

# SEEKING INTERNATIONAL RELIEF FOR UYGHURS IN CHINA

## I. TELLING THE UYGHUR STORY THROUGH INTERNATIONAL LAW

Uyghur Muslims in China have been the target of Chinese persecution, most recently ramping up in 2017.<sup>1</sup> The Uyghurs are a Turkish minority ethnic group originating in central and east Asia; approximately 11 million Uyghurs live in Western China's Xinjiang region, the majority of which are Muslims.<sup>2</sup> Reports on the internment of Uyghurs in Chinese reeducation camps have slowly come to light.<sup>3</sup> However, there has yet to be much international attention to the issue; as a result, the Chinese government and sparse foreign reports are the only sources of information on a humanitarian crisis affecting over a million people.<sup>4</sup>

The stage for international legal relief remains bleak given China's controlling position on the United Nations Security Council.<sup>5</sup> Instead, other unconventional forms of international relief should be explored. Creating a truth commission or filing a human rights class action are two options for shedding more light on the Uyghur persecution in China. Neither option offers a perfect solution to Uyghur persecution, but both have the potential to raise awareness and provide some form of restorative justice to a group that has been largely silenced on the international stage.

---

1 XINJIANG: CHINA'S MUSLIM BORDERLAND (Frederick S. Starr ed., 2004); Roland Hughes, *China Uyghurs: All You Need to Know on Muslim "Crackdown"*, BBC NEWS (Nov. 8, 2018), <https://www.bbc.com/news/world-asia-china-45474279>.

2 *Id.*

3 *Id.*

4 Ellen Halliday, *Uighurs Can't Escape Chinese Repression, Even in Europe*, ATLANTIC (Aug. 20, 2019), <https://www.theatlantic.com/international/archive/2019/08/china-threatens-Uyghurs-europe/596347/> (Even in Europe Uyghurs are afraid to speak publicly about their experiences in the reeducation camps for fear of reprisals against their family members still living in China);

Editorial Board, Opinion, *How China Corralled 1 Million People into Concentration Camps*, WASH. POST (Feb. 29, 2020), [https://www.washingtonpost.com/opinions/global-opinions/a-spreadsheet-of-those-in-hell-how-china-corralled-Uyghurs-into-concentration-camps/2020/02/28/4daeca4a-58c8-11ea-ab68-101ecfec2532\\_story.html](https://www.washingtonpost.com/opinions/global-opinions/a-spreadsheet-of-those-in-hell-how-china-corralled-Uyghurs-into-concentration-camps/2020/02/28/4daeca4a-58c8-11ea-ab68-101ecfec2532_story.html).

5 *UN Security Council Working Methods*, SEC. COUNCIL REP. (Oct. 19, 2015), <https://www.securitycouncilreport.org/un-security-council-working-methods/the-veto.php>. As a permanent member of the UN Security Council, China may exercise its veto power to single handedly block any action from the General Assembly or the ICC on this issue.

## II. THE CASE OF CHINESE UYGHUR MUSLIMS

Chinese Chairman Xi Jinping laid the foundation for the crackdown on the Uyghur population in a series of speeches delivered in private to officials in April 2014, just weeks after Uyghur militants stabbed more than 150 people at a train station, killing 31.<sup>6</sup> President Xi, in a series of leaked documents released in November 2019, called for an all-out “struggle against terrorism, infiltration and separatism” using the “organs of dictatorship” and showing “absolutely no mercy.”<sup>7</sup> The Chinese government had presented its efforts in the Xinjiang region to the public as a benevolent campaign to deradicalize the region. However, thanks to a series of document leaks, we now know the internment was discussed and organized as a ruthless campaign in which senior party leaders were recorded ordering urgent action against extremist violence, including mass detentions. Party leaders went on to discuss the consequences of such a crackdown without apparent concern for the vast human rights violations.<sup>8</sup>

Chinese authorities claim the Uyghurs are responsible for an ongoing separatist movement in the Xinjiang region of China. China further ramped up its crackdown against Uyghur Muslims after five people were stabbed to death in a separatist attack attributed to the Uyghur ethnic group in February 2017.<sup>9</sup> The crackdown on Uyghurs in China has taken the form of increased surveillance and detainment in reeducation camps.<sup>10</sup> In August 2018, the

---

6 Austin Ramzy & Chris Buckley, *Absolutely No Mercy: Leaked Files Expose How China Organized Mass Detentions of Muslims*, N.Y. TIMES (Nov. 16, 2019), <https://www.nytimes.com/interactive/2019/11/16/world/asia/china-xinjiang-documents.html?module=inline>.

7 *Id.*

8 *Id.*

9 Hughes, *supra* note 1. The Chinese government has also blamed the Uyghurs for the 2009 riots in the region’s capital as well as numerous other attacks in the region resulting in hundreds of deaths. *See id.*; cf. Jen Kirby, *China’s Brutal Crackdown on the Uyghur Muslim Minority, Explained*, VOX (Nov. 6, 2018), <https://www.vox.com/2018/8/15/17684226/Uyghur-china-camps-united-nations>; *China Has Turned Xinjiang into a Police State Like No Other*, ECONOMIST (May 31, 2018) <https://www.economist.com/briefing/2018/05/31/china-has-turned-xinjiang-into-a-police-state-like-no-other>

10 *See* Hughes, *supra* note 1. The surveillance methods employed against the Uyghurs are far more intense than that encountered by the average Chinese citizen. *Id.* For those allowed to remain in their homes, reports indicate facial recognition cameras and QR codes on people’s doors, allowing officials to check the codes in order to see who is inside the home at a given time. *Id.* People are also reportedly made to undergo biometric tests as a further monitoring measure. *Id.* Chris Buckley & Austin Ramzy,

international community took notice as the United Nations heard testimony that up to a million Uyghur Muslims and other Muslim groups may be being detained in the western Xinjiang region of China, where they were undergoing “re-education” programs.<sup>11</sup>

It has been estimated that over a million people, 10% of China’s Uyghur Muslim population, has been forced into the camps as of 2019.<sup>12</sup> The Chinese government has claimed the camps prevent terrorism while also teaching detainees “vocational educational skills” to transform them into productive Chinese citizens.<sup>13</sup> However, human rights organizations report the camps are actually more properly classified as internment camps, in which detainees are subject to widespread torture and other human rights abuses.<sup>14</sup> Those released from the camps have also reported horrific cases

---

*Inside China’s Push to Turn Muslim Minorities into an Army of Workers*, N.Y. TIMES (Feb. 17, 2020), <https://www.nytimes.com/2019/12/30/world/asia/china-xinjiang-muslims-labor.html>. “The Chinese labor bureau of Qapqal ordered that Uyghur villagers should undergo military-style training to convert them into obedient workers, loyal to the ruling Communist Party.” “Turn around their ingrained lazy, lax, slow, sloppy, freewheeling, individualistic ways so they obey company rules,” the government director stated. China’s government maintains that the Uyghurs are “rural surplus labor” and may threaten social stability if they remain unemployed. Government entities have stated “putting the group into steady, supervised government-approved work will erase poverty and slow the spread of religious extremism and ethnic violence” that has been attributed to the group. *Id.*

11 See Hughes, *supra* note 1. The “re-education programs” include forced pledges of loyalty to the communist party and renouncements of the Uyghurs’ Muslim faith. Chinese officials have bragged that the camps have proved extremely effective in preventing terror attacks. Jane Perlez, *China Wants the World to Stay Silent on Muslim Camps. It’s Succeeding*, N.Y. TIMES (Sept. 25, 2019), <https://www.nytimes.com/2019/09/25/world/asia/china-xinjiang-muslim-camps.html>. Wang Yi, state councilor and foreign minister of China, stated at a United Nations summit: “The education and training centers are schools that help the people free themselves from terrorism and extremism and acquire useful skills,” citing the camps as being responsible for preventing any attacks from occurring in China in the last three years. *Id.*

12 Keir Simmons, *Inside Chinese Camps Thought to be Detaining a Million Muslim Uyghurs*, NBC NEWS (Oct. 4, 2019), <https://www.nbcnews.com/news/world/inside-chinese-camps-thought-detain-million-muslim-uyghurs-n1062321>.

13 See *id.* The director of the Moyu County Vocational Education and Training Center in Hotan Prefecture in the southwestern Xinjiang made it clear in statements that the role of the centers is to change the minds and thoughts of those who are forced to live there. However, a former National Security Council Director has stated the true purpose of the camps is about “crushing, to some degree, the Muslim culture, the Uyghur culture—getting people to feel much more bonded to the Communist Party than to their own religious beliefs.” *Id.*

14 *Id.* Ms. Sauytbay, a former inmate at one of the internment camps, described the conditions of her detention. Her description of the camps included allegations of inadequate health care, crowding, and almost nonexistent hygiene. She alleges prisoners who were observant Muslims were forced to eat pork, a food that is forbidden in Islam. Sauytbay estimated there were around 2,500 prisoners confined in the camp she was held in, their ages ranging from 13 to 84. Sautbay stated, “[t]hey would punish

of sexual abuse committed by camp guards, medical experiments on the inmates, and otherwise atrocious health conditions.<sup>15</sup> However, details remain sparse as to the exact conditions of the camps at this time.

Chinese officials have stated that the Uyghurs who placed in such camps are collected and detained according to three general categories.<sup>16</sup> First are individuals who have committed a minor offense, such as wearing a burqa or watching a prohibited religious video.<sup>17</sup> Second are those who have been convicted of a more serious offense; in these cases the individual is offered internment in the reeducation camps as an alternative to a standard prison sentence.<sup>18</sup> Third are those who served their jail time, but were deemed to need “reeducation,” effectively extending their sentence.<sup>19</sup> However, reports indicate that Uyghurs placed in the camps may not be limited to

---

inmates for everything...[a]nyone who didn't follow the rules was punished. Those who didn't learn Chinese properly or who didn't sing the songs were also punished.” Punishments in the camps could take the form of being deprived of food or even having one’s fingernails ripped out. Ellen Ioanes, *Rape, Medical Experiments, and Forced Abortions: One Woman Describes Horrors of Xinjiang Concentration Camps*, BUS. INSIDER (Oct. 22, 2019), <https://www.businessinsider.com/muslim-woman-describes-horrors-of-chinese-concentration-camp-2019-10>. Reports have also included details of nearly a half million children being separated from their families and placed in boarding schools. Amy Qin, *In China's Crackdown on Muslims, Children Have Not Been Spared*, N.Y. TIMES (Dec. 28, 2019), <https://www.nytimes.com/2019/12/28/world/asia/china-xinjiang-children-boarding-schools.html>. When the parents are sent to reeducation centers the ruling Communist Party has created boarding schools to care for the separated children. The Chinese government has set a goal of operating one to two such schools in each of Xinjiang’s 800-plus townships by the end of next year to accommodate the massive reeducation program. *Id.*

15 Zamira Rahim, *Prisoners in China's Xinjiang Concentration Camps Subjected to Gang Rape and Medical Experiments, Former Detainee Says*, INDEPENDENT (Oct. 22, 2019), <https://www.independent.co.uk/news/world/asia/china-xinjiang-Uyghur-muslim-detention-camps-xi-jinping-persecution-a9165896.html>. Ms. Sautybay, a former detainee at one of the internment camps, said women were systematically raped and that she personally was forced to watch a woman be repeatedly assaulted by a policeman. She claimed, “on an everyday basis the policemen took girls with them, and they didn’t return to the rooms all night.” *Id.*

16 Simmons, *supra* note 12. Uyghurs are not the only groups detained in the reeducation camps; reports indicate all manner of prisoners are forced into the camps, mainly consisting of those who harbor strong religious beliefs such as Buddhists and Muslims. Leaked papers consisting of 24 documents, some of which contain duplicated material include nearly 1,200 pages of internal speeches by Mr. Xi and other Chinese leaders, and more than 150 pages of directives and reports on the surveillance and control of the Uyghur population in Xinjiang. Ramzy & Buckley, *supra* note 6. There are also references to plans to extend restrictions on Islam to other parts of China. “Of the 24 documents, the directive on how to handle minority students returning home to Xinjiang in the summer of 2017 offers the most detailed discussion of the indoctrination camps and provides the clearest picture of the regimented way the party told the public one story while propagating a far harsher narrative internally” while discussing the mandatory reeducation of Uyghur Muslims. *Id.*

17 Simmons, *supra* note 12.

18 *Id.*

19 *Id.*

those who were found guilty of an offense.<sup>20</sup> Instead, the camps are also used to threaten the families of those critical of the Chinese government, expanding China's suppression of the Uyghur's story internationally.<sup>21</sup>

Chinese control over information regarding the reeducation camps has been incredibly effective.<sup>22</sup> Besides largely refusing to allow foreign journalists into Xinjiang and exerting control over domestic Chinese reporting, the Chinese government has also managed to silence even those survivors of the camps who have left the country.<sup>23</sup> It is rare for anyone to be discharged from these camps, as to secure release, inmates must pass a series of exams with unknown criteria.<sup>24</sup> Furthermore, even after leaving the camps, these individuals are reluctant to come forward out of fear that their families will be persecuted.<sup>25</sup> The final attribute of China's success in controlling the Uyghur's story is its economic influence over other nations.<sup>26</sup> China's economic weight in the international market has been credited with the slow publicity of this story and will likely continue to

---

20 Halliday, *supra* note 4. Halmurat, a Uyghur activist from China, was one of the first to challenge the Chinese demand for silence on the persecution of his people. In August of 2018, he set off on a "Freedom Tour" of Europe to raise awareness of the internment of Uyghurs, including his parents. Halmurat argued his parents' case did not fit with any official Chinese-government excuses for detaining Uyghurs. His parents are retirees, with no need of vocational training. They are secular, with no affiliations to any religious extremist groups. It also appears his parents were not convicted of any crime and were detained as a method of punishing Halmurat's activism. *Id.*; Jamie Fullerton, *Whistleblower Goes Public After Leaked Documents Reveal China's Crackdown on Uyghur Muslims*, TELEGRAPH (Dec. 8, 2019), <https://www.telegraph.co.uk/news/2019/12/08/whistleblower-goes-public-leaked-documents-reveal-chinas-crackdown/>. Chinese police pursued a whistleblower who fled the country arriving at her family home, questioning her husband and demanding access to the whistleblower's personal computer. *Id.*

21 Halliday, *supra* note 4.

22 See Perlez, *supra* note 11. Chinese officials have succeeded in convincing countries to support Beijing publicly on the issue, most notably Muslim countries in Africa, Asia and the Middle East. This effective control over the discussion has even extended to influence over the United Nations. At a special event ahead of the United Nations' General Assembly in September of 2019 on protecting religious freedom, President Trump hosting the event failed to make any mention of the Uyghurs. Raabia Qureshi, *Why So Silent?* BVNW NEWS (Nov. 7, 2019), <https://bvnwnews.com/top-stories/2019/11/07/why-so-silent/>.

23 See Halliday, *supra* note 4.

24 Simmons, *supra* note 12. China reports the "graduation" tests are a "combined assessment of language skills, understanding of Chinese law and regulations, "de-radicalization" and vocational skills," however there is no true confirmation on these claims.

25 See Halliday, *supra* note 4. Halmurat's story of familial persecution is a prominent example of the practical reality that even those who have fled China may not feel free to speak out against the human rights abuses being committed within the country.

26 Perlez, *supra* note 11. "Backed by its diplomatic and economic might, China has largely succeeded in quashing criticism. Chinese officials have convinced countries to support Beijing publicly on the issue, most notably Muslim ones in Africa, Asia and the Middle East." *Id.*

cause countries to drag their feet in condemning China's actions.<sup>27</sup> Recently, the United States House of Representatives put forward a bill condemning China's treatment of Uyghur Muslims.<sup>28</sup> However, this has been criticized by the Chinese government.<sup>29</sup> Hua Chunying, a spokesperson for China's Foreign ministry, responded to the House bill by stating: "The U.S. attempts to sow discord among various ethnic groups in China . . . and contain China's growth . . . But its attempt will never succeed."<sup>30</sup> This continued China's messaging: deny any wrongdoing concerning the Uyghur internment.

### III. AVENUE FOR LEGAL RELIEF

#### A. *International Criminal Court*

For Chinese Uyghurs, legal relief has multiple potential sources. First, the Rome Statute of the International Criminal Court ("the Rome Statute") offers a potential venue for legal relief.<sup>31</sup> Article 7 of the Rome Statute defines crimes against humanity as:

[A]ny of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

1. Murder;
2. Extermination;
3. Enslavement;
4. Deportation or forcible transfer of population;

---

<sup>27</sup> *See id.*

<sup>28</sup> Merrit Kennedy, *China Rebukes House Bill Condemning Crackdown on Uighurs*, NPR (Dec. 4, 2019), <https://www.npr.org/2019/12/04/784753252/china-rebukes-house-bill-condemning-crackdown-on-Uighurs>. The bipartisan bill passed the House in a 407–1 vote, condemning the "gross human rights violations" against the Uyghurs and calling for "an end to arbitrary detention, torture, and harassment of these communities inside and outside China." *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Nicholas Sherwood, *Justice(s) For Crimes Against Humanity: The Uyghur Muslims in China*, UAB INST. FOR HUM. RTS. BLOG (Feb. 8, 2019), <https://sites.uab.edu/humanrights/2019/02/08/justices-for-crimes-against-humanity-the-uyghur-muslims-in-china/#:~:text=Justice%20%28s%29%20for%20Crimes%20Against%20Humanity%3A%20The%20Uyghur,indocrinate%20the%20Uyghur%20Muslims%20in%20the%20Xinjiang%20>. The Rome Statute established an International Criminal Court as a permanent institution meant to address the most serious crimes of international concern. Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90.

5. Imprisonment or other sever[e] deprivation of physical liberty in violation of fundamental rules of international law;
6. Torture;
7. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
8. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender . . . or other grounds that are universally recognized as impermissible under international law . . . ;
9. Enforced disappearance of persons;
10. The crime of apartheid;
11. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.<sup>32</sup>

According to the aforementioned reports, the conditions in China faced by Uyghur Muslims violate acts 1, 3, 5, 6, 7, 8, 9, and 11 of the Rome Statute.<sup>33</sup> However, mounting such a claim in the International Criminal Court (“ICC”) faces several hurdles. To prosecute a criminal claim in the ICC, one of two types of jurisdiction must apply.<sup>34</sup> Either the state facing an alleged violation must be a party to the Rome Statute, or the case must be referred to the ICC Prosecutor by the United Nations Security Council (“UNSC”).<sup>35</sup>

China is not a party to the Rome Statute; therefore, a jurisdictional claim must rely on a referral from the UNSC.<sup>36</sup> However, China is a permanent member of the UNSC with full veto power.<sup>37</sup> Any of the UNSC’s permanent members may exercise the veto power to protect their national interests and

---

32 Sherwood, *supra* note 31.

33 *Id.* Simmons, *supra* note 12 (Reports of multiple gross human rights violations rampant in the re-education camps).

34 Sherwood, *supra* note 31.

35 *Id.*

36 *Id.*

37 *Id.* Member states have recognized the incredible power of the Security Council members having veto power and have attempted to revoke the power in the past. However, these efforts have failed and are unlikely to ever succeed in the future thus crippling the United Nations’ ability to address wrongs committed by the Security Council states. See Press Release, General Assembly, Member States Call for Removing Veto Power, Expanding Security Council to Include New Permanent Seats, as General Assembly Debates Reform Plans for 15-Member Organ, U.N. Press Release SC/6997 (Nov. 20, 2018), <https://www.un.org/press/en/2018/ga12091.doc.htm>.

block any action voted on by the rest of the Security Council.<sup>38</sup> The use of the veto has primarily been utilized by Russia and China since 2011, with the conflict in Syria accounting for the majority of the vetoes.<sup>39</sup> Even the threat of a veto affects the work of the Council, as bills are typically tabled the moment a permanent member of the Council threatens to employ their veto power. This, combined with China's history of suppression on this issue, renders it unlikely any case will be successfully brought before the ICC.<sup>40</sup> Despite this, two Uyghur activists are in the process of initiating proceedings in the court, "accusing Chinese officials of genocide and other crimes against humanity against Uyghur Muslim minority groups."<sup>41</sup> The potential success of this lawsuit remains to be seen.

### B. *International Restorative Justice*

With the avenue to the ICC effectively closed to Chinese Uyghurs, some have suggested alternate forms of indirect relief, such as individual nations coming together to make statements shaming China or the establishment of an international truth and reconciliation commission.<sup>42</sup> Truth and reconciliation commissions focus on restorative justice, inviting the injured community to work with an international commission to collect 'facts-on-the-ground' about ongoing repression, negotiate with the oppressing state to end the crimes against humanity, and devise solutions to repair trauma.<sup>43</sup>

Truth and reconciliation commissions performed well in a number of countries that had to come to terms with ugly pasts riddled with conflict,

---

38 Sherwood, *supra* note 31.

39 Michelle Nichols, *Russia Casts 13th Veto of U.N. Security Council Action During Syrian War*, REUTERS (Sept. 19, 2019), <https://www.reuters.com/article/us-syria-security-un/russia-casts-13th-veto-of-un-security-council-action-during-syrian-war-idUSKBN1W42CJ>; Michelle Nichols, *Russia, Backed by China, Casts 14th U.N. Veto on Syria to Block Cross-Border Aid*, REUTERS (Dec. 20, 2019), <https://www.reuters.com/article/us-syria-security-un/russia-backed-by-china-casts-14th-u-n-veto-on-syria-to-block-cross-border-aid-idUSKBN1YO23V>;

List of Links to Security Council Vetoes, UNITED NATIONS, <https://research.un.org/en/docs/sc/quick> (last visited Jan. 16, 2021).

40 See Sherwood, *supra* note 31.

41 Alanah Lockwood, *Uyghur Activists File ICC Complaint Against China for Genocide, Crimes Against Humanity*, JURIST (July 9, 2020, 8:10 AM), <https://www.jurist.org/news/2020/07/Uyghur-activists-file-icc-complaint-against-china-for-genocide-crimes-against-humanity/>.

42 See Sherwood, *supra* note 31.

43 *Id.*

civil strife, violence, and massive human rights abuse.<sup>44</sup> The most famous example of a truth and reconciliation commission is South Africa's 1995 commission, established to examine Apartheid-Era crimes.<sup>45</sup> Truth commissions are often used after countries face major political changes, most often as those countries transition into a democracy after having previously been under authoritarian rule.<sup>46</sup>

Truth and reconciliation commissions have become increasingly common. The International Human Rights Law Institute at DePaul University in Chicago completed a study of international and non-international conflicts after World War II.<sup>47</sup> The study found that out of 229 international and internal conflicts, 9 were the subject of a truth commission, and 24 were subject to a national inquiry commission.<sup>48</sup> A large number of new democratic governments in Latin America established truth commissions to examine human rights violations after displacing

---

44 Angelika Schlunck, *Truth and Reconciliation Commissions*, 4 ILSA J. INT'L & COMP. L. 415, 415 (1998). Truth Commissions are traditionally used after a human rights violation has occurred and are used primarily as a retroactive form of relief, in order to start to draw attention to what may have occurred in a given nation. See Bonny Ibhawoh, *Do Truth and Reconciliation Commissions Heal Divided Nations?*, CONVERSATION (Oct. 1998), <http://theconversation.com/do-truth-and-reconciliation-commissions-heal-divided-nations-109925>; *Can We Handle the Truth? International Day for the Right to the Truth*, INT'L CTR. FOR TRANSITIONAL JUST. (2020), <https://www.ictj.org/gallery-items/truth-commissions>; Mary Kay Magistad, *South Africa's Imperfect Progress, 20 Years After the Truth & Reconciliation Commission*, PUB. RADIO INT'L (Apr. 6, 2017) <https://www.pri.org/stories/2017-04-06/south-africas-imperfect-progress-20-years-after-truth-reconciliation-commission>.

45 Schlunck, *supra* note 44, at 415.

46 *Id.* One example of such a successful commission is the Argentina National Commission on Disappeared Persons established in 1983, the Full Stop Law (Law No. 23492, Dec. 3, 1986, [1986-B] E.D.L.A. 1100 (Arg.)) limits prosecution and the Due Obedience Law (Law No. 23521, June 4, 1987, B.O. (Arg.)) refers to *acting under superior orders* as a defense.

Schlunck, *supra* note 44. South Africa has also been referred to as the gold standard of truth commissions. Magistad, *supra* note 44. Twenty years after South Africa's Truth and Reconciliation Commission, the Commission continues to be the model by which others are created. The Commission opened up a way to talk about the individual and systemic wrongs committed under the 43 years of apartheid, the government-imposed system of discrimination and separation based on skin color. The Commission's successes were not criminal trials and convictions, rather the successes included opening a dialogue that is credited with national reform for the country. See *id.*

47 Schlunck, *supra* note 44, at 415.

48 *Id.* at 416. The cited study is Jennifer Balint, *An Empirical Study on Conflicts (of an international and non-international character, civil conflicts and tyrannical regime victimization) and their outcomes since WWI*, REPORTS ON THE UNITED STATES MEETING OF EXPERTS ON REIGNING IN IMPUNITY FOR INTERNATIONAL CRIMES AND SERIOUS VIOLATIONS OF HUMAN RIGHTS, (Apr. 13, 1997) held in Washington D.C., International Human Rights Law Institute DePaul University College of Law, Chicago.

authoritarian governments.<sup>49</sup> The establishment of commissions in these new democratic states seemed to show the governments' desire to bring human rights offenders to justice, but regimes often ended up granting amnesties for the perpetrators despite the findings of the commission.<sup>50</sup> Some new governments set up commissions to investigate human rights violations with the goal of providing reparations for victims as a concrete form of relief.<sup>51</sup> Truth commissions have not been as popular or as successful in Eastern Europe for investigating harms caused by the former Soviet Union, as states have been less cooperative with facilitating the commissions.<sup>52</sup> Few states set up any investigatory commissions; the failings of truth commissions in these states has been attributed to the unwillingness of these states to face their ugly history and acknowledge the past wrongs committed by their governments.<sup>53</sup>

The actual mechanics of a truth commission vary greatly, as it is a general name given to the proceedings of a local body that is set up to

---

49 Schlunck, *supra* note 44, at 416. Truth and reconciliation commissions were also used in Argentina, Chile, Colombia, Guatemala, Paraguay, and Peru. *Latin American Truth Commissions: Confronting the Past*, WHITE & CASE (July 29, 2014) <https://www.whitecase.com/publications/article/latin-american-truth-commissions-confronting-past>; *Opening New Chapters in Latin America with Truth Commissions*, INT'L CTR. FOR TRANSITIONAL JUST. (July 31, 2013), <https://www.ictj.org/news/opening-new-chapters-latin-america-truth-commissions>.

50 Schlunck, *supra* note 44, at 416. Latin American countries that passed such amnesty shield laws include Argentina, Chile, El Salvador, Guatemala and Peru. These amnesty laws have proven effective in defeating any future prosecutions against human rights abusers granted amnesty in the countries, locking even international courts out of further pursuing any prosecutions. Naomi Roht-Arriaza, *Truth Commissions and Amnesties in Latin America: The Second Generation*, 92 AM. SOC'Y INT'L L. PROC. 313, 314 (1998).

51 Schlunck, *supra* note 44, at 416.

52 Lavinia Stan, *Truth Commissions in Post-Communism: The Overlooked Solution?*, 2 OPEN POL. SCI. J. 1, 1–13 (2009). The five truth commissions that investigated communist abuses by the Soviet Union shared some important features contributing to their successes and failings. "First, the German and the Romanian commissions were set up without much prompting and support from the international community, whereas the Baltic commissions had" more international input. *Id.* at 3. In the Baltic countries the research, documentation and writing of final reports was completed by national support staff. *Id.* While an international commission enjoys independence from the fractured societies they investigate, including former potential perpetrators placed in the government, the police, the secret police and the army could interfere with the commission's work. As predominantly domestic commissions, all post-communist commissions except the Estonian commission were in a better position to have their results readily accepted by their local society. The inclusion of a limited number of foreign members was considered additionally advantageous by promoting "impartiality in the work of the commission" and by giving the commission access to the newest research tools developed in the West. All five commissions concluded their activity with written reports in relatively short periods of time being regarded as efficient investigations. *Id.* at 1, 3.

53 Schlunck, *supra* note 44, at 416, 418–19.

investigate a history of human rights violations in a given country.<sup>54</sup> There are no standard procedures or an ideal image of a truth commission as they are highly customized depending on the needs and preferences of the country.<sup>55</sup> Priscilla Hayner, an expert on truth commissions in the United States, has come up with four elements that define a truth commission:<sup>56</sup>

- 1) Focuses on the past;
- 2) Does not concentrate on a specific event in the past but attempts to reconstruct an overall picture of certain human rights violations over a designated period of time;
- 3) Exists for a pre-determined period of time and ceases to exist when its mandate ends, typically with a formal report of the commission's findings; and finally
- 4) Must be vested with some authority to gather information and report.<sup>57</sup>

Commissions are often the outcome of a negotiated peace accord and are conducted by an international panel, like the Commission on the Truth created for El Salvador in 1992.<sup>58</sup> A truth commission's primary purpose is not to prosecute but rather to investigate and publish the truth.<sup>59</sup> The

---

<sup>54</sup> *Id.* at 417. A **truth commission** is defined as "an official body established to investigate a series of human rights violations, war crimes, or other serious abuses that took place over many years." Priscilla B. Hayner, *Truth Commission*, ENCYC. BRITANNICA (Sept. 18, 2008), <https://www.britannica.com/topic/truth-commission>. A truth commission's main aim is to identify the causes and consequences of abuses, not to prosecute. A commission's aim is to "conclude with a final report, including recommendations for reform to prevent such abuses from" repeating in the nation. *Id.*

<sup>55</sup> Schlunck, *supra* note 44, at 417. The success and power of a truth commission entirely depends upon the political will, financial resources, and support of the society. Truth commissions are a valuable starting tool for a country whose political leadership is determined to examine human rights violations, but hold little value when the abuses are ongoing. *Id.* at 419.

<sup>56</sup> *Id.* at 417. Priscilla Hayner created the most widely adopted general definition of a truth commission. Describing such commissions as "bodies set up to investigate a past history of violations of human rights in a particular country—which can include violations by the military or other government forces or armed opposition forces." Eric Brahm, *What Is a Truth Commission and Why Does It Matter*, 3 PEACE & CONFLICT REV. 1, 3 (2009).

<sup>57</sup> Schlunck, *supra* note 44, at 417.

<sup>58</sup> *Id.* at 417. The El Salvador Truth Commission was created through the Peace Accord between FMLN and the Salvadoran government under the mediation of the United Nations. It was signed at Chapultepec Castle in Mexico City on Jan. 16, 1992; the final report of the Commission was submitted to the United Nations on March 13, 1993. Rep. of the Comm'n on the Truth for El Salvador, Letter dated 29 March 1993 from the Secretary General Addressed to the President of the Security Council, at 1, 10, U.N. Doc. S/25500 (Apr. 1, 1993).

<sup>59</sup> Schlunck, *supra* note 44, at 418; Brahm, *supra* note 56, at 5; *FAQs: Truth and Reconciliation Commission*, CBC NEWS (May 16, 2008, 11:22 AM), <https://www.cbc.ca/news/canada/faqs-truth-and-reconciliation>

exposure to the facts is meant to have a cathartic and educational effect on the society in transition to a new era.<sup>60</sup>

A commission's strength or weakness ultimately depends on how cooperative a given government wishes to be in uncovering the truth.<sup>61</sup> The flexibility of a commission is as much its strength as its weakness, because authorities may deny access to confidential material or attempt to dissuade witnesses from testifying by not guaranteeing protections. Authorities may also have political goals that taint the findings of a truth commission.<sup>62</sup> Finally, a commission's power is only as great as the attention it is paid by the public and officials, as such reports do not carry any legal consequences.<sup>63</sup>

In this case, international non-governmental organizations would connect with local Uyghur Muslims in the Xinjiang Province, document the communities, and attempt to refocus international attention to solve the human rights issue.<sup>64</sup> However, this avenue of relief again relies upon government entities as a critical element for the plan's success, as well as access to China's Xinjiang Province. Both of these requirements seem unlikely to be filled given China's restrictions on access to the camps and the international community's reluctance to become involved given the financial stakes of confronting China.<sup>65</sup> China's situation is not in line with those exhibited by South American countries where truth commissions proved successful. China has not undergone a regime change; rather, by all

---

reconciliation-commission-1.699883; The Truth and Reconciliation Commission (TRC) 1995, S. AFR. HIST. ONLINE (Apr. 24, 2014),

<https://www.sahistory.org.za/article/truth-and-reconciliation-commission-trc-1995>; Bill Curry, *What Is the Truth and Reconciliation Commission?*, GLOBE & MAIL (May 31, 2015) <https://www.theglobeandmail.com/news/politics/what-is-the-truth-and-reconciliation-commission/article24717073/>.

<sup>60</sup> Schlunck, *supra* note 44, at 418.

<sup>61</sup> *Id.* at 420. The flexibility is the strength of a truth commission, however it is also its most critical weakness. Contrary to a court, a truth commission has to be vested with authority by the government, which may not share in the interest of creating an independent and resourceful investigating commission. Authorities may deny access to information and confidential material. See Hun Joon Kim, *Truth Commissions in South Korea: Lessons Learned*, MIDDLE E. INST. (Dec. 20, 2013), <https://www.mei.edu/publications/truth-commissions-south-korea-lessons-learned>.

<sup>62</sup> Schlunck, *supra* note 44, at 420. These very issues presented themselves in Argentina, where victims found themselves being asked to cooperate with the truth commission while the same police officers who tortured them were still on duty. See Calvin Sims, *Buenos Aires Journal; Argentina's Bereft Mothers: And Now, a New Wave*, N.Y. TIMES, Nov. 18, 1997, at A4.

<sup>63</sup> Schlunck, *supra* note 44, at 420.

<sup>64</sup> Halliday, *supra* note 4.

<sup>65</sup> See Rahim, *supra* note 15.

evidence it appears to be actively working to maintain the current regime and would have no interest in supporting a truth commission.<sup>66</sup>

However, a truth commission may still have some use, even when not fully supported by the local government. South Korea instituted a truth commission to investigate the period in the nation between 1948 and 1954.<sup>67</sup> During this period, a communist-led uprising on Jeju Island in Korea resulted in a counterinsurgency campaign by the Korean government and an estimated 15,000 deaths.<sup>68</sup> The initial Jeju Commission was regarded as a large success. The Commission issued recommendations in seven categories: (1) the issuance of an apology; (2) the declaration of a memorial day; (3) the use of the report to educate students and the public; (4) the establishment of a memorial park; (5) the provision of essential living expenses to bereaved families; (6) support for excavations of mass graves; and (7) continuous support for further investigation and commemoration projects.<sup>69</sup>

The commission was successful in investigating individual cases on Jeju Island despite lacking full government support.<sup>70</sup> The Jeju Commission was authorized to request government records but lacked any enforcement power when the government branches or organizations rejected such requests.<sup>71</sup> The Jeju Commission was able to create a successful white paper report, which eventually resulted in a \$12 billion commemoration project.<sup>72</sup> The Jeju Commission's success in spite of its limited authority is credited to the type of "truth" sought by the commission. Rather than focusing on the forensic evidence surrounding every individual's case, the commission focused on creating an overriding narrative documenting what occurred in

---

66 See Buckley *supra* note 10.

67 Kim, *supra* note 61. The massacres perpetrated by the government were systematically hidden from the general public and the victims' demands for truth and justice were suppressed during consecutive anticommunist military regimes for some 50 years before the commission. See *Facts & Truth: Introduction*, JEJU4.3, <http://jeju43peace.org/historytruth/fact-truth/> (last visited Jan. 16, 2021).

68 Kim, *supra* note 61.

69 *Id.*

70 *Truth Commission: South Korea 2005*, U.S. INST. PEACE (Apr. 18, 2012), <https://www.usip.org/publications/2012/04/truth-commission-south-korea-2005>. "The Commission received 11,174 cases based on petitions from individuals." *Id.* "The body confirmed the alleged harms in 8,468 cases (76%), rejected 1,729, and sent another 957 cases to other instances or closed them because of insufficient information." *Id.* The commission's final findings included the conclusions that "during the Korean War, several mass killings of civilians were committed not only by the North Korean military, but also by South Korean and U.S. Armed Forces." *Id.*

71 Kim, *supra* note 61.

72 *Id.*

the Jeju Island as a whole, using individual cases to bolster the historical account it compiled.<sup>73</sup> This creation of a master narrative allowed the commission to avoid the pitfalls associated with attempting to acquire evidence for every individual case. In addition, the Jeju Commission benefited from active local advocacy and civil groups which helped fill in the gaps when government sources would not.<sup>74</sup>

Taking the lessons learned from the Jeju Commission into account, a Chinese truth commission sponsored by an outside entity and aimed at the Uyghur detentions could have some benefits even without true government support. By focusing on uncovering an overarching narrative truth rather than seeking to find truth on individual cases we can hope to create a report shedding more light on the Uyghur detentions. Specific benefits of such a commission include creating an official documentation of the conditions of the camps, of day to day activities within them, and a compilation of testimonials from those who have experienced the camps. Currently such an official look into the camps is lacking. The only information available to the public is sourced from independent reports and from the publications of the Chinese government.<sup>75</sup> A truth commission with well documented sources and subject to oversight would give the public far greater confidence in the reports of the camps than the confidence in the current statements from the Chinese government. A clearer look inside the camps may spur a more robust discussion about the situation both within China and internationally. This may eventually result in reparations, formal apologies, and other remedial acts as seen in Korea following the white paper publication recommendations by the Jeju Commission.

---

73 *Id.*

74 *Id.*

75 Simmons, *supra* note 12.

#### IV. HUMAN RIGHTS CLASS ACTIONS

A novel third method for legal relief for the Uyghur Muslims is the filing a class action suit in a United States federal court.<sup>76</sup> While the option also remains for individual human rights suits, a class action suit in United States courts has numerous advantages that render such a suit exceptionally inviting in this case.<sup>77</sup>

A class action suit “has the potential to provide victims of large-scale human rights abuses,” like those effecting over a million Uyghur Muslims in China, with the ability to achieve some form of justice in cases where the alternative may be no justice at all.<sup>78</sup> The very nature of a systemic persecution by a government against a particular group of people lends itself to class treatment, because class action suits are designed to “address collective harms or acts targeted at particular protected groups or communities.”<sup>79</sup> Class actions seek remedies that reflect the collective nature of the harm suffered and, inevitably, over the course of the suit cover the harm perpetrated in the broadest manner possible, illustrating the

---

76 FED. R. CIV. P. 23. In order to certify as a class for the purposes of Rule 23, a plaintiff must show that one member will be the representative of the class and that the class meets the four prerequisites:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class. *Id.*

77 Beth Van Schaack, *Unfulfilled Promise: The Human Rights Class Action*, 2003 U. CHI. LEGAL F. 279 (2003). There are three general types of human rights class actions that have been brought in United States Courts:

- (1) cases against individuals under the doctrine of command responsibility;
- (2) cases against corporate entities alleging involvement in present day human rights violations;
- (3) cases arising out of the World War II (“WWII”) period.

78 *Id.* Forms of direct relief stemming from a class action suit can be liability, punitive damages, compensatory damages, or an order for an injunction; however, orders for injunctions have yet to be observed successfully. Such suits have been already employed in relation to the Holocaust and Swiss investors’ role in the theft of persecuted Jews’ property. Samuel P. Baumgartner, *Human Rights and Civil Litigation in United States Courts: The Holocaust-Era Cases*, 80 WASH. U. L.Q. 835 (2002).

79 Van Schaack, *supra* note 77. Class action suits allow pursuing harms that otherwise could never be litigated due to economic or situational circumstances of an individual member. Janet C. Alexander, *An Introduction to Class Action Procedure in the United States*, Presented Conference: Debates over Group Litigation in Comparative Perspective, Geneva, Switzerland, July 21–22, 2000, <https://law.duke.edu/grouplit/papers/classactionalexander.pdf>.

breadth of the persecution on a public stage.<sup>80</sup> Finally, unlike ICC investigations and prosecutions, class actions can be initiated by members of the class itself rather than relying on governments or individual prosecutors to initiate action.<sup>81</sup>

The United States is considered to be at the forefront of class action litigation.<sup>82</sup> Despite having their roots in English Common Law, class action suits are largely considered a distinctly American form of litigation.<sup>83</sup> Although a small number of other countries have adopted class action litigation, the United States remains on the forefront of innovation in this area.<sup>84</sup> The United States' progressive rules surrounding class actions, as well as its unique Alien Tort Claims Act, make the United States the obvious forum for any human rights class action suit.<sup>85</sup>

---

80 Alexander *supra* note 79. "Several class actions in the tradition of the WWII class actions have been filed seeking reparations for African American slave labor during the antebellum period." *Id* at 7. These suits aim to draw not only reparations but to further highlight the atrocities committed against slaves in the United States.

81 Sherwood, *supra* note 31. In order to initiate a suit only one individual must act as the class representative and file the suit. From this point, the class representative will be responsible for guiding the suit through the courts and providing notice to the members of the class, so that they may have the option of formally declining participation in the class action to avoid being bound by any decision effecting the class. Note that Rule Federal Rule of Civil Procedure 23 is inclusive in respect to class formation. FED. R. CIV. P. 23. Thus, if one is properly classified as being part of the class as per the four formerly mentioned prerequisites, that individual is automatically considered part of the class, and will only not be counted towards recovery if that individual personally opts out of the litigation. This makes a class action case particularly well suited to pulling in a large group of individuals suffering human rights abuses who are otherwise unable to voice their complaints over the conditions imposed upon them.

82 Debra Lyn Bassett, *The Future of International Class Actions*, 18 SW. J. INT'L L. 21, 25 (2011).

83 *Id.* "The United States has always been lauded as being at the forefront of aggregate litigation developments" such as the class action suit. Class actions originated in the English common law of equity as early as the year 1199. *Id* at 21. This class action process was carried over to the United States as part of its common law. The modern class action stems from the Federal Rule of Civil Procedure 23 created in 1966. This iteration of class actions is what constitutes the understanding of a class action today. For many years, class action litigation was virtually unheard of outside of the United States. Until recently it was commonly said that class actions were unique to the United States and that other countries had fully rejected the class action device due to what they perceived as the negative U.S. experience with class actions, producing high awards and barring individual suits. *Id.*

84 *Id.* The United States is no longer alone in supplying a forum for class action litigation.

In the early 2000's Australia and Canada were virtually the only other countries who were considered to have a class action suit. However, today "twenty-two countries have adopted some form of class actions." *Id.* These countries include Argentina, Australia, Brazil, Bulgaria, Canada, Chile, China, Denmark, Finland, Indonesia, Israel, Italy, Mexico, the Netherlands, Norway, Poland, Portugal, South Africa, Spain, Sweden, Taiwan, and the United States.

85 See Paul R. Dubinsky, *Justice for the Collective: The Limits of the Human Rights Class Action*, 102 MICH. L. REV. 1152, 1187 (2004).

The Alien Tort Claims Act states, “[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”<sup>86</sup> This act, with Federal Rule of Civil Procedure 23, which allows a member of a class to sue as a representative on behalf of all of the members of the affected class, could provide an opportunity for international human rights class actions to be brought in United States federal courts.<sup>87</sup> International law includes customary law that binds all states regardless of consent.<sup>88</sup> The United States has recognized the law of nations includes *jus cogens* norms that permeate all civilized nations, including a ban on torture.<sup>89</sup> Any state has universal jurisdiction over such offenses and can bring cases in their own courts or in international settings. Universal jurisdiction provides that if torture is alleged in a case, the United States can prosecute a clear violation of the law of nations under the Alien Tort Claims Act.<sup>90</sup>

---

<sup>86</sup> 28 U.S.C. § 1350. In order to properly assert a claim under 28 U.S.C. § 1350 one must allege that an underlying law has been broken. In the case for international human rights actions involving torture, the Torture Victim Protection Act (TVPA) has been cited as an underlying statute in order to justify a 28 USCS § 1350 suit. This has been upheld by the court in *Hilao v. Estate of Marcos*, 103 F.3d 767, 778 (9th Cir. 1996), and would likely also be a suitable statute under which to charge a violation in this case.

<sup>87</sup> See Schlunck, *supra* note 44.

<sup>88</sup> *Filartiga v. Pena-Irala*, 630 F.2d 876, 881, 883, 888 (2d Cir. 1980).

<sup>89</sup> See *id.* at 882.

<sup>90</sup> See *id.*

### A. *Uses of Human Rights Class Actions in the Past*

In December 1996 a successful class action human rights suit was brought against Ferdinand E. Marcos, former president of the Philippines.<sup>91</sup> The plaintiffs alleged the Marcos regime had systemically subjected the class to torture and summary execution.<sup>92</sup> The district court's jurisdiction under the Alien Tort Claims Act, 28 U.S.C. § 1350, was upheld on appeal. This marked a successful use of the statute to pursue an international human rights class action where no party was a United States citizen.<sup>93</sup> The jury awarded \$1.2 billion U.S. dollars to the plaintiffs in this case.<sup>94</sup> However, the success of this suit was undercut as, after judgment for the plaintiffs was awarded, the Marcos Estate refused to pay any sum.<sup>95</sup> The Marcos Estate claimed the United States court lacked any jurisdiction over any of the funds which resided in the Philippines, and when no assets in the United States could be uncovered the judgment went unpaid.<sup>96</sup>

International human rights class actions have also found success in the United States in terms of securing reparations for Holocaust victims.<sup>97</sup> Recoveries were accomplished in cases involving Holocaust insurance and

---

91 *Hilao*, 103 F.3d at 771. This suit was brought against the estate of the former president and not the administration or government body itself. This case is significant as one of the first successful uses of United States law to provide noncitizen plaintiffs with a forum to sue a noncitizen defendant for human rights abuses.

92 *Id.* at 771.

93 *Id.* at 772.

94 *Id.* The estate was found liable in the class action of ten thousand Filipinos and twenty-three named plaintiffs for torture, summary execution, disappearance, and prolonged arbitrary detention. In February 1994 the jury awarded \$1.2 billion in exemplary damages. Ralph G. Steinhardt, *Fulfilling the Promise of Filartiga: Litigating Human Rights Claims Against the Estate of Ferdinand Marcos*, 20 YALE J. INT'L L. 65, 65-66 (1995).

95 Associated Press, *Firm Awarded \$22 Billion from Marcos Estate Over Stolen Treasure*, L.A. TIMES (July 21, 1996), <https://www.latimes.com/archives/la-xpm-1996-07-21-mn-26520-story.html>.

96 Barbra Dacanay, *Marcos Family Still Hounded by Hunter of Golden Buddha*, GULF NEWS PHIL. (May 13, 2006), <https://web.archive.org/web/20151219040854/http://gulfnws.com/news/asia/philippines/marcos-family-still-hounded-by-hunter-of-golden-buddha-1.236727>.

97 Dubinsky, *supra* note 85, at 1153-54. A set of related mega-class action suits was brought in the late 1990s. In these suits, Holocaust victims and their supporters sought to obtain a remedy for wrongs suffered during the Nazi era and afterwards. For these cases the litigation tool chosen was a class action suit filed in United States Courts.

banking litigation.<sup>98</sup> Additionally, South African victims of Apartheid relied on United States courts to find relief against corporations accountable for human rights violations.<sup>99</sup> The results of these cases have been viewed as remarkable successes in finding relief for the injured parties, allowing for widespread recovery and garnering international attention.<sup>100</sup> The successes of the Holocaust victims were so great, such an approach has been identified as the “Holocaust restitution model,” standing as a positive piece of precedent for future reparations movements.<sup>101</sup>

However, another United States statute, the Foreign Sovereign Immunities Act, 28 U.S.C. § 1330, has largely barred the use of the Alien Tort Claims Act from finding actual recovery in human rights class

---

98 *Id.* at 1153. In total, over seventy class actions were filed arising out of the WWII period. Efforts to recover stolen funds and materials and to address Nazi-era human rights violations benefited greatly from a combination of events beginning in the mid-1990s. “Researchers of the Holocaust Museum in Washington, D.C. discovered newly declassified documents in the United States National Archives detailing Swiss accounts that had been in the names of Jewish victims.” Morris A. Ratner, *The Settlement of Nazi-Era Litigation Through the Executive and Judicial Branches*, 20 BERKELEY J. INT’L L. 212, 213 (2002). These discovered documents created a renewed interest in the stolen assets. Armed with the newfound evidence, a team of the most experienced and prominent class action plaintiffs’ counsel in the United States filed suits against Swiss banks, including Credit Suisse and Union Bank of Switzerland, and other Swiss entities. *Id.* The suits sought to “recover dormant bank accounts and to press human rights and other claims against the banks for the banks’ roles in laundering gold and other assets” taken from the victims of Nazi persecution. *Id.* Several of the cases even sought to disgorge the banks of any profits they made from relying on Nazi slave labor camps. The cases were all filed in the United States District Court for the Southern District of New York, a jurisdiction which had pioneered the use of Federal Rule of Civil Procedure 23 as a case management tool in order to permit large scale class action claims. Similar class action suits were later filed against German, Austrian, French and other European entities, seeking recovery for Nazi-era misconduct. *Id.* at 213. A “credible threat of an enforceable class action litigation combined with (1) intense media attention, (2) political pressure from well-situated victims’ advocates, (3) the ongoing efforts of institutions such as the World Jewish Restitution Organization, and (4) mounting public support within Switzerland to face past wrongs” all weighed heavily on the defendants. *Id.* These pressures led to a shocking \$1.25 billion settlement of the Swiss Banks litigation, under Fed. R. Civ. P. 23. The settlement was historic as the first resolution of mass tort claims arising from Nazi-era conduct during World War II. It was later followed by a string of similarly successful suits. *Id.*

99 Dubinsky, *supra* note 85, at 1553–54. The South African victims of Apartheid used the class action human rights suits to pursue corporations for their liability in contributing to the Apartheid system. *See, e.g.*, In re South African Apartheid Litigation, 238 F. Supp. 2d 1379 (2002); *See* Christelle Terreblanche, *Government Opposes Reparations Claims*, INDEP. ONLINE (July 26, 2003), <https://www.iol.co.za/news/south-africa/government-opposes-reparations-claims-110398> (noting claim by Justice Minister Penuell Maduna that class action lawsuits in the U.S. were in effect creating a “surrogate government”).

100 Dubinsky, *supra* note 85, at 1153–54.

101 *Id.* However, scholars have cautioned adding too much emphasis to the success of Holocaust victims in using class actions as a vehicle for achieving reparations. Scholars state that the suits likely would not have achieved such successes without the massive amount of financial, public and legislative support they received internationally. *Id.* at 1153.

actions against foreign government entities.<sup>102</sup> When pursuing cases against foreign governments themselves rather than individual actors, the Foreign Sovereign Immunities Act applies, restricting liability without a waiver of immunity from the foreign government.<sup>103</sup> This shield from liability would apply to China in this case and would likely not be waived. However, this restriction on liability does not render a human rights class action entirely useless.

An additional cited benefit of such international litigation is the benefit provided by publicity.<sup>104</sup> Despite many such class actions failing to earn large monetary awards, another real benefit of the suit is providing the plaintiffs with a stage on which to raise attention on their situation.<sup>105</sup> Crimes against ethnic groups often involve breaking down and silencing a group making it difficult for members of the group to come together with

---

102 See *Jota v. Texaco Inc.*, 157 F.3d 153 (2d Cir. 1998); *Doe I v. Unocal Corp.*, 395 F.3d 932, 956–58 (9th Cir. 2002); *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 244 F. Supp. 2d 289 (S.D.N.Y. 2003); *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 148–49 (2d Cir. 2010), *aff'd*, 569 U.S. 108 (2013) (barring recovery for a 28 U.S.C. § 1350 Alien Tort Claim action against foreign corporations “when all relevant conduct [takes] place outside the United States”); *Doe v. Karadzic*, 176 F.R.D. 458 (S.D.N.Y. 1998). In the first two cited suits monetary relief was barred by the defense’s assertion of sovereign immunity. This danger of suing a foreign government directly has proved fatal to these cases time and time again.

The *Jota* court stated that, in order for the Ecuador government to participate in the litigation, it would be required to “fully relinquish its sovereign immunity.” *Jota*, 157 F.3d at 163. Ecuador was not permitted to participate because “the official position of the Ecuadoran Ambassador to the United States remained opposed to the litigation and especially to Ecuador’s role in it,” and the general rule is that “[a]n ambassador generally has the power to bind the state that he represents.” *Id.* at 162 (internal quotations and citations omitted). Since neither the ambassador nor any other formal representative of the Ecuadoran government “fully relinquished its sovereign immunity,” despite direct invitations from the court to do so, Ecuador was not permitted to participate in the litigation. *Id.* at 163. This broad interpretation of sovereign immunity also addressed the issue of if the defendant responding to and litigating the suit constituted a waiver of sovereign immunity, which it did not. In short, only an explicit waiver of immunity by a party directly authorized by law will constitute a waiver of sovereign immunity. *Jota*, 157 F.3d at 162–63.

103 See *Jota*, 157 F.3d at 163 (requiring the government to “fully relinquish its sovereign immunity” in order to participate in the class action litigation). Note, however, that there are still other mechanisms, though limited, by which to pursue a foreign state even without their waived immunity. 28 U.S.C. § 1605(a)(2)–(6).

104 Schlunck, *supra* note 44, at 1181.

105 *Id.* at 418–19. Even when monetary relief is not provided by courts, the process of litigation itself can provide alternate forms of relief to plaintiffs: first, the “mechanism of the class action device [] provides a forum for groups bound by ethnic or cultural characteristics to assert their shared identity,” Van Schaack, *supra* note 77 at 310–11; and second, “[l]itigation allows a group of victims to preserve their collective memory through the public airing and recordings of the stories of a community of victims,” *id.* at 313.

one voice and strike back.<sup>106</sup> However, when invoking the common harms in a collective fashion through the mechanism of the class action device, the group is provided with a forum in which all members of the class are necessarily bound together by ethnic or cultural characteristics to assert their shared identity before the court.<sup>107</sup> Groups that may not otherwise benefit from political or other recognition can thus utilize the class action mechanism to rebuild their identity and gain formal recognition by an authoritative entity while telling their story. Following this, several human rights class actions have included allegations, by indigenous or other minority groups, that the defendant's practices are destroying the groups' unique cultural characteristics and their ability to maintain their traditional relationships with the land.<sup>108</sup> All of these claims are possible to assert when creating a "class" in a suit specifically engineered to address class harms rather than just individual wrongs, while also focusing on the harm targeted at the ethnic group at large.<sup>109</sup> Additionally, the suits may serve to encourage greater investigation into a harm that is largely undocumented prior to commencement of the suit.<sup>110</sup>

---

106 *Id.* at 310–11.

107 *Id.* at 310.

108 *Id.* at 310–11.

109 *Id.* at 308.

110 *Id.*

*B. United States Supreme Court Changes to the Alien Torts Act*

Recently the United States Supreme Court has eroded the wide-ranging applicability of the Alien Torts Act.<sup>111</sup> In the 2017 *Jesner* case, the Supreme Court restricted the Alien Torts Act to no longer apply to corporate defendants.<sup>112</sup> This limitation has not completely closed off access to the Alien Torts Act, but has effectively limited the Act's applicability—when also considering the issue of sovereign immunity—to only individual defendants. A second and even more limiting case was considered by the Supreme Court in the 2004 *Sosa* case. In *Sosa*, the court ruled the Alien Torts Claims Act itself was purely jurisdictional and limited to causes of action similar to those included in the law of nations at the time of the Act's passage in 1789.<sup>113</sup> The types of international law identified by the court that the Act was based on included piracy and crimes against foreign ambassadors and diplomats.<sup>114</sup> Although the court does significantly curtail the types of actions that can be brought under customary international law in this case, the court does not explicitly address whether torture is a *jus cogens* norm that can form the basis of a claim under the act.<sup>115</sup> This exact question has not yet been tested by the Supreme Court but, as the Supreme Court chose to not overrule *Filartiga v. Pena* in the decision, alongside its firm universal ban on torture by states, there remains a strong possibility torture allegations may still use the Alien Torts Act as a vehicle for prosecution in United States courts. In summary, given the recent limiting decisions of the Supreme Court, the most viable case for a class action under the Alien Torts Act by Uyghurs would be a class alleging torture by an individual defendant, or group of individual defendants, who have for any reason come to the United States.

---

<sup>111</sup> See *Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386 (2018); *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004).

<sup>112</sup> See *Jesner*, 138 S. Ct. at 1407.

<sup>113</sup> *Sosa*, 542 U.S. at 724.

<sup>114</sup> See *id.*

<sup>115</sup> See *id.* at 732.

### C. *Class Action Litigation's Benefits for Chinese Uyghurs*

Given that most other legal remedies for the Uyghurs in China are cut off due to China's powerful position on the UNSC, a human rights class action offers an excellent although imperfect opportunity.<sup>116</sup> One of the most consistently cited issues with the Uyghurs' persecution in China is visibility; thus the potential spotlight provided by a large class action suit by the million Uyghurs detained in China's internment camps could help alleviate that issue.<sup>117</sup> Added visibility to the plight is an important consideration given China's stranglehold on the global conversation.<sup>118</sup> An approach that combines a human rights class action as well as other international alternate forms of indirect relief such as individual nations coming together to make statements condemning China or helping establishing an international Truth and Reconciliation Commission could begin to open up the dialogue around the issue and eventually lead to a de-escalation of China's persecution of the Uyghurs.<sup>119</sup>

A further advantage of a human rights class action brought on behalf of the Uyghur Muslims in China is the ability to force Chinese officials to the table to discuss the matter. The United States rules of civil procedure include the right of a class to seek declaratory relief under Rule 23(b)(2). Under this rule the court may issue an acknowledgment that particular rights were violated on a collective scale, providing a mechanism for formalizing a judicial determination.<sup>120</sup> This declaratory relief could be achieved if Chinese officials fail to refute the claims made in the class action suit. Additionally, given the collective nature of international law norms of responsibility, the preceding class action on behalf of the Uyghurs would

---

116 Halliday, *supra* note 4. It is extremely unlikely China will allow the United Nations Security Council to sanction an investigation in international criminal court. Additionally, it is unlikely a truth commission will serve any meaningful purpose given China's unrepentant state and ongoing oppression, as truth commissions are regarded a retroactive form of relief.

117 See generally Schlunck, *supra* note 44; Van Schaack, *supra* note 77, at 306–11. China's seeming control over even other Muslim countries on the issue of Uyghur detainment indicates relief will likely have to come from individuals rather than governments. Kate Lyons, *The World Knows What Is Happening to the Uyghurs. Why Has It Been So Slow to Act?*, GUARDIAN (July 26, 2019), <https://www.theguardian.com/world/2019/jul/27/the-world-knows-what-is-happening-to-the-Uyghurs-why-has-it-been-so-slow-to-act>. "A reluctance to offend China and an information blackout" has led to the persecution of the Uyghurs to be under reported on the international stage.

118 Sherwood, *supra* note 31.

119 See *id.*

120 Van Schaack, *supra* note 77.

allow the class of plaintiffs to seek the discovery and introduction of a broader range of evidence that may more accurately reflect the repression suffered under the Chinese government. This represents a significant advantage over any individual suing outside of the class as such broad discovery aids in creating a more accurate and complete historical and judicial record.<sup>121</sup>

The other forms of relief potentially provided by a human rights class action include the securing of a monetary judgment or injunctive relief.<sup>122</sup> Injunctive relief in this case would likely be out of the question, as the harm perpetrated is from a government entity and sovereign immunity would bar the United States courts from any enforcement.

Finally, a human rights class action can provide a method of redressing grievances when individual action is untenable. Victims often lack the resources necessary to pursue a claim or lack access to lawyers or to courts able to hear their claims.<sup>123</sup> In the case of the Uyghurs they have yet to find any meaningful court in which to be heard, as both Chinese and United Nations courts are effectively barred to them. Human rights plaintiffs such as the Uyghurs may also lack a basic knowledge of their legal rights under international law, and the creation of a class action will allow for some proceeding to be placed underway once a class representative has been identified, lessening the burden to begin the collective motion.

Class actions further insulate individuals who may fear violent retaliation (against themselves or their loved ones) if they participate in the legal process without having to assume a public or prominent role in the litigation.<sup>124</sup> As previously cited, this fear is well founded in the case of the Chinese Uyghurs as multiple advocates have been subject to retaliation from the Chinese authorities.

Acknowledging that the goal of a class action for Uyghur human rights is to bring increased visibility, rather than injunctive or monetary relief,

---

121 *See id.* at 308.

122 *See id.* at 314–15.

123 *See id.* at 306–07.

124 *See id.* at 306. In certain contexts, class treatment may provide the only feasible method of adjudication for the victims of human rights abuses when the threat of retaliation is too great. An example of such a scenario was seen with the Marcos case: “Philippine law required a defendant to be served in the situs for a case to proceed. Once Marcos fled to Hawaii, his victims could not obtain justice in the Philippines. Allowing victims based in the Philippines to participate in the class action in U.S. courts ensured that they received some measure of justice.” *Id.* at 320.

clarifies that there is a high probability that a class action lawsuit could have a positive outcome. Viewing the benefits of a class action suit as purely monetary or injunctive is a narrow characterization that ignores the other substantial benefits of such a suit.

#### V. REFLECTING ON UYGHUR PERSECUTION IN CHINA AND THE STRUGGLE FOR GREATER VISIBILITY

The failure of international courts to offer any meaningful form of relief to the Uyghurs, combined with the Chinese government's ability to stifle information surrounding the internment camps, has made it clear that unconventional tactics are necessary to achieve results. Truth commissions and human rights class actions both offer such unconventional methods for drawing attention to this plight. While a truth commission is hamstrung by the need for a cooperative government to support it and human rights class actions lack effective means of enforcement, both still represent a valuable chance to increase visibility. A human rights class action is especially well suited to drawing additional visibility to the persecution as it requires no government to act and can instead be initiated by the class members alone.<sup>125</sup> There is no simple solution to the Uyghur persecution in China, but as more and more information is revealed, it has become clear the need for action is pressing.<sup>126</sup>

*Thomas Fisher\**

---

<sup>125</sup> *See id.* at 326.

<sup>126</sup> Ramzy & Buckley, *supra* note 6.

\* Thomas Fisher is an Executive Notes Editor at Washington University Global Studies Law Review and a J.D. Candidate at Washington University School of Law (2021).

