

Opinion – The ICC and Non-State Actors in the Xinjiang Crisis

Written by Wilder Alejandro Sánchez

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As the humanitarian crisis continues in Xinjiang, the East Turkestan government-in-exile (ETGE) has delivered new evidence to the International Criminal Court (ICC) to demonstrate said international judicial body's jurisdiction. Without a doubt, the international community, particularly global and regional powers, has a critical role to play in stopping the egregious human rights abuses that have occurred for several years against various ethnic groups in this region, including atrocities committed against the Uyghurs, ethnic Kazakhs, and ethnic Kyrgyz. However, in light of the inaction by many key governments, the East Turkestan government-in-exile and activists are turning to non-state actors, like the ICC and private corporations, to pressure Beijing to end its repressive policies.

As Gani Stambekov, president of Free Kazakhs, explains, "the longer we procrastinate the more chance [the] Chinese regime will have time and opportunity to cover up its crimes." The ETGE first filed a complaint to the ICC on 6 July, 2020, accusing Chinese authorities of rounding up and forcefully deporting Uyghurs from Tajikistan, a State Party to the Rome Statute, into a "China Occupied East Turkistan."

However, in a December 2020 report, the ICC ruled that the case would not move forward, since, "in the present situation, from the information available, it does not appear that the Chinese officials involved in these forcible repatriation fulfilled the required elements [as] described." The report added that,

while the conduct of such officials may have served as a precursor to the subsequent alleged commission of crimes on the territory of China, over which the Court lacks jurisdiction, the conduct occurring on the territory of States Parties does not appear, on the information available, to fulfil material elements of the crime of deportation under article 7(1)(d) of the Statute.

The ETGE remains committed to its case, and it has submitted new evidence to demonstrate that not only are human rights abuses occurring in Xinjiang, but also in neighboring Tajikistan. As The Economist explains, "there is no evidence of mass killings of Uyghurs in Xinjiang, but there are credible reports of extra judicial detentions, torture, sterilisations, forced labour and many other horrors that could constitute crimes against humanity." Evidence of how "Chinese authorities are rounding up and forcefully deporting Uyghurs from Tajikistan," was reportedly submitted. "There is also evidence of a newly constructed triple barbed wire Chinese border fence well within Tajik territory," according to the ETGE.

Another strategy that activists and supporters of the Uyghur population are carrying out is a boycott of the 2022 Winter Olympics, scheduled to take place in Beijing. So far, this idea has not gained much traction. The International Olympics Committee argues that it must remain "neutral" and not become involved in politics. Similarly there is pressure on major companies, like Gap, H&M, and Adidas, to sever ties with China as it has been revealed that many of their garments are made with Uyghur forced labor. Technology companies like Apple, Amazon and Tesla have also been accused of the same.

The Chinese government is adamant that what is taking place in Xinjiang is not repression and there are no human rights abuses. Foreign Affairs Minister Wang Yi said in February that "such inflammatory accusations are fabricated

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out of ignorance and prejudice, they are simply malicious and politically driven hype and couldn't be further from the truth." In actuality, Beijing argues, the "re-education" camps are only meant for violent individuals and criminals, and they serve to reform them and give them a better place in society.

Stambekov argues that international pressure is forcing Beijing to slowly tell the truth about the situation in Xinjiang. "China first denied the existence of the camps, saying that they were false allegations, but later it agreed to the existence of the facilities but called them 're-education camps.'" He also warned about Beijing adapting its repressive tactics; for example when the international community revealed the coordinates of concentration camps, Chinese authorities demolished some of them and transferred prisoners to underground facilities. "An ethnic Kazakh named Tursynbek, who was a concentration camp victim and survivor, explained to us that when Chinese officers came for him in his cell, they put a black bag over his head and took him to an underground prison," he remarked.

Unfortunately, and unsurprisingly, the international community is divided on how to respond to the crisis. At the crux of the problem is the influence of the Chinese government, specifically the country's economic wealth and the investment opportunities (e.g. the Belt and Road Initiative) that influence both developing and developed nations. Several governments, whether at the executive or legislative level, have passed resolutions, bills, or made announcements condemning the situation, including the United States, Canada, and Belgium. However, many governments have been silent about the crisis. For example, a resolution to condemn the situation was blocked in Australia by the federal government and the Labor Party in April. There have also been accusations that some governments have supported Beijing's policies by extraditing Uyghurs to China.

One noteworthy example of conflicting objectives is the Republic of Kazakhstan. Apart from Uyghurs, tens of thousands of ethnic Kazakhs have also been imprisoned. According to some human rights activists, the number is as high as half a million. Free Kazakhs has a project called "Half a Million Kazakhs" which is the estimated number of ethnic Kazakhs imprisoned in the camps. However Kazakhstan, which borders China, has strong economic relations with Beijing, hence has to act cautiously so that it can help ethnic Kazakhs across the border without angering one of its most prominent trade partners.

In recent years there has been a growing anti-Chinese sentiment in Kazakhstan, mostly due to the perception of Chinese influence in the country, including land purchases by Chinese citizens, whether as part of an investment project or in a personal capacity. There are also constant protests in front of the Chinese embassy and consulates in Kazakhstan regarding the human rights crisis; however, these have not become widespread.

As there is no global united front regarding the crisis in Xinjiang, we are witnessing the evolution of strategies by East Turkestan government-in-exile, friendly governments, the Uyghur diaspora and their supporters to pressure and bring accountability to Beijing. As many governments remain silent, entities like the ICC and industries have now become focal points of the ETGE and allies. For example, pressuring global giants like Apple or Adidas to ensure that they do not use Uyghur forced labor would affect their overall relationship with Beijing, something that the Chinese government wants to protect in order to maintain economic growth. As for the future of a case against the Chinese government at the ICC, it is too early to tell if the Court will confirm that it has jurisdiction – not to mention the difficulty of doing so since China is not a member.

Ultimately, while pressuring Beijing is a delicate game of chess with serious geopolitical and economic consequences, hundreds of thousands of Uyghurs, ethnic Kazakhs and ethnic Kyrgyz continue to suffer in Xinjiang. As more time passes, Beijing will have more opportunities to come up with creative methods use its influence on the international community to stop investigations and deflect accusations.

The views presented in this article are the author's own.

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