[1]GENOCIDE, CRIMES AGAINST HUMANITY AND THE RESPONSIBILITY OF STATES TO UYGHURS AND OTHER TURKIC MUSLIMS IN XINJIANG, CHINA:

CAN INTERNATIONAL LAW STEP IN WHERE DIPLOMACY STANDS STILL?**

Schona Jolly QC

I am honoured to be invited here to do this keynote speech today, speaking to and with so many faces and names I recognise after 18 months of working behind a screen. Thank you very much to Jo, Hannah and her team for organising this conference in the hardest of times and bringing together so many voices that wish to speak out about the grave situation ongoing in Xinjiang today.

I wish to make clear that everything I say this today is in my own capacity alone and attributable only to me.

Before I move to the substance of my talk this morning, I do wish to acknowledge another situation unfolding on the ground even as we all stand here, where international law, politics and reality collide with frightening circumstances. For our friends, colleagues and so many others in Afghanistan right now, these are terrifying times. The promise of law – be that the rule of law, international law, of accountability, of equality – right now has failed in Afghanistan, in every way. The lawyers, judges, activists and human rights defenders currently in Afghanistan – and their families - face fatal threats because of their involvement in that promise of law. For those of us on the outside, trying to help them to leave, to reach safety, trying to convince our own governments to help them to leave, we must also convince those in power that the promise of law was a real promise, made by our governments. Such promises must be kept, so that the promise of law - of its stability, of its equal application, of justice and accountability and of its protection for all - is not relegated to mere rhetoric and history.

** The text of this keynote speech contains some differences between the version spoken on 2nd September 2021 and the written text, notably in respect of a few detailed passages, which were not read out owing to time constraints on the day, and some insignificant differences arising in oral presentation. More legal detail and reference is available in the BHRC High Level Briefing Paper, July 2020: https://barhumanrights.org.uk/bhrc-publishes-new-report-outlining-the-responsibility-of-states-under-international-law-to-uyghurs-and-other-turkic-muslims-in-xinjiang-china/ and in the evidence given to the Foreign Affairs Committee in December 2020/January 2021: https://committees.parliament.uk/writtenevidence/19000/pdf/.

With both that promise of law, and the commitment to ensure it is not relegated to mere rhetoric, I wish to turn to the question of alleged atrocity crimes in Xinjiang: **Can international law step in where diplomacy stands still?**

Most of you here in this room are academics; I come at this question from a perspective of a practising lawyer, and so offer a practical perspective. I leave much of the very important and interesting detail, as well as the academic debate on research and data which we have heard, to those better qualified in this room.

The severe ill-treatment, repression and abuse of Uyghurs and other Turkic Muslims by the Chinese State has been widely reported in open-source material. Independent investigations within Xinjiang have been notoriously difficult and entry remains strictly guarded and monitored. Notwithstanding that secrecy, serious allegations have emanated from a number of diverse and credible sources. The primary sources upon which I base any assessment of that comes from (i) first-hand accounts from individuals with direct experience of the situation or through their family members; (ii) covertly obtained audio-visual evidence through in-depth journalistic investigation; and (iii) the leaking of official documents including the so-called 'China cables'. These are all in the public domain and have been studied carefully and verified, and indeed remain debated by experts even here. It is that information which forms the basis of the documented allegations which, if proven, would constitute very serious violations of international human rights and international criminal law.

Unlike many or most situations in which atrocity crimes are alleged to have been committed, this situation is not taking place in the context of war, but rather in a stable and functioning state which has a powerful economic reach around the world, diplomatic relations with the international community, and has been very narrowly re-elected in the UN Human Rights Council. Indeed, it has used that seat to make "derogatory and inflammatory remarks" against UN Special Rapporteurs that have criticised its actions – in Xinjiang, Hong Kong and Tibet - and has threatened both the UN system and its offices from the power of that seat. It is in that disturbing context in which all and any form of accountability is being evaded, and in which the political and diplomatic communities appear to have become unstuck.

How do you deal with a problem like this in the context of a State with the political and economic power, influence and reach of China, and which to all intents and purposes appears to have slipped away from the enforcement mechanisms of international law and is actively pursuing a policy by which any dissent will not be tolerated?

It is a very serious challenge – at multiple levels- to which we must acknowledge there are no simple solutions. Diplomacy has struggled with the conflicting interests, and the consequence is that not only does accountability feel distant, but the prospect of putting an end to immediate pain and suffering in Xinjiang – which must be the urgent task of the international community – remains remote.

It is important too that we pause to recognise that the situation in Xinjiang, in which atrocity crimes are alleged to have taken place, arise in the context of a world in which commitment to international human rights amongst individual states is weak. The international and political framework, built to support human rights is reliant on the commitment of states, is at a low ebb. China has a permanent seat on the Security Council and will use its veto to effect. It is now seeking to shape and reframe the UN agenda with seats on the Human Rights Council and other leadership positions. Special Rapporteurs have been singular and united in their attempts to bring focus on what is happening in Xinjiang, Tibet and Hong Kong; the high point being a letter signed by 50 of them in June 2020 in which they called for decisive measures and renewed attention on what was happening all of those places. Specific measures were identified including the establishment of an impartial and independent mechanism to monitor, analyse and report on violations. But China, now sitting on the Human Rights Council, has every interest in obstructing this call. It is difficult to see what, if any, progress has been made by the Secretary General to this end. Following reports that the UN earlier this year was seeking a 'no restrictions' visit to Xinjiang, progress indeed appears to have stalled. Western states have written letters and tried to join forces to some degree. But China has played that game too, returning with letters signed by a higher number of signatories, including with multiple majority Muslim States. Sanctions have now been imposed by various states including the UK, and China has responded with tit-for-tat sanctions against individuals, MPs and indeed a barristers' chambers.

Wringing our hands is not an option. The private art of diplomacy, which for all its many advantages, has fallen on deaf ears and aggressive 'wolf-warrior' diplomacy by China. The political sphere – constrained as it is by conflicting interests - is not producing results and alone it will not put an end to the suffering or create the openness required to examine it through a legal lens. It is therefore now critical and urgent that every tool in the available box be deployed.

The severity of the situation requires a multi-pronged, multilateral approach: One which requires a clear consideration of the space in which a state can both hear the political rhetoric on human rights, but also face the sharp end of action, of consequences for violations. The documented and

detailed allegations, which we have heard about, must be pursued using all appropriate means available, including those by reference to international law and the international legal framework.

Journalists, investigative teams, NGOs and others are already working with courageous survivors and witnesses to bring testimony and evidence out. That evidence has already forced the Chinese state to defend itself, to deny the allegations or to shoot the messengers with threats or sanctions. But beyond that, there appear to be few consequences that China faces from the international community other than reproach. There appears to be few active policies of atrocity prevention.

International law can be part of the toolkit used by states other than China who are determined to ensure China's compliance with its international human rights obligations and prevent ongoing and future violations.

Law alone will not provide simple solutions, but nor has any other approach. Working hand in glove with political and economic pressure, as well as prevention strategy, the gaps may start to be plugged. In order to deploy them, however, political will is required to bring pressure to bear on China. In the spaces between the words in quiet corridors and open letters, China is receiving mixed messages. International law can be used at least to concretise the message that the international community does take the allegations seriously and will not look the other way.

The mechanisms available -and which I will shortly discuss – are not perfect. Some would say they are far from perfect. But they are what we have, and they can be used to far better effect by states determined to prevent ongoing and future violations. The handwringing over the failures of the UN will not achieve a fixed and improved system, but the effective use of the mechanisms which do exist may start again to rebuild trust in an international system that just a few decades ago promised Never Again.

The documented allegations

I will not detail the documented allegations in this talk. Most of you are aware of them; they are openly available and many of the panels in this talk are discussing their detail. Other speakers and panels will explore these allegations and sources in more detail than I can here. I will just say this to frame the context of the mechanisms and the legal framework.

The allegations include the mass surveillance and arbitrary detention of over 1 million Uyghurs and other Turkic Muslims, torture and inhuman treatment of detainees, the forced separation of

children from their parents, the denial of the right to practice their religion or speak their language, forced sterilisation, forced labour, forced organ harvesting, enforced disappearances and killings in detention. It is enough for me to say that much of the evidence is first-hand, detailed and consistent. It has emerged for some time and continues to emerge, even as this week new stories in The Atlantic. The weight that will be afforded to each of those sources will need to be tested in due course, and it is not for me to comment on those in the course of this talk.

So what are the obligations in international law?

For those of you interested, our BHRC July 2020 High-Level Briefing paper contains far more detail than I can provide in this overview today. Instead, what I would like to give you is a flavour of what is available and what can yet be deployed. China is a state party to a number of international human rights and international criminal law treaties which:

i. prohibit China (or others within its jurisdiction) from violating the rights of its citizens and/or commit crimes against them;
ii. impose upon China, in some instances, a duty to prevent crimes or rights violations before they arise and, in particular, serious crimes such as torture, genocide, slavery and discrimination; and/or
iii. require China to fulfil a duty to punish perpetrators of crimes or rights violations when they occur.

I want to refer in particular of the following six core human rights and international criminal law treaties which are, among others, relevant to the documented violations and/or crimes to-date against Uyghurs and other Turkic Muslims and which may have been contravened include:

a. International Convention on the Elimination of All Forms of Racial Discrimination;
b. Convention on the Prevention and Punishment of the Crime of Genocide;
c. United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment;
d. Convention on the Elimination of All Forms of Discrimination against Women;
e. United Nations Convention on the Rights of the Child;
f. Slavery Convention 1926.

In addition, China has signed the International Covenant on Civil and Political Rights. As a signatory to the ICCPR, China is under an obligation to refrain from committing acts that defeat the object and purpose of the Covenant.

Moreover, China is bound by *jus cogens* norms of customary international law that include the prohibition of genocide, racial discrimination, slavery, and torture. These obligations are *erga omnes* in nature i.e., they are owed to the international community as a whole. China's compliance with these obligations is, therefore, the concern of all States.

Under the six treaties set out, China is required to take numerous steps in respect of the documented allegations of violations and/or crimes against Uyghurs and other Turkic Muslims. At this conference, a number of break-out sessions concern the question of genocide and/or crimes against humanity in both the legal and evidential sense, and the attendant obligations on both China and the international community of states.

For now, I will limit my observations here to say only that there are credible accounts, emanating from a number of bodies and organisations, which raise grave concerns that serious human rights violations are being committed in Xinjiang against Uyghurs and/or other Turkic Muslims, which may include prohibited acts of genocide and or crimes against humanity. In due course, the forensic strength and reliability of those accounts will need to be tested in a court of law.

The allegations include acts of killings in detention; other extra-judicial killings; serious bodily or mental harm including sexual violence, and/or other conditions of life calculated to destroy inflicted upon detainees; measures such as forced sterilisation, enforced abortions, enforced birth control and enforced separation of the sexes that may constitute restrictions on birth within the group; and separation of children from the protected group and transfer to non-members. The allegations raise particular concerns about the gendered nature of the prohibited acts with such acts constituting serious bodily and mental harm specifically directed against women and girls. If proven, and I emphasise the if since intent is a difficult hurdle in international law, all the aforementioned acts, given their frequency and pattern, are likely to violate numerous provisions of the Genocide Convention. For genocide, there would need to be proof of the requisite specific intent (i.e. the intent to destroy, in whole or part, the protected group) by high, mid-level and/or low-level perpetrators of prohibited acts. As many of you know, that is a high hurdle to climb.

Irrespective of whether that threshold is or can be met in a court in due course, State Parties to the Genocide Convention have a duty, independent of China's own duty, to prevent genocide

and/or punish perpetrators of the crime. The ICJ has concluded that the obligation to prevent genocide contained in Article I of the Genocide Convention has an extraterritorial scope. As such, States that have the '*capacity to effectively influence*' other States have a duty to employ all means reasonably available to them to prevent genocide, including in relation to acts committed outside their own borders. That duty is one of conduct rather than result.

The obligation to prevent genocide is engaged from the moment the State learns, or should know, of the existence of a serious risk that genocide will be committed. So, it is incumbent upon all States to consider, in light of the information available to them, whether genocide is being committed or whether there is a serious risk that genocide may be committed, and if so, to take all available diplomatic, legal and other lawful measures to prevent genocide.

Acts such as enslavement, persecution, extermination, and torture *inter alia*, when committed as part of a widespread or systematic attack on a civilian population, constitute crimes against humanity. I The prohibition of crimes against humanity is considered to be a peremptory norm.

In this debate, we often do not discuss crimes against humanity. There are real questions as to whether crimes against humanity should be considered, as they sometimes appear to be, a lesser crime: If, for example, (and I am not taking this example in a specific context) 100,000 people or 200,000 people are subjected to treatment that may constitute a crime against humanity, the obligation should not hang differently, or be treated less seriously, because of the label.

Although China is not a party to the Rome Statute of the International Criminal Court, China retains a responsibility under customary international law to protect all persons in its jurisdiction from crimes against humanity, as well as to investigate and prosecute perpetrators of such crimes, including public officials and persons acting on behalf of the State.

Moreover, the effective investigation and prosecution of crimes against humanity is not dependent upon a State's ratification of the Rome Statute. As the Preamble to the Rome Statute recognises, effective prosecution of the most serious crimes of international concern '*must be ensured by taking measures at the national level and by enhancing international cooperation'*. As an obligation *erga omnes*, all States are under a customary international law obligation to investigate and prosecute crimes against humanity, wherever committed. A number of States, in particular but not exclusively State Parties to the Rome Statute, have implemented legislation enabling their domestic criminal courts to exercise universal or extraterritorial jurisdiction over crimes against humanity, regardless of the perpetrator's nationality and/or where the alleged crimes were committed.

In the absence of reliable domestic avenues for resolution, third party states, including the UK must be willing to use such mechanisms as exist to enforce China's obligations under international law by requiring China to: cease continuing violations of its international human rights obligations; prevent future violations; and provide a remedy for harm suffered. I emphasised willing, and political will. They go hand in glove, operating as they do at state level. The current stalemate on Xinjiang, with much shaking of heads but little else, is demonstrating not just inertia but insufficient political will.

It is true that part of this may be because there are real and considerable limitations upon holding China accountable in legal terms for alleged violations and crimes. China does not accept, where available, individual complaints procedures which would allow Chinese nationals to directly bring their cases before the various UN Committees. Nor does it accept any inquiry procedures into serious and systematic abuses of human rights under these treaties. China has also expressly made reservations to deny the conferral of jurisdiction on the International Court of Justice in the event of a 'dispute' as to the application, interpretation, and fulfilment of the provisions of the treaties. It has not accepted the competence of treaty-based mechanisms to receive inter-State communications concerning its compliance with its obligations under the treaty. In short, what this means is that individuals and States are not able to enforce China's obligations under most of these treaties in a formal court of law or an international, independent, impartial forum.

There is one important exception to this formidable list of reservations, and I would like to take a few moments to explain why I think it is important, and worthy of pursuit.

China has not made any reservation to Article 11 CERD. This means that it has accepted the competence of the Committee on the Elimination of Racial Discrimination to examine and adjudicate inter-State disputes concerning alleged failures to give effect to the Convention. State Parties to CERD - including the UK - may, therefore, request the Committee examines alleged breaches of the Convention by China.

The prohibition of racial discrimination is *jus cogens* in character. The *erga omnes* and *erga omnes partes* character of the rights and obligations that are owed under customary international law and CERD means that there is a requirement on all States to protect the rights and obligations under CERD.

States other than China have, a right and arguably a duty, inter alia: to invoke responsibility of a State alleged to have violated CERD; to not consider any violations as legal, with all the consequences that entails for both States; to ask for cessation of possible violations; and to request

just satisfaction for victims of any violations, including commitments for non-repetition, and arguably payment of reparations to victims (though reparations are not established as custom). States should also refrain from rendering aid or assistance in maintaining the situation created by a breach of CERD.

The inter-State communications mechanism of CERD does allow a State to formally communicate its grievances to another State that has allegedly violated the Convention. Arts. 11-13 lay out the procedure. So, if a State Party would be willing to submit such a communication to the Committee against China, and if the jurisdiction and admissibility of such a case were to be accepted, this could be a viable option to pursue.

There are multiple and detailed accounts, emanating from a number of bodies including the Committee on Eliminating Racial Discrimination, that Uyghurs and other Turkic Muslims are discriminated against systematically. By these accounts, which include official leaks, discrimination is the very purpose.

Discrimination - the othering, whether directly or indirectly, of people according to one of their characteristics - is both the precursor and the ugly heart of genocide.

China has not made any reservation to Article 11 CERD, by which States Parties accept the competence of the Committee on the Elimination of Racial Discrimination to examine inter-State disputes. The Committee on the Elimination of Racial Discrimination, then, provides a means by which State Parties to CERD can, and should, seek to invoke China's international responsibility with respect to its treatment of the Uyghurs.

There is *prima facie* evidence of discriminatory treatment of Uyghurs and other Turkic Muslims in the following ways: frequent profiling, monitoring and targeting by law enforcement agencies; discrimination in workplace settings; specific identification and targeting of Uyghur leaders, officials and prominent persons by law enforcement, penal and judicial bodies; forcible separation of children from their parents and extended family and forced assimilation into non-Uyghur group practices; removal of Chinese identity documents including passports; destruction of ethno-cultural and religious symbols and places of worship; measures prohibiting free practice and observance of religion and belief and forcible assimilation of Uyghur or other Turkic Muslims into practices going against their beliefs; and forcible displacement and re-population of traditional Uyghur and other Chinese regions with Han Chinese. There continue to be new and substantial sources of information which point to policies of widespread oppression and detention, including

the leaking of a prisoner list which appears to demonstrate China's use of AI and technology to systematically discriminate against Uyghurs and other Turkic Muslims.

So why have States not adopted this route so far?

My view is that states are or may be reluctant to go down this path because it has been so little trodden. Moreover, it does not carry the 'glory' (if you like) of an ICC conviction: Combined with the overall lack of political will, no single state wants to stir the nest. But it is potentially a step that has a much bigger footprint than it might initially appear.

One of the obvious challenges in the global political climate has been how to turn around opinion in Muslim majority states that have, so far, for geopolitical or economic reasons, been vocally supportive (or at least muted) on the allegations in Xinjiang in a way that they have not been against other populations facing oppression or atrocity crimes. A CERD communication, and any subsequent findings by the CERD Committee could be a powerful tool with which to sway public opinion, and in consequence, achieve state support in those countries. Given that, for example, China in fact had much less actual support for its role on the UN Human Rights Council than in previous years, those sorts of findings may in fact act as a badge of shame for those countries that continue to support it. Small changes can be powerful indicators, and we know that the Chinese state reacts to adverse publicity. In fact, it does not tolerate it. It may not be an inter-State dispute in the ICJ, but it is nevertheless an option that exists for States, including the UK, and which may yet cause its own chain of consequences. For that reason, however imperfect the options are, it is one which I urge states - including. my own - to take.

There are other options which I cannot detail for lack of time. Do read our BHRC report for more detail.

In brief, the non-availability of inter-State legal dispute mechanisms does not preclude some international organisations from requesting an Advisory Opinion from the ICJ on matters that concern them, for example obligations of States under treaties, matters which require clarification or development of international law, and measures to strengthen peaceful relations between States. The procedure is available to five United Nations organs, fifteen specialised agencies and one related organisation. Advisory Opinions issued by the ICJ are non-binding but carry great legal weight and moral authority. As with a CERD decision, it has the potential to create a public stir, increased reporting and swayed public opinion in states which traditionally have supported China's efforts to repress criticism.

The treaty-based mechanisms also provide guidance, develop jurisprudence, monitor each state party's compliance with the provisions of the treaties, and conduct reviews of state parties' progress in implementing the treaty. Civil society members can provide input to the Committee at various points by submitting reports, making oral statements, and organizing side events and briefings for Committee members. While the outcome of all of these processes is non-binding, they can have significant symbolic impact, which feeds into the HRC's Universal Periodic Review of State compliance with international human rights norms. In time, and over time, they may also contribute to the process of accountability. Taken together, particularly with a CERD and an ICJ decision, the pressure will both build globally and at state level.

What all of these measures also do is to change the subliminal silence in the space in which China operates at a geopolitical level. It is beyond time that it does. For sure, it is not a simple solution, but it is a crucial difference between the current tendency to mere slapped wrists whilst proceeding with business as usual.

I want to emphasise that this is not an ideological war against China, and nor should it be. This is not to stigmatise China or her great history, culture and people. Facing up to our international obligations against the Chinese state should not be used or pursued as part of any populist anti-China rhetoric, which of course also has adverse implications for ethnic Chinese communities around the world in terms of increased hate crime and discrimination. It is important that we continue to be focused and clear about why the Chinese state is being pursued and for what. But, faced with the most serious documented and emerging concerns of systemic and persistent violations of the most serious human rights and *jus cogens* norms, this is and should be a matter of grave concern to the international community as a whole (*erga omnes*). It is therefore the responsibility of all States to take all available measures to prevent any violations of international law from occurring – whether they are labelled genocide or crimes against humanity or other grave human rights violations- to seek to bring an end to them all, and to call upon China to immediately cease all and any alleged practices and policies - violating its obligations and responsibilities - towards the Uyghurs and other Turkic Muslims.

That is the diplomatic, political, economic and security space into which this message should be heaped. And that requires difficult and confronting choices by some states. The Chinese state should not be able to hear one thing and know that another will be done. The routes that exist under international law, imperfect as they are, are a means of showing consistency, stability and commitment to human rights as set out in international legal and criminal standards, and which

are more powerful than any other agenda. All States, including China, have unequivocally accepted that slavery and racial discrimination, torture and genocide are prohibited: they have committed to not carry out those proscribed acts; they have committed to their prevention; and they have committed to punishment of perpetrators where they have found individuals to have committed those proscribed acts. There can be no derogation from those commitments.

As such, all States have a right to invoke the responsibility of China for any failure to uphold its obligations under the aforementioned conventions and/or customary international law, and any resulting violations of *jus cogens* norms and *erga omnes (partes)* obligations.

Domestic avenues

There may also be domestic avenues of recourse open to States relating to their own criminal jurisdictions and universal jurisdiction. But there is an avenue which is not yet sufficiently pursued which may prove also to be critically important in the toolbox – that is, the business and human rights approach as a matter of law, rather than consumer choice, including a focus on supply chains. It is a lecture in of itself, so I address it briefly for now, but it is one of considerable importance and effect; it should be pursued seriously, and it will also impact upon that space in which mixed-messages are being heard by China.

States should take steps under domestic law to ensure that international corporations that operate in, or whose supply chains are linked to, Xinjiang Uyghur Autonomous Region implement measures and conduct necessary due diligence to ensure that their operations do not contribute in any way to the commission of alleged violations of human rights in XUAR by the Chinese authorities. I limit my current observations to say it is an avenue that should be pursued vigorously at state level instead of placing the onus on consumers.

I would like to say a few words specifically about the UK here. Despite some advances towards securing some forms of corporate accountability in the UK, the mechanisms – both through jurisprudence and enforcement - remain weak and provide limited and uncertain remedies for victims. Although the Home Office has announced an intention to strengthen transparency provisions in the Modern Slavery Act 2015, this body of piecemeal provision does not go far enough.

One powerful step forward would be through the introduction of a law on due diligence which will strengthen corporate accountability for human rights abuses. This would be in line with a

global corporate trend, ever since the adoption by the UN of the Guiding Principles on Business and Human Rights on strengthening or introducing human rights reporting requirements. More recently, this has taken the form of specific human rights due diligence laws. France, for example, enacted the Corporate Duty of Vigilance in 2017, requiring French companies of a certain size to establish and to implement an annual 'vigilance plan'. The German government is also considering enacting a mandatory human rights due diligence law. The EU too has announced that the Commission will propose mandatory human right due diligence legislation. In September 2020, a draft report was issued by the European Parliament Committee on Legal Affairs which made specific recommendations to the Commission to that effect. A previous call by the UK Joint Committee on Human Rights for the introduction of such a law has gone unheeded. In April 2019, civil society organisations launched a new campaign calling for an effective law to require companies and investors to take action to prevent human rights abuses, worker exploitation and environmental harm in their global operations, activities, products, services, investments and supply chains. They later prepared a useful set of considerations to be included in any new legislation introducing a corporate duty.

In August 2020, the UK government announced a consultation on proposals relating to due diligence in supply chains in relation to "forest-risk" commodities. As presently envisaged, the duty is limited and will impact on a small number of companies working only in a specific field. It is unlikely to be as broad as the EU law being consulted upon. It would be a powerful step, for the UK government to introduce a corporate duty of due diligence, specifically relating to human rights and in compliance with international standards. It would avoid the piecemeal nature of current provisions and proposals, which are limited in scope and effect, and which lack ambition to meet international standards.

Soft law must become hard law. Consumer choice must become business sanction. That is the economic and business space into which this message should be heaped. Again, the message to the Chinese state should not that it can hear one thing and know that something will be done privately.

As its economic power continues to grow, China itself will need to rely on international law frameworks. It already does. It needs them for arbitration purposes, for the law of the sea and for contract and commercial decisions and transactions done every day.

The promise of law - and the rule of law - is that it can and should apply to us all. And to that end, the most vulnerable and hidden communities amongst us should be protected by the systems created for that reason. But international human rights law, treaties and systems also requires the will of states, the funding of states and the active support of the system by which they were created and embedded. That will, funding and support is needed now to ensure states are not able to commit grave human rights violations – whatever name or label is attached to them – with impunity.

In conclusion, I commend to you the various suggestions that we made in our 2020 Briefing Paper[i], many of which have in fact been incorporated in the Foreign Affairs Committee report recently published[ii]. These recommendations were made to states other than China as to how they may and should ensure China's compliance with its international obligations by: invoking its responsibility in any available international forums including at the United Nations and, in particular, international dispute mechanisms (such as the Committee for the Elimination of Racial Discrimination); using all diplomatic means and good offices of the State; and/or by implementing Magnitsky-type sanctions on individual perpetrators of grave human rights violations.

I continue to commend them, and indeed many now have been endorsed by the Foreign Affairs Committee in its latest report[iii]. Taken individually, many do not go far enough. But acting in a multi-pronged, consistent and concerted way with a wide range of partner states, 13 months on from the launch of our report, these are options available to states, including my own, and are not being properly pursued.[2]

In conclusion, I want to thank the many journalists, investigative teams and scholars who have done so much to shine light on what is happening in Xinjiang. I want to pay immense tribute to the courageous survivors who have told their stories. And I want to hope that the multiple spaces of security, economics and diplomacy in which mixed messaging to the Chinese state remains rife can and will be filled with the tools that are available, and which include those provided by an international law framework that was built to mean Never Again. We can make that happen.

Thank you very much.

Newcastle University,

2 September 2021

[i] States should use all available means to call upon China to:

i. cease and desist all and any violations of its obligations and responsibilities under the relevant treaties;
ii. make effective in domestic law the provisions of the relevant treaties in order to honour obligations to respect, protect and fulfil the obligations and responsibilities thereof;
iii. investigate – and permit, support, and strengthen independent and impartial investigation by others - all allegations of genocide, murder, extermination, torture and other forms of ill-treatment, and enslavement and prosecute alleged offenders; and
iv. provide 'just satisfaction' to survivors/victims in the form of individual and/or general measures which may, *inter alia,* include: remedial actions, reparations, and commitments for non-repetition.

b. Give effect to their responsibilities under the relevant treaties to create, maintain and utilise international bodies to carry out investigations and due diligence in respect of China's alleged violations of its obligations and responsibilities concerning its Uyghur and other Turkic Muslim populations;

i. States should specifically consider supporting and assisting independent, impartial and international mechanisms (whether state or non-state) to carry out investigations to determine comprehensively any violation by China of its *jus cogens* obligations and responsibilities. Such a mechanism may be founded, with the support of States, as an *ad hoc* process independent of international bodies where those bodies do not have a mandate.

c. To use all available offices and legal means to prevent any violations being committed against the Uyghur and Turkic Muslim populations;

d. To use all available offices and legal means to investigate, apprehend and punish alleged perpetrators of any violations being committed against the Uyghur and Turkic Muslim populations;

e. Utilise mechanisms before international organisations to request that an Advisory Opinion be sought from the ICJ on allegations that would constitute, if proven, serious violations of international law, in particular obligations of an *erga omnes* character;

f. Support the call of the UN independent experts of 26 June 2020 for decisive measures to protect fundamental freedoms in China by:

i. urging the Government of China to invite mandate-holders, including those with a mandate to monitor civil and political rights, to conduct independent missions and to permit those visits to take place in an environment of confidentiality, respect for human rights defenders, and full avoidance of reprisals against those with whom mandate-holders may meet,
ii. calling upon the UN Human Rights Council (**"HRC"**) to act with a sense of urgency to take all appropriate measures to monitor Chinese human rights practices,
iii. establishing an impartial and independent United Nations mechanism - such as a United Nations Special Rapporteur, a Panel of Experts appointed by the HRC, or a Secretary

General Special Envoy - to closely monitor, analyse and report annually on the human rights situation in China, particularly, in view of the urgency of the situations in the XUAR;

g. Create and apply Magnitsky-style sanctions on individuals, whether state or non-state actors, where there are reasonable grounds to suspect the person is involved in serious human rights violations in XUAR; and

h. Invoke China's international responsibility for alleged violations of CERD, engaging the inter-State dispute mechanism.

[ii] https://committees.parliament.uk/work/564/xinjiang-detention-camps/news/156425/foreign-affairs-committee-publish-report-never-again-the-uks-responsibility-to-act-on-atrocities-in-xinjiang-and-beyond/