



Regimes of Noncompliance: Human Rights Law and Crises in Myanmar and China

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Abstract

This research paper analyzes the Human Rights crises currently ongoing concerning the Rohingya ethnic group in Rakhine Myanmar and the Uyghur people in Xinjiang China. First touching on the conception of HR envisaged in the Universal Declaration of Human Rights, the paper aims to uncover the ways, for both political and economic reasons, this enduring culture of rights have been undermined or circumvented by the governments of China and Myanmar. My focus will be on the specific HR instruments: ICERD and the ICCPR, the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention Relating to the Status of Stateless Persons. I examine various, instruments, and institutions within the broader international HR apparatus and then uncover their weaknesses. Utilizing an extensive body of literature regarding HR compliance coupled with insights into the historical and political nuances of these two nations and the ethnic groups of concern, the paper attempts to formulate a theory of regime type and HR compliance corollaries.

Keywords: Human Rights; compliance; genocide; Uyghur; Rohingya; regime type

Introduction

In general, there is vast agreement over a single fact, the integrity, and limitations of which few seem able to reach an absolute consensus on. Most people conclude that human beings hold irrevocable human rights (HR) but the diversity of opinions concerning where they come from and how they can be guaranteed is well documented (Barton, Hillebrecht & Wals, 2017). Suffused within discourse over HR are deliberations about which conception of HR is most appropriate for global HR governance and to what extent these rights may be effectively enforced internationally. However, within the global context, there are well established legal

and philosophical frameworks for HR, as set out in the Universal Declaration of Human Rights (UDHR) as well as other core treaties. Among the nine core instruments recognized by the United Nations (UN), I will focus on two: The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the International Covenant on Civil and Political Rights (ICCPR). Furthermore, I will broaden my analysis to include the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention Relating to the Status of Stateless Persons.

This paper explores the theoretical literature surrounding the issues of inadequate compliance and enforcement of HR law and potential explanations for this. In more particular contexts, I analyze the political regimes of China and Myanmar. Using the key tenets of the aforementioned HR instruments as my legal framework, I explore the HR violations central to the humanitarian crises of the Rohingya people in Myanmar and the Uyghur people in China. Particularly this paper attempts to probe the impacts that intergroup cultural and ethnic differences, as well as regime type, have in compliance variance. Additionally, I will critically assess the compliance gaps in HR as a direct result of ineffectual instrument structures. Having thoroughly reviewed the literature, I argue, from both critical and realist perspectives, that HR compliance gaps in both Myanmar and Chinese regimes are attributable to differences in modes of HR governance, cultural and geostrategic deference, and insufficient enforcement obligations in the operative HR legal frameworks.

UDHR: Challenges and Contestation

Since its drafting on December 10, 1948, the UDHR has valorized the global ideal of human dignity and the consequent rights for which all human beings are entitled. On this basis, the international community has since negotiated numerous treaties with a goal in mind to define the parameters of HR and enforce them; such instruments include inter alia, the ICERD adopted on December 21, 1965, and the ICCPR on December 16, 1966 (OHCHR 2020). Despite the UDHR's contributions and its generally widespread acceptance, threats to the integrity of the established conceptualizations of HR still emerge (Ozler 2018). The Vienna Convention of 1993 otherwise known as the Vienna Declaration and Programme of Action, saw representatives of 171 states adopt the provisions seen across the panoply of HR instruments (UN 2005). And still, the acknowledgment of the universality of HR is insufficient to guarantee that the ideals laid out in the documents will be carried out in practice.

Underlying the legislative power of the UDHR is the still highly contested set of foundational moral principles that establishes a common, perhaps singular notion of human nature, undergirding these precepts of HR universality (Hoover 2013). Contestation over these moral precepts likely stems from criticisms over the Eurocentric conceptions that different actors argue have bolstered a liberal-hegemonic order and neglects the harm done by this Eurocentric view, namely the diminution of Eastern moral viewpoints (Hoover 2013: 217). Moreover, we see antagonisms of HR that focus their critique of rights on the concepts of universalization and humanity as identity as being political tools. The plurality and discontinuity of rights claims contributes to contestation. The historical imposition of HR ideology as a byproduct of Western liberalism taints the notion of universality (Hoover 2013: 218) Cheng (2015) attributes the resistance to universality, in part, to intractable differences in language, specifically the occlusion of particular phrases in Asian linguistic conceptions of rights that are otherwise rife in the UDHR and HR rhetoric generally.

Another plausible explanation is the relative weakness inherent in the foundational framework. Ozler (2018) notes, notwithstanding the purported universalization of HR, that the declarations in the foundational document are merely aspirational. Taking on inherently realist and critical perspectives, he illustrates a lack of enforcement architecture within the broad HR regime

(Özler 2018: 399). Although HR is universally endorsed, the individuals for whom these rights are vouchsafed reside in states which remain sovereign. These states themselves are the final arbiters for the prosecution of HR institutionalization in their respective legal jurisdictions. In addition to the problem of sovereignty, HR monitoring and enforcement mechanisms are overall quite poor. According to Saunders, very few HR treaties contain formal mechanisms with sanctioning power (Saunders 2012). Instead, various UN treaties had created reporting and monitoring mechanisms entailing the compilation of substantive factual reviews of different state's HR practices by neutral third parties. These reporting and monitoring initiatives fall short, however. For none may adequately compel state behavior with respect to HR security as they lack the authority to impose sanctions of any sort (Saunders 2012: 112-113). There is no clear path to implementation or enforcement to the wider international community but rather a moralization mechanism which impels (though not compels) behavioral compliance among signatory states (Ozler 2018: 401).

Another issue raised is the frequent bifurcation of political and economic rights which then begets selective implementation among certain countries. Absent any robust accountability mechanisms, states select which body of rights to promote based on which are conducive rather than diminutive to their national interests (Özler 2018; Schwarz 2004). Blame ought not be placed on the moral shortcomings of the UDHR but rather on the broader structures and mechanisms that fail to diffuse the provision of these rights into feasible practice. Despite the aspects of universalization and endorsement of HR, a challenge to its efficacy is and perhaps always has been piecemeal implementation and its subsumption in state interests over HR advancement.

Human Rights Instruments

Declarations like the UDHR, while laying the moral foundation for HR, are not the legal mechanisms for how such protections are carried out in practice. The primary means by which this process occurs is through UN treaties (Özler 2018: 398). The enterprise of global HR governance is to promote and ensure the systematic enforcement of HR protections against the neglect and abuses of different states. HR, rather than privileging state interests, works to prevent the risk of abuse utilizing HR legal frameworks (Pegram 2015). The essential thrust of HR legislation is directed toward state actors in the form of obligations to uphold rights protections or amend laws that pose potential harms to rights as such. The institutional imperatives of states set out in both the ICCPR and the ICERD are clear. For instance, Article 2, Section 1 of the ICCPR compels state parties to ensure the civil and political rights of individuals within its contiguous areas or otherwise act toward the realization of these goals through domestic legislation and institutionalization (OHCHR 2020). Article 4, Section 1 of the ICCPR which affords state parties the detraction privileges from their obligations in the event of public emergencies. These derogation privileges do not permit the state to implement remedial measures for these emergencies that are inconsistent with their legislative obligations. A large cluster of articles contained in the two above mentioned treaties distill the protections relevant to the comparative compliance analysis in the paper. Protections such as the right to life, liberty and security of the person, equality before the law, rights of aliens, right to political participation and so on. The repression of these particular provisions and their causes will be central to the comparative analysis.

The parameters in respect to genocide are designed to include the attempt to commit, complicity in, conspiracy to commit, and incitement of genocide so detailed in Article 2. The conditions which may render nationality or statelessness are obscured to a considerable extent by conflicting stateless rights provisions with particular domestic citizenship laws. Davies' analysis (2014) of the member states comprising the Association of Southeast Asian Nations (ASEAN) confirmed two key suspicions intrinsic to the realist and critical perspectives;

a) that mistrust or disregard of the HR provisions is deeply entrenched in the belief that the HR legal regime threatens the sovereignty of nation states and b) that no concrete relationship exists to attest to the enjoyment of enshrined treaty rights upon treaty signature or even ratification. Despite this, the convention does well, including in Articles 1, 8, and 9, to stipulate the prevention of statelessness by contracting parties, especially on the grounds of racial, religious, or ethnic discrimination (UNHCR, 1961). On another note, the first article of the genocide convention states, “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish” (OHCHR 1948). Also, Articles 4, and 6 unambiguously declares that politically or individually responsible actors in the undertaking of genocide shall be punished for the enumerated crimes while Article 5 requires contracting states to structure their legislation to give effect to the protections of the convention and proffer adequate punitive measures for guilty parties (OHCHR 1948).

The preventative and obligatory contracting state commitments are abundantly clear and serve as the legal impetus for states to adhere to and advance these protections; although this is no guarantee. Textual analysis will show that UN treaties are robust and effective at delineating the moral and legal obligations of state parties and scholars have demonstrated the efficacy of these treaties especially through the process of norm institutionalization (Evans 2005; Özler 2018). The caveat to this being that compliance through normalization is often, if not always, a remote contingency on treaty ratification. Reference to the Vienna Convention on the Law of Treaties confirms such a contingency. Section 1(b),(c) of Article 12, which details the conditions for consent to be bound by a treaty, establishes individual state discretion to give effect to this consent, granted that unambiguous expression of this during negotiation is shown or that upon signing, a signatory state agrees to this subsequent effect (UN 2005). That the trajectory of HR compliance rests upon signatory states determining their commitment to legally binding provisions seems everywhere confirmed. It is an indictment on the conceptual porosity of HR’s legal foundations.

Unsurprisingly, many sovereign nations have been reluctant to ratify numerous treaties. According to the OHCHR, concerning the ICCPR, neither Myanmar nor China have agreed to ratify this treaty nor has Myanmar provided ratification for the ICERD treaty (OHCHR 2020). The legally binding nature of treaty ratification which is buttressed by the moral repletion of HR idealization and normalization has been shown to advance HR governance to a considerable degree (Özler 2018). How the acceptance and application of the pervasive notion of HR provisions fare within the political domains of Myanmar and China are an altogether different uncertainty. What I will demonstrate is that the clear disavowal of HR compliance among these two non-ratified states as shown in the ongoing regional and ethnic injustices in the respective nations alludes to this uncertainty.

The Rohingya Crisis

According to the Council on Foreign Relations (CFR), the Rohingya are an ethnic minority group that practices a variation of Sunni Islam, whose collective numbers worldwide are estimated to be 3.5 million (Albert & Maizland 2020). The Republic of the Union of Myanmar (henceforth Myanmar) formerly known as Burma, is a Southeast Asian country adjacent to the Bay of Bengal and nestled in-between India, Bangladesh, Thailand, and China. The Rohingya are one of 135 official ethnic groups in the nation whose predominant religion is Theravada Buddhism accounting for 88% of the population, followed by Christianity with 6% and then Islam which comprises a mere 4.3% of religious denominations (Gopinathan 2019: 70). Approximately one million Rohingya peoples resided in the eastern Myanmar state of Rakhine. The Rohingya people trace their origins, to the fifteenth-century Kingdom of Arakan which is now current day Rakhine, Myanmar, Chittagong, and Bangladesh. Other members of the

ethnic group emigrated to Rahkine during the twentieth century while the state-operated under colonial rule as British India (Albert & Maizland 2020).

After Burma achieved independence in 1948 from British colonial rule as a democratic nation, a military coup d'état was successfully staged in 1962 which saw the continuation of a military-style dictatorship for 49 years thereafter (Gopinathan 2019). Amid ever-increasing anti-Rohingya sentiment during the late 1970s, Burmese military forces aimed at purging the region of so-called "illegal inhabitants". Instances of violence, arbitrary arrest, and harassment followed which led to the widespread departure of 250,000 Rohingya to Bangladesh (Milton et al. 2017: 943). A repatriation agreement was created in 1981 that would see the gradual return of these displaced Rohingya back to Burma. Yet no respite was to be had. In 1982, the militarized government introduced the Citizenship Act which effectively recognized only the descendants of Burmese-born people before 1824 as lawful citizens. The government effectively denied any Myanmar-born Rohingya from claiming citizenship (Gopinathan 2019: 64). The Rohingya people now live in a condition of statelessness as the Myanmar government has denied the indigeneity of the Rohingya to the contiguous land of the Arakan-Myanmar region. Compounded by decades of blatant disenfranchisement at the behest of the military junta, recurrent communal violence since 2012 among the Rohingya and the Rahkini Buddhists and even stints of violence directed by the military forces have inflamed regional tensions (Ubayasiri 2019).

The Myanmar government has essentially institutionalized discrimination and disenfranchisement through restrictions on marriage, employment, and family planning. One report details a regional order prohibiting Rohingya couples in the towns of Maungdaw and Buthidaung from conceiving more than two children (FR 2020). Under the pressure of Buddhist nationalists in the country, in 2015, President Thein Sein revoked the temporary citizenship cards called White cards that since the 90s the Rohingya people were able to acquire and use to vote, albeit with limited political rights (Albert & Maizland 2020). One report shows the government policy imposed in the last few years that have required the Rohingya to carry around national verification cards that identify them as foreigners rather than citizens (FR 2020). These identification cards are the government's attempt, to further repress the political rights of this ethnic minority group.

The stateless condition of the Rohingya is a result of their continuing exodus out of Rahkine and into Bangladesh. In addition to decades-long political and civil diminution, the mass flight was fueled by a 2017 attack by a Rohingya group known as Arakan Rohingya Salvation Army (ARSA). In a brutal retaliation, the military junta defined ARSA as a terrorist organization and began a campaign that saw hundreds of Rohingya villages burned, approximately 6,700 Rohingya dead, and hundreds of thousands of Rohingya displaced (Albert & Maizland 2020). The mass migration in 2017 of over 700,000 Rohingya peoples to refugee camps in the Bangladeshi city of Cox's Bazar coupled with the already settled 300,000 sees the Rohingya as one of the largest stateless groups in the world (Ubayasiri 2019). The precarious existence of this ethnic group is only likely to grow as repatriation efforts continuously fail, absent any swift legal reform in Myanmar, and local as well as political tensions rise in Bangladesh due to the precipitation of this refugee crisis (The Lancet 2020). HR abuses abound upon assessment of the Rohingya crisis that has proliferated discussions and courses of action regarding the specter of genocide and the obvious implication of civil and political rights subjugation by the Myanmar government.

The Plight of the Uyghurs

The Uyghur American Association (UAA) defines the Uyghur people as a Muslim, Turkic-speaking ethnic group who primarily reside in the autonomous region referred to as Xinjiang

by the Chinese government but described by the Uyghur people as East Turkistan. The autonomous region borders the Middle Eastern countries of Kazakhstan, Kyrgyzstan, and Pakistan, whose original territories consisted of 1.8 million square kilometers and was annexed by Chinese communist forces in the mid-twentieth century (UAA 2019). Among the estimated 12 million Uyghurs in Xinjiang, approximately 1 million have been detained in Chinese 'reeducation camps' along with members of other Muslim groups in the region (Maizland 2020). Reports have unequivocally shown that blatant human rights abuses have been occurring for years and persist to this very day in these detention camps (Busby 2018; Fallon 2019; Finnegan 2020). A Reuters investigation has recorded personal testimony that corroborates instances of torture during interrogation, detainment overcrowding, and the indoctrination by the Chinese Communist Party (CCP) that have driven numerous individuals to suicide (Auyezov & Wen 2018). According to the CFR, female detainees have reported stories of sexual abuse and forced contraception and abortion. Some have had contraceptive devices such as IUDs placed against their will. What makes situations worse is the disruption of Uyghur families when parents are separated from children who are then placed in state-run orphanages (Maizland 2020). As many as 1200 buildings have been repurposed for detainment in the region, accounting for nearly as many townships in Xinjiang. The HR violations in the region, targeting this specific ethnic and religious group are undeniable.

It is useful to understand the historical context in which potential expansions for this repression may be appropriately placed. The Uyghur minority have embraced the religion of Islam for over a millennium and have occupied the regions of East Turkistan for centuries, cultivating highly personalized communal exchanges and cultural practices (UAA 2019). Following World War II, the Uyghurs attempted secession from China to establish the East Turkistan Republic. Attempts at secession were quelled by the CCP and the liberation of Xinjiang in 1949 by the People's Liberation Army (PLA) in 1949 (Clarke 2015). Shortly after was the formal establishment of the Xinjiang Uyghur Autonomous Region (XUAR) through legislation in 1984 (Finnegan 2020). Government officials have openly denied the existence of the camps and then reoriented their rhetoric around claims of vocational education and cultural training (Maizland 2020). Tangible threats of terrorist and separatist mobilization in tandem with the reified and internationalized ethnic and political conflicts between the Uyghurs and the CCP has moved some to analogize the regional conflict as the Palestinization of Xinjiang (Clarke 2015). The reticence of the CCP and their shifting rhetoric, what little there has been, points to a larger issue of accountability gaps and political repression which hinders the mission of HR governance.

Regimes and Compliance: A Comparative Analysis

After more than 71 years since its adoption, it is immediately clear that there exists a sharp divergence in certain state's behavior away from the professed endorsement of rights protections envisaged in the UDHR. Repression is a function of autocratic regime types and that on the whole, autocratically run states are more repressive of human rights than democratic states (Møller & Skaaning, 2013). Typically, this repression function is attributable to issues of legitimacy in autocratic regimes. Regimes that are lacking in legitimacy are more likely to use repression as a tool for guaranteeing the continuation of their power. Totalitarian regimes tend to repress political and civil rights and often by their tendency to exclude these rights altogether. However, authoritarian regimes tend to allow room for limited political pluralism, lacking intense political mobilization, and taking on an indurate, oligarchic shape (Schwarz 2004). This is to say, while autocratic regimes allow a very limited space for democratic praxis, they are most characterized by relatively unchallenged, unmitigated party power. For autocratic categorization, it is important to remember that the presence of pluralism, albeit limited and sovereignly granted, is an indication that a degree of human rights provisions is also offered by the ruler. The key parameters of autocracies that Schwarz molds

around our conceptions of HR repressions are laudable but, in my view, insufficient in scope and theoretical flexibility. Instead, I attempt to distill the nuances of political anomalies like Myanmar or ever-increasingly recalcitrant and legitimized non-democratic regimes such as China.

Myanmar was relinquished from British colonial rule and gained dependence as a democratic state in 1948 until 1962 at which point the subversive military coup then began to exercise enormous influence over the political decisions of the government and the economic strategy of the country until 2010. The newly militarized government altered the structure of the nation's constitution transforming it from a democratic republic to a constitutional dictatorship. Even today, the military junta still impacts the government's decision-making process. It was during the military occupation of government institutions that the country's Citizenship Act was passed in 1982, denying nationality rights to the Rohingya for decades. Gopinathan (2019: 74) suggests that the ethnic makeup of the military autocracy then and the democratic parliament now being overwhelmingly Buddhist widely contributes to the repression of the Rohingya's rights.

The cluster of violations to the rights enshrined in the ICERD in Myanmar is staggering, to say the least. Yet one of the key inefficiencies in these particular frameworks derive from State actor's ability to slyly manoeuvre around abilities in certain articles. Consider Article 1, Section 1 of ICERD. This component of the instrument states unequivocally:

“In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” (OHCHR 2020)

This is then followed by Section 3 of the attendant article which says:

“Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.” (OHCHR 2020)

It is difficult to reconcile HR provisions, irrespective of their widespread endorsement, with the essentiality of state sovereignty over domestic laws. Herein lies the implementation issue of HR. Despite international codification, so to speak, of HR norms, the onus for promoting and eventually institutionalizing HR falls on state power (Schwarz 2004: 203). Removed from the constraints of a constitutionally militaristic state, Myanmar democratically elected their government for the first time in decades in 2016. The country's de facto leader Aung San Suu Kyi has received varying degrees of criticism for her glib approach to the Rohingya crisis. And yet, one must account for the undeniable Buddhist nationalist reach in Rahkine which has co-opted a still forceful military to respond in the region. Møller and Skaating's (2013) arguments reflecting the legitimacy problems that autocracies face, see a weak application in Myanmar's case. The issue with the HR abuses, at least in part, has to do with the political influence of civilian actors under a vitriolic cultural guise. The Rohingya enumerate 1 million in Rahkine

compared to the other 53 million people in Myanmar; the vast majority of whom are Buddhists (Gopinathan 2019: 65).

Accounting for both former and contemporary government practices, Myanmar is in direct violation of Article 5, Section (b) and (c) of the ICERD which stipulate:

“b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.”
(OHCHR 2020)

Along with the above-mentioned violations are the repression of the rights set out in Article 5, Section D, (3) which affords each individual the right to nationality. The term Rohingya is not even officially recognized by the Myanmar government. Rohingya people are known exclusively as a minority Muslim group that live in the state of Rakhine and are so rendered a political and cultural other to the predominantly Buddhist population (Gopinathan 2019). Although this constitutes an overt systemic denial of indigeneity and nationality for many of the Rohingya people, these practices still run counter to provisions displayed in Article 9 of the Convention on the Reduction of Statelessness, which states a “Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds” (UNHCR 1961).

In accordance with Article 6 of the Rome Statute, the crime of genocide requires one of five prohibited acts given by the Statute against a protected national, ethnic, racial, or religious group with the intent to destroy the group in whole or in part (ICC 2011). Two of the prohibited acts being section (a): “killing members of the group” (pg. 3) and (b): “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” (pg. 3), have undoubtedly been committed against the Rohingya. What is more, these prohibited acts are enumerated in Article 2 of the Genocide Convention as well. In January 2020, responding to the first international lawsuit against Myanmar by Gambia, the International Court of Justice (ICJ) unanimously indicated a provisional measure with binding effect that emergency steps be taken to ensure that no further acts as outlined in Article 2 of the Genocide convention take place against the Rohingya people by state, paramilitary, or civilian forces. Nor should any evidence proving the actions of genocide go uncollected or distorted (ICJ 2020).

It is a failure that the discriminatory and genocidal actions in the Rakhine region went on unperturbed for years without adequate investigation. Indeed, one of the supposed achievements of the international judicial system is the International Criminal Court’s Office of the Prosecutor (ICC OTP) who is charged with the investigation of mass atrocities and then to determine retributive measures and then dole out prosecutions (Chung 2008). It remains to be seen, however, what substantive measures, if any, are taken by the Myanmar state to remedy the situation or what punitive actions if remedial state actions fail, will the delegated international judicial organs take against the military and the government. What remains clear is the intractability of the compliance gap in the nation when confronted by the overbearing weight of its autocratic shadow, ethnic vitriol, and generally porous legal parameters among other factors.

Analysis of the Chinese regime requires considerable nuance too. Chinese repression of HR stems from a linguistic, as it were, translational disjuncture from Western conceptions of rights which have informed, thereafter, their embodiment of national autocratic legitimation. The concept of 'rights' embraced by China was not expressly associated with civil liberties or the moral undertones of the UDHR but was rather meant to symbolize the collective rights and the promotion of the fortitude of the nation, not the individual. In China, the state is treated as the primary unit of international and domestic politics (Cheng 2015: 7). Chinese deference to state power and legitimacy over ostensibly universalized norms lay against their lack of contribution to the formation of these norms. In his work *World Order*, Henry Kissinger remarks:

“When urged to adhere to the international system’s “rules of the game” and “responsibilities,” the visceral reaction of many Chinese...has been profoundly affected by the awareness that China has not participated in making the rules of the system. *They are asked—and, as a matter of prudence, have agreed—to adhere to rules they had had no part in making.*” (pg. 225, emphasis added)

Indeed, the aspirational moral framework displayed in the UDHR came prior to the formation of a concretized Chinese state and their ideological underpinnings that have come to particularize the regime.

Since its inception as a Republic in 1949, China has utilized ideology as a tool of legitimation for its power as well as its authority over the states' moral claims. To the extent that short legitimacy lies at the heart of autocratic regimes, the consequence of HR repressions is accurate. Historically, the Chinese Communist Party (CCP) has been adroit in ensuring its legitimacy. The belief that liberal-democratic principles are universal introduces a challenging element into the international system, assuming that governments not practicing them are less than fully legitimate. The commonality, on a sociopolitical level, between Myanmar's adoption of autocracy and China's, is not that either is delegitimate. It is that both countries sport their particular rendition of social and political hegemony which drives their HR repressions. To these respective states, their standards of governance are perfectly legitimate. The foundations of China's autocratic legitimation are rooted firmly in the state's quest for national preservation which the CCP views as threatened by the Uyghur minority.

After their official founding in the earlier 1950s, the reintegration of Xinjiang into the Chinese State was the beginning of the CCP's effort to formally bind these contiguous regions and the non-Han-Chinese people who reside in them with the ever-increasing unitary Chinese state (Finnegan 2020). The mandate of Chinese law reflects its uncompromising commitment to state and territorial strength. Article 2 of China's new National Security Law defines 'national security as:

“a status in which the regime, sovereignty, unity, territorial integrity, welfare of the people, sustainable economic and social development, and other major interests of the state are relatively not faced with any danger and not threatened internally or externally and the capability to maintain a sustained security status.” (Finnegan 2020: 7)

The rhetoric in this legislation and others evinces political and territorial cogency that the Chinese state claims is threatened by Uyghur separatism. The motivations of this law, what I argue is part of the all-encompassing Chinese unitary zeitgeist, has been met with criticism by the OHCHR. The utter lack of specificity as to the definition or exigency of threats to the Chinese state only allows for the further repression of rights to occur. Additionally, barriers to HR governance abound when one considers two aspects of the Vienna convention on the Law of Treaties. Articles 32 and 33 of the convention affirms collaboration between the ICJ and relevant parties with respect to the task of interpreting the meanings of specific treaty provisions that are ambiguous, obscure, unreasonable or authenticated in two or more languages (UN 2005). Yet, some questions arise. Unreasonable and obscure to whom? Within what linguistic context are these interpretations to be laid out? Ambiguity elides accountability.

Part of China's apparent concern with respect to the Uyghur population is the trenchant separatist ideals of groups like the East Turkestan Islamic Movement (ETIM). The ETIM is a militant Uyghur separatist group that Chinese officials claim are heavily tied to global terrorist networks from countries bordering Xinjiang (Xu, Fletcher & Bajoria). The framing of Uyghur communities as terroristic engenders a politics of Chinese repression. Suspicion of concerted terroristic and separatist movements with Chinese autocratic rhetoric and unitary vigor has brought the government's genocidal and tyrannical practices to the fore. The emergence of national security legislation which unduly obscures the definitions of national security threats is a principal political tool for which this autocratic regime is capable of stymieing human rights while advancing their ever-threatening *raison d'état*.

The emergence of laws that have allowed China's government to encroach on Uyghur rights is contrary to many of the constitutional and international HR safeguards displayed in the People's Republic of China's (PRC) political history. China describes itself as unitary and multinational. HR safeguards in the Chinese constitution are present. For example, Article 36 of its constitution details that the state ought to protect 'normal religious activities', additionally, the National Human Rights Action Plan passed by the State Council in 2012 claims to uphold "the principle of freedom of religious belief stipulated in the Constitution and strictly implements the Regulations on Religious Affairs to guarantee citizens' freedom of religious belief" (Chaney 2018: 506). The Council also promotes the goals of protecting normal religious activities according to the law with a clause that the action plan was formulated in line with the "principles of practicality" (Chaney 2018: 506). As to who defines concretely the meanings of 'practical' or the delimitations of 'normal' religious activities in accordance "to the law" remains unclear. The definitional opacity of these laws allows far too much room for the caprices of autocratic bodies to undermine the law in favor of, well, the law. Moreover, the PRC was a signatory of the original UN Charter and UDHR, and a signatory to the ICCPR. While China has signed the ICCPR, it has not yet been ratified by the state and thus, no obligatory power exists. It has, however, ratified the ICERD, of which its state-sanctioned repressions against the Uyghurs violate numerous articles.

Article 6 of the Rome Statute (2011) and Articles 2 of the Genocide Convention (1948) essentially mirror one another's parameters for genocide. The most egregious acts committed against the Uyghur people fall well in line with the prohibitive acts provided by Sections (b), (d), and (e) in the respective articles of both legal instruments. The forcible contraceptive and abortive measures that some Uyghur women in the detention centers have testified to violate Section (d) which impugns "imposing measures intended to prevent births within the group." (ICC 2011: 3). The forcible relocation of Uyghur children upon the detention of their parents to state-run orphanages where they also undergo cultural indoctrination violates Section (e) of both instruments which situates genocide in the form of "forcibly transferring children of the group to another group" (pg. 3). Not a ratified state in the ICCPR and so not legally bound to undertake its provisions, the Chinese State ratified the ICERD and has since failed to conform

to the provisions laid out in Article 5, Section (b). A section which urges the provisions of the right to “security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.” (OHCHR 1965). Also unfulfilled is Section (d), subsection 7 which guarantees the right to freedom of thought, conscience, and religion. While protections against arbitrary detainment are safeguarded in legal frameworks, China usually argues that the basis for detainment are not arbitrary but for the purposes of ‘re-education’ and so, are more difficult to prove the guilt of (Maizland 2020). Some scholars have framed Uyghur repression as outright cultural genocide, citing practices of re-education as the deliberate attempt at religious and ethnic decimation under the guise of terrorist mitigation (Fallon 2019 & Finnegan 2020). One inclined to agree with this assessment must still recognize the obscurity, or rather the very preclusion of specific culturally-oriented language in genocide frameworks.

China's compliance gap is the result of two problems relating to their unique form of autocratic governance on the one hand, and legal ambiguities on the other. International codification of HR is little but symbolic to states who express their acceptance of normalization but continue to violate these norms. The explosion of opposition to the Uyghur rights repression has fostered widespread discontent over Chinese governance which the CCP has attempted to distort or deny. If not a blatant denial of the actions taking place in autocratic states, these very states will deny the validity of human rights norms. Kissinger writes, “China rejects the proposition that international order is fostered by the spread of liberal democracy and that the international community has an obligation to bring this about, and especially to achieve its perception of human rights by international action” (Kissinger 2014: 229). Consistent with critical perspectives on the global HR governance, autocratic states will oppose the notions of international legal applicability within national jurisdictions (Schwarz 2004). This revelation explains the sentiments of ASEAN countries who refused to agree with the moral ends of the HR norms but rather feign HR norm universalization for strategic purposes. This disregard for HR norm universality and the deference to particular national conceptions of value and rights underlies the perpetual Chinese model of governance (Davies 2014). China views HR governance as a matter of internal affairs, and because this unitary interest and action are inextricably tied to economic development, any conscious prospect of separation, especially the massive region of Xinjiang which is the center of the nation's massive string of development projects, the Belt and Road Initiative is seen as a feasible threat to national interests (Maizland 2020).

A recent article coming out of The Atlantic suggests that China's growing political acumen are continuously weakening international standards and norms on HR (Wright 2020). China's disregard for HR provisions is not helped in the least by weak enforcement measures concomitant with legal frameworks or the fact that since their inception as an official republic, they have deferred from ratifying many of the major treaties including the ICCPR. Article 106, Section 1 and 2 of the Rome Statute which overlooks supervision of enforcement declares that any supervision of crimes will be consistent with international treaty norms (ICC 2011: 106). The issue with this is that, for all intents and purposes, many of the treaties discussed to this point, are soft law and China, although expected to uphold many of the rights protections, is not legally bound to do so. The International Court of Justice (ICJ) under Chapter XIV, Article 92 of the Charter of the United Nations is the principal legal organ of the UN. Chapter XIV, Article 93 of the Charter implicates all UN member states as ipso facto parties to the ICJ Statute (UN 1941). Upon inspection, one recognizes the limitations of such a judicial organ lies within its very constitution. Under the provisions of Section 2 of Article 38 of the Statute of the ICJ, the court only has jurisdiction to decide cases given the consent of states to submit cases for review. What is more, Article 59 of the statute explicitly states: “The decision of the Court has no binding force except between the parties and in respect of that particular case” (ICJ 1946). To the extent that no adjudicative power is treated as having as

absolute binding character, the parameters for which aspirational HR can be upheld or retributive HR justice can be brought forth, becomes easily undermined.

China is reluctant to share information or allow investigative measures to be undertaken on the situation from abroad or internally. We have yet to see whether the very limited scrutiny the international community, including the ICC OTP, has been putting on the Uyghur repression will evoke a serious response to the ongoing crises as we have seen in Myanmar. Another report from *The Atlantic* has said that no formal investigation into the Uyghur suppression has even been carried out by the UN. In an interview, Human Rights Watch China director Sophie Richardson was quoted rightly suggesting, “If any government other than China was holding a million Muslims arbitrarily, I think we can reasonably assume we would already be well under way in a discussion, not just about investigation, but accountability” (Gilsinan 2020). This latter claim is pivotal in the sense that when the obligation to respect HR is shirked by regimes whose conviction it is to disavow these norms, such abdication should not be abetted by complacency or worse still, by fear.

The trouble with Chinese regime is how it chooses to interpret its obligations. ‘Normal’ religious and cultural activity is precisely that which is defined within the contexts of their norms, defined by the law, for their ideological and economic ends. When the CCP’s law steps in, they do so as criminal and state law. He argues that HR law conflicts with sovereign law because HR requires a substantial degree of civic vitality which the CCP has gone to great lengths to dwarf (Chaney 2018: 518). This civic engagement is imperative not only in universalizing norms but various accountability and monitoring measures which hold to account the covert practices of rights suppressions. If the link between the domestic monitoring and enforcement mechanisms such as non-governmental organizations (NGO) and International NGOs—transmitting sufficient and reliable information about HR repressions—are so sparse that they become obsolete, then it takes much longer for the oppressive state to become subject to scrutiny for their deeds (Schwarz 2004). In both crises, the elapsed time between the beginning of these repressions and tangible mitigative efforts have been inadequate. Curtailed civic vitality especially as it concerns journalistic endeavors in China is palpable (Auyezov & Wen, 2018). A result, combined with manipulation tactics and utter denial of wrongdoing, the Uyghur’s detainment and genocide have only been highlighted internationally relatively recently.

Regime legitimacy ought not be relegated to characterizations pertaining to conformity to established rules and the validations of political hegemony as Holbig (2013) says, but that it will encompass conformity to a standard of political autonomy and unitary mobilization which is the mandate of the CCP. A marked difference between the autocracies of the two nations is that the lack of express consent, the withdrawal of express consent, or the active articulation of dissent leads to delegitimizing power. The parochial influence of the Buddhist nationalist offered a real semblance of express consent which legitimated the actions of the military junta and, for that matter, the inaction of the Myanmar government. China, while actively seeking the legitimization of autocratic governance, they seem quite content in operating currently as a repressive, unchecked bureaucratic juggernaut. It would not be unfair to classify Myanmar as a civilian autocracy in many respects. Møller and Skaaning (2013) have described this subtype of autocracy as more repressive of religious rights than other subtypes which partially explains the anti-Muslim sentiment largely fueling the Rohingya crisis. I will venture to say that Chinese autocracy takes a more formally political shape, repressing rights under the auspices of governmental and territorial solidification as opposed to strictly ethnic and religious animosity as seen in Myanmar.

The view that HR treaties are signed or ratified with the intent that a country will implement its provisions for their citizen's benefit should be examined cautiously. So too should norm

codification or the expression of HR universalization. Widespread as the acceptance of HR is or the signing/ratifications across many countries is, it downplays the reality that governments frequently enter into agreements, binding or otherwise, without the full intent to comply. Both Davies (2014) and Chaney (2018) instead point to the strategic adoption of norm codification and HR compliance to appease domestic or foreign constituents against a backdrop of reality which sees no substantive change made to HR governance but rather the preservation of national interests. Economic and political for China, more ethno-nationalist for Myanmar.

Conclusion

This paper has analyzed the humanitarian crises of the Rohingya people of Rakhine, Myanmar and the Uyghur people of Xinjiang, China. Under the guidance of both critical and realist perspectives, I have enumerated and explained the reasons why the HR violations in these respective crises are occurring. I examined the inefficiencies of longstanding UN HR instruments as a legal framework, including the ICCPR, the ICERD, the Genocide Convention, and the Convention on the Reduction of Statelessness. Upon analyzing the regime types of both nations, I have developed a useful explanation for the pervasive compliance gaps in HR that are endemic to both of these crises. The domestic government accountability that both these autocratic regimes are utterly bereft of plays a significant role in perpetuating these abuses. Evidence has been brought forward which serves to prove that both the governments of Myanmar and China have carried out practices that are in direct violation of HR treaties. The unfortunate fact for HR governance is that international codification of HR norms cannot be conflated with the notion that those who proclaim its universality or purport to abide by its provisions will do so in reality. HR is an international matter that is often in direct conflict with certain country's legal sovereignty and their particular conceptions of rights. From a critical lens, the ideals that the UDHR crystallizes belongs to a liberal-hegemonic order requiring vigorous civic engagement, cultural toleration, and institutions that are accountable to laws and its people, all of its people. For many, this intrinsically democratic conception of rights is contentious as it implies a universality that nations like the PRC endorse with words alone. The reality is that both countries, along with others, practice governance based on different philosophical premises. Premises which are conducive to enhancing their economic, territorial, and religious interests.

Aside from the disregard of the moral and practical foundations of HR governance, the legal enforcement and compliance frameworks employed by the UN to oversee international HR is weak and some of frameworks themselves are nebulous and easily maneuverable. Neither of the countries this article discusses has been particularly inclined to treaty ratification and even less so to actually complying with their obligations. For the country that has, China, the specters of HR interpretation measured against legal sovereignty pose major obstacles to compliance. To a large extent, along with these country's moral failures to their people, intentional and otherwise, the feeble legal frameworks of HR governance have done an insufficient job of holding these two nations to account for their violations. Where a state has violated or repudiated the norms of particular HR treaties, danced around the edge of compliance, or simply denied to recognize the legitimacy of these norms, there exists no rigorous international mechanism for enforcing them. The realist and critical perspectives are best equipped to explain major deficits in compliance between these two sovereign, ethnically homogenous nations. Specifically, the points that international HR law has little enforcement power, that states use or abuse HR as a method to enhance their positions of national interest, and cultural and political diversity belies the universality of HR norms. There is no fix-all to HR governance and I doubt there ever will be. Any contemporary structure of international rules and norms, if it is to prove relevant, cannot be alone affirmed by joint declarations, but fostered as a matter of common conviction. The onus lies on truly liberal democratic nations to strengthen HR enforcement measures in both the legal and political realms. Regardless of

what conceptions of human rights one favors, the aforementioned crises constitute some of the most disquieting HR abuses in recent memory. These are intractable and fairly new challenges that run the course of geostrategic hegemony and contestation. Can these moral and legal frameworks be modified or restructured around policy that is less ambiguous and is, therefore, less subject to misinterpretation, disagreement, and abuse, or will they have to be replaced altogether? We are failing if we allow this question to go unanswered for any longer. Let us answer it together.

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