autonomy risks further entrenching the differences between China's minzu, resulting in the emergence of minority nationalism[340]. The existence of minority nationalism would eventually, in a fashion not dissimilar to the Soviet Union's experience, result in separatist aspirations among China's minorities. As a means to mitigate what he sees as a systematic policy flaw, Ma radically proposes for the derogation of constitutional

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[338] Appleby, I., 2010. Uninvited guests in the communal apartment: nation-formation processes among unrecognized Soviet nationalities. *Nationalities Papers*, 38(6), pp. 859–860.
[339] China's concern with the regions geo-politic restructuring resulted in the establishment of the "Shanghai five" and later formalisation into the Shanghai Cooperation Association (SCO). For further reading, see: Yuan, J.-D., 2010. China's Role in Establishing and Building the Shanghai Cooperation Organization (SCO). *Journal of Contemporary China*, 19(67), pp. 855–869.
[340] Rong, M., 2006. Ethnic Relations in Contemporary China: Cultural Tradition and Ethnic Policies Since 1949. *Policy and Society*, 25(1), p. 104.

right to regional autonomy for China's minorities by removing the minzu classification system all together. The consequences of which would, he posits, result in the de-politicisation of ethnicity by decoupling minority identity from regional autonomy.

As a preferred model of acculturation, Ma appraises the United States as an example, noting that "ethnicity-related issues are shown as individual or social problems, not political issues facing the entire ethnic group"[341]. In considering that China should derive its minzu policies from that of the United States, Ma ignores in his consideration the fundamentally different ethnic composition that exists throughout the United States, which unlike China or the former Soviet Union, does not contain areas of significant territory where ingenious minorities constitute a regional majority, but instead is a society that is more broadly characterised through a prolonged period of extensive immigration.

Following the periods of heightened ethic unrest that culminated in the protests in Tibet in 2008[342], and the 2009 Ürümqi riots in Xinijang[343], Ma Rong's proposals saw increasing influence among CCP policy makers. Bovingdon and Leibold deftly chart the increasing popularity of Ma's views among Chinese intellectuals on what is commonly referred to as "second generation minzu policies"[344], many of which make similar calls for radically creating the necessary conditions for the acceleration of homogenisation of minorities into the Han majority culture[345].

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[341] Rong, M., 2010. A New Perspective in Guiding Ethnic Relations in the 21st Century: "De-politicization" of Ethnicity in China. *Procedia - Social and Behavioural Sciences*, 2(5), p. 6837.
[342] Barnett, R., 2009. The Tibet Protests of Spring 2008: Conflict between the Nation and the State. *China Perspectives*, 3, pp. 1–23.
[343] Ryono, A. & Galway, M., 2014. op.cit., pp. 235–255; Millward, J.A., 2009. Introduction: Does the 2009 Urumchi violence mark a turning point? *Central Asian Survey*, 28(4), pp. 347–360.
[344] Bovingdon, G., 2014. Hu Wants Something New: Discourse and the Deep Structure of Minzu Policies in China. In S. H. Williams, ed. *Social Difference and Constitutionalism in Pan-Asia*. Cambridge University Press, pp. 180–189; Leibold, J., 2013. Ethnic Policy in China: Is Reform Inevitable? *Policy Studies*, 68. pp. 14-21.
[345] Shengli, B., 2011. Also on "China's improvment on national policy" (也谈中国可进一步完善民族政策). *People's Daily*. Available at: http://theory.people.com.cn/GB/16057587.html; Weiqun, Z., 2012. Some thoughts on the issue of minzu minority areas (对当前民族领域问题的几点思考). *Study Times*. Available at: http://cpc.people.com.cn/GB/64093/64102/17122242.html.

However, there are also those within Chinese academia who disagree with the proponents for dramatic changes to existing minzu policies. One of the most prominent is Hao Shiyuan[346], an ethnographer and vice director of the division for ethnic issues at China's prestigious Academy of Social Sciences (CASS), an academic institution with strong ties to the inner circles of the PRC's State Council[347]. Hao considers that Ma's analysis that Soviet nationality policy failed by inadvertently reinforcing nationalist sentiment among its minorities is one of "historical materialism"[348]. Instead, Hao contends that the Soviet Union's failure to address the increasingly tribalistic national sentiments amongst its minority population are instead the result of Lenin's and Stalin's eventual divergence from the Soviet Union's initial policy of minority co-option to one of extensive ethnic discrimination[349], with examples including the promotion of the Russian language as the Soviet standard[350]. Similarly, Hao rejects Ma's view that China's minority policy should consider the United States as a model; pointing out the existence of racial inequality and affirmative action policies as illustrative of the failures of America's "melting pot" model[351]. Instead Hao represents those in Chinese intellectual circles who are largely proponents of China's existing policy of regional autonomy for minorities, who instead make the comparatively moderate argument for the acceleration of economic development within minority regions as a means to address "the ethnic issue"[352].

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[346] Chinese Academy of Social Sciences, Hao Shiyuan - CASS Biography. Available at: http://casseng.cssn.cn/about/about_leadership/Assistant_to_the_President_of_CASS/201402/t20140221_969746.html.

[347] Sleeboom-Faulkner, M., 2007. *The Chinese Academy of Social Sciences (CASS): Shaping the Reforms, Academia And China (1977-2003)*, Brill, pp. 17-23.

[348] Shiyuan, H., 2012. Soviet Defeat, The United States Failure (苏联失败、美国也未成功). *CN Politics*. Available at: http://cnpolitics.org/2012/05/ussr-and-usas-ethnic-polic/.

[349] Ibid.

[350] Ornstein, J., 1959. op.cit., pp. 10–12.

[351] Shiyuan, H., 2012. US national policy is not China's example (美国民族政策不是中国的榜样). *Global Times*. Available at: http://opinion.china.com.cn/opinion_34_46334.html.

[352] Shiyuan, H., 2012. Ethnicities and ethnic relations. In L. Peilin, ed. *Chinese Society - Change and Transformation*. pp. 101-106.

Both approaches are each flawed in their own way. The proposal of Ma et al. for the downgrading of minority nationality status fails to take fully take into account the complex milieu of historical and cultural factors that have contributed to the existing minority unrest. Ma's proposal that a taxonomic downgrading will have the effect of depoliticising minority status will instead have the effect of further politicising minority identity as a consequence of removing their constitutional privileges and protections as recognised minority nationalities. Similarly, Hao's comparably moderate calls for the preservation and improvement of existing policies disproportionately emphasises the importance of economic development without due regard for the deeply entrenched cultural differences that define minority identity. The absence of such considerations makes any attempted implementation of economic equality ill-considered as a result.

Despite these issues, the above examples demonstrate that a plurality of views exist among some of China's most influential scholars on how to address the shortcomings of China's minzu policy. While Ma's proposals of radical reforms are diametrically opposed by scholars such as Hao, who instead calls for the improvement of existing CCP policies, both of these divergent schools of thought emanate from the shared recognition that the CCP's current minority policy has its shortcomings in addressing issues of inequality and dissatisfaction among China's minorities. As Leibold notes, the fact that such discussions are taking place in the public realm represents a curious departure from the usually linear and opaque party line of the CCP's internal policies[353].

It can also be said that the lack of cohesion among China's intellectuals on how to address existing minority issues is both reflected and manifested within current CCP minority policy. As this chapter will later demonstrate, the policies that directly affect Xinjiang's Uyghur are perhaps the best illustration of this incoherency, the repercussions of which only serve to fuel further ethnic tensions.

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[353] Leibold, J., 2013. op.cit., p. 2.

3.2.1 CCP Ideology Manifested in P.R.C. Law & Policy

The structure of China's model of governance offers perhaps the clearest means with which to examine how the CCP's guiding ideology shapes and defines contemporary Chinese society. On paper, its structure shares much with the Western models of governance, with an ostensibly balanced constitution that promotes the principle of equality along with many of the same freedoms that are espoused within the core treaties of the United Nations[354]. There is also the separation of powers into separate executive, judicial and legislative branches typically found within Western systems of governance.

Regarding the legislative branch in particular, its principal legislative body, the National People's Congress (NPC); comprises of delegates from all 55 minority nationalities and is constitutionally charged with a broad range of powers including the ability to legislate national laws[355], and the competency to make amendments to the constitution[356]. However, its sheer size[357], combined with the relative infrequency with which it is convened[358], restricts the NPC's ability to sufficiently respond to the ever changing needs of the PRC's frequently shifting legislative landscape.

Instead, this is achieved through the work of the NPC's Standing Committee (NPC-SC). In a manner not dissimilar to the Permanent Members of the United Nations Security Council, the NPC-SC comprises of a smaller core group of 175 legislators whom meet more frequently than the full NPC[359]. The NPC-SC is provided with the competency to interpret both national law and the constitution itself. It shares a co-

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[354] For more on China's interaction with the United Nations, see *infra* chapter: Chapter 4: China and the United Nations: A Cautious Engagement.
[355] Constitution of the People's Republic of China of 1982, op.cit., Art. 62(3).
[356] Ibid., Art 62(1).
[357] The world's largest legislative body, the NPC frequently contains close to 3,000 members with elections taking place every 5 years.
[358] Constitution of the People's Republic of China of 1982, op.cit., Art. 61.
[359] NPC-SC schedule regular meetings on a bi-monthly basis, with additional meetings taking place in special circumstances such as national emergencies

symbiotic relationship with the NPC; with members of both bodies holding five year terms in office[360], and the NPC retaining the power to overrule decisions taken by the NPC-SC if deemed necessary[361]. While the NPC is the principle organ charged with the promulgation of national law, the NPC-SC may also carry many of these functions providing there are no conflicts of interest with the NPC[362]. The NPC-SC is also responsible for determining the constitutionality of regional regulations, otherwise known as third-tier laws, which are made by the Supreme People's Court, the State Council or smaller municipal NPC's[363].

As the above summary demonstrates, the structure of the PRC's legislative branch provides a reasonable level of accountability for legislators both within the NPC and its Standing Committee, and provides mechanisms for the potential curtailment of either bodies powers should the need arise. However, these examples also illustrate some of the key differences that exist between the PRC's model of governance and its Western counterparts. In particular, the NPC-SC's ability to "interpret the constitution"[364] is unique in that it provides the power of interpretation to the legislative branch of government, divesting the power of interpretation from the judicial branch which is otherwise typical of Western systems of governance. Similarly, the NPC has the power to elect the President of the Supreme People's Court (SPC), the highest level of the judicial branch, while the NPC-SC has the power to both appoint and remove members of judicial branch up to the level of Vice-President of the SPC[365]. These powers firmly place the judicial branch of the PRC government at a level below the legislative branch by effectively removing its independent ability to interpret the constitution, while also making the composition of its judiciary subject to the approval of the legislative branch.

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[360] Constitution of the People's Republic of China of 1982, op.cit., Art. 60.
[361] Ibid., Art 62(11).
[362] Ibid., Art 6(2)&(3).
[363] Constitution of the People's Republic of China of 1982, loc.cit, Art. 67(7) & (8).
[364] Ibid., Art. 67(1).
[365] Ibid., Art. 67(11).

The formulation of the executive branch, or State Council, mirrors the judicial branches imbalanced relationship with the legislative branch.

This hierarchical subjugation of both the judicial and the executive branch to exist beneath the legislative branch brings into sharp focus the effectively top-down vertical linearity that characterises the PRC's system of governance, which is explicitly provided for within the initial provisions of China's constitution, where it states:

> [...]All administrative, judicial and procuratorial organs of the State are created by the people's congresses to which they are responsible and by which they are supervised.
>
> The division of functions and powers between the central and local State organs is guided by the principle of giving full scope to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities.[366]

This system of governance, described within the constitution as "democratic centralism" ensures that the legislative, judicial and executive powers all ultimately emanate from the same source, contrasting with the Western doctrine of "trias politica"[367]. This top-down power structure is itself representative of the CCP's authoritarian model, and is devised in a manner to restrict the independence of each distinct branch of government while at the same time concentrating power in a manner that enables the CCP to assert its control.

To illustrate how the CCP maintains its control and asserts itself within the PRC's governmental structure, one may examine the dual positions held by those within upper echelons' of each branch of government. Within the NPC itself, the chairman of its

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[366] Constitution of the People's Republic of China of 1982, op.cit., Art. 3.
[367] For further reading on the strengths and limitations of the doctrine of "Trias Politica" or the separation of powers, see: Wilson, J.Q., 1986. Political Parties and the Separation of Powers. In R. A. Goldwin & A. Kaufman, eds. *Separation of Powers - Does it Still Work?*. American Enterprise Institute for Public Policy Research.

Standing Committee, Zhang Dejiang (张德江), is also one of the seven members of the Politburo Standing Committee (PSC), who together constitute the CCP's leadership. While analogous to the NPC-SC in its respective organisational importance, the PSC is at the same time free of the constitutional restrictions put in place to limit the NPC-SC's power. Another example includes the Premier of the PRC, the highest position within the civil service who is charged with appointing the members of the NPC-SC. Currently, this position is held by Li Keqiang (李克强), who also holds a position within the Politburo Standing Committee. Similarly, the Chair of the CPPCC, an advisory body that allows for limited participation of Chinese non-governmental organisations (NGOs) and officially recognized political parties, is also a member of the PSC. Xi Jinping, the first ranked PSC member also holds numerous simultaneous positions both within the CCP and as President of the PRC and its military branch, the Central Military Commission. In essence, the CCP permeates all aspects of the PRC's system of governance from above. While these examples demonstrate that the leadership positions within the various branches of government all hold dual positions within the CCP, it extends to all levels of China's government.

Consider the NPC for example. While election of candidates of the 3,000 strong NPC is determined by both the smaller municipal NPC's and the PLA, the majority of the NPC's composition is comprised of CCP members[368]. The candidacy of the NPC-SC is also determined by the CCP[369]. This is significant in that all substantial laws need to be passed by the NPC or the NPC-SC, with the majority of both being comprised of CCP members. This authoritative structure ensures that the CCP holds the power to shape and influence laws, and to interpret the powers and protections of the constitution. As such, the Party's autonomy exists above all aspects of the PRC's governance, and is

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[368] Shi, M., China. In P. R. Baehr, ed. *Human Rights in Developing Countries: Yearbook 1994*. Martinus Nijhoff Publishers, p. 162; Kesselman, M., Krieger, J. & Joseph, W., 2012. *Introduction to Comparative Politics, Brief Edition*, Cengage Learning, pp. 407-408.
[369] Pei, M., 2009. *China's Trapped Transition: The Limits of Developmental Autocracy*, Harvard University Press, p. 59.

free from the constitutional checks and balances that the state machinations are otherwise beholden to. In essence, the constitution itself is designed to preserve the power of the CCP through providing a structural means with which it can progress and implement its own ideological agenda through law and policy.

In order to demonstrate how the CCP uses the PRC's authoritarian system of governance to maintain its position of ideological dominance, one may examine the CCP's view on religion, and how that view manifests in religious policy. The existence of such policies, which are given effect through the establishment of regulations and administrative structures, are implemented to mitigate the competing ideological influence of religion within the public sphere, and to co-opt religious practice for the purposes of protecting the Party's position of authority.

The CCP's views on religion can be found within Document No. 19[370], an internal white paper published in 1982 in order to both clarify its view on religion, and to provide a coherent policy strategy in the implementation of religious regulations at the national and municipal level. Document No. 19 reflects the CCP's Marxist ideological influence within its opening section[371]. It succinctly states that "Religion will eventually disappear from human history"[372]. The paper provides a class-based discourse in religion's development within society which resulted in part from "the need of the oppressor classes to use religion as an opiate and as an important and vital means in its control of the masses"[373]. It positions the Party's socialist ideology as the means with which

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[370] Central Committee of the Communist Party in China, 1982. *Document No. 19: The Basic Viewpoint and Policy on the Religious Question during Our Country's Socialist Period*, Beijing. For English translation, see: Spiegel, M., 1991. Freedom of Religion in China, London: Human Rights Watch/ Asia, appendix 2.

[371] Karl Marx famously wrote that "religion is the opiate of the masses". For further reading, see: Raines, J.C., 2002. *Marx on Religion*, Temple University Press.

[372] Document No. 19, Art. I.

[373] Ibid.

religion will disappear through the "long-term development of Socialism and Communism"[374], considering religion as a "historical phenomenon"[375].

Despite the CCP's pejorative view on religion, it also realises the limitations in its efforts in achieving a socialist society devoid of religious belief. Further, the document proceeds to describe the potential dangers of forcibly prohibiting religious practice or belief, noting that:

> Those who expect to rely on administrative decrees or other coercive measures to wipe out religious thinking and practices with one blow are even further from the basic viewpoint Marxism takes toward the religious question. They are entirely wrong and will do no small harm.[376]

With this in mind, the paper continues to detail the CCP's approach to the "religious question" with respect to China's minorities, demonstrating an understanding of the intersectionality of minority identity with that of religion:

> Each minority and each religion is differently situated with regard to this question of the relationship between religion and the ethnic minorities. There are some ethnic minorities in which nearly all the people believe in one particular religion, Islam or Lamaism, for example. Among these peoples, the question of religion and ethnicity is frequently intertwined.[377]

The paper follows by articulating the need for an understanding of "the particular situation of each ethnic group and each religion" in order to "proceed in our handling of them"[378]. Regarding the foreign origins of the majority of China's most popular religions including Islam, the paper stresses the dangers of "infiltration by hostile foreign

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[374] Document No. 19. op.cit.
[375] Ibid.
[376] Ibid. Art. I.
[377] Ibid. Art. IX.
[378] Ibid.

religious forces"[379], giving specific reference to religious centres of influence that are outside of the CCP's sphere of control[380]. As these examples demonstrate, the paper demonstrates the CCP's overriding concern with religion is the perceived threat it poses to its own ideological control, viewing both religious belief and organisations that propagate it as an existential threat to the Party's ambitions of a socialist state.

With this in mind, an examination of the constitutional provision on the right to religion is necessary. Art. 36 of China's current 1982 constitution is as much indicative of the CCP's pragmatism concerning the existence of religion within contemporary Chinese society as it is of the CCP's socialist aspirations.

> **Article 36** Citizens of the People's Republic of China enjoy freedom of religious belief.
>
> No State organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.
>
> The State protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the State.
>
> Religious bodies and religious affairs are not subject to any foreign domination.[381]

On initial examination of the above provision, it offers neutral protections for both religious and non-religious belief, while also ensuring that religious activities do not "disrupt public order, impair the health of citizens or interfere with the educational

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[379] Document No. 19. op.cit., Art. XI.
[380] Ibid. When considering the risk of foreign spheres of influence, the paper specifically concerns itself with the Christian religions, Catholicism and Protestantism, stating: "there are reactionary religious groups abroad, especially the imperialistic ones such as the Vatican and Protestant Foreign-mission societies, who strive to use all possible occasions to carry on their efforts at infiltration 'to return to the China mainland.'".
[381] Constitution of the People's Republic of China of 1982, op.cit., Art. 36.

system of the State"[382]. However, the provision also makes the distinction between religious belief and its manifestation through practice or activity. In particular, this distinction is used to limit the scope of the constitutional protections in what it refers to as "normal religious activities". This deliberately opaque language is open to broad interpretation over what specific activities fall within the scope of the provisions protections, providing both flexibility and discretion for the NPC-SC in interpreting efficacy and applicability of the constitutions protections in practice.

Hong Qu raises the point that such flexibility is useful for municipal governments in autonomous regions, such as Xinjiang, which are "characterized by very unique religious and ethnic differences", providing necessary leeway for "the local government to interpret the policy and law according to local situations"[383]. This further demonstrates the broadly divergent role that the constitution plays within China's legal system when compared to its Western contemporaries. In this specific instance, it provides the CCP with the legal basis with which it may further implement its religious policy agenda with respect to the differing conditions and requirements that are specific to each religious minority. As the next section will demonstrate, an example of this constitutional relativism is the promulgation of several municipal regulations concerning religious practice within Xinjiang in particular which are unique to the region and have a dramatic effect on the Uyghurs' religious identity.

3.3 Laws and Policy in Xinjiang and its Impact on the Uyghur

3.3.1 Religion and Culture

The regulations in Xinjiang that target outward manifestations of Islamic religiosity are unique both in character and application within China's legal system. In character,

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[382] Constitution of the People's Republic of China of 1982, op.cit., Art. 36.
[383] Qu, H., 2011. Religious Policy in the People's Republic of China: an alternative perspective. *Journal of Contemporary China*, 20(70), p. 442.

many of the regulations are heavily restrictive with an emphasis on outright prohibition, and are unique in their focus on Islamic practice specifically. In application, the regulations are frequently promulgated by municipal authorities at the local township level, which has the effect of disproportionately targeting areas that contain a concentrated Uyghur population.

Potter makes the argument that the existence of such restrictive policies is a result of the CCP's conclusions that Uyghur religiosity is intertwined with nationalist desires of separatism[384]. Consequently, the view that the Uyghurs outward manifestations of religious belief has the effect of reinforcing their identity as a minority may in itself form a rational basis for the interpretation of such manifestation as disrupting the "public order"[385], resulting in the determination that such manifestations fall outside the scope of the constitutional protections afforded to "normal" religious activities. Indeed, this conclusion appears consistent with the regulations of religious practice in Xinjiang specifically, which do not exist in regions populated by China's other Muslim minorities, such as the Hui.

However, Potter's assertion does not fully take into account the deliberate shift in the CCP's discourse away from principally concerning itself the spectre of Uyghur separatism, to instead focusing on religious extremism. This re-alignment of CCP rhetoric has benefitted in part from the global "War on Terror" in so far as it serves to legitimise the ongoing restrictions of any religious activities that the CCP views as outside the ambiguously defined religious protections found within China's constitution[386].

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[384] Potter, P.B., 2003. Belief in Control: Regulation of Religion in China*. *The China Quarterly*, 5(19), pp. 327–329.
[385] Constitution of the People's Republic of China of 1982, op.cit., Art. 36.
[386] For further reading on the emergence of terrorism discourse within China following the events of 9/11, see *infra* section: 3.3.4.2 The "Global War on Terror" and the Emergence of the "East Turkistan Islamic Movement" in China.

An example of such regulations is the "Implementing Measures of the Law on the Protection of Minors"[387], issued in 1993 by the Standing Committee of the Xinjiang Uyghur Autonomous Regional People's Congress (XUARPC-SC); a municipal body tasked with the promulgation of laws and regulations specific to Xinjiang. Contained within its body of regulations is Art. 14, which states that "Parents or other guardians may not permit minors to be engaged in religious activities"[388]. Evidence of the implementation of this regulation has since been observed by scholar Jacqueline Armijo, who reported to the US Congressional-Executive Commission on China in 2003 that "there are signs on mosques refusing entry to anyone less than 18 years of age"[389]. Subsequently, in 2006, a report by Radio Free Asia (RFA) provided an example demonstrating that such bans remained in place[390]. More recently, the blanket prohibition of minors from participating in religious activities has re-appeared as Art. 37 in the 2015 Xinjiang Uyghur Autonomous Regions' Regulations of Religious Affairs (XUAR-RRA), which was promulgated in January this year[391]. Ostensibly drafted with a view to curb rising religious extremism within Xinjiang, the XUAR-RRA contains a collection of many of the provisions previously found within various earlier Xinjiang regional ordinances. It includes provisions regulating the appointment of religious clergy[392], religious property[393], collective religious activities[394], and the use of religion to

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[387] For original version of document, see: Bayinguoleng Ruoqiang County People's Government Information Office, 1993. Xinjiang Uygur Autonomous Region implementation of the "Protection of Minors Act" (新疆维吾尔自治区实施《中华人民共和国未成年人保护法》办法). Available at: http://o.loulan.gov.cn/Htm/zhengcefagui/xjzzqzcfg/2007-8/24/200708241101340.htm.

[388] Translation by the United States Congressional-Executive Commission on China, see: United States Congressional-Executive Commission on China, 1993. Xinjiang Uighur Autonomous Region Implementing Measures for the Law on the Protection of Minors (CECC Partial Translation). Xinjiang Uyghur Autonomous Region People's Congress Standing Committee. Available at: http://www.cecc.gov/resources/legal-provisions/xinjiang-uighur-autonomous-region-implementing-measures-for-the-law-on#body-chinese.

[389] Armijo, J., 2003. Armijo, J., 2003. op.cit., p. 3.

[390] Kamberi, D., Mudie, L. & Jackson-Han, S., 2006. China Bans Officials, State Employees, Children From Mosques. *Radio Free Asia*. Available at: http://www.rfa.org/english/uyghur/uyghur_religion-20060206.html.

[391] Xinjiang People's Congress Standing Committee, 2015. *Xinjiang Uyghur Autonomous Region Regulations on Religious Affairs (新疆维吾尔自治区宗教事务条例)*, Available at: http://news.ts.cn/content/2014-12/04/content_10789678_all.htm.

[392] *Xinjiang Uyghur Autonomous Region Regulations on Religious Affairs (新疆维吾尔自治区宗教事务条例)*, op.cit., Arts. 24-30.

incite the "three evils" of terrorism, separatism and religious extremism[395]. While many of these regulations are consistent the national RRA, the existence of the prohibition of children from engaging in religious activities is unique to the XUAR-RRA in its severity.

Another regulation that has come into effect this year is the prohibition of Islamic veils and full robes within Xinjiang's capital of Ürümqi by the Standing Committee of the Ürümqi People's Congress[396]. The ban - made under the auspices of preventing the spread of religious extremism from disturbing "Chinese cultural traditions"[397] - prohibits the wearing of either face veils or full body robes in public places including but not limited to recreational areas, hospitals and public transportation[398]. By ostensibly seeking to prevent religious extremism, the stated basis behind this restriction provides an apt illustration of the Party's conflation of the Uyghurs' religious practices with religious extremism. A position piece published on the Turpan prefectural government website provides further insight into the rationale behind the prohibition of face veils within Xinjiang. It contains a plethora of motivations, including the need to "maintain social stability"[399], and to "safeguard national cultural security"[400]. Rather implausibly, it also raises the issue that such restrictions are necessary to "protect the health of women"[401], noting that long periods without sun will result in calcium deficiency, resulting in "osteoporosis, arthritis and other diseases"[402]. By making the argument that the wearing of full robes or face veils would in itself impair the health of those who wear

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393 Ibid., Arts. 15-20.
394 Ibid., Art. 31.
395 Ibid., Art 21 & 40(c).
396 Urumqi People's Congress Standing Committee, 2015. Urumqi ban of masked robes or burqa in public places (乌鲁木齐市公共场所禁止穿戴蒙面罩袍的规定). *Xinjiang Autonomous Regional People's Congress*. Available at: http://www.urumqi.gov.cn/znsx/jdxw/notice/cytg/218477.htm. For English version, see James Leibold and Timothy Grose's translation: http://www.chinafile.com/reporting-opinion/features/city-urumqi-prohibition-wearing-items-mask-face-or-robe-body.
397 Ibid., Art. 1.
398 Ibid., Art. 5.
399 Turpan Prefecture People's Congress Working Committee, 2014. Proposed Legislative Regulations on the Act of Wearing jilbāb Robes and Veils (关于立法规制穿着吉里巴甫服、蒙面纱行为的建议). Available at: http://rd.tlf.gov.cn/index.htm.
400 Ibid., Art. 3(1).
401 Ibid., Art. 3(4).
402 Turpan Prefecture People's Congress Working Committee, 2014. op.cit., Art. 3(4).

it, this argument seeks to avail of the exemption clause contained within Art. 36 of the constitution, which notes that religious activities must not "impair the health of citizens". Ultimately, this reaching argument was not included within the Ürümqi regulations; however its existence demonstrates a desire among municipal authorities to at least comply with a strictly literal interpretation of the constitution, while at the same time exposing the effective weakness of the constitution in its protection of religious freedom.

The Hajj pilgrimage, one of the five pillars of Islam, has too fallen under additional restrictions within Xinijang specifically[403]. While some Uyghur are permitted to make the Hajj through government organised tour groups[404], heavy restrictions remain in place through the arbitrary limitation of the issuance of travel documents necessary for the Uyghur to travel outside of China[405]. In 2014, Xinhua, China's state news outlet, claimed that over 14,000 Chinese citizens were to embark on officially sanctioned Hajj pilgrimages over the course of the year[406], numbers which fall far short of what would be needed to ensure that every able bodied Chinese Muslim would have the opportunity to go in their lifetime. Further, in 2007 Saudi Arabian authorities privately expressed their frustration towards their Chinese counterparts for not allowing more Chinese Muslims to make the Hajj pilgrimage each year, and have said that over 50,000 Chinese Muslims would otherwise be able to travel to Mecca were it not for these self-imposed restrictions by the CCP[407]. This figure also illustrates the unequal levels of accommodation that the state authorities provide to the Uyghur minority in particular, with Uyghurs only representing 23% of the 14,000 who made the Hajj in

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[403] For further reading on the Hajj pilgrimage restrictions with respect to international human rights law, see *infra* sections: 5.2.3 Article 12 – Freedom of Movement, 5.3.2 Article 15 – Cultural Rights

[404] *Xinjiang Uyghur Autonomous Region Regulations on Religious Affairs (新疆维吾尔自治区宗教事务条例)*, op.cit., Art. 35.

[405] Clarke, M., 2010. Widening the net: China's anti-terror laws and human rights in the Xinjiang Uyghur Autonomous Region. *The International Journal of Human Rights*, 14(4), p. 552.

[406] Xinhua News Agency, 2014. Chinese Muslims start annual Mecca pilgrimage. Available at: http://news.xinhuanet.com/english/china/2014-09/05/c_133623858.htm.

[407] Embassy of the United States Beijing, 2010. 07BEIJING7591, Surprisingly Small Increase in Chinese Hajj. *Wikileaks*. Available at: http://wikileaks.org/cable/2007/12/07BEIJING7591.html.

2014[408], despite the Uyghur population constituting over 40% of China's overall Muslim population[409]. While the argument could be made that economic factors have contributed to this demographic imbalance, recent reports of Uyghur paying human traffickers in order to travel outside Xinjiang illegally reveals that state-mandated restrictions are a more likely cause[410].

Restrictions on religious activities also extend to third level education, with reports of Xinjiang University at times restricting religious activities amongst Uyghur students, even going so far as to prohibit students from fasting during the period of Ramadan[411]. Indeed, China's state media outlet the Global Times also alluded to the existence of Ramadan restrictions in a report published in 2014, noting that during the month of Ramadan that "CPC and League members, civil servants and students cannot take part in fasting and other religious activities. All CPC officials and civil servants should guide family members and friends to act in line with the law and fight against illegal religious activities"[412].

Perhaps one of the most pernicious regulations to have been promulgated recently within Xinjiang concerns the stocking of items otherwise considered taboo, or haram, by religiously observant Uyghur shopkeepers. The edict, promulgated on 29 April 2015 within the county area of the restive Hotan prefecture in southern Xinjiang[413], requires that "all restaurants and supermarkets in our village should place five different brands

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[408] Xinhua News Agency, 2014, Chinese Muslims start annual Mecca pilgrimage. op.cit.
[409] Figures drawn from a compilation of 2010 population census data of China's 10 Muslim minority nationalities. As the census does not record religious association, accuracy is limited to associating minzu taxonomy with religious identity. Figures are also consistent with research data compiled by the Pew Research Centre, see: Pew Research Center, 2011. The future of the global Muslim population. Projections for 2010-2030. *Population Space and Place*, 13(1), p. 74.
[410] Kuo, K.T. & Springer, K., 2014. Illegal Uighur Immigration in Southeast Asia. *CogitASIA*. Available at: http://cogitasia.com/illegal-uighur-immigration-in-southeast-asia/.
[411] Bovingdon, G., 2010. op.cit., p. 71.
[412] Jie, J., 2014. No fast for CPC members during Ramadan. *Global Times*. Available at: http://www.globaltimes.cn/content/868638.shtml.
[413] Henryk Szadziewski's statistical analysis of Chinese media reporting of violent incidents in Xinjiang notes that the Hotan prefecture had the joint second highest number of incidents in 2014. See: Szadziewski, H., 2015. Legitimizing Repression: China's "War on Terror" Under Xi Jinping and State Policy in East Turkestan. *Uyghur Human Rights Project*, p. 15.

of alcohol and cigarettes in their shops before [May 1, 2015]"[414], the notice proceeds to state the penalty, noting that "anybody who neglects this notice and fails to act will see their shops sealed off, their business suspended, and legal action pursued against them"[415]. The regulation, while narrow in its application at the prefectural level, reveals the extent with which laws and regulations are applied as a legalistic means of acculturation in regions where the populations' composition comprises of a significant number of minorities whose religious or cultural practices differ from broader Chinese social norms[416].

The intersectionality of the Uyghurs' religious and cultural identity also manifests in praxis. Evidence of this can be seen within Mäshräp, a traditional form of social gathering comprised of Uyghur males, which provides a platform for the transmission of Uyghur culture through music, dance, and the discussion of Uyghur traditions and values[417]. While not a part of Islamic orthodox practice, the Mäshräp's religious overtones when combined with its organisational nature concerned Xinjiang's authorities to the extent that it was banned during the 1990s[418], which Grose accords as a key motivation behind what later became known as the "Ghulja incident"[419], resulting in multiple deaths and mass arrests on charges of "separatism" and "illegal religious activities"[420]. Laudably, the authorities have since changed their position on the Mäshräp, and have succeeded in their nomination of the Mäshräp for its inclusion in UNESCO's list of "intangible cultural heritage in need of urgent safeguarding" on 17

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[414] Translation provided by Radio Free Asia, see: Hoshur, S., Juma, M. & Lipes, J., 2015. Chinese Authorities Order Muslim Uyghur Shop Owners to Stock Alcohol, Cigarettes. *Radio Free Asia*. Available at: http://www.rfa.org/english/news/uyghur/order-05042015133944.html.
[415] Ibid.
[416] Reza Hasmath's study on the ethnic composition of Xinjiang's prefectural populations reveals that Hotan's population was 88.19% Uyghur according to the most recent census statistics. See: Hasmath, R., 2014. What Explains the Rise of Ethnic Minority Tensions in China? In *American Sociological Association Annual Meeting*. p. 7.
[417] Roberts, S.R., 1998. ritual among young Uighur men in the Ili valley. *Central Asian Survey*, 17(4), p. 675; Becquelin, N., 2000. op.cit., p. 88.
[418] Bovingdon, G., 2010. op.cit., pp. 126-127.
[419] Grose, T., 2012. Uyghur Language Textbooks: Competing Images of a Multi-Ethnic China. *Asian Studies Review*, 36(September), p. 378.
[420] Amnesty International, 1999. *Peoples Republic of China: Gross Violations of Human Rights in the Xinjiang Uighur Autonomous Region*, London, pp. 17-21.

November 2010[421]. Its addition to the list however is not without controversy. Rachel Harris, a scholar who specialises on traditional Uyghur cultural practices and member of the UNESCO examination committee on the Mäshräp's nomination, raised concerns in her report over the ability of China's central and regional government to preserve the Mäshräp stating that:

> However there are issues relating to meshrep revivals in recent years, where practice has been restricted by the authorities. This is clearly a concern for the viability of the practice of meshrep, and one which the submission does not address.[422]

Rachel Harris also takes issue at the "folklorised representations of meshrep traditions" that were described in China's nomination of the Mäshräp[423], highlighting how China's nomination sought to de-emphasise the role of religion as part of the Mäshräp, reporting that:

> It is still a concern that the only mention of the word 'Muslim' in the entire document comes under this section regarding respect for the custom of ritual washing. Will similar respect be offered to other Muslim practices which may take place at meshrep: for example communal prayers and sermons?[424]

As these above examples demonstrate, the restrictive religious and cultural legislation within Xinjiang reflects a view by CCP authorities that religious belief and its practice forms a key source of Uyghur unrest. While this can in part be seen to have derived from the wider perception within the CCP that religion in itself is an impediment to its own ideological aspirations, the relative severity of the regulations implemented in the Xinjiang Uyghur Autonomous Region also reveals the limited levels of accommodation

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[421] UNESCO Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, 2010. *Nomination File No. 00304 For Inscription on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding in 2010*, Nairobi.
[422] Harris, R., 2010. *Report on the Examination of Nomination Files No. 00304 for Inscription on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding in 2010*, Nairobi, p. 5.
[423] Ibid., p. 9.
[424] Ibid., p. 8.

that the CCP are willing to provide to a minority whose ethno-religious identity starkly differs from that of the majority population. As this section will proceed to elaborate upon, the restrictive laws and policies that exist in Xinjiang are not limited to the religious sphere, but also extend to areas including education, employment, and population control.

3.3.2 Education and Language

Education plays a key role in both China's modernisation efforts and in the preservation and transmission of minority identity. When examined within the context of the Uyghurs, the educational sphere encapsulates these competing forces, demonstrating an internal tension that exists within China's policy of providing ethnic autonomy while also attempting to develop a modern workforce capable of adapting to the rapidly changing needs of its labour based economy. These competing policy challenges are manifested within the teaching of language in minority regions such as Xinjiang, where the Uyghur and the Han are demarcated along linguistic lines.

Language forms a fundamental marker of the Uyghurs' minority identity, its Turkic origins provides strong linguistic resemblance to the languages used in neighbouring Central Asian states such as Kazakhstan and Uzbekistan[425]. Dwyer notes that the Uyghur language exists as an informal lingua franca for many of the non-Uyghur minorities that exist throughout the region including the Tajiks, Tatars and Kyrgyz[426]. The Uyghurs distinctive language underlines some of the significant cultural differences that exist between Uyghur and Han, positioning Uyghur cultural identity closer to the Uyghurs Central Asian neighbours. The written form of the Uyghur language, currently promoted through Arabic script following a period of attempted reforms by the CCP that

[425] Klimeš, O., 2015. *Struggle by the Pen: The Uyghur Discourse of Nation and National Interest, c.1900-1949*, Brill, pp. 22-23.
[426] Dwyer, A.M., 2005. *The Xinjiang Conflict: Uyghur Identity, Language Policy, and Political Discourse*, Washington, DC, p. 12.

included both the adoption of Cyrillic and later Romanised pinyin[427], also further illustrates the role of religion in defining the Uyghurs' status and identity as a minority.

The significance of language as a core part of the Uyghurs' identity is also reflected within the CCP's own considerations of language as a central criterion within its minority classification project[428]. The CCP's recognition of the importance of language as a part of minority identity is also illustrated in China's constitution, with its minority centred provision stating that "all nationalities have the freedom to use and develop their own spoken and written languages and to preserve or reform their own folkways and customs"[429].

This provides a starting point on which to examine the implementation of language policy within Xinjiang's educational sphere. The CCP's competing goals of preserving the distinct languages of minorities such as the Uyghur, while also promoting Mandarin as the defining marker of a monocultural national identity, presents what Stites considers as a constitutional basis for bi-lingual education[430]. In theory, China's policy of bi-lingual education represents an earnest attempt to accommodate the linguistic differences of its minorities. Lin highlights the underlying pragmatic necessities for the conception of a bi-lingual education policy among China's minorities, pointing out the views of Chinese academics who consider that education of minorities in their own language is "necessary for the development of their intellectual ability"[431] in circumstances where they are otherwise isolated in their interactions with Han Chinese. Indeed, the guiding motivation is to facilitate increased levels of educational engagement with minorities who may otherwise be deterred by a culturally unfamiliar

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[427] For further reading on the CCP's motivations behind the short-lived orthographic changes to Cryllic and later to pin yin, see: Dreyer, J.T., 1978. Language Planning for China's Ethnic Minorities. *Pacific Affairs*, 51(3), pp. 372–374.
[428] For further reading on the CCP's ethnographic classification system, see *supra* section: 3.2 The Emergence of the CCP's Minzu Minority Policy.
[429] Constitution of the People's Republic of China of 1982, op.cit., Art. 4.
[430] Stites, R., 1999. Writing Cultural Boundaries: National Minority Language Policy, Literacy Planning, and Bilingual Education. In *China's Minority Education*. p. 100.
[431] Lin, J., 1997. Policies and Practices of Bilingual Education for the Minorities in China. *Journal of Multilingual and Multicultural Development*, 18(3), p. 195.

educational system. This is complimented by the stated aim of encouraging the adoption of Mandarin as a second language in order to allow minority students to "function within the larger society, thereby increasing their employment opportunities and facilitating various cultural exchanges as well"[432]. An egalitarian policy that protects and maintains minority languages, while also equipping them with the linguistic skills necessary to share the benefits of China's economic development, is consistent with both the principles of equality and non-discrimination enshrined within the constitution, and for the protection of minority identity.

Examples of the implementation of China's bi-lingual minority language policy within national law include the promulgation of China's National Education Law, which came into effect in 1 September 1995[433]. Contained within it is Art. 12, which ensures that Mandarin forms the standard written and spoken language for the purposes of state education, with the exception of minority communities who are instead allowed to use either their language, or the native minority language adopted in the region[434]. Another example can be found within the Regional National Autonomy Law (RNAL), the amended version of which was promulgated on 28 February 2001[435]. The RNAL is highly significant for minorities in that it details the implementation of regional autonomy for minority populations living within areas that have been designated with the status of national autonomy. In particular, it provides provisions that define how national autonomy is both structured within the state system of governance, along with the limitations that affirm the centrality of the state[436], preventing the derogation the rights

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[432] Ibid.

[433] National People's Congress, 1995. *Education Law of the People's Republic of China (中华人民共和国教育法)*, Beijing. Available at: http://www.moe.gov.cn/s78/A02/zfs_left/s5911/moe_619/tnull_1316.html. For English translation, see: http://www.china.org.cn/english/education/184669.htm.

[434] Ibid., Art. 12.

[435] National People's Congress, 2001. *Regional National Autonomy Law of the People's Republic of China [RNAL] (中华人民共和国民族区域自治法)*, Beijing. Available at: http://www.gov.cn/test/2005-07/29/content_18338.htm. For English translation, see: http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1383908.htm.

[436] Lundberg, M., 2009. Regional National Autonomy and Minority Language Rights in the PRC. *International Journal on Minority and Group Rights*, 16(3), p. 409.

and obligations established within either the constitution[437], or national law[438]. With respect to language rights in particular, Art. 10 provides that minority nationalities living within autonomous areas are afforded the same linguistic freedoms found within the constitution:

> Autonomous agencies in ethnic autonomous areas guarantee the freedom of the nationalities in these areas to use and develop their own spoken and written languages and their freedom to preserve or reform their own folkways and customs.[439]

The national laws detailed above provide minorities with the freedom to pursue an education in their minority language, and also for the use and development of their language in a general context. In theory, these protections also provide state authorities with the legal capability to spur economic development, improve social integration, and foster a national identity through the development of shared lingua franca among China's 56 nationalities. Importantly, the legal recognition of the importance of minority languages encourages ethnic integration while also ostensibly providing protections against the normative pressures faced by minority populations existing within a culturally different majority society. In principle, the incorporation of an egalitarian approach to bi-lingual education affords minorities both the ability to preserve their unique cultural identity, while at the same time enabling them to share the benefits of state education, which in turn equips minorities with a means to engage and participate within Chinese society.

However, while there are certainly merits to the advancement of a common vernacular amongst China's citizens, in the case of the Uyghur the CCP has moved from initially adopting a pluralistic approach of promoting Mandarin as a lingua franca in conjunction

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[437] RNAL, Arts. 1,4.
[438] RNAL, Arts. 5,6.
[439] RNAL, Art. 10.

with maintaining the viability of the Uyghur language[440], to a more assimilatory posture which has an adverse impact on the Uyghur language in favour of Mandarin[441].The negative effects of this assimilatory approach to bi-lingual education are highlighted upon an examination of its implementation within the Xinjiang region. Adamson and Feng's comparative study on the implementation of bi-lingual language policies throughout a number of different minority regions in China have noted that within Xinjiang that the "application of recent policies has been coercive in imposing standard Chinese on the minority group despite the latter's clear expressions of attachment to a distinct cultural identity"[442]. Dwyer notes that the endorsement of Mandarin language learning in preference of Uyghur language learning has been a policy trend since the mid-1980s[443], a period when several policy documents were published with the express aim of "actively spreading and promoting Putonghua[Mandarin], and further promoting the scheme of Pinyin"[444]. This policy objective was achieved in part by extending the time spent learning Mandarin within the state education system, with Mandarin language instruction doubling in duration during this period[445]. In 2004, a policy document published by the Khotan regional government sought to further promote the use of Mandarin as the primary language, with the educational use of minority language limited to the studying of minority languages[446]. This was part of a broader

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[440] Wang, Y., 2013. *Language, Culture, and Identity Among Minority Students in China*, Taylor & Francis, p. 43.
[441] Bewicke, A.E., 2009. Silencing the Silk Road: China's Language Policy in the Xinjiang Uighur autonomous region. San Diego International Law Journal, 11(1), pp. 135-170; Dwyer, A.M., 2005. op.cit., pp. 29–40.
[442] Adamson, B. & Feng, A.W., 2009. A comparison of trilingual education policies for ethnic minorities in China. *Compare: A Journal of Comparative and International Education*, 39(3), p. 330.
[443] Dwyer, A.M., 2005. op.cit., p. 36.
[444] Blachford, D.R., Language Spread Versus Language Maintenance: Policy Making and Implementation Process. In M. Zhou & H. Sun, eds. *Language Policy in the People's Republic of China: Theory and Practice Since 1949*. Springer Netherlands, p. 113.
[445] Dwyer, A.M., 2005. op.cit., pp. 36-37.
[446] Schluessel, E.T., 2007. "Bilingual" education and discontent in Xinjiang. *Central Asian Survey*, 26(2), p. 257.

Xinjiang policy edict which sought to further accelerate the adoption and use of Mandarin among China's minorities[447].

Another means with which the authorities sought to increase levels of Mandarin language adoption by the Uyghur was through what Chen calls the "Xinjiang Class"[448]. Modelled after a similar program that was implemented in Tibet from 1985[449], the Xinjiang Class was principally implemented for the purpose of improving ethnic integration by sending a selection of students who pass a competitive entrance exam to receive four years of secondary level education in schools located within inner China[450]. The official educational curriculum of the Xinjiang Class program consists of instruction through Mandarin and English[451], with an emphasis on imbuing a Party-centric sense of nationalism[452]. Chen observes that the underlying political motivations behind the establishment of the Xinjiang Class are further indicated by the classes' composition[453], with the majority being Uyghur from Xinjiang's rural southern regions[454], where the majority of incidents involving ethnic violence occur[455]. However, this view may also be considered somewhat uncharitable, as the illiteracy rates are typically higher in southern Xinjiang due to factors including limited access to education and increased levels of poverty, which makes students from southern Xinjiang a preferable candidate pool for the purposes of facilitating upward social mobility.

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[447] Feng, A. & Sunuodula, M., 2009. Analysing minority language education policy process in China in its entirety. *International Journal of Bilingual Education and Bilingualism*, 12(6), p. 693.
[448] Chen, Y., 2010. Boarding School for Uyghur Students: Speaking Uyghur as a Bonding Social Capital. *Diaspora, Indigenous, and Minority Education*, 4(March), p. 5.
[449] Feng, A., 2007. *Bilingual Education in China: Practices, Policies, and Concepts*, Multilingual Matters, p. 53.
[450] Grose, T., 2010. The Xinjiang Class: Education, Integration, and the Uyghurs. *Journal of Muslim Minority Affairs*, 30(1), p. 101.
[451] Grose, T., 2010. op.cit., p. 101.
[452] A document published by China's Ministry of Education outlining its regulations for the Xinjiang Class notes within Art. 1 "support of the leadership of the Communist Party" as the first reason for the programs existence. See: Ministry of Education of the People's Republic of China, 2000. *Regulations of the Xinjiang Inland School (trial) (内地新疆高中班管理办法（试行）)*, Beijing. Available at: http://www.moe.gov.cn/s78/A09/mzs_left/moe_752/tnull_1009.html, Art. 1.
[453] Chen, Y., 2010. op.cit., p. 10.
[454] Ibid; Grose, T., 2010. op.cit., p. 101.
[455] Henryk Szadziewski's quantitative study of media reports of violence in Xinjiang over a two year period shows the vast majority of incidents occurring within Southern Xinjiang. See: Szadziewski, H., 2015. op.cit.

Concerning language specifically, Ministry of Education (MOE) regulations for the Xinjiang Class stipulate an emphasis to be placed on Mandarin and English language instruction[456]. Art. 16 later suggests that minority students should also learn their minority languages, stating that host schools purchase minority language learning materials for minority students to use in their own time[457]. The emphasis of Mandarin language use at the expense of minority languages such as the Uyghur language is consistent with the broader implementation of China's bi-lingual policies in Xinjiang. Chen considers that the insufficient emphasis on minority language learning within the program has had a negative impact on the programs objective of improving ethnic integration, with students instead choosing to communicate through Uyghur outside of the program as a means to assist each other in improving their academic performance[458]. This has resulted in the unintended effect of reinforcing the students' cultural identity as Uyghurs and as minorities.

Evidence of the increasing emphasis on Mandarin language use at the expense of the Uyghur language can also be seen within Xinjiang's system of primary and secondary education. Despite the increased attention by policy makers on minority language education in recent times, Uyghur language schools face shortages in available teaching materials and even basic supplies[459]. Another example is the lethargic publication of educational materials in minority languages, with Uyghur translations of texts from the national curricula reportedly taking two years to complete[460], resulting in instances where classes taught in Uyghur use Mandarin language textbooks[461]. The curtailing of resources necessary for gaining an equally sufficient education through the Uyghur language has had the effect increasing the dichotomy in the quality of

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[456] Ministry of Education of the People's Republic of China, 2000. op.cit., Art. 6.
[457] Ibid., Art. 16.
[458] Chen, Y., 2010. op.cit., p. 15.
[459] Dwyer, A.M., 2005. op.cit., p. 38; Bewicke, A.E., 2009. op.cit., p. 145.
[460] Ahemaitijiang, A., 1998. Educational Modernization and Uyghur Modernization (Jiaoyu xiandaihua yu weiwu'er minzu de xiandaihua wenti). *Journal of Xinjiang University*. In: Chen, Y., 2010. op.cit., p. 7.
[461] Zhang, S. & McGhee, D., 2014. *Social Policies and Ethnic Conflict in China: Lessons from Xinjiang*, Palgrave Macmillan, p. 155.

education offered in Mandarin and Uyghur, further compounding the association of Uyghur minority culture with "cultural backwardness"[462]. Ma also highlights a lack of minority teachers as a cause for the poor level of quality in minority language education[463], a problem that will only be exacerbated if Xinjiang's best and brightest are sent to inland Chinese schools that remove minority language training entirely from their educational curriculum. A primary cause for the insufficient number of minority teachers is also a result of the state's attempts to accelerate the adoption of Mandarin in Xinjiang by making teaching through Mandarin a mandatory ability for teachers regardless of the subject[464], resulting in the redundancy of many otherwise capable minority teachers who are Mandarin illiterate[465].

The restrictions placed upon Uyghur language education also extends to the tertiary level, with Dwyer observing Xinjiang University's decision to cease teaching classes in Uyghur resulting from an insufficient number of academic texts available in Uyghur[466]. By limiting the availability of third level education in the Uyghur language in the regions premiere university, it increases the difficulty faced by Uyghur who wish to use and preserve their language from attaining the same level of upward social mobility that is otherwise available to Mandarin speaking Chinese. This places Uyghur in a compromising position where they may have to sacrifice their own language; a fundamental component of their ethno-cultural identity as a minority, in order to compete in Mandarin dominated Chinese society. Xinjiang University's decision to educate only in Mandarin Chinese effectively facilitates the stagnation of the Uyghur language, with the best educated left with little recourse but to primarily use Mandarin

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[462] The impact of the association of minority culture and "cultural backwardness" has been summarised by Postiglione, stating "The extent to which schools in China create an atmosphere that has positive institutional norms towards diverse cultural groups is limited by notions of cultural backwardness". See: Postiglione, G.A., 2009. The Education of Ethnic Minority Groups in China. In *The Routledge International Companion to Multicultural Education*. p. 505.
[463] Rong, M., 2007. Bilingual Education for China's Ethnic Minorities. *Chinese Education & Society*, 40(2), p. 19.
[464] Schluessel, E.T., 2009. History, identity, and mother-tongue education in Xinjiang. *Central Asian Survey*, 28(4), p. 395.
[465] Zhang, S. & McGhee, D., 2014. op.cit., pp. 154-155.
[466] Dwyer, A.M., 2005. op.cit., p. 40.

Chinese. This has the consequence of mitigating the benefits of maintaining a command of the Uyghur language, resulting in the erosion of the presence of Uyghur language in the upper classes of society in Xinjiang, in effect ghettoising Uyghur cultural identity.

When these separate policies are examined together, the implementation of the PRC's bi-lingual education model in Xinjiang strongly promotes the adoption of Mandarin while also deterring the pursuit of minority language education. The exclusive promotion of Mandarin among Uyghurs as a means of social and economic mobility, while at the same time systematically antiquating the Uyghur language, represents an unequal treatment of minority culture when compared to Han culture, further entrenching a Sino-centric perception of cultural superiority. By lowering the quality of education available through the Uyghur language through its de-emphasis within the school curriculum and by failing to ensure the availability of educational materials in the Uyghur language, the regional authorities are heavily curtailing the Uyghurs' ability to maintain and develop their own language and culture[467]. In essence, the current implementation of China's bi-lingual language policy in Xinjiang demonstrates a Sino-centric form of development, encouraging minority participation in education for the purposes of socio-economic mobility by providing minimal minority language protection while at the same time solely promoting the use of Mandarin.

While it could be argued that the shift in preference towards Mandarin language learning within Xinjiang's educational system may be contributed in part to socio-economic pressures and the increasing marketization of Xinjiang's local economy, the existence of linguistic protections within China's constitution and its national law should serve as a means to allow minorities such as the Uyghur to maintain a space to

[467] Chou, B.K.P., 2012. Implementation Measures of China's Xinjiang Policies. *Chinese Law & Government*, 45(4), p. 8.

preserve and enjoy their own language as part of their identity as a recognised minority.

In terms of the policy goal of improving education and literacy rates among Xinjiang's minorities, the ethno-cultural issues that surround its implementation may actually impede the overall efficacy of such policies, with Uyghur educational levels still ranking far below their Han counterparts[468]. While Grose considers that this may be caused by inaccessibility for many Uyghurs living in remote locations[469], the lack of adequate accommodation for the Uyghurs' cultural identity within the educational system could also be a contributing factor. This is supported by Zhou's empirical analysis on the effect that China's bi-lingual language policy has had on minority literacy and attendance rates. He reports that the school attendance rates of minorities improved when China sought what he refers to as "pluralistic" language policies within the educational system. Further, Zhou suggests that the increase in literacy rates among minorities including the Uyghur came as a result of the incorporation of native language use within primary schools[470].

Indeed, when examined in a wider context, the predominance of Mandarin within Xinjiang's educational sphere is representative of a broader perception of minority culture as inferior or backward when compared to Han orientated Chinese society[471]. The implementation of China's bi-lingual education policy in Xinijang is a manifestation of this perception, and has resulted in a trust deficit and reticence among the region's minorities that prevents them from fully engaging with the state's educational system.

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[468] Zhou, M., 2001. The Politics of Bilingual Education and Educational Levels in Ethnic Minority Communities in China. *International Journal of Bilingual Education and Bilingualism*, 4(2), p. 129.

[469] Grose, T., 2008. Educating Xinjiang's Uyghurs: Achieving Success or Creating Unrest? *Virginia Review of Asian Studies*, 11, p. 130.

[470] Zhou, M., 2001. op.cit., p. 146.

[471] Hansen, M.H., 1999. Teaching Backwardness or Equality - Chinese State Education Among th Tai in Sipsong Panna. In G. A. Postiglione, ed. *China's Minority Education*. Taylor & Francis, p. 243; Nima, B., 2001. Problems Related to Bilingual Education in Tibet. *Chinese Education & Society*, 34(2), p .97.

The negative effects of the implementation of China's bi-lingual language policy in Xinjiang also reveal the flaws that exist regarding the legally ascribed protections for minority language. In practice, such protections are limited in their efficacy by only ensuring the freedom of use. As a result, they provide no onus for the state authorities to ensure the realisation of that freedom by providing minorities with the means to develop and maintain their language in an environment that increasingly emphasises the cultural identity of the majority.

3.3.3 Economy and Employment

Perhaps one of the more controversial policies employed by the CCP are the state orchestrated efforts to facilitate the mass migration of Han Chinese into Xinjiang, which has been achieved through the implementation of a variety of methods including demobilisation of military forces, and the encouragement of civilians to migrate through the provision of economic incentives. While the practice of resettling military and civilians along China's borders are not unique to the CCP[472]. The extent of the practice following the CCP's rise to power has increased to the extent that it has fundamentally altered the composition of the region's population. This is seen by many scholars as a sustained effort to increase the CCP's control over the region by diluting the Uyghurs' majority status and cultural influence in Xinjiang[473]. The consequences of these policies

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[472] Indeed, Shichor claims that such the practice dates back to the Han Dynasty, some 2000 years ago. See: Shichor, Y., 2010. Company Province: Civil-Military Relations in Xinjiang. In *Chinese Civil-Military Relations: The Transformation of the People's Liberation Army*, p. 124. While others argue that the origins of the practice stems more recently during the Qing Dynasty. See: Millward, J., 1998. *Beyond the Pass: Economy, Ethnicity, and Empire in Qing Central Asia, 1759-1864*, Stanford University Press, p. 50.

[473] Lim, R., 2010. China's Ethnic Policies in the Xinjiang Region. *Washington Journal of Modern China*, p. 69; Smith Finley, J., 2007. Chinese Oppression in Xinjiang, Middle Eastern Conflicts and Global Islamic Solidarities among the Uyghurs. *Journal of Contemporary China*, 16(53), p. 641; Dillon, M., 1995. *Xinjiang: Ethnicity, Separatism and Control in Chinese Central Asia*, Department of East Asian Studies, University of Durham, p. 31; Howell, A. & Fan, C.C., 2011. Migration and Inequality in Xinjiang: A Survey of Han and Uyghur Migrants in Urumqi. *Eurasian Geography and Economics*, 52(1), p. 120; Hess, S., 2009. Dividing and conquering the shop floor: Uyghur labour export and labour segmentation in China's industrial east. *Central Asian Survey*, 28(4), p. 407.

have had broad economic and cultural implications for the region, and are a primary source of ethnic tensions between the Han and the Uyghur[474].

In order to demonstrate the extent with which the mass migration policies have impacted Xinjiang, one may examine the rapid and dramatic change in the composition of the region's population, as the following tables derived from Xinjiang's population censuses illustrate:

Year	1941	1945	1953	1964	1982	1990	2000	2010
Han Population %	5%	6.2%	6.1%	32.9%	40.3%	37.6%	40.6%	39.2%
Uyghur Population %	80%	82.5%	74.7%	54%	45.7%	47.5%	45.21%	46.1%

Table 1: Uyghur-Han Demographic Shift within Xinjiang[475]

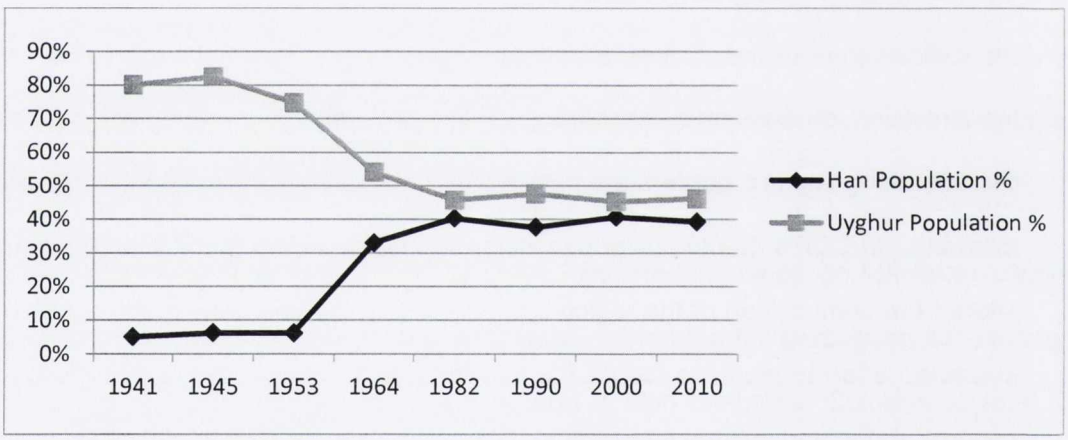


Figure 1: Graph Data of the Uyghur-Han Demographic Shift within Xinjiang [476]

[474] Becquelin, N., 2000. op.cit., pp. 74-75.
[475] Percentages deduced from population numbers found in: Bellér-Hann, I., 2008. Community Matters in Xinjiang, 1880-1949: Towards a Historical Anthropology of the Uyghur, Brill Academic Pub, p. 64; Chaudhuri, D., 2005. A Survey of the Economic Situation in Xinjiang and its Role in the Twenty-first Century. China Report, 41(1), p. 2; Toops, S., 2004. The Demography of Xinjiang. In S. F. Starr, ed. *Xinjiang: China's Muslim Borderland*, p. 246; SBX (Statistical Bureau of Xinjiang Uyghur Autonomous Region), 2003. Xinjiang Tongji Nianjian (Xinjiang Statistical Yearbook 2000), Beijing: China Statistics Press; SBX (Statistical Bureau of Xinjiang Uyghur Autonomous Region), 2012. Xinjiang Tongji Nianjian (Xinjiang Statistical Yearbook 2010), Beijing: China Statistics Press.
[476] Graph complied using data from Table 1

These figures illustrate the extent with which the increase in the population of Han Chinese has re-shaped Xinjiang's demographic landscape. Prior to the establishment of the PRC in 1949, the Uyghur are thought to have represented as much as 80% of Xinjiang's total population. This changed dramatically following the formal establishment of the XUAR in 1955[477]. The extent of Han migration, particularly in the period from the 1950s to the 1970s, has resulted in the Uyghurs' majority representation within the region being diluted by almost half. Gilley considers that China's current Develop West economic strategy will only increase this trend, with the eventual emergence of a Han majority within Xinjiang[478].

In order to determine how state policy has facilitated the mass migration into Xinjiang, it's important to understand the means with which it was implemented. The primary mechanism which has served as a funnel for internal migration into the region has been through the Xinjiang Production and Construction Corps (XPCC). The XPCC is a civil-military organ that was initially composed of some 200,000 military personnel upon establishment of the XUAR[479]. Originally charged with a defensive mandate, its composition of demobilised military personnel illustrates its military origins, one that was tasked with shoring up the PRC's periphery at a time when neighbouring countries posed a viable threat to the regions sovereignty[480]. Once established, the XPCC was also tasked with the development of Xinjiang's infrastructure, raising the production capacity of the regions agricultural and energy sectors. The XPCC's bifurcated goals of providing a defensive force and facilitating economic development together serve the CCP's overarching goal of ensuring territorial sovereignty.

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[477] For additional information on Xinxiang's history, see *supra* chapter: Chapter 1: The History and Religion of Xinjiang.

[478] Gilley, B., 2001. "Uighurs need not apply." *Far Eastern Economic Review*, 164(33), p. 26.

[479] State Council of the People's Republic of China, 2003. IX. Establishments, Development and Role of the Xinjiang Production and Construction Corps. *History and Development of Xinjiang*. Available at: http://www.china.org.cn/e-white/20030526/9.htm.

[480] For more information on the Soviet involvement of the second East Turkestan Republic, see *supra* section: 1.7 The Second East Turkestan Republic, 1944-1949.

In addition to military personnel, many of China's youth were rusticated from inland urban centres into working for the XPCC[481]. This linear migration pattern increased dramatically during the artificially induced famine caused by the Great Leap Forward[482], resulting in the migration of over a million Han Chinese into Xinjiang within a two year period[483]. While a source of ire for many Uyghur in itself, this was further compounded by Xinjiang's selection as an appropriate destination to house criminals from inner China[484], a process that dates back to the Qing Dynasty[485]. Lamentably, this policy has persisted following the establishment of the PRC, with the XPCC having employed prisoners and convicts from the eastern provinces in preference of Xinjiang's native Uyghur population of experienced farmers and agricultural labourers. Qian Guo provides an idea to the extent of this practice, asserting that during the 1950s that as many as half of the XPCC agricultural labour force consisted of current and former convicts[486].

During the latter stages of the Great Leap Forward, as many as 800,000 Han migrants arrived in the years 1959 and 1960[487], with Gardner Bovingdon claiming that many of these Han migrants were encouraged by the XPCC to claim land for themselves[488]. The ensuing marginalisation of Uyghurs that followed enabled a Soviet radio campaign which encouraged Uyghur to leave Xinjiang for the Soviet Union to gain traction,

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[481] Sines, A., 2002. Civilizing the Middle Kingdom's Wild West. *Central Asian Survey*, 21, p. 8.
[482] For more information on the effects that the GLF had within Xinjiang, see *supra* chapter: 1.8 The People's Republic of China, 1949-
[483] Millward, J.A., 2007. op.cit., p. 263.
[484] Seymour, J.D., 2005. Sizing up China's Prisons. In *Crime, Punishment, and Policing in China*, p. 144.
[485] Rowe, W.T., 2010. *China's Last Empire: The Great Qing*, Harvard University Press, p. 75; Waley-Cohen, J., 1991. *Exile in Mid-Qing China: Banishment to Xinjiang, 1758-1820*, Yale University Press.
[486] Guo, B. et al., 2009. op.cit., p. 173. This is also supported by Anderson & Seymour, who state that according to official figures that as many as 120,000 prisoners were in the *bingtuan* (XPCC) in 1965, see: Seymour, J.D. & Anderson, M.R., 2015. *New Ghosts, Old Ghosts: Prisons and Labor Reform Camps in China*, Taylor & Francis, p. 114.
[487] Bovingdon, G., 2010. op.cit., p. 51.
[488] Ibid.

resulting in the mass exodus of 60,000 Uyghurs and other minorities leaving Xinjiang for the Soviet Union[489].

The following years bore witness to the political upheaval during China's Cultural Revolution (1966-1976)[490]. During this period of factional in-fighting within the CCP, a combination of the XPCC's administrative insulation from the central government[491], and its economic and military prowess, posed a potential threat to Mao's control over the administration of China. As a means of addressing perceived threat posed by the XPCC, its military capacity was eventually abolished in 1975. Further, in order to reduce its organisational autonomy, it was re-structured by the PRC government as a civil-economic entity under the administrative subordination of the Ministry of State Farms and Land Reclamation[492].

Despite The XPCC's forced re-emphasis on economic development, in practice its dual function as a militia remained a reality. In 1982 the XPCC was formally re-established in its original civil-military capacity by Deng Xiaoping[493], reflecting a change in the CCP's perception of the XPCC, which now saw it as a key organ for Xinjiang's securitisation and stability[494]. This was further necessitated throughout the 1990s following the Soviet Union's collapse, which resulted in significant regional uncertainty. This geo-political instability was further compounded by the subsequent emergence of newly independent Central Asian states and Xinjiang's own period of heightened restiveness towards the latter half of the decade. All of which helped contribute to the

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[489] Shichor, Y., 2004. The Great Wall of Steel: Military and Strategy in Xinjiang. In S. F. Starr, ed. *Xinjiang: China's Muslim Borderland*. p. 138.
[490] For further reading on the effects that the Cultural Revolution had on Xinjiang, see *supra* section: 1.8 The People's Republic of China, 1949-.
[491] The XPCC maintains its own budget, police force and judicial system. See: Cliff, T.M.J., 2013. Peripheral Urbanism: Making History on China's Northwest Frontier. *China Perspectives*, (3), p. 14.
[492] Shichor, Y., 2010. op.cit., p. 126.
[493] Zhao, Y., 2001. Pivot or Periphery? Xinjiang's Regional Development. *Asian Ethnicity*, 2(2), p. 203.
[494] An Amnesty International report published in 1992 states that "armed groups from the nominally civilian Production and Construction Brigades (Shengchan Jianshe Dui)" were deployed to quell the series of riots that later became known as the *Baren Uprising*: See: Amnesty International, 1992. *Secret Violence: Human Rights Violations in Xinjiang*, p. 5.

re-factoring of the XPCC's military capability from an emphasis on external threats to internal ones[495].

Economically, the XPCC has now emerged as one of China's growth engines, overseeing much of China's internal energy and precious metal exploitation and agricultural production. Within Xinjiang, the XPCC is now the single largest land owner, possessing some 30% of the regions' arable land[496]. It is also the region's largest employer[497]. In order to demonstrate how the XPCC's economic dominance in Xinjiang has negatively affected the Uyghur, one may consider the establishment of the cotton industry within southern Xinjiang during the 1990s.

Following China's 9th national five year plan to develop China's regional economy[498], Xinjiang was to prioritise the production of cotton, despite grain being a traditional and profitable source of livelihood for many Uyghurs in southern Xinjiang[499]. In order to ensure that this policy was implemented; strict measures were put in place including production quotas based on acreage[500], and the restriction of any cotton sales to state-run cooperatives[501]. The primary issue with cotton production for Uyghur farmers is its cost; its resource intensive production makes it an industrial crop, requiring large-scale production over large tracts of arable land in order to make it affordable[502]. Consequently, cotton makes a poor choice of crop for the majority of Uyghur who typically own small-scale subsistence farms located throughout the southern region.

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[495] Tong, J., 2010. The Xinjiang Problem (I): Stabilization and Rectification Policies, 1996-98. *Chinese Law & Government*, 43(1), p. 4; Ong, R., 2005. China's security interests in Central Asia. *Central Asian Survey*, 24(4), p. 429.
[496] Cliff, T.M.J., 2013. op.cit., p. 14.
[497] Shichor, Y., 2010. op.cit., p. 123.
[498] Zhao, Y., 2001. op.cit., p. 210.
[499] In a summary meeting by the Standing Committee of the Central Party Politburo titled "Meeting on Safeguarding Stability in Xinjiang", economic production was put forward as a means to ensure regional stability "With the central authorities providing the funds and with local support, we will complete the Southern Xinjiang Railway as quickly as possible to energize the vigorous development of cotton production [...] to transform the state of poverty and backwardness as soon as possible", see: Anon, 2010. Summary of Minutes of the Meeting on Safeguarding Stability in Xinjiang (Excerpts) (March 19, 1996). *Chinese Law & Government*, 43(1), p. 16.
[500] Becquelin, N., 2000. op.cit., p. 82.
[501] Zhao, Y., 2001. op.cit., p. 203.
[502] Becquelin, N., 2000. op.cit., p. 82.

Despite the apparent unsuitability of cotton for production by the type of subsistence farming typically employed by Uyghurs, Becquelin details how the state mandated quota system has forced Uyghur farmers to produce it[503].

At the macro level, this policy has resulted in the doubling of cotton production from 1990-1997[504], making Xinjiang China's largest cotton producer[505]. However, Uyghur farmers have not been able to benefit from much of this growth, owing to the fixed prices on the sale of cotton at below the market rate. The effect of this price-fixing insures that the state-owned cooperatives derive the greatest profit by purchasing at below market rates from Uyghur farms and re-distributing within the national marketplace at the market value[506]. As a result, the Uyghurs' ability to improve their livelihood is curtailed by a restriction that limits the sale of cotton to state approved cooperatives, preventing them from securing better rates from alternative buyers[507]. This is further compounded by state mandated quotas for cotton production based on acreage, preventing Uyghur farmers from using their land to farm cheaper, more profitable grains, despite grains having been a traditional choice of crop within Xinjiang long prior to the promotion of cotton production.

While the state authorities have since made efforts to diversify production away from the policy induced dependency on cotton[508], the effects of mandatory cotton production during the 90s has resulted in a detrimental impact on the livelihoods of many of the most economically vulnerable Uyghur. There has been an environmental cost to this policy which affects the Uyghur population too. Perhaps the most damaging effect that the state mandated cotton production has had in Xinjiang is on its water supply, which

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503 Becquelin, N., 2000. op.cit., p. 82.
504 Chaudhuri, D., 2005. op.cit., p. 17.
505 Danlu, T., 2012. Xinjiang Sets World Record for Cotton Production. *Xinhua News Agency*. Available at: http://news.xinhuanet.com/english/china/2012-10/14/c_131905502.htm.
506 Becquelin, N., 2000. op.cit., pp. 81-82.
507 Bellér Hann, I., 1997. The peasant condition in Xinjiang. *Journal of Peasant Studies*, 25(1), p. 92.
508 Spoor, M., Xiaoping, S. & Chunling, 2015. Small Cotton Farmers, Livelihood Diversification and Policy Interventions in Southern Xinjiang. In *Rural Livelihoods in China: Political Economy in Transition*.

has resulted in increasing levels of deforestation and the lowering of water tables throughout southern Xinjiang; further impeding Uyghurs' ability to grow profitable grain[509]. Concerning the environmental degradation caused by the practice, Chaudhuri concludes that when combined with the negative impact of energy exploration in the region that such policies "may create a disaster without recovery"[510]. On considering that the cost of cotton was actually cheaper to import than produce within China when these policies were enacted, Becquelin scathingly posits that the central authorities emphasis on increasing cotton production in Xinjiang is merely a vehicle to support land re-appropriation by the XPCC and for the further encouragement of Han settlers[511], who are attracted with generous subsidies for cotton production and manufacturing[512]. The acts of land re-appropriation by the XPCC have also had a direct impact on the Uyghurs' cultural and religious identity, an example of which includes the re-appropriation of land owned by religious associations and mosques (waqf land) throughout the 50's[513].

While the above examples are illustrative of some of the negative consequences that the XPCC has had on the Uyghur population through its ill-considered quota-centric means of promoting economic development, there are additional issues too. Perhaps the largest source of Uyghur discontent has not been as a result of being economically displaced through the result of the XPCC activities, but from being denied the benefits of the XPCC's economic advancements.

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[509] Starr, S.F. & Fuller, G.E., 2003. The Xinjiang Problem. *Central Asia-Caucasus Institute*. p. 17.
[510] Chaudhuri, D., 2005. op.cit., p. 26.
[511] Becquelin, N., 2000. op.cit., p. 84.
[512] De Varennes, F., 2006. Language Rights of Minorities and Increasing Tensions in the People's Republic of China. *Asia-Pacific Journal on Human Rights and the Law*, 7(2), p.12; Zhao, Y., 2001. op.cit., p. 216.
[513] Dillon, M., 1997. op.cit., p. 81; Israeli, R., 1981. The Muslim Minority in the People's Republic of China. *Asian Survey*, 21(8), p. 903.

As mentioned previously[514], the XPCC is now Xinjiang's single largest employer. However, the vast majority of its workforce has historically been derived from Han Chinese migrants from inner China. Despite the XUAR having been established for 60 years, Uyghur representation within the XPCC remains disproportionately low when compared to the Uyghurs' majority status in the region. Indeed, the State Council of the PRC recently published a white paper on the XPCC's development in 2014, where it notes that the minority population within the XPCC (a combination of all 55 of China's minority nationalities) represents 13.9% of its total[515]. The under-representation of Uyghur within the XPCC also manifests within its leadership, with just two of the 19 top-ranking positions being held by individuals of Uyghur extraction[516]. This disproportionately low number further supports the level of disenfranchisement experienced by Uyghur, and illustrates the inefficacy of the XPCC's ostensible mandate as a vehicle for rapid economic development as a means of insuring regional stability. The fact that the demographic of the region's largest employer, which is publicly owned, is not proportionately representative of the regions majority population provides a level of validity for the perception among many Uyghur of employment discrimination and inequality[517].

When considering the XPCC's conception as a means for provide regional stability, it's important to delineate its overt policy of providing economic development, and its covert policy of facilitating a Han majority population in Xinjiang. In order to illustrate the dichotomy that exists between the two, a closer examination of the XPCC's demographic composition at the county level is necessary. An example of which is Hotan county, located deep within southern Xinjiang where the majority of the Uyghur

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[514] See *supra* note: 497.
[515] State Council of the People's Republic of China, 2014. *The History and Development of the Xinjiang Production and Construction Corps*, Beijing. Available at: http://english.gov.cn/archive/white_paper/2014/10/05/content_281474992384669.htm.
[516] Xinjiang Production and Construction Corps (Bingtuan), 2015. Leadership Corps (兵团领导). Available at: http://www.bingtuan.gov.cn/gk/btld/.
[517] Zang, X., 2010. Affirmative Action, Economic Reforms, and Han–Uyghur Variation in Job Attainment in the State Sector in Urumchi. *The China Quarterly*, 202, p .352.

population are concentrated. At 96.22%, the vast majority of the population of Hotan is Uyghur, with the total Han population representing just 3.59% of the county's total population according to Xinjiang's most recent prefectural population census[518]. Hotan is also one of Xinjiang's poorest regions, with Toops' empirical study of Xinjiang's development noting that out of Xinjiang's 15 separate districts, prefectures and cities, that Hotan had contributed the least to Xinjiang's overall GDP[519].

As a result, Hotan's status both as an area with a strong Uyghur majority and its lower economic status, provides a use case with which to determine the priorities of the XPCC's implementation within the region. Given the XPCC's status as Xinjiang's largest employer, its control by the PRC government[520], and in light of the economic difficulties experienced within Hotan, the XPCC is an ideal vehicle with which to improve regional stability though the facilitation of Hotan's economic development. However this is not reflected in practice. On consideration that Hotan's Uyghur population forms a significant majority, it would be reasonable to consider that the XPCC would best achieve of its overt objective through the employment of Uyghur from within Hotan county in order to facilitate its economic growth and development. Indeed, given the extent of the Uyghur majority in the county's composition, one would be forgiven for inferring that the composition of the XPCC's presence within Hotan may bear a higher proportion of the Uyghur minority than the XPCC's national average of 13.8%. However it is in fact the stark opposite, with the population of the XPCC's 224th Regiment in Hotan reportedly being composed of 98% Han majority[521]. When considered in this light, the XPCC's overt policy of promoting economic development as a means to ensure regional stability does little to include the Uyghurs as

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[518] Côté, I., 2015. The enemies within: targeting Han Chinese and Hui minorities in Xinjiang. *Asian Ethnicity*, 16(2), p. 138.
[519] Toops, S., 2004. op.cit., p. 9.
[520] "The XPCC remains an important component of Xinjiang Uyghur Autonomous Region and is subject to its leadership while under the management of relevant departments of the central government", see: State Council of the People's Republic of China, 2014. *op.cit.*
[521] The Economist, 2013. Circling the Wagons - Settlers in Xinjiang. *The Economist*. Available at: http://www.economist.com/news/china/21578433-region-plagued-ethnic-strife-growth-immigrant-dominated-settlements-adding.

beneficiaries in Xinjiang's development, or stakeholders in its stability. Rather, the policy preference of facilitating the mass migration of Han in lieu of earnestly including Uyghur in Xinjiang's development draws into question the state's claims that economic inequality is the source of Uyghur unrest[522], and that economic development is its panacea. Further, some scholars share the view that the promotion of economic development within Xinjiang is not for the benefit of abating Uyghur unrest, but done so in order prevent disillusioned Han migrants from moving back to China's more prosperous and crowded eastern region[523].

Indeed, the implementation of Xinjiang's development strategy has led to an increase in the income disparity between the urbanised centres in northern Xinjiang where the majority of Han are resided, and the rural south where the majority of Uyghur reside. Huhua's study on the topic reveals that this "particularity" runs contrary to the national trend where increased urbanisation and GDP per capita results in a decrease in the rural-urban income disparity[524]. To provide an example of the extent of the disparity, Xinjiang's income per capita in 2002 was the equivalent of 943 USD, while the Uyghur populated southern regions such as Hotan had an income of 248 USD[525]. Huhua rightly accords the low literacy rates in the southern regions as a partial cause for this disparity, but asserts that the primary factor for it is due to the government's emphasis on facilitating urban economic development in preference to rural development, with northern Xinjiang receiving 70% of the governments fixed asset investments in 2000[526].

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[522] Former President Hu Jintao emphasised economic development as a means to improving Xinjiang's long-term stability, stating that "doing a good job of Xinjiang work under the new situation is an inevitable requirement for improving the living standards of all ethnic groups in Xinjiang and attaining the overall objective of building a moderately prosperous society". See: Jintao, H., 2012. Thoroughly Implement the Scientific Concept of Development, Make Efforts to Promote Leaping Advances and Long-Term Stability in Xinjiang. *Chinese Law & Government*, 45(3), p. 54.

[523] Bovingdon, G., 2010. op.cit., p. 55; Cliff, T.M.J., 2009. op.cit., p. 89.

[524] Huhua, C., 2010. Urban–Rural Income Disparity and Urbanization: What Is the Role of Spatial Distribution of Ethnic Groups? A Case Study of Xinjiang Uyghur Autonomous Region in Western China. *Regional Studies*, 44(8), pp. 967-968.

[525] Beydulla, M., 2012. Rural economy, environmental degradation and economic disparity: a case study in Deryabuyi, Xinjiang. *Central Asian Survey*, 31(2), p. 199.

[526] Huhua, C., 2010. loc.cit, p. 975.

The lack of government investment in Xinjiang's south where the majority of the Uyghur population are located brings into light a development strategy that prioritises Xinjiang's northern urban centres where the majority of the Han population reside. When considered in addition to the Han-centric employment preferences of the XPCC, the selective allocation of government investments gives further credence to the existence of the state's covert policy of facilitating Han migration by focusing those investments to the benefit of areas with a Han majority.

Interestingly, Xinjiang's uneven prioritisation of urban development has not served as a sufficient incentive for Uyghur to migrate towards Xinjiang's more prosperous urban areas. Hasmath's work on Xinjiang's urban-rural divide provides a possible explanation for this. He considers how the high proportion of Han in Xinjiang's wealthiest regions have contributed to a form of "internal Han colonisation", where by the Han majority serves to attract more rural Han to Xinjiang's urban centres than Uyghur[527]. Evidence of this can be seen within population statistics, where the Han presence in urban centres has increased by 1.78% over a 10 year period, while the Uyghur presence decreased over the same period[528]. The existence of this phenomenon serves to illustrate the underlying cause of the Uyghurs' disengagement from seeking employment within Xinjiang's prosperous urban centres, which is the Uyghurs' limited access to the urban labour market.

The Uyghurs' access to labour outside the rural agricultural sector is largely dependent on state mandated preferential employment policies[529], which provide a means of employment within local government institutions. Within the private sector industries that are concentrated in northern Xinjiang, Uyghurs do not benefit from the safety of such preferential policies, and instead compete with Han migrants from other regions for the same employment opportunities. The consequences of this competition, where

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[527] Hasmath, R., 2014. op.cit., pp. 6-7.
[528] Ibid.
[529] Sautman, B., 1997. *[Working Paper] Preferential Policies for Ethnic Minorities in China: The Case of Xinjiang*, Hong Kong, pp. 17-24.

educationally disadvantaged Uyghur compete with Han migrants from wealthier regions who typically hold higher levels of education, puts the Uyghur in a disadvantageous position and limits their ability to attain upwards social mobility. This effect is compounded by what Yang refers to as a "tendency to hire Han over similarly qualified minorities in some profitable industries such as energy, finance and communications"[530]. The popularised perception of Uyghurs as "backward" or "inferior" [531] also manifests in Xinjiang's private-sector. The effect of this perception outside of the public sector is readily apparent[532], with the private sector exhibiting the highest level of income disparity between the Han and the Uyghur[533].

Currently, as the state seeks to impose further market reforms and deemphasise public-sector dominance[534], minorities such as the Uyghur who depend on public-sector preferential policies in order to get a foothold within the non-agricultural sector will be increasingly faced with having to seek employment within the private sector. As a result, the ability of the local government to counteract the Uyghur-Han income disparity through the implementation of preferential public-sector hiring policies will be diminished[535], creating the potential for even greater levels of income disparity in the future.

The issues faced by Uyghurs in Xinjiang largely stem from a complex milieu that arises in part from the state's economic and educational policies and the nascent effects of

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[530] Yong, L., 2010. An Economic Band-Aid: Beijing's New Approach to Xinjiang. *China Security*, 6(2), p. 36.
[531] Zang, X., 2011. Uyghur-Han Earnings Differentials in Urumchi. *The China Journal*, (65), pp. 146–147.
[532] Maurer-Fazio's audit based analysis of minority and Han applications to job postings reveals the existence of discrimination on the grounds of minority status, noting that Uyghur women typically have to submit 83% more job applications to receive the same number of responses as their Han counterparts. See: Maurer-Fazio, M., 2012. Ethnic discrimination in China's internet job board labor market. *IZA Journal of Migration*, 1(1), p. 12.
[533] Wu, X. & Song, X., 2014. Ethnic Stratification amid China's Economic Transition: Evidence from the Xinjiang Uyghur Autonomous Region. *Social science Research*, 44, p. 169.
[534] Wildau, G., 2014. China Announces Plan for Reform of State-Owned Enterprises. *Financial Times*. Available at: http://www.ft.com/cms/s/0/07928638-0c24-11e4-a096-00144feabdc0.html; Zeng, J., 2013. *State-Led Privatization in China: The Politics of Economic Reform*, Taylor & Francis.
[535] Hasmath, R., 2014. op.cit., p. 12.

traditional cultural and ethnic stereotypes. The provision of education is of paramount importance in addressing the pervasive issues of inequality, of which employment discrimination is a symptom of. The implementation of bi-lingual education policies within Xinjiang represents some principled attempts by the state to improve the literacy levels of the Uyghur population; however the policy is frustrated in its implementation. This has also been a feature of Xinjiang's economic development since its establishment as the XUAR, where pejorative perceptions of Uyghurs has been institutionalised following the establishment of the XPCC, resulting in the limitation of the Uyghurs' ability to contribute to Xinjiang's growth and development.

This has resulted in a stark division in the regions socio-economic landscape, one where a wealthier urbanised north is also characterised by its high proportion of Han, which contrasts starkly with the comparatively impoverished rural south where the majority of the Uyghur reside. The underlying cause of Xinjiang's socio-economic bifurcation represents the inefficacy of the state's implementation of educational and economic policies, the failure of which ultimately emanates from the CCP's views on ethnicity.

3.3.4 Criminality and Extremism

Much like how regional policies in the areas of religion, education and employment exhibit characteristics unique to their implementation in Xinjiang, the same may also be said regarding policies targeting both criminality and extremism. This section will focus on two specific policies, highlighting their specific characteristics that are unique in their regional application.

The first policy, referred to as the "Strike Hard" campaign, is illustrative of an authoritarian state that employs its security apparatus both as a means to reduce criminality, and also preserve its own authority. The second policy focuses on the emergence of a political discourse that seeks to equate Uyghur dissent with

international terrorism. The successful promotion of this narrative has resulted in the promulgation of many of the more repressive laws and regulations detailed throughout this chapter, many of which were ostensibly implemented in order to further ensure national security. Instead, the current security environment in China and within Xinjiang in particular, is one of heightened Uyghur unrest and an increased threat posed by international terrorist organisations including both Al Qaeda and the Islamic State[536].

3.3.4.1 The "Strike Hard" Anti-Crime Campaign and its implementation in Xinjiang

Perhaps one of the most significant policy innovations in addressing the issue of serious criminality in the PRC has been through the emergence of the Strike Hard campaign. First implemented in the early 1980s[537], it was conceived as a means to tackle a dramatic increase in criminality that occurred during the auspices China's period of economic reform and urbanisation. The Strike Hard campaign shares its methodology with the mass campaigns orchestrated under Mao's rule, which sought to address socio-political vulnerabilities and issues through mass rallies in order to instigate social order and stability[538]. Broadly speaking, Strike Hard campaigns are short intense efforts to publicly crackdown on criminality through meting out expedited punishments on a large scale within a limited period of time[539].

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[536] Note: As detailed within *supra* section: Thesis Methodology, online news sources have been incorporated into this research when necessary. This is particularly true of the later stage of this section owing to the recent nature in which the events discussed have taken place, resulting in a gap in the existing scholarly research on the events in question. Another factor that necessitates the use of media reports in this particular circumstance is the relative lack of transparency evidenced in state publications. In light of these limitations, efforts have been made to include a range of national and international sources where possible.

[537] Trevaskes, S., 2010. *Policing Serious Crime in China: From "strike Hard" to "kill Fewer,"* Routledge, p. 4.

[538] Examples of such campaigns include the "Hundred Flowers Campaign" and the Anti-Rightest Campaign, for further reading, see *supra* section: 2.4 The Struggle of Law under Communism, 1949-1976.

[539] The first national Strike Hard campaign was carried out in 1983 and lasted for a period of 3 years. See: Tanner, H.M., 1999. *Strike hard!: anti-crime campaigns and Chinese criminal justice, 1979-1985*, East Asia Program, Cornell University, p. 99.

The punitive nature of the Strike Hard campaign, with its characteristically harsh sentencing[540], reflects a legal tradition that shares its ideological origins from the legalist leanings of the Qing dynasty[541]. Its punitive nature is also reflected in its name, one that emphasises both speed and severity[542]. Xinjiu expands upon this through his identification of three core elements that together define a Strike Hard campaign's nature as *swiftness*, *harshness* and *focus* a specific target[543]. The campaign styled structure of the policy is symptomatic of its periodic nature, giving further emphasis to achieving the objective goal of crime reduction within a fixed period of time. Another characteristic of the Strike Hard campaign is its intended use as a deterrent, with public mass sentencing rallies used both as a determinant of the campaign's success, and in order to demonstrate the state's authority and capability in tackling crime[544].

Indeed, the use of the Strike Hard campaign as a political device to allow the state to flex its authoritative power is illustrative of the political nature of the campaigns themselves. This is reflected in many ways, including the state's public rhetoric on each campaign[545], which is frequently peppered with language not dissimilar to the ideological rhetoric used by Mao in his efforts to carry out mass mobilisation programmes[546]. The political nature of the Strike Hard campaign is also reflected within the state's views on criminality itself. Dutton's translation of an internal government

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[540] Some scholars have noted the correlation that exists between the increased application of the death penalty during periods when Strike Hard campaigns are in effect. See: Jiang, N., 2013. *China and International Human Rights: Harsh Punishments in the Context of the International Covenant on Civil and Political Rights*, Springer Berlin, p. 120; Bakken, B., 2013. Capital Punishment Reform, Public Opinion, and Penal Elitism in the People's Republic of China. In R. Hood & S. Deva, eds. *Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion*, p. 187.

[541] For further reading on the character of law during the Qing dynasty, see *supra* section:

2.2 Characteristics of Law during late Qing China.

[542] Trevaskes, S., 2010. op.cit., p. 5.

[543] Xinjiu, Q., 2005. An Analysis of the Strike-Hard Criminal Policy An Analysis of the Strike-Hard. *Contemporary Chinese Thought*, 36(3), pp. 77–78.

[544] Trevaskes, S., 2010. op.cit., p. 4.

[545] Ibid., p. 13.

[546] Ibid., p. 12; For additional reading on Mao's use of Mass Mobilisation programmes, see: Strauss, J., 2007. Morality, Coercion and State Building by Campaign in the Early PRC: Regime Consolidation and After, 1949–1956, pp. 891–912.

document titled "The Basic Character of Crime in Contemporary China" provides further insight into the government's perception of the nature of criminality within contemporary Chinese society, and a rationale to its approach in addressing it with the conception of the Strike Hard campaigns[547]. The report notes that "crime is the result of social contradictions, and therefore is always influenced by the politics, economy and culture of the society"[548]. The association of criminality with politics is further elaborated upon later in the report when it enumerates "four tides" of high criminality that occurred within the PRC, with each tide coinciding with a specific period of political strife[549]. While the report does not go into detail concerning the implementation of the Strike Hard campaign other than to mark its success in reducing crime[550], it does demonstrate an awareness of the consequential linkage that exists within both crime and policy. While such an association is certainly not unique to the PRC, it is accorded additional significance owing to the state's authoritarian structure, one where social order is a necessary prerequisite for the CCP's own legitimacy.

The inherently political nature of the national Strike Hard is also apparent in its application within Xinjiang. Much like how the above referenced report considers that the nature of criminality is influenced by politics and culture; the character of the Strike Hard campaigns that are carried out in Xinjiang are influenced by the authorities' views on regional politics and minority culture.

While the national Strike Hard campaigns are also carried out within Xinjiang, in 1996, additional specialised Strike Hard campaigns were implemented within Xinjiang specifically[551]. Implemented following a meeting concerning Xinjiang's regional

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[547] Dutton, M., 1997. "The Basic Character of Crime in Contemporary China." *The China Quarterly*, 149, pp. 160–177.
[548] Dutton, M., 1997. op.cit., p. 161.
[549] Ibid. The report states that the first tide occurred following the establishment of the PRC, the second during the Great Leap Forward, the third during the Cultural Revolution, and the fourth and current wave at time of publication commencing during China's period of rapid modernisation.
[550] Ibid., p. 170.
[551] Dillon, M., 2004. op.cit., pp. 84-85; Bovingdon, G., 2010. op.cit., p. 131.

stability[552], Potter notes that the meeting's broad attendance of the various branches of Xinjiang's administrative government and the XPCC signalled the extent of the Xinjiang campaigns' deployment and organisational requirements[553]. The political significance of the 1996 Xinjiang campaign was further signified by reports that Xinjiang Party Secretary and XPCC chief Wang Lequan ended all other responsibilities to concentrate on the Xinjiang campaign's success[554].

The Xinjiang Strike Hard campaigns have also sought to address the issue surrounding the perceived emergence of violent separatist movements within Xinjiang. This can be seen within the focus of the initial 1996 campaign which specifically targeted "splittism and illegal religious activities"[555]. The association of separatism with religion reflects the CCP's views on what it perceives as the underlying motivations behind Uyghur separatism. The issue with this association is that it provides the Xinjiang campaign with a sufficiently broad remit to ensnare the majority of Uyghur population on the basis of their religious identity, all under the problematic assumption that Uyghur religiosity in itself is synonymous with Uyghur dissent.

While it could be argued that the 1996 Xinjiang campaign only sought to address the issue of "illegal religious activities" and as such is limited in its remit to targeting those engaging in illegality, this would be failing to take into account the broader structural flaws of the Strike Hard campaign and its implementation in Xinjiang in particular.

One flaw of the Strike Hard campaign is its quota-centric determination on which the success of each campaign is determined. Xinjui considers that the emphasis on conviction rates as a determinant of a Strike Hard campaigns' efficacy creates a

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[552] Castets, R., 2003. The Uyghurs in Xinjiang – The Malaise Grows. *China Perspectives*, 49, p. 10.
[553] Potter, P.B., 2010. *Law, Policy, and Practice on China's Periphery: Selective Adaptation and Institutional Capacity*, Taylor & Francis, p. 45.
[554] Dillon, M., 2004. op.cit., p. 91;
[555] Becquelin, N., 2004. Criminalizing ethnicity: political repression in Xinjiang. *China Rights Forum*, (1), p. 41.

temptation for authorities to delay arrests until a Strike Hard campaign takes place[556]. The dangers of such temptations reflect some of the same structural issues that existed during the time of the Great Leap Forward and its emphasis on production quotas[557]. Further, the Strike Hard campaigns' emphasis on both speed and severity encumbers the independence of the judiciary. An example of this is manifested in the increased application of the death penalty during each campaign period[558], with Jiang observing that "the 'Strike Hard' campaign has led to extensive or random application of the death penalty... to the accused, including the innocent"[559].

Accordingly, this quota-centric approach to law enforcement is one that prioritises exercising periodic punitive action over ensuring rule of law. As a result, the Strike Hard campaign's politicisation of law enforcement is ultimately an exercise of the state's authority over its security. The recognition of the shortcomings of the national Strike Hard campaigns has been further highlighted following several high profile cases of miscarriages of justice having occurred due to the campaigns' emphasis on expediting criminal sentences[560], with an unusually frank article published by state media outlet Xinhua stating:

> But rapid police interrogations and hasty judgments by the court were also blamed for widespread torture and unjust punishments for innocent parties. Many others were given penalties harsher than they deserved in accordance with the law.

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[556] Xinjiu, Q., 2005. op.cit., p. 87.
[557] The Great Leap Forward's state mandated agricultural targets proved disastrous, with many encouraged to dramatically overstate their production yields and to take dangerous shortcuts in the process. This led to the central government dramatically overestimating the level of food available, contributing to a famine that had an estimated death toll of between 15-45 million people. For further reading, see: Dikötter, F., 2010. *Mao's Great Famine: The History of China's Most Devastating Catastrophe, 1958-62*, Bloomsbury Publishing.
[558] While the Death Penalty remains a state secret in China, a 2001 report by Amnesty International claims that over 1,781 people were executed in a three month period during the 2001 national Strike Hard campaign. See: Amnesty International, 2001. *"Striking Harder" Than Ever Before*, Available at: http://www.amnesty.nl/nieuwsportaal/pers/striking-harder-ever.
[559] Jiang, N., 2013. op.cit., p. 158.
[560] Amnesty International, 2002. *People's Republic of China: Serious Human Rights Violations and the Crackdown on Dissent Continue*, p. 1.

> Following the exposure of several misjudged cases years ago which sparked national outcries, China's legal circles began to reflect on the criminal justice system. In one case reported in 2005, a Chinese woman Shi Xiaorong, believed to be killed in the 1980s in Hunan Province, reappeared 16 years after her alleged murderer had been executed.[561]

However, the recognition of the shortcomings of the Strike Hard campaigns methodology has not been extended to its specialised implementation in Xinjiang. Months prior to the first Xinjiang Strike Hard campaign in 1996, an internal party report called Document No. 7 was published concerning the stability of Xinjiang. The document outlined the CCP's objective to "legally strengthen the leadership and control over religion and comprehensively and correctly realize and implement the religion policy of the Party"[562]. It proceeded to specifically outline specific measures including the replacement of religiously active CCP members, and to "Give leadership positions in mosques and religious organizations to dependable, talented people who love the motherland. Stop illegal organizations such as underground religious schools, kung-fu schools and Koran studies meetings."[563]

The CCP's implementation of religious restrictions just prior to Xinjiang's first specialised Strike Hard campaign both represents the campaigns overtly political nature, while also further demonstrating the CCP's conflation of religion with dissent. The consequences of the Party's stance on religion in Xinjiang has led to additional punitive actions being taken beyond the scope of the national Strike Hard campaigns. Examples include the closure of mosques and religious schools that were deemed

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[561] Ni, S., Wu, C. & Zhang, M., 2007. China rejects "strike hard" anti-crime policy for more balanced approach. *Xinhua News Agency*. Available at: http://news.xinhuanet.com/english/2007-03/14/content_5846317.htm.

[562] Central Committee of the Communist Party in China, 1996. *Document No. 7: Record of the Meeting of the Standing Committee of the Political Bureau of the Chinese Communist Party Concerning the Maintenance of the Stability in Xinjiang*, Available at: http://caccp.freedomsherald.org/conf/doc7.html.

[563] Ibid.

illegal[564], with additional reports of 4000 religious students being arrested and sent outside Xinjiang to the Qinghai region[565]. While the national Strike Hard campaigns focused mostly on the perpetrators of violent crimes, the Xinjiang campaigns have also targeted crimes of a political nature, giving further support to Potter's consideration that the Xinjiang campaign "was an important example of the deployment of political-legal institutions in the service of policy goals of the Party/state"[566]. The severity of the punitive action was also distinct to the Xinjiang campaign; with what Amnesty International claims are reports of Xinjiang being the only location within China where public executions took place during its Strike Hard campaigns[567].

Perhaps predictably, the 1996 Xinjiang campaign did little to quell Uyghur unrest and instead only served to further exacerbate it. By legally conflating otherwise peaceful religious activities with religious extremism, the regional authorities did little to rectify the Uyghurs already contentious relationship with the state. Hierman posits that the catch-all manner in which the Strike Hard campaign took place in Xinjiang perhaps provided a shared sense of grievance among Uyghurs throughout the region, further popularising resentment of the state and its policies[568].

The upsurge in anti-state sentiments among the Uyghur population came to the fore the following year during a series of protests that took place in Yining[569]. The protests were allegedly spurred as a result of a series of executions of Uyghur separatists and the arrest of a larger number during a police crackdown in early February[570], with Millward also claiming that the prohibition of the Mäshräp within the area may have

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564 Dillon, M., 2004. op.cit., p. 88.
565 Han, E., 2013. *Contestation and Adaptation: The Politics of National Identity in China*, OUP USA, p. 50.
566 Potter, P.B., 2010. op.cit., p. 46.
567 Amnesty International, 2002. op.cit., p. 2.
568 Hierman, B., 2007. The Pacification of Xinjiang: Uighur Protest and the Chinese State, 1988-2002. *Problems of Post-Communism*, 54(3), p. 60.
569 The riots are also referred to as the "Ghulja riots" owing to the Uyghur translation on Yining.
570 Dillon, M., 2004. op.cit., pp. 93-94;

also been a contributing factor[571]. The overriding theme in either case stems from the intense punitive actions that occurred as a result of the 1996 Xinjiang Strike Hard campaign.

There are mixed reports over regarding the characterisation of the protests, with some asserting its peaceful nature[572], others noting Uyghur chants of independence with religious overtones[573], while state sources claiming it to be a pre-meditated action taken to "split the motherland"[574]. The initial protest, numbering around several hundred[575], was countered with a police clampdown, the brutality of which reportedly escalated from tear gas and dogs to the use of live rounds on protestors[576]. In response, the protests devolved into all out attacks against state authorities and even Han civilians[577]. The state reaction was severe, involving a largescale deployment of the police, XPCC militiamen and the PLA around the city of Yining, reportedly outnumbering the cities inhabitants by four to one[578], causing the its closure for a period of two weeks and the eventual arrests of thousands[579]. Later that year further violence occurred including a string of bus bombings in the city of Ürümqi and assassinations of government officials and religious personnel[580].

The state's public rhetoric in response to instances such as the Yining protests is to further blame the existence of separatist or nationalistic sentiments among Uyghurs on foreign ideologies and external forces. In the case of the Yining protests, state and

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[571] Millward, J.A., 2004. *Violent separatism in Xinjiang: a critical assessment*, Washington, DC: East-West Center Washington, p. 17.
[572] Kuo, K.T., 2012. op.cit., p. 540.
[573] Millward, J.A., 2004, op.cit., p. 17.
[574] Tyler, P.E., 1997. In China's Far West, Tensions With Ethnic Muslims Boil Over in Riots and Bombings. *New York Times*. Available at: http://www.nytimes.com/1997/02/28/world/in-china-s-far-west-tensions-with-ethnic-muslims-boil-over-in-riots-and-bombings.html.
[575] Dillon, M., 2004. op.cit., p. 94.
[576] Millward, J.A., 2004, op.cit., p. 17.
[577] Bovingdon, G., 2010. op.cit., p. 127.
[578] Dillon, M., 2004. op.cit., p. 94.
[579] Amnesty International, 2003. People's Republic of China: No justice for the victims of the 1997 crackdown in Gulja (Yining). *Amnesty International*. Available at: http://www.amnesty.org.uk/press-releases/peoples-republic-china-no-justice-victims-1997-crackdown-gulja-yining.
[580] Han, E., 2013. op.cit., pp. 52-53; Wang, D., 1998. op.cit., p. 1.

public security officials claimed to the press that CIA involvement was suspected[581], while in other instances the authorities emphasise Islamic ideology as a cause[582]. In either case, the state's public attitude to Uyghur unrest reflects an unwillingness to examine the causality of its own policies in its attempts to improve regional instability.

Following the 1996 Strike Hard campaign and the ensuing violent unrest that occurred the following year, the Strike Hard campaigns have since became an almost yearly fixture in Xinjiang[583], with reports of Beijing's announcement that the campaign would be extended indefinitely[584]. The most recent Strike Hard campaign was one year in duration and commenced on May 2014[585], leading to a reported 95% increase in arrests over the previous year[586]. Despite the concerns outlined earlier by authorities regarding the extra-judicial expedition of criminal sentencing in the national Strike Hard campaign, and the CCP's Central Political and Legal Committee call to abolish quota based law enforcement metrics in January 2015[587], the publication by regional authorities of the steep increase in convictions during Xinjiang's most recent Strike Hard campaign shows little sign of reform in the region. Perhaps most tellingly, in January 2015, Xinjiang's chief prosecutors proudly made the assertion that they've "shortened the time between approving arrests and prosecution in major terrorist-

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581 Dillon, M., 2004. op.cit., pp. 98-99.
582 Tiantian, B., 2015. Xinjiang Party chief warns of "political struggle" in region. *Global Times*. Available at: http://www.globaltimes.cn/content/927241.shtml.
583 Human Rights Watch, 2005. *Religious Repression of Uighurs in Xinjiang*, New York: Human Rights Watch, pp. 66-67.
584 Kurlantzick, J., 2004. Review Essay The Unsettled West China's Long War on Xinjiang. *Foreign Affairs*, 83(4), p. 141.
585 Cui, J., 2015. Drive against terrorism in Xinjiang shows result. *China Daily*. Available at: http://www.chinadaily.com.cn/china/2015-01/20/content_19356520.htm; Yuwen, W., 2015. China hails crackdown on terror in Xinjiang. *BBC News*. Available at: http://www.bbc.com/news/world-asia-china-32895245?OCID=fbasia; Hellmann, M., 2014. China Arrests 380 in First Month of Yearlong Antiterrorism Campaign. *Time Magazine*. Available at: http://time.com/2911211/china-arrests-380-in-first-month-of-yearlong-antiterrorism-campaign/.
586 Cui, J., 2015. Xinjiang arrests nearly doubled. *China Daily*. Available at: http://www.chinadaily.com.cn/china/2015-01/23/content_19384490.htm.
587 Xinhua, 2015. Law enforcement authorities a comprehensive audit of law enforcement and judicial assessment indicators, conviction rate clearance rate and so on will be canceled (政法机关今年全面清理执法司法考核指标 有罪判决率、结案率等将取消). *Xinhua News Agency*. Available at: http://news.xinhuanet.com/legal/2015-01/21/c_1114079201.htm.

related cases so the suspects can be tried as soon as possible to show the region's determination to fight terrorism in accordance with the law"[588].

In conclusion, while the heavy handedness of the Strike Hard campaigns in Xinjiang may subdue Uyghur unrest in the short term through punitive deterrence, it will also have the effect of further fuelling a shared sense of injustice and mistrust amongst Uyghurs over the longer term[589]. Indeed, the continued existence of the Strike Hard campaigns in Xinjiang contrasts starkly with its limited application at the national level[590], further highlighting both the persistence of Uyghur unrest while also bringing the efficacy of specialised campaigns in Xinjiang into question.

3.3.4.2 The "Global War on Terror" and the Emergence of the "East Turkistan Islamic Movement" in China

Existing in concert with Xinjiang's anti-crime policies has been the emergence of a new narrative concerning the inter-relation of Uyghur unrest with the global jihadist movement. While state authorities have frequently claimed "foreign forces" as a core contributor to the existence of Uyghur separatism, the ambiguous nature of the claim had never been fully elaborated upon until just weeks following the attacks of September 11th. After which, an obscure terrorist organisation called the East Turkistan Islamic Movement (ETIM) was thrust into the international spotlight by Chinese state authorities.

The first public reference to the ETIM's existence was contained in a document published shortly after the September 11th attacks by China's permanent mission to the

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[588] Cui, J., 2015. op.cit.
[589] Davis, E., 2008. Uyghur Muslim Ethnic Separatism in Xinjiang, China. *Asian Affairs*, 35(1), p. 16.
[590] In total there have been four national Strike Hard campaigns in the years 1983-1986, 1996, 2001-2003, and 2010. For further reading on the first three national Strike Hard campaigns, see: Trevaskes, S., 2010. op.cit. For further reading on the 2010 national Strike Hard campaign, see: China Daily, 2010. "Strike hard" campaign targets violent crimes. *China Daily*. Available at: http://www.china.org.cn/china/2010-06/15/content_20267402.htm.

UN[591]. Titled "Terrorist Activities Perpetrated by "Eastern Turkistan" Organizations and Their Links with Osama bin Laden and the Taliban", the document starts by describing the existence of a terrorist network operating under the collective umbrella banner of "Eastern Turkestan". It outlines a series of violent attacks which were perpetrated by "'Eastern Turkestan' elements" since 1990 both inside and outside China[592].

The document's second paragraph is perhaps its most controversial. Titled as "The Relationship Between the 'Eastern Turkistan' Terrorists and the Taliban in Afghanistan and Osama bin Laden", it reports that the ETIM is "a major component of the terrorist network headed by Osama bin Laden"[593]. The document continues to emphasise the ETIM's links with both the Taliban and Osama Bin Laden, stating that "Osama bin Laden demanded that the ETIM stir up turmoil in the near future in the three Central Asian countries, namely, Uzbekistan, Tajikistan and Kyrgyzstan, and then stage an organized infiltration into China's Xinjiang"[594]. The document proceeds to assert that the ETIM has received training and logistical support from both Osama Bin Laden and the Taliban, along with claims of receiving direct financial assistance to the amount of "300,000 US dollars in various ways, and undertook to cover all the expenses of the ETIM activities for the year of 2001"[595].

The document's announcement on the existence of the ETIM, and its stated association as a "major component" of Osama Bin Laden's network of global jihadists, portrays the disparate acts of violence involving Uyghurs over the previous decade ultimately as part of the wider global jihadist movement. The attribution of these incidents collectively to the network referred to as the "East Turkestan force" also creates the perception that the attacks occurred as a result of the planning of a

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[591] Permanent Mission of the People's Republic of China to the United Nations, 2001. Terrorist Activities Perpetrated by "Eastern Turkistan" Organizations and Their Links with Osama bin Laden and the Taliban. *The official website of the Permanent Mission of the People's Republic of China to the United Nations*. Available at: http://www.china-un.org/eng/zt/fk/t28937.htm.
[592] Permanent Mission of the People's Republic of China to the United Nations, 2001. op.cit.
[593] Ibid.
[594] Ibid.
[595] Ibid.

cohesive organisational entity. When considered in its entirety, the document asserts the existence of Uyghur terrorist organisations and also emphasises the organisations' operational capabilities by directly associating them with both Al Qaeda and the Taliban, presenting Uyghur terrorist groups as an international terrorist threat.

The document's publication signalled a paradigm shift regarding China's public position on Xinjiang, prior to which scant official information was publically available regarding the existence of organised Uyghur terrorist groups operating from either inside or outside of Xinjiang. This dramatic change in rhetoric, along with ETIM's reportedly central role, was noted with surprise by many scholars including Dru Gladney, who stated that "at the time, very few people, including activists deeply engaged in working for an independent East Turkestan, had ever heard of ETIM"[596]. Other scholars have articulated puzzlement with this new narrative, with Millward arguing that violent incidents in Xinjiang had in fact declined throughout the 90s, prior to the reports publication[597]. Bovingdon also noted the relative paucity of violent incidents involving Uyghurs when compared to the number of violent "mass incidents" that have occurred throughout the rest of China over the same period[598], making the assertions contained within the report all the more jarring. Furthermore, on September 2nd, just days prior to the September 11th attacks, Wang Lequan asserted on the topic of Xinjiang's regional stability that it was "better than ever in history"[599]. Given Wang Lequan's position within Xinjiang's government and his prominent role in its security apparatus[600], his claim illustrates a starkly divergent picture of Xinjiang's stability when compared to China's publication to the UN just two weeks later.

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[596] Gladney, D.C., 2004. *Dislocating China: Reflections on Muslims, Minorities and Other Subaltern Subjects*, C. Hurst, p. 251.
[597] Millward, J.A., 2004. op.cit., p. 32.
[598] Bovingdon, G., 2010. op.cit., p. 112.
[599] Millward, J.A., 2004. op.cit., p. 11.
[600] For further information on Wang Lequan's role within Xinjiang, see *supra* section: 3.3.4.1 The "Strike Hard" Anti-Crime Campaign and its implementation in Xinjiang.

Following the document's publication, a statement by Tang Jiaxuan, China's then Minister of Foreign Affairs and head of its UN delegation, addressed to the United Nations General Assembly an additional clarification concerning China's position on international terrorism and further highlighted its efforts in combatting it[601]. The statement included the assertion that China is also a victim of international terrorism, stating that "The "Eastern Turkestan" terrorist forces are trained, equipped and financed by international terrorist organizations. The fight against the "Eastern Turkestan" group is an important aspect of the international fight against terrorism"[602].

The above statement broadly continues the narrative that was established in the initial document, and further postulates the existence of "East Turkestan" forces as a singular organisational entity, portraying it as monolithic in structure and its existence as an international terrorist threat. The statement also associates China's efforts to combat the "East Turkestan" group as synonymous with the global war on terrorism.

Following on from the initial reports published by the PRC, on 21 January 2002, a white paper was subsequently published by China's State Council titled "'East Turkistan' Terrorist Forces Cannot Get Away with Impunity"[603]. The paper further elaborates upon the initial document, providing additional information on the specific activities that the "East Turkestan" forces are alleged to have engaged in, along with providing a historical context for how the "'East Turkistan' issue" came about.

The paper begins its first section focused on the political nature of the term "East Turkestan", explaining its use as a "political concept first put forward by old colonialists with the aim of dismembering China"[604]. The report then goes on to make the assertion

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[601] Jiaxuan, T., 2001. Statement by H.E. Mr. Tang Jiaxuan, Minister of Foreign Affairs and Head of Delegation of The People's Republic of China, At the 56th Session of the UN General Assembly. *Permanent Mission of the People's Republic of China to the UN*. Available at: http://www.china-un.org/eng/zt/fk/t28933.htm.

[602] Ibid.

[603] State Council of the People's Republic of China, 2002. A. "East Turkistan" Terrorist Forces Cannot Get Away With Impunity, 21st January 2002. *China Report*, 38(3), pp. 435–450.

[604] State Council of the People's Republic of China, 2002., op.cit.

that Xinjiang is an inseparable part of China, following the establishment of a military outpost in the region during the time of the Han dynasty in 60 B.C., before claiming that "From that time on, the central government has never ceased jurisdiction over Xinjiang"[605]. On reflection of this assertion, Millward contends that:

> As any student of Chinese history knows, since the Han period there have been several extended epochs when no "central government" could claim jurisdiction even over the central provinces of China, let alone over Xinjiang. (In fact, no power based in China ruled Xinjiang between the withdrawal of the Tang dynasty from the area in 755 and the Qing conquest in 1758, although Kublai Khan exercised some influence in the 1260s.)[606]

The questionable bias of the paper's historical account of Xinjiang continues during in its detailing of the East Turkestan Republic in 1933 and its collapse three months later[607]. While the existence of the first East Turkestan Republic was indeed short-lived in its duration, and devolved owing to popular opposition within Xinjiang itself[608], the paper seeks to emphasise its fleeting existence in a manner that it does not conflict with its broader narrative of Xinjiang's historical and inextricable relationship with central China. This is further evidenced by the subsequent absence within the paper of any mention of the second East Turkestan Republic, which existed outside of central China's jurisdiction from 1944 to 1949[609]. The selectively curated account of Xinjiang's history while problematic in itself brings into question both the understanding of the context of Uyghur unrest that the paper seeks to elaborate upon, and the accuracy of the papers' content overall.

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[605] State Council of the People's Republic of China, 2002., op.cit.
[606] Millward, J.A., 2004. op.cit., p. 12.
[607] State Council of the People's Republic of China, 2002., op.cit.
[608] For further information on Xinjiang's history, see *supra* chapter: Chapter 1: The History and Religion of Xinjiang.
[609] Ibid.

The paper continues by elaborating on the current nature of Uyghur unrest, articulating that "the influence of extremism, separatism and international terrorism" as cause for the increase in "terrorist violence" among "'East Turkestan' forces"[610]. The report asserts that "'East Turkestan' terrorist forces" are responsible for over 200 hundred terrorist incidents within Xinjiang, resulting in 162 deaths and 440 injuries between 1990 and 2001[611]. In doing so, the report continually accords and conflates violent incidents involving Uyghurs as part of the nebulously defined "East Turkestan" forces. This vague encapsulation of the perpetrators of such incidents under a collective banner that it associates with international terrorism fails to take into account the many divergent motives and groups responsible for each incident. The resulting conflation is unhelpful, and serves to inhibit a more nuanced analysis on the underlying causalities on why these attacks were carried out.

The remainder of the report enumerates some of the reported terrorist incidents into a selection of categories including "Explosions", "Assassinations", "Attacks on Police and Government Institutions" and "Plotting and Organising Disturbances and Riots, and Creating an Atmosphere of Terror"[612]. While the reported incidents are certainly of a violent nature, with many involving civilian fatalities and injuries, debate exists on whether the majority of the events listed fall under an internationally understood definition of terrorism[613]. Clarke observed that the number total number of deaths and fatalities accorded to each specific incident within the report were significantly less than the number presented during the reports initial outline[614]. The Yining riots that took place in 1997 were also included as a terrorist activity despite it being widely

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610 State Council of the People's Republic of China, 2002., op.cit.
611 State Council of the People's Republic of China, 2002., op.cit.
612 Ibid.
613 While there is a clear standardised definition of terrorism has yet to find consensus, the definition adopted within the US code remains functionally similar to the definition proposed within United Nations General Assembly Resolution titled "Measures to eliminate international terrorism", making it a suitable definition to form the basis of Roberts' analysis. See: United Nations General Assembly, 1997. *Measures to Eliminate National Terrorism (A/RES/51/210)*, New York.
614 Clarke, M., 2007(a). China's "War on Terror" in Xinjiang: Human Security and the Causes of Violent Uighur Separatism. *Regional Outlook Paper*, 11, p. 15.

considered to be a spontaneous act of protest. Clarke observes that this incident alone attributes to 200 of the 400 alleged injuries to have taken place as a result of terrorist activities over the period documented in the report[615]. In Roberts' analysis of the white paper he used the definition of terrorism adopted within the US Code to analyse the applicability of the 45 incidents reported within the white paper in order to determine whether they did indeed constitute acts of terrorism. His analysis concluded that "one of these 45 acts of violence was, without reservations, most likely an act of 'terrorism'"[616]. While Roberts' contends that the lack of transparency from government reports and the relative absence of public information makes it impossible to determine whether the majority of the attacks can be considered as acts of terrorism, the extent of the disparity that exists between Roberts' analysis and the papers determination that all 45 attacks were acts of terrorism raises questions concerning the nature of the incidents reported on.

Subsequent to the white paper's publication, and the carrying out of bi-lateral negotiations that resulted in the approval of an FBI legal attaché office within the US embassy in Beijing[617], upon his return from a state visit to China in 2002 the US Deputy of State announced the designation of the ETIM as a foreign terrorist organisation[618]. While its designation on the foreign terror list extends only to the blocking of its financial support by the US Department of Treasury under Executive Order 13224[619], its inclusion by the United States has had the effect of validating China's narrative concerning the international terrorist threat posed by the ETIM.

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[615] Clarke, M., 2007(a). op.cit., p. 15.
[616] Roberts, S.R., 2012. op.cit., p. 12; Holdstock, N., 2014. What we Talk About When we Talk About "The Uyghurs." *Dissent*, (Summer), p. 67.
[617] Ross, R., Tunsjø, Ø. & Tuosheng, Z., 2010. *US-China-EU Relations: Managing the New World Order*, Taylor & Francis, p. 291; Donohoe, M., 2001. FBI agents may be based in Beijing next year. *The Irish Times*. Available at: http://www.irishtimes.com/news/fbi-agents-may-be-based-in-beijing-next-year-1.340977.
[618] Armitage, R., 2002. Press Conference - Return from China Visit. *United States Department of State Archives*. Available at: http://2001-2009.state.gov/s/d/former/armitage/remarks/2002/13180.htm.
[619] Office of the Coordinator for Counter Terrorism, 2001. Executive Order 13224. *United States Department of State*. Available at: http://www.state.gov/j/ct/rls/other/des/122570.htm.

Scholars have challenged the basis of the ETIM's designation as a terrorist organisation by US authorities, with some considering its timing may be indicative of a political concession by US authorities keen to enlist further support for their own counter-terrorist efforts[620], although this has since been denied by US authorities[621]. Others have doubted the accuracy of the evidence supporting the ETIM's designation[622], a sentiment that is compounded by the US Department of Treasury's press release on the ETIM's terrorist designation[623], which copies verbatim the number of alleged attacks carried out from the 2002 China's white paper, only claiming that the ETIM was directly responsible for all instances, despite the original white paper according responsibility to the vaguer umbrella term of "'East Turkestan' terrorist forces"[624]. Another possible explanation for the US terrorist designation for ETIM may be connected to the prior arrest of two Uyghurs reportedly plotting an attack on the US embassy in Bishkek, Kyrgyzstan who were then later deported to China[625]; however the Uyghurs' motives or associations have never been publicly established.

Irrespective of the motivations behind ETIM's inclusion on US terror lists, its existence has had the effect of internationally legitimising China's new discourse concerning the threat of Uyghur separatism and its connection to international terrorism. Evidence can be found in China's public response to the US designation, with a spokesman from China's Foreign Ministry reportedly having stated that:

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620 Roberts, S.R., 2012., op.cit., p. 2; Chung, C., 2004. The Shanghai Co-operation Organization: China's Changing Influence in Central Asia. *The China Quarterly*, 180, p. 1004; Alterman, J.B. & Garver, J.W., 2008. *The Vital Triangle: China, the United States, and the Middle East*, CSIS Press, p. 20; Human Rights Watch, 2005. op.cit., pp. 21-22; Potter, P.B.K., 2013. Terrorism in China Growing Threats with Global Implications. *Strategic Studies Quarterly*, p. 77.

621 Kan, S. a., 2009. US-China Counterterrorism Cooperation: Issues for US Policy. *Congressional Research Service*, p. 5.

622 Clarke, M., 2007(a). op.cit., pp. 11-19.

623 United States Department of Treasury, 2002. Treasury Dept. on Addition of ETIM to Terrorist List. *United States Department of Treasury*. Available at: http://iipdigital.usembassy.gov/st/english/texttrans/2002/09/20020912191909jthomas@pd.state.gov0.751034.html.

624 State Council of the People's Republic of China, 2002. op.cit.

625 Gladney, D.C., 2004. op.cit., p. 252.

> ETIM and other East Turkistan organizations have joined international terrorist forces to create violent terrorist incidents inside and outside of China for a long time, posing severe threats to regional security and stability. [...] there is evidence connecting East Turkistan organizations with international terrorist forces.[626]

The above statement continues to further the "international Uyghur terrorism" narrative, while also adding for the first time that other "East Turkestan" organisations have aligned with international terrorist organisations. This goes further than previous statements where the ETIM was solely referenced in its association to the global jihadist movement, to a more sweeping statement that goes beyond the scope of the ETIM. Shortly after the US's designation of the ETIM, the United Nations Security Council also designated the ETIM as a terrorist organisation in a resolution put forward by the US, China, Afghanistan and Kyrgyzstan on 11 September 2002[627]. In 2004, the ETIM was added by the US Department of State on to its Terrorist Exclusion List (TEL), a black list used to block the immigration of members associated with the organisation[628]. A curious development considering that prominent Uyghur activist and Nobel prize nominee Rebiya Kadeer was subsequently granted U.S. residency just one year later following the diplomatic efforts of the US Department of State (USDOS)[629], despite having being accused by Chinese officials including Wang Lequan of colluding

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[626] People's Daily, 2002. China Hails US Decision to Put ETIM on Terror List. *People's Daily*. Available at: http://www.china.org.cn/english/international/40575.htm.

[627] Reeker, P.T., 2002. Designation of the Eastern Turkistan Islamic Movement Under UNSC Resolutions 1267 and 1390. *United States Department of State Archives*. Available at: http://2001-2009.state.gov/r/pa/prs/ps/2002/13403.htm.

[628] United States Department of State, 2004. *Terrorist Exclusion List*, Washington, DC. Available at: http://www.state.gov/j/ct/rls/other/des/123086.htm.

[629] Kadeer, R. & Cavelius, A., 2009. *Dragon Fighter: One Woman's Epic Struggle for Peace with China*, Kales Press, pp. 380-381;Yardley, J., 2005. China Frees Muslim Woman Days Ahead of Rice's Visit. *New York Times*. Available at: http://www.nytimes.com/2005/03/18/world/asia/china-frees-muslim-woman-days-ahead-of-rices-visit.html.

with "overseas terrorists, separatists and extremists forces"[630], and others alleging her associations with the ETIM[631].

The classification of the ETIM as a terrorist organisation by the US and the UN has had the effect of further equating Uyghur unrest with global terrorism. While the threat of violent attacks within China involving Uyghur has been, and remains to be, a reality, the addition of the ETIM among organisations including Al Qaeda, Boko Haram and the Islamic State has resulted in the conflation of Uyghur unrest with international terrorism within both state and public discourse. Dwyer's discourse analysis on the emergence of the "international Uyghur terrorism" narrative provides an example on the how this shift in rhetoric has succeeded in increasing this conflation. Her research finds that following 2001 the English language internet searches using the term "Uyghur separatists" declined while use of the searches using the term "Uyghur terrorists" increased[632]. Interestingly, the Chinese language internet searches using the term "Uyghur terrorists" did not increase, leading Dwyer to posit that the emergence of the "international Uyghur terrorist" discourse was intended for an international rather than a domestic audience[633].

Perhaps the most dramatic international event that coincided with this shift in narrative has been the capture and detention of 22 Uyghurs as "enemy combatants" in Guantanamo by US forces. Allegedly captured as a result of the US policy of providing a $5,000 bounty for captured fighters by local militias[634], the Uyghurs involved were

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630 Xuequan, M., 2009. Evidence shows Rebiya Kadeer behind Urumqi riot: Chinese gov't. *China View*. Available at: http://news.xinhuanet.com/english/2009-07/09/content_11676293.htm; Xinhua, 2009. Evidence shows Rebiya Kadeer behind Xinjiang riot: Govt. *China Daily*. Available at: http://www.chinadaily.com.cn/china/2009-07/09/content_8401803.htm.

631 China Post, 2009. Uighur activist Rebiya Kadeer denied entry visa to Taiwan. *China Post*. Available at: http://www.chinapost.com.tw/taiwan/national/national-news/2009/09/26/226198/Uighur-activist.htm.

632 Dwyer, A.M., 2005. op.cit., pp. 56-57.

633 Ibid.

634 Wayne, M.I., 2009. Inside China's War on Terrorism. *Journal of Contemporary China*, 18(59), pp. 251–252. For further reading on the use of bounty's to facilitate the capture of militants and the resulting rights abuses the policy facilitated, see: Amnesty International, 2007.

reportedly found within militant camps used to for combat training, where upon capture they were designated as Enemy Combatants[635].

In September 2002, a month after the US Deputy of State's visit to China, Chinese security services were granted permission to travel to Guantanamo to interrogate the Uyghur detainees. During a House Committee on Foreign Affairs Hearing over the issue, Jason Pinney, an attorney representing several of the detainees at the time, highlighted the dubious legality of the arrangement:

> [...] we agreed to provide the Chinese with special and unprecedented access to the Uighur men. In September of 2002, we allowed a delegation from the Communist Chinese government to travel to Guantanamo and interrogate the Uighurs imprisoned there. The interrogations lasted for days. Our clients were forced into cells, alone, with the Chinese. No representative from the United States was present during these interrogations. In the history of our republic, I cannot think of another example where a Communist country was invited in to interrogate, unsupervised, prisoners in a United States detention facility.[636]

Subsequent to the Uyghurs' detention in Guantanamo and interrogation by both US and Chinese authorities, the US found no evidence to support their categorisation as Enemy Combatants. All 22 Uyghur were later cleared of their Enemy Combatant status, and after a protracted period, were eventually re-located to third countries

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Bounties paid for terror suspects. *Amnesty International*. Available at: http://www.amnesty.org.au/hrs/comments/bounties_paid_for_terror_suspects/.

[635] Put simply, the term "Enemy Combatant" is used as a designation for individuals engaged in hostile actions against a state during a period of conflict. With respect to Guantanamo specifically, the term is controversial with respect to the extrajudicial implications that surround the status of those designated under it. For further reading, see: Haynes, W., 2012. Enemy Combatants. *Council of Foreign Relations*. Available at: http://www.cfr.org/international-law/enemy-combatants/p5312.

[636] Pinney, J., 2009. *Testimony of Jason Pinney before the House Committee on Foreign Affairs Subcommittee on International Organizations, Human Rights, and Oversight - Chinese Interrogation Vs. Congressional Oversight: The Uighurs At Guantanamo*, Boston, MA, available at: http://democrats.hcfa.house.gov/111/pin071609.pdf, p. 2.

despite China's reservations[637]. The USDOS's refusal to return the Uyghur detainees to China stems from its concerns surrounding the Chinese judicial system, in particular that they may be subjected to further persecution by the Chinese state authorities[638].

During the course of Roberts' research on the ETIM's operational capacity, he carried out several interviews with some of the Uyghurs who were formerly detained in Guantanamo. As a result of the interviews conducted, he observed that:

> Although all of the Uyghur detainees who were in this camp were forthcoming in their statements at various Guantanamo hearings about their distaste for Chinese rule in their homeland, they all denied belonging to ETIM, and most suggested they had never heard of the group until they were brought to the detention facilities.[639]

The conclusions drawn from Roberts' research, and indeed the eventual findings of the US government, provide a divergent narrative to the one found within Chinese government discourse concerning both the operational capacity of the ETIM, and its connections to international terrorist organisations at the time. While the fact that the interviewed Uyghur displayed open animosity towards China[640], and that they were captured in a "training camp", does raise questions regarding their intentions regarding China, Roberts' research states that they showed no animosity towards the US, much less subscribed to the Pan-Islamist doctrines espoused by international terrorist organisations such as Al-Qaeda[641].

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[637] Countries include Albania, Bermuda, El Salvador, Slovakia, Sweden, Switzerland and Germany.
[638] BBC News, 2006. China demands Guantanamo Uighurs. *BBC News*. Available at: http://news.bbc.co.uk/2/hi/asia-pacific/4753559.stm; Blanchard, B., 2014. China denounces U.S. for sending Uighur "terrorists" to Slovakia. *Reuters*. Available at: http://www.reuters.com/article/2014/01/02/us-china-usa-uighurs-idUSBREA0107R20140102.
[639] Roberts, S.R., 2012. op.cit., p. 7.
[640] "None of the former detainees presently in Albania refuted that they are adamantly opposed to Chinese rule in their homeland, and it is certainly possible that they would have been willing to partake in violence targeting the Chinese state.", see; Ibid., pp. 8-9.
[641] Ibid., p. 7.

The dangers of Uyghur separatism are, and have been, a reality following the XUAR's establishment. Acts of violence within Xinjiang in particular has resulted in significant levels of loss of life and destruction, with much of it directed against the state and towards Xinjiang's Han population. However, the narrative that has been promoted by the PRC immediately following the attacks of September 11th has conflated the threat of Uyghur nationalism with that of Pan-Islamic terrorism. This narrative has not been supported by any comprehensive evidence; instead it has been adopted and developed based on the tenuous assertions put forward within state reports and documents, the contents of which have been shown to be both misleading and inaccurate.

An example of such inaccuracies are evident amongst the state's allegations concerning the ETIM's capabilities and operational capacity at the time, which had yet to be fully determined despite their controversial inclusion on the US & UN terror watch lists. While it is not disputed that organisations such as the ETIM exist, the implied threat posed as a result of their reported associations with Al Qaeda, and Osama Bin Laden in particular, has been overstated[642]. An example of the repercussions of this overstatement has been the detention of 22 Uyghurs within Guantanamo by US forces as detailed earlier in this section. Following exhaustive efforts to prove otherwise, all were eventually found to pose no threat to the US, nor did they have any association with the ETIM, with few having even allegedly heard of the organisations existence[643].

While Uyghur anti-state violence remains a credible concern to Chinese authorities, its focus on China itself during this period casts doubt over China's claims that such organisations were in league with the Pan-Islamist ideologies that featured within international terrorist movements, making anti-state violence more likely the result of Uyghur nationalist separatism than Pan-Islamic terrorism. The state narrative that

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[642] Cunningham, C.P., 2012. Counterterrorism in Xinjiang : the ETIM, China, and the Uyghurs. *International Journal on World Peace*, 29(3), p. 38; Roberts, S.R., 2012. op.cit., p. 9.
[643] Ibid., p. 38.

foreign ideologies are the root cause of acts of violence caused by Uyghurs has the unfortunate effect of absolving the state authorities from considering the possibility that a source in the resurgence of Uyghur nationalist separatism may stem from its own policies.

The timing of the publication on the ETIM's existence and the international threat it poses has had the resulting consequence of reinforcing the PRC's international terrorist discourse despite their having been little evidence to support the claims at the time. The perpetuation and exaggeration of the ETIM's capabilities in particular has had the effect of legitimising increased levels of repression against the Uyghur and promoting further intolerance towards the Uyghur in both law and policy.

Lamentably, many of the most onerous policies described within this chapter were accelerated following the emergence of the "international Uyghur terrorism" discourse. By further narrowing the space available for the Uyghurs to maintain their minority identity, the state authorities risk further alienating many Uyghurs from Chinese society, making them vulnerable to the very ideologies that are attempting to counter.

Evidence of this can be seen within the emergence of Uyghur terrorism in 2006, several years after the cultivation of the "international Uyghur terrorism discourse" and the ensuing clampdown on religious and cultural activities in Xinjiang.

Following the death of ETIM's leader Hasan Mashum by US forces in Pakistan in 2003[644], there were reportedly no violent incidents alleged to have occurred as a result of the ETIM activities between 2003 and 2006[645]. This changed in 2006 following the ETIM's apparent re-emergence under the reported leadership of Abdul Haq[646], who

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[644] Fayaz, S., 2012. China's Xinjiang Problem and Pakistan. *Dialogue*, 7(3), p. 249.
[645] Clarke, M., 2007(a). op.cit., p. 16.
[646] Abdul Haq is thought to have been Mashum's successor, having served under him during Mashum's leadership of the ETIM. It is this linkage that has perhaps formed the basis of both scholar's and the Chinese state officials' consideration that the TIP is synonymous with the ETIM. See: Zenn, J., 2014. Uyghur Migrants Find New Route to Southeast Asia. *China Brief*, 14(17), pp. 8-9.

under the banner of the Turkestan Islamic Party (TIP)[647] released a video espousing the organisations jihadist orientation while also making direct threats against China[648]. The release of this video marked an upswing in the number of violent incidents alleged to have been perpetrated by the ETIM/ TIP and Al Qaeda[649], signalling a convergence in both organisations ideologies, and an increase in the level of cooperation in operational planning, logistics and training between the ETIM/ TIP and Al Qaeda. This change can be traced back to Abdul Haq's leadership role within ETIM/ TIP, who has also been reported to have held a position within Al Qaeda's executive council[650].

An example of the dangers that this convergence poses includes acts of terrorism beyond China's borders, such as attempted bomb plot in Norway in 2010[651]. The incident, which included alleged Al Qaeda support[652], provided further evidence of the TIP's increased engagement with pan-Islamic international terrorist organisations. Al Qaeda's involvement has not been limited to increasing the ETIM/ TIP's capabilities, but also includes its own efforts directed against China. Shortly after the Ürümqi riots in 2009, Al Qaeda in the Maghreb (AQIM) issued a threat towards Chinese citizens working in Algeria in revenge of the treatment of Uyghurs by Chinese authorities[653]. The viability of the threat posed is made apparent due to a previous attack carried out

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[647] Roberts, S.R., 2012. op.cit., p. 10.
[648] Turner, J.A., 2014. *Religious Ideology and the Roots of the Global Jihad: Salafi Jihadism and International Order*, Palgrave Macmillan.
[649] Owing to the continued reference to the TIP as ETIM within its Chinese state media, the organisation will henceforth be referred to as ETIM/ TIP for purposes of clarity.
[650] Potter, P.B.K., 2013. op.cit., p. 75.
[651] Wong, E., 2010. Chinese Separatists Tied to Norway Bomb Plot. *New York Times*. Available at: http://www.nytimes.com/2010/07/10/world/asia/10uighur.html.
[652] Ibid.
[653] Macartney, J., 2009. Al-Qaeda vows revenge on China after riots. *The Times*. Available at: http://www.thetimes.co.uk/tto/news/world/asia/article2610899.ece; Moore, M., 2009. Al-Qaeda vows revenge on China over Uighur deaths. *The Telegraph*. Available at: http://www.telegraph.co.uk/news/worldnews/asia/china/5822791/Al-Qaeda-vows-revenge-on-China-over-Uighur-deaths.html.

by the AQIM on a convoy of Chinese engineers that resulted in the deaths of 24 Algerian security personnel[654].

While AQIM's activities against Chinese interests within North Africa could be attributed to China's role within the regions energy sector, the direct reference to the China's treatment of the Uyghur must also be considered. Given the prominent position of Abdul Haq within Al Qaeda's administrative structure, both TIP and Al Qaeda now pose an increasingly severe threat towards China following the organisations resurgence in 2006. This is further referenced by public threats directed towards China contained within a recent publication by Al Qaeda[655], and in a video message from alleged leader of Islamic State, Abu Bakr al-Baghdadi[656]. Further, in 2014 China state sources reported that there are 300 Chinese nationals fighting within Islamic State[657], with many of those potentially being Uyghur[658].

The increase in the ETIM/ TIP's activities after 2006 also occurred within China. Significant incidents include a series of coordinated bombings in 2008 that occurred outside of Xinjiang in locations including Kunming and Shanghai[659]. Perhaps in an effort to mitigate international concern during the run up to the 2008 Beijing

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654 Branigan, T., 2009. Al-Qaida threatens to target Chinese over Muslim deaths in Urumqi. *The Guardian*. Available at: http://www.theguardian.com/world/2009/jul/14/al-qaida-threat-china-urumqi.

655 Griffiths, J., 2014. Al-Qaeda magazine calls for Xinjiang to be "recovered by the Islamic Caliphate." *South China Morning Post*. Available at: http://www.scmp.com/news/china/article/1621190/new-al-qaeda-magazine-calls-xinjiang-be-recovered-islamic-caliphate?page=all.

656 Olsen, A., 2014. China Sees Islamic State Inching Closer to Home. *Foreign Policy*. Available at: http://foreignpolicy.com/2014/08/11/china-sees-islamic-state-inching-closer-to-home/.

657 Martina, M., 2014. About 300 Chinese said fighting alongside Islamic State in Middle East. *Reuters*. Available at: http://www.reuters.com/article/2014/12/15/us-mideast-crisis-china-idUSKBN0JT0UX20141215.

658 Crowcroft, O., 2015. The oldest Isis jihadi: 80-year-old Chinese grandfather fights for Islamic State in Syria. *International Business Times*. Available at: http://www.ibtimes.co.uk/oldest-isis-jihadi-80-year-old-chinese-grandfather-fights-islamic-state-syria-1504293; Cui, J., 2015. IS recruits Xinjiang residents. *China Daily*. Available at: http://en.people.cn/n/2015/0311/c90882-8860966.html.

659 Elegent, S., 2008. A China Threat from Pakistan? *Time Magazine*. Available at: http://content.time.com/time/world/article/0,8599,1831216,00.html.

Olympics[660], Chinese authorities were notably tight-lipped on the events and alleged that the bus bombing in Shanghai was the result of mechanical error[661], despite the TIP having claimed responsibility for the attacks[662]. In 2013, three Uyghur family members deliberately drove a car into crowds of tourists within Beijing's Tiananmen Square before the car became engulfed in flames, resulting in five fatalities including the perpetrators and injuring 38[663]. While information concerning the attackers' motives is debated[664], with some doubting the involvement of terrorist organisations due to the relative lack of sophistication involved in the attack[665], the TIP subsequently claimed responsibility for the terrorist attack and threatened further action[666].

Given Tiananmen Square's symbolic importance as the centre of modern China, and the continued political sensitivity it holds following the events that took place in 1989, the 2013 attack held additional significance despite the relatively few fatalities when compared to similar events that occurred in Xinjiang. The symbolic imagery of the attack, striking at the historical heart of China's centre of governance, presents the

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660 Wong, E., 2008. Warning of Attacks on Olympics Is Said to Be Linked to Muslim Separatist Group. *New York Times*. Available at: http://www.nytimes.com/2008/08/10/sports/olympics/10uighurs.html.

661 Baker, R., 2008. Shanghai Bus Fire Highlights Chinese Transportation Vulnerability. *Stratfor Analysis*. Available at: https://www.stratfor.com/weekly/t_weekly_may_7.

662 AFP, 2008. Uighur group says it launched attacks. *Taipei Times*. Available at: http://www.taipeitimes.com/News/front/archives/2008/07/27/2003418667.

663 Grammaticas, D., 2013. Tiananmen Square crash "suicide attack." *BBC News*. Available at: http://www.bbc.com/news/world-asia-china-24723667.

664 Some observers have cast doubt as to whether the attack was carried out by an organised terrorist group, with some pointing out that the violence may have occurred as a result of the partial destruction of a mosque that was partly financed by one of the assailants. See: Jacobs, A., 2013. Tiananmen Attack Linked to Police Raid on a Mosque in Xinjiang. *New York Times*. Available at: http://sinosphere.blogs.nytimes.com/2013/11/07/tiananmen-attack-linked-to-police-raid-on-a-mosque-in-xinjiang/; Pantucci, R., 2013. *Tiananmen Attack: Islamist Terror or Chinese Protest?*, Available at: http://www.jamestown.org/programs/chinabrief/single/?tx_ttnews%5Btt_news%5D=41798&cHash=96a96735577de65c268b853d9006a817.

665 Roberts, S.R., 2013. Tiananmen crash: Terrorism or cry of desperation? *CNN*. Available at: http://edition.cnn.com/2013/10/31/opinion/china-tiananmen-uyghurs/index.html. Roberts' article has subsequently received a vitriolic rebuttal from a Global Times editorial. See: Global Times Editorial, 2013. CNN disrespects itself with terror sympathy. *Global Times*. Available at: http://www.globaltimes.cn/content/822265.shtml#.Unc6D7b8SYY.

666 Maclean, W., 2013. Islamist group calls Tiananmen attack "jihadi operation": SITE. *Reuters*. Available at: http://www.reuters.com/article/2013/11/23/us-china-attack-claim-idUSBRE9AM0B520131123; Kaiman, J., 2013. Islamist group claims responsibility for attack on China's Tiananmen Square. *The Guardian*. Available at: http://www.theguardian.com/world/2013/nov/25/islamist-china-tiananmen-beijing-attack.

state with a direct threat to its ability to ensure stability for its periphery and security for its centre.

In March 2014, an attack in Kunming rail station marked one of the bloodiest acts of pre-meditated ethnic violence to have been perpetrated within the PRC, when eight Uyghurs armed with knives and short swords indiscriminately attacked civilians, resulting in 29 fatalities and over 140 injuries[667]. While the TIP did not claim responsibility for the attack, it subsequently published a video with its current leader[668], Abdullah Mansour[669], supporting the perpetrators or the attack while also threatening further action:

> If the fighters of East Turkestan are now fighting with swords, knives, and mallets, our dear Allah will soon give us opportunities to fight the Chinese using automatic guns [...]
>
> Know that blood of those who are killing themselves is not being spilled for nothing, for their blood will bring tens of more to carry out jihad.[670]

While the TIP was not responsible for the 2014 Kunming rail station attack, its public reaction to the events is illustrative of its increasingly public profile, a trend that is consistent with international terrorist organisations such as Al Qaeda or the Islamic State, whom increasingly utilise public media platforms to promote their own agendas. Further, the level of planning, sophistication and scope of the attacks that the TIP is

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667 Tiezzi, S., 2014. Is the Kunming Knife Attack China's 9-11? *The Diplomat*. Available at: http://thediplomat.com/2014/03/is-the-kunming-knife-attack-chinas-9-11/; Phillips, T., 2014. Chinese police "solve" Kunming massacre. *The Telegraph*. Available at: http://www.telegraph.co.uk/news/worldnews/asia/china/10673092/Chinese-police-solve-Kunming-massacre.html.

668 Abdul Haq was reportedly killed in a US drone strike within Pakistan in 2010. See: Al Jazeera and agencies, 2010. Xinjiang fighter "killed by drone." *Al Jazeera*. Available at: http://www.aljazeera.com/news/asia-pacific/2010/03/2010328195748457.html.

669 Khan, D.I., 2014. From his Pakistan hideout, Uighur leader vows revenge on China. *Reuters*. Available at: http://in.reuters.com/article/2014/03/14/pakistan-uighurs-idINDEEA2D08U20140314.

670 Mansour A., 2014. Cited in: SCMP, 2014. Uygur militant's support for Kunming knife attack "proof of China's terror threat". *South China Morning Post*. Available at: http://www.scmp.com/news/china/article/1452534/china-says-uygur-militants-support-knife-attack-proves-terror.

reportedly responsible for following its re-emergence in 2006 also bears strong similarities with attacks carried out by international terrorist organisations[671]. The TIP's reported operational base in Pakistan[672], along with its increasingly enmeshed association with other jihadist groups is further indicative of the increasingly viable threat that the TIP now poses to China.

Curiously, the TIP's current operational profile shares more in common with international terrorist organisations than the ETIM as it existed in the early 2000's. Given China's success in gaining global recognition for its assertion that the ETIM's was an international terrorist organisation at a time when there was little evidence to substantiate it, and the resultantly legitimised clampdown on the Uyghurs that followed[673], it brings into question how such an organisation has since managed to grow and become the very threat that China's state authorities had previously warned about 14 years ago.

Indeed, the policies that Chinese state authorities have ostensibly pursued in order to mitigate the threat of terrorism have done little to abate it. Instead, recent attacks have demonstrated that the threat posed to China by organised Uyghur terrorist groups is now greater than at any time previously. A notion which was given further credence by Xi Jinping, who highlighted in in a recent statement that "we have to be clearly aware

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671 Howden, D., 2013. Terror in Westgate mall: the full story of the attacks that devastated Kenya. *The Guardian*. Available at: http://www.theguardian.com/world/interactive/2013/oct/04/westgate-mall-attacks-kenya-terror; Glanz, J., Rotella, S. & Sanger, D.E., 2014. In 2008 Mumbai Attacks, Piles of Spy Data, but an Uncompleted Puzzle. *New York Times*. Available at: http://www.nytimes.com/2014/12/22/world/asia/in-2008-mumbai-attacks-piles-of-spy-data-but-an-uncompleted-puzzle.html.

672 Cooper III, C.A., "Controlling the Four Quarters" China Trains, Equips and Deploys A Modern, Mobile People's Armed Police Force. In *Learning by Doing: The PLA Trains at Home and Abroad*, p. 155.

673 An example of the heavy handedness of this approach has been the indefinite detention of Ilham Tohti, see: Bequelin, N., 2014. The Price of China's Uighur Repression - Jailing of Ilham Tohti Will Radicalize More Uighurs. *New York Times*. Available at: http://www.nytimes.com/2014/09/26/opinion/nicholas-bequelin-china-jailing-of-ilham-tohti-will-radicalize-more-uighurs.html; BBC News, 2014. China jails prominent Uighur academic Ilham Tohti for life. *BBC News*. Available at: http://www.bbc.com/news/world-asia-29321701.

that in the new situation, our country is facing increasing threats and challenges to our national security and increasing threats to our social stability"[674].

Significantly, the most recent international terrorist incident alleged to have ETIM/ TIP involvement has been the bombing of a religious site in Bangkok, Thailand on 17 August 2015[675]. While the details surrounding the motives behind the attack remain unclear, both Thai and Chinese authorities have since alluded the involvement of Chinese nationals[676], with one arrested suspect holding a Chinese passport and Uyghur name[677]. Other suspects involved in the attack are thought by Thai authorities are thought to have held both Chinese and Turkish passports[678]. The primary suspect, who has is evading arrest at time of writing, is suspected to have returned to Beijing following the bombing[679]. Chinese officials have since blamed ETIM/ TIP as responsible for the attack[680]. No organisation has publicly taken responsibility for the bombing[681].

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[674] Wee, S., 2014. China's president warns against growing threats to national security. *Reuters*. Available at: http://www.reuters.com/article/2014/04/26/us-china-xi-security-idUSBREA3P0DW20140426.

[675] Bangkok Post, 2015. 19 killed, 123 hurt as bomb blast rocks Bangkok tourist attraction. *Bangkok Post*. Available at: http://www.bangkokpost.com/news/security/658688/19-killed-123-hurt-as-bomb-blast-rocks-bangkok-tourist-attraction; Holmes, O., 2015. Bangkok bomb: Thai capital reeling after deadliest attack in years. *Guardian*. Available at: http://www.theguardian.com/world/2015/aug/17/bangkok-bomb-thai-capital-reels-deadliest-attack-in-years.

[676] BBC News, 2015. Bangkok's Erawan Shrine bomb: One suspect "is Chinese." *BBC News*. Available at: http://www.bbc.com/news/world-asia-34199451.

[677] Fuller, T., 2015. Passport Hints at a Uighur Link in Bangkok Bombing. *New York Times*. Available at: http://www.nytimes.com/2015/09/03/world/asia/suspect-in-bangkok-bombing-has-chinese-passport-thailand-says.html?_r=0.

[678] SCMP, 2015. Thai Muslim man is third Bangkok blast suspect detained by police as two arrested foreigners identified for first time. *South China Morning Post*. Available at: http://www.scmp.com/news/asia/southeast-asia/article/1854956/two-foreign-suspects-bangkok-shrine-blast-identified-junta; Kyodo News, 2015. Money transfer trail leads to Bangkok bombing suspects. *Bangkok Post*. Available at: http://www.bangkokpost.com/news/general/690140/bomb-plotters-money-trail-detailed.

[679] Holmes, O., 2015. Suspected mastermind of Bangkok bombing believed to be in China. *The Guardian*. Available at: http://www.theguardian.com/world/2015/sep/11/bangkok-bombing-suspected-mastermind-izan-bangladesh-china.

[680] Chen, A., 2015. Bangkok bomb linked to East Turkestan Islamic Movement, as Chinese media stops downplaying issue due to sensitivities over Uygurs. *South China Morning Post*. Available at: http://www.scmp.com/news/china/diplomacy-defence/article/1856783/bangkok-bomb-linked-east-turkestan-islamic-movement.

[681] Yuen, Y.-I., 2015. Thai police nab suspect, find bogus Turkish ID. *Global Times*. Available at: http://www.globaltimes.cn/content/939857.shtml.

The absence of any claims of responsibility for the bombing is a departure from the current modus operandi of the ETIM/ TIP, who have been markedly active in publicly claiming responsibility or support for a number of attacks following their re-mergence in 2006. The attack followed shortly after the forced refoulement of over 100 Uyghurs who were seeking asylum in Thailand back to China[682], which attracted a stinging rebuttal from UNHCR Assistant High Commissioner for Protection, Volker Turk, who stated "we are shocked by this deportation of some 100 people and consider it a flagrant violation of international law"[683]. A video released by Chinese state media of the Uyghur returnees with their faces covered did little to address concerns over their extra-judicial treatment as terrorists by state authorities[684], with protests at both the Chinese and Thai embassies in Turkey resulting in the closure of the Thai embassy occurring shortly after[685]. Some have considered the forced refoulement of Uyghurs by Thai authorities to have been a potential motivation behind the bombing, with Wang Guoxiang, an associate professor at the Beijing Academy of Social Sciences stating that "the blast could be an act of revenge from the terror group, the East Turkestan Islamic Movement, for the deportation"[686]. Owing to the paucity of information concerning the attackers' motives and the lack of any claims of organisational responsibility, it is impossible to be certain as to the key motivations behind the attack. However it brings into sharp relief the interconnectivity of the issues surrounding the threat of violent unrest among Uyghurs, and their treatment by Chinese state authorities.

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[682] Chen, T.-P. & Chaichalearmmongkol, N., 2015. Thailand Deports 100 Muslim Uighurs to China. *Wall Street Journal*. Available at: http://www.wsj.com/articles/thailand-deports-100-muslim-uighurs-to-china-1436451320.

[683] Volker Turk, in: Sawitta, A. & Dikmen, Y., 2015. Thai PM defends decision to send Uighurs back to China. *Reuters*. Available at: http://www.reuters.com/article/2015/07/09/us-thailand-uighurs-turkey-idUSKCN0PJ18620150709.

[684] Denyer, S., 2015. Uighurs face "grim" return to China as authorities level terrorism claims. *Washington Post*. Available at: https://www.washingtonpost.com/world/asia_pacific/chinese-uighurs-face-grim-return-as-authorities-raise-terrorist-claims/2015/07/10/7ac10ed2-f319-4130-868d-a082d9f9b564_story.html; Blanchard, B., 2015. China says Uighurs deported from Thailand were "on way to jihad." *The Sydney Morning Herald*. Available at: http://www.smh.com.au/world/china-says-uighurs-deported-from-thailand-were-on-way-to-jihad-20150712-giaoxn.html.

[685] BBC News, 2015. Turkish police hit pro-Uighur protesters with pepper spray. *BBC News*. Available at: http://www.bbc.com/news/world-asia-33457401.

[686] Wang Guoxiang, in: Yuen, Y.-l., 2015. op.cit.

3.4 Chapter Conclusion

The beginning of this chapter considered the dichotomy of the inner and outer, the existence "cultural other" and the Sino-centric centre of Chinese society. The manifestations of this perception are also apparent within the emergence of China's "international Uyghur terrorism" narrative. The state's approach towards addressing the existence Uyghur anti-state violence and dissent reflects a view that its existence is predicated upon "otherness", its emphasis that Uyghur unrest is a manifestation of foreign ideologies and religion is symptomatic of this perception. It is this perception that both guides and shapes the state's response to violence perpetrated by Uyghurs through its implementation of policies that seek to erode the existence of this "otherness", under the implicit belief that "otherness" is an issue in itself.

As this section has demonstrated, measures taken as a result of this perception have done little to abate the persistence of violent unrest among Uyghurs, or to soothe inter-ethnic tensions with China's Han majority. Correspondingly, the inefficacy of the policies described within this chapter reveal the underlying ideological flaws that the policies are merely a manifestation of. Within the context of Uyghur violent unrest in particular, the ideological flaw that is the pejorative consideration of the "other" is that it precludes the possibility that policies emanating from China's centre may instead be fuelling and propagating the very disharmony that they were devised to alleviate.

The emergence of international terrorist organisations after September 11th 2001 brings into sharp relief the state's necessity of addressing the issues that often emerge as a result of its own policies. What was previously considered to be an overstated threat to China's national security has now become credible international concern. The increased attention drawn towards the treatment of Uyghurs by jihadist groups risk creating a situation that is the very antithesis of national harmony and social stability.

Chapter 4: China and the United Nations: A Cautious Engagement

4.1 Chapter Introduction

Before an analysis of China's implementation of the UN's core human rights treaties with respect to Uyghur minority rights can take place, it is vital to fully appreciate the context in which China has come to terms with the principles of an institution that originates from outside the borders of the Middle Kingdom (Zhōngguó, 中国)[687]. By gaining a greater understanding of how China perceives international law and its implementation mechanisms, this chapter will provide a necessary context for the efficacy of the rights and protections relevant to the Uyghur that are discussed in chapter five. In order to achieve this, this chapter will examine the PRC's relationship with the UN. This will be achieved by focusing on China's interactions with some of the UN's most effective human rights implementation and protection mechanisms within the context of minority rights. By illustrating China's increasing engagement with the machinery of the UN, this chapter seeks to demonstrate the potential for China to improve its implementation of the UN treaties.

Since the representative seat for China at the UN was transferred from to ROC to the PRC in 1971[688], the PRC has sought assert its legitimacy as a world power by increasing its international engagement within the framework that the UN provides. Examples of which include China's growing contribution of military and security personnel to the UN's peacekeeping operations (UNPKO)[689], its permitting country

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[687] For further reading on the term "Middle Kingdom", see *supra* chapter: 3.1 Chapter Introduction.
[688] Kent, A., 2011. *China, the United Nations, and Human Rights: The Limits of Compliance*, University of Pennsylvania Press. p. 40.
[689] Huang, C., 2013. Principles and Praxis of China's Peacekeeping. In M. Lanteigne & M. Hirono, eds. *China's Evolving Approach to Peacekeeping*. pp. 15–29.

visits by UN Special Procedures, and participation in the Universal Periodic Review (UPR) process[690].

As will be examined later in this chapter, the recent completion of China's second UPR in October 2013[691] offers an opportunity to measure the progress that China has made on the most salient human rights issues within the country, and more specifically how the discourse on the issue of minority rights within the UN has continued to evolve over time, often at the mercy of divisive national agendas that frustratingly run into tension with the universalist principles and ambitions of the UN.

The United Nations Commission on Human Rights (UNCHR), and its successor, the United Nations Human Rights Council (UNHRC), is the principle organisation within the UN solely dedicated to the promotion and protection of human rights among its member states. The discourse created as a result of China's engagement within these institutions in recent years reveals the socio-political tension that exists within China's leadership; which simultaneously strives to be seen as a responsible state power by the international community, while also emphasising sovereignty as a necessary component of its foreign policy.

As will be discussed later in the chapter, it is the emphasis on national sovereignty that China has deployed as a shield in order to avoid criticism of its minority policies. This is particularly true regarding the geo-politically sensitive regions of Xinjiang and Tibet.

4.2 China's Early Relationship with the United Nations

The CCP's formal participation within the UN first began in 1971, prior to which the ROC represented China[692], owing to China being under ROC rule at the time of the

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690 Lijiang, Z.H.U., 2010. Chinese Practice in Public International Law: 2009*. *Chinese Journal of International Law*, 9(3), pp. 630–631.
691 United Nations Commission on Human Rights, 2013. *Report of the Working Group on the Universal Periodic Review - China (A/HRC/25/5)*, Geneva.
692 Glassner, M.I., 1998. *The United Nations at Work*, Praeger. p. 146.

UN's founding in 1945. Due to sustained efforts by the CCP to solicit support from other developing nations, a sufficiently large voting bloc was amassed to overrule the United States counter-voting bloc[693], allowing for the passing of General Assembly Resolution 2758, titled "Restoration of the lawful rights of the People's Republic of China in the United Nations", on 25 October 1971[694].

As China was one of the founding treaty members of the United Nations during the establishment of the UN, it secured a seat as a permanent member at the Security Council (SC)[695], providing China with the power to veto draft resolutions. It is this ability that has effectively been the root cause for the CCP's delayed representation within the UN. The United States, at a time of heightened tensions between the competing ideologues of the West and the Soviet Union, was determined not to have its own ideological dominance at the UN diluted by the addition of another communist state as a permanent member of the SC.

The increased threat of bloc politics within the SC that risked creating an impasse did not manifest however, with the CCP only exercising its veto power once over the following 20 years following the its inheritance of China's permanent seat at the SC[696]. Indeed, this contrasts sharply the veto usage of other SC permanent members, with the USSR issuing 10 vetoes, and some 64 vetoes being made by the United States[697]. China's relative inactivity in exercising its veto power serves to illustrate China's foreign

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693 The Learning Network, 2011. Oct. 25, 1971 | People's Republic of China In, Taiwan Out, at U.N. *New York Times*. Available at: http://learning.blogs.nytimes.com/2011/10/25/oct-25-1971-peoples-republic-of-china-in-taiwan-out-at-un/?_r=0.The United States at the time was wary of another communist country obtaining a permanent seat at the United Nations Security Council, and for a time successfully prevented the PRC from ousting the ROC from the UN.

694 United Nations General Assembly Resolution 2758, 1976. *Restoration of the lawful rights of the People's Republic of China in the United Nations*, New York. Available at: http://undocs.org/A/PV.1976.

695 The five permanent members of the UN Security Council are represented by the Peoples Republic of China, the United Kingdom of Great Britain and Northern Ireland, the French Fifth Republic, the Russian Federation and the United States of America.

696 Derived from an analysis of voting information from the following report: United Nations General Assembly, 2004. *Report of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters related to the Security Council*, New York. Available at: http://undocs.org/A/58/47(SUPP).

697 Ibid.

policy within the UN in a broader sense over this period, which sought minimal engagement in international affairs compared to its SC counterparts.

China's initial reticence to fully participate in the various machinations of the UN can be seen in its interactions with a number of UN organs, an example of which can be found in China's initial stance towards the UNPKO. Fravel notes that China was initially hostile to the very concept of dispatching a peace keeping force, with the Chinese ambassador to the UN at the time regarding the use of such forces as having "super-powers as behind the scenes bosses"[698]. Despite China's initial reluctance to engage with the UNPKO, its importance cannot be understated. By fulfilling the UN's overall mandate through direct intervention in areas of conflict between states, and within internal conflict zones, it is perhaps the most visible component of the UN's efforts to improve human rights. Many of the UNPKO's missions have involved deployment within state's suffering from weak governance and inter-ethnic conflict[699], challenging the principle of national sovereignty as a result.

The reasons for China's initial reluctance to approve peace keeping operations, much less participate in them, was due to a combination of historical and ideological factors. China's "century of humiliation", a protracted period of territorial encroachment by imperial powers that occurred throughout the 19th century[700], has had a lasting impact on the China's national psyche[701]. Consequently, the notion of being an active participant in operations that could be construed as imperialistic in nature was something that proved thoroughly unpalatable to China's leadership. There were also

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[698] Fravel, M.T., 1996. China's attitude toward U.N. Peacekeeping Operations since 1989. *Central Asian Survey*, 36(11), p. 1104.

[699] Examples of such missions include the United Nations Mission in Bosnia and Herzegovina (UNMIBH), and the United Nations Operation in Côte d'Ivoire (UNOCI). For more information on the operations, see: http://www.un.org/en/peacekeeping/operations/

[700] For further reading of this period, see *supra* section: 2.2 Characteristics of Law during late Qing China.

[701] For more information on the impact that the "century of humiliation" narrative has on Chinese foreign and national policy, see: Kaufman, A.A., 2011. The "Century of Humiliation" and China's National Narratives. *Testimony before the U.S.-China Economic and Security Review Commission Hearing on "China's Narratives Regarding National Security Policy"*, pp. 1–10.

domestic considerations to be taken into account. Throughout much of the 1970s, China was going through the Cultural Revolution[702], a period of massive political upheaval within the Country which forced China to focus inwards, rather than towards conflict zones that did not directly threaten China's territorial integrity[703].

As a result of these factors, the principle of national sovereignty has been a central concern of China's in its interactions with the UN; evidence of this can be seen in a statement published by the Permanent Mission of the People's Republic of China to the UN which stated:

> The primary role of the United Nations in the field of PKO is irreplaceable. In the new era, PKO should follow the basic principles as tested by history, such as the respect for state sovereignty, non-interference in internal affairs, as well as impartiality, neutrality, use of force only in self-defence and the prior consent of the parties concern.[704]

This statement reflects China's somewhat conflicting stance on the UNPKO; acknowledging its importance with respect to the UN while at the same time asserting a non-interventionist position in how the UNPKO exercises its mandate, effectively limiting its ability to fulfil it.

Despite China's initial reticence towards the UNPKO, it eventually shifted towards a more supportive stance in the late 1980s. In December 1988 it became part of the special committee on peace keeping operations[705], and contributed personnel to two

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[702] For further information on the Cultural Revolution in China, see *supra* section: 2.4 The Struggle of Law under Communism, 1949-1976.

[703] The UNPKO carried out three separate operations throughout the 1970s; the UN Emergency Force II, the UN Disengagement Observer Force and the US Interim Force in the Lebanon. Each operation occurred in the Middle East, affecting countries including Egypt, Israel, Syria and Lebanon. For more information, see: http://www.un.org/en/peacekeeping/operations/early.shtml

[704] Permanent Mission of the People's Republic of China to the UN, 2004. United Nations Peacekeeping Operations (PKO). Available at: http://www.china-un.org/eng/chinaandun/securitycouncil/thematicissues/peacekeeping/t29394.htm.

[705] Suzuki, S., 2010. Integrating into the international community? Chinese peace-keeping operations. In S. Breslin, ed. *A Handbook of China's International Relations*. Routledge, p. 107.

peacekeeping operations the following year[706], initiating an upward trend of China's resource commitment to the UNPKO. To date, China has committed over 20,000 personnel[707], and has directly participated in as many as 30 different peace keeping operations[708]. In the UNPKO's most recent operational budget, China was ranked as its sixth largest financial contributor[709].

The significant increase in the contribution of resources towards the UN's peace keeping initiatives in recent years marks an almost paradigm shift in the manner in which China participates in the UN's peace keeping operations. Some scholars argue the cause for this shift in engagement stems from China's adoption of new human rights norms[710], or its increasing concern over how it is perceived within the international community[711]. However, the argument could also be made that such a stance is entirely in keeping with China's prioritisation of its own national interests, and that the increases in troop and budgetary contributions are primarily an effort to shore up its energy securities in the affected regions. Indeed, almost 75% of the peace keeping operations China has been engaged with have been on the African continent[712]. Many of which involve member states that China has vested economic interests in as a result of extensive bilateral trade agreements[713], resulting in an

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[706] Gill, B. & Huang, C., 2009. China's expanding role in peacekeeping Prospects and Policy Implications. *Stockholm International Peace Research Institute*, 25(November). pp. 4-5.
[707] Wang, M., 2014. Statement by Ambassador Wang Min at the Security Council Open Debate on United Nations Peacekeeping Operations. *Permanent Mission of the People's Republic of China to the UN*. Available at: http://www.china-un.org/eng/chinaandun/securitycouncil/thematicissues/peacekeeping/t1168830.htm.
[708] Figures derived from an analysis of UNPKO operational data found at: http://www.un.org/en/peacekeeping/operations/.
[709] United Nations General Assembly, 2012. *Implementation of General Assembly resolutions 55/235 and 55/236*, New York. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/224/Add.1
[710] Suzuki, S., 2010. op.cit., p. 111.
[711] Kim, S.S., 1994. China and the third world in the changing world order. In S. S. Kim, ed. *China and the World: Chinese Foreign Relations in the Post-Cold War Era*. p. 141; Inboden, R.S. & Chen, T.C., 2012. China's Response to International Normative Pressure: The Case of Human Rights. *The International Spectator*, 47(2), pp. 49–50.
[712] Huang, C., 2012. China and Peacekeeping Operations. In *The Ashgate Research Companion to Chinese Foreign Policy*. p. 343.
[713] Examples of member states with extensive bilateral trade links with China that are the subject of UNPKO operations with Chinese involvement include: Liberia (UNMIL), the

economic incentive to ensure political stability. Examples of such missions include UNMISS in Sudan, where in September 2014, China - Sudan's largest trading partner[714] - has deployed an infantry battalion; numbering over 700 infantry troops to the region, marking the first occasion that China has deployed infantry soldiers as part of a peace keeping force[715].

Another example of China's cautious engagement with the UN can be seen in its delayed participation with the now depreciated UNCHR (1946-2006)[716], following its membership in 1982[717]. The UNCHR, established during the second meeting of The Economic and Social Council (ECOSOC)[718], was the first international organisation established with a mandate solely dedicated to human rights. It served as the primary vehicle for promoting the normalisation of human rights among the UN's member states; providing a platform for member states to be held accountable for human rights abuses by placing them under close scrutiny and censure.

One of the mechanisms employed within the UNCHR to fulfil its mandate was the submission of country specific resolutions; statements of opinion which were often used to condemn specific human rights violations. Following the clampdown of the pro-democracy movement that led to the Tiananmen Square protests in 1989[719], a country-specific resolution was drafted by the Secretary-General dedicated to the human rights

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Democratic Republic of the Congo (MONUC) and the Democratic Republic of Timor-Leste (UNMISET).

[714] Shichor, Y., 2005. Sudan: China's Outpost in Africa. *China Brief*, 5(21). Available at: http://www.jamestown.org/programs/chinabrief/single/?tx_ttnews%5Btt_news%5D=3898&tx_ttnews%5BbackPid%5D=195&no_cache=1.

[715] The Ministry of National Defence of the People's Republic of China, 2014. Defence Ministry's regular press conference on Sep. 25, 2014. Available at: http://eng.mod.gov.cn/Press/2014-09/25/content_4539896.htm.

[716] Henceforth referred to as the Commission.

[717] Wang, Y., 2011. *Transformation of Foreign Affairs and International Relations in China, 1978-2008*, Brill. p. 292.

[718] United Nations Economic and Social Council, 1946. *Report of the Committee on the organization of the Economic and Social Council (E/20)*, New York.

[719] The concerns relating to the Tiananmen Square incident which were raised by interested parties can be found in a note submitted by the Secretary-General to the UNCHR: United Nations Commission on Human Rights, 1990. *Situation in China - Note by the Secretary-General submitted pursuant to Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1989/5 (E/CN.4/1990/52)*, New York.

situation in China[720]. Despite China's staunch opposition to the resolution on the basis of state sovereignty[721], and its attempts to counter it via intensive lobbying efforts[722], a secret ballot was carried out leading to a 15-9 majority voting in favour for the passing of the resolution[723]. This signified an important milestone for the United Nations in promoting the universality of human rights as it was the first resolution that was successfully against a permanent member of the SC[724]. Subsequently, China submitted a response to the resolutions passing, maintaining its argument for state sovereignty:

> The use of the United Nations forum by a small number of Western countries to interfere in China's internal affairs constitutes a complete violation of the purposes of the United Nations Charter and the norms governing international relations.[725]

China also attempted to undermine the damning reports by NGOs submitted to the UNCHR regarding the Tiananmen massacre by regarding them as a Western "pretext for their unjust acts"[726]. While China's assertion of underlying political motivations as the reason for the resolution's passing may not be entirely without merit[727], were the rights violations to have never occurred, then there would simply have been no basis for the reports to have been published.

Following the stinging experience of the 1989 resolution, China sharpened its non-interventionist stance throughout much of the 1990s. Subsequent resolutions were

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[720] E/CN.4/1990/52.
[721] Kent, A., 2011. op.cit., p. 57.
[722] Maher, R.M. et al., 1990. The 41st Session of The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. *Human Rights Quarterly*, 12(2), p. 300.
[723] Ibid., p. 306.
[724] Sceats, S. & Breslin, S., 2012. *China and the International Human Rights System*, London: Chatham House. p. 4.
[725] United Nations Commission on Human Rights, 1990. *Letter dated 12 January 1990 from the Permanent Representative of the People's Republic of China to the United Nations addressed to the Secretary-General (E/CN. 4/1990/55)*, Geneva.
[726] Ibid.
[727] Moss notes the reality of the US's selective drafting against states known for committing human rights abuses. With the US pushing for resolutions against China and Iran, but not Iraq, a trading partner at the time. Moss, L.C., 2006. Will the Human Rights Council Have Better Membership than the Commission on Human Rights? *Human Rights Brief*, 13(3), p. 5.

continually filed against China on an almost yearly basis[728], focusing on a range of human rights issues including minority rights, with one resolution noting the "inadequate protection of the distinct cultural, ethnic linguistic and religious identity of Tibetans and others"[729]. However, China drew a hard-line, redoubling its efforts to quash the resolutions. It successfully thwarted each attempt, prompting the failure of each resolution to pass the drafting stage[730]. Sceats notes the extensive efforts made by China to prevent such resolutions from passing, offering incentives for other member states to abstain, and threatening punishments by way of limiting economic trade for countries that voted in favour of the resolutions[731].

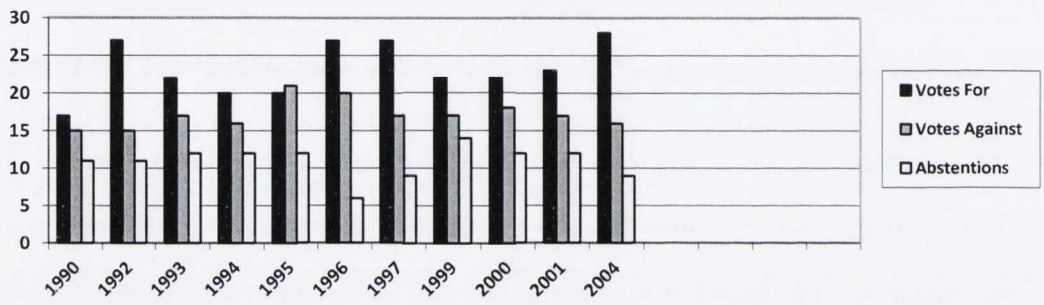


Figure 2: UNCHR China Resolution Voting Record, 1990-2004 [732]

The above table displays the number of member states who voted for, abstained, or voted against the draft resolutions on China's human rights situation. It illustrates the effectiveness in China's lobbying efforts in persistently preventing 11 successive

[728] A notable exception was the absence of a draft resolution submission in 1991, which was shelved by the US in return for China not using its veto power against UN approval on the use of military force in Iraq. See: Wan, M., 2013. *Human Rights in Chinese Foreign Relations: Defining and Defending National Interests*, University of Pennsylvania Press, Incorporated. p. 113.

[729] UN Commission on Human Rights, 1996. *Situation of human rights in China (E/CN.4/1996/L.90)*, New York.

[730] Other such failed resolutions include: UN Commission on Human Rights, 1992. *Situation in China/Tibet (E/CN.4/RES/1992/116)*, Geneva; United Nations Commission on Human Rights, 1993. *Situation of human rights in China (E/CN.4/RES/1993/110)*, Geneva; UN Commission on Human Rights, 1994. *Situation of human rights in China (E/CN.4/RES/1994/108)*, Geneva; United Nations Commission on Human Rights, 1995. *Situation of Human Rights in China (E/CN.4/1995/L.86)*, Geneva.

[731] Ibid.

[732] Table data derived from: Xinhua News Agency, 2004. Chronology of Defeats of Anti-China Human Rights Attempts. *China Internet Information Centre*. Available at: http://webcache.googleusercontent.com/search?q=cache:8atxVqzv2swJ:china.org.cn/english/international/93203.htm+&cd=6&hl=en&ct=clnk&gl=ie.

resolutions from passing despite the efforts of other permanent members of the SC including the US, UK and France[733]. Notably, for the final four draft votes submitted during the UNCHR's existence, the United States was the only sponsor in the drafting process, prior to which EU member states were typically involved in the co-sponsoring of such resolutions.

The stark change in the participation of EU member states in the creation of the draft resolutions can be seen in part as a result EU-wide policy change in bilateral negotiations with China that occurred throughout the mid-1990s, signalled by the establishment of the EU-China Human Rights Dialogue in 1995[734]. This led to a shift away from public censure of China's human rights violations, to what Kinzelbach refers to as "quiet diplomacy", resulting in any discussions between the EU and China concerning human rights occurring privately behind closed doors[735]. This must surely have been regarded as something of a coup for Chinese diplomats[736], resulting in China's image being no longer challenged as intensely in the public sphere by the EU over the issue of human rights.

China's determined effort to prevent the UNCHR from passing any draft resolution against it demonstrates how much of a perceived threat it viewed such mechanisms. Arguably, this helps to illustrate the efficacy of the tactic of "naming and shaming" in putting pressure on member states that are committing human rights abuses[737]. China's efforts to undermine the UNCHR's attempted resolutions critical of the CCP's

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[733] Until 1997, the above mentioned members of the SC were frequent co-draftee's on UNCHR resolutions regarding the human rights situation in China

[734] Kinzelbach, K., 2014. *The EU's Human Rights Dialogue with China: Quiet Diplomacy and its Limits*, Taylor & Francis. p. 28.

[735] Ibid., pp. 25-46.

[736] Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and Other International Organisations in Switzerland, 2001. Spokesperson on The European Council of Foreign Ministers refusing co-table an anti-China draft resolution with the United States this year. Available at: http://www.china-un.ch/eng/rqrd/jblc/t85092.htm.

[737] "Naming and shaming" is the rhetoric used by then Chinese ambassador to the UN, Sha Zukang when referring to country specific censure by the UNCHR. See: Zukang, S., 2005. *Statement by H.E. Ambassador SHA Zukang, on behalf of the Like Minded Group, at the Meeting between the President of the General Assembly and the Commission on Human Rights*, Geneva. Available at: http://www.china-un.ch/eng/rqrd/thsm/t223170.htm.

policies came with a cost however. Its lobbying efforts resulting in a number of concessions including the significant signing by China of the International Covenant on Civil and Political Rights and the ratification of the International Covenant on Economic, Social and Cultural Rights[738], and the invitation of Mary Robinson, then United Nations High Commissioner of Human Rights, to conduct the first such state visit to China by a UN High Commissioner[739]. Additionally, the issue of human rights violations within China, and minority rights in Xinjiang and Tibet in particular, continues to affect China's foreign policy discourse, drawing persistent international criticism from both NGOs and member states[740].

Perhaps the most potentially effective investigatory mechanism available to the Commission was the Special Procedures (SP). SPs are experts in the human rights field, charged with a specific mandate that is either thematic or country specific in nature. SPs can operate in groups, known as Working Groups (WG), or as specially appointed individuals, known as Special Rapporteurs (SR). In order to fulfil their mandate WGs and SRs may conduct country visits at the invitation of member states, providing the UN with a means to directly obtain information regarding potential rights abuses or progress made by member states.

China has invited a number of SPs on country visits throughout the existence of the Commission[741]. Within the context of Uyghur minority rights, two country visits are of particular note. The first of which took place in 1994 by the Special Rapporteur on

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[738] Inboden, R.S. & Chen, T.C., 2012. op.cit., p. 53.

[739] Mary Robinson's visit to China in 1997 was the first of seven during her tenure as High Commissioner, during which she worked to improve China's human rights situation while highlighting existing issues. See: Gaer, F.D. & Broecker, C.L., 2013. *The United Nations High Commissioner for Human Rights: Conscience for the World*, Brill. p. 287.

[740] Rights abuses in Xinjiang and Tibet are a regular fixture in the US Department of State's (DOS) annual human rights reports on China, for example see: United States Department of State, 2013. *CHINA (INCLUDES TIBET, HONG KONG, AND MACAU) 2013 HUMAN RIGHTS REPORT*, Washington, DC. Available at: http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220186.

[741] These include a visit made by the Working Group on Arbitrary Detention in 1997 (EC/N.4/1998/44/Add.2), and a country visit by the Special Rapporteur on Torture in 2005 (E/CN.4/2006/6/Add.4). A list of recent country visits by the Special Procedures can be found here: http://www.ohchr.org/EN/HRBodies/SP/Pages/countryvisitsa-e.aspx

Religious Intolerance[742], who was the first Special Reporter of the Commission to be invited by China to conduct a country visit[743]. During his visit the SR met with representatives of each of China's five recognised religions[744], and conducted visits to four regions[745]. While the rapporteur did not address the Uyghur specifically in anything other than statistical data, his findings concerning China's restriction of religion remain applicable to Uyghur minority rights:

> It appears that the Chinese authorities are trying to restrict and repress all religious activities outside the existing structures mentioned above and are at the same time reducing authorized religious activities across the whole of China[746]

The findings of the Special Rapporteur are illustrative of the disparity that often exists between China's stated commitments to the protection of religious activities within its public discourse at the UN[747], and the repressive effects of its policies within the country. Consequently, the finding of the SR proves its value; providing the UN with a means in order to determine the veracity of member states claims.

Another example of the efficacy of Commission's Special Procedures is in its ability to publicise reports made by experts with the purpose of raising awareness of human rights issues. In 2003, the Ninth Session of the Commission's Working Group on Minorities included a series of presentations by independent experts on specific issues related to minority rights. Of particular note was a paper published by anthropologist

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[742] The title of the mandate was subsequently changed to "Special Rapporteur on freedom of religion or belief" following the adoption of resolution 55/97 by the General Assembly (A/RES/55/97).
[743] United Nations Commission on Human Rights, 1995. *Implementation of the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief - China (E/CN.4/1995/91)*, Geneva. p. 110.
[744] Buddhism, Catholicism, Islam, Protestantism, Taoism.
[745] Beijing, Chengdu, Lhasa and Shanghai
[746] Ibid., p. 119.
[747] For further reading on this disparity, see *supra* section: 5.4.3 ICERD and its Applicability for the Uyghur: 'Indirect Racial Discrimination' by way of Religious Repression

Dru Gladney on the topic of Uyghur minority rights in Xinjiang[748]. This report is unique among the UN's published literature in that it centres on the Uyghur; detailing politically sensitive areas including the Chinese government's mass migration policy and how it has affected the Xinjiang's ethnic composition[749], along with the existence of Uyghur separatist movements[750].

The SPs unique ability to engage with independent experts and publish politically sensitive research is highly beneficial, allowing for the dissemination of information within the UN which may otherwise be restricted due to political manoeuvrings of member states with national interests that are tangential to the UN's central mandate. The existence of this report, detailing a topic that is treated with the utmost sensitivity by the Chinese government, is a testament to the value that these UN mechanisms provide. To further highlight China's sensitivity on the subject of Uyghur minority policy, it is worth noting that Dru Gladney was subsequently one of 13 scholars to face a travel ban to China as a result of their contributions to a book titled "Xinjiang: China's Muslim Borderland"[751], which was published one year after he submitted his report to the Commission.

Despite the existence of such mechanisms, the UNCHR was not without its critiques. Wan argues that the efforts by the UNCHR to hold China account have had little impact on the way it views its governance[752]. However, the concessions that China was willing to provide in order to avoid censure forces China's authorities to at least consider the political cost of its own policies owing to how they're perceived by the international community. By acceding to such concessions China has further enmeshed itself within

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[748] Gladney, D.C., 2003. *China's Minorities: The Case of Xinjiang and the Uyghur People (E/CN.4/Sub.2/AC.5/2003/WP.16)*, Geneva.
[749] E/CN.4/Sub.2/AC.5/2003/WP.16. pp. 7-9.
[750] E/CN.4/Sub.2/AC.5/2003/WP.16. pp. 16-19.
[751] Starr, S.F., 2004. *Xinjiang: China's Muslim borderland*, M.E. Sharpe.
[752] Wan, M., 2013. op.cit., p. 111.

the framework of the United Nations, exposing it to the normative forces driving the UN's machinery[753].

Concerning China's engagement within the Commission's other member states; in an effort to counterbalance what it saw as a Western power bias within the Commission, China sought support from a broad coalition of developing countries that had shared socio-economic interests. The group, known as the Like Minded Group of Developing Countries (LMDC)[754], consisted of as many as 20 different member states including Iran and Zimbabwe[755]. In an effort unite and mobilise the LMDC, China employed what Freedman describes a third world discourse[756], portraying any attempts to censure developing countries as little more than bullying from economically powerful states. This narrative was used as an effective rationale to rebuff and undermine efforts to hold China to account for its own human rights violations. As described previously, the collective voting power of the LMDC was successfully employed to prevent China from experiencing the embarrassment of repeated censure from the Commission following the events that took place in Tiananmen in 1989.

China also worked with the LMDC in an attempt to defang the Commission of its powers to hold states accountable for human rights violations. The LMDC submitted recommendations to the UNCHR that any Commission sessions relating to the human rights situations on a specific country be held confidentially[757], and that states gain

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[753] For more information on how the normalisation of international human rights can affect domestic political change, see: Risse-Kappen, T. & Sikkink, K., 1999. The Socialization of International Human Rights Norms in Domestic Practices: Introduction. In T. Risse-Kappen, S. C. Ropp, & K. Sikkink, eds. *The Power of Human Rights: International Norms and Domestic Change*. Cambridge University Press.
[754] Zukang, S., 2005. op.cit.
[755] Ibid.
[756] Freedman, R., 2013. *The United Nations Human Rights Council: A Critique and Early Assessment*, Routledge. pp. 31-32.
[757] United Nations Commission on Human Rights, 1999. *Rationalisation of the Work of the Commission (E/CN.4/1999/120)*, Geneva. p. 13.

greater control over the selection of personnel for the Commission's Special Rapporteurs and Working Groups[758].

Interestingly, the principle of state sovereignty that so heavily informs China's foreign policy behaviour at the Commission was not universally applied. For countries which bore a shared history of colonial encroachment, China was readily willing to overlook its non-interventionist stance under the auspices of preventing human rights violations that occurred as a result of "colonialism, racism, foreign aggression and occupation, as well as apartheid"[759]. This has manifested in China supporting numerous country specific resolutions concerning member states that are seen to have been affected by colonialism such as Afghanistan, Israel, and South Africa[760]. While this could be considered as a contradiction, China's support of such resolutions remains in keeping with the overall stratagems of the LMDC, functioning as a counterbalance to hegemony of Western states. As such, China in particular benefits from participating in such measures by positioning itself within the SC as an alternative voice for the concerns of the developing states, gaining the advantage of their support on what it views as "anti-China" measures taken by the UN's human rights implementation mechanisms[761].

The increasingly apparent limitations that the UNCHR was encumbered with as a result of the prevalence of bloc politics, twinned with persistent membership issues, effectively hamstrung the Commission from achieving its mandate of holding human rights violators to account. Despite reforms that attempted to address some of these issues, including the member expansion from 18 to 53 members[762], the underlying

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[758] Ibid., p. 15.
[759] State Council of the People's Republic of China, 1991. *Human Rights in China - X. Active Participation in International Human Rights Activities*, Beijing.
[760] Kamminga, M.T., 1992. *Inter-State Accountability for Violations of Human Rights*, University of Pennsylvania Press, Incorporated. pp. 108-111.
[761] Permanent Mission of the People's Republic of China to the United Nations, 2001. Anti-China Draft Resolution on Human Rights thwarted. Available at: http://www.china-un.org/eng/zghlhg/jjhshsw/rqwt/t29316.htm.
[762] Office of the High Commissioner for Human Rights, 1990. *Enlargement of the Commission on Human Rights and the further promotion of human rights and fundamental freedoms (E/RES/1990/48)*, Geneva.

structural issues remained. In 2005, then Secretary-General Kofi Annan submitted his five year report to the General Assembly, in which he submitted a bruising critique of the UNCHR's failures:

> Yet the Commission's capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism. In particular, States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. As a result, a credibility deficit has developed, which casts a shadow on the reputation of the United Nations system as a whole.[763]

Kofi's report then called for the UNCHR's replacement; leading to the dismantling of the Commission and the formation of the UNHRC[764], which was established soon after in March 2006[765].

4.3 China and the UN Human Rights Council's Renewed Efforts to Promote Minority Rights

In order for the Council to avoid the same pitfalls experienced by the Commission, a number of reforms were envisaged in order to address the Commission's structural deficiencies. Notable reforms included increasing the Council's session frequency so that it would convene at least three times annually[766]; an improvement over the Commission's single annual session. This would have the effect of increasing the level of engagement between Council members, and help to keep the promotion and protection of human rights on the agenda of all member states. The Council could also

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[763] Annan, K., 2005. *In larger freedom: towards development, security and human rights for all - Report of the Secretary-General Contents (A /59/2005)*, New York. p. 49
[764] Henceforth referred to as the Council.
[765] United Nations General Assembly, 2006. *Resolution adopted by the General Assembly on 15 March 2006 - Human Rights Council (A/RES/60/251)*,
[766] United Nations General Assembly, 2006. *Resolution Adopted by the General Assembly - Human Rights Council (RES 60/251)*, New York. Art. 10.

convene "special sessions" to address situations that posed immediate threats to human rights[767], further improving the Council's ability to react to an emerging crisis.

Another structural reform was the change in the eligibility criteria needed for Council membership to an absolute majority vote of the GA's 193 members[768]. This was complemented with a consideration for balanced geographical representation within the Council[769]; a positive development that sought to counter the regional bloc politics that were prevalent within the UNCHR[770]. Further to this was the incorporation of a restriction on the number of terms that a country could retain membership of the Council[771]. This provides more opportunities for UN member states to attain Council membership, while also limiting the amount of time, and influence, a single state can exercise from within the Council. Importantly, any candidate seeking to join the Council will have their own human rights record taken into account during the vote[772]; this provision seeks to address one of the principle complaints leveed against the UNCHR; that serious human rights violators were also Commission members[773].

Perhaps the most significant reform was the establishment of a peer review system called the Universal Periodic Review[774], where by every member state of the GA would become the subject of a country specific review with the overall aim of improving the human rights situation in all countries by helping to ensure that member states fulfil their obligations. By ensuring that every country falls under an equal level of scrutiny as

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[767] A special session was arranged for during the UNHRC's first scheduled session regarding the deteriorating situation in the Occupied Palestinian territory. See: Burayzat, M., 2006. *Report on the First Session of the Human Rights Council (A/HRC/S-1/3)*, Geneva.

[768] The General Assembly is the UN's broadest international body, with every member state within the UN holding membership, see United Nations, 1945. *Charter of the United Nations and the Statute of the International Court of Justice (1 UNTS XVI)*. Art. 9.

[769] RES 60/251. Art. 7. For additional reading on the issue of geographical distribution within the UN, see: Downer, A. et al., 1999. *What is Equitable Geographic Representation in the Twenty-first Century*, New York, pp. 1-55.

[770] Lebovic, J.H. & Voeten, E., 2006. The Politics of Shame : The Condemnation of Country Human Rights Practices in the UNCHR. *International Studies Quarterly*, 50(4), pp. 863–864.

[771] RES 60/251. Art. 7.

[772] RES 60/251. Art. 8.

[773] Alston, P., 2006. Reconceiving the UN Human Rights regime: challenges confronting the new UN Human Rights Council. *Melbourne Journal of International Law*, 7(1), p. 188.

[774] Redondo, E.D., 2008. The Universal Periodic Review of the UN Human Rights Council : An Assessment of the First Session. *Chinese Journal of International Law*, 7(3), pp. 721–734.

a result of the process, the Council sought to address the shortcomings of the Commission by mitigating the selectivity that characterised the country specific resolutions of its predecessor. The structure of the UPR also improves on the credibility of the UNHRC in that it better institutionalises the principles of universality that underpins the United Nations[775]. Unfortunately, in practice the UPR would also be susceptible to many of the same political agendas that plagued the country specific resolutions of the Commission. An example of this can be seen through an examination of China's interaction with the UPR.

The UPR process for each state operates over three specific phases. The first, a report submission phase, consists of the submission of three separate reports. The first report, submitted by the member state under review consists of a broad review of the human rights situation within the country, giving the state an opportunity to note the advances it has made and the challenges it faces. The second report, submitted by the OHCHR, is a compilation of the findings from UN treaty bodies, Special Procedures and other organs concerning the human rights situation of the country under review. The third report, also prepared by the OHCHR, consists of a summary of the submissions of approved stakeholders, including both national human rights institutions and NGOs; with each stakeholder providing information relevant to their own specific mandate. This multi-faceted approach to data collection provides a comprehensive and non-biased method of gathering information pertinent to the UPR process.

The second phase of the UPR process is the interactive dialogue phase, conducted by the UPR Working Group, and takes place over a period of three hours in duration[776]. During which, members of the Council (along with those who hold observer status) may raise questions, pose suggestions and make criticisms regarding the performance of

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[775] United Nations General Assembly, 1948. *Universal Declaration of Human Rights (A/RES/217 A(III))*.
[776] United Nations Human Rights Council, 2007. *Institution-building of the United Nations Human Rights Council (A/HRC/RES/5/1)*, Geneva. Art. 22.

the member state under review - which is also given the opportunity to discuss issues related to the findings of the initial phase of the process.

The third and final phase of the UPR process consists of the publishing of a report that contains a review of the outcome of the process, detailing the comments and voluntary pledges made by the member state under review in response to the second phase of the process[777]. Due to the non-binding nature of such pledges, it is the responsibility of the member state under review to ensure that it fulfils any pledges made during the process. However, the cyclical nature of the UPR does help to impart some sense of obligation upon member states to have made actionable progress during the interim period of the UPR cycle in order to avoid the embarrassment of repeated criticism during its subsequent UPR.

As part of the UPR's initial cycle, China submitted its first national report on 10 November 2008[778]. The report was broad in scope, providing an outline of China's position on human rights, while also detailing its institutional infrastructure and procedural mechanisms for the protection and promotion of human rights in China. Regarding minority rights specifically, the report stated that:

> China safeguards the right of ethnic minorities to use and develop their own spoken and written languages, endeavours to protect their cultures and respects their customs, habits and religious beliefs. The Chinese Government has helped 13 ethnic groups create and develop written languages.[779]

Further, the report also elaborates China's alleged stance on religious freedom, going so far as to describe specific penal punishments for officials that "illegally deprives a citizen of his or her freedom of religious belief or who infringes the customs or habits of

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[777] A/HRC/RES/5/1. Art. 26.
[778] United Nations Human Rights Council, 2008. *National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1 - China (A/HRC/WG.6/4/CHN/1)*, Geneva.
[779] A/HRC/WG.6/4/CHN/1. Art. 74.

ethnic minorities"[780]. This is a curious detail; nowhere else in the report does it prescribe specific penalties for the infringement of any rights by state officials, revealing a somewhat defensive posture by China, perhaps made with a view to pre-emptively mitigate any expected criticism over its infringement of religious rights of minorities such as the Uyghur.

The report also contains a section on the current achievements and challenges faced by China in fulfilling its human rights obligations towards minorities, noting that "owing to their underdeveloped economies, some ethnic minority areas are lagging behind in their economic and social development"[781]. To address this recognised economic deficiency, China highlights its objective to alleviate the social and economic disparity that exists between China's relatively impoverished minority regions and its developed eastern region:

> Increasing investment in the development of ethnic minority areas, with emphasis on helping poor members of ethnic minorities living in particularly difficult circumstances; supporting basic education for ethnic minorities; promoting the traditional medicine and cultures of ethnic minorities; and enhancing their capacity for self-development.[782]

Regarding the context of minority rights specifically; in highlighting safeguards for the protection of minority rights, the national report demonstrates an awareness of the importance attached to the various issues relating to minorities, including both cultural and religious rights. Similarly, by taking the unusual step of articulating specific penal punishments for officials that infringe those rights, China also inadvertently alludes to the existence of such infringements.

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[780] A/HRC/WG.6/4/CHN/1. Art. 56.
[781] A/HRC/WG.6/4/CHN/1. Art. 85.
[782] A/HRC/WG.6/4/CHN/1. Art. 96.

In addition to China's submitted report, the OHCHR submitted two complimentary reports on China; the first consisting of a compilation of findings from relevant UN sub-organs including treaty bodies and Special Procedures[783]. Within this report are the noted concerns from a number of UN treaty bodies regarding allegations of discrimination of minorities such as the Uyghur[784], with specific concerns including those made by the Committee on the Rights of the Child, which recommended "that China take all necessary measures to ensure the full implementation of the Regional Ethnic Autonomy Act"[785]. The report also noted the concern of the Committee against Torture regarding allegations of targeted torture, ill-treatment and disappearances directed against minorities including the Uyghur[786], which accords additional significance in light of the National Report specifying a two year punishment for any state officials who infringe minority rights.

Within the stakeholder summary report submitted for China's first UPR[787], a number of stakeholders specifically referred to discriminatory practices against the Uyghur minority[788], including the mass migration of Han Chinese into the XUAR[789], and restrictions on freedom of religion[790].

The interactive dialogue phase of China's first UPR took place on 9 February 2009, and was initiated by a presentation from China's permanent Representative to the United Nations Office at Geneva. During the introduction, the representative specifically detailed China's stated emphasis on ethnic autonomy:

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783 United Nations Human Rights Council, 2008. *Compilation Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1 (A/HRC/WG.6/4/CHN/2)*, Geneva.
784 A/HRC/WG.6/4/CHN/2. Arts. 13,15,18,28 & 39.
785 A/HRC/WG.6/4/CHN/2. Art. 39.
786 A/HRC/WG.6/4/CHN/2. Art. 18.
787 United Nations Human Rights Council, 2009. *Compilation Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(C) of the Annex to Human Rights Council Resolution 5/1 (A/HRC/WG.6/4/CHN/3)*, Geneva.
788 A/HRC/WG.6/4/CHN/3. Arts. 9, 28, 29 51, 54.
789 A/HRC/WG.6/4/CHN/3. Art. 51.
790 A/HRC/WG.6/4/CHN/3. Art. 28.

> China pursued a policy of ethnic equality and regional ethnic autonomy. Ethnic minorities in China benefitted from special preferential policies in the political, economic, cultural and educational spheres. The Government encouraged dual- and multi-language teaching in schools of ethnic minorities, and has helped 13 ethnic minorities to create or develop their written languages. Huge investment has been made to protect the religious practices, cultural identities and other heritages of ethnic minorities.[791]

Following the introduction, an interactive dialogue took place between multiple member state delegations, with comments and queries were directed towards China. A number of member states used to opportunity to comment over the treatment of minorities in China[792], with several specifically referencing the treatment of the Uyghur[793]. In response to the comments, China's delegation submitted the following statement:

> The delegation noted that the most fundamental feature of China's ethnic policy is equality. In China 155 areas of ethnic autonomous regions enjoy extensive autonomous rights in legislation, economics and culture. The second feature is that the ethnic autonomous regions may enjoy preferential treatment in finance and tax than other regions. The ratio of deputies of National People's Congress of ethnic population is higher than that for Han ethnic group. The third feature is that the State respects the habits and customs of religious beliefs of minorities, and prohibits speeches and actions that instigate ethnic hatred and religious discrimination, protects, develops culture of ethnic minorities. The Government has helped thirteen ethnic minorities to create and improve their written languages. China has 56 ethnic groups that live in harmony, help each other and seek common development and there is no ethnic conflict. The delegation noted that regrettably, a few people with the support of foreign forces try to split Tibet and Xinjiang from China and they by no means

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[791] United Nations Human Rights Council, 2009. *Report of the Working Group on the Universal Periodic Review - China (A/HRC/11/25)*, Geneva. Art. 13

[792] Countries include: Australia, Austria, Canada, Bhutan, Germany, Italy, New Zealand, Netherlands, Portugal, Palestine, South Africa, Sri Lanka, Switzerland, The United Kingdom of Great Britain and Northern Ireland, Vietnam

[793] Countries include: Canada, Czech Republic & Japan.

> represent the governing majority of Tibetans and Uighurs as Tibet and Xinjiang are inseparable parts of China's territory and the Government will not allow any attempt to split China to succeed.[794]

China's response broadly seeks addresses many of the concerns submitted by the member state delegations by referring to official state policies that help benefit China's recognised minorities. The statement exhibits some contradictions by stating that the fundamental feature of its ethnicity policy is equality, while at the same time highlighting of preferential economic policies that exist within some minority autonomous regions. China's response also seeks to redress any attempts to link minority rights with anti-state violence in Xinjiang and Tibet by conflating such unrest with separatism, and alleging foreign involvement as an external source of that unrest rather than internal policy.

Of the 99 recommendations made during China's first UPR, 42 were accepted outright[795], 50 were rejected[796], and three were noted as having been already implemented or in the process of being implemented, with four pending response following further examination by China[797]. Of the 42 recommendations accepted by China, three directly referred to the provision of improved minority rights[798]; the contents of which mainly focused on the economic and social welfare of ethnic minorities, with the notable exception of Japan, which specifically referred to cultural rights in its recommendation[799]. Of the 50 recommendations that were rejected, four also directly referred to minority rights:

> Switzerland (31d): While stressing that the rights and the particularities of minorities should be recognized and protected, and that their economic development should be supported, Switzerland

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[794]A/HRC/11/25. Art. 102.
[795] A/HRC/11/25. Art. 114.
[796] A/HRC/11/25. Art. 117.
[797]A/HRC/11/25. Art. 116.
[798] A/HRC/11/25. Arts. 114.37, 114.38, 114.16.
[799] "Continue its efforts to further ensure ethnic minorities the full range of human rights including cultural rights" (Art. 114.37).

> expressed concern over the situation of ethnic minorities in Xinjiang and Tibet, Switzerland recommended that the Chinese authorities: (d) respect the fundamental rights of these ethnic minorities, notably freedom of religion and movement.[800]
>
> Germany (43h): and guarantee all citizens of China, including its minority communities and religions, the exercise of religious freedom, freedom of belief and the freedom of worshipping in private.[801]
>
> Czech Republic (82f): With regard to protection of human rights of national minorities, including Tibetans and Uyghurs, Czech Republic recommended that China (f) review laws and practices in particular with regard to ensuring protection of their freedom of religion, movement, protection of their culture and language.[802]
>
> Italy (96b): simplify requirements for official approval of religious practices in order to allow more individuals to exercise their freedom of religion and belief and to better respect the religious rights of minorities[803]

The shared characteristic among the three rejected recommendations is that each calls for right to exercise religious belief amongst minorities. Among the 42 accepted recommendations, none concerned the religious rights of China's minorities.

Despite China's willingness to accept recommendations on a number of other potentially sensitive human rights issues[804], its unwillingness to engage in any dialogue over the issue of the right to religion amongst its minority population demonstrates the level of sensitivity that China attaches to the issue. The association of minority rights with the threat of minority separatism contained within China's previously detailed UPR statement illustrates the rationale behind this sensitivity.

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[800] A/HRC/11/25. Art. 31.
[801] A/HRC/11/25. Art. 43.
[802] A/HRC/11/25. Art. 82.
[803] A/HRC/11/25. Art. 96.
[804] Such recommendations include Netherlands call for a deepening of reforms to the judicial system, and Benin's recommendation that HKSAR and MSAR maintain separate rights systems to mainland China. See: Ibid., Arts. 32, 39.

Freedman also notes that the existence of regional politicisation throughout the interactive dialogue phase of China's first UPR process[805], illustrated by the stark contrast between the criticisms made by member states as outlined above, and the unreserved praise of China's human rights record offered by others[806].

China's second UPR session took place in October 2013. In a manner similar to its first UPR, China's national report submission for the second UPR provides information concerning a broad range of issues of interest to the UPR Working Group, paying specific attention to efforts made in the interim period between the two reviews[807]. As with the first UPR, the report also dedicates a section specifically to ethnic minority rights, on this occasion detailing the positive developments made since on a number of fronts including the provision of "ethnic education"[808], establishment of cultural preservation projects[809], and increased financial investment in ethnic minority regions[810]. The report also contains a section titled "fully respecting freedom of religious belief in ethnic regions":

> In Tibet, the manner of succession of the reincarnated Living Buddha is fully respected, and traditional religious activities proceed normally. Currently, there are more than 1,780 places of religious activity of all types in Tibet, with some 46,000 monks residing in monasteries. Tibetan cultural customs and practices continue to be handed down and protected.[811]

Despite commenting on the freedom of religious belief in ethnic regions, China elects instead to refer to Tibet specifically, omitting any detail on other regions such as Xinjiang. This could be explained in part by the brief nature of the report, owing to its 20

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[805] Freedman, R., 2013. op.cit., p. 277.
[806] Countries include: Cuba, Egypt, The Russian Federation, Sri Lanka, Venezuela, Yemen.
[807] United Nations Human Rights Council, 2013. *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council 16/21 - China (A/HRC/WG.6/17/CHN/1)*, Geneva.
[808] A/HRC/WG.6/17/CHN/1, Art. 81.
[809] A/HRC/WG.6/17/CHN/1, Art. 82.
[810] A/HRC/WG.6/17/CHN/1, Art. 80.
[811] A/HRC/WG.6/17/CHN/1, Art. 79.

page restriction, ensuring that a degree of selectivity is all but inevitable. Despite such restrictions, the report could have made better use of the limited space available by addressing the matter in a general fashion, as China has done in its first UPR[812].

Repeating the pattern of the first UPR, the OHCHR submitted its two companion reports; the first, a compilation report of relevant information from UN treaty bodies and Special Procedures[813]. The tone of the report remained consistent with its predecessor, but was supplemented with additional information concerning recent developments that had occurred over the intervening period. On the topic of minority rights pertaining to the Uyghur, the ICERD Committee made the recommendation that China "carefully consider" the root causes for the escalation of events including inter-ethnic violence, along with any policies that encourage mass migration[814]. Similarly, the Special Rapporteur on the Right to Food requested the suspension of non-voluntary urbanisation migration policies within ethnic minority autonomous regions, including Xinjiang[815].

The information provided by NGOs and other stakeholders in the summary report also contained a number of assertions particularly relevant to Uyghur minority rights[816]. The DHF, a UN accredited NGO based in San Francisco, alleged that over a two year period between 2008-2010 that over 50% of China's trials relating "Endangering state security" occurred in Xinjiang[817], a region that consists of under 2% of the country's population.

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[812] A/HRC/WG.6/17/CHN/1, Art. 74.
[813] United Nations Human Rights Council, 2013. *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 (A/HRC/WG.6/17/CHN/2)*, Geneva.
[814] A/HRC/WG.6/17/CHN/2, Art. 63.
[815] A/HRC/WG.6/17/CHN/2, Art. 64.
[816] United Nations Human Rights Council, 2013. *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 (A/HRC/WG.6/17/CHN/3)*, Geneva. Art. 63
[817] A/HRC/WG.6/17/CHN/3, Art. 31.

During the interactive dialogue phase of China's second UPR, 252 recommendations were made by member states. Out of those recommendations, 204 were accepted and 48 were not accepted[818]. Notably, this marks a significant increase from the 42 recommendations accepted by China during the previous UPR. Of the accepted recommendations, 18 contained recommendations specifically relating to minority rights[819], one of which specifically recommended improving protections of the Uyghur[820]. Ostensibly, this is an improvement over China's previous UPR, where no accepted recommendations specifically referred to the Uyghurs' minority rights. Of the recommendations that China rejected, five were pertaining to minority rights[821], which both proportionately and in absolute terms, is also an improvement over the previous UPR's eight rejected recommendations relating to minority rights. The increased acceptance of recommendations regarding minority rights should be commended, and could perhaps be considered as a positive step towards China's improved international engagement within the UN human rights implementation framework.

However, there are still firm limits to this engagement. Of the recommendations related to minority rights that were accepted by China, most incorporated an ambiguous use of language that leaves room for interpretation. The accepted recommendation by the United States on the subject of minority rights helps to illustrate this example. It requests that China "Protect the rights of ethnic minority groups, including Tibetans, Uighurs, and Mongolians, in accordance with China's Constitution and international human rights commitments"[822]. The non-critical language employed by the United States effectively allows China to rubberstamp its acceptance of it without having to

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[818] United Nations Human Rights Council, 2014. *Report of the Working Group on the Universal Periodic Review - China (A/HRC/25/5/Add.1)*, Geneva.
[819] These included recommendations from: Australia, Austria, Bhutan, Cambodia, Canada, Central African Republic (CAR), Cuba, India, Iraq, Japan, Netherlands, Russian Federation, Sierra Leone, South Sudan, Togo, United States, Venezuela, Vietnam.
[820] United States.
[821] Countries include: Australia, Canada, Czech Republic, Germany, Sweden
[822] A/HRC/25/5. Art. 186.234.

acknowledge any existing shortcomings in the existing protections for minorities. Indeed, this can be evidenced in China's response to the recommendation:

> In accordance with China's Constitution and international human rights commitments, the Chinese government guarantees that all ethnic minorities fully exercise political, economic, cultural, social, educational, religious and other basic rights, and vigorously promotes development of all undertakings for ethnic minorities and in ethnic minority areas.[823]

This contrasts with the rejected recommendation made by the Czech Republic, which requested that China "Protect ethnic and religious minorities, including Tibetans and Uyghurs, stop all disproportionate policies against them, while addressing their discontent in a non-violent, dialogical way"[824]. While the recommendation bears a strong effectual similarity to the one made by the United States, it also employs a critical component to the recommendation, forcing China to accept the existence of discriminatory policies against its minorities were it to accept the recommendation.

This is an important distinction, and reveals both the merits and limitations of the UPR to affect its mandate as a mechanism to improve human rights within each country under its review. As every nation state subject to the UPR process has the power of adjudication - that is to decide which recommendations to accept or reject - a limit is placed on the level of censure that any potential human rights violator is exposed to. For any participating state who wishes for a recommendation to be adopted by the member state under review, the procedural mechanisms of the process encourages states to exercise restraint when submitting recommendation in order to improve the chances that the recommendation be accepted by the state under review.

As a result, this example demonstrates that the UPR functions best as a co-operative mechanism between member states, and as such bears limits on to the extent to which

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[823] A/HRC/25/5/Add.1, Art. 186.234.
[824] A/HRC/25/5. Art. 186.233.

it can be used to press issues that are against the perceived interests of the member state under review. It could be argued that the recommendation made by the United States was with this limitation in mind, and that it was preferable to have China accept that it should use the framework of constitutionality and international human rights norms to protect its minorities, rather than reject any chastisement of its failings.

4.4 Chapter Conclusion

As highlighted in the introduction to this chapter, China's voluntary participation in the human rights machinery of the UN explicitly demonstrates its support of the UN's mission to promote universal human rights, and creates a space for dialogue over its own commitment in the promotion and protection of those rights. However, too often the merit of such dialogue and the intention behind it is brought into question. The unfortunate politicisation of the UN's functional bodies encourages member states, including China, to pursue nationalistic agendas that hamper the UN in attempting to achieve its mandate, resulting in a race to the bottom.

The PRC's late participation within UN illustrates both the aspirations and limitations of the United Nations. China has become increasingly engaged in the various machinations of the United Nations, and in many respects has become a positive contributor to a number of UN initiatives. However, it has also sought to minimise the efficacy of several vital components of the UN, impeding the organisations efforts to promote and protect rights that it is itself violating. It is this contradiction that reveals China's view of the United Nations, realising both its potential as a vehicle for promoting its national interests, and the potential threat its poses to its own sovereignty and standing within the world stage.

Chapter 5: Signatories with Aspirations of Implementation - China and the UN's International Human Rights Treaties

5.1 Chapter Introduction

The core human rights treaties of the United Nations represent both the organisation's aspirations and its limitations in developing a universal minimum standard for the promotion and protection of human rights. The nine core treaties together seek to form a contract between states and their citizens to ensure that the state upholds its obligations in realising and maintaining the various rights enshrined within.

However, despite the indivisible nature of human rights[825], the separation and grouping of human rights into disparate treaties is evidence of the UN's limitations. Necessitated by often divergent values and principles that exist between each member state, which are manifested in national law and policy, the universality of the rights contained within the treaties remains stubbornly aspirational in application. The splitting of the most fundamental of human rights into two separate treaties; the International Covenant on Economic, Social and Cultural Rights (ICESCR)[826], and the International Covenant on Civil and Political Rights (CCPR) serve to demonstrate this limitation[827].

The blueprint of the United Nations human rights program, the International Bill of Human Rights, was initially conceived in 1948[828]. During the drafting process, it was first considered that it would consist of two instruments; the Universal Declaration of

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[825] The United Nations doctrinal framework for the interrelation of human rights accords that "Recognizing that all human rights and fundamental freedoms are indivisible and interrelated and that the promotion and protection of one category of rights should never exempt or excuse States from the promotion and protection of another", see: United Nations General Assembly, 1993. *General Assembly Resolution "World Conference on Human Rights" (A/RES/45155)*, New York.

[826] United Nations General Assembly, 1966. *International Covenant on Economic, Social Cultural Rights (A/6316)*, New York: United Nations.

[827] United Nations General Assembly, 1966. *International Covenant on Civil and Political Rights (A/6316)*, New York: United Nations.

[828] United Nations General Assembly, 1948. *International Bill of Human Rights (A/RES/3/217A)*, New York: United Nations.

Human Rights (UDHR), which would provide a description of the principles that constituted as human rights, and a covenant which would serve to elaborate and further define those rights[829]. Following the UDHR's adoption on 10 December 1948[830], it was subsequently decided that the Commission on Human Rights (UNCHR) would draft two separate covenants on human rights; one containing civil and political rights, and the other focusing on economic, social and cultural rights[831].

In order to develop an understanding of the cause for this division of two distinct groupings of rights, it's necessary to appreciate the historical context that led to the IBHR's creation. Following the aftermath of WW2, an ideological divide developed between states that emphasised democratic values within the political system, and states whose political system was derived from Marxist-Leninist ideology[832]. The demarcation along ideological lines during this period resulted in diverging philosophies concerning human rights and the values that they represent. The group of nations that identified with Marxism (the Eastern-Bloc) did not share the recognition of the inalienability of political and civil rights that was held by the Western democratic nations (Western-Bloc). Economic considerations also played an important role in the division. Stark notes that developing countries, many of which were former colonies, felt that an emphasis should first be placed on the right to access of fundamental materials such as food and shelter, contending that "civil and political rights were meaningless without economic rights"[833]. This differentiation in socio-economic values that existed between

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[829] United Nations General Assembly, 1950. General Assembly Resolution "Draft International Covenant on Human Rights and measures of implementation: future work on the Commission on Human Rights" (A/RES/421(V)), New York.
[830] A/RES/217 A(III).
[831] United Nations General Assembly, 1952. *General Assembly Resolution "Preparation of two Draft International Covenants on Human Rights" A/RES/543(VI)*, New York.
[832] For further reading on the circumstances the led to the ideological split and the political tensions that followed during the Cold War, see: Gaddis, J.L., 2011. *The Cold War*, Penguin Books Limited; Harper, J.L., 2011. *The Cold War*, OUP Oxford.
[833] Stark, B., 1995. Urban Despair and Nietzsche's "Eternal Return": From the Municipal Rhetoric of Economic Justice to the International Law of Economic Rights. *Vanderbilt Journal of Transnational Law*, 28, p. 215.

developed and developing states later became classically known as the North-South divide[834].

The ideological tensions that manifested as a result of this ideological schism were played out within the UN during the drafting phase of the treaty component of the International Bill of Human Rights, contributing to the creation of the two separate covenants[835]. Both the CCPR and the ICESCR were later adopted by the United Nations General Assembly on 16 December 1966[836]. The respective grouping of rights along ideological lines has resulted in the ICESCR consisting of economic, social and cultural rights, and the CCPR comprising of political and civil rights.

As this chapter's focus in on the rights contained within the core treaties with respect to Chinese minorities in general and the Uyghur in particular, it is beyond this chapter's remit to exhaustively examine the core treaties in their totality. For this reason, some selectivity is necessary in discussing rights and protections that are of particular relevance to the Uyghur minority. Consequently, in addition to the CCPR and ICESCR, this chapter will also focus on a number of additional core treaties; including the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women.

The rights contained within these five treaties together will provide a sufficiently comprehensive scope to examine the efficacy of Chinese law and policy with respect to

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[834] The broadly geographical demarcation between the northern developed states and the southern developing states became less relevant following the dissolution of the USSR, leading to formation of geographically northern states whose economic status would fall within the criteria of a developing state. For further reading on the economic nature of the division, see: Thérien, J., 1999. Beyond the North-South Divide: the Two Tales of World Poverty. *Third World Quarterly*, 20(4), pp. 723–742.

[835] Joseph, S. & Castan, M., 2013. The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary, OUP Oxford. p. 7.

[836] United Nations General Assembly, 1966. Resolution adopted by the General Assembly 2200 (XXI). International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, United Nations.

international human rights law, providing an ethical basis with which we can determine the efficacy of Chinese law and policy and its effects on the Uyghur.

5.2 The United Nations International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights emphasis on political and civil rights (CCPR) was seen to be inherently incompatible with the collectivist ideology of states within the Eastern-Bloc[837]. This resulted in the historical resistance among Eastern-Bloc states from proceeding with its adoption[838]. Conversely, the family of rights contained within the ICESCR, which place an emphasis on securing economic freedoms in place of political and civil rights, were seen to be better aligned with Marxist doctrine. It is for this reason that member states such as China have been historically apprehensive to become party to the CCPR[839], while being more willing to ratify the ICESCR into law.

The CCPR contains some of the most substantive protections of fundamental rights contained within the core treaties. In contrast to the ICESCR, many of its provisions bear a negative formulation, emphasising the protection of rights by prohibiting states from infringing upon them[840]. It is this emphasis that demonstrates the categorisation of the rights within the CCPR as "first generation" rights[841]. The distinction between first and second generation rights stems from the state's role in the promotion and protection of those rights. Second generation rights differ from first generation rights by bearing a cost upon the state, with the state assuming responsibility for the

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[837] Marxist-Leninist ideological thought emphasises the importance of the collective over the individual. As such, many of the individually orientated rights enshrined within the CCPR are considered to be fundamentally incompatible with Marxist-Leninist doctrine. Conversely, the class based dynamics prevalent within Marxist-Leninist ideology affords rights to the proletariat working class, but denies them to what it refers to as the bourgeois upper class, which is falls under tension with the notion of universality that is espoused within the UDHR.
[838] Hoffmann, S.L., 2010. *Human Rights in the Twentieth Century*, Cambridge University Press. p. 149.
[839] China has signed the CCPR in 1998, but has not yet ratified it.
[840] Landman, T. & Carvalho, E., 2009. *Measuring Human Rights*, Taylor & Francis. p. 23.
[841] Orend, B., 2002. *Human Rights: Concept and Context*, Broadview Press. p. 30.

implementation of those rights[842]. As such, the second generation rights that characterise the ICESCR are traditionally considered to be somewhat aspirational in character[843], and are contingent on the state's ability to realise them.

The "negative rights" emphasis of the CCPR requires that states may not intervene in a manner that infringes upon the rights contained within, consequently encouraging inaction by the state. It is this distinction that has created the perception by some scholars that CCPR rights bear a lower cost to the state compared to the rights of the ICESCR[844].This negative emphasis also results in limitations being imposed upon states parties; it is this imposition that brings the CCPR into direct conflict with the principle of state sovereignty. It is the perceived encroachment upon a state's ability to exercise absolute authority, combined with persisting ideological divisions that have contributed towards China's continued reluctance in completing its ratification of the CCPR.

China first formalised its intention to become party to the CCPR when it became signatory on 5 October 1998. Tomuschat correctly accords the significance of this gesture, while noting that "China does not categorically reject the CCPR although its current system of governance makes it hard for the leadership actually to take that step in frank seriousness"[845]. Despite China's earnestness in signalling its desire to become

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[842] Vasak, K., 197AD. A 30-Year Stuggle - The sustained efforts to give force of law to the Universal Declaration of Human Rights. *The Unesco Courier*, 30(1). p. 29.
[843] Scott, C. & Macklem, P., 1992. Constitutional Ropes of Sand or Justiciable Guarantees? Social Rights in a New South African Constitution. *University of Pennsylvania Law Review*, 141(1), p. 18; Choukroune, L., 2005. Justiciability of Economic, Social, and Cultural Rights: The UN Committee on Economic, Social and Cultural Rights' Review of China's First Periodic Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights. *Columbia Journal of Asian Law*, 19, p. 44; Alston, P. & Quinn, G., 1987. The Nature of the Obligations Under the International Covenant on Economic, Social and Cultural Rights. *Human Rights Quarterly*, 9(2), p. 159.
[844] Orend, B., 2002. op.cit. p 140; Welch, C.E., 2001. *NGOs and Human Rights: Promise and Performance*, University of Pennsylvania Press, Incorporated. p. 108.
[845] Tomuschat, C., 2014. *Human Rights: Between Idealism and Realism*, Oxford University Press. p. 53.

part of the majority of UN member states that are party to the CCPR[846], in the 16 years that has passed since its signing of the instrument, China has yet to formally initiate the process of ratification. In spite of this, it should also be noted that despite the non-binding nature of signatory status within multilateral treaties such as the CCPR, the act of being signatory in itself bears its own obligations. The 1969 Vienna Convention of on the Law of Treaties (VCLT) provides a legal codification for states who have participated in international treaties such as the CCPR[847]. Ratified by China in 1997, contained within the VCLT are provisions that detail the legal force and applicability of such treaties. Art. 18 is of particular relevance, as it proscribes the legal applicability of the CCPR with regards to the Uyghur. On the subject of treaty signatories, Art. 18 states that a state "is obliged to refrain from acts which would defeat the object and purpose of a treaty"[848]. When examined within the context of China, a country which has ratified the VCLT into law, and is a signatory of the CCPR, it can be seen that China is obligated to honour the purpose of the CCPR, and refrain from any transgressions of the obligations it has consented to have imposed upon it as a result.

As such, the importance of the CCPR within the context of the promotion and protection of Uyghur minority rights cannot be understated. The covenant contains a provision explicitly for the benefit of minority rights; along with other provisions that are directly applicable to minorities including freedom of religion, freedom of movement and freedom of self-determination. The relevance of the rights recognised in the CCPR, in addition to China's signatory status, necessitates further examination of the relevant rights contained within in order to reveal the incompatibilities that currently exist between the rights provided within the CCPR, and the Chinese legal system.

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[846] As of February 2015, 168 UN member states are currently party to the CCPR. Source: United Nations, 2015. United Nations Treaty Series Database. *United Nations Treaty Collection*. Available at: https://treaties.un.org/Pages/UNTSOnline.aspx?id=1.
[847] United Nations, 1969. 1969 Vienna Convention on the Law of Treaties (A/CONF.39/27), Vienna.
[848] A/CONF.39/27, Art. 18.

5.2.1 Article 1 – Right of Self-Determination

> 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
>
> 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
>
> 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.[849]

The right to self-determination serves as the bed rock of the United Nations concept of human rights. Its significance is made apparent by its placement as the first specific provision within both the CCPR and the ICESCR. This symbolic gesture situates the concept of self-determination as indivisible in nature, transcending the categorisation imposed by the separation of first and second generation rights. This is further illustrated within the first section of the provision, where by it encapsulates political with economic, social and cultural freedoms.

In enabling people to form their own political status, the very concept of self-determination is the antithesis of states such as China that govern through authoritarian rule. Consequently, it would follow that the rights contained within Art. 1 are fundamentally incompatible with the ideological principles of such authoritarian states. However, China's ratification of the ICESCR, which includes the same

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[849] CCPR, Art. 1.

provision, runs contrary to this line of reasoning. Instead, it is perhaps owing to its use of the term "peoples" that has enabled China to adopt the provision[850]. As a result of this pluralisation, the concept of self-determination as defined within Art. 1 is defined as a collective right rather than as an individual one[851]. This collective emphasis creates a level of ambiguity that allows for divergent interpretations by states parties on what constitutes self-determination, allowing ostensibly authoritarian countries such as China to adopt Art. 1 under a statist interpretation; positing that the state is analogous to the term "peoples". By substituting the people's right to self-determination with that of the state's right to self-determination, Kent rightly argues that countries such as China can proceed to wantonly infringe on the rights of the very peoples that Art.1 was intended to protect[852]. When this interpretation is examined within the context of the Uyghur minority, it can be seen that the Uyghur are exposed to an increased likelihood of encroachment of their right to self-determination regardless of the existence of this protection. This is particularly the case owing to their numeric inferiority as a minority and their distinct socio-cultural identity that reduces their potential to participate in state governance of majority society.

As highlighted by Nowak, the concept of minority rights is closely associated with that of self-determination[853], both of which are linked to the anti-colonial movement that developed after WW2[854]. Despite the applicability of the right to self-determination in protecting the rights of minorities, the CCPR contains an additional provision that dedicates additional protections specifically for minorities.

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[850] Examples of such use can be seen within the China's formal title under the CCP, the People's Republic of China. Similar examples include the People's Liberation Army and the National People's Congress.
[851] Crawford, J., 1988. The Rights of Peoples: "Peoples" or "Governments"? In J. Crawford, ed. *The Rights of Peoples*. Clarendon Press, pp. 55–57.
[852] Kent, A., 2011. op.cit., p. 21.
[853] Nowak, M., 2005. U.N. Covenant on Civil and Political Rights: CCPR Commentary, N.P. Engel. p. 7.
[854] Ibid., p. 6.

5.2.2 Article 27 – Minority Rights

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.[855]

This provision contrasts with that of Art. 1 in that it imposes specific duties upon the state to ensure the protection of the characteristics that define the identity of its minority populace. In promoting a positively discriminative ethos, it provides minorities with additional protections not explicitly provided to the majority population of states parties. When examined within the context of the broader decolonialization movement, the need for a provision dedicated solely to minorities becomes more apparent. The protections provided within Art. 27, along with the duties it imposes on the state, can be seen to serve as a possible counterbalance to any statist interpretations of Art. 1 by bolstering the protections for minorities that bear characteristics which are distinct from those of the majority population of the state. Conversely, in saying "persons belonging to such minorities", Art. 27 bears an individualistic formulation, emphasising the rights of an individual within a minority rather than the collective rights of that entire minority. This was structured in a manner that differs from the collective right to self-determination, limiting the ability for minority groups to make calls for self-determination[856], which could potentially result in a destabilising effect upon the sovereignty of states parties.

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[855] CCPR, Art. 27.

[856] Guimei, B., 2004. The International Covenant on Civil and Political Rights and the Chinese Law on the Protection of the Rights of Minority Nationalities. *Chinese Journal of International Law*, 3(2), p. 445.

An internationally standardised definition for what constitutes a "minority" has been a widely contested issue amongst scholars[857]; Art. 27 seeks to clarify the issue by delineating minorities along three distinct criterions of language, religion and culture. The broad scope of the criteria transcends the bounds of nationally imposed categorisations of minorities, and as such it can be considered to apply to minority groups that hold distinct ethnic, religious or cultural features without being limited to formal national classification of minority status[858].

This is in contrast to Art. 4 of China's constitution, which limits specific protections to minority groups that are officially recognised and demarcated by the state[859]. The constitution makes the assertion that "the state protects the lawful rights and interests of the minority nationalities and upholds and develops the relationship of equality, unity and mutual assistance among all of China's nationalities"[860], however in doing so it narrows the protections offered to minorities in respect to the CCPR by limiting state protections to those 55 national minorities that have hold national legal status[861]. This leaves peoples who may otherwise constitute a minority outside of China's ethnological criteria without explicit constitutional protections. While Nowak makes the point that whether a group is considered a minority is not dependent on national legal

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[857] Khan, B.U. & Rahman, M.M., 2013. *Protection of Minorities: Regimes, Norms and Issues in South Asia*, Cambridge Scholars Publisher, pp. 1-2; Åkermark, A.S., 1996. *Justifications of Minority Protection in International Law*, Kluwer Law International, pp. 88-97; Pentassuglia, G., 2002. *Minorities in International Law: An Introductory Study*, Council of Europe Pub, pp. 55-75; Caruso, U. & Hofmann, R., 2015. *The United Nations Declaration on Minorities: An Academic Account on the Occasion of its 20th Anniversary (1992-2012)*, Brill, pp. 6-7.

[858] Examples of the applicability of this provision in circumstances where minorities are not officially classified by the state include France. An elaboration on the applicability of Art. 27 regardless of national classification can be found within Para. 4 of General Comment No. 23 "Some States parties who claim that they do not discriminate on grounds of ethnicity, language or religion, wrongly contend, on that basis alone, that they have no minorities.". See: United Nations Human Rights Committee, 1994. *General Comment 23 (CCPR/C/21/Rev.1/Add.5)*, Geneva. p. 2.

[859] See Chapter V, *Equal Rights and Special Protection for Ethnic Minorities*, in: Chinese Communist Party, 2009. *Progress in China's Human Rights in 2009*, Beijing. Available at: http://www.china.org.cn/government/whitepaper/node_7101466.htm.

[860] Constitution of the People's Republic of China of 1982, op.cit., Art. 4.

[861] China's 56 officially recognised nationalities were first delineated and formally classified by the PRC following the establishment of the Ethnic Classification Project in 1954. Jacka et al note the politicization of the process which led to the establishment of a large Han majority nationality. See: Jacka, T., Kipnis, A.B. & Sargeson, S., 2013. *Contemporary China: Society and Social Change*, Cambridge University Press. pp. 147-148.

recognition[862], the limitations of the protections offered within the constitution remains incompatible with the spirit minority protections of the CCPR.

Additionally, for those who fulfil the dual criteria of being considered a minority by both the Chinese legal system and the CCPR's broader criteria, the protections offered by the constitution are still limited with respect to the protections proscribed by the CCPR. Art. 4 of the constitution states that all "nationalities have the freedom to use and develop their own spoken and written languages and to preserve or reform their own folkways and customs". By providing specific linguistic protections, the constitution provides a welcome specificity in its definition, allowing all nationalities to both use and further develop their own unique language systems. This is a progressive measure, and helps to ensure that the use of distinct languages can be both preserved and expanded upon in accordance with the needs and desires of minority groups[863]. This contrasts with the remainder of Art. 4, which is both vague in its description and regressive in character. Rather than delineating between culture and religion, the passage adopts the rather more amorphous phrase of "ways and customs", leaving it open to interpretation as to whether either term extends to include religious practices. Additionally, the use of the term "preserve or reform" is comparatively regressive in that it emphasises preservation of existing customs without extending the protection to include the development of customs as seen in the articles protection of languages. The potentially subversive use of the term "reform" within the context of minority rights is alarming in that it promotes reform in lieu of development of existing customs, potentially exposing minority customs to homogenisation. As a result, the constitution falls short of protections of the rights of minorities found in the CCPR, leaving minorities vulnerable to assimilationist pressures[864]. While China's constitution does offer some

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[862] Nowak, M., 2005. op.cit., p. 648.
[863] For further reading on the implementation of language policy in Xinjiang, see *supra* section: 3.3.2 Education and Language.
[864] Dinstein elaborates on the importance of Art. 27 in protecting against such pressures, stating that "the fundamental concept, once more, is that of prevention of forced assimilation... and

religious protections in the form of Art. 36, it does so solely as an individual protection. The underlying principle behind Art. 27 of the CCPR is that it is designed to complement the rights found within the treaty with additional, supplementary rights that are collective in nature, necessitated by the need to protect the collective characteristics which define and distinguish minority identity from the majority.

Many of the individual rights enunciated within the CCPR are also directly applicable to the protection and promotion of minority identity. While the protections contained within the following CCPR provisions are not directly applicable to the collective identity of minorities, at the level of the individual they serve to buttress Art. 27 in that they apply to everyone under the jurisdiction of the state. Such provisions include Art. 12, the right to Freedom of Movement.

5.2.3 Article 12 – Freedom of Movement

> 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
>
> 4. No one shall be arbitrarily deprived of the right to enter his own country.[865]

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preservation of the separate identity of the minority". See: Dinstein, Y., 1976. Human Rights of Peoples and Minorities. International and Comparative Law Quarterly, 25(1), pp. 118–120.

[865] CCPR, Art. 12

Art. 12 is notable in that it places responsibility on states parties to ensure that individuals are able to leave the state's territory, irrespective of their citizenship status. This broad protection however, is superseded by an extensive restrictive clause which contains broad criteria with which states can prevent individuals from leaving the state territory. This restriction clause is a necessary function in allowing states parties to exercise a level of discretion in the case of scenarios including the prevention of the spread of disease epidemics, human trafficking, and maintaining the sovereignty of neighbouring states. However, the restriction clause does have limits in its application. In stating that restrictions must be "consistent with the other rights recognized in the present Covenant", states are prevented from using the clause to unnecessarily infringe on other rights accorded to individuals.

When examined within the context of the minority rights of the Uyghur, many of whom are heavily restricted from travelling outside of China, whether it is for economic, social or religious reasons, it becomes apparent that such policies infringe upon the rights promoted within Art. 12 that would otherwise allow the Uyghur to freely leave China subject to the restrictions provided in Art. 12(3). Indeed the method employed by China to control the emigration of Uyghur from China is by arbitrarily limiting the availability of travel documents necessary for Uyghur to legally leave the country[866]. Nowak rightly asserts that the issuance of travel documents is an obligation of the state in ensuring the right to leave a country[867]. As such, the discriminatory manner in which minorities such as the Uyghur are subjected to regarding restricted access to travel documents is

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[866] Reports on the issue of passport issuance restrictions are limited and are not readily promoted by the government. However, The Global Times, a Chinese state-run news organisation, alluded to the additional restrictions faced by minorities: "The Passport Law of China requires citizens to be issued passports within 15 days. But different standards are enforced between Han and other ethnic groups, according to Turgunjun Tursun, a deputy researcher in the Sociology Department at the Xinjiang Academy of Social Sciences in Urumqi, Xinjiang Uyghur Autonomous region.", see: Wenting, X., 2012. Official: No passport discrimination. *Global Times*. Available at: http://www.globaltimes.cn/content/750962.shtml. See also: Jacobs, A., 2013. No Exit: China Uses Passports as Political Cudgel. *New York Times*. Available at: http://www.nytimes.com/2013/02/23/world/asia/chinese-passports-seen-as-political-statement.html; United States Congressional-Executive Commission on China, 2014. *Annual Report 2014*, Washington, DC. p. 109.

[867] Nowak, M., 2005. op.cit., p. 269.

tantamount to a violation of Art. 12(2), in that the state arbitrarily discriminates against the Uyghur minority by restricting their ability to travel in relation to the Chinese majority population.

Such restrictions are particularly onerous as they directly impact the Uyghurs' religious freedoms. Pilgrimages such as the Hajj, one of the five pillars of Islam, are a religious duty to be performed by every able bodied Muslim at least once in their lifetime, and are heavily restricted as a result of such policies[868]. In addition to the infringement upon Art. 12, the imposed restriction of travel for the purpose of practicing ones religious beliefs may also be seen to infringe upon Art. 18 of the CCPR, which provides specific protections for freedom of religion.

5.2.4 Article 18 – Freedom of Religion

> 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
>
> 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
>
> 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
>
> 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal

[868] For further reading on travel restrictions relating to the Hajj pilgrimage, see *supra* section: 3.3.1 Religion and Culture.

guardians to ensure the religious and moral education of their children in conformity with their own convictions.[869]

Art. 18, which includes protections for not only religious belief, but also the manner in which that belief can manifest in the forms of "worship, observance, practice and teaching", ensures that everyone may practice their belief in a manner that is commensurate with the religion of their choosing. Within the context of the Uyghurs' ability to make the Hajj pilgrimage, their right to do so falls within the purview of the manifestation of religious belief, as defined in Art. 18(1).

Art. 18(2) states that coercion may not be used to impair ones religious freedoms or ability to adopt a religion of their choosing. The use of the term "coercion" within the overall context of Art. 18 has the effect of restraining the states parties ability to employ persuasive methods, whether overt or covert in nature, which may infringe on the ability to freely adopt or maintain specific religious beliefs. As such, Art. 18(2) can be seen to compliment and reinforce the right of manifestation of religious belief as provided in Art. 18(1)[870].

As can be seen within the majority of the provisions within the CCPR, the protections provided within Art. 18 are also subject to restrictions. The restrictions included within Art. 18(3) differ from many of its analogues found within the other provisions, including the notable omission of the term "national security" in preference of "public safety". Nowak surmises that considered within the context of the CCPR, the use of the term "public safety" as a basis for the restriction of religious practice may only be enacted when a specific threat to public safety occurs during the manifestation of religious belief[871]. If Nowak's interpretation of Art. 18 were applied to China's restriction upon Uyghurs' ability to practice their religious belief in making the Hajj pilgrimage, it is evident that such restrictions do not fall within the accepted scope outlined by Art.

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[869] CCPR, Art. 18.
[870] Nowak, M., 2005. op.cit. p. 416.
[871] Ibid., p. 427.

18(3), and as such is an unjustifiable infringement on the Uyghurs' ability to manifest their religious belief.

Art. 18(4) places an obligation upon the state to ensure that parents may imbue their religious beliefs on to their children. As such, it promotes the parents right to freely determine their child's religious education, giving parents preeminent authority over the state with regards to their children's moral and religious upbringing.

Stemming from the Marxist ideology that guides much of China's national policy, the principle of separation of religion from education is aggressively enforced according to Chinese law[872]. This results in the prevention of any religious activities which may be considered to promote or propagate religious ideals in the public educational sphere. As religious education is effectively non-permitted in public education, parents must avail of private, non-state schooling in order to exercise their right to provide religious education for their children. According to Art. 18(4), the responsibility to provide a religious education according to the parents or legal guardians' religious convictions is not incumbent on the state. As such, the state is not obliged to directly fund or facilitate religious education within the framework of state-run or publicly funded schools.

While this is consistent with Chinese law, which does not expressly prohibit private religious education, it is not evenly applied at the regional level. At the municipal level, discrepancies become apparent upon examination of minority regions such as Xinjiang. As detailed in chapter 3[873], significant restrictions exist prohibiting parents from allowing their children from engaging in religious activities[874]. The application of this regulation, which is administered by a municipal government in a region that ostensibly holds

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[872] See Art. 8 of the People's Republic of China Education Law & Art. 16 of the People's Republic of China Compulsory Education Law.
[873] For further reading on the effects of religious restrictions within the educational sphere in Xinjiang, see *supra* section: 3.3.1 Religion and Culture.
[874] For original version of document, see: Bayinguoleng Ruoqiang County People's Government Information Office, 1993. op.cit. Translation by the United States Congressional-Executive Commission on China, see: United States Congressional-Executive Commission on China, 1993. op.cit.

autonomous status in order to better accommodate the rights of the minorities that reside within it, does not differentiate between the public and private sphere, but instead imposes a blanket restriction on the parental right to ensure the religious education of their children, directly infringing on Art. 18(4) as a result. This demonstrates that when parental rights are examined within the context of Uyghur minority rights, that the state fails to fully respect the parental right to provide a religious education to their children, encroaching upon on the protections accorded within Art. 18 of the CCPR.

The above examples highlight some of the inherent tensions that exist between the rights recognised in the CCPR, and the various laws and regulations promulgated by the Chinese government. These restrictive policies that are discriminatory in both character and in application belie an unwillingness to accommodate any perceived differences that could potentially challenge the state's cultural or ideological homogeneity. When examined within the context of the Uyghur minority, who are often the subjects of such policies, the importance of the protections contained within the CCPR is sharply apparent.

5.2.5 Optional Protocol to the CCPR

The limitations faced by the CCPR implementation monitoring group, the Human Rights Committee (HRComm), in ensuring that states parties fulfil their obligations in actualising the rights proscribed within the CCPR, is not only limited to the voluntary nature of state ratification, but also in the effective monitoring and identification that rights violations have taken place. To remedy this procedural inefficiency, the United Nations sought to develop a mechanism that would allow individuals to communicate allegations that their rights under the CCPR have been violated. This was achieved

through the establishment of the first Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OP1)[875].

CCPR-OP1 first came into force on 23 March 1976[876], it provides the HRComm with the ability to "receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party"[877]. The addition of this competency allows the HRComm to more effectively monitor potential rights abuses by member states, providing individuals suffering rights violations with an additional avenue of recourse in circumstances where the state is either the persecutor, or complicit in the persecution of the rights of the CCPR. In order to further encourage the implementation of the rights of the CCPR into national law, the CCPR-OP1 allows the HRComm to request a written explanation from the state concerning individual complaints of rights abuses[878]. Once furnished with both the original complaint and the states parties' response, the HRComm may then submit its recommendations to both the state concerned and to the individual[879]. The CCPR-OP1 also contains a provision that allows for a state party to communicate to the HRComm allegations of rights violations made by another state party[880]. While this mechanism remains untested[881], its existence alone potentially serves a purpose as a diplomatic tool, the very threat of being reported to the HRComm over alleged rights abuses may in itself be an effective motivator for treaty implementation.

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[875] United Nations, 1983. Optional Protocol to the International Covenant on Civil and Political Rights (UNTS vol. 999), New York. p. 171.
[876] Ibid.
[877] CCPR-OP1, Art. 1.
[878] CCPR-OP1, Art. 4(2). "Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State".
[879] CCPR-OP1, see Art. 5(4) "The Committee shall forward its views to the State Party concerned and to the individual."
[880] CCPR-OP1, Art. 41.
[881] On the subject of inter-state complaints, the Office of the High Commission for Human Rights asserts that "these procedures have never been used". See: Office of the High Commissioner for Human Rights, Human Rights Bodies - Complaints Procedures. Available at: http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#interstate.

In spite of the potential that the CCPR-OP1 has as an effective monitoring mechanism in facilitating the realisation of the rights contained within the CCPR, it also inherits the same structural limitations as a result of its voluntary nature. In order for complaints or allegations to be received by the HRComm regarding rights violations, the complaint must concern a state which is both party to the CCPR and CCPR-OP1[882]. The resulting ineligibility of states which have not ratified CCPR-OP1, or indeed the CCPR, results in the inability of individuals to make complaints or allegations of rights abuses to the HRComm.

China, which has signed but not ratified the CCPR, is therefore ineligible to ratify the CCPR-OP1, which effectively denies the HRComm the competency of receiving complaints from individuals within China of abuses of the rights accorded by the CCPR. Without the procedural competency to receive complaints of rights abuses, or indeed to receive reports by China concerning the implementation of the CCPR, the HRComm is left with limited means with which it can oversee that China fulfilling its obligations as signatory to the CCPR to not act against the spirit of the covenant.

In conclusion, the voluntary nature of the CCPR-OP1 limits its ability to address the issue of rights violations to countries that are willing to ratify it. Its limited implementation by member states is demonstrative of a general reticence to attract additional scrutiny over potential human rights abuses[883], or failures regarding the implementation of international rights into national law. Donnelly rightly highlights that states who are willing to become party to such rigours are the least likely to be rights violators[884], and as such, the CCPR-OP1 provides little remedy as a rights monitoring mechanism in states such as China, where it is most needed.

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[882] Ibid., see Art. 1 "No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol".
[883] Currently, of the 168 states parties to the CCPR, 115 are party to the CCPR-OP1
[884] Donnelly, J., 1986. International human rights: a regime analysis. *International Organization*, 40(03), p. 611.

5.3 The United Nations International Covenant on Economic, Social and Cultural Rights

Unlike the CCPR, The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by China in 2001, does not include a specific provision concerning minority rights. As a result, many of the minority populations residing within Eastern-Bloc states historically have not shared the same protections as provided by the CCPR. However, like the CCPR, there are a number provisions within the ICESCR that are relevant to the protection and promotion of minority rights without being explicitly directed towards the minorities in particular. One such provision is the right of education, which plays an essential factor in ensuring the long-term preservation of minority identity. The ICESCR defines the right to education as:

5.3.1 Article 13 – Right to Education

> 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
>
> 2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
>
> (a) Primary education shall be compulsory and available free to all;
> (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.[885]

Art. 13(1) outlines the fundamental right to education for all, and provides a rationale that forms the basis of that right. In stating the aims of education to foster the development of an understanding of human dignity and fundamental freedoms, it also serves to guide the role of education as a mechanism for the protection and promotion of human rights. In doing so, it places the role of education of unique importance, entrusting it with the responsibility of perpetuating the conceptual basis of human rights amongst future generations.

[885] ICESCR, Art. 13.

Whereas Art. 13(1) seeks to evoke the spirit of what the right to education should provide, Art. 13(2) outlines specific duties in order to actualise the right to education. It enumerates differing levels of education and imposes measures to limit restrictions that may otherwise limit the accessibility of education for all.

Art. 13(3) emphasises the primacy of the parents' authority in choosing their children's education in concert with their own moral or religious belief. This primacy is limited by the caveat that the education provided conforms to "minimal" qualitative standards that are approved by states parties. None the less, the spirit of this clause is to ensure that parents are free to provide their children with an education, be it public or private, that is consistent with their own system of belief. As such, the use of the term "minimal" limits the potential for state interference of the parents' right to provide a moral or religious education through the imposition of educational standards[886], while at the same time realising that parents right to provide a religious or moral education may be restricted in circumstances where that education does not meet those recognised basic standards.

Art.13(4) seeks to reinforce this right by ensuring the ability to establish non-state schools that offer an education that may differ from that which is provided by the state. This right is restricted through the reemphasis of Art.13(1), ensuring that any education provided remains consistent with the spirit of education espoused within Art.13(1), and that of the minimum standards imposed by the state.

When examined within the context of Uyghur minority rights, there exist examples of regional regulations and measures that overstep the parental rights to provide a religious education as enshrined within Art. 13. Such examples include the previously detailed regulations affecting the religious practice of minors[887], and the prohibition of

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[886] Beiter, K.D., 2006. The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights, Martinus Nijhoff Publishers. p. 558.
[887] See *supra* section: 3.3.1 Religion and Culture.

teaching Islam to anyone under the age of 18[888], whom by virtue of their age are considered to be minors under Chinese law[889], and as such fall within the protections of Art. 13.

While such restrictive policies have no basis in Chinese law, their very existence stems from China's emphasis on the separation of religion from education, which extends to the realm of private education, with Art. 4 of the *Law on the Promotion of Non-Public Schools of the People's Republic of China* stating:

> Non-public schools shall abide by laws and regulation, implement the educational principle of the State, guarantee the educational quality and devote their efforts to the training of various types of people for the cause of socialist development.
>
> Non-Public schools shall implement the principle of separating education from religion. No organization or individuals may make use of religion to conduct activities designed to interfere with the educational system of the State.[890]

The statist tone of the law contrasts from that of Art. 13 of the ICESCR, which emplaces an emphasis on the parental right to provide an education aligned with their convictions over that of the state. As such, the emphasis on the separation from religion from the educational sphere, regardless of whether it is public or private, provides the state with a rational basis for the limitation of any religious activities which may be seen to interfere with the official educational system. The restrictive municipal

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[888] Lipman, J., Barat, K. & Bovingdon, G., 2004. *Practicing Islam in Today's China: Differing Realities for the Uighurs and the Hui*, Washington, DC: U.S. Government Printing Office. p. 1; Human Rights Watch, 2005. op.cit., p. 58. Municipal restrictions on the religious education of minors can be traced to the CCP's white paper on religious policy, "It will be absolutely forbidden to force anyone, particularly people under eighteen years of age, to become a member of a church, to become a Buddhist monk or nun, or to go to temples or monasteries to study Buddhist scripture.", see: Central Committee of the Communist Party in China, 1982. *Document No. 19,* op.cit.

[889] Art. 2: "Minors as used in this Law refer to citizens under the age of eighteen". See: National People's Congress, 1991. *Law of the People's Republic of China on Protection of Minors*, Beijing. Available at: http://www.china.org.cn/english/government/207411.htm.

[890] National People's Congress, 2002. *Law on the Promotion of Non-Public Schools in China*, Beijing. Available at: http://www.chinaeducenter.com/en/cedu/lpnsc.php.

policies that promote an outright ban on the religious education of minors under the auspices of the separation of religion from education, demonstrably exceeds the leeway provided by the derogation clause of "minimal standards" seen within Art. 13(3)(4), and as a result infringes on the parental right to provide a religious education as defined within the ICESCR.

5.3.2 Article 15 – Cultural Rights

> 1. The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications;(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
>
> 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
>
> 3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
>
> 4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.[891]

Art. 15 is perhaps one of the most ambitious provisions contained within the ICESCR. It seeks to provide broad protections for everyone's right to participation and enjoyment of one's culture. As with the term minority, the term "culture" as a concept lacks a universally understood definition[892]. As such, its use within the ICESCR raises the

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[891] ICESCR, Art. 15

[892] Williams, R., 2003. The Analysis of Culture. In *Culture: Critical Concepts in Sociology*. p. 28; Bennett, T., 1998. *Culture: A Reformer's Science*, Sage Publications (CA). p. 27.

issue of differing interpretations of which customs and practices fall within the umbrella of culture as it used within the provision, and whether such traits benefit from its protection.

Therefore, before an analysis of Art. 15 and the protections it offers to the Uyghurs can take place, it is important to first consider the potential ambiguities that may arise from the use of this term, and particularly the possible implications that can result from such ambiguities. As such, further examination of the meaning of the term "culture", particularly within the context of the ICESCR, is needed.

Within academia, a lack of specificity persists among scholars regarding a universal definition of culture despite numerous studies on the subject[893], and the eventual emergence of a dedicated field of study on the matter[894], leading to the oft cited claim by Apte that "despite a century of efforts to define culture adequately, there was in the early 1990s no agreement among anthropologists regarding its nature"[895]. Instead, there exists a multitude of definitions, each existing within separate contexts. Kroeber and Kluckhorn compiled over 150 separate definitions for the term culture, and categorised them into six distinct groups[896]. Perhaps the most relevant of the groups identified by Kroeber and Kluckhorn is that of the *descriptive definition*, the most influential of which they have identified as originating from Taylor's definition:

> Culture, or civilization, taken in its wide ethnographic sense, is that complex whole which includes knowledge, belief, art, law, morals,

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[893] Strauss, C., Quinn, N. & Meeting, A.A.A., 1997. A Cognitive Theory of Cultural Meaning, Cambridge University Press; Jenks, C., 2003. Culture: Critical Concepts in Sociology, Routledge; Allan, K., 1998. The Meaning of Culture: Moving the Postmodern Critique Forward, Praeger.

[894] Smith, P., 2001. Cultural Theory: An Introduction, Wiley; Keesing, R.M., 1974. Theories of Culture. Annual Review of Anthropology, 3(1974), pp. 73–97; Hofstede, G.H., 2001. Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations Across Nations, SAGE Publications.

[895] Apte, M., 1994. Language in Sociocultural Context. In E. K. Brown, R. E. Asher, & J. M. Y. Simpson, eds. *Encyclopedia of Language & Linguistics, Vol. 4*. pp. 2000–2010.

[896] Kroeber, A. & Kluckhohn, C., 1952. *Culture: A critical review of concepts and definitions.*, Cambridge, MA: Harvard University Printing Office. p. 41.

> custom, and any other capabilities and habits acquired by man as a member of society[897]

This definition is fitting in that it identifies a conceptual "whole" which includes not only the physical manifestation of culture through customs or habits, but also the immaterial and intangible components of culture such as belief and socially orientated knowledge.

Within the UN itself, some of the earliest discourse on the meaning of culture and its importance was conducted within the auspices of the United Nations Economic, Scientific, and Cultural Organisation (UNESCO), the UN's principle organ dedicated to the protection and promotion of culture. As part of its mandate, UNESCO is charged with the protection and preservation, promotion and dissemination of culture; necessitating a conceptual understanding of the meaning of culture in order to provide an organisational remit. The underlying motivations that underpin UNESCO's remit can be found within the preamble of the UNESCO constitution. In stating that "since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed"[898], it emphasises the need for a cultural change in perception in order to create a peaceful reality. The preamble continues, expanding on why such a change is needed:

> That ignorance of each other's ways and lives has been a common cause, throughout the history of mankind, of that suspicion and mistrust between the peoples of the world through which their differences have all too often broken into war;
>
> That the great and terrible war which has now ended was a war made possible by the denial of the democratic principles of the dignity, equality and mutual respect of men, and by the propagation, in their place, through ignorance and prejudice, of the doctrine of the inequality of men and races;

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[897] Tylor, E.B., 1871. Primitive Culture: Researches Into the Development of Mythology, Philosophy, Religion, Art, and Custom, J. Murray.
[898] UNESCO, 1945. Constitution of the United Nations Educational, Scientific and Cultural Organization, New York.

> That the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern;[899]

This preamble, drafted following the evils that occurred during World War II, highlights the risk that intolerance and ignorance of the differences that exist within society and between society's poses towards the ideals of trust, equality and human dignity. To remedy these causes for conflict and inequality, the preamble proclaims the central role that culture has in achieving the ideals of dignity, peace and justice. In doing so, it firmly emphasises the importance of cultural rights in the pursuit of human dignity.

Following the establishment of UNESCO, the United Nations continued to develop its own attempts to form a cohesive basis of agreement on a shared definition of the term culture continued, leading to the formation of a broad definition during the UNESCO World Conference on Cultural Policies (MONDIACULT), which took place in Mexico in 1982, some 16 years after the adoption of the ICESCR. The definition stated:

> That in its widest sense, culture may now be said to be the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs;[900]

This definition shares a number of traits with Taylor's definition. It too considers the notion of a conceptual "whole", one which embodies a diverse range of material and immaterial features that together are to be identified collectively as culture. While this definition includes some additional specificity on what can be constituted as culture, a potentially problematic sense of vagueness remains apparent. Perhaps this is why the definition as used within the UN has continued to morph and subtly, but significantly

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[899] UNESCO, 1945. Constitution of the United Nations Educational, Scientific and Cultural Organization, op.cit.
[900] UNESCO, 1982. World Conference on Cultural Policies (CLT/MD/1), Mexico City. p. 41.

change shape. In 2002, a glossary on cultural heritage was established by UNESCO; within it includes a definition on culture that was derived from the MONDIACULT declaration:

> The set of distinctive spiritual, material, intellectual and emotional features of a society or a social group, encompassing, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.[901]

This offers one of the most coherent and specific definitions of the term culture to be found within UN literature on the subject. Similar to earlier referenced definitions, it seeks to include both material and immaterial features that together form a cultural identity of a group that are collectively associated through shared characteristics. It principally differs from the MONDIACULT definition through the addition of "ways of living together", further emphasising the notion of culture forming part of both identity of the self, and the means with which people coexist. Evidence of the applicability of this definition when examining the ICESCR can be found within *General Comment No. 21* of the Committee on Economic, Social and Cultural Rights (ICESCRComm)[902], which relies on the UNESCO definition[903].

The use of this working definition for the term culture by the ICESCRComm allows for the formation of a conceptual basis for analysis of Art. 15. When examined within this context, Art. 15 offers a considerably broad and comprehensive range of protections including both the material manifestations of culture (clothing, architecture, shrines and places of worship), and intangible aspects of culture (that may for example include language, religious belief, customary knowledge and folklore). On consideration that culture is an embodiment of the distinctive features that form the identity of an

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[901] Zanten, W. Van, 2002. *Glossary on Intangible Cultural Heritage*, The Hague: Netherlands National Commission for UNESCO. p. 4.
[902] United Nations Committee on Economic, Social. and Cultural Rights, 2009. *General Comment No. 21 (E/C.21/GC/21)*, Geneva.
[903] E/C.21/GC/21, p. 3.

individual or social group, the relevance and significance that the protections that this provision offers to the culture and identity of minorities becomes immediately apparent.

Art. 15(1)(a) ensures that the state recognises everyone's right to "take part in cultural life", when considered within the previously considered working definition of culture, this protection places an obligation upon states parties to recognise the legitimacy of everyone's cultural life. With the addition of the term "social group" to that of society within the UNESCO definition, it is ensured that the protection is not limited to the culture that is represented by the state or the majority population.

Evidence of this can be seen within *General Comment No. 21,* which confirms the inclusion of minorities as protected under Art. 15(1)(a), and in doing so it directly references the minority rights provision (Art. 27) of the CCPR[904]. The association between the CCPR's Art. 27, with the right of everyone "to take part in cultural life" contained in Art. 15(1)(a), broadens the scope of the protection to ensure that cultural life is not limited to that of the state or the majority population, but also to include minority cultures that are not representative of either the majority or national culture.

Art. 15(2) ensures that the "conservation" of culture, including its development and diffusion, is not restricted or limited by the state. This is of particular importance in that it protects the ability for culture to sustain itself through the dissemination and transmission of cultural norms between generations within both wider society, and disparate social groups. Additionally, Art. 15(3) provides that the freedom of creative activity forms an indispensable aspect in the right to take part in cultural life. As such, it further enmeshes the notion of cultural life with that of freedom of thought and its manifestation[905]. When considered in this context, any restriction or censorship of creative expression may potentially infringe on everyone's right to take part in cultural life as accorded by Art. 15 (1).

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[904] General Comment No. 21 (*E/C.21/GC/21*), op.cit., pp. 8-9.
[905] O'keefe, R., 1998. The "Right to Take Part in Cultural Life" under Article 15 of the ICESCR. *International and Comparative Law Quarterly*, 47(4), p. 910.

Lastly, Art. 15(4) reinforces Art. 15(2) by further ensuring that the diffusion of culture is not confined to state borders. It seeks to protect and promote the transnational aspects of culture by asserting that member states recognise the benefits of fostering international communication between nations through culture. The underlying motivation that underpins Art. 15(4) can be found within the preamble of the UNESCO constitution "That ignorance of each other's ways and lives has been a common cause... of that suspicion and mistrust between the peoples of the world through which their differences have all too often broken into war"[906]. By ensuring that the diffusion of culture (including that of minority culture) is not limited by the boundaries of nation states, Art.15 seeks further realise the auspices of UNESCO's constitution, that "the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern"[907].

As noted earlier, General Comment No. 21 both clarifies and emphasises that the cultural rights promoted by Art. 15 fully extend to include the cultural rights of minorities. This elaboration resultantly precludes any interpretations that the rights of Art. 15 solely apply to the cultural norms and praxis of either the nation state or the majority population. This much needed clarification prevents the use of statist interpretations of Art. 15 as a method of legitimising restrictions on minority cultural identity and practice in order to protect the cultural rights of the majority.

When the protections of Art. 15 are examined within the context of the Uyghur minority; it becomes clear that the Uyghurs' cultural identity and praxis falls within the scope of Art. 15's broad protection of culture and of cultural life. Resultantly, any attempts to limit the diffusion of Uyghur cultural identity or cultural practice may be seen to encroach upon the cultural rights provided by Art. 15.

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[906] UNESCO, 1945. Constitution of the United Nations Educational, Scientific and Cultural Organization, op.cit.
[907] Ibid.

Examples of cultural practices which can be considered part of Uyghur cultural identity includes the wearing of face veils such as the burqa, the wearing of which has been prohibited through municipal government policies in Xinjiang[908]. The municipal authorities stated rationale for the regulations is to curb religious extremism, which has the effect of conflating the wearing of face veils such as the burqa with engaging in religious extremist activities. The existence of such restrictions may not only be discriminatory in how it associates minority cultural practice with extremism, but also infringe upon Uyghurs' right to take part in a cultural life, as accorded by Art. 15(1)(a).

By actively restricting Uyghur from freely choosing to wear clothing considered part of their cultural identity, the state is actively placing limitations on the Uyghurs' ability to engage in cultural practices, and therefore failing to fulfil its obligations in ensuring everyone's right to freely choose their own cultural identity.

Another traditional Uyghur practice that can be considered part of Uyghur culture is the observance of the Islamic holy month of Ramadan by way of fasting. As clarified by General Comment No. 21, the protections offered by Art. 15(1) extends to not only the right to take part in a cultural life, but also the engagement in cultural practices[909]. Correspondingly, practices such as fasting during Ramadan clearly fall within the scope the scope of the protections offered by Art. 15(1) as part of one's ability to freely engage in cultural practices as part of their cultural life.

As detailed within Chapter 3[910], the municipal authorities have frequently promulgated regulations that restrict particular social groups including party cadres, civil servants and minors from fasting during Ramadan[911]. It follows that any restriction by state authorities that prevents specific groups from observing Ramadan can also be

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[908] See *supra* section: 3.3.1 Religion and Culture.
[909] General Comment No. 21 (*E/C.21/GC/21*), op.cit., p. 4.
[910] See *supra* section: 3.3.1 Religion and Culture.
[911] Jie, J., 2014. op.cit; Sautman, B., 2010. Scaling back minority rights?: The debate about China's ethnic policies. *Stanford Journal of International Law*, 51, p. 71; Waite, E., 2006. op.cit., pp. 255–256. Wellens, K., 2009. Negotiable Rights? China's Ethnic Minorities and the Right to Freedom of Religion. *International Journal on Minority and Group Rights*, 16(3), p. 441.

considered as a restriction upon everyone's ability to take part in a cultural life. Additionally, the targeted nature of such policies, discriminating against specific social groups, undermines the basis of equality and non-discrimination that defines Art. 15(1), which ensures that "everyone" has the right to take part in a cultural life. Indeed, the emphasis on non-discrimination is further elaborated upon in General Comment No. 21, which states that: "Article 2, paragraph 2, and Art. 3 of the Covenant prohibit any discrimination in the exercise of the right of everyone to take part in cultural life on the grounds of race, colour, sex, language, religion, political or other opinion"[912]. As such, any discriminatory restrictions that selectively encroach upon everyone's right to take part in a cultural life results in a failure of the state's obligations to respect the cultural rights of its citizens, and can be considered an infringement on the cultural rights accorded by Art. 15.

As outlined previously[913], another traditional practice of the Uyghur is to make the Hajj pilgrimage, which is considered a core tenet of religious observance and forms part of the Uyghurs' cultural identity. As such, the ability for Uyghur to carry out the Hajj pilgrimage can be considered part of the Uyghurs' ability to take part in a cultural life, falling within the concept of culture defined within General Comment No. 21, and therefore the protection of Art. 15(1)(a).Providing that the practice of making the Hajj pilgrimage is to be considered a minority cultural activity, and thus falls under the protections of Art. 15(1)(a), any limitation on this activity could be considered to be a violation of Art. 15.

In light of the clarification made by General Comment No. 21, the practice by state authorities of systematically limiting the issuance of travel documentation necessary for Uyghur who wish to make the Hajj pilgrimage may infringe upon Art. 15, as the Uyghurs' participation in the Hajj may be considered to be contributing to the diffusion

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[912] General Comment No. 21 (*E/C.21/GC/21*), op.cit., p. 6.
[913] See *supra* section: 3.3.1 Religion and Culture.

of culture. Moreover, in actively limiting the number of Uyghur from participating in the Hajj pilgrimage, the state may be failing its obligations to encourage "international contact and co-operation in the scientific and cultural fields", as defined by Art. 15(4).

As the above examples demonstrate, Art. 15 offers perhaps one of the broadest protections of the UN's core treaties for the protection of minority identity. The inclusive definition of the term culture as employed by the UN allows for the consideration of many of the Uyghurs' unique practices and beliefs to be part of the Uyghurs' culture, the preservation and transmission of which falls within the remit of the ICESCR.

5.3.3 Optional Protocol to the ICESCR

Until 2008[914], a significant inconsistency existed within the United Nations concerning the CCPR and the ICESCR. Despite both treaties having come into force at the same time, only the CCPR benefitted from a reporting mechanism that allowed for effective oversight of the treaty's its implementation. The 40 year delay in the creation of an equivalent for the ICESCR is perhaps in part due to how its respective rights have been traditionally perceived. The absence of an effective implementation mechanism for the ICESCR's second generation rights alludes to a lingering perception that they have remained somewhat aspirational.

Despite discussions concerning the drafting of a reporting mechanism for the ICESCR taking place on multiple occasions to remedy this failure[915], it wasn't until 2004 that work began in earnest concerning its eventual realisation, following the initial meeting

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914 United Nations General Assembly, 2009. *Resolution adopted by the General Assembly (A/RES/63/117)*, New York.

915 Such discussions began during the World Conference on Human Rights that took place in Vienna in 1993. During which, an analytical paper was adopted which served to generate discourse and highlighted the benefits that such a mechanism would provide to the promotion of economic, cultural and social rights. See: Committee on Economic Social and Cultural Rights, 1993. *Contribution to the World Conference on Human Rights (A/CONF.15/PC/62/Add.5)*, Vienna. Annex II. For additional discussions, see: United Nations Commission on Human Rights, 1997. *Draft optional protocol to the International Covenant on Economic, Social and Cultural Rights (E/CN.4/1997/105)*, Geneva; United Nations Committee on Economic Social and Cultural Rights, 1992. *Report on the sixth session (E/C.12/1991/4)*, New York. Paras. 359-366.

of the Working Group tasked with its development[916]. Subsequent to the expansion of the Working Group's mandate which would allow for the convening of additional meetings concerning the possibility of a reporting mechanism[917], in 2006 the Working Group was formally tasked with the drafting of the Optional Protocol for the International Covenant on Economic, Social and Cultural Rights (ICESCR-OP)[918]. After a series of draft iterations, the ICESCR-OP came into effect in May 2013.

The establishment of the ICESCR-OP is a milestone in the development of international human rights norms in that it provides the grouping of economic, social and cultural rights with the equivalent reporting mechanism for treaty implementation long used for civil and political rights. As a matter of principle, its establishment serves to reinforce the notion of interrelatedness and invisibility of all human rights, signalling that the realisation of the rights contained within the ICESCR can no longer be disregarded as aspirational.

Functionally, the ICESCR-OP broadly shares many of the same features with the CPPR-OP1, in that it provides the ICESCRComm with the competency to receive complaints concerning potential abuses of rights contained within the ICESCR. As such, it suffers some of the same restrictions owing to the voluntary nature of the CCPR-OP1. The inter-state complaint mechanism too was added despite the fact that its equivalent in the CCPR-OP1 remains unused[919]. In light of this, Mahon astutely notes that its addition to the ICESCR-OP may well be due to its effectiveness as a

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[916] The meeting was heavily focused on discussions concerning the justiciability of the ICESCR. See: United Nations Commission on Human Rights, 2004. *Report of the open-ended working group to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights on its first session (E/CN.4/2004/44)*, Geneva.

[917] Mahon, C., 2008. Progress at the front: The draft optional protocol to the international covenant on economic, social and cultural rights. *Human Rights Law Review*, 8(4), p. 624.

[918] United Nations General Assembly, 2009. *Resolution adopted by the General Assembly (A/RES/63/117)*, New York.

[919] See *supra* note 881.

diplomatic tool[920], suggesting that the threat of its use may in itself prove an effective deterrent for rights violators.

As a benefit of its relatively late promulgation, the ICESCR-OP not only adopts many of the provisions contained within the CCPR-OP1, but also from the analogous protocols that were since drafted with respect to the other core treaties. The effects of this are the addition of some robust features that are currently lacking within the CCPR-OP1. One such feature is the ability for complaints to be registered on behalf of the victim[921], subject to limitations[922]. This is a significant development in the efficacy of treaty based reporting mechanisms in that it removes some of the inherent risks faced by victims when communicating allegations of right violations against states parties. In doing so, it also provides a more active role for NGOs and human rights organisations in the promotion and protection of human rights by enabling them to represent victims of human rights abuses, particularly in circumstances where the victim may not be in a position to submit communications with the ICESCRComm. Another addition to the ICESCR-OP that further enhances its efficacy is the establishment of protection measures for those who have submitted allegations[923], which places responsibility upon the state accused to ensure that the victim is not negatively affected as a result of any correspondence made concerning issues "pursuant to the present Protocol"[924]. While the effectiveness of seeking that an alleged rights violator refrain from discriminating against a claimant whom already is a victim of abuse is questionable, its

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920 Mahon, C., 2008. op.cit., p. 642.
921 "Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent". A/RES/63/117, Art. 2.
922 Limitations include the necessity of consent from the victim; although this may be overlooked providing that sufficient justification is provided.
923 A/RES/63/117, Art. 13.
924 Ibid.

existence within the ICESCR-OP may prove an effective deterrent if used as a diplomatic tool, in a manner similar to the inter-state communications mechanism[925].

Another feature contained within the ICESCR-OP that is lacking in the CCPR-OP1 is the inquiry procedure[926]. This gives the ICESCRComm additional powers in situations where "grave or systematic violations" have taken place[927]. In the case that sufficiently serious allegations against a state have been made, the ICESCRComm may conduct an inquiry, which depending upon the discretion of the ICESCRComm can include state visits akin to those taken by the Special Procedures[928]. Determining which violations amount to being "grave and systematic" in nature will need to be determined by the Committee, however owing to the remit of the ICESCR-OP, it follows that such violations be economic, cultural or social in character.

China's role within the drafting of the ICESCR-OP was a productive one. Despite efforts by some member states during the drafting stage to reduce strength to the reporting mechanism to be applicable to a limited number of provisions within the ICESCR, China opposed this view, taking the position that any reporting mechanism should be applicable to all of the rights recognised within the ICESCR[929]. Despite China's support for the creation of the ICESCR-OP, it has yet to become signatory, with scholars such as Carole J Peterson taking a pessimistic view that this will change in the future[930].

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[925] A/RES/63/117, Art. 10.
[926] A/RES/63/117. Art. 11.
[927] A/RES/63/117. Art. 11(2).
[928] State visits however requiring permission of the state concerned in either circumstance. For additional information concerning the role of the Special Procedures within the United Nations, see: Nifosi, I., 2005. *The UN Special Procedures in the Field of Human Rights*, Intersentia.
[929] Vandenbogaerde, A. & Vandenhole, W., 2010. The optional protocol to the international covenant on economic, social and cultural rights: An ex ante assessment of its effectiveness in light of the drafting process. *Human Rights Law Review*, 10(2), p. 221.
[930] Carole J, P., 2013. Preserving Traditions or Breaking the Mold? Transnational Human Rights Processes in the People's Republic of China and Hong Kong. In *Transnational Legal Processes and Human Rights*.

5.4 International Convention on the Elimination of all Forms of Racial Discrimination

The International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)[931], which came into force in 1969, differs from both the CCPR & ICESCR in its scope, with its remit directed towards the addressing the specific issue of racial discrimination. Drafted during a time when the scourge of anti-Semitism remained a persistent concern among world leaders despite the horrors of the holocaust having being brought to an end two decades prior[932]. This concern was further compounded by the continued participation in colonialism by some of the charter members of the United Nations[933], the existence of a convention that sought to address some of the most egregious and systematic violations of the UN's core principles was desperately needed[934].

Its mandate, to realise the principles of equality that are central to the UDHR[935], seeks to eliminate any manifestations of racial prejudice, the very existence of which undermines the core values of human equality that the United Nations sought to engender amongst its community of member states. The spirit of the convention can be found within its preamble. It reiterates the United Nations charter in stating that it is

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931 United Nations General Assembly, 1965. *International Convention on the Elimination of All Forms of Racial Discrimination (A/RES/20/2106)*, New York.

932 Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, 1960. *(E/CN.4/800)*, New York. Para. 163.

933 Both Britain and France maintained expansive colonial empires throughout the early 20th century prior to the global decolonisation movement. For further reading on Frances colonial history, see: Barclay, F., 2013. *France's Colonial Legacies: Memory, Identity and Narrative*, University of Wales Press. For further reading on the history of the British Empire, see: Brown, J. & Louis, W.R., 1999. *The Oxford History of the British Empire: Volume IV: The Twentieth Century*, OUP Oxford.

934 On the establishment of ICERD, France considered that "no convention of equal scope or significance had ever been adopted before", see: Schwelb, E., 1966. The International Convention on the Elimination of All Forms of Racial Discrimination. *The International and Comparative Law Quarterly*, 15(4), p. 996.

935"All human beings are born free and equal in dignity and rights. They are endowed 13 with reason and conscience and should act towards one another in a spirit of brotherhood." See: A/RES/217 A(III), Art. 1.

based upon "the principles of the dignity and equality inherent in all human beings"[936]. This provides the ICERD with a central thrust and guiding principle, underscoring the importance of equality as a right for all and that any manifestations of inequality through the existence of racial discrimination are in violation of this right. The preamble then proceeds to establish its rational basis for the existence of such principles. It asserts that discrimination between people may have a deleterious impact on "friendly and peaceful relations" and that the barriers that can arise as a result are "repugnant to the ideals of any human society"[937]. In doing so, the ICERD recognises that the international character of the phenomenon of racial prejudice, and that the effects of such prejudices extends beyond the bounds of nation states and consequently must be addressed in a similarly international fashion[938]. The necessity of the ICERD in addressing racial discrimination, a fundamental barrier in ensuring the credibility of the United in its ability to achieve its aspirations laid within the UDHR, is further drawn into focus in the preamble when issue is raised of the existence of systematic racial discrimination manifested and perpetuated through existing government policies within member states[939].

The unflinching rhetoric espoused within the preamble is indicative of the ICERD's importance. The need to address the issue of discrimination through the creation of a treaty with the specific aim of its elimination, was brought to the fore by a resurgence of anti-Semitic activities in 1959-1960 that were "reminiscent of outrages committed prior to and during the Second World War"[940]. Following the swift GA resolution condemning such incidents[941], the Sub-Commission on Prevention of Discrimination and Protection

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[936] ICERD, preamble.
[937] Ibid.
[938] Kelsey, B.Y.B., 1975. A Radical Approach to the Elimination of Racial Discrimination. *University of New South Wales Law Journal*, 1(1), p. 57.
[939] "Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation", ICERD Preamble.
[940] *E/CN.4/800,* Art. 166(A).
[941] United Nations General Assembly, 1960. Manifestations of Racial and National Hatred (A/RES/1510(XV)), New York.

of Minorities sought additional information and observations from relevant stakeholders regarding the manifestation of "anti-Semitism and other religious and so-called racial prejudices"[942], with the aim of developing an appropriate instrument to address the issue of discrimination.

Emboldened from the positive support for the 1960 GA resolution[943], in 1961 during the thirteenth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights, it was suggested that the GA make preparations for an international convention towards the prohibition of "racial and national hatred"[944]. In 1962, The GA's Third Committee enacted two separate resolutions; one on the preparation of a draft convention on the elimination of all forms of racial discrimination[945], and the other of a draft convention on the elimination of all forms of religious intolerance[946].

Owing to the interconnectedness of the Uyghurs' religiosity with their identity as a minority, it's important at this point to further detail the significance of the GA's decision to draft two separate conventions for "racial discrimination" and "religious intolerance". Up until this point, the issue of racial and religious discrimination has been inexorably linked within the UN's internal discussions on the issue. Indeed, the initial proposal for a resolution on the issue of discrimination stemmed from the issue of anti-Semitism, with religion plainly forming a core component of its prejudice. This was further reflected within the title of the ECOSOC's proposal for a GA resolution titled

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942 United Nations Economic and Social Council, 1961. Manifestations of Racial Prejudice and National and Religious Intolerance (E/RES/826(XXXII)), New York.
943 A/RES/1510 (XV)
944 Sub-Commission on Prevention of Discrimination and Protection of Minorities, 1961. *Report on the Thirteenth Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights (E/CN.4/815)*, New York. Para. 176.
945 United Nations General Assembly, 1962. *Preparation of a Draft Declaration and a Draft Convention on the Elimination of all Forms of Racial Discrimination (A/RES/1780(XVII))*, New York.
946 United Nations General Assembly, 1962. *Preparation of a Draft Declaration and a Draft Convention on the Elimination of all Forms of Religious Intolerance (A/RES/1781(XVII))*, New York.

"Manifestations of Racial Prejudice and National and Religious Intolerance"[947]. Indeed, the cause for the compartmentalisation of the issues concerning racial and religious discrimination had less to do with concerns of applicability than overt political interests. The notion of a convention targeted towards the perpetration of religious discrimination proved a divisive issue, with Schwelb positing that the basis for such divisiveness was largely a result of divergent political agendas[948]. The disparate factions included Arab and Communist states on the one hand who sought to deemphasise the importance of protecting against religious intolerance, and African states with the support of the United States preferring the establishment of a broader, more robust instrument that targeted discrimination of all kinds[949].

The events which led to the creation of the ICERD also further highlights some of the systematic limitations that exist within treaty drafting processes, which too often contributes to a weakening in treaty effectiveness. Much like the vested national interests and incompatible ideological dogmatism that contributed to the CCPR/ ICESCR split, the ICERD too failed to escape the omnipresent power politics that all but dominate the GA. Despite these issues, the intersectionality of racial and religious discrimination remains a feature of the ICERD's spirit, and as will be expanded upon later within this chapter, religious intolerance has not been completely excised from its scope.

5.4.1 ICERD's Substantive Articles with Respect to Minorities

The ICERD is separated into three distinct sections, with the first containing the substantive provisions that detail and define the rights against racial discrimination and

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[947] E/RES/826(XXXII)B.
[948] Schwelb, E., 1966. op.cit., p. 999.
[949] For further reading on the United States political motivations behind its position concerning the ICERD, see: Friesel, O., 2014. Race versus Religion in the Making of the International Convention Against Racial Discrimination, 1965. *Land and History Review*, 32(2), pp. 351–383.

the states parties obligations to ensure the prohibition of racial discrimination, while providing that effective avenues of relief exist when discrimination does occur.

In order to address some of the potential ambiguities that may arise from the term "racial discrimination", which forms the raison d'être for the conventions existence, the ICERD elaborates upon the term through the establishment of a working definition within Art. 1(1):

> In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.[950]

Art. 1 first outlines the behavioural procedures in which discriminatory behaviour may arise to include "distinction, exclusion, restriction or preference"[951], the use of these terms serves to limit the manners with which prejudice may manifest, and as such is consistent with protecting the guiding principle of universal equality. Art. 1 continues to demarcate specific grounds that it considers discriminatory. Wide ranging in character, the criteria used to define the racial component of the definition includes both physical features such as "race" and "colour", and also immaterial features including "national or ethnic" origins[952]. Additionally, discrimination on the above grounds through the previously highlighted behavioural procedures must have the effect of "nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life"[953]. In essence, to satisfy the definition of "racial discrimination", one of four particular acts must occur, after which an objective appraisal of the effects caused

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[950] ICERD, Art. 1.
[951] Ibid.
[952] Ibid.
[953] Ibid.

as a result of the alleged act are tested through the use of two conditions; the first being that the act must be of a specific character, and the second condition provides the objective component of the provision, enunciating the demonstrative effect caused by an act of "racial discrimination".

Despite the ICERD's stated focus on racial discrimination, Art 1(1) arguably provides a broad enough scope to allow for interpretation over what may be defined as racial discrimination. In particular, in defending the enjoyment and exercise of human rights in the "political, economic, social, cultural or any other field of public life", it potentially provides enough leeway for its applicability to extend beyond the bounds of political, economic, social or cultural rights, raising the possibility that other rights groupings may be considered[954].

Indeed, such considerations may be said for minority rights. Despite the lack of any explicit reference to minorities in its definition of "racial discrimination", the generous scope afforded by Art. 1(1) ensures that the protections contained within the ICERD remain applicable to minorities, the discrimination of which forms one of the key motivations behind the ICERD's creation[955].

Arts. 1(2)(3) provides additional clarification concerning the the use of the term nationality, the use of which has often resulted in some confusion among member states[956]. Art. 1(2) ensures that states parties are responsible for all people within their sovereign borders, ensuring that citizenship status is not a prerequisite for benefitting from the ICERD's protections. This is of particular relevance for stateless peoples, whom by their very virtue are often one of the most vulnerable groups within any given

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[954] An ICERDComm report published in 1984 considered the extension of ICERD to include "attacks on religion", see: United Nations Committee on the Elimination of Racial Discrimination, 1984. *Report of the Committee on the Elimination of Racial Discrimination (A/39/8)*, New York. Para. 507.

[955] See *infra* note 1039.

[956] Normand, R. & Zaidi, S., 2008. *Human Rights at the UN: The Political History of Universal Justice*, Indiana University Press. p. 264.

society, ensuring that they are too afforded the same protections as those officially recognised by the states parties. Art. 1(3) reaffirms the sovereignty of states parties, noting that the protections and obligations contained within the ICERD may infringe on otherwise valid state mechanisms regarding "nationality, citizenship or naturalisation"[957], it however adds that such state mechanisms or procedures may not be used "discriminate against any particular nationality"[958].

Art. 1(4)'s provision is potentially significant for minorities such as the Uyghur, in that it recognises the necessity of positive discrimination in circumstances where it is needed in order "to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination". This has the effect of imposing a cost upon the state, obligating it to implement additional measures uniquely for the realisation of equality between "racial or ethnic groups or individuals" in circumstances where inequality exists. The potential effects of Art. 1(4) are considerable, as it obligates states parties to not only desist from engaging in activities of racial discrimination, but to actively participate in a manner that fulfils the thrust of the ICERD in realising equality for all, giving specific reference towards "ethnicity".

Art. 2 further expands upon the resulting obligations of the state. It compliments Art. 1 in many ways, with its primary function ensuring that states parties fully recognise the principle of non-discrimination at the governmental level:

> 1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
>
> (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions

[957] ICERD, Art. 1(3)
[958] Ibid.

and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.[959]

The provisions contained within Art. 2(1)(a)(b) imposes upon states parties the responsibility to desist from discriminatory practices in both the public and private sphere, giving effect to the principle of non-discrimination by ensuring that discriminatory practices by public authorities, institutions, organisations or peoples are

[959] ICERD, Art. 2.

not supported by the state. Art. 2(1)(c) gives further effect to this by obligating the state to "amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists"[960]. This may have particular significance with respect to the use of constitutional law by states parties, preventing arguments of constitutionality from being used as a potential justification for states parties failing in fulfilling their treaty obligations.

Thornberry notes the strength of Art. 2(1)(d) in particular[961]. Indeed, unlike much of the previous provisions contained within Art. 2, it uses a positive formulation, imposing additional responsibilities upon states parties to not only "desist" from discriminatory practices, but to "bring to an end, by all appropriate means including legislation as required by circumstances, racial discrimination by any persons, group or organization". The potentially ambiguous phrase of "all appropriate means" is further elaborated by Art. 2(2), which also serves as a caveat to the general prohibition of discriminatory policies in special circumstances where the application of positive discrimination is necessary to achieve the goals of racial equality. As such, Art. 2(2) further supports the application of positively discriminatory policies as espoused within Art. 1(4) specifically, creating an exception concerning the prohibition of racial discrimination in instances where discriminatory measures may be necessary to guarantee "full and equal enjoyment of human rights and fundamental freedoms"[962]. Art. 2(2) further underscores the potential risks associated with positive discrimination in unwittingly working against the principle of equality by noting that such measures must be temporary, and may only persist until the "objectives for which they were taken have been achieved"[963].

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[960] ICERD, Art. 2(1)(c).
[961] Thornberry, P., 1991. *International Law and the Rights of Minorities*, Clarendon Press. p. 269.
[962] ICERD, Art. 2(2).
[963] Ibid.

Other provisions of particular relevance to minorities include Arts. 3 & 4. Art. 3 specifically addresses the analogous issue of racial segregation and apartheid. Its relative brevity within the context of the ICERD's other provisions is not indicative of any lesser importance, with the issue of abolishing apartheid being a significant concern of the United Nations since its establishment[964]. Indeed, the robust rhetoric used within Art. 3 that calls for states parties to "prevent, prohibit and eradicate" all practices that have the effect of racial segregation is evidence of the importance that the ICERD drafting committee considered this issue.

Art. 4 primarily concerns itself with the issue of pre-existing malignant perceptions regarding race that can result in the manifestations of discriminatory behaviour. It explicitly refers to the role of propaganda and organisations that perpetuate such views, imposing positive measures on states parties to "eradicate all incitement to, or acts of, such discrimination"[965]. The subsequent sub-sections within Art. 4 give effect to the provision. Art. 4(a) emplaces an obligation upon states parties to employ national law to punitively punish those who engage in "acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin"[966], and also for the dissemination of "ideas based on racial superiority or hatred, incitement to racial discrimination"[967]. Similarly, Art. 4(b) seeks to prohibit the existence of organisations that promote or disseminate "ideas based on racial superiority or hatred, incitement to racial discrimination"[968]. Finally, Art. 4(c) elaborates on the measures set out within Art. 2(a) concerning state authorities, prohibiting state authorities and institutions from promoting or inciting racial discrimination.

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[964] In 1950, the United Nations General Assembly enacted resolution 395(V) in reference to the treatment of people of Indian origin in South Africa, the resolution stated that "Considering that a policy of racial segregation (apartheid) in necessarily based on doctrines of racial discrimination", see: United Nations General Assembly, 1950. *Resolution by the General Assembly (395(V))*, New York. For further reading on the United Nations efforts to eliminate apartheid, see: Gassama, I.J., 1995. Reaffirming Faith in the Dignity of Each Human Being: The United Nations, NGOs and Aparheid. *Fordham International Law Journal*, 19, pp. 1464–1541.
[965] ICERD Art. 4.
[966] ICERD, Art. 4(a).
[967] Ibid.
[968] ICERD, Art. 4(b).

The strongly defined prohibition of any ideations of racial superiority or hatred, along with the existence of racist organisations, raises issues concerning its compatibility with other rights including freedom of expression[969] and association[970], potentially bringing Art. 4 within contention of the rights accorded within both the UDHR and the CCPR[971]. Indeed, the existence of such issues emerge upon an examination of reservations by states parties to the ICERD, where reservations specifically concerning Art. 4 are a predominant feature[972]. In an effort to reconcile the seemingly opposing principles contained within the ICERD and the UDHR, the United Kingdom sought to clarify its position on the matter within its reservation, stating that it would adopt legislation concerning Art. 4(a)(b)(c) only so far that such legislation may consider "the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Art. 5 of the Convention"[973]. Similarly, Belgium refers to the need to balance the issue of freedom of speech with that of hate speech within its reservation, stating that:

> ...article 4 must be reconciled with the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association. Those rights are proclaimed in articles 19 and 20 of the Universal Declaration of Human Rights and have been reaffirmed in articles 19 and 21 of the International Covenant on Civil and Political Rights. They have also been stated in article 5, subparagraph (d) (viii) and (ix) of the said Convention.[974]

The Committee on the International Convention on the Elimination of All Forms of Racial Discrimination (ICERDComm)'s view concerning the issue of compatibility can

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[969] "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers", see: UDHR, Art. 19.
[970] UDHR, Art. 20.
[971] CCPR, Art. 19
[972] The countries that explicitly refer to Art. 4 within the declarations and reservations of the ICERD include: Antigua Barbuda, Australia, Austria, Bahamas, Barbados, Belgium, France, Grenada, Ireland, Italy, Japan, Malta, Monaco, Nepal, Papua New Guinea, Switzerland, Thailand, Tonga, United Kingdom of Great Britain and Northern Ireland.
[973] United Nations, 1971. *United Nations Treaty Series, Volume 660*, New York. p. 302.
[974] United Nations, 2002. *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 2002*, United Nations Publications. pp. 133-134.

be found within General Recommendation No. 7[975]. Within General Recommendation No. 7, the ICERDComm highlighted the issue of reservations towards Art. 4, recommending that states parties "take necessary steps with a view to satisfying the mandatory requirements of that article"[976]. Eight years later, the ICERDComm published General Recommendation No. 15 which sought to further address the still present issue[977], where it further asserts its position, clarifying that "the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression"[978].

The right to such freedoms are further recalled within Art. 5 of the ICERD, which elaborates on the state's obligations to prohibit racial discrimination. Contained within its comprehensive range of provisions, which includes both civil and political rights, are the "right to leave any country"[979], "the rights to freedom of opinion and expression"[980], and the "right to freedom of thought, conscious and religion"[981]. The rights enumerated within Art. 5 offer perhaps one of the broadest protections of the provisions within the ICERD, ensuring the enjoyment of economic, social, cultural, political and civil rights. Importantly, Art. 5 also explicitly refers to freedom of religion, despite efforts made to separate religious protections into a separate convention. Its existence within the ICERD raises questions of applicability concerning religious discrimination. Indeed within General Recommendation No. 32[982], the ICERDComm accepts the intersectionality that exists between racial discrimination and religious discrimination[983]. Framed within the notion of "double or multiple discrimination", General

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[975] United Nations Committee on the Elimination of Racial Discrimination, 1985. *General Recommendation No. 7 (A/40/18)*, United Nations.
[976] A/40/18.
[977] United Nations Committee on the Elimination of Racial Discrimination, 1993. *General Recommendation No. 15 (A/48/18)*, New York.
[978] A/48/18.
[979] ICERD, Art. 5(d)(i).
[980] ICERD, Art. 5(d)(viii).
[981] ICERD, Art. 5(d)(vii).
[982] United Nations Committee on the Elimination of Racial Discrimination, 2009. *General Recommendation No. 32 (CERD/C/GC/32)*, Geneva.
[983] CERD/C/GC/32. Para. 7.

Recommendation No. 32 considers this intersectionality to extend the grounds of discrimination "in practice" in circumstances where religious discrimination exists in addition to the grounds detailed in Art. 1[984]. As will be expanded upon later in this chapter, such a consideration is significant with regards to the Uyghur minority in that it concerns the applicability of ICERD, and the competency of ICERDComm, in determining discrimination on the basis of religion.

Also of particular relevance to minorities is the provision contained within Art. 7. It serves to recapitulate the states parties' obligations to address any manifestations of prejudices that result in discrimination. It specifically refers to the "fields of teaching, education, culture and information", reaffirming the role of education echoed in other UN treaties as an important means in enabling "all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace"[985], and as such its centrality in realising the ideal of equality for all.

5.4.2 ICERD Treaty Implementation Procedures

The ICERD delineates its provisions into functionally discrete sections; the first, detailed previously, contains the substantive provisions that detail the rights and responsibilities that states parties must respect and uphold. The second section ascribes the means with which the implementation of the substantive provisions is achieved. This is realised through a series of procedural measures that are employed in an analogous manner vis-à-vis the other core treaties detailed previously. In order to

[984] CERD/C/GC/32. Para. 7.
[985] ICESCR, Art. 13.

oversee treaty implementation, Art. 8, establishes the ICERDComm, detailing its organisational structure and the method with which its staff are appointed[986].

The first implementation procedure is the State Progress Report. Art. 9 requires that states parties submit reports on the "legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention"[987]. Like its analogues, the State Progress Report forms one of the procedures with which the ICERDComm can determine the progress made by states parties in fulfilling the measures necessary to achieve the objectives defined within the ICERD's first section. Similarly, the efficacy of this mechanism in providing the ICERDComm with an informed view as to whether states parties are fulfilling their obligations is limited to the objectivity of states parties in drafting the report. A reasonable argument could be made that any states parties who are complicit in acts of racial discrimination would therefore be incentivised to be less than objective in their reporting in order to avoid possible criticism by the ICERDComm. This would have the effect of reducing the efficacy of the reporting procedure and therefore the ICERDComm's means of facilitating treaty implementation. Following the receipt of State Progress Reports, the ICERDComm subsequently publishes its Concluding Observations in response.

Despite the issue of objectivity that exists from the Periodic Report mechanism, it provides a public space for discussion over issues concerning racial discrimination[988]. Additionally, Weissbrodt notes that the Concluding Observations reports have provided the ICERDComm with an opportunity to broaden their remit beyond the limitations of

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[986] ICERD, Art. 8.
[987] ICERD, Art. 9(1)(a).
[988] Falcon, S.M., 2011. U.S. Treaty Obligations and the Politics of Racism and Anti-Racism Discourse. In M. D. Alleyne, ed. *Anti-Racism and Multiculturalism: Studies in International Communication*. Transaction Publisher, p. 68.

the ICERD in order to gain "a more complete picture of the human rights environment in the state party"[989].

The second procedural mechanism to facilitate treaty implementation is Inter-state reporting, the provision of which is described within Art. 11. A potentially powerful tool, it enables a state party to raise allegations of treaty violations caused by another state party, which is of particular r elevance within the context of racial discrimination. It provides a potential means with which to achieve a peaceful solution in circumstances where racial discrimination takes place within the sovereign territory of a nation state against a racial group of differing nationality. The benefits of this procedure are counterbalanced by the potential for politicisation of the process for purposes other than earnest efforts concerning realisation of treaty mandate.

The third mechanism available for treaty implementation is the "conciliation commission"[990]. Specifically conceived to remedy the issue of inter-state disputes, conciliation commissions are established in an ad-hoc manner consisting of five people who are selected by either unanimous approval by the states involved in the dispute[991], or by secret ballot in circumstances where unanimous consent cannot be achieved[992]. In order to help maintain a level of neutrality, the conciliation commission must not be composed of any members whose nationality is the same as is involved in the dispute[993]. The benefits of this mechanism are that it provides states parties with a peaceful means with which to address allegations of racial discrimination, further emboldening member states as stakeholders in fulfilling the aims laid out within the ICERD's preamble.

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989 Weissbrodt, D., 2010. The Approach of the Committee on the Elimination of Racial Discrimination to Interpreting and Applying International Humanitarian Law. *Minnesota Journal of International law*, 19, pp. 334–335.
990 ICERD, Art. 12.
991 Ibid.
992 ICERD, Art. 12(1)(b).
993 ICERD, Art. 12(2).

The final implementation mechanism outlined within the ICERD endows the ICERDComm with the competency to receive reports of rights violations within its operational remit[994]. Much like its ICESCR counterpart detailed earlier[995], the reporting mechanism for the ICERD allows either individuals or groups of individuals to submit allegations of abuses made by a state party providing they lie within that state's jurisdiction. This robust complaints procedure provides a potential recourse for those suffering racial discrimination by the state, lessening the onus upon other states to communicate potential rights allegations, thereby alleviating some of the potential political tensions that can arise as a result of inter-state reporting and reactionary assertions of state sovereignty. An issue that complicates the successful implementation of the complaints procedure is the relatively small number of member states who have made explicit declarations under Art. 14[996], which has the undesirable effect of limiting the applicability of the procedure as a means with which ICERDComm can engage directly with victims of state sanctioned rights violations[997].

5.4.3 ICERD and its Applicability for the Uyghur: 'Indirect Racial Discrimination' by way of Religious Repression

Religion plays an intransigent component of the Uyghurs' ethno-religious identity, the discrimination of which frequently takes place on religious grounds. In order to fully appraise the applicability of the ICERD with regards to the Uyghur minority, it is

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[994] ICERD., Art. 14.

[995] See *supra* section: 5.3.3 Optional Protocol to the ICESCR.

[996] As of the ICERDComm's most recent annual report, of the 176 states parties to the ICERD, 55 have made a declaration under Art. 14. See: United Nations Committee on the Elimination of Racial Discrimination, 2014. *Report of the Committee on the Elimination of Racial Discrimination (A/69/18)*, Geneva. p. 130.

[997] Despite its existence for over 50 years, ICERDComm has only received and considered 50 communications under Art. 14. Theo Van Boven raises the possibility that this relatively low level of engagement is likely due to the apprehension of states parties from formally accepting Art. 14, it wasn't until 1982 that Art. 14 received the 10 declarations necessary to allow ICERDComm to avail of the complaints procedure. See: Boven, T. Van, 2000. The Petition System under the International Convention on the Elimination of All Forms of Racial Discrimination - A Sobering Balance-Sheet. *Max Planck Yearbook of United Nations Law*, 4, pp. 275–278.

important to first determine whether religious discrimination falls within the ICERD's scope.

Nowak makes the argument that rights should not be rigidly defined, but must be considered dynamically, allowing for interpretation based on the circumstance and context in which they are used[998]. Such an approach would allow such rights to remain relevant through ever shifting socio-political contexts and circumstances, further galvanising them as a viable means of realising the UDHR's guiding principles. With this in mind, Alves notes that the role of the ICERDComm has evolved, from its inception during the 1960s when discrimination was primarily based on physical features[999], to more recent times where religion often forms the basis for discrimination.

Previously in this chapter, the intersectionality of racial and religious discrimination was briefly touched upon when describing the ICERD's beginnings as a single instrument to address all forms of discrimination, including on grounds of religion[1000]. Despite the ICERD's eventual establishment as a treaty specifically dedicated to racial discrimination, this intersectionality remains a reality. Alves succinctly articulates the relevance of religion within the ICERD as a result of this intersectionality:

> Of course religion is neither nationality nor ethnic origin, let alone race or colour. But since religion has historically been one of the defining components of ethnicity, and ethnic origin is mentioned as one of the bases of racial discrimination, it is generally considered fitting that CERD should pay attention to the situation of religious minorities.[1001]

Indeed, despite the deliberate efforts to remove the issue of religious discrimination from the ICERD's remit, the intersectionality of religion and ethnicity has been recognised by the ICERDComm on several occasions, as can be seen within its

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998 Nowak, M., 2005. p. 648.
999 Alves, J. a L., 2008. Race and Religion in the United Nations Committee on the Elimination of Racial Discrimination. *University of San Francisco Law Review*, 42(4), p. 942.
1000 See *supra* section: 5.4.1 ICERD's Substantive Articles with Respect to Minorities.
1001 Alves, J. a L., 2008. loc.cit, 42(4), p. 951.

Concluding Observations in response to Periodic Reports submitted by numerous states parties[1002]. Such observations include ICERDComm's response to the issue of potential religious discrimination within Georgia, where it stated:

> Religious questions are of relevance to the Committee when they are linked with issues of ethnicity and racial discrimination. In this connection, and while acknowledging the effort made by the State party to fight ethno-religious violence, the Committee remains concerned about the situation of ethno-religious minorities, such as the Yezidi-Kurds[1003]

Also of note is the ICERD's Concluding Observations to France in 2005, following France's promulgation of a law banning overly conspicuous religious symbols from within primary and secondary level schools, on which the ICERDComm commented:

> The Committee recommends to the State party that it should continue to monitor the implementation of the Act of 15 March 2004 closely, to ensure that it has no discriminatory effects and that the procedures followed in its implementation always place emphasis on dialogue, to prevent it from denying any pupil the right to education and to ensure that everyone can always exercise that right.[1004]

Such statements, which fully recognise the intersectionality of racial and religious discrimination, demonstrate that the ICERDComm has interpreted its competency as defined within the ICERD to provide comment on issues concerning religious discrimination. Indeed, as Thornberry notes, the "thrust of the convention towards the

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[1002] United Nations Committee on the Elimination of Racial Discrimination, 2007. *Concluding Observations of the Committee on the Elimination of Racial Discrimination - Nigeria (CERD/C/NGA/CO/18)*, Geneva. Para. 20; United Nations Committee on the Elimination of Racial Discrimination, 2005. *Concluding Observations of the Committee on the Elimination of Racial Discrimination - Ireland (CERD/C/IRL/CO2)*, Geneva. Para. 18.
[1003] United Nations Committee on the Elimination of Racial Discrimination, 2007. *Concluding Observations of the Committee on the Elimination of Racial Discrimination - Georgia (CERD/C/GEO/CO/3)*, Geneva. Para. 18.
[1004] United Nations Committee on the Elimination of Racial Discrimination, 2005. *Concluding observations of the Committee on the Elimination of Racial Discrimination - France (CERD/C/FRA/CO/16)*, Geneva. Para. 18.

elimination of 'all forms' of racial discrimination" allows for a broad interpretation of its scope[1005].

The necessity for such a dynamic and broad interpretation of the ICERD's scope was brought sharply into focus following the attacks that took place on 11 September 2001[1006]. The ensuing securitisation of state borders through policies carried out under the auspices of counter terrorism resulted in the targeting of Muslims in a discriminatory fashion through selective profiling[1007]. Alves highlights ICERDComm's increasingly active role in the face of such discrimination by way of religious identity[1008], illustrating how the changing nature of discrimination in contemporary society required a level of dynamism from the ICERDComm in order to maintain its ability to provide full effect to its mandate.

While such a broad reading of the ICERD allows for a degree of thematic leeway concerning issues relating to religious discrimination, the ICERDComm is still restricted from freely engaging in such issues. In 2009, the ICERDComm sought to clarify its remit in its publication of General Recommendation No. 32, stating:

> The principle of enjoyment of human rights on an equal footing is integral to the Convention's prohibition of discrimination on grounds of race, colour, descent, and national or ethnic origin. The "grounds" of discrimination are extended in practice by the notion of "intersectionality" whereby the Committee addresses situations of

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[1005] Thornberry, P., 2005. Confronting racial discrimination: A CERD perspective. *Human Rights Law Review*, 5(2), p. 258.

[1006] Chon & Arzt raise the issue of religious discrimination in light of the global reaction to the 911 attacks, stating that "Religion is a component missing from racial anti-discrimination theory and doctrine for reasons that have little to do with the absence of actual discriminatory action based on religion. If anything, the war on terror has heightened the need for legal shields against religious discrimination as an aspect of racial discrimination". See: Chon, M. & Arzt, D., 2005. Walking While Muslim. *Law and Contemporary Problems*, 68(215), p. 237.

[1007] For further reading on the discriminatory effects of racial profiling, see: Ramirez, D.A., Hoopes, J. & Quinlan, T.L., 2003. Defining Racial Profiling in a Post-September 11 World. *American Criminal Law Review*, 40, pp. 1195–1233; Davies, S.L., 2003. Profiling Terror. *Ohio State Journal of Criminal Law*, 1, pp. 45–101; Chandrasekhar, C., 2003. Flying While Brown: Federal Civil Rights Remedies to Post-9/11 Airline Racial Profiling of South Asians. *Asian American Law Journal*, 10(2), pp. 215–225; Nelson, L., 2003. The Conservative Case Against Racial Profiling in the War on Terror. *Albany Law Review*, 66, pp. 329–342.

[1008] Alves, J. a L., 2008. op.cit., pp. 953–959.

> double or multiple discrimination - such as discrimination on grounds of gender or religion – when discrimination on such a ground appears to exist in combination with a ground or grounds listed in article 1 of the Convention. Discrimination under the Convention includes purposive or intentional discrimination and discrimination in effect. Discrimination is constituted not simply by an unjustifiable "distinction, exclusion or restriction" but also by an unjustifiable "preference", making it especially important that States parties distinguish "special measures" from unjustifiable preferences.[1009]

While re-asserting its acknowledgement of the intersectionality of religious and racial discrimination, the above statement clarifies the ICERDComm's limitations by stating that it "addresses situations of double or multiple discrimination", or otherwise referred to as "aggravated discrimination"[1010]. As such, the ICERDComm's ability to address religious discrimination is determined by whether such discrimination also falls within the grounds of "race, colour, descent, or national or ethnic origin"[1011].

In light the ICERDComm's recognition of the nexus of race and religion with regards to discrimination, and its comments concerning the discriminatory racial profiling of Muslims following September 11th[1012], a reasonable argument can be made that Muslim identity represents the manifestation of this intersection. Berry considers that the discriminatory targeting of Muslims by way of religious identity amounts to indirect discrimination, where by a "discriminatory act targets a religious group, but as a consequence disproportionately affects a particular ethnic group which subscribes to that religion"[1013].

[1009] CERD/C/GC/32, Geneva. Para. 7.
[1010] United Nations General Assembly, 2000. *World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/PC.1/7)*, Geneva. Para. 8.
[1011] ICERD, Art. 1.
[1012] United Nations General Assembly, 2002. *Report of the Committee on the Elimination of Racial Discrimination (A/51/18)*, New York. Paras. 121, 223, 338, 427.
[1013] Berry, S.E., 2011. Bringing Muslim Minorities Within the International Convention on the Elimination of All Forms of Racial Discrimination-Square Peg in a Round Hole? *Human Rights Law Review*, 11(3), p. 430.

From an examination of China's Periodic Reports that have been submitted following its ratification of the ICERD, China too demonstrates an understanding of this intersectionality. Contained within each report are frequent comments concerning religious practices and minority groups such as the Uyghur. Within its initial report published in 1983 following its ratification of the ICERD, China asserted its role in "opposing racism and racial discrimination" at both the international and national level, where it claims such injustices are "left over from history"[1014]. It's second report in 1985 goes into further detail, positioning itself as a progressive force making amends caused by the "policy of national oppression and discrimination pursued by the feudal dynasties of past ages and by the Kuomintang Government, plus imperialist aggression in modern times"[1015].

The 1983 report also details China's efforts through law and policy to protect the "lawful rights and interests of minority nationalities and upholds and develops the relationship of equality, unity and mutual assistance among all of China's nationalities"[1016]. It specifically refers to the CCP's adoption of the "Common Program" in 1949, which served as an interim constitution for five years following the establishment of the PRC[1017]. Drafted during the CCP's period of territorial consolidation, it consequently contained extensive rights relating to minorities, whom the CCP were seeking support of as part of its consolidation efforts at the time. The 1983 report details the rights afforded to minorities noting that:

> The Common Program further stipulated that in areas where minorities live in compact communities, regional autonomy shall he

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[1014] United Nations Committee on the Elimination of Racial Discrimination, 1983. *Initial Reports Submitted by States Parties Under Article 9 of the Convention - China (CERD/C/101/Add.2)*, Geneva. Para. 6.
[1015] United Nations Committee on the Elimination of Racial Discrimination, 1985. *Second Periodic Reports of States Parties due in 1985 - China (CERD/C/126/Add.1)*, Geneva. Para. 11.
[1016] CERD/C/101/Add.2, Para. 6(1)(b).
[1017] Wu, X., 2014. From Assimilation to Autonomy: Realizing Ethnic Minority Rights in China's National Autonomous Regions. *Chinese Journal of International Law*, 13(April), pp. 64–68. For further reading on the PRC's interim constitution, see *supra* section: 2.4 The Struggle of Law under Communism, 1949-1976.

> practised and that the people of all nationalities have the freedom to use and develop their own spoken and written languages, to preserve or reform their own ways and customs, and to practise religion. The Common Programme also stipulated that the government should assist all minorities in their development in the political, economic, cultural and educational spheres.[1018]

Plainly aware that the Common Program had since been superseded by several constitutions in the time since, the report goes on to state that the "stipulations mentioned above have been incorporated in the Constitution and all its revised versions"[1019]. However, this is not the case. China's 1975 constitution, drafted during the ideological upheaval of the Cultural Revolution, bears minimal reference to minorities, with Art. 4 declaring that "All the nationalities are equal. Big-nationality chauvinism and local-nationality chauvinism must be opposed"[1020]. The 1975 constitutions' equal emphasis of both majority *chauvinism* and minority *chauvinism* serves to both undermine the spirit of minority rights and underplay the greater risk posed by the *chauvinism* of the majority in respect to minorities. Another issue with China's 1983 report is its assertion that the above quoted stipulation concerning the freedom of religious practice has also been incorporated into subsequent constitutions[1021]. Indeed, as detailed within China's most recent constitution[1022], its provision for religious freedom only extends to the right to "religious belief" and not its practice[1023].

[1018] United Nations Committee on the Elimination of Racial Discrimination, 1983. *Initial Reports of States Parties Due in 1983 - China (CERD/C/101/Add.3)*, Geneva. Para. 3.
[1019] CERD/C/101/Add.3, Para. 4.
[1020] National People's Congress, 1975. *Constitution of the People's Republic of China of 1975: 中华人民共和国宪法, 1975 (宪法 (1975))*. For English translation, see: Chin, K., 1977. The 1975 Constitution of the People's Republic of China. *Hastings International And Comparative Law Review*, 1, pp. 29–30.
[1021] CERD/C/101/Add.3, Para. 4.
[1022] *Constitution of the People's Republic of China of 1982,* op.cit., Art. 36.
[1023] For further discussion of China's constitutional protections with regards to religion, see *supra* section: 3.2.1 CCP Ideology Manifested in P.R.C. Law & Policy.

China submitted its second Periodic Report in 1985; it also highlights the intersectionality of religion and ethnicity with regards to minority identity[1024]. It emphasises the importance of Islam as part of Chinese Muslim minority identity, stating that "Islam has a wide influence among 10 minority nationalities, including the Huis, Uygurs and Hazaks"[1025]. Under the heading "customs and religious belief", the report details some of the measures taken by the Chinese authorities to "fully ensure that people enjoy freedom of religious belief"[1026], with sections dedicated to both "minority nationalities' customs concerning clothing and ornaments"[1027] and the "dietary habits of the minority nationalities"[1028]. Conversely, under the auspices of eliminating "all forms of national oppression and discrimination left over from the past", the report notes that China's nationality policies were to "put an end to economic poverty and cultural backwardness in the minority areas"[1029]. While allowing for the potential inaccuracies that can be caused as a result of transliteration, the fact that such a statement associates minority areas with "cultural backwardness" raises questions concerning the tone and consistency of China's rhetoric, given that the same passage declares China's intention to eliminate all forms of "national oppression and discrimination"[1030].

Indeed, such inconsistencies were observed by the ICERDComm within its Concluding Observations. Within its 1985 report China also referred to some of its minorities religions as "primitive religions"[1031]. The ICERDComm sought clarification within its Concluding Observations of the same report, querying "about what was meant by the

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[1024] "Each national minority in China has its own habits and customs. Some of the customs and habits are related to important historical events and figures; some are related to a nationality's economy, culture and life-style; and others are related to a nationality's religion". See: CERD/C/126/Add.1, Geneva. Para. 9.
[1025] CERD/C/126/Add.1. Para. 10.
[1026] CERD/C/126/Add.1, Para. 80.
[1027] CERD/C/126/Add.1, Para. 86.
[1028] CERD/C/126/Add.1, Para. 87.
[1029] CERD/C/126/Add.1, Para. 12.
[1030] Ibid.
[1031] CERD/C/126/Add.1. Para. 10.

term 'primitive religions' mentioned in the report"[1032], China responded stating that "that there was no derogatory connotation in the Government's use of the term 'primitive religions'"[1033].

Within China's subsequent reports, it continually re-emphasises its efforts and progress made with regards to implementation of rights and protections contained within the ICERD. It notes many positive steps including the recruiting of minorities into positions within both regional governments and regional People's Congresses[1034], an increase in available teaching material in minority languages[1035], and the rapid expansion of economic development in minority regions[1036]. Within the area of religious freedom, China made the assertion that:

> In China no person has been arrested or sentenced for reason of religious belief. While safeguarding the freedom of religious belief, the Chinese Government prohibits any criminal activity in the name of religion. The purpose is to protect the safety of life and property of all the ethnic groups and protect normal religious activities from being tarnished and impaired. This has won the support of all ethnic groups including religious believers[1037]

The above statement marks a departure from China's initial Periodic Report, and reveals a shift in rhetoric to one that is more consistent in its protection of "religious belief" specifically, as accorded within China's current constitution.

However, contained within the Concluding Observations to these reports, the ICERDComm countered China's claims by expressing concern over many of the same

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[1032] United Nations General Assembly, 1987. *Report of the Committee on the Elimination of Racial Discrimination (A/42/18)*, New York. Para. 335.
[1033] A/42/18. Para. 346.
[1034] United Nations Committee on the Elimination of Racial Discrimination, 1996. *Seventh Periodic Reports of the States Parties Due in 1995 (CERD/C/275/Add.2*)*. Paras. 62-66.
[1035] CERD/C/275/Add.2*, Para. 82(c).
[1036] CERD/C/275/Add.2*, Paras. 23-25.
[1037] United Nations Committee on the Elimination of Racial Discrimination, 2009. *Reports Submitted By States Parties Under Article 9 of the Convention - China (CERD/C/CHN/10-13)*, Geneva. Para. 119.

areas. With regards to China's economic development of minority areas including Xinjiang, the ICERDComm noted that:

> Concern is expressed at the underrepresentation in business in some areas of persons of minority groups, which may be indicative of structural obstacles to their enjoyment of increases in economic prosperity. Concern is also expressed with regard to allegations that members of minority nationalities may not enjoy the same working conditions as persons of Han origin.[1038]

The report also stated that such economic development should not have the effect of eroding minority identity, stating that "efforts with respect to economic development and national modernization should not deprive members of such ethnic groups of their right to their own culture, in particular their traditional ways of life"[1039]. This raises the issue of ethnic stratification within Xinjiang's labour market[1040], seen by many scholars as a contributory factor causing the continual ethnic unrest that exists between the Uyghur and Han in China[1041].

On the subject of education[1042], the ICERDComm noted with concern that minority children remain underrepresented at both secondary and tertiary levels of education[1043], and that the "instruction provided in the curricula on the history and culture of minority nationalities is not adequate as compared to the education provided concerning the history and culture of persons of the Han nationality"[1044]. Furthermore, the report went on to state that "concern is expressed about whether the efforts in

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[1038] United Nations Committee on the Elimination of Racial Discrimination, 1996. *Concluding Observations of the Committee on the Elimination of Racial Discrimination - China (CERD/C/304/Add.15)*, Geneva. Para. 16.
[1039] CERD/C/304/Add.15, Para. 18.
[1040] For further reading on minority employment in Xinjiang, see *supra* section: 3.3.3 Economy and Employment
[1041] Davis, E., 2008. op.cit., p. 24; Howell, A. & Fan, C.C., 2011. op.cit., p. 136; for a statistical analysis of the income disparity that exists between Uyghur and Han Chinese in Xinjiang, see: Wu, X. & Song, X., 2014. op.cit., pp. 58–172.
[1042] For further reading on Uyghur minority education in Xinjiang, see *supra* section: 3.3.2 Education and Language.
[1043] CERD/C/304/Add.15, Para. 17.
[1044] Ibid.

teaching and education to combat prejudices which lead to racial discrimination are sufficient"[1045], raising questions over concerning China's over the efficacy of its implementation of the ICERD in respect to the educational sphere.

In a manner that is consistent with its analogous Concluding Observations concerning other states parties, the ICERDComm has also demonstrated the applicability of religion as part of its remit in addressing racial discrimination through its Concluding Observations reports on China. In its most recent such report, the ICERDComm highlighted the inconsistencies that exist between China's statements concerning religious freedom and the persistent claims that such freedoms are encroached upon in practice, noting that:

> Notwithstanding the assurances provided by the State party delegation, the Committee remains concerned about reports that members of some minority groups do not fully enjoy freedom of religion. (art. 5(d))
>
> Taking into account the intersectionality between ethnicity and religion, the Committee recommends that the State party ensure respect for the right of members of all ethnic groups to freely enjoy freedom of religion.[1046]

In the 1996 Concluding Observations report, the ICERDComm states:

> Taking into consideration that a distinctive religion is essential to the identity of several minority nationalities, concern is expressed with regard to the actual enjoyment of the right to freedom of religion in the State, particularly in the Muslim parts of Xinjiang and in Tibet, including the preservation of places of worship and the exercise of religious rights by members of all ethnic groups.[1047]

[1045] CERD/C/304/Add.15, Para. 19.
[1046] United Nations Committee on the Elimination of Racial Discrimination, 2009. *Concluding observations of the Committee on the Elimination of Racial Discrimination - China (CERD/C/CHN/CO10-13)*, Geneva. Para. 20.
[1047] CERD/C/304/Add.15, Para. 14.

The above statements are highly significant with regards to Uyghur minority rights. As has been detailed previously, the intersectionality of religious discrimination with that of racial discrimination is both a reality and something that has been recognised as within ICERDComm's authority. Just as the argument can be made that such intersectionality manifests in Muslim identity, the same argument could also be made for the Uyghur[1048], whose population makes them the largest Muslim minority group in Xinjiang[1049]. Accordingly, the above statements demonstrate that the ICERDComm recognises that the Uyghurs' religious identity forms a core part of their identity as a minority. Resultantly, it follows that any discrimination on religious grounds that occurs in a manner that may disproportionately affect the Uyghur could amount to "double or multiple discrimination"[1050], therefore falling within the definition of racial discrimination as defined by the ICERD.

It therefore stands to reason that the multitude of policies and regulations outlined previously which have the effect of restricting religious freedoms[1051], may also be considered to be within the ICERDComm's authority in addressing issues of racial discrimination. While such regulations concerning the restriction of religious freedoms may not be explicitly be directed at the Uyghur, the method in which such regulations are applied has the effect of being discriminatory to the Uyghur.

The Xinijang Uyghur Autonomous Region, its name illustrating the CCP's designation of regional autonomy in "areas where people of minority nationalities live in compact communities"[1052], contains the vast majority of the PRC's Uyghur population. Further, the majority of the restrictions upon religious practices that exist in Xinjiang are enacted by the XUARPC-SC, a municipal body established as an organ of "self-government" for

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[1048] For further reading on Uyghur religiosity, see *supra* section: 1.3 The Religiosity of the Uyghurs in Xinjiang.
[1049] Toops, S., 2014. Where Inner Asia Meets Outer China: The Xinjiang Uyghur Autonomous Region. In *Eurasian Corridors of Interconnection: From the South China to the Caspian Sea*. New York: Routledge. p. 62.
[1050] CERD/C/GC/32, Para. 7.
[1051] See *supra* chapter: Chapter 3: The Effects of China's Law and Policy on Xinjiang's Uyghur.
[1052] Constitution of the People's Republic of China of 1982. op.cit., Art. 4.

the "exercise of the right of autonomy"[1053]. It follows that any laws or regulations promulgated by the XUARPC-SC are regionally specific, with that region specifically established due to its highly concentrated Uyghur population[1054].

Consequently, any laws or regulations which curtail religious freedoms that are enacted by the XUARPC-SC within Xinjiang will consequently disproportionately affect the Uyghur minority, resulting in discrimination through application. Consequently, it is posited that such regulations fall within the definition "double or multiple discrimination", existing as religious discrimination by design and racial discrimination in practice.

5.5 Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC)[1055] first came into force on 2 September 1990, and is perhaps the most successfully implemented instrument among the core treaties of the United Nations. Despite its relatively recent establishment when compared to its analogues, the CRC bears the distinct achievement of securing the largest number of states parties of all the core treaties[1056], providing the CRC with a level of jurisdictional reach that is without peer. The relative success of the CRC serves to underscore the importance with which states parties, irrespective of differing cultural or political values, hold regarding the rights and protections it contains. By virtue of its focus on the rights of the child, the CRC's thematic scope differs from either the CCPR or the ICESCR, with its provisions applicability limited the rights of children, the definition of which is described within Art. 1 as "every human being below the age of

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[1053] Constitution of the People's Republic of China of 1982. op.cit., Art. 4.
[1054] Cunningham, C.P., 2012. op.cit., p. 9.
[1055] United Nations General Assembly, 1989. *Convention on the Rights of the Child (A/RES/44/25)*, New York.
[1056] As of May 2015, 195 member states have ratified the CRC, with only two member states, the United States and Somalia, remaining as signatories.

eighteen years unless under the law applicable to the child, majority is attained earlier"[1057].

The CRC's structure is broadly similar to the ICERD; with its first section detailing the substantive provisions of the treaty, and the second section outlining the treaties operational structure through the establishment of the CRC's dedicated treaty (CRCComm)[1058], and the establishment of a Periodic Report procedure to help facilitate treaty implementation[1059].

In a manner that is consistent with its treaty counterparts including the CCPR[1060], the CRC demonstrates an understanding of the necessity of supplementary protections for minorities in order to protect minority identity and its manifestation in culture, language and religion[1061]. Indeed, the specific vulnerabilities faced by minorities by virtue of their status as a minority is further heightened for minority children, whom also face the threat of additional marginalisation and discrimination as a result of their status as a child[1062]. The CRCComm demonstrates and understanding of this within its reporting on the implementation of the CRC by states parties, and as will be demonstrated subsequently in this chapter, has paid particular attention to the vulnerabilities that minority children with respect to the rights of the CRC.

As such, CRCComm has shown that the protections contained within the CRC are highly applicable for minority children. While it is beyond the scope of this paper to exhaustively detail each of the CRC's provisions in its entirety, a selection of provisions are of particular relevance to minorities will be outlined with respect to the protections they provide minorities, and ensuing obligations placed upon state parties to provide such protections.

[1057] CRC, Art. 1.
[1058] CRC. Art. 43.
[1059] CRC. Art. 44.
[1060] CCPR, Art. 27.
[1061] CRC, Art. 30.
[1062] Stavenhagen, R., 1994. Double Jeopardy: The Children of Ethnic Minorities. *UNICEF Innocenti Occasional Papers*. p. 20.

5.5.1 CRC's Substantive Articles with Respect to Minorities

As highlighted earlier, Art. 1 sets out to define the applicability of the CRC for every human being under the age of 18[1063]. Art. 2 further elaborates upon this inclusive sentiment, obligating states parties to realise the aims of Art. 1 by prohibiting any discrimination on a relatively wide range of grounds including race, political opinion and religion.

This provision complements the ICERD's protections in so far as it prevents states parties from discriminating against children on the basis of either their own identity, or their parents' identity. The provision's inclusion of religion and political opinion demonstrates an additional robustness in the protection that is lacking from the ICERD's overly pragmatic focus on racial discrimination.

As the wide ranging assortment of prohibited grounds for discrimination illustrates, Art. 2 is highly applicable to children of minorities, many of whom suffer discrimination on the basis of their identity as a minority[1064], of which religion, ethnicity or language may form a core component. Indeed, this is further evidenced within the CRCComm's Concluding Observations in response to China's state reports, where minorities have been specifically referenced on a number of occasions with respect to the issue of discrimination[1065]. Further, Art. 2(2) expands on the enforcement of non-discrimination, providing an obligation upon states parties to ensure that children are not to be

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[1063] CRC, Art. 1.

[1064] For additional reading on Xinjiang's education language policies, see *supra* section: 3.3.2 Education and Language. For additional reading on religious policies that affect those under 18 in Xinjiang, see *supra* section: 3.3.1 Religion and Culture.

[1065] United Nations Committee on the Rights of the Child, 2005. *Concluding Observations: China (including Hong Kong and Macau Special Administrative Regions) (CRC/C/CHN/CO/2)*, Geneva. Art. 32; United Nations Committee on the Rights of the Child, 1996. *Concluding Observations of the Committee on the Rights of the Child: China (CRC/C/15/Add.56)*, Geneva. Art. 40.

discriminated against on the basis of their "parents, legal guardians, or family members"[1066].

Art. 14 is also of relevance to minority children as it offers protections relating to "freedom of thought, conscience and religion" all of which must be respected by states parties as a result[1067]. Art. 14(2) serves to ensure that states parties also respect parents' right to "provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child"[1068]. As outlined previously, religion often forms a considerable component of minority identity[1069]. By protecting a child's right to freedom of religion this provision serves to facilitate the protection of minority children's' capacity to develop in a manner that is consistent with their identity as a minority. Art. 14(2) compliments this protection by ensuring that states parties respect the parents' freedom to provide direction in the development that is consistent with their own beliefs. With respect to minorities in particular, this has the effect of facilitating the transmission of religious or cultural values between generations, which in turn will serve to rebuff minority identity from the homogenising pressures of the dominant majority culture. Art. 14(3) provides a necessary restriction clause by ensuring that any manifestations of religion or belief do not conflict with national laws that are "necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others"[1070].

Art. 17 concerns the child's right to access information from a plurality of different sources. It ensures that states parties disseminate "information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health"[1071]. The provision then proceeds to provide further elaboration upon the modes of

[1066] CRC, Art. 2.
[1067] CRC, Art. 14(1).
[1068] CRC, Art. 14(2).
[1069] See *supra* section: 5.2.4 Article 18 – Freedom of Religion.
[1070] CRC, Art. 14(3).
[1071] CRC, Art. 17.

dissemination, including the encouragement of "international co-operation in the production, exchange and dissemination of such information from a diversity of cultural, national and international sources"[1072], and the "production and dissemination of children's books"[1073]. Perhaps of most benefit to children of minorities in particular is Art. 17(d), which explicitly refers to the language needs of minority groups, many of whom are demarcated from the majority population due to linguistic differences[1074]. This helps to fulfil the spirit of Art. 17 in ensuring that all children may benefit from sufficient access to information by providing specific protections for minorities who may otherwise suffer from systematic discrimination as a result of their minority language being inadequately catered for by "mass media"[1075]. Also of note with respect to minorities is the protection contained within Art. 17(a), which further encourages mass media to disseminate "information and material of social and cultural benefit to the child and in accordance with the spirit of Art. 29"[1076]. This protection links the right to information contained within Art. 14 to the aims of education espoused within Art. 29; which ensures the children may be educated with respect to their "cultural identity, language and values"[1077].

Art. 20 concerns the child's right to care in the face of removal from the family environment[1078]. While not specifically orientated towards minorities, it may become applicable with respect to further supporting the child's "freedom of thought, conscious and religion"[1079]. Art. 20 also encourages due consideration toward the child's "ethnic, religious, cultural and linguistic background" with respect circumstances where a child must be deprived of their family environment[1080], providing additional protections

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[1072] CRC, Art. 17(b).
[1073] CRC, Art. 17(c).
[1074] Language is one of the three defining criterions used within the CCPR to distinguish minorities. See, CCPR, Art. 27.
[1075] CRC, Art. 17(e).
[1076] CRC, Art. 17(a).
[1077] CRC, Art. 29(c).
[1078] CRC, Art. 20.
[1079] CRC, Art. 14(1).
[1080] CRC, Art. 20(3)

relevant to children of minorities, whose ethnic, religious, cultural and linguistic background often differs from the background of the majority population.

As detailed previously, Art. 29 serves to provide direction for the education of children that must be agreed upon by states parties[1081]. It encourages the full development of a child's abilities[1082], and an appreciation of the principles of the United Nations[1083]. Of particular relevance to children of minorities, Art. 29(c) obliges states parties to ensure that education plays a role in developing respect for the "cultural identity, language and values" of children and their parents, irrespective of whether they originate from within the state party or not. This has the effect of ensuring that the educational curricula fosters both an understanding and respect for differing cultural and ethnic identities of children, facilitating the development of a society of tolerance for differing groups of people who may not share cultural values. This is further supported by Art. 29(d), which illustrates the goals with which the provision seeks to achieve in the existence of a "free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin"[1084]. The explicit reference to ethnicity religion and "indigenous origin" within Art. 29(d) further underscores the importance of education in addressing the issue of discrimination of minorities.

Despite the applicability of the above provisions towards the protection of children of minorities, Art. 30 is unique in that it offers supplementary protections specifically for the purposes of protecting minorities. The substance of Art. 30 is an almost direct copy of its counterpart in the CCPR[1085], differing only by its inclusion of children of "indigenous origin"[1086]. Art. 30 shares the same benefits and limitations in its

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[1081] CRC, Art. 29.
[1082] CRC, Art. 29(a).
[1083] CRC, Art. 29(b).
[1084] CRC, Art. 29(d).
[1085] CCPR, Art. 27.
[1086] Doek highlights the significance of this owing to the fact that indigenous peoples may not always be considered as minorities, providing examples of Central American states parties

protections with Art. 27 of the CCPR as a result[1087]. However, its inclusion in the CRC is significant in that it provides protections for children of minorities in states who are not party to the CCPR, further demonstrating the importance of the CRC in general, and its applicability towards the Chinese Uyghur in particular.

5.5.2 China's minorities and the Implementation of the CRC: Limitations in Practice

The CRC's Periodic Report procedure, akin to its treaty counterparts, obliges all states parties to submit periodical reports detailing the measures taken regarding the advancement of the rights and duties enshrined within the CRC.

China became state party to the CRC on 2 March 1992. As detailed within the CRC, all states parties must submit an initial report on the measures taken to realise the rights of the CRC within two years of "entry into force"[1088]. China's first Periodic Report, submitted in 1995[1089], asserts China's position as a "consistent respecter and defender of children's rights"[1090], with reference to its role as co-sponsor of the draft resolution calling for the adoption of the CRC. The report proceeds to document China's existing constitutional and statutory protections that correspond to the CRC's various rights and state obligations. Of interest within the initial report with respect to minorities are China's comments on the "practical enforcement" of measures taken under the concept of non-discrimination (Art. 2), with the report noting that "the state and society make allowance for the specific circumstances of children from ethnic minorities, children in poor districts and disabled children through special preferential measures and political

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where the indigenous peoples hold majority status. See: Doek, J.E., 2008. The United Nations CRC. In K. Henrard & R. Dunbar, eds. *Synergies in Minority Protection*. p. 289.

[1087] For further information concerning the protections of Art. 27, see *supra* section: 5.2.2 Article 27 – Minority Rights.

[1088] CRC, Art. 44(1)(a).

[1089] United Nations Committee on the Rights of the Child, 1995. *Initial Reports of States Parties due in 1994: Addendum - China (CRC/C/11/Add.7)*, Geneva.

[1090] CRC/C/11/Add.7, Para. 1.

concessions to ensure that their rights are effectively safeguarded"[1091]. This statement demonstrates China's stated willingness to implement positively discriminatory measures in order to ensure that minority children's rights are protected.

In reference to "freedom of thought, conscience and religion" (Art. 14), the initial report provides the guarantee that "freedom of religious belief of citizens of every nationality" is provided for[1092]. It continues to describe the measures that China has taken in order to realise the guarantee through the provision of financial and labour support for the upkeep of places of worship and support for religious institutions[1093], before deferring to "detailed accounts" contained within China's Periodic Reports submitted to the ICERDComm[1094]. While China's statement has the effect providing further reinforcement to the applicability of religion as part of the ICERDComm's competency, it also results in the minimisation of the information provided specifically to the CRCComm with respect to children's right of religious belief.

Fittingly, the CRCComm sought to address the issue of religious freedom for minority children within its Concluding Observations to the interim report[1095]. It noted its continued concern "about the actual implementation of the civil rights and freedoms of children"[1096], emphasizing that "the implementation of the child's right to freedom of thought, conscience and religion should be ensured in the light of the holistic approach of the Convention"[1097]. The CRCComm also sought to address the right to freedom of religion in reference to Art. 30, expressing its "deep concern in connection with violations of human rights of the Tibetan religious minority"[1098]. In a manner similar to the ICERDComm, the CRCComm has also demonstrated its deference to the concept

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[1091] CRC/C/11/Add.7, Para. 31.
[1092] CRC/C/11/Add.7, Para. 67.
[1093] CRC/C/11/Add.7, Para. 68.
[1094] Ibid.
[1095] CRC/C/15/Add.56.
[1096] CRC/C/15/Add.56, Para. 17.
[1097] CRC/C/15/Add.56.
[1098] CRC/C/15/Add.56, Para. 20.

of intersectionality of religion with that of minority identity within its Concluding Observations.

China's second Periodic Report[1099], submitted in 2005, shares much with its initial report in tone and substance, stating China's progress made in promoting and protecting the rights and interests of children. The report, like its predecessor, adds context to the assertion that China respects the rights provided by the CRC by highlighting relevant constitutional protections, legal statutes and some specific examples where appropriate. One such example relevant to minorities is China's claim that the CRC has been fully translated into "Uighur, Kazakh and Mongolian", which is in accordance with Art. 42 of the CRC, which states that "States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike"[1100]. Indeed, such a positive step was noted by the CRCComm within its Concluding Observations to the second report[1101]. However, a shadow report published by an NGO called the World Uyghur Congress (WUC) challenged China's claim that any translation actually exists, stating that:

> The World Uyghur Congress (WUC) notes that it has not been able to locate a translation of the Convention - as well as other vital human rights treaties and their respective observations – into the Uyghur language either on the national or the Xinjiang Uyghur Autonomous Region (XUAR) government websites.[1102]

While the WUC's claim cannot be considered as irrefutable evidence that China has not translated the CRC into Uyghur, as it has alluded to, it does draw into question the veracity of China's claims with respect of measures taken to bring effect to the rights contained within the CRC. Such questions may also be raised regarding the freedom of religion with respect to children. While China consistently refers to its constitutional

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[1099] United Nations Committee on the Rights of the Child, 2005. *Second Periodic Report of States Parties Due in 1997 - China (CRC/C/83/Add.9)*, Geneva.
[1100] CRC, Art. 42.
[1101] CRC/C/CHN/CO/2. Para. 24.
[1102] World Uyghur Congress, 2012. *Report to the UN Committee on the Rights of the Child*, p. 2.

protection of religious belief[1103]; claiming that such freedoms are "basically consistent with the spirit and main provisions of international agreements and the Convention"[1104], and its willingness to implement positive discrimination policies for "children of ethnic minorities"[1105], there remains persistent evidence to the contrary. Examples of religious policies that specifically affect Uyghur children include the previously detailed regulations that prohibit minors within Xinjiang from engaging in religious practice[1106].

The existence of these discrepancies has also been raised by the CRCComm in its Concluding Observations to the second Periodic Report. The report first recognises China's adoption of a regulation that "guarantees freedom of religion for ethnic minorities in mainland China" before going on to note its concern at reports that "that children, in particular Tibetan Buddhist, Uighur and Hui children, have been restricted in studying and practising their religion, and some cases have been detained for participating in religious activities"[1107]. The same report also re-stated the CRCComm's comments from its initial Concluding Observations report regarding its concerns of persistent discrimination against "ethnic and religious minorities, such as Tibetan, Uighur and Hui children; and internal migrant children"[1108]. Further, when commenting on the availability of educational material in minority languages (Arts. 17(d), 28(b), 30), the CRCComm submitted the recommendation to "Ensure that all teaching and learning materials for the primary and secondary level are also available in ethnic minority languages and with culturally sensitive content"[1109]

[1103] Constitution of the People's Republic of China of 1982, op.cit., Art. 36.
[1104] CRC/C/83/Add.9, Para. 73.
[1105] CRC/C/11/Add.7, Para. 31.
[1106] For additional information on religious restrictions faced by Uyghur minors, see *supra* section: 3.3.1 Religion and Culture.
[1107] CRC/C/CHN/CO/2, Para. 44.
[1108] CRC/C/CHN/CO/2, Para. 30.
[1109] CRC/C/CHN/CO/2, Para. 77(d).

China's most recent Periodic Report was submitted in 2010[1110]. It marks a change in tone from its previous reports to the CRCComm, with China electing to adopt a more defensive posture, providing specific rebuttals in response to the CRCComm's previously raised concerns and recommendations. In response to the CRCComm's recommendation that teaching materials be made available in minority languages in a manner that is sensitive to minority culture, China re-asserted that it "ensures the freedom of all ethnic groups to use and develop their ethnic languages and scripts"[1111]. However, China's reliance on its assertion that minorities are free to use and develop their own languages still falls short of its positive obligations as state party to ensure education is "available and accessible to all children" as accorded by Art. 28[1112].

China also sought to provide a rebuttal to the CRCComm's concerns regarding the right of the child to freedom of religion. Directly referring to allegations of regional policies in Xinjiang that restrict minors from participating in religious activities[1113], China claimed that "In a place with ethnic autonomy such as Xinjiang, there are no stipulations prohibiting children of any age from going to worship at mosques or receiving religious education"[1114]. This defence conflicts with the detailed examples provided previously of policies and regulations that restrict children from exercising their right to religious freedom in attending mosques or receiving a religious education.

China's increasingly defensive posturing can be seen to be in direct response to the CRCComm's concerns with respect to children of minorities. In the CRCComm's most recent Concluding Observations report[1115], it provides its particularly stern comments concerning the persisting issues that surround China's treatment of minority children.

[1110] United Nations Committee on the Rights of the Child, 2012. *Third and Fourth Periodic Reports of States Parties Due in 2009 - China (CRC/C/CHN/3-4)*, Geneva.
[1111] CRC/C/CHN/3-4, Para. 232.
[1112] CRC, Art. 28(d).
[1113] See *supra* section: 3.3.1 Religion and Culture.
[1114] CRC/C/CHN/3-4, Para. 72.
[1115] United Nations Committee on the Rights of the Child, 2013. *Concluding observations on the combined third and fourth periodic reports of China, adopted by the Committee at its sixty-fourth session (CRC/C/CHN/CO/3-4)*.

The report re-emphasises comments made in previous reports regarding discriminatory practices[1116], the flawed provision of bilingual education[1117], and the application of torture of minority children[1118].

Perhaps of most significance are the CRCComm's comments under the heading "Freedom of thought, conscience and religion". The CRCComm raises the issue that China continues to promulgate rules and regulations that have the effect of restricting religious freedoms irrespective of China's "constitutional guarantees of freedom of religious belief for ethnic and religious minorities"[1119]. This pointed comment by the CRCComm highlights the limited efficacy of China's constitutional protections in practice, and in doing so it undermines China's ability to reference to its constitution as a means to demonstrate its sincerity and willingness to fully implement the protections enshrined within the CRC. The CRCComm continues to provide specific concerns regarding minorities including the Uyghur, noting that "Frequent reports indicating that Tibetan and Uighur children and children of Falun Gong practitioners seeking to exercise their right to freedom of religion and conscience are arrested, detained and subject to ill-treatment and torture"[1120]. This assertion that the cause for the discriminatory treatment of minorities such as the Uyghur is a direct result of their attempts to exercise their religious freedoms further demonstrates the central role of religion as both a core part of their identity as a minority, and as a basis for their discrimination by state law and policy.

The CRCComm's recommendation in light of the above comments provides some of its most specific issues with Chinese law and policy. It echoes its comments made within its previous Concluding Observations report regarding its recommendation for the full

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[1116] CRC/C/CHN/CO/3-4, Paras. 25-26.
[1117] CRC/C/CHN/CO/3-4, Paras. 75-76.
[1118] CRC/C/CHN/CO/3-4, Para. 43.
[1119] CRC/C/CHN/CO/3-4, Para. 41.
[1120] CRC/C/CHN/CO/3-4, Para. 41(a).

implementation of China's Regional Ethnic Autonomy Law[1121], a law which was promulgated specifically for the purpose of ensuring that all Chinese citizens residing in areas designated as autonomous regions are afforded the same protections by regional authorities as those within greater China. This law is particularly applicable towards minorities, whom typically form a significant proportion of the population of autonomous regions.[1122].

Notably, the CRCComm then proceeds to call for the revision of "all policies and legislative provisions, including Art. 14 of the Implementing Measures for the Law on the Protection of Minors, which imposes serious restrictions on the right of Uighur children to religious freedom"[1123]. This is particularly significant given that the Implementing Measures for the Law on the Protection of Minors is a regionally specific law, promulgated within the Xinjiang Uyghur Autonomous Region by municipal authorities. As such the above recommendation is the first time that the CRCComm has provided explicit recognition of the inherent incompatibilities that exist between China's national and regional legislation with respect to minority rights.

In 2014, in response to the CRCComm's stern rebuke of China's shortcomings with respect to children of minorities, China took the unusual step of issuing a commentary concerning the CRCComm's most recent Concluding Observations[1124]. The report is the first of its kind in relation to China's engagement with the CRCComm. It initially reemphasises China's commitment to "adopt the sound recommendations in the Concluding Observations and strengthen relevant work in line with China's reality"[1125].

[1121] CRC/C/CHN/CO/2. Para. 44.
[1122] "Autonomous agencies in ethnic autonomous areas guarantee the freedom of religious belief to citizens of the various nationalities", National People's Congress, 2001. *Regional Ethnic Autonomy Law of the People's Republic of China*, Beijing. Art. 11. For English translation, see: http://www.cecc.gov/resources/legal-provisions/regional-ethnic-autonomy-law-of-the-peoples-republic-of-china-amended.
[1123] CRC/C/CHN/CO/3-4, Para. 41(c).
[1124] Permanent Mission of the People's Republic of China to the United Nations, 2014. *Comments of the Chinese Government about the Concluding Observations on the Combined 3rd & 4th Periodic Reports of China Adopted by the CRC Committee at its 64th Session*,
[1125] Ibid., Para. 1.

This statement, which prefaces the purpose of the overall commentary, infers some selectivity with regards to China's acknowledgement and acceptance of the CRCComm's recommendations. By using the term "sound recommendations", China provides itself with a measure of discretion with regards to the applicability of the recommendations set out by the CRCComm. In referring to "China's reality", China supplements this discretionary leeway with the use of an contextually ambiguous caveat. The use of such terms, readily applied in various forms throughout China's official engagement with the UN, alludes to an underlying principle not dissimilar to that of cultural relativism, where by China will only implement the measures it discerns as beneficial in a manner that suits existing state orthodoxy. Such an attitude is unproductive, and runs contrary to the spirit of international treaty implementation, and particularly is unhelpful in light of the severity of the concerns levelled at China by the CRCComm concerning rights that China is party to.

China's commentary then proceeds to provide a rational basis for China's discretionary attitude, noting "with regret that there are accounts in the Concluding Observations that do not square with the facts"[1126]. It provides further detail regarding the basis of such claims, reporting that "some are based on unverified information, some lack necessary analysis and statistical support and some are exaggerations, thus failing to give a real picture of China's implementation of the Convention in relevant areas"[1127]. It notes that as a result of such alleged inaccuracies on the part of the CRCComm, that "The Chinese government cannot accept the parts of the Committee's Concluding Observations which do not square with facts and the recommendations made thereof"[1128].

[1126] Comments of the Chinese Government about the Concluding Observations on the Combined 3rd & 4th Periodic Reports of China Adopted by the CRC Committee at its 64th Session. op.cit., Para. 2.
[1127] Ibid.
[1128] Ibid.

With the raison d'etre for the commentary established, China proceeds to provide specific rebuttals to a number of the CRCComm's concerns. Of particular relevance to minorities are China's comments regarding the CRCComm's claims of "continuous violations of rights and discrimination against Tibetan and Uyghur children"[1129]. In response to such claims, China states that:

> In China, minors, irrespective of their sex, ethnic origin, race and religious belief, are all protected and entitled to equal rights in accordance with law. Concerning protection of the rights of children from ethnic minorities, the Chinese government is committed to a policy of equality and unity of all ethnic groups, which provides for not only prohibition of discrimination but also special measures to support the development of child-related programs and the protection of the rights of the child in areas inhabited by ethnic minorities[1130]

The above comment defends China's position by stating that Chinese law operates on the basis of equality and is non-discriminatory by nature. However, as has been demonstrated previously, such laws and regulations may not be discriminatory in character, but are exercised in a manner that is discriminatory in application[1131]. The promulgation and enforcement of regionally specific regulations in areas where concentrated minority populations reside bears a disproportionately negative impact on the freedoms of those minorities as a result.

On the subject of freedom of thought, conscience and religion, an area where the CRCComm provided some of its most pointed criticisms, China again re-asserts its position as a state that exercises equality:

> The Chinese government pursues a policy towards ethnic groups that features ethnic equality and unity, regional ethnic autonomy and common prosperity of all ethnic groups. It protects freedom of

[1129] CRC/C/CHN/CO/3-4, Paras. 25-26.
[1130] *Comments of the Chinese Government about the Concluding Observations on the Combined 3rd & 4th Periodic Reports of China Adopted by the CRC Committee at its 64th Session.* op.cit., Para. 2(b).
[1131] See *supra* chapter: 3.3 Laws and Policy in Xinjiang and its Impact on the Uyghur.

> religious belief of children from ethnic minorities, and safeguards their right to education in accordance with law including the right to learning the minority languages of their own.[1132]

However, when considering the concerns communicated within CRCComm's most recent Concluding Observations, China's assertion fails to address the specific points raised by the CRCComm. Such points include those detailed earlier, such as the CRCComm's recommendation for the revision of the regional laws prohibiting Uyghur children's religious freedoms[1133]. As the above examples demonstrate, China's criticism concerning the CRCComm's rebukes has not been sufficiently supported with any substantive evidence. Indeed, while the CRCComm has provided an example of a specific law in support of its rebuke, China has elected to avoid any reference to the above legislation, opting instead to espouse idealised principles that bear little substance in the face of the CRCComm's specific allegations.

China concludes its commentary on the CRCComm's Concluding Observations by stating:

> The Chinese government values the positive role of human rights treaty body in promoting and protecting human rights, believes that the constructive dialogue and cooperation between the treaty body and state parties serve as an important vehicle for the implementation of human rights conventions, and hopes that human rights treaty body will treat all sorts of information cautiously and consider the implementation of the conventions in an objective and fair manner, ensure that the consideration is non-politcized and non-selective and can faithfully reflect the implementation by state parties with a view to promoting the development of international human rights.[1134]

[1132] *Comments of the Chinese Government about the Concluding Observations on the Combined 3rd & 4th Periodic Reports of China Adopted by the CRC Committee at its 64th Session.* op.cit., Para. 2(e).
[1133] See *supra* note: 1120.
[1134] *Comments of the Chinese Government about the Concluding Observations on the Combined 3rd & 4th Periodic Reports of China Adopted by the CRC Committee at its 64th Session.* op.cit. Para. 5.

China's concluding remarks serve to illustrate China's perception of the UN treaties in a broader sense, viewing rights implementation and development only as positive providing that it is applied in a "productive" fashion with regards to state interests, one that serves to project China's image in a desirable light.

However, when this positive image is threatened in the course of the CRCComm's efforts to realise its mandate of the promotion and protection of the rights of children, China's engagement with the treaty body is seen to be more pre-occupied with defending its image than earnestly addressing the issues raised by the CRCComm.

5.6 Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Form of Discrimination against Women (CEDAW) remains the UN's sole gender based treaty. First adopted on 18 December 1979[1135], the CEDAW's purpose, in a manner not dissimilar to the ICERD, is to supplement and further give effect to the principle of equality as declared within the International Bill of Human Rights. Its existence is necessitated by the persistence of gender inequality and discrimination against women despite the establishment of treaties such as the ICESCR and CCPR which promote and protect the rights of men and women as equals[1136].

Much like its analogues, CEDAW also establishes its own treaty body with the mandate to oversee its implementation[1137]. To this end, the Committee on the Elimination of Discrimination against Women (CEDAWComm) has the power to consider reports submitted by states parties concerning any progress made regarding the CEDAW's implementations[1138]. The CEDAWComm may also, depending on its ratification by states parties, avail of the reporting mechanism provided within the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP), which shares much in common with its ICESCR[1139] and ICERD[1140] equivalents. Regrettably, perhaps in part owing to its relatively recent coming into force[1141], China has yet to ratify the CEDAW-OP.

While CEDAW provides no explicit protections for minorities, many of its provisions are directly applicable to the protection of minority identity with respect to women of

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[1135] United Nations General Assembly, 1979. *Convention on the Elimination of All Forms of Discrimination against Women (A/34/46)*, New York.
[1136] ICESCR, Art. 3; CCPR, Art. 3.
[1137] CEDAW, Art. 17.
[1138] CEDAW, Art. 18.
[1139] ICESCR-OP, Art. 2.
[1140] ICERD, Art. 14.
[1141] CEDAW-OP came into force on December 21st 2000.

minorities. Evidence of this can be seen within the CEDAWComm's dialogues with states parties. It is for this reason that a selection of the most relevant provisions contained within CEDAW will be outlined in this chapter, with the intention of providing a specific context with which CEDAW's protections can be examined with respect to the Uyghur minority.

5.6.1 The Substantive Articles with Respect to Minorities

Art. 1 of the CEDAW provides a functional definition for the term "discrimination against women" to be applied within its subsequent provisions[1142]. It provides a biological construct in the form of "sex" to delineate the character in which discrimination against women occurs[1143]. With this in mind, it defines the behavioural mechanisms which may give rise to discrimination as "any distinction, exclusion or restriction on the basis of sex". It then provides the consequential component of its definition, describing the effects of such behaviour as resulting in the "impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field"[1144]. Should an act comprise of both of these components, an act of discrimination against women can be considered to have occurred. The above definition of the concept of discrimination against women bears a broad similarity with that of its analogous definition contained within the ICERD.

Art. 1 also contains a number of important distinctions that serve to illustrate the specific nature of discrimination against women. In particular, it incorporates the basis of equality with specific consideration to marriage, noting that women's freedom to enjoy or exercise their human rights and fundamental freedoms should occur

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[1142] CEDAW, Art. 1.
[1143] Freeman, M.A. & Chinkin, C., 2013. Introduction. In M. A. Freeman, C. Chinkin, & B. Rudolf, eds. *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*. OUP Oxford. pp. 14-15.
[1144] CEDAW, Art. 1.

"irrespective of their marital status"[1145]. This illustrates one of the key challenges for CEDAW with regards its implementation of equality of men and women with respect to marital status; formally acknowledging the role that marital status has historically played as a basis for discrimination against women in society. The second distinctive component which separates the CEDAW's definition from the ICERD's is the phrase "on a basis of equality of men and women". While the fundamental principle of universal equality forms not only the central thrust for the CEDAW's existence, but that of the International Bill of Human Rights itself, the concept of gender based equality remains sufficiently at odds with current societal realities that its explicit addition within the CEDAW's definition of discrimination is further warranted.

The scope of CEDAW's definition of discrimination against women is intended to be sufficiently wide ranging to include not only direct acts of discrimination, but also that of indirect discrimination. As outlined previously, acts of indirect discrimination manifest in praxis, irrespective of the inherent neutrality of the laws or policies which precipitated it. As such, laws or regulations which may not bear a discriminatory character may become discriminatory in practice providing that the application of such laws disproportionately affects a specific group of people. Within the context of the CEDAW specifically, laws which ban specific items of clothing or religious symbols may not be discriminatory against women in a direct sense, but if the resulting application of such restrictions disproportionately affects women then such laws may be considered discriminatory in practice, or indirectly discriminatory.

The definition provided by Art. 1 is further given effect by Art. 2, which enumerates specific obligations upon states parties to realise the principle of non-discrimination against women through the adoption of relevant legislation and constitutional protections[1146]. Art. 2(d) is significant in that imposes both a negative and a positive

[1145] CEDAW, Art. 1.
[1146] CEDAW, Art. 2(a)(b)(c).

obligation upon states parties in order "to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation"[1147]. This emplaces responsibility upon states parties to not only refrain from engaging in discrimination against women, but also to "ensure" that such discrimination is not practiced by individuals or organisations under its authority. This provides an additional significance of minorities such as the Uyghur, ensuring that any arguments that use autonomous rule as a basis for the repudiation of state responsibility may not be considered as sufficient grounds to relinquish responsibility for states parties.

Also of importance is Art. 2(e), which ensures that states parties take "all appropriate measures to eliminate discrimination against women by any person, organization or enterprise"[1148]. This expands upon the obligations of Art. 2(d) to include not only the responsibility of the state party to address the existence of discrimination against women by state actors, but also of non-state actors. As Byrnes demonstrates, the obligations outlined Art. 2(d) and Art. 2(e) are highly complementary as a result:

> Under the international law of State responsibility the acts of non-state actors can be treated as those of the State in a variety of circumstances. In some cases, 'non-State actors' may in fact be acting as the state, or their acts or omissions may be directly attributable to the State because the State has delegated its role to the non-State actor.[1149]

Arts. 2(f) & 2(g) provide a similar function with regards to treaty implementation, obligating member states to "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute

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[1147] CEDAW, Art. 2(d).
[1148] Ibid. Art. 2(e).
[1149] Byrnes, A., 2013. Art. 2. In M. A. Freeman, C. Chinkin, & B. Rudolf, eds. *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*. OUP Oxford. p. 87.

discrimination against women"[1150]. This provides a real means with which to give full effect to the principle of non-discrimination against women, ensuring that any existing laws be repealed should they be found to be incompatible with CEDAW's provisions. Art. 2(g) provides for additional specificity concerning penal regulations in particular. Despite its clear overlap with Art. 2(f), it has proved utility as part of the CEDAWComm's efforts to ensure effective treaty implementation[1151].

Art. 3 functions to further reinforce the states parties' obligations as enumerated within Arts. 1 & 2, ensuring that states parties take "all appropriate measures, including legislation, to ensure the full development and advancement of women"[1152]. This statement is prefaced by specifying a number of areas including "political, social, economic and cultural fields"[1153], which has the effect of further reinforcing the applicability of the states parties' obligations under Arts 1&2 by providing explicit reference to a number of areas where women may suffer from inequality. This is particularly salient with respect to the Uyghur minority, owing to the central role of culture as part of Uyghur identity[1154].

The measures detailed within Art. 5 are of particular interest with respect to minorities in general, and the Uyghur specifically, as it imposes an obligation on states parties to take all appropriate measures to modify cultural practices that may otherwise perpetuate inequality between men and women, facilitating the prevention of discrimination against women:

> To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the

[1150] CEDAW, Art. 2(f).
[1151] Byrnes, A., 2013. op.cit. p. 92.
[1152] CEDAW, Art. 3.
[1153] Ibid.
[1154] For further reading on Uyghur culture, see *supra* section: 3.3.1 Religion and Culture.

> inferiority or the superiority of either of the sexes or on stereotyped roles for men and women[1155]

As outlined previously, culture forms a core component of Uyghur identity. The measures detailed within this Art. 5 are rightly drafted with a view of achieving the principle of gender equality; however it also presents with it the challenge of infringing upon cultural, religious or social rights as a result. This raises the issue of cultural relativism with respect to gender equality, particularly so with regards to minorities where culture is often regarded as a defining feature of their identity as a minority. While the preservation, transmission and development of culture is vital importance to the development of human rights as a whole, it is also important that any cultural practices which may infringe on upon the rights of women are seen as incompatible with the universal principles of equality and dignity that are central to the existence of human rights.

The concept of cultural relativism stems from the principles of self-determination both of the individual and of communities[1156]. It has also found utility as a conceptual means with which to address the issue of opposing values between differing cultures. Consequently, it could be argued that when cultural relativism facilitates a permissible environment of discrimination and intolerance that it runs contrary to the purpose of cultural relativism as a means for addressing intolerance as a result. Much in the manner that the right to freedom of speech does not permit hate speech in international human rights law[1157], cultural rights should not permit the existence of harmful cultural practices. Indeed, this is a notion shared by the CEDAWComm, which expressed its view "that cultural and religious values cannot be allowed to undermine the universality

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[1155] Ibid. Art. 5(a).
[1156] Donnelly, J., 1984. Cultural Relativism and Human Rights. *Human Rights Quarterly*, 6(4), p. 400.
[1157] Cohen, R., 2014. Regulating Hate Speech : Nothing Customary About It Table of Contents. *Chicago Journal of International Law*, 15(1), pp. 247-250.

of women's rights"[1158]. Indeed, the requirement placed upon states parties as a result of Art. 5 is necessitated by the pervasive derogatory cultural stereotypes that contribute to the systemised discrimination against women at the societal level, warranting the need for cultural malleability if true gender equality is to be achieved.

Much like culture, education is vitally important as a means for the advancement of universal principles of human rights. Within the context of equal rights for women, education plays a central role in fulfilling the principle of equality by providing women with an equal right for the pursuit of knowledge, facilitating the advancement of women. Art. 10 provides specific protections for women against discrimination within the educational sphere[1159], it ensures not only that women share equal access to guidance and studies[1160], but the same opportunities to participate in continuing education[1161], sports[1162], and scholarships[1163]. Art. 10 also places a positive obligation upon state parties to address the issue of gender inequality that can manifest in school attendance and participation[1164]. It also places a responsibility upon states parties to remove any existing educational content that has the effect of perpetuating gender stereotypes[1165].

As highlighted earlier when discussing the CRC[1166], minorities are particularly vulnerable to discrimination in education owing to their status as a minority within majority society. This is the case for the Uyghur, whose unique language requirements[1167], demographic location within a remote and rural area of China[1168],

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[1158] United Nations Committee on the Elimination of Discrimination against Women, 1998. *Report of the Committee on the Elimination of Discrimination against Women (A/53/38/Rev.1)*, New York. Para. 282.
[1159] CEDAW, Art. 10.
[1160] CEDAW, Art. 10(a).
[1161] CEDAW, Art. 10(e).
[1162] CEDAW, Art. 10(g).
[1163] CEDAW, Art. 10(d).
[1164] CEDAW, Art. 10(f).
[1165] CEDAW, Art. 10(c).
[1166] See *supra* section: 5.5 Convention on the Rights of the Child.
[1167] Dwyer, A.M., 2005. op.cit., pp. 12-15.
[1168] Zhao, Y., 2001. op.cit., pp. 206-211.

together with the lower average income when compared to the Han majority[1169], are all contributory factors that increase the Uyghurs' vulnerability to exclusion from or discrimination within education. Resultantly, it follows that Uyghur women face additional risk of exclusion from access to education due the inherent risk of multiple discriminations on the basis of both their gender and minority status.

Arts. 11-14 together provide a comprehensive body of protections ensuring the non-discrimination of women in the fields of employment[1170], the provision of healthcare[1171], financial security and cultural life[1172], and equality within rural areas[1173]. Much like Art. 10 ensures the equal right to education, Arts. 11-14 together serve to ensure agency and independence through ensuring equal opportunities to employment, healthcare and participation in cultural activities.

Like the previously detailed CEDAW provisions, these also are of particular relevance to minorities. Equal employment opportunities are of vital importance for minorities such as the Uyghur, who for the same reasons as outlined previously regarding the right to education, are also particularly vulnerable to marginalisation within the employment sector[1174]. The income disparity that exists between Uyghur and their Han majority counterparts within Xinjiang itself has long been a source of resentment among the Uyghur[1175], and is demonstrative of the existing inequality that needs to be addressed[1176].

Uyghur women face additional dimensions of potential discrimination within the workplace owing to existing government restrictions on religious clothing as described

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[1169] Cao, H., 2010. Urban–Rural Income Disparity and Urbanization: What Is the Role of Spatial Distribution of Ethnic Groups? A Case Study of Xinjiang Uyghur Autonomous Region in Western China. *Regional Studies*, 44(8), pp. 969-971.
[1170] CEDAW, Art. 11.
[1171] CEDAW, Art. 12.
[1172] CEDAW, Art. 13.
[1173] CEDAW, Art. 14.
[1174] For further reading on Uyghur employment in Xinjiang, see *supra* section: 3.3.3 Economy and Employment.
[1175] Chaudhuri, D., 2011. Minority Economy in Xinjiang--A Source of Uyghur Resentment. *China Report*, 46(1), p. 16.
[1176] Zang, X., 2011. op.cit., pp. 154–155.

earlier. The effects of such restrictions may result in deleterious consequences on the ability for Uyghur women to attain positions within the Chinese government and a civil service; resulting in reduced participation of women in the role of China's policy development and law enforcement. It also would follow that China's restrictions of religious freedoms under the overt auspices of the separation of religion from education would prevent Uyghur women from obtaining teaching roles within the public educational sphere[1177]. This would further restrict the ability for the Uyghur to transmit their minority cultural practices on to subsequent generations of Uyghur children, while also infringing upon Uyghur women's ability to freely participate in all aspects of a cultural life[1178].

While such restrictions in themselves may constitute a violation of a women's right to work, it is also important to counterbalance this rights based analysis with an awareness that certain cultural traditions or practices may themselves result in discrimination against women. It is this perception that has given rise to the discussions on the restriction of religious clothing or symbols within schools, including that worn by teachers in numerous countries other than China[1179]. Indeed, the UN has commented on the matter, stating that "Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes"[1180]. Furthermore, evidence of the negative effects of cultural traditions or practices can be seen within the Uyghur society, with Uyghur women consistently earning less than Uyghur men, which Zang suggests emanates from the preservation

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[1177] For further reading on the prohibition of religion from Xinjiang's educational sphere, see *supra* section: 3.3.1 Religion and Culture.
[1178] CEDAW, Art. 13(c).
[1179] Examples of such countries include Switzerland, Germany, France. For further reading, see: Ssenyonjo, M., 2007. The Islamic Veil and Freedom of Religion, the Rights to Education and Work: a Survey of Recent International and National Cases. *Chinese Journal of International Law*, 6(3), pp. 691–710.
[1180] United Nations Human Rights Committee, 2000. *General Comment No. 28 (CCPR/C/21/Rev.1/Add.10)*, New York. Para. 5.

of traditional gender roles within Uyghur society in Xinjiang[1181], preventing Uyghur women from equally enjoying the affirmative action policies implemented to improve the educational level of Uyghur[1182].

However, with respect to restrictions on religious clothing specifically, considering that the overriding intention of such considerations is the achievement of universal equality and tolerance, then it follows that any restrictions on religious clothing in the public sphere which results in the exacerbation of the very inequality it sought to address[1183], can be considered as an act of discrimination against women in itself and thus an infringement upon the relevant protections contained within the CEDAW.

5.6.2 CEDAW's Implementation with Respect to China's Minority Women

China first ratified CEDAW in 1980, and submitted its initial progress report in 1983[1184]. Much like its corresponding reports to the other treaty implementation bodies, China's initial report provides an historical context for the current state of affairs with regards to women's rights. In particular, the report places much of the responsibility for gender equality in China on the "'three big mountains' of imperialism, feudalism and bureaucratic capitalism"[1185]. It goes on to portray the current system of "socialist" governance as a panacea for China's historically patriarchal society[1186], noting that:

[1181] Zang, X., 2011. Gender Roles and Ethnic Income Inequality in Urumchi. *Ethnic and Racial Studies*.
[1182] Ibid., pp. 20–21.
[1183] Freedman, J., 2007. Women, Islam and rights in Europe: beyond a universalist/culturalist dichotomy. *Review of International Studies*, 33, p. 44.
[1184] United Nations Committee on the Elimination of Discrimination Against Women, 1983. *Initial Reports of States Parties - People's Republic of China (CEDAW/C/5/Add.14)*.
[1185] CEDAW/C/5/Add.14, Preface.
[1186] Greenhalgh considered the prevalence patriarchal societies in East Asia as having its roots in China, noting that "Traditional Confucian China and its cultural offshoots, Japan and Korea, evolved some of the most patriarchal Family systems that ever existed", see: Greenhalgh, S., 2014. Sexual stratification: The other side of "Growth with Equity" in East Asia. *Population and Development Review*, 11(2), p. 265. For further reading on the existence of gender inequality within Muslim society in China specifically, see: Zang, X., 2012. *Islam, Family Life, and Gender Inequality in Urban China*, Taylor & Francis. pp. 2-4.

> Since the founding of the People's Republic of China in 1949, however, a new social system has been established, which removed the political and economic baes that sustained restrictions on women, and which abolished all the laws that perpetuated oppression and constraining of women, thus creating the social preconditions for their complete emancipation.[1187]

The initial report proceeds to describe the relevant laws and constitutional protections promulgated by the CCP that serve to fulfil China's obligations as state party. Within the report, the Chinese government emphasises that it has "all along attached great importance to equality between men and women in all spheres"[1188], and references the specific rights accorded within its 1982 constitution including Art. 48, which states that "women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural and social, including family life"[1189].

Within the CEDAWComm's Concluding Observations to China's initial report, it commended the progress achieved since the founding of the PRC[1190], providing specific praise in areas such as the greatly improved literacy rates for women[1191]. The single explicit reference to minority women during the CEDAWComm's initial exchange with China regarded its policy on divorce, with the question specifically referring "to the policy in China with regard to minorities and to the practice where one spouse came from a minority and the other one was Chinese"[1192]. The issue of Han-Uyghur intermarriage in China is a contentious one. Smith's research on ethnic boundaries illustrates some of the inherent challenges that intermarried couples are faced with[1193]. Stemming largely from the differing customs and practices of both the Uyghur and the

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[1187] CEDAW/C/5/Add.14, Preface.
[1188] CEDAW/C/5/Add.14, Para. 1.
[1189] Constitution of the People's Republic of China of 1982, op.cit., Art. 48.
[1190] United Nations Committee on the Elimination of Discrimination Against Women, 1984. *Concluding Observations of the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW/A/39/45)*, Para. 133.
[1191] CEDAW/A/39/45, Para. 173.
[1192] Ibid. Para. 152.
[1193] Smith, J.N., 2002. op.cit., pp. 162-163.

Han, the recent resurgence in Uyghur nationalism has also contributed to an apparent reduction in intermarriage between Uyghur and Han Chinese, with many Uyghur allegedly seeing it as a taboo[1194] and a cause for divorce between Han-Uyghur marriages[1195].

China's second Periodic Report contains little of relevance to minority women specifically[1196]. More generally, it outlines the progress made in the intervening years following its initial report, while re-emphasising the difficulties resulting from persistent gender role stereotypes, noting that "traditional biases against women constitute the main obstacle to women's full participation in development"[1197]. Contained within the Concluding Observations to the second report are China's first direct references to minorities, made in response to follow-up questions raised by CEDAWComm. The comment itself concerns China's "one child policy", noting that "there were distinctions in the enforcement of the policy, in particular with regard to minorities and areas with lower population density"[1198], providing an example of China's positively discriminatory policies with respect to minorities, a welcome measure that acknowledges the vulnerable position faced by minorities as a result of their minimal representation within China's overall population.

China's combined third and fourth Periodic Reports marks a change in China's reporting; with a stark increase in stated accounts of measures taken improve the conditions within minority areas specifically[1199]. It noted the high number of minorities represented as deputies within the eighth National People's Congress, amounting some 17% of the overall number of female deputies, a number far higher than is

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[1194] Smith, J.N., 2002. op.cit., p. 163.
[1195] Ibid.
[1196] United Nations Committee on the Elimination of Discrimination Against Women, 1989. *Second Periodic Reports of States Parties - China (CEDAW/C/13/Add.26)*.
[1197] CEDAW/C/13/Add.26, Art. 5(a) 1.
[1198] United Nations Committee on the Elimination of Discrimination Against Women, 1992. *Concluding Observations of the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW/A/47/38)*, Para. 213.
[1199] United Nations Committee on the Elimination of Discrimination Against Women, 1997. *Third and Fourth Periodic Reports of States Parties - China (CEDAW/C/CHN/3-4)*, p 4.

representative of China's minority population within the context of China's overall total[1200]. Further, the report notes that three deputies were elected as members of the NPC-SC[1201]. More generally in the area of development, of which China emphasises its economic dimension, the report states that as part of China's "Programme for the Development of Chinese Women" that it recognises the importance of "helping women in remote, poor and ethnic minority-inhabited areas"[1202]. The report goes on to note that the Ministry of Labour has called efforts "to be made to promote women's development in remote, poor and ethnic minority-inhabited regions"[1203].

Within the Concluding Observations to the third and fourth reports, the CEDAWComm expressed its concern over China's population control policies with respect to minorities, stating that:

> There are consistent reports of abuse and violence by local family planning officials. These include forced sterilizations and abortions, arbitrary detention and house demolitions, particularly in rural areas and among ethnic minorities.[1204]

The subject of forced abortions constitutes a source of strong discontent for the Uyghur, with a report published by Amnesty International in 1999 detailing several cases of attacks by Uyghur on family control centres and staff members[1205]. CEDAWComm also repeated its request that China provide additional information concerning the Uyghur, stating:

[1200] As of China's most recent 2010 population census data, China's 55 recognised minorities together constitute 8.49% of China's overall population. See: National Bureau of Statistics of People's Republic of China, *Communiqué of the National Bureau of Statistics of People's Republic of China on Major Figures of the 2010 Population Census[1] (No. 1)*, Beijing. Available at: http://www.stats.gov.cn/english/NewsEvents/201104/t20110428_26449.html. Para. 6.
[1201] CEDAW/C/CHN/3-4, p. 4.
[1202] CEDAW/C/CHN/3-4, p. 8.
[1203] CEDAW/C/CHN/3-4, pp. 24-25.
[1204] United Nations Committee on the Elimination of Discrimination Against Women, 1998. *Report of the Committee on the Elimination of Discrimination against Women (A/53/38/Rev.1 Paras. 251-336)*, New York. Para. 299(b)
[1205] Amnesty International, 1999. op.cit., pp. 49-50.

> In light of the diversity of the country and its population, the Committee repeats the request it made in its concluding comments on China's second periodic report, that the Government provide in its reports a breakdown of information by provinces and autonomous regions and also include information on ethnic minorities particularly the Uyghur and Tibetan peoples.[1206]

China's combined fifth and sixth Periodic Reports to the CEDAWComm continue the trend established by the previous iterations by providing additional information concerning China's minorities[1207]. Laudably, it also provides the welcome addition of empirical population data detailing both national and regional minority nationality demographics[1208], partially fulfilling CEDAWComm's request for additional population data on minority areas. The report also includes updated information on the participation of minority women within the Chinese government, noting that 13.88% of the female deputies within the National People's Congress were minorities[1209], a reduction in the level of participation compared to the 17% stated in the previous report. Additionally, the report continues the theme established by its predecessors in describing progress made in terms of economic development. The report emphasises China's iterative economic development model, called the "Ten-Year Programme", as a means of improving the living conditions for all, while giving "particular attention to the development problems confronting women in minority-inhabited areas"[1210].

CEDAWComm's Concluding Observations of the fifth and sixth report illustrates a growing awareness of the economic-centric development bias in China's Periodic Reports[1211]. Commenting on the issue of non-economic discrimination against minority

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[1206] A/53/38/Rev.1, Para. 306.
[1207] United Nations Committee on the Elimination of Discrimination Against Women, 2004. *Combined fifth and sixth periodic report of States Parties - China (CEDAW/C/CHN/5-6)*
[1208] CEDAW/C/CHN/5-6, pp. 67-70.
[1209] CEDAW/C/CHN/5-6, p. 27.
[1210] CEDAW/C/CHN/5-6, p. 12.
[1211] United Nations Committee on the Elimination of Discrimination Against Women, 2006. *Concluding comments of the Committee on the Elimination of Discrimination against Women: China (CEDAW/C/CHN/CO/6).*

women outside of the context of educational or economic discrimination for the first time, CEDAWComm noted its concern "at the situation of rural minority women, including Tibetan women, who face multiple forms of discrimination based on sex, ethnic or cultural background and socio-economic status"[1212]. The report goes on to issue the following recommendation regarding the issue of discrimination:

> The Committee urges the State party to take a holistic approach to eliminating the multiple forms of discrimination that ethnic minority women face and to accelerate the achievement of their de facto equality. The Committee requests the State party to provide, in its next report, comprehensive information, including sex- disaggregated data, on the situation of rural women, including ethnic minority women, especially with regard to their educational, employment and health status and exposure to violence.[1213]

This marks a shift in focus for CEDAWComm from being primarily concerned economic-centric metrics for determining treaty implementation to a more "holistic" model, recognising the intersectionality of the varying manifestations of discrimination against women that occur as a direct symptom of gender inequality. To further illustrate this shift in emphasis, subsequently in the same report CEDAWComm is issued a stern warning with regards to discriminatory practices by state officials with respect to minorities, pointedly stating:

> The Committee... also urges the State party to investigate and prosecute the reports of abuse and violence against ethnic minority women by local family planning officials, including forced sterilization and forced abortion. The Committee recommends that the State party introduce mandatory gender-sensitivity training for family planning officials.[1214]

[1212] CEDAW/C/CHN/CO/6, Para. 27.
[1213] CEDAW/C/CHN/CO/6, Para. 28.
[1214] CEDAW/C/CHN/CO/6, Para. 32.

China's most recent CEDAW submission, its combined seventh and eight Periodic Report[1215], provides some positive developments with regards to the advancement of gender equality with respect to minorities. The report details an increase in political participation with respect to minority women, noting that 21.5% of the total female deputies within the National People's Congress were minority women[1216], the highest ever recorded according following China's ratification of CEDAW, demonstrating a significant increase from the 13.88% stated within China's previous report.

The report also, for the first time, specifically refers to minority political participation within Xinjiang specifically, noting that minority women's cadre's account for 66% of the total region's women cadres. While these statistics may read positively on paper, minorities make up 59.4% of Xinjiang's total population according to 2010 population census data[1217], making it representative with the regions' population demographic. Of particular concern are the covert policies behind minority cadre recruitment, with some scholars considering the recruitment of minorities into party cadre's merely as a device to politically co-opt and subordinate the minority populace towards party policy[1218]. Potter makes a stinging assertion to this effect, noting that:

> Indeed, direct interaction between government and administrative officials and local residents often involves teams of Han and local minority officials, with the Han cadre making decisions and the minority cadre simply translating, insulating the Han official from direct contact with local people.[1219]

[1215] United Nations Committee on the Elimination of Discrimination Against Women, 2013. *Combined Seventh and Eigth Periodic Report of States Parties (CEDAW/C/CHN/7-8)*, New York.
[1216] CEDAW/C/CHN/7-8, Para. 132.
[1217] China Internet Information Centre, 2010. Census of Xinjiang Uygur Autonomous Region. *china.org*. Available at: http://www.china.org.cn/english/MATERIAL/139224.htm.
[1218] Spiegel, M., 2000. Editor's Introduction. *Chinese Law & Government*, 33(2), pp. 6-7; Tong, J., 2010. Caesarean Delivery: the Regulations on Religious Affairs in China, March 2005. *Religion, State and Society*, 38(4), p. 394; Rahman, A., 2005. op.cit., pp. 81-82.
[1219] Potter, P.B., 2005. Governance of China's Periphery: Balancing Local Autonomy and National Unity. *Columbia Journal of Asian Law*, 19(1). p. 302.

CEDAWComm's Concluding Observations to China's most recent report further evidence of its shift in emphasis from focusing on economic equality to a wider ranging approach to overseeing treaty implementation by further concerning itself with the issue of the continued existence of discrimination against minority women[1220]. For the first time within CEDAWComm's engagement with China within the Periodic Report implementation mechanism it directly references the Uyghur[1221], noting that:

> The Committee is concerned about reports that ethnic and religious minority women, such as Tibetans and Uighurs, and women with disabilities continue to experience multiple and intersecting forms of discrimination. The Committee is particularly concerned that ethnic and religious minority women continue to have limited access to health, education and employment.[1222]

In its recommendation, CEDAWComm called upon China to "vigorously pursue efforts aimed at elimination the multiple and intersecting forms of discrimination experienced by ethnic and religious minority women"[1223]. As the above excerpts demonstrate, the report also recognises the role of both ethnicity and religion as components of minority identity with its adoption of the term "ethnic and religious minority women"[1224]. This is the first time that CEDAWComm uses the term, which has the effect of both further reinforcing the intersectionality of ethnicity and religion with that of minority rights, while also providing evidence of CEDAWComm's competency to provide comment on matters relating to religious discrimination.

This renewed emphasis on the protection of religious freedoms situates CEDAWComm's dialogue with China in a novel position, contrasting with

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[1220] United Nations Committee on the Elimination of Discrimination Against Women, 2014. *Concluding observations on the combined seventh and eighth periodic reports of China (CEDAW/C/CHN/CO/7-8).*

[1221] The Uyghur are explicitly referenced on three separate occasions. See: CEDAW/C/CHN/CO/7-8, Paras. 30,34,46.

[1222] CEDAW/C/CHN/CO/7-8, Para. 46.

[1223] Ibid. Para. 47.

[1224] The above term was incorporated within the Concluding Observations on seven separate occasions within the report. See: CEDAW/C/CHN/CO/7-8, Paras. 23, 30, 31(e), 34, 35(b), 46, 47.

CEDAWComm's typical engagement with religious and cultural traditions as a negatively discriminatory of perpetuating traditional gender stereotypes or discriminatory practices. Rather, CEDAWComm's concern for the rights of "ethnic and religious minority women" demonstrates it's the extent of its remit by commenting on the derogation of the Uyghurs' religious freedoms as an act of discrimination against minority women. As such, the CEDAWComm has extended the applicability of the CEDAW's rights and protections to include religious freedoms.

As China's response to the most recent Concluding Observations report is not scheduled to be published until 7 November 2016, it remains to be seen how China will react to CEDAWComm's comments concerning multiple or intersectional discrimination of minority women. Indeed, while it may pursue a similarly unproductive course to that which it has taken within its dialogue with the CRCComm[1225], China's otherwise impressive progress with regards to the advancement of women's rights may also signify that China is more willing to earnestly adopt the CEDAWComm's recommendations despite how bitter the medicine might taste.

5.7 Chapter Conclusion

As this chapter demonstrates, the substantial body of rights contained within the selected core treaties provides a broad range of protections that that are either explicitly and implicitly be applicable to minorities. The diversity of the nature of the protections themselves is illustrative of the complexities that surround the term "minority"; necessitating the establishment of a universally accepted definition of what constitutes a minority in order to ensure their effective protection by states parties, and to determine the relevance of the protections contained within the core treaties with respect to minorities. This chapter has also highlighted the importance of culture and

[1225] Comments of the Chinese Government about the Concluding Observations on the Combined 3rd & 4th Periodic Reports of China Adopted by the CRC Committee at its 64th Session. op.cit., Para. 5.

religion as a key component of minority identity, and the applicability of the ICESCR's Cultural protections in protecting minority identity as a result. A further complication concerning minorities is the intersection of minority and national identity, the reality of which raises the persistent issue of sovereignty and self-determination with respect to the Uyghur minority.

Despite these significant challenges, the United Nations has sought to address many of these issues through the development of rights enforcement mechanisms such as those contained within the Optional Protocols. The adoption of which has improved the United Nations ability to evaluate the advancement of human rights norms implementation through assessing state compliance through the establishment of bottom-up reporting mechanisms, enabling citizens with a means to remedy rights violations inflicted by the state actors.

Issues remain however. Any state's obligation to realise such rights is dependent on the state's willingness to recognise the authority of the United Nations as arbiter over rights implementation and enforcement. This has further limited the extent of treaty ratification of the Optional Protocols, which requires a willingness of the state to both realise the rights contained within the respective parent treaty, and to expose itself to further scrutiny and accountability. States that willingly infringe upon these rights are often the least willing to accede to such accountability.

China's participation within the United Nations is representative of both the strengths and weaknesses of United Nations treaty implementation. Despite having the highest population of any member state within the United Nations, China's citizens representing roughly 20% of the world's population still do not benefit from many of the political and civil rights enjoyed by the majority of the member states of the United Nations. China's minorities are particularly vulnerable as a result, owing to both their

status as minority within Chinese society, and the lack of explicit minority protections that are contained within the CCPR.

Conversely, this chapter serves to demonstrate that despite the absence of the CCPR's rights and protections for China's minorities, that many of the rights contained within China's ratified treaties together provide analogous protections to those found within the CCPR. The resulting patchwork of disparate rights discussed throughout this chapter - together with the expansive remit of the treaty bodies oversee treaty implementation - affords China's minorities with a number of applicable rights and protections that may serve in the preservation and protection of their minority identity, irrespective of CCPR ratification.

While China has undoubtedly made significant progress in the development and implementation of human rights by ratifying the majority of the core treaties and in signing the CCPR, without an effective means for citizens to report rights violations by the state, the justiciability of those rights remains limited to the efficacy of national law. As many of the examples contained within this chapter illustrate, significant incompatibilities persist between state law and policy and the norms contained within both the rights of the treaties that China is party to, and the rights contained within the CCPR that China is signatory of.

The continued existence of such incompatibilities serve to highlight the necessity for China formally ratify all remaining core treaties and their respective optional protocols in order to further realise the human rights its citizens are entitled to. If China continues to renege on this moral responsibility, it risks fostering the perception of a state that is either unable or unwilling to meet its rights obligations towards its citizens.

Conclusion

The primary issue that this thesis has sought to address surrounds the CCP's attempts to address the issue of Uyghur unrest through law and policy. The complex relationship that exists between the Chinese state and its Uyghur population necessitated a holistic approach to the research conducted in the development of this thesis in order to sufficiently ascertain the multivariate cultural, political and ideological tensions that have defined this relationship.

The embodiment of the CCP's ideological perception of the Uyghur can be witnessed within the numerous laws and policy diktats that have been implemented specifically to address what the Party perceives as a direct threat to its vision of a monocultural civilisation state. Accordingly, this thesis focused on the relevant laws and regulations that have had a direct impact on the Uyghurs' identity as a minority. In order to provide an ethical basis necessary to evaluate the efficacy of such legislation, a comparative analysis of state law and policy with international human rights law was necessary. In framing Chinese law within a human rights discourse, this thesis has sought to determine the role of law and policy in addressing Uyghur unrest, and how the CCP's ideology has influenced the Chinese legal system with respect to its treatment of the Uyghur. Before addressing these questions, an overview of thesis' content is appropriate.

Conclusions of the Substantive Chapters of the Thesis

As demonstrated throughout this paper, the reality of Uyghur unrest as it exists today is not a novel phenomenon in China's modern history. The recent emergence of a discourse that seeks to enmesh the existence of Uyghur violence with that of international jihadist terrorism risks obfuscating the underlying causes that have

continued to perpetuate the existence of Uyghur nationalism and its manifestation in anti-state violence over the last century.

In order to dispel this obfuscation, the first chapter of this thesis provided an historical context necessary to understand the underlying causes of Uyghur unrest. By charting the Uyghurs' unique ethno-religious identity through periods of dramatic change within China's history, it reveals a group whose collective identity reflects Xinjiang's complex milieu of competing cultures and ideologies. Despite Xinjiang's ever shifting socio-political environment over the last century, the formation of the Uyghurs' identity during this period is demonstrative of the permanence of the Uyghurs' religiosity.

Islam has played a central role both in the Uyghurs' identity as a minority, and in how they have been perceived within Chinese society. Despite the Uyghurs' religiosity situating them closer to their Turkic and Middle-Eastern counterparts than to the cultural norms of traditional Chinese society, their place within the broader context of China's history positions Uyghurs as a "familiar other"[1226]; one that exists along China's geographic and cultural periphery. It is this existence that has shaped the Uyghurs' interactions with the various conceptions of the Chinese state over the last century. Chinese rule over Xinjiang throughout this period been frequently characterised by the corruption, intolerance and the self-interest of rulers who have held scant regard for the Uyghurs' cultural values and aspirations. Perhaps with a degree of inevitability, the Uyghur have repeatedly sought to achieve self-rule by forcefully establishing an autonomous state within Xinjiang.

The existence of Uyghur nationalism has continued despite the radical social and cultural changes that have irrevocably changed China in the time since. Perhaps most illustrative of these changes has been the emergence of the People's Republic of China. Following the initial auspices of the PRC's establishment, the Uyghurs have

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[1226] Lipman, J., 1996. Hyphenated Chinese: Sino-Muslim Identity on Modern China. In G. Hershatter, ed. *Remapping China: Fissures in Historical Terrain*. Stanford University Press, pp. 97–112.

frequently chaffed under the laws and policies borne from an ideology whose doctrine that is starkly divergent from the values and principles that are central to the Uyghurs' identity as a minority. The PRC's politically tumultuous recent history is reflected within the Uyghurs changing relationship with the state over this same period, marked by periods of both increased tolerance and restiveness.

The second chapter of this thesis provided an overview of China's recent legal history. Noting periods of dramatic legal reform and the advancement of Chinese constitutionalism, it demonstrated that despite the political upheaval which characterised China in the last century that significant progress has been made in the pursuit of a legal system that better reflects the aspirations of the Chinese people. China's economic miracle; its transformation of the country's fortunes, and indeed its position within the community of nations, is a shining example of the power of legal reform for the benefit for all. However, despite China's strides in the name of advancement, it still holds onto a legal heritage that emphasises the authority of those in charge, perpetuating the state's own perception of legitimacy without providing the legal means for the people of China to determine that legitimacy themselves.

The potential dangers of this top-down approach are brought into stark relief within the third chapter, which enumerates the laws and policies that are demonstrative of the excesses of a state power beholden to an ideological need for absolute control. The Party's ideology was explored with respect to its perception of the Uyghur, who while being officially recognised as one of China's indigenous minorities, have been treated under Chinese law in a manner that starkly contrasts with experience of China's Han majority. The perception of the Uyghur as an 'other' within Chinese society has exposed the Uyghur to laws and policies that regard the Uyghurs' expressions of 'otherness' as acts of defiance against both the Party's ideological primacy, and the Party's ideation of Chinese society.

As a result, the laws and regulations detailed within chapter three can be seen to have had a deleterious effect on any aspect of the Uyghurs' identity that is perceived as distinct from the Party endorsed concept of Chinese society. The resulting resistance by Uyghurs to the very real encroachment on their ethno-religious and cultural identity can be seen as a direct reaction to these laws and regulations.

Similarly, the emergence of the "international Uyghur terrorist" discourse put forward by the Chinese government can be seen to have been rooted in a traditionally held view that equated perceptions of otherness with incivility and disharmony. While this discourse has been complicated by the very real emergence of pan-Islamist extremism, which indeed China is not immune to, the conflation of Uyghur unrest with this external threat serves to perpetuate the traditionally held view of the Uyghurs' 'otherness', while also undermining the legitimacy of the Uyghurs' grievances with the state. The damaging effects of this conflation are evidenced in China's response to the threat of Uyghur extremism, which has resulted in increasingly repressive policies in the wake of this new discourse. By not paying heed to the underlying causalities of Uyghur unrest, the state risks further inflaming it as a consequence.

The fourth substantive chapter deals with China's engagement with the United Nations, the history of which reflects the vested national interests that continue to encumber the UN's ability to fulfil its mandate. This thesis first notes PRC's entry to the UN, and how its engagement with the organisation, while initially hesitant, has since developed considerably. While China has not been immune to promoting its own interests in favour of the pursuit of universal human rights, its participation within the United Nations has also given cause for some optimism. China's adoption and continued engagement with the UN human rights machinery provides a means with which the normative forces of the UN can have a positive effect on China's law and policy.

The final substantive chapter of this thesis provides a comparative analysis of the laws and regulations discussed in chapter three, with the protections found within international human rights treaties of the UN. The numerous rights and protections found within many of the core treaties that have been signed or ratified by China represent a means with which to address the negative impact that Chinese law and policy has on the Uyghur as a minority. Despite China having yet to ratify the CCPR, this thesis argued that the absence of a binding provision specifically applicable to China's minorities could be compensated through the holistic interpretation of the many rights and obligations which China is party to. Evidence of this was provided within China's interactions with the implementation mechanisms afforded to each of the core treaties detailed within this chapter. However, the structural flaws of the United Nations are also evident, with the inherent limitations of such mechanisms resulting in a failure to adequately hold China to account to its obligations as states parties to the majority of the core treaties. As this chapter demonstrates, these limitations are readily apparent within the limited scope of each treaty bodies' remit; necessitating an organic approach to the interpretation of the treaties in order to ensure their continued relevance and efficacy in promoting rights for all.

Suggestions on Areas for Further Study

Regretfully, the scope of this study necessitated some selectivity in its analysis of state legislation which has had a particular impact on the Uyghur minority. As a result, there have been some specific laws that could not be included within this thesis' analysis of Chinese legislation. Examples of such legislation include the promulgation of China's national security law in July 2015[1227], and the recent drafting of China's Anti-Terror[1228],

[1227] National People's Congress, 2015. China adopts national security law. *Xinhua*. Available at: http://www.npc.gov.cn/englishnpc/news/Legislation/2015-07/01/content_1940329.htm.
[1228] National People's Congress, 2014. *Draft Anti-Terror Law Text (反恐怖主义法（草案）全文)*, Beijing. Available at: http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2014-11/03/content_1885027.htm.

and Cybersecurity Laws[1229]. While these laws are potentially highly relevant to any legal study concerning the Uyghurs, the timing of this study has made impossible to ascertain of the impact that the implementation that such laws may have on the Uyghur specifically. With this in mind, a future analysis of the implementation of the National Security Law and the impending Anti-Terror and Cybersecurity Laws following their promulgation would make for an important and highly relevant addition to existing research.

Similarly, this thesis has endeavoured to provide an expansive selection of the UN core treaties in its analysis of rights and protections that are specifically applicable to the Uyghur as a minority. However, there remain additional treaties and implementation mechanisms within the United Nations that may hold merit for additional analysis. Of the treaties that have not been covered within this thesis, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) may contain particular value in this regard. Despite the absence of any direct reference to minorities within its provisions, a country visit to China by then Special Rapporteur on Torture Manfred Nowak in 2005 has highlighted the particular vulnerability of the Uyghur with respect to torture[1230], noting that Uyghurs represented China's second largest group of reported victims of torture received by the Special Rapporteurs at the time. The substance of Nowak's report has also been subsequently reflected within the CAT Committee's Concluding Observations[1231].

An additional area for further study concerns the Uyghurs' representation as stakeholders within the state's administrative structure. This is an area of particular relevance with respect to religious organisations such as China Islamic Association

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[1229] National People's Congress, 2015. *Draft Cybersecurity Law Text (网络安全法（草案）全文)*, Beijing. Available at: http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2015-07/06/content_1940614.htm.

[1230] United Nations Commission on Human Rights, 2006. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak - Mission to China (E/CN.4/2006/6/Add.6)*, Geneva.

[1231] United Nations Committee against Torture, 2008. *Concluding Observations of the Committee against Torture - China (CAT/C/CHN/CO/4)*, Geneva.

(CIA), which holds significant influence over China's Muslims with respect to Islamic education, yet just 16% of the membership of the organisation is Uyghur[1232]. The CIA's representative bias towards the Hui minority over that of the Uyghur within its leadership may influence the future direction of Chinese Islamic education in a manner that could have negative repercussions for the Uyghurs' uniquely syncretic religiosity.

Concluding Comments

The initial question that this thesis sought to address concerned the historical context of Uyghur unrest, which was addressed through the examination of Xinjiang's recent history in chapter one. The chapter concluded that Uyghur unrest exists as a by-product of Uyghur minority's interactions with the varying regional powers that sought to assert territorial control of Xinjiang long prior to the existence of the PRC. The historical basis for Uyghur unrest as it has manifested during the early twentieth century can be seen to have been borne from a desire to exist in a manner that is commensurate with the beliefs and values that defined the Uyghurs' collective identity. Religion has significantly contributed to how the Uyghurs identify as a people, and in how they are defined by others. Consequently, religion has played an influential role in the attempts by some Uyghurs to form a national identity, while also becoming a focal point of the Uyghurs' claims of persecution and marginalisation as a result.

Another question that this thesis addressed concerned the efforts that the state has made in integrating the Uyghur within contemporary China. As this thesis has demonstrated, there remain significant disparities between the Uyghur minority and the Han majority throughout a number of sectors of Chinese society. Despite laudable attempts by the Chinese state authorities to address the issue of employment

[1232] Figures derived from nationality categorisation of CIA Standing Committee members, see: China Islamic Association, 2014. Chinese Islamic Association Ninth Standing Committee List (中国伊斯兰教协会第九届常务委员会委员名单). *China Islamic Association*. Available at: http://www.chinaislam.net.cn/about/wygw/about188.html.

discrimination through affirmative action policies, the Uyghurs still face significant challenges within private sector employment. China's push for economic reform through further privatisation of state owned enterprises represents a further challenge for Uyghurs whose employment options are limited to an ever shrinking state sector.

Commendably, the Chinese government has also attempted to address Uyghur-Han employment inequality through the reforms to educational system in Xinjiang; however the flawed implementation of Xinjiang's bi-lingual language policy has promoted use of Mandarin at the expense of the Uyghurs' cultural identity. This Sino-centric approach towards multi-cultural education risks alienating Uyghurs from participating within the state educational system, further exacerbating the issue of inequality for future generations.

Perhaps the most contentious efforts made by the state to integrate Xinjiang's social fabric into China's interior have been its mass Han migration policies. Many of the social issues outlined above have been exacerbated by the dramatic shift in Xinjiang's population demographic following the PRC's establishment. By using economic incentives to facilitate Han in-migration into Xinjiang, Uyghurs are placed in a competitive employment environment that has demonstrated a considerable preference bias for Han labourers over their Uyghur counterparts. Examples of this phenomenon discussed previously include the increasing ethnic stratification that exists within Xinjiang's urban centres which are predominantly populated by Han Chinese, with that of Xinjiang's comparatively impoverished agricultural south where the majority of the Uyghur are located.

Cultural and social tensions have also significantly increased as a result of the influx of Han Chinese into Xinjiang. Inter-ethnic violence is an increasingly common occurrence, the frequent outbursts of violence in Xinjiang illustrative of how traditionally held ethnic stereotypes and Uyghur-Han mistrust can rapidly devolve into outward manifestations

of mutual hostility. Furthermore, many of the laws and regulations outlined in this thesis; including the prohibition of children engaging in religious practice and the edict enforcing Uyghur-owned shops to sell alcohol, are symptomatic of a state more interested in addressing the dissatisfaction of Xinjiang's Han Chinese population than respecting the identity of the region's indigenous Uyghur population.

Ostensibly, the provision of regional autonomy within China's constitution is designed as a means to alleviate the normative pressures faced by minorities living within contemporary Chinese society. In application however, the existence of Xinjiang's autonomous status has done little to prevent the mistreatment of the Uyghur, with many of the most repressive laws and regulations detailed within this thesis having being promulgated by Xinjiang's municipal government. In effect, the application of regional autonomy as it exists in Xinjiang provides the regional government with a level of constitutional leeway that enables it to bring into effect policies which would otherwise be incompatible with both national law and the Chinese constitution. Evidence of this can be seen in the prohibition of children from engaging in religious education in Xinjiang. As discussed earlier in this thesis, the separation of religion from education remains in effect at the national level, with children of minorities are given legal protection to pursue a private education that is in keeping with their "folkways and customs" as a minority. Consequently, the blanket prohibition of children engaging in religious practice in Xinjiang is in contention with both national legislation and the Chinese constitution.

The central question of this thesis concerned the role that state law and policy has had in addressing or exacerbating the issue of Uyghur unrest. Despite the historical pre-existence of Uyghur nationalism and unrest prior to the establishment of the PRC, the CCP's promulgation of laws and policies that ostensibly sought to mollify these underlying socio-political tensions have demonstrated minimal efficacy in this regard. Instead, the sources of Uyghur unrest as it exists today frequently stem from the very

laws and policies which ostensibly sought to mitigate it. As this thesis has argued, many of the laws and policies implemented within Xinjiang have had a disproportionate and discriminatory impact on the regions' Uyghur population in comparison to China's Han majority. The inability or unwillingness of the state to address this reality reflects an ideology of a Party that holds a pejorative view towards the Uyghurs' unique cultural and religious identity. It is this view that has influenced and guided China's policy and law with respect to the Uyghurs in Xinjiang.

Despite China's successes in garnering international recognition for the alleged threat of international Uyghur terrorist organisations, its actions during the interim period have shown little evidence of having any substantively positive impact in mitigating the potential threat. Instead, a recent escalation in the scope, methodology, and reach of recent terrorist attacks conducted by Uyghurs is illustrative of the contrary. Indeed, while the increasing threat of international religious extremism is of grave concern, China's reactionary approach of imposing further restrictions upon Uyghurs' religious and cultural practices has proven to be an ineffective means to address the issue, and instead has only served to fuel further disenfranchisement, discontent and anti-state sentiment among Uyghur in Xinjiang.

As a means of addressing the issue concerning the role of law and policy in fomenting Uyghur unrest, this thesis has looked towards the international human rights norms and protections of the United Nations. By providing a comparative framework for assessing China's laws and policies with respect to the Uyghur, this thesis has demonstrated that many of such laws are incompatible with the rights and principles promoted by the United Nations. In highlighting this incompatibility, this thesis provides a clear means with which to assess the extent with which national law and policy encroaches upon the rights of the Uyghur, as given effect by China's voluntary signing and ratification of many of the United Nations core treaties.

Despite the promotion and enforcement of the Uyghurs' rights within the United Nations machinery, its efforts remain debilitated by China's often divergent interests and the inherent limitations of the UN itself. This thesis has shown that the UN has made measurable progress in addressing the issue of Uyghur rights, but such progress remains limited to China's willingness to look introspectively at its own role in the continuance of Uyghur unrest as it exists today.

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