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Executive Summary

This evidence submission addresses how the UK can leverage domestic and international law tools to influence China's compliance with its human rights obligations in Xinjiang province, and how the UK can improve and restructure its approach to atrocity prevention more generally. On the first question, this submission recommends diplomatically appealing to China to use its position on the UN HRC to lead by example in the region, while also buttressing such appeals with other tools. In particular, under the UN human rights regime, this submission considers (and recommends) HMG's leadership or support for the establishment of a UN commission of inquiry or other fact-finding mission through the Human Rights Council. In addition, this submission recommends supporting monitoring work by the UN Special Procedures and Treaty Bodies, engaging with China during its next Universal Periodic Review, and considering inter-state procedures pursuant to Art. 11-13 of the International Covenant on the Elimination of Racial Discriminations. This submission also considers whether the alleged violations in Xinjiang might amount to genocide under the Genocide Convention, or other crimes under customary international law, and suggests avenues for engaging the International Court of Justice. This submission also discusses trade negotiations and restrictions, domestic and international sanctions measures, and the possibility of international and domestic criminal and civil/tort proceedings. Finally, this submission turns to making recommendations on how HMG can improve its approach to atrocity prevention by developing a strategic framework for mass atrocity prevention, establishing a cross-government atrocity prevention strategy, developing a strong, centralised inter-agency process, and considering additional legislative and policy recommendations to strengthen UK commitment and leadership on atrocity prevention issues.

Status Quo

The factual bases of this submission are premised entirely on open source reporting and investigations, and will likely be well-known to the Inquiry. Information has emerged convincingly indicating consistent patterns of gross violations of human rights and fundamental freedoms targeting China's Uyghur Muslims and other ethnic minorities. It is widely reported that between 1 million and 1.5 million Uyghurs (some estimate 3 million) and other predominantly Muslim Turkic individuals are held in detention 'camps'.¹ Despite Chinese claims to the contrary, recent compelling satellite imagery indicates rapid development over the past few years.² There is also evidence suggesting that the Chinese government is seeking to erase Uyghur culture, including through the destruction of thousands of mosques and Uyghur graveyards,³ as well as policies focused on 're-educating' Uyghurs to renounce their religion, punishing them for speaking their language, separating children from their parents for 'integration', and drastically reducing the Uyghur birth rate through coercive birth controls.⁴ If proven, such widespread, systematic conduct would likely constitute crimes against humanity under international law. Where the specific intent to 'destroy in whole or in part' the Uyghurs were demonstrated, they might also constitute genocide. At a minimum, they constitute serious violations of international human rights law.

The Chinese government has consistently defended its policies and actions in Xinjiang. For example, a White Paper published by the State Council Information Office on 18 March 2019 emphasised the 'severe crackdown on terrorism and extremism' and the 'terrorist forces' 'exaggerating the cultural differences between ethnic groups.'⁵ A

¹ <https://qz.com/1599393/how-researchers-estimate-1-million-uyghurs-are-detained-in-xinjiang/>

² <https://www.nytimes.com/2020/09/24/world/asia/china-muslims-xinjiang-detention.html>

³ <https://www.scmp.com/news/china/politics/article/3032646/no-space-mourn-destruction-uygur-graveyards-xinjiang>; <https://edition.cnn.com/2020/01/02/asia/xinjiang-uyghur-graveyards-china-intl-hnk/index.html>; <https://www.wsj.com/articles/china-razed-thousands-of-xinjiang-mosques-in-assimilation-push-report-says-11601049531>

⁴ <https://www.economist.com/china/2020/10/17/how-xinjiangs-gulag-tears-families-apart>

⁵ <https://news.cgtn.com/news/3d3d514f3349444e33457a6333566d54/index.html> The local government upholds the principles of protecting lawful activities, curbing illegal actions, containing extremism, resisting infiltration, and preventing and punishing crimes. The local government fully respects and safeguards civil rights including freedom of religious belief.' Also reporting 'Since 2014, Xinjiang has destroyed 1,588 violent and terrorist gangs, arrested 12,995 terrorists, seized 2,052 explosive devices, punished 30,645 people for 4,858 illegal religious activities, and confiscated 345,229 copies of illegal religious materials.'

further White Paper published on 17 September 2020 contrarily emphasises Xinjiang's 'proactive labour and employment policies,' increased enrolment in education, and the strict adherence to employment laws, concluding with the observation that 'there is a manipulation of facts by certain international forces to support false claims of "forced labour" and "human rights violation" in Xinjiang,' and a 'denial of the fact that the local people in Xinjiang enjoy the right to work, aspire to move out of poverty and are working towards that goal. '6 The Chinese government promises to 'continue its commitment to the people-centred philosophy of development, adhere to the principle that employment is of paramount importance to people's well-being, implement the strategy of giving priority to employment, and introduce more proactive policies to boost employment.'⁷

However, such measures have drawn condemnation from the international community. While the response to the 2019 attempt to seize the UN Human Rights Council (UN HRC) regarding China's detention programme in Xinjiang was discouraging,⁸ the recent, growing body of satellite and witness evidence regarding the rapid development of at least 380 detention camps has led to the retraction of support from majority-Muslim states.⁹ In fact, in October 2020, 41 fewer states voted for China's election to the UN HRC than in 2016, the fewest votes China has ever received since the Council's establishment in 2006. Likewise, among the 15 countries elected to fill vacant seats in the 47-member body this year, China received the lowest number of votes. This election came as unfavourable views of China reached historic highs in many countries, due to its handling of the COVID-19 outbreak.¹⁰ This picture indicates that China's position on the world stage is weaker than it has been in recent times. The risk of international isolation remains low, given China's influence (supported by its trade, technology, and foreign investment policies). However, taking the above into account, and given its eagerness to project an image of soft-power,¹¹ China may be - today more so than

⁶ <https://news.cgtn.com/news/2020-09-17/China-releases-white-paper-on-employment-labor-rights-in-Xinjiang--TQVs1g2Ptu/index.html>

⁷ <https://news.cgtn.com/news/2020-09-17/China-releases-white-paper-on-employment-labor-rights-in-Xinjiang--TQVs1g2Ptu/index.html>

⁸ [A/HRC/41/G/11](https://www.unhcr.org/refugees/41/G/11); [A/HRC/41/G/17](https://www.unhcr.org/refugees/41/G/17).

⁹ <https://thediplomat.com/2020/10/2020-edition-which-countries-are-for-or-against-chinas-xinjiang-policies/>

¹⁰ <https://www.pewresearch.org/global/2020/10/06/unfavorable-views-of-china-reach-historic-highs-in-many-countries/>

¹¹ <https://www.cfr.org/backgrounder/chinas-big-bet-soft-power>

historically - susceptible to international pressure. For this reason, a sensible strategy for Her Majesty's Government (HMG) might be to diplomatically appeal to China to use its position on the UN HRC to lead by example in the region, while also buttressing such appeals with tools focusing on inquiry and negotiation. The full range of international legal remedies will be explored below, including, where possible, mediation, conciliation, and litigation. In addition, domestic criminal, and civil/tort liability proceedings will also be discussed. It is unlikely, however, that China will respond positively to litigation.¹² HMG may also leverage targeted sanctions and trade negotiations - alongside other tools - to influence China's human rights practices.

1. How can the UK use organisations and agreements such as the UN Human Rights Council and the Genocide Convention to influence China towards better human rights practices?

I. UN Human Rights Council

International Commissions of Inquiry, Fact-Finding missions and other Investigation

HMG may encourage members of the UN HRC to table a resolution establishing an international inquiry, such as a fact-finding mission, or other international investigation into the allegations in Xinjiang. Of the 22 and 23 countries who co-signed the July 2019¹³ and October 2019¹⁴ joint statements respectively, only Australia, Austria, Denmark, Germany, the Netherlands, Japan, and Spain are currently members of the UN HRC. However, given China's relatively weaker position on the world stage, a simple majority might not be excluded to pass a resolution at the next Session of the Council. Serious human rights abuses and mass atrocities might also constitute threats to international peace and security.¹⁵ On these grounds, besides the UN HRC, the following bodies might also appoint fact-finding missions: UN General Assembly (pursuant to Art. 11 UN Charter, and UNGA 377/A 'Uniting for Peace', which empowers the UNGA to convene

¹² <https://www.chathamhouse.org/2018/07/two-years-south-china-sea-ruling-remains-battleground-rules-based-order>

¹³ https://www.hrw.org/sites/default/files/supporting_resources/190708_joint_statement_xinjiang.pdf

¹⁴ <https://www.gov.uk/government/speeches/joint-statement-on-xinjiang>

¹⁵ <https://www.un.org/en/sections/issues-depth/peace-and-security/>

Emergency Special Sessions);¹⁶ the UN Secretary General (UNSG, Art. 99 UN Charter); and UN Security Council (UNSC, Chapter VI UN Charter). However, given the UNSG good offices role, China's permanent seat on the UNSC, and the 2/3 majority vote needed at the UNGA, these avenues seem less likely.¹⁷ China is likely to respond negatively to calls for inquiries.¹⁸ However, among the tools available to HMG, an inquiry is one of the least confrontational options, and one that can be used as leverage under – and to reinforce – any of the additional tools and avenues discussed below. For this reason, we highly recommend that HMG leads or supports calls for the establishment of inquiry or fact-finding mission.

UN Special Procedures

Various UN independent experts have already expressed their concerns on the situation in Xinjiang, including: the UN Working Group on Arbitrary Detentions; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on minority issues; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; UN Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the right to privacy; the Working Group on Enforced and Involuntary Disappearance; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.¹⁹ Additional UN special procedures might report

¹⁶[https://www.un.org/en/ga/sessions/emergency.shtml#:~:text=Under%20the%20resolution%20377A\(V,be%20convened%20within%2024%20hours%3A&text=If%20not%20in%20session%20at,hours%20of%20the%20request%20therefor](https://www.un.org/en/ga/sessions/emergency.shtml#:~:text=Under%20the%20resolution%20377A(V,be%20convened%20within%2024%20hours%3A&text=If%20not%20in%20session%20at,hours%20of%20the%20request%20therefor)

¹⁷ Fact-finding is frequently also employed in addition to other diplomatic dispute resolution means such as negotiation, mediation, good offices, and conciliation as well as in arbitration and international civil litigation. Any additional options will be explored under specific treaty bodies.

¹⁸ <https://www.theguardian.com/world/2020/apr/29/australia-defends-plan-to-investigate-china-over-covid-19-outbreak-as-row-deepens>

¹⁹ https://www.ohchr.org/Documents/Issues/Terrorism/SR/OL_CHN_18_2019.pdf. Also see, complains lodged by the special procedures on: 12 January 2018 (ref. no CHN 1/2018); on 16 February 2018 (ref. no CHN 4/2018); 6 March 2018 (ref. no CHN 5/2018); 6 April 2018 (ref. no CHN 7/2018); 14 June 2018 (ref. no CHN 12/2018); 11 July 2018 (ref. no CHN 13/2018); 6 August 2018 (ref. no CHN 14/2018); 22 August 2018 (ref. no CHN 15/2018) and on 28 August 2018 (ref. no CHN 17/2018).

on the situation in Xinjiang.²⁰ If any such procedures should wish to monitor or report on the situation in Xinjiang, HMG shall fully collaborate and support these experts by negotiating with China access to Xinjiang's province and detention sites. We encourage HMG to forward any relevant information in its possession to the special procedures. Special procedures reports are crucial to China's Universal Periodic Review, and assist treaty bodies' monitoring of compliance.

UN Treaty Bodies

China has ratified and is bound by a range of UN human rights treaties, including: the UN Convention against Torture (CAT),²¹ the International Convention on the Elimination of all forms of Racial Discrimination (ICERD),²² the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).²³ These treaties impose international human rights law obligations on China. China's compliance with these treaties is monitored through both the UN HRC Universal Periodic Review (discussed below), and dedicated treaty bodies. Some of these treaty bodies provide for inter-state complaint or communication procedures. However, China has not signed the CRC and ICESCR Optional Protocols providing for inter-state complaint procedures, nor does it recognise the competence of the Committee Against Torture to investigate alleged acts of torture, under Article 21 CAT. China also declared that it does not consider herself bound by paragraph 1 of Art. 30 CAT, providing for dispute resolutions on application or interpretation. Likewise, China does not consider itself bound by Art. 22 ICERD, through which inter-state disputes could be referred to the International Court of Justice. China is however subject to inter-state procedures pursuant to Art. 11-13 ICERD, which HMG may utilise to transmit a communication to the Committee on the Elimination of Racial Discrimination. We encourage HMG to utilise this option, as one of the few available –

²⁰ These include the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on the human rights of internally displaced persons; the Independent Expert on human rights and international solidarity; and the Special Rapporteur on the Field of Cultural Rights. <https://www.ohchr.org/en/HRBodies/SP/Pages/Welcomepage.aspx>

²¹ <https://www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx>

²² <https://www2.ohchr.org/english/bodies/cerd/>

²³ <https://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx>

and one of the least confrontational, alongside inquiry and negotiations - against China. In addition, the Committee on the Rights of the Child, and the Committee on the Elimination of Discrimination against Women can still transmit suggestions and recommendations to the Chinese government. We encourage HMG to forward any relevant information in its possession to these Committees.

Universal Periodic Review

China concluded its most recent universal periodic review (UPR) during the 31st Session of the UN HRC, in November 2018.²⁴ In its letter to China's Foreign Minister dated April 29, 2019, the High Commissioner for Human Rights requested: unhindered access for international monitors to investigate alleged human rights violations in Xinjiang; the abolition of all forms of arbitrary detention, including extra-legal detention facilities; full protection of the right to freedom of religion or belief; and the taking of urgent steps to respect the rights of persons belonging to ethnic minorities, including the rights to peaceful assembly and to practice religion and culture.²⁵ China's 4th UPR cycle will take place in 2024, during the 45th Session of the UN HRC.²⁶ HMG may encourage China to voluntarily submit an UPR mid-term report to disclose steps taken since the conclusion of its most recent UPR to ameliorate the situation in Xinjiang.²⁷ Furthermore, during China's UPR next cycle, HMG shall continue to engage with the UPR process, particularly around compliance with ICERD, ICESCR, CEDAW, CRC, and CAT. In participating to the UPR dialogues, HMG shall utilise the interactive discussion to pose questions and make observations leveraging HMG's unparalleled intelligence apparatus, and to advance recommendations on human rights complying measures in Xinjiang province.

II. UN Genocide Convention

As will be well-known to the Inquiry, genocide is defined as the intent to destroy, in whole or in part, a national, ethnical, racial or religious group. This can be achieved through acts such as: killing members of the group; causing serious bodily or mental

²⁴ <https://www.ohchr.org/EN/HRBodies/UPR/Pages/CNIndex.aspx>

²⁵ <https://lib.ohchr.org/HRBodies/UPR/Documents/Session31/CN/LetterChina.pdf>

²⁶ https://www.ohchr.org/Documents/HRBodies/UPR/UPR_4th_cycle.pdf

²⁷ <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx>

harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group.²⁸ The destruction of culture – through the purposeful erosion of defining characteristics of protected groups such as outlawing cultural practices, destroying cultural and religious property, abolishing language, or removing children to live with or be educated by another group – can be evidence of the requisite genocidal ‘specific intent’ to destroy a group ‘in whole or in part.’²⁹ The clear evidence of determined policies of forcible assimilation, and the erasure of cultural indicia such as mosques may thus also suggest specific intent on the part of the Chinese state. Plummeting Uyghur birth-rates are also alarming. If established, forcible birth control measures (including sterilisation and forced abortions³⁰) could constitute ‘imposing measures intended to prevent births within the group’ within the definition of genocide. Taking other contextual elements into account, coercive interference with procreative freedom may also be a stark – and chilling - indication of genocidal intent.

Customary International Law

The prohibition against genocide is a peremptory norm of international law from which no derogation is permitted and which imposes obligations towards all. States have an obligation to prevent, not to commit, and punish genocide. It is beyond question that genocide is also a crime under customary international law.³¹ As mentioned above, the essential requirement for genocide is the specific ‘intent to destroy in whole or in part’. However, even without special genocidal intent, many of the same acts that would otherwise amount to genocide can amount to crimes against humanity under customary international law when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of that attack. These include: murder;

²⁸ Art. 2 Genocide Convention; Art. 6 Rome Statute.

²⁹ ICTY, Tolimir, IT-05-88/2-A, [Appeal Judgement](#), 8 April 2015, at paras 225-226; Krstić, [Trial Judgment](#), 2 August 2001, paras 595-598; Krstić, [Appeal Judgment](#), IT-98-33-A, 19 April 2004, para. 53.

In view of the apparent policy of cultural destruction, consideration has also been given to the legislative corpus relating to cultural heritage (China ratified UNESCO’s World Heritage Convention in 1985). Due to the lack of world heritage status, to the inapplicability of Rome Statute Article 8 in China, and in the absence of armed conflict, such avenues remain unavailable.

³⁰ <https://jamestown.org/wp-content/uploads/2020/06/Zenz-Internment-Sterilizations-and-IUDs-UPDATED-July-21-Rev2.pdf?x33438>

³¹ <https://www.legal-tools.org/doc/8799cd/pdf/>

extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognised as impermissible under international law; enforced disappearance of persons; the crime of apartheid; and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.³² If confirmed, the extrajudicial detention and forced labour of over a million Uyghurs and other Turkic and Muslim minorities, and the forced sterilisation of Uyghurs women by the Chinese state apparatus would likely constitute crimes against humanity.³³ At a minimum, states (and individuals alike) have an obligation not to commit crimes against humanity under customary international law, and might incur in responsibility (or individual liability in the case of individuals) in case they do.³⁴

International Court of Justice

While China prefers settling disputes through negotiation and conciliatory mediation involving its 'core interests', she appears to be increasingly prepared to accept adjudicative settlement where politically expedient.³⁵ However, China has not accepted the compulsory jurisdiction of the International Court of Justice. This does not prevent

³² <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e768>

³³ Rome Statute, Article 7: any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) murder; (b) extermination; (c) enslavement; (d) deportation or forcible transfer or population; (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) torture; (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparably gravity; (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) enforced disappearance of persons; (j) the crime of apartheid; (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. ICTR Statute, Article 5: inhumane acts committed as part of a systematic or widespread attack against any civilian population on national, ethnic, racial or religious grounds;

³⁴ <https://www.legal-tools.org/doc/d6a48a/pdf/>

³⁵ <https://www.chathamhouse.org/sites/default/files/publications/research/2017-03-29-chinas-evolving-approach-international-dispute-settlement-moynihan-final.pdf>

her from agreeing to ICJ jurisdiction in specific cases. However, it is unlikely that China would agree to ICJ jurisdiction under the Genocide convention or other human rights treaties.

As an alternative approach, the UK could seek to leverage US-China treaties of friendship accepting compulsory jurisdiction by lobbying the US to bring a case against China before the ICJ. Pursuant to Article 96(2) of the UN Charter, the International Labour Organisation is also competent to seek an Advisory Opinion from the ICJ, and could also be leveraged by the UK to do so.

2. Where these mechanisms prove ineffective, what other international law and agreements can be used effectively for atrocity prevention?

I. Trade negotiations

Trade negotiations constitute an opportunity to raise human rights concerns through diplomatic means. As HMG opens trade talks with China, including discussing the possibility of a Free Trade Agreement, emphasis should be put on raising human rights issues, and particularly the serious violations alleged against the Uyghurs and other minorities by China.

II. Sanctions Measures

Sanction measures may be used by States to protect and enforce international law, to protect national security interest, and against threats to international peace and security. They may be used against states, companies, or individuals. Depending on the sanctions, this tool might indicate an escalation of tensions. We strongly advise against country-wide sanctions, as these often have serious adverse effects on the civilian population. They could also impose a significant toll on the UK economy. Alternatives are explored below.

Domestic sanctions

The Global Human Rights Sanctions Regulations (GHRSR) 2020 equip HMG with the power to place sanctions – through asset freezing and/or immigration prohibitions – upon persons ‘involved’ with the commission of the violations against the Uyghurs. This legislation allows the UK to sanction persons responsible for and companies complicit or engaging in, for example, slavery, persecution on ethnic or religious grounds, genocide; facilitating, inciting, promoting or providing support for such an activity; profiting or otherwise benefitting from such activities; failing to investigate such activity when under a duty to do so; or otherwise contravening the Regulations.³⁶ These regulations also permit sanctions to be placed on companies where owned or controlled by an ‘involved person’ (meaning [i] someone holding, directly or indirectly, more than 50% of shares or voting rights, or right to appoint or remove the majority of board of directors, and/or [ii] someone reasonably expected to ‘be able, in most cases or in significant respects, by whatever means and whether directly or indirectly,’ to ensure the company’s affairs are conducted in accordance with their wishes³⁷). This legislation raises possibilities for the UK to place effective, public sanctions on individuals and companies involved in the systematic abuses alleged against the Uyghurs and other Turkic minorities.³⁸ These align with the FCDO’s ‘human rights priorities’ of combatting modern slavery, protecting freedom of religion and belief, and preventing torture, and avoid direct confrontation with the Chinese government. Careful consideration should be given to the most impactful attribution of sanctions, taking into account, *inter alia*, persons’ *de facto* positions of effective authority, and the extent to which they would be impacted by financial or travel restrictions. The deployment of such mechanisms will also allow HMG to discourage private sector companies from contributing to human rights abuses. This would apply to UK-linked businesses with operations in Xinjiang, which could be held accountable for any involvement in abuses pursuant to Regulation 7.

International sanctions

³⁶ Global Human Rights Sanctions Regulations 2020, Regulation 6.

³⁷ Regulations 7(2) and (4).

³⁸ Pressure appears to be mounting on global brands. <https://www.business-humanrights.org/en/latest-news/china-83-major-brands-implicated-in-report-on-forced-labour-of-ethnic-minorities-from-xinjiang-assigned-to-factories-across-provinces-includes-company-responses/>

Given China's permanent seat on the UNSC, Chapter VI sanctions measures are to be excluded. However, HMG might work alongside partners to explore regional sanctions (transatlantic, or European), or multilateral sanctions in conjunctions with other countries. The United States and Canada have already passed similar human rights sanctions legislation as the GHRSR. They would be ideal partners for the imposition of coordinated multilateral sanctions.³⁹ In addition, the European Union is also considering similar legislation.⁴⁰ A transatlantic approach to sanctions would be most effective.

Trade restrictions

As it has recognised, HMG must continue to duly scrutinise all trade products originating from or linked to China, and encourage its partners to do the same.⁴¹ In July 2020, U.S. Customs and Border Protection officers at the Port of New York/Newark detained a shipment of products/accessories suspected to be made with human hair that originated in Xinjiang, China.⁴² It has been estimated that 20% of cotton garments sold globally contain material from Xinjiang province.⁴³ Investigations by the New York Times, The Wall Street Journal and others have linked forced labour in Xinjiang to major fashion brands.⁴⁴ Some clothing companies appear to be withdrawing or reviewing their direct and indirect links to manufacturers in Xinjiang, though supply-chain transparency can be challenging – not least because of the strict control exercised by the Chinese government in Xinjiang.⁴⁵

Placing import bans on goods produced in Xinjiang, or at least a rebuttable presumption requiring importers to demonstrate complete freedom from abuse, would be an important step in curbing the trade of tainted goods into the UK.⁴⁶ The UK's ability and

³⁹ The following countries and territories have also passed similar legislation, referred to as 'Magnitsky-style' sanctions: Estonia, Lithuania, Latvia, Gibraltar, Jersey, and Kosovo.

⁴⁰ https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655

⁴¹ <https://committees.parliament.uk/committee/365/business-energy-and-industrial-strategy-committee/news/119247/committee-launch-inquiry-into-the-use-of-forced-labor-in-uk-value-chains/>

⁴² <https://www.cbp.gov/newsroom/national-media-release/cbp-detains-chinese-shipment-suspected-forced-labor-products-made>

⁴³ <https://www.nytimes.com/2020/07/23/fashion/ughur-forced-labor-cotton-fashion.html>

⁴⁴ <https://www.nytimes.com/2020/07/23/fashion/ughur-forced-labor-cotton-fashion.html>

⁴⁵ <https://www.nytimes.com/2020/07/23/fashion/ughur-forced-labor-cotton-fashion.html>

⁴⁶ The US has already implemented tough measures: <https://www.dhs.gov/news/2020/09/14/dhs-cracks-down-goods-produced-china-s-state-sponsored-forced-labor>

willingness to stand up to oppressive trade activity has been well-illustrated in its recent ban of Huawei equipment.

The Modern Slavery Act 2015 applies to incorporated companies or partnerships, or parent companies and subsidiaries, with an annual turn-over above £36million supplying goods or services at least in part in the UK.⁴⁷ These organisations must publish an annual statement setting out steps taken to ensure that their supply chains and the entirety of their business are free from slavery and human trafficking, including by identifying risk of slavery and explaining how that has been assessed and managed. Further, the importation of goods made in detention camps may violate the UK's Foreign Prison-Made Goods Act 1897. Moreover, profiting from potential human rights abuses of forced child labour and imprisonment could attract criminal charges under the Proceeds of Crime Act 2002 and the Serious Crime Act 2015. Available legal regimes should be strictly enforced to ensure that companies doing business in the UK are not fuelling forced labour. To this end, close attention must be paid to the findings of the Business, Energy and Industrial Strategy Committee inquiry into the use of forced labour in supply chains originating in China.⁴⁸

III. Other Legal Proceedings

Rome Statute of the International Criminal Court

China is not a State Party to the Rome Statute. Given her permanent seat on the UN Security Council, a referral to the International Criminal Court pursuant to Art. 13(b) of the Rome Statute is unlikely. The ICC Pre-Trial Chamber's majority decision that the ICC could claim jurisdiction over crimes committed by a non-State Party (Myanmar) was founded on the premise that one of the elements of the crime (deportation) was satisfied only through completion in the territory of a State Party (Bangladesh);⁴⁹ a claim to jurisdiction over criminal conduct effected entirely within China could not proceed on the same basis. While China has demonstrated support for international

⁴⁷ <https://www.legislation.gov.uk/ukpga/2015/30/introduction/enacted>

⁴⁸ <https://committees.parliament.uk/committee/365/business-energy-and-industrial-strategy-committee/news/119247/committee-launch-inquiry-into-the-use-of-forced-labour-in-uk-value-chains/>

⁴⁹ https://www.icc-cpi.int/CourtRecords/CR2018_04203.PDF

criminal mechanisms, including where it might have been assumed that it would not,⁵⁰ it should be noted that it is unlikely to respond productively to threats of criminal proceedings.

Domestic criminal proceedings

The International Criminal Court Acts of 2001 incorporate the Rome Statute of the International Criminal Court into UK law.⁵¹ Under the Acts, UK police forces can investigate, and UK prosecution services can prosecute, suspects of genocide and crimes against humanity if these or their victims are residents or nationals of the UK, or if such crimes have been committed in the UK.⁵² In addition, under universal legislation laws, UK courts can exercise jurisdiction over any suspects of war crimes and crimes against humanity who might be found on UK territory, even if the crimes have been committed elsewhere, and irrespective of the victim or perpetrator's nationality.⁵³ Exercise of universal jurisdiction in the UK has thus far been extremely rare.

3. How effective is the FCDO's current approach to atrocity prevention, and how can it be restructured to maximise the UK's impact in this area?

HMG's commitment to preventing atrocities is recognisable in particular in the UK's leadership on the prevention and punishment of sexual and gender-based violence,⁵⁴ and its commitments to protecting religious freedoms and to countering violent extremism. There are a number of ways in which HMG can yet improve and restructure its overall approach to atrocity prevention, many of which have been advocated for some time by various groups in the civil society. These include, most urgently:

- Developing a strategic framework for mass atrocity prevention, and clearly distinguishing its atrocity prevention strategy from its conflict prevention and other workstreams. In fact, not all atrocities occur within conflict situations, and,

⁵⁰ China agreed to the establishment of the ICTY and ICTR, acquiesced to a referral of the situation in Darfur to the ICC, and voted in favour of the referral of Qaddafi to the ICC.

⁵¹ International Criminal Court Act 2001; International Criminal Court (Scotland) Act 2001.

⁵² <https://www.legislation.gov.uk/ukpga/2001/17/contents>

⁵³ <https://www.gov.uk/government/publications/universal-jurisdiction-information-note>

⁵⁴ <https://www.gov.uk/government/organisations/preventing-sexual-violence-in-conflict-initiative>

while aligned strategically, conflict prevention and atrocity prevention strategies do have important operational and tactical differences. Atrocity prevention strategies can overlap and interact with other relevant policy frameworks.⁵⁵ Yet, these can also sometimes work at cross-purposes.⁵⁶ In addition, and not as an alternative, HMG should update the 2017 Joint Analysis of Conflict and Stability guidelines, which do not identify specific risks of mass atrocities, and also make sure that Conflict, Stability, and Security Fund (CSSF) awards are aligned with atrocity risks forecasting.⁵⁷

- Establishing a cross-government atrocity prevention strategy, a recommendation already made in the House of Commons Foreign Affairs Committee report 'Global Britain: The Responsibility to Protect and Humanitarian Intervention'.⁵⁸ Developing such strategy would significantly improve HMG's strategic communication around mass atrocities, help integrate a means of prevention analysis, and institutionalise the UK's commitment to preventing atrocities.⁵⁹
- Developing a strong, centralised inter-agency process. Currently, atrocity prevention sits within FCDO.⁶⁰ However, an inter-agency process would ensure a whole-of-government approach, which could in turn assist with: deploying rapid-response teams; imposing targeted sanctions; recommending a role for regional or U.N. peacekeepers (or other multilateral military contingents); mobilizing trade and other relevant authorities towards supply chains and the provision of dual-use technology (some of which might be leveraged positively for preventive purposes; others which might be potentially harmful or disruptive); funding and otherwise supporting documentation and accountability mechanisms, such as UN Inquiries, or novel investigative mechanisms such as UNITAD,⁶¹ the IIIM,⁶² and the IIMM;⁶³ addressing dangerous speech on multiple platforms through peace-building initiatives, potential

⁵⁵ <https://www.elac.ox.ac.uk/files/atrocitypreventioninatransatlanticsetting-finalpdf>

⁵⁶ <https://stanleycenter.org/publications/pab/BellamyPAB22011.pdf>

⁵⁷ <https://ecr2p.leeds.ac.uk/the-uk-and-atrocity-prevention/>.

⁵⁸ <https://publications.parliament.uk/pa/cm201719/cmselect/cmffaff/1005/1005.pdf>

⁵⁹ <https://fpc.org.uk/putting-atrocity-prevention-at-the-heart-of-british-foreign-policy/>

⁶⁰ <https://www.gov.uk/government/publications/uk-approach-to-preventing-mass-atrocities>

⁶¹ <https://www.unitad.un.org/>

⁶² <https://iiim.un.org/>

⁶³ <https://iimm.un.org/>

counter-speech, and engagement with the private sector, including social media companies; investing in transitional justice mechanisms, reconciliation and peace-making efforts, social cohesion, and inter-faith dialogues; launching disarmament, demobilization and reintegration (DDR) programs for armed actors; and supplying humanitarian assistance to and through trusted civil society actors.⁶⁴ HMG may consider studying lessons learned from mainstreaming atrocity prevention under the Obama and Trump administrations, and consider how these could inform domestic integration into the national security architecture, top-level strategic direction-setting, and bureaucratic institutionalization.⁶⁵

- Parliament should also consider passing the Genocide Determination Bill,⁶⁶ and may consider passing legislation similar to the Elie Wiesel Genocide and Atrocity Prevention Act 2018,⁶⁷ requiring the White House to report annually on steps taken to prevent atrocities, and atrocity-specific training for Foreign Service Officers.
- HMG may prioritise maintaining ongoing dialogue with European and transatlantic partners to harmonise their atrocity prevention strategies, share lessons learned, and identify additional gaps in the operationalization of its Responsibility to Protect.
- Additional ways in which the UK can improve its atrocity prevention approach include:
 - Upholding its obligations under the Arms Trade Treaty, in particular by not selling weapons to known or potential perpetrators of atrocities;
 - providing safe passageways for migration for those fleeing atrocities;
 - restricting the flow of finance through the UK which may benefit perpetrators by further expanding listed parties under the human rights sanctions' regime;

⁶⁴ <https://www.justsecurity.org/73141/good-governance-paper-no-13-atrocities-prevention-and-response/>

⁶⁵ <https://committees.parliament.uk/writtenevidence/4373/html/>

⁶⁶ <https://publications.parliament.uk/pa/bills/lbill/2019-2019/0013/20013.pdf>

⁶⁷ <https://www.congress.gov/bill/115th-congress/senate-bill/1158>

- supporting multilateral efforts aimed at investigating and prosecuting atrocity crimes, including by supporting calls for stronger support to UN HRC appointed (and OHCHR supported) investigative mandates;⁶⁸
- using universal jurisdiction cases strategically to combat impunity for the perpetrators of atrocities;
- continuing its support of international courts and tribunals, including and especially the International Criminal Court, including by advocating with US partners for the removal of Prosecutor Fatou Bensouda and the Head of the of the Jurisdiction, Complementarity and Cooperation Division Phakiso Mochochoko from the US sanctions list;
- supporting the legal sector, and in particular the international human rights lawyers and international criminal and humanitarian law practitioners who support UK leadership and uphold UK responsibilities under international legal instruments;
- providing inclusive and tolerant leadership, and promoting education programmes to counter the root factors that may lead to identity-based violence;⁶⁹
- allocating dedicated financial resources to supporting and commissioning rigorous expert research to guide evidenced-based decision making, in particular around the intersectionality of atrocity prevention with closely related frameworks of protection, and the role of emerging technologies for prevention and accountability purposes.⁷⁰

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⁶⁸ http://opiniojuris.org/2020/10/14/structural-challenges-confronted-by-un-accountability-mandates-perspectives-from-current-and-former-staff-part-iii/?relatedposts_hit=1&relatedposts_origin=39321&relatedposts_position=1

⁶⁹ <https://www.una.org.uk/news/una-uk-welcomes-uk%E2%80%99s-guidance-note-atrocity-prevention>

⁷⁰ <https://www.elac.ox.ac.uk/files/atrocitypreventioninatranatlanticsetting-finalpdf>