

The Urgency of the International Criminal Court's (ICC) Jurisdiction in Handling Serious Violations of Human Rights Case of the Uyghur

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Abstract

The international community is currently confronted with a severe humanitarian crisis involving the Uyghur population in Xinjiang, China, marked by pervasive reports of egregious human rights violations, encompassing forced labor, forced assimilation, and mass detention. This study accentuates the imperative for the International Criminal Court (ICC) to assert its jurisdiction and launch an investigation into the alleged crimes against humanity perpetrated against the Uyghur people. The Uyghur case presents a distinctive challenge for the ICC, given the complex political dynamics surrounding China's global influence and its non-membership in the Rome Statute. Nevertheless, this study contends that the ICC's role in addressing such severe human rights violations is now more crucial than ever. It delves into the legal avenues for ICC jurisdiction, exploring potential grounds under the principle of universality and the possibility that some alleged crimes may qualify as war crimes or crimes against humanity. Furthermore, the study delves into the ethical imperative compelling the international community to take decisive action against systemic abuses, asserting that justice and accountability stand as foundational tenets of international law. It also addresses foreseeable obstacles and objections to ICC jurisdiction, including challenges related to state sovereignty, geopolitical considerations, and the practicalities of prosecuting high-ranking officials. In conclusion, this study underscores the urgency of the ICC asserting jurisdiction in the Uyghur case, presenting an opportunity for the international community to showcase its dedication to upholding human rights and justice in the face of severe violations. The ICC's



involvement in addressing these atrocities can serve as a beacon of hope for the victims and a deterrent against future perpetrators of similar crimes.

Keywords

Human Rights, ICC, Uyghur Ethnicities

Introduction

In the 21st century, the global community finds itself grappling with a profound moral and legal dilemma: the ongoing and well-documented violations of human rights perpetrated against the Uyghur population in Xinjiang, China. The allegations of mass detentions, forced labor, cultural suppression, and systemic abuse have sent shockwaves throughout the world, demanding urgent attention and action.¹ In fact, in the other sides, humans are living creatures whose essence cannot be separated from living in groups or living together with other humans. In a teaching delivered by a philosopher named Aristotle, stated that basically humans as living beings always want to gather and mingle with other humans, and become creatures who have a social character. Every human being on earth, from the time he is born, grows and develops until he dies, he will always be part of a society that always needs help from one another.²

Human groups can be categorized from the smallest to the largest scope, starting from the family to the state. Like humans, the state also lives

¹ Endah Rantau Itasari, and Dewa Gede Sudika Mangku. "Legal Protection Against Violations of Human Rights that Abuse Uyghur Ethnic Women in China." *Yinyang: Jurnal Studi Islam Gender dan Anak* 16, no. 1 (2021): 33-48; Endah Rantau Itasari, "Legal Protection of Uyghur Muslim Ethnicities in China from Perspective Human Rights." *Lambung Mangkurat Law Journal* 6, no. 1 (2021): 26-40; James Waller, and Mariana Salazar Albornoz. "Crime and No Punishment? China's Abuses Against the Uyghurs." *Georgetown Journal of International Affairs* 22, no. 1 (2021): 100-111.

² Thomas Buergenthal, "The evolving international human rights system." *American Journal of International Law* 100, no. 4 (2006): 783-807; Manfred Nowak, "Introduction to the international human rights regime." In *Introduction to the International Human Rights Regime*. (Leiden: Brill Nijhoff, 2003).

with the principles that are owned by humans, where a country cannot be considered as a country without recognition from other countries. Every existing country certainly requires a law, as the existing legal adage states “*ubi societas ibi ius*” which means where there is society there is law.³ The role of law in every society is as a human regulatory tool called society, this law exists to regulate the order of life and good behavior from one individual to another.

From the moment of birth and throughout one’s life, every individual possesses inherent human rights that accompany them until their passing. These human rights are innate, granted to individuals by the simple virtue of their existence within a community or society. Many of these rights are deemed universal and inalienable, transcending distinctions of nationality, race, religion, or gender, for they form the bedrock of our shared humanity. At the core of all human rights principles lies the belief that individuals should have the opportunity to nurture their abilities and pursue their aspirations. Among the foundational human rights that have emerged prominently are the rights to life, liberty, property, equality, and freedom of expression. Consequently, it is an imperative for each nation to ensure the protection and safeguarding of these rights for all its citizens.⁴

Being part of a minority community presents unique challenges, often requiring individuals to adapt in environments that may not be inherently supportive. Consequently, they may encounter identity-related

³ The Latin phrase “*ubi societas, ibi ius*” translates to “where there is society, there is law” in English. This phrase emphasizes the idea that wherever people come together to form a society or community, there will also be a need for rules, regulations, and laws to govern their interactions and ensure order. It underscores the essential connection between the existence of a society and the establishment of a legal framework to maintain order and justice within that society. See Monia Ciravegna, “Ubi Societas, Ibi Ius: The Legal System.” *Damanhur: An Esoteric Community Open to the World*. (Cham: Springer International Publishing, 2022), pp. 75-96.

⁴ Walter Kälin, and Jörg Künzli. *The Law of International Human Rights Protection*. (Cambridge, Mass: Oxford University Press, USA, 2019); Kristin Henrard, *Devising an Adequate System of Minority Protection: Individual Human Rights, Minority Rights and the Right to Self-Determination*. Vol. 62. (Leiden: Brill, 2021); Ridwan Arifin, and Lilis Eka Lestari. “Penegakan dan Perlindungan Hak Asasi Manusia di Indonesia dalam Konteks Implementasi Sila Kemanusiaan Yang Adil dan Beradab.” *Jurnal Komunikasi Hukum (JKH)* 5, no. 2 (2019): 12-25.

difficulties that extend beyond the societal context. Fundamentally, human beings are entities entrusted by a divine creator with the responsibility of stewarding and preserving the world. Hence, every individual inherently possesses human rights, which serve as the cornerstone for preserving one's dignity and the broader environment. Human rights, being universal and perpetual, are the foundational entitlements of every individual. They demand protection, reverence, and upholding, and they cannot be arbitrarily disregarded, diminished, or seized by any entity. This assertion underscores the sanctity of human rights as personal possessions, and any act of depriving an individual of these rights is tantamount to a criminal offense.⁵

Minorities in various parts of the world often experience cases related to these human rights crimes, many of them have problems related to self-identity in the eyes of the state and even internationally, even though the human rights of every person are sovereignty given in full to oneself, besides that there have been many lately there is also a lot of racist behavior that occurs, because they are not the same as most people, they will be discriminated against, this can have very fatal consequences, many minority citizens experience mental disorders and even want to commit suicide due to racism from other people, even though God created humans it is different so that humans can learn about respecting differences which can later provide a useful lesson for oneself and others. China is a developed country with a high population density, so they implemented the One Child Policy system which experienced pros and cons by the Chinese population themselves, because many thought that this had violated human rights, but this was done by the government to regulate population density. in China. Chinese society consists of many different tribes and ethnicities, one of

⁵ Robert Alexy, "Discourse theory and fundamental rights." *Arguing Fundamental Rights*. (Dordrecht: Springer Netherlands, 2006), pp. 15-30; Gianluigi Palombella, "From human rights to fundamental rights: Consequences of a conceptual distinction." *ARSP: Archiv für Rechts-und Sozialphilosophie/Archives for Philosophy of Law and Social Philosophy* (2007): 396-426.

which is the Hui and Uyghur ethnic groups who are Muslim communities in mainland China.⁶

Generally, law in a country is divided into two types, namely public law and private law. Private law (*Privaatrecht*) or commonly referred to as civil law, basically regulates the legal relationship between one individual and another individual which focuses on individual interests. While Public Law consists of Constitutional Law, State Administrative Law, Criminal Law and International Law, which in outline regulate the legal relationship between a member of society (citizen) and the state that controls the order of society.

Within one of the Public Laws itself there is International law, which has a wider scope of responsibility than other laws, because this law focuses on discussing the procedures for regulating legal relations between the territory of the state of Indonesia and other regions, in International Law it is again clarified into two sections, namely International Criminal Law which focuses on criminal acts and criminal acts between one country and another in international relations, and International Private Law which regulates problems between citizens of a country and citizens of other countries.

International law is now becoming important considering the increasing needs of each country, because every country that has relations with other countries definitely needs a system that regulates these legal relations. So that International Law exists as a rule and scientific source regarding how to run, regulate and secure a country that conducts relations between countries.

International law is also growing with the existence of major cases in several corners of the world, and even then, major cases are not free from elements of crime and serious violations that cause large losses. The large

⁶ Rosemary Foot, *Rights beyond borders: The global community and the struggle over human rights in China*. (Oxford: OUP Oxford, 2000); Marina Svensson, *Debating human rights in China: A conceptual and political history*. (Maryland, US: Rowman & Littlefield Publishers, 2002); Philip Baker, "Human rights, Europe and the People's Republic of China." *The China Quarterly* 169 (2002): 45-63.

number of crimes that exist both across countries and between countries initiated the presence of International Criminal Law which is here to focus on criminal problems in the world. International Criminal Law is a body of laws that impose obligations directly on individuals by imposing punitive sanctions on violators. International law exists to help solve any increasingly complex problem. Because it cannot be denied that the problems that are present today are becoming increasingly complex and require special attention in handling them.

International crimes are categorized into four primary types: genocide, crimes against humanity, war crimes, and crimes of aggression. Regrettably, in recent times, a growing number of individuals have fallen victim to these grave offenses, collectively posing a significant threat to global security and well-being. Nevertheless, the pervasive impunity enjoyed by certain perpetrators of these crimes often impedes proactive measures within the realm of International Criminal Law. Recognizing the collective responsibility to dismantle the chain of impunity surrounding these wrongdoers, the International Criminal Court, also known as the Rome Statute, was established. Fundamentally, the Rome Statute represents a treaty among numerous nations, establishing an International Criminal Court with the primary objective of prosecuting all manifestations of crimes against humanity while systematically dismantling the web of impunity woven around those who commit them.⁷ However, the Uyghur

⁷ Alex Fox, "China's Crimes Against Humanity Upon the Uyghur People Under the Rome Statute of the International Criminal Court." *Loyola University Chicago International Law Review* 17, no. 2 (2021): 131; Mena, Kenza. "Is the International Criminal Court a Dead-end for the Uyghurs' Case? The Implications of the OTP's Refusal to Open an Investigation into the Situations in Tajikistan/China and Cambodia/China." *The Implications of the OTP's Refusal to Open an Investigation into the Situations in Tajikistan/China and Cambodia/China (July 1, 2021)* (2021); Rangga Suganda, and Wita Setyaningrum. "Juridical review of cases of human rights violations against the Uighur Ethnic and its resolution mechanisms in the perspective of international law." *Borobudur Law Review* 5, no. 1 (2023): 31-42.

case introduces numerous unresolved issues, particularly concerning justice, law enforcement, and the safeguarding of human rights.⁸

In this context, the Uyghur case presents a multifaceted challenge that extends beyond the borders of China. It challenges the principles of international law, the notion of state sovereignty, and the ethical responsibilities of the global community. The Uyghur crisis demands a robust response that balances the intricacies of diplomacy, international law, and justice for victims.⁹

This paper embarks on a comprehensive exploration of the legal, ethical, and geopolitical dimensions surrounding the ICC's jurisdiction in the Uyghur case. It will delve into the potential avenues through which the ICC can assert its authority, examining the principle of universality, the classification of alleged crimes as war crimes or crimes against humanity, and the moral duty to hold perpetrators accountable. Moreover, this paper will confront the various obstacles and objections that may hinder the ICC's pursuit of jurisdiction, including the complexities of dealing with a powerful non-member state like China, the risks of political backlash, and the practical challenges of prosecuting individuals at the highest echelons of power.

Method

This study adopts a qualitative empirical approach to examine the intricate challenges associated with ICC jurisdiction in the Uyghur case. Given the

⁸ Lina Lenberg, "Uyghur Diaspora Activism in the Face of Genocide." *International Journal of Human Rights Education* 6, no. 1 (2022): 7; Joseph E. Fallon, "China's crime against Uyghurs is a form of genocide." *Fourth World Journal* 18, no. 1 (2019): 76-88.

⁹ Michael Clarke, "Widening the net: China's anti-terror laws and human rights in the Xinjiang Uyghur Autonomous Region." *The International Journal of Human Rights* 14, no. 4 (2010): 542-558; Ciara Finnegan, "The Uyghur minority in China: A case study of cultural genocide, minority rights and the insufficiency of the International legal framework in preventing state-imposed extinction." *Laws* 9, no. 1 (2020): 1; Julia Stern, "Genocide in China: Uighur Re-education Camps and International Response." *Immigration and Human Rights Law Review* 3, no. 1 (2021): 2.

complexity of the issues under investigation as multifaceted social phenomena, a qualitative methodology was chosen to thoroughly explore the nuances and intricacies involved. This approach allows for a comprehensive understanding of the qualitative aspects of the phenomenon, enriching the depth of analysis. The sources for this research were meticulously curated through an extensive review of existing literature, including prior research studies, books, and articles directly pertinent to the subject matter. By drawing from a robust foundation of established knowledge and insights, this study ensures a credible and rigorous exploration of ICC jurisdiction in the Uyghur case.

Uyghur Ethnic in China: History and the Development

A region in the heart of Asia is called Xinjiang, with the official name Xinjiang Uyghur Autonomous Region. This area is a province with the largest Muslim population in China, namely the people who are commonly called the Uyghur Ethnicity. In China itself, Islam is a minority religion, based on data compiled by the Council of Foreign Relations (CFR) stating that "Agnostic" is the most widely adhered to by Chinese people with a percentage of 31.8% of the total population in China. As for the Islamic religion itself, only 1.8% are adhered to by Chinese people. A total of 58% of Xinjiang's population adheres to Islam, with a Uyghur population of 12 million.¹⁰

In 1949 after the Chinese Communist Party won the civil war, Beijing officially claims the Xinjiang region as its territory. The government granted the status of an autonomous region Named Xinjiang Uighur Autonomous Region (XUAR). The granting of autonomy is based on economic factors,

¹⁰ Xiaowei Zang, "Uyghur—Han Earnings Differentials in Ürümchi." *The China Journal* 65 (2011): 141-155.

considering that Xinjiang has substantial reserves of oil and minerals. Not long after granting autonomy status to Xinjiang, China immediately launched various development projects.¹¹

In 1954, China established the Xinjiang Production and Construction Corps (XPCO) to work on settlements and agriculture. This project spanned fifty years. Then in the early 1990s, special economic zones were imposed in Xinjiang with Beijing subsidizing local cotton farmers and overhauling its taxation system. Still in the same period, namely the central government launched capital for infrastructure projects, with the massive development in Xinjiang, it certainly triggered the flow of migrant workers to Xinjiang, especially the “Han” ethnic group, which is the largest ethnic group in China.

As a result, the Han ethnic population in Xinjiang increased dramatically, from only 6.7% or the equivalent of 2,200 people in 1949, now it has jumped to 40% or the equivalent of 8.4 million people in 2008. If this happens, of course it can not only have a positive impact, but there are also indications of a prolonged negative impact, namely social friction.

The social friction in Xinjiang is due to the difficulty of access for the Uyghur community to water and land, the existing economic disparities also result in discriminatory hiring practices. From this, the stigmatization grew which stated that "the Han ethnicity is getting richer, while the Uyghur ethnicity is getting poorer in their own ancestral land". The existing social friction is further exacerbated by the Beijing government's policy which states that the Uyghur community is prohibited from fasting during Ramadan or wearing the veil.

In 2009 there was a clash involving the Uyghur ethnicity and the Han ethnicity, this was due to the fact that two Uyghur workers were killed in

¹¹ Abanti Bhattacharya, "Conceptualising Uyghur separatism in Chinese nationalism." *Strategic Analysis* 27, no. 3 (2003): 357-381; Sean R. Roberts, "Imagining Uyghurstan: re-evaluating the birth of the modern Uyghur nation." *Central Asian Survey* 28, no. 4 (2009): 361-381; Elizabeth Van Wie Davis, "Uyghur muslim ethnic separatism in Xinjiang, China." *Asian Affairs: An American Review* 35, no. 1 (2008): 15-30.

Guangdong, which is a province in China, as a result of this clash 197 people were killed, 1,600 people were injured, and 718 people were detained. This incident made the Chinese government even stricter and stricter with the Uyghurs, they said that all Uyghurs have the potential to become terrorists and separatists. The problem is that several regimes in China often target Uyghur civilians, who are completely innocent.

The Chinese government is alleged to have committed a human rights violation against the Uyghur ethnic minority in Xinjiang, this was reported by the United States which was discussed and presented on the UN agenda. By submitting proposals for reporting from other countries as many as 10 countries, which in essence discussed the Chinese regime which committed human rights violations. Several Islamic countries in the United Nations were silent and did not provide support in any form for this reporting indication, only the country of Somalia which also provided support from 17 other countries which also provided support as well.¹²

The Existence and Problems Faced by the Uyghur Ethnic Group

It is mandatory for everyone to receive equal protection of rights, including every ethnic group on earth. That is also what the Uyghur ethnicity feels at the moment for every human rights violation they are currently receiving. It is also common knowledge that the perpetrators of serious human rights against the Uyghur ethnicity are the Chinese Government.¹³

¹² Henryk Szadziewski, "The push for a Uyghur Human Rights Policy Act in the United States: recent developments in Uyghur activism." *Asian Ethnicity* 21, no. 2 (2020): 211-222.

¹³ Dewi Rahmayuni, and Helmi Hidayat. "Hierarki Pengaruh Isu-Isu Moderasi Beragama pada Media Guo Ji Ri Bao 国际日报 Studi Kasus Berita Konflik Etnis Uighur di Xinjiang." *Jurnal Studi Jurnalistik* 2, no. 1 (2020): 1-24; Moh Hakim, et al. "Nationality, ethnicity, and solidarity: respon Turki atas perundingan etnis Uighur." *Jurnal Hubungan Internasional* 14, no. 1 (2021): 158-174.

This started with the Chinese Government which considered that the Uyghur Muslim group was a threat of terrorism and separatism for their country. This assumption exists because of the stereotype that Muslim groups and the Islamic religion are terrorist groups. The Chinese government really hates the existence and existence of the Uyghur ethnicity, but they really know that the area inhabited by the Uyghur ethnicity is an area that has extraordinary natural wealth and resource potential. Women in the Uyghur ethnicity is also not allowed to wear headscarves or hijabs, even though this hijab or headscarf is one of the things that is difficult for a Muslim woman to get rid of. Not to mention fellow residents there, they are not allowed to do excessive communication. In fact, the communication they have tends to be very rare because of the prohibition to communicate or talk to each other, especially between ethnic Uyghurs and foreigners. Prayers, which are one of the obligations of a Muslim, are not allowed to be performed by people who are over 40 years old. If they are caught praying, they will immediately be arrested by the local Chinese government. Not only that, if he is a Muslim who knows enough about technology, they will not hesitate to drag people of the Uyghur ethnicity to Basecamp.¹⁴

The Chinese government persistently discriminated against the Uyghur Muslim community, unjustly casting them as primary suspects in recent acts of terrorism. This unfounded suspicion led to the arbitrary detention of numerous individuals in detention facilities. Over time, these detainees began to recount harrowing experiences of both physical and psychological abuse endured during their interrogations.¹⁵

¹⁴ Anna Hayes, "Interwoven 'Destinies': The significance of Xinjiang to the China dream, the belt and road initiative, and the Xi Jinping Legacy." *Journal of Contemporary China* 29, no. 121 (2020): 31-45.

¹⁵ Smith Finley, Joanne. "Chinese oppression in Xinjiang, Middle Eastern conflicts and global Islamic solidarities among the Uyghurs." *Journal of Contemporary China* 16, no. 53 (2007): 627-654.

The Urgency of International Criminal Court (ICC) Jurisdiction in Cases of Serious Human Rights Violations of Uyghur Ethnicity in China

That all actions such as detention of ethnic Uighur Muslims, oppression, persecution, discrimination, and unfair treatment by the government of the People's Republic of China, not only that Uighur Muslims are persecuted through "re-education" camps, this is contrary to Article 5 Paragraph (1) Rome Statute. What the Chinese government is doing is a crime against humanity, meaning that every action taken is a systematic attack by transferring the Hui ethnic population (original Chinese ethnicity to Uyghur) to carry out population occupation, structured by having "re-education" camps for ethnic Chinese.¹⁶

Uighurs, forced and aggressive persecution by civil and government officials, not allowed to meet with the families of the people who were detained in the concentration camps, forced to adhere to the communist system and not believe in God, cheered and sang chanting communist slogans for hours on end hours every day, isolated in the camp which is equipped with a digital system to identify things that are not in accordance with the system, limiting visitors, even though it is allowed but under the supervision of camp guards and spreading widely directed against one group of civilians with intentional attacks. According to article 7 of the Rome Statute, acts, such as murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or cruel physical pressure and violate the basic rules of international law, sexual slavery, forced prostitution, or other forms of sexual violations with a level of seriousness

¹⁶ Zainab Raza, "China's 'political re-education' camps of Xinjiang's Uyghur Muslims." *Asian Affairs* 50, no. 4 (2019): 488-501; Adrian Zenz, "'Thoroughly reforming them towards a healthy heart attitude': China's political re-education campaign in Xinjiang." *Central Asian Survey* 38, no. 1 (2019): 102-128; Rima Abdul Mujib Nagib, and Syaiful Anam. "De-extremization Effort through Political Re-education Camps In China: A Case of Uyghur Ethnic Minorities." *Nation State: Journal of International Studies* 4, no. 1 (2021): 51-72.

that can be in comparison, claims against certain groups that can be jointly identified in the fields of politics, race, nation, ethnicity, culture, religion, gender or other grounds that are universally known as things that cannot be permitted in accordance with international law. From the point of view of international human rights, the Chinese government's policy is not in accordance with the incidents of crimes against humanity that occurred against ethnic Uyghur Muslims which have previously been described as being in the spotlight of the international world which consumed many civilians, it is good that the UN Security Council sees this as a violation of human rights and also violates international law because there is no protection of civilians in the Uighurs. The Rome Statute rules are universally binding and apply to all citizens of the world, both directly and indirectly, meaning that the Rome Statute is binding not only for ratifying countries but for all countries that have not been or are participants, namely China.¹⁷

Before entering the ICC's action against the Chinese government for the violence perpetrated against the Uyghur ethnicity, the head of the United Nations (UN) Human Rights agency has ordered China to expand access to members and allow a monitoring team to China to carry out examinations and verify allegations related to the establishment of camps for politically motivated Uyghur Muslims.¹⁸

The United Nations has urged the PRC to give way to the 'concentration camps' in the Xinjiang Autonomous Region.¹⁹ They wish to observe directly the alleged human rights violations of around 1 million Uighur Muslims who are detained, reasoning is to provide an introduction

¹⁷ Lu Jianping, and Wang Zhixiang. "China's attitude towards the ICC." *Journal of International Criminal Justice* 3, no. 3 (2005): 608-620.

¹⁸ Qin Liusuan, "International Law Enforcement of Alleged Gross Human Rights Violations by the Chinese Government Against the Uyghur Muslim Ethnicity." *Siber International Journal of Advanced Law (SIJAL)* 1, no. 1 (2023): 1-8; Natasha Parassram Concepcion, "Human Rights Violations Against Muslims in the Xinjiang Uighur Autonomous Region of Western China." *Human Rights Brief* 8, no. 1 (2000): 8.

¹⁹ Yordan Gunawan, "Responsibility of People's Republic of China for minority based on ICERD: Uyghur Case." *Varia Justicia* 15, no. 2 (2019): 65-73; Daan F. Oostveen, "Material Politics, Violence, and Religion: A Comparative Study of Islam and Buddhism in the People's Republic of China." In *Material Perspectives on Religion, Conflict, and Violence*. (London: Brill, 2022), pp. 58-72.

to PRC culture.²⁰ During a hearing at the UN Headquarters in New York, United States last November, a number of countries urged the PRC to end its discriminatory treatment of the Uyghur tribe and human rights activists. The PRC denies all reports and ignores pressure by feeling that their human rights record is in good condition and is said to have improved over the past 4 decades.²¹ The PRC government rejects accusations of human rights violations against the Uighurs in the Xinjiang Autonomous Region, by forcing them to enter into special camps. They instead consider the Uighurs not normal people and are trying to 'educate' them. In the 117-page Human Rights Watch report entitled "Eradicating the Ideological Virus", HRW took part in the recommendations for upholding the law in the PRC Government, namely:

- 1) Immediate closing of all political education camps in Xinjiang and granting the release of all persons currently under detention;
- 2) Stop immediately the "Strike Hard Campaign against Violence Terrorism" in Xinjiang one of which includes the "fanghui," "Become a Family" team and a number of other mandatory programs aimed at monitoring and controlling Uyghur Muslims;
- 3) Provide respect for the rights to freedom of expression, assembly, association, religion and culture to ensure that Uyghur Muslims can participate in the peace process and voice concerns and express criticism;
- 4) By not taking sides in the investigation of Party Secretary Chen Quanguo and other senior officials who participated in alleged cruel

²⁰ Alaina Feyza Ardianti, "Realisme: Dilangarnya Hak Asasi Manusia Etnis Uighur oleh Kebijakan Cina di Kamp Xinjiang." *Jurnal Fakultas Ilmu Sosial dan Politik Universitas Airlangga* 3 (2020); Yohanes Soga Watowai, "Penegakan Hak Asasi Manusia dalam Konflik Etnis Uighur dan Pemerintah China." *Jurnal Hukum Online* 1, no. 2 (2023): 488-529.

²¹ Anggi Putri Piranda, Deswita Rosra, and Ahmad Iffan. "Pelanggaran Ham Berat Terhadap Etnis Uighur Ditinjau Dari Universal Declaration of Human Rights (DUHAM) 1948." *Abstract of Undergraduate Research, Faculty of Law, Bung Hatta University* 14, no. 2 (2023): 1-6.

practices in connection with the Beat Loud Campaign, and by rightly holding participating parties to take responsibility;

- 5) Examination of all incidents of those detained or imprisoned on charges of state security, terrorism or extremism and the cancellation of all wrongful charges, and requesting a fair retrial in cases where those found guilty did not receive a trial that complied with international due process standards.

The Chinese government built a special camp to "educate" the Uyghur community it is estimated that around 1 million people were sent to this camp. According to several sources, the Uyghur community in the camp was detained, persecuted, and indoctrinated to remain loyal to the communist party in China. As time goes by, allegations of human rights violations against the Uyghurs are increasingly emerging, but the Chinese government has repeatedly denied this issue.

Seeing how the Rome Statute regulates various types of international crimes, one of which is regarding the types of crimes against humanity. An emeritus Egyptian-American law professor, namely M. Cherif Bassiouni stated that Crimes against humanity are crimes consisting of extermination, murder, enslavement, deportation, and other inhumane acts committed against civilians, whether in the span of time before, during or after war, or persecution on political, racial, or religious grounds in the commission of or in connection with a crime within the jurisdiction of the Court, whether or not in violation of the domestic laws of the country in which the crime was committed.²²

Concepts and ideas about whether to establish a special court for the Uyghur ethnicity have been around for a long time but had to stop during

²² M. Cherif Bassiouni, *Crimes against humanity in international criminal law*. (Leiden: Martinus Nijhoff Publishers, 1999). See also Massimo Renzo, "Crimes against humanity and the limits of international criminal law." *Law and Philosophy* 31 (2012): 443-476; Phyllis Hwang, "Defining Crimes Against Humanity in the Rome Statute of the International Criminal Court." *Fordham International Law Journal* 22, no. 2 (1998): 457.

the cold war. In essence, the International Criminal Court has the authority to pass judgment on events that happened to this Uyghur ethnic Muslim group. This is in line with article 12 paragraph (2) A of the Rome Statute.²³

In essence, the ICC can exercise its authority to give jurisdiction over cases that are unable and unwilling to carry out investigations and prosecutions. According to Article 17 paragraph (2) of the Rome Statute, it says that there are several conditions for the implementation of the jurisdiction of the ICC, such as conditions that are unwilling and unable to be found.²⁴

Through the main UN organs such as the General Assembly, the Security Council, the International Court of Justice, and the UN Secretary. The responsibility of the United Nations in resolving the problem of human rights violations against the Uighur Tribe in the Xinjiang Autonomous Region, PRC by the Government of the PRC can be seen in the procedures and efforts to resolve them in the main UN instruments, namely Chapter VI and Chapter VII of the UN Charter. One of the functions of the Security Council itself is to hold talks on situations and conflicts that occur between countries in sessions held at the suggestion of both its own members and other UN members, then carry out investigations of the situation and conflict to what extent it can endanger international peace and security. In addition, the Security Council can also provide recommendations related to procedures and procedures for carrying out appropriate respective adjustments, taking into account what procedures have been carried out with the agreement of the parties and also being aware that disputes with

²³ Muhammad Fajrin Saragih, Sulaiman Hamid, and Makdin Munthe. "Tinjauan Yuridis Pelanggaran HAM Terhadap Muslim Uighur Di China Ditinjau Dari Hukum Humaniter." *Sumatra Journal of International Law* 4, no. 2 (2016): 1645-25; Nanda Sagita Dewi, and Devica Rully Masrur. "Kejahatan Kemanusiaan (Crimes Against Humanity) Di Negara Republik Rakyat Tiongkok (RRT) Terhadap Muslim Etnis Uighur." *JCA of Law* 1, no. 2 (2020); Wisye Anabella Alexandra Tumengkol, and Amad Sudiro. "Peran PBB Atas Pelanggaran HAM Terhadap Suku Uighur di Provinsi Xinjiang, Republik Rakyat Cina (RRC) Berdasarkan Instrumen-Instrumen HAM Internasional." *Jurnal Hukum Adigama* 5, no. 1 (2022): 1315-1339.

²⁴ Ayisha Mahadevi, et al. "Implementasi Hal Asasi Manusia Internasional dalam Pemenuhan Asas Membership oleh Myanmar Kepada Etnis Rohingya." *PARAPOLITIKA: Journal of Politics and Democracy Studies* 3, no. 2 (2022): 142-157.

law in general can be brought before the International Court of Justice.²⁵ The additional function of the General Assembly's authority is considered to be a residual responsibility to efforts to maintain international peace and stability in the event that the Security Council fails to make decisions on conditions and conflicts that threaten international peace and security.²⁶

²⁵ The United Nations Security Council serves several key functions, including: (1) Maintenance of International Peace and Security: Its primary function is addressing threats to international peace and security, taking actions such as imposing sanctions, authorizing the use of force, or deploying peacekeeping missions to resolve conflicts; (2) Peacekeeping Operations: It establishes and oversees peacekeeping missions in conflict-affected regions, helping to implement ceasefires, monitor peace agreements, and promote stability; (3) Imposition of Sanctions: It can impose economic and political sanctions on countries or entities involved in conflicts to deter aggression or violations of international law; (4) Authorization of the Use of Force: The Security Council can authorize the use of force, including military interventions, to maintain or restore international peace and security; (5) Settlement of Disputes: It facilitates the peaceful settlement of disputes by encouraging negotiations, mediation, and diplomatic efforts; (6) Monitoring and Reporting: The Council monitors international situations and conflicts, relying on reports from the Secretary-General and other UN bodies to stay informed about developments affecting peace and security; (7) Admission of New Member States: It plays a role in the admission of new member states to the United Nations, making recommendations to the General Assembly; (8) Referral of Cases to the International Criminal Court (ICC): The Security Council can refer situations involving serious international crimes to the ICC for investigation and prosecution; (9) Decisions on Non-Proliferation and Disarmament: It addresses issues related to nuclear non-proliferation and disarmament, passing resolutions to prevent the spread of nuclear weapons and promote disarmament efforts; and (10) Protection of Civilians: The Security Council emphasizes the protection of civilians in armed conflict, calling for respect for international humanitarian law and measures to safeguard civilians. The Security Council consists of five permanent members with veto power (the United States, Russia, China, France, and the United Kingdom) and ten non-permanent members elected for two-year terms. Decisions of the Security Council, especially those involving the use of force, require the affirmative votes of at least nine of its fifteen members, including the concurring votes of all five permanent members. The veto power held by the permanent members can be a source of strength and contention within the Council. See Ernest L. Kerley, "The powers of investigation of the United Nations Security Council." *American Journal of International Law* 55, no. 4 (1961): 892-918; Michael C. Wood, "Security Council working methods and procedure: recent developments." *International & Comparative Law Quarterly* 45, no. 1 (1996): 150-161; Hulsroj, Peter. "The legal function of the Security Council." *Chinese Journal of International Law* 1.1 (2002): 59-94; David Bosco, "Assessing the UN Security Council: a concert perspective." *Global Governance* 20, no. 4 (2014): 545-562.

²⁶ İrem Karamık, "Three Evils' of Xinjiang: Suppression, Violent Separatism and R2P." *The Responsibility to Protect Twenty Years On: Rhetoric and Implementation* (2022): 245-269; Ismah Rustam, and Arida Meilani. "The Strategy of World Uyghur Congress (WUC) to Strive for Human Rights for Uyghur people." *Resolusi: Jurnal Sosial Politik* 4, no. 2 (2021): 53-70; Fithriatus Shalihah, and Muhammad Raka Fiqri. "Overview of human rights violations against Rohingya ethnicity in Burma and Uighur tribe in China in international law perspectives." *International Conference on Law Reform (INCLAR 2019)*. Atlantis Press, 2020; Hilly Moodrick-Even Khen, "The Uyghurs: A Case for Making the

The phenomenon that occurs in China which affects the Uyghur ethnic minority is certainly related to the perspective of the International Criminal Court, because the principle of the ICC itself is to carry out a trial if the jurisdiction of the country concerned is reluctant or unable to investigate and carry out the trial for several reasons. The International Criminal Court, also known as the International Criminal Court, was established by several considerations and agreements from several member states involved in the United Nations in 1998. However, the implementation of the ICC was only massive on July 1, 2002, or more precisely after the Rome Statute. In effect, several countries that joined the Rome Statute automatically became members of the ICC.

Pursuant to Article 14 of the Rome Statute regarding Submission of Situations (Cases) by States Parties, it states that State party may submit to the Public Prosecutor a situation where one or more crimes within the jurisdiction of the Court appear to have been committed while requesting the Public Prosecutor to investigate the situation (case) it is for the purpose of determining whether a particular person or more should be accused of having committed the crime. Then a submission details the circumstances involved and is accompanied by supporting documentation as such is available to a country surrendering the situation.

In mid-2020 the Uyghur community submitted a report to the ICC regarding the crimes against humanity they received, as stated in article 14 earlier. the Uyghur community also provided evidence regarding the reporting to the Court, in which the evidence shows how the Chinese Government locked more than 1 million Uyghurs in camps which they called "re-education camps" and forced Uyghur Women to "sterile" by force . However, efforts by the Uyghur community to report China failed, because the submission of the report was immediately rejected by the Prosecutor's Office Fatou Bensouda.

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This was done by the Public Prosecutors not without reason, the article The actions reported by the Uyghur community occurred in Chinese territory, where Chinese territory itself was not part of the signing of the Hague-based ICC. While the requirement to exercise territorial jurisdiction of the criminal court is that the country or region in question has become part of the ICC. Besides that, the Chinese government massively denied the accusations against it by saying that the accusations of the Uyghur community were baseless and the purpose of the camps was as a preventive measure to keep away from potential terrorism.

This refusal did not make the Uyghur community stop and give up, through Uyghur advocates the submission efforts were still being made and continued to urge the ICC. According to one of the International Criminal Laws itself, it has regulated *au dedere au judicare*, namely that every country has the obligation to prosecute and try perpetrators of international crimes and is obliged to cooperate with other countries in arresting, detaining and prosecuting and trying international crimes.

Implementation of law enforcement, namely the activity of elaborating an idea and legal ideals contained in moral values, for example a sense of justice and legitimacy towards a concrete form, in the implementation of the embodiment of carrying out organizational growth, for example the police, prosecutors, courts and correctional institutions as classic elements of law enforcement which are formed from state, in other words that the rule of law essentially contains the supremacy of a substantial value, namely justice .

The International Criminal Court has the right to try what happened in Xinjiang against ethnic Uighur Muslims based on the basic principles of the Court, namely the principle of territorial jurisdiction (*ratione loci*). The Court has jurisdiction over crimes committed in the territories of state parties regardless of the nationality of the perpetrators. This basic principle is explained in Article 12 Paragraph (2) A of the Rome Statute. The Court also has jurisdiction over crimes committed on the territory of countries that

accept jurisdiction on an ad hoc basis and in areas designated by the UN Security Council. The United Nations clearly has the authority to resolve international disputes because the United Nations has a special place because its activities cover almost all fields with the main role assigned to it by the international community, namely: maintaining world peace and world security. Because of that task, the UN must handle disputes peacefully and the procedures for resolving disputes by the UN are as follows:

a. Preliminary Observations

Observe the dispute first, because it is contained in Article 2 Paragraph (3) of the PBB which states that the PBB must maintain the values of peace and justice.

b. Main Role of the Security Council Role

The Security Council confirmed in Article 24 Paragraph 1 of the UN Charter, "In order for the United Nations to take immediate and effective action, member states give primary responsibility to the International Security Council and agree that the Security Council in carrying out its duties acts on behalf of member states" .

c. General Assembly intervention

The role of the General Assembly according to Article 10 of the UN Charter, "The General Assembly may discuss all issues or matters included in the framework of the Charter or related to the powers and functions of any of the organs listed in the Charter and make recommendations to UN members or to the Security Council." Therefore, recommendations are only proposals without binding legal force like decisions, this means that the General Assembly is not the highest body above countries or the highest body above the Security Council.

It is highlighted that all actions such as detention of ethnic Uighur Muslims, oppression, persecution, discrimination, and unfair treatment by the government of the People's Republic of China, not only that Uighur

Muslims are persecuted through "re-education" camps, this is contrary to Article 5 Paragraph (1) Rome Statute. What the Chinese government is doing is a crime against humanity, meaning that every action taken is a systematic attack by transferring the Hui ethnic population (original Chinese ethnicity to Uyghur) to carry out population occupation, structured by having "re-education" camps for ethnic Chinese. Uyghurs, forced and aggressive persecution by civil and government officials, not allowed to meet with the families of the people who were detained in the concentration camps, forced to adhere to the communist system and not believe in God, cheered and sang chanting communist slogans for hours on end hours every day, isolated in the camp which is equipped with a digital system to identify things that are not in accordance with the system, limiting visitors, even though it is allowed but under the supervision of camp guards and spreading widely directed against one group of civilians with intentional attacks.

The reality faced by the ICC in handling cases in the Uyghurs

However, the main problem is that the ICC or international courts cannot do anything about it. Quoted from one of the news channels, the ICC has refused to deal with cases that occurred in the Uyghurs. This happened when several Chinese people who were part of the Uyghur ethnic group reported the actions of the Chinese government to the International Criminal Court (ICC) in The Hague. In that July, the Uyghurs submitted a large document of evidence to the Court, in which it explained the allegation that the Chinese Government had imprisoned more than one million ethnic Uyghurs and some of the Muslim minorities in camps.

The government in Beijing has been accused of forcibly sterilizing Uyghur women on a massive scale. In response to these allegations, the Prosecutor of the International Criminal Court (ICC), Fatou Bensouda, initially rejected the report. She stated that the ICC couldn't take action

because the alleged incidents occurred in China, a country that is not a signatory to the ICC's jurisdiction. Furthermore, the report highlights that there is currently no legal basis to continue investigating separate claims regarding the forced deportation of Uighurs from Tajikistan and Cambodia back to China. Uighur advocates argue that even though these alleged deportations didn't occur within Chinese territory, the ICC can still act because they took place on the territories of Tajikistan and Cambodia, both of which are ICC member states.

In response to these developments, lawyers representing the Uighurs have petitioned the court to reconsider its decision "based on new facts or evidence," according to ICC prosecutors. This request opens the door for further examination of the allegations and potential actions by the ICC in relation to the reported abuses against the Uyghur population.

Conclusion

This study concluded that the urgent need for the International Criminal Court (ICC) to assert its jurisdiction in addressing the serious violations of human rights in the case of the Uyghur cannot be overstated. The situation in Xinjiang, China, involving the Uyghur population, is characterized by widespread reports of human rights abuses, including forced labor, cultural suppression, and mass detentions. The ICC, as the primary international institution responsible for prosecuting individuals responsible for grave international crimes, has a critical role to play in seeking justice and accountability for the victims of these atrocities. Despite the challenges posed by China's non-membership in the Rome Statute, various legal avenues, including the principle of universality and the classification of alleged crimes as war crimes or crimes against humanity, provide a basis for ICC jurisdiction.

Furthermore, the ethical imperative to address such gross human rights violations underscores the importance of the international

community coming together to ensure that perpetrators are held accountable. Justice and accountability are fundamental pillars of international law, and the ICC's intervention can serve as a beacon of hope for the victims and a deterrent to future perpetrators. While there are obstacles and objections to ICC jurisdiction, including geopolitical considerations and potential backlash, the pursuit of justice should remain steadfast. The ICC's jurisdiction in the Uyghur case represents an opportunity for the international community to demonstrate its unwavering commitment to upholding human rights and the rule of law, even in the face of complex challenges.

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There is no peace without justice. There is no justice without truth. And there is no truth unless someone rises up to tell the truth.

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