Forum: The Uighur Population in China and R2P

Pursuing Accountability and Protection for the Uighur and Muslim Minorities in China

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Abstract

This short article introduces the forum on the Uighur population in China and R2P. It provides context to demonstrate why it is important to analyse the current situation in Xinjiang Uighur Autonomous Region of China through an R2P lens and states the objectives of the forum. It then provides a brief summary of the contributions in the forum that take into account the domestic context, legal arguments and analysis of the international political context in which R2P is operationalised.

Keywords

responsibility to protect – Uighur minorities – China – ethnic and religious persecution – legal accountability

There is currently a government-led campaign of repression of Uighurs and other Muslim minorities underway in the Xinjiang Uighur Autonomous Region (XUAR) of China. The forced detention of approximately one million ethnic minority Uighurs is ‘the largest-scale detention of ethnic and religious minorities since World War II’¹ With systematic forced birth control in the form of abortions and sterilizations, the curtailment of religious freedom and mass surveillance of the population, the situation has the hallmarks of genocidal events that have occurred over the past century.

Whether the persecution of Uighur minorities is legally deemed to constitute genocide, crimes against humanity or systematic violations of human rights, it is evident that the campaign falls squarely within the parameters of the R2P framework. R2P represents a collective consciousness at the international level to act when there is evidence of widespread persecution of populations on the basis of identity. The preventive aspect of R2P prompts states to engage with situations of serious human rights violations earlier rather than later given the immense cost that such violations inflict on human lives.

Yet here within lies the paradox of R2P implementation: the normative commitment of states to the principles of atrocity prevention and intolerance of genocide, war crimes, crimes against humanity and ethnic cleansing encounters immense political hurdles. First, preventive action is sensitive for many states that consider international investigations, monitoring mechanisms and early warning alerts as constituting interference into domestic affairs, and therefore resist the actions necessary to garner sufficient evidence to make a legal determination on the nature of violations. Second, geopolitical considerations and the veto power held by China on the UN Security Council mean that confronting China on its domestic human rights record has long been a formidable task. Chinese cooperation is necessary to address a broad range of crucial global issues, and China is in an increasingly powerful economic position to influence states that limits their willingness to call out abuses inside its borders.

¹ As cited in Global Centre for the Responsibility to Protect brief ‘China’, *Populations at Risk*, 15 September 2020. <https://www.globalr2p.org/countries/china/>, accessed 5 November 2020.

This forum brings together a group of experts to reflect on the situation in XUAR through the lens of R2P. The purpose of the forum is to illuminate the relevance of R2P to the current situation, including the implications for the international community to shape responses to the Chinese government that promote accountability and protection of the Uighur and other persecuted minorities in the country. In the first contribution, Michael Clarke provides an account of the historical background to the issue and an overview of the domestic political situation in XUAR. Clarke argues that the Chinese government's repressive policy towards ethnic Uighur and other minority groups shows that it is 'seeking to destroy the 'shrines of the soul' of the Uyghur nation so that it may impose its conception of 'Chinese' culture and civilization in its place'. In doing so, he argues, the Chinese government is carrying out a form of cultural genocide over the Uighur population, and colonial imposition in XUAR.

The next two articles grapple with the legal questions of how to define the nature of repression within China, and to consider options available to the international community to pursue accountability for the Uighur population.

Sophie Ryan considers the criteria and evidence that would be required to make a legal determination of genocide or crimes against humanity in the context of persecution of Uighur and Muslim minorities in XUAR. While genocide can be notoriously difficult to determine given its status as the 'crime of crimes', evidence for crimes against humanity may be more attainable. Ryan argues that despite the legal labels applied to the situation, clear evidence of egregious human rights violations are sufficient to merit urgent international attention.

Building on this argument, Andrew Garwood-Gowers analyses options for accountability based on a range of potential legal findings. While China's status as non-member of key international legal adjudication mechanisms restricts options for pursuing accountability, he sees some potential through new judicial precedents of exercising extraterritorial jurisdiction through the International Criminal Court. However, Garwood-Gowers concludes that the international community should give priority to securing access for an independent fact-finding investigation, persuading China to retract its repressive policies in the Xinjiang region, and widening the base of actors calling out China's actions beyond Western states and civil society groups.

The final two articles examine the situation from the perspective of global politics, to consider the broader implications for the international community and the normative context in which R2P is operationalised.

In a sober account, Rosemary Foot argues that the current geopolitical reality of China's status impedes a meaningful application of R2P to the Uighur

situation. Foot argues that China's support for a 'thin version of R2P' has enabled it to place the 'state at the centre and in a role as the provider or curtailer of the rights of individuals.' This position ensures that China remains unaccountable for atrocities it commits within its own borders – subverting the fundamental responsibility of the state for protection – and is consistent with China's global approach to human protection beyond its borders. As China's role in global governance becomes more significant, Foot warns that its 'thin, pluralist, vision of global order that downgrades the importance of our common humanity' threatens to weaken the normative power of R2P and global human protection standards.

Finally, Nadira Khoury turns attention to the internal dynamics of the United Nations to consider the breadth – and limits – of international collective action to influence the situation. She demonstrates that China has managed to direct the UN response in a way that obstructs any consequential outcome to date. However, she argues that 'China holds an enormous amount of influence at the UN, but it is not omnipotent', showing that intensified publicity and access to credible evidence of abuses has moved China from a position of denial to one where it is forced to expend 'much of its political capital to continue to persuade Member States to ignore crimes against humanity and genocide'. There are no easy solutions and Khoury concludes by arguing that creativity and the ability to embrace a wide range of alternative responses is now incumbent on the international community if it is to navigate the difficult terrain of atrocity prevention and human protection within powerful states such as China.