

A low-angle photograph of the United Nations Secretariat Building in New York City. The building's glass facade reflects the sky. In the foreground, several flagpoles hold flags, including the South African flag, the United States flag, and the flag of the United Nations. The sky is blue with scattered white clouds.

EXPLANATORY NOTE

The Need to Establish A U.N. Mechanism for Evidence Gathering in Xinjiang

Dr. Ewelina U. Ochab

 **NEW LINES
INSTITUTE**
FOR STRATEGY AND POLICY

September 2022

Getty Images



The Need to Establish a U.N. Mechanism for Evidence Gathering in Xinjiang

Explanatory Note, September 2022

Dr. Ewelina U. Ochab

Summary

After the failed U.N. visit to Xinjiang, China, which did not enable the U.N. to conduct any fact-finding, States must table a resolution at the U.N. to establish a mechanism that would enable it to collect the evidence of atrocities in Xinjiang and preserve the evidence for future prosecutions. The issue requires urgent attention of the U.N. General Assembly.



The Concerning Situation in Xinjiang

The Chinese government stands accused of genocide and crimes against humanity against the Uyghurs and other Turkic minorities in the Xinjiang region of China. Reports of such atrocities have been published by leading experts in the field. The Chinese government denies any wrongdoing.

Among others, in March 2021, New Lines Institute for Strategy and Policy published a report co-authored by over 50 global experts in human rights, war crimes, and international law, analyzing the situation of the Uyghur community in Xinjiang against the legal definition of genocide and the duties to prevent and punish the crime of genocide.¹ The report concludes that the Chinese government “bears State responsibility for committing genocide against the Uyghurs in breach of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.”

In November 2021, the United States Holocaust Memorial Museum’s Simon-Skjodt Center for the Prevention of Genocide published its new report “To Make Us Slowly Disappear’: The Chinese Government’s Assault on the Uyghurs,” providing their assessment of the situation of Uyghurs in Xinjiang.² The report concludes that the Chinese government may be committing genocide against the Uyghurs. Furthermore, according to its findings, the Chinese government is failing in its legal obligation to prevent the crime of genocide. The report confirms that publicly available information indicates that the Chinese authorities have caused serious mental and bodily harm to members of the Uyghur community through “the forced sterilisation of Uyghur women; the forced placement of IUDs; the detention of members of the Uyghur community; the physical abuse of detainees; the forced separation of Uyghur families, including children, whether by transfer or detention; and the forced labour extracted from Uyghurs held in detention as well as those recently released or otherwise not detained.” Further, the report indicates the use of rape and sexual violence as yet another way of causing serious bodily or mental harm upon the members of the community. The report identifies several ways the community is subjected to measures intended to prevent births within the group, including: “Forced sterilisation of Uyghur women, and the forced or otherwise coerced implantation of IUDs in circumstances where they cannot be removed without surgical intervention approved by the state.” These methods are said to be leading to the slow disappearance of the community from Xinjiang.

Again, the allegations continue to be denied by the Chinese government and classified as anti-China propaganda. The Chinese government’s official position is that Uyghurs are subjected to counterterrorism and deradicalization measures.



In December 2021, the Uyghur Tribunal, an independent inquiry, published its findings stating that the People's Republic of China (PRC) has committed genocide, crimes against humanity, and torture against Uyghur, Kazakh, and other ethnic minority citizens in the north west region of China.³ The Uyghur Tribunal found that: "Torture of Uyghurs attributable to the PRC is established beyond reasonable doubt. Crimes against humanity attributable to the PRC is established beyond reasonable doubt by acts of: deportation or forcible transfer; imprisonment or other severe deprivation of physical liberty; torture; rape and other sexual violence; enforced sterilization; persecution; enforced disappearance; and other inhumane acts." The Uyghur Tribunal further added that "it is satisfied beyond reasonable doubt that the PRC, by the imposition of measures to prevent births intended to destroy a significant part of the Uyghurs in Xinjiang as such, has committed genocide."

In September 2021, Michelle Bachelet, the then High Commissioner for Human Rights, said at the opening of the U.N. Human Rights Council that her Office was finalizing its assessment of the available information on allegations of serious human rights violations in that region, with a view to making it public. The report was ultimately published on Aug. 31, 2022, and found that "the information currently available to [the Office of the High Commissioner for Human Rights] on implementation of the Government's stated drive against terrorism and 'extremism' in [Xinjiang] in the period 2017-2019 and potentially thereafter, also raises concerns from the perspective of international criminal law. The extent of arbitrary and discriminatory detention of members of Uyghur and other predominantly Muslim groups, pursuant to law and policy, in context of restrictions and deprivation more generally of fundamental rights enjoyed individually and collectively, may constitute international crimes, in particular crimes against humanity."⁴

Why do we need to collect evidence in cases of atrocity crimes?

To prove genocide and other mass atrocity crimes, evidence is crucial. Documenting and preserving evidence at the time of the suspected atrocity is the only way to effectively ensure that any group is able to access justice in the future.

Whose responsibility is it to collect evidence in cases of atrocity crimes?

States hold ultimate responsibility for collecting and preserving evidence of atrocity crimes occurring within their territories. However, where the State is involved in the atrocities, it is reasonable to conclude that the State will not collect and preserve evidence that could ultimately implicate itself in the crimes. This is where international bodies will play an important role.



The U.N. has acted previously to collect and document evidence of atrocities perpetrated in many parts of the world, and where it was clear that the State would not do so.

Understandably, some civil society groups, governments, and organizations have been involved in various initiatives to collect and preserve some evidence of atrocity crimes. However, this has never been on the scale of such initiatives run by the U.N.

What U.N. processes have been used in the past to document atrocity crimes?

There are several mechanisms by which the U.N. can act, including at the levels of the U.N. Security Council, General Assembly, and the Human Rights Council. These will be explored in more detail in the following sections.

The current U.N. system means that each situation has to have its own mechanism established.

What evidence collection is currently ongoing in the case of the atrocities being conducted against the Uyghurs?

Currently, there is no U.N. mechanism that would have the mandate to collect and preserve the evidence of the atrocities perpetrated against Uyghurs and other ethnic minorities. Some of the evidence is being collected by researchers and NGOs. However, the evidence will not necessarily be collected and stored in a way that would enable the evidence to be used in future proceedings. Furthermore, reports suggest that some of the databases are being attacked by hackers in an attempt to destroy the evidence.

In May 2022, the Office of the High Commissioner for Human Rights visited China and Xinjiang. The United Nations High Commissioner for Human Rights Michelle Bachelet's trip to China marks the first time a U.N. human rights commissioner has had access to China since 2005. However, as the trip has been highly choreographed, nothing of the "unfettered access" the U.N. has been asking for, the visit aids only the state propaganda. The U.N. visit was agreed upon in response to reports of severe human rights violations in Xinjiang, China, and especially, atrocities against the Uyghurs and other Muslim minorities. The U.N. visit commenced mid-May 2022, with little being known of the scope of the inquiry, the powers of the investigative team, and terms of reference, among others.

On May 28, 2022, upon the conclusion of her visit, Michelle Bachelet stated that the visit was not an investigation into China's human rights policies.⁵ This ultimately means that the design of the visit prevented Michelle Bachelet and her team from conducting an investigation. According to Bachelet, she spent two days in Kashgar and Urumqi, and



“met with a range of officials, including the Secretary of the Chinese Communist Party of the Xinjiang Uyghur Autonomous Region (XUAR), the Governor and the Vice-Governor in charge of public security, among others[,] and] visited Kashgar prison and the Kashgar Experimental School, a former Vocational Education and Training Centre (VETC), among other places.” However, she also emphasized that she was “unable to assess the full scale of the VETCs.” This again means that she has not been granted full and unfettered access and was only shown what the government wanted her to see.

Bachelet further phrased the concerns about the situation of Uyghurs and other Muslim minorities in Xinjiang as a result of counterterrorism and deradicalization measures – the official line of the Chinese government’s justification of the dire treatment of the Uyghurs. She added that, “The application of relevant laws and policies and any mandatory measures ... need to be subject to independent judicial oversight with greater transparency in judicial proceedings.”⁶ It is highly unlikely that such independent judicial oversight will be possible in a state that goes this far in its “counterterrorism and deradicalization measures.” Bachelet continued that she hoped that the visit “will encourage the government to review a number of policies to ensure that human rights would be fully respected and protected.” Considering China’s human rights legacy, this hope is not substantiated.

Bachelet indicated that the Chinese government agreed to regular engagements with the U.N. Human Rights Office and to establish a working group to facilitate substantive exchanges and cooperation between the two.⁷ However, again, the agreed solution leaves out one crucial detail – the involvement of victims.

What U.N. mechanisms might be possible for collecting and preserving evidence of atrocities against the Uyghurs and other ethnic minorities?

The U.N. has, at times, established mechanisms to collect and preserve the evidence of atrocity crimes for a number of cases. These are discussed below.



U.N. Security Council Mechanisms

Commissions of Experts

In the past, the U.N. Security Council established commissions of experts to consider the available evidence, collect further information, and prepare an opinion to confirm the nature of the atrocities. The U.N. Security Council followed this approach in the cases of Bosnia and Rwanda. Once the commission of experts confirmed that the atrocities amounted to genocide, the U.N. Security Council then passed resolutions establishing ad hoc tribunals to prosecute the perpetrators.

Investigative Team

In 2017, in response to the Daesh atrocities, the U.N. Security Council established the Investigative Team. The Investigative Team was tasked with collecting, preserving, and storing evidence of Daesh atrocities in Iraq that may amount to war crimes, crimes against humanity, and genocide.

According to the resolution, “[the] evidence of crimes collected and stored by the Team in Iraq should be for eventual use in fair and independent criminal proceedings, consistent with applicable international law, conducted by competent national-level courts, with the relevant Iraqi authorities as the primary intended recipient as specified in the Terms of Reference, and with any other uses to be determined in agreement with the Government of Iraq on a case by case basis.”⁸

In the case of the atrocities perpetrated against the Uyghurs, as the alleged perpetrator is the Chinese government, it is very unlikely the U.N. Security Council resolution would succeed. China, as one of the Permanent Five, has a veto right and so could easily block the resolution.

U.N. General Assembly’s Mechanisms

International, Impartial and Independent Mechanism

In 2017, the U.N. General Assembly established a mechanism for Syria, the International, Impartial and Independent Mechanism for Syria, to assist in the investigation and prosecution of persons responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011 (IIIM).⁹



IIMM was established to: “collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law.”¹⁰

The resolution would need to receive a majority at the U.N. General Assembly. For example, U.N. General Assembly Resolution 71/248 establishing the IIMM was strongly opposed by Syria. However, it was adopted by a recorded vote of 105 in favor and 15 against, with 52 abstentions. It is possible that if such a mechanism were to be established in the case of the atrocities against the Uyghurs, the resolution would reach majority. See draft resolution enclosed (Appendix A).

U.N. Human Rights Council Mechanisms

Independent Investigative Mechanism

In 2018, the U.N. Human Rights Council passed a resolution establishing the Independent Investigative Mechanism for Myanmar (IIMM), “an ongoing independent mechanism to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law.”¹¹

As per the resolution, the IIMM was to:

“(a) Be able to make use of the information collected by the fact-finding mission and continue to collect evidence;

“(b) Have the capacity to document and verify relevant information and evidence, including through field engagement and by cooperating with other entities, as appropriate;

“(c) Report on its main activities on an annual basis to the Human Rights Council (...).”



New Mechanisms

In 2021, the U.N. Human Rights Council passed a resolution establishing a mechanism for collection of the evidence of the atrocities in Sri Lanka. The new mechanism will “collect, consolidate, analyse and preserve information and evidence and to develop possible strategies for future accountability processes for gross violations of human rights or serious violations of international humanitarian law in Sri Lanka, to advocate for victims and survivors, and to support relevant judicial and other proceedings, including in Member States, with competent jurisdiction.”¹² The resolution was adopted by a recorded vote 22 to 11, with 14 abstentions. Sri Lanka did not support it.

In December 2021, the U.N. HRC established a similar mechanism for Ethiopia¹³, and in March 2022, for Ukraine.¹⁴

The resolution would need to receive a majority vote. Considering the current structure of the HRC, it may be difficult to reach a majority. See draft resolution enclosed (Appendix B).

Recommendations

States must work together to table a resolution, preferably at the U.N. General Assembly, to establish a mechanism for the collection and preservation of evidence of the atrocities in Xinjiang. Appendix A could be used as a draft zero or a guide to start the drafting process.

Author

Dr. Ewelina U. Ochab is a human rights advocate, author, and co-founder of the Coalition for Genocide Response. Ochab focuses on the persecution of ethnic and religious minorities around the world, with main projects including the Daesh genocide in Syria and Iraq, Boko Haram atrocities in West Africa, the situation of the Rohingya Muslims in Myanmar and Uyghurs in China. She tweets at @EwelinaUO.



Endnotes

- 1 The Uyghur genocide: An examination of China's breaches of the 1948 Genocide Convention. New Lines Institute. 9 March 2021, <https://newlinesinstitute.org/uyghurs/the-uyghur-genocide-an-examination-of-chinas-breaches-of-the-1948-genocide-convention/>
- 2 To make us slowly disappear. (n.d.). November 2021, <http://www.ushmm.org/genocide-prevention/reports-and-resources/the-chinese-governments-assault-on-the-uyghurs>
- 3 Uyghur tribunal judgment. (2021). *Uyghur Tribunal*. <https://uyghurtribunal.com/wp-content/uploads/2022/01/Uyghur-Tribunal-Judgment-9th-Dec-21.pdf>
- 4 OHCHR assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China. (2022). OHCHR. <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>
- 5 Statement by UN High Commissioner for Human Rights Michelle Bachelet after official visit to China. (n.d.). OHCHR. Retrieved September 12, 2022, from <https://www.ohchr.org/en/statements/2022/05/statement-un-high-commissioner-human-rights-michelle-bachelet-after-official>
- 6 Ibid.
- 7 Ibid.
- 8 Security Council requests creation of independent team to help in holding ISIL (Da'esh) accountable for its actions in Iraq. UN Press. (n.d.). Retrieved September 12, 2022, from <https://press.un.org/en/2017/sc12998.doc.htm>
- 9 Mandate – IIM. (n.d.). Retrieved September 12, 2022, from <https://iiim.un.org/who-we-are/mandate/>
- 10 Ibid.
- 11 Mandate – IIM. (n.d.). Retrieved September 13, 2022, from <https://iimm.un.org/mandate-and-establishment/>
- 12 OHCHR | OHCHR Sri Lanka accountability project. (2021). OHCHR. Retrieved September 12, 2022, from <https://www.ohchr.org/en/hr-bodies/hrc/sri-lanka-accountability/index>
- 13 OHCHR | International Commission of Human Rights Experts on Ethiopia. (n.d.). OHCHR. Retrieved September 12, 2022, from <https://www.ohchr.org/en/hr-bodies/hrc/ichre-ethiopa/index>
- 14 OHCHR | Independent International Commission of Inquiry on Ukraine. (n.d.). Retrieved September 12, 2022, from <https://www.ohchr.org/en/hr-bodies/hrc/iicir-ukraine/index>



General Assembly

Distr.: General
dd month yyyy

xx session

[Resolution adopted by the General Assembly on dd month yyyy]

**xx/xx. International, Impartial and Independent Mechanism
to Assist in the Investigation of the Situation in Xinjiang,
China**

The General Assembly,

Guided by the Charter of the United Nations,

Reaffirming its commitment to the sovereignty of the People's Republic of China,

Recognizing the work of international civil society actors in documenting violations and abuses of human rights law in the People's Republic of China, especially as perpetrated against religious and ethnic minorities, especially the Uyghur Muslim minorities, Turkic minorities, Falun Gong practitioners, and others,

Noting with concern the impunity for serious violations of and abuses of human rights law in the People's Republic of China, which has provided a fertile ground for further violations and abuses,

Alarmed by the precarious human rights situation in the country, including the violations associated with arbitrary incarceration and detention in the so-called "re-education camps," torture and other cruel, inhuman, or degrading treatment or punishment, rape and sexual violence, forced sterilization and forced abortions, enforced disappearances, trafficking of persons, forced labor, discrimination, violations of the right to life, freedom of religion or belief, freedom of expression, and especially as perpetrated against religious and ethnic minorities aimed at stripping their religious identity, with a view to ensuring full accountability, in particular where these violations may amount to genocide or crimes against humanity,

Reaffirming that it is the responsibility of the Government of the People's Republic of China to ensure the full enjoyment of all human rights and fundamental freedoms of its entire population, including by ensuring the right to freedom of religion or belief for all, freedom of expression, and other universal human rights,

Recognizing that particular risk factors affect women, children, persons with disabilities, and the elderly, and the need to ensure the full enjoyment of all their human rights and fundamental freedoms by them against neglect, abuse, exploitation, and violence,

1. *Strongly condemns* the ongoing grave, widespread, and systematic human rights violations in the People's Republic of China;
2. *Emphasizes* the need to ensure accountability for crimes involving violations of international law, in particular of international human rights law, some of which may constitute crimes against humanity or even genocide, committed in the People's Republic of China since 2018, through appropriate, fair, and independent investigations and prosecutions at the domestic or international level, and stresses the need to pursue practical steps toward this goal to ensure justice for all victims and to contribute to the prevention of future violations;
3. *Decides* to establish the International, Impartial and Independent Mechanism to Assist in the Investigation of Persons Responsible for the Most Serious Crimes under International Law committed in Xinjiang, the People's Republic of China, since 2018 under the auspices of the United Nations to closely cooperate with other UN bodies to collect, consolidate, preserve, and analyze evidence of human rights violations and abuses and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional, or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law;
4. *Requests* the Secretary-General, in this regard, to develop, within 20 working days of the adoption of the present resolution, the terms of reference of the International, Impartial and Independent Mechanism for Xinjiang, China, with the support of the Office of the United Nations High Commissioner for Human Rights, and also requests that the Secretary-General undertake, without delay, the steps, measures, and arrangements necessary for the speedy establishment and full functioning of the Mechanism, initially funded by voluntary contributions, building on existing capacities, including recruiting or allocating impartial and experienced staff with relevant skills and expertise in accordance with the terms of reference;
5. *Urges* the Government of the People's Republic of China to cooperate fully with the Mechanism, and to permit them and their staff unrestricted access to visit the country and to provide them with all information necessary to enable them to fulfill their mandates;
6. *Requests* the United Nations system as a whole to fully cooperate with the International, Impartial and Independent Mechanism for Xinjiang and to promptly respond to any request, including access to all information and documentation, and decides that the Mechanism shall closely cooperate with other UN mechanisms in all aspects of its work;
7. *Requests* the Secretary-General to report on the implementation of the present resolution within 45 days of its adoption, and decides to revisit the question of funding of the International, Impartial and Independent Mechanism as soon as possible.



General Assembly

Distr.: General
DD MMMM 202x

Original: English

Human Rights Council

[number] session

dates

Agenda item x

Promotion and protection of all human rights, civil, political, economic, social, and cultural rights, including the right to development

Resolution adopted by the Human Rights Council on DD MMMM 202x

NN. Commission of Inquiry on Xinjiang, China

The Human Rights Council,

Guided by the Charter of the United Nations and the Universal Declaration of Human Rights,
...

Alarmed by the precarious human rights situation in the country, including the violations associated with arbitrary incarceration and detention of Uyghurs and other Turkic minorities in the so-called “re-education camps,” torture and other cruel, inhuman, or degrading treatment or punishment, rape and sexual violence, forced sterilization and forced abortions, enforced disappearances, trafficking of persons, forced labor, discrimination, violations of the right to life, freedom of religion or belief, freedom of expression, and especially as perpetrated against religious minorities aimed at stripping their religious identity, with a view to ensuring full accountability, in particular where these violations may amount to genocide or crimes against humanity,

Reaffirming that it is the responsibility of the Government of the People’s Republic of China to ensure the full enjoyment of all human rights and fundamental freedoms of its entire population, including by ensuring the right to freedom of religion or belief for all, freedom of expression, and other universal human rights,

Recognizing that particular risk factors affect women, children, persons with disabilities, and the elderly, and the need to ensure the full enjoyment of all their human rights and fundamental freedoms by them against neglect, abuse, exploitation, and violence,

Reaffirming the importance of States’ engaging fully and constructively with the universal periodic review process and with other mechanisms of the Human Rights Council for the improvement of their situation of human rights,

1. *Strongly condemns* the ongoing grave, widespread, and systematic human rights violations in the People's Republic of China;
2. *Decides* to establish an ongoing independent mechanism to collect, consolidate, preserve, and analyze evidence of the most serious international crimes and violations of international law committed in the People's Republic of China since 2018, the Commission of Inquiry on Xinjiang, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional, or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law;
3. *Further decides* that the Commission of Inquiry on Xinjiang will investigate the systematic, widespread, and grave violations of human rights in the People's Republic of China, including the violations associated with arbitrary incarceration and detention of Uyghurs and other Turkic minorities in the so-called "re-education camps," torture and other cruel, inhuman, or degrading treatment or punishment, rape and sexual violence, forced sterilization and forced abortions, enforced disappearances, trafficking of persons, forced labor, discrimination, violations of the right to life, freedom of religion or belief, freedom of expression, and especially as perpetrated against religious minorities aimed at stripping their religious identity, with a view to ensuring full accountability, in particular where these violations may amount to genocide or crimes against humanity,
4. *Urges* the Government of the People's Republic of China to cooperate fully with the Commission of Inquiry on Xinjiang, and to permit them and their staff unrestricted access to visit the country and to provide them with all information necessary to enable them to fulfill their mandates;
5. *Encourages* the United Nations, including its specialized agencies, regional intergovernmental organizations, mandate holders, interested institutions and independent experts, and nongovernmental organizations, to develop regular dialogue and cooperation with the independent mechanism in the fulfillment of their mandates;
6. *Requests* the Secretary-General to provide the Commission of Inquiry on Xinjiang with all assistance and adequate staffing necessary to carry out their mandates effectively and to ensure that these mechanisms work with the support of the Office of the United Nations High Commissioner for Human Rights;
7. *Invites* the Commission of Inquiry on Xinjiang to submit regular reports on the implementation of this mandate to the Human Rights Council and to the General Assembly;
8. *Requests* the Commission of Inquiry on Xinjiang to present an oral update to the Human Rights Council at its [xx] session and to the General Assembly at its [xx] session, and a written report to the Council at its [xx] session;
9. *Decides* to transmit all reports of the Commission of Inquiry on Xinjiang to all relevant bodies of the United Nations and to the Secretary-General for appropriate action.