

Targeted Sanctions and Accountability Avenues for Human Rights Violations in Xinjiang



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Sanctioning the Treatment of Uighurs in China

China has been accused by various [states](#) of committing genocide against the Uighurs and other Muslim communities in recent months. Against this background, in March 2021, the United States, the European Union, the United Kingdom, and Canada [announced sanctions](#) against the Asian hegemon. China retaliated with similar measures. This post discusses the international legal framework and effectiveness of targeted sanctions regimes with a special focus on the newly established [EU Global Human Rights Sanctions Regime](#). It is argued that qualifying individual targeted sanctions remains a challenge for international lawyers due to the lack of clear demarcation between sanctions framework and the country-specific restrictive measures. Nevertheless, individual sanctions remain a viable option to pressure violators but alone might not be strong enough to deliver justice to victims. Therefore, this post offers a glimpse at other more robust accountability mechanisms as well as non-judicial measures by the private sector and individuals to deter those involved in the treatment of Uighurs.

Background

Reports have been issued throughout the last five years by human rights NGOs, media outlets, and governments (see [here](#), [here](#), and [here](#)) about the persecution of the Muslim population of the Chinese region of Xinjiang. According to these reports, Uighurs have been detained in the so-called 'vocational camps.' Constant video surveillance and forced labor raise the compelling conclusion that these camps more resemble prisons. Even outside the camps, the Chinese government introduced the so-called '[social credit system](#)' in Xinjiang, according to which the government is allowed to collect various sets of personal data. A Xinjiang resident can lose points by paying frequent visits to mosques and unstable regions. In 2017, [Human Rights Watch stated](#) that Chinese authorities started a massive biodata collection in Xinjiang. It was suggested by [journalists and confirmed by Xinjiang residents](#) that being of Uighur origin automatically lowers your social credits. Moreover, a recent [BBC report](#) revealed that according to first-hand accounts from inside the camps, mass rape, sexual abuse, forced sterilization, and torture are part of the organized camp system. While this post does not discuss the elements of genocide, for the discussion of liability prospects and grounds for sanctions, I rely on the analysis by prominent international criminal lawyers (see e.g. [here](#)).

The March Sanctions

Announcing sanctions against several Chinese officials and entities, US Secretary of State Blinken [stated](#) that “the PRC continues to commit genocide and crimes against humanity in Xinjian,” confirming the position of the previous administration [that acknowledged genocide](#) against Uighurs earlier this year. In late February 2021, Canada’s House of Commons [passed the non-binding motion](#) that made Canada the second country to label Chinese actions against Uighurs as genocide. The Netherlands became the first among European countries that [qualified](#) the treatment of Uighurs as genocide.

After this chain of strong statements, the March 2021 sanctions came as no surprise. On 22 March, the Council of the EU [declared the sanctioning](#) of four Chinese officials and the Xinjiang Production and Construction Corps Public Security Bureau including travel bans and asset freezing. The penalties were adopted in the framework of the recently established EU Global Human Rights Sanctions Regime (also called the European Magnitsky Act). On the same day, the US (who added two more names to the list), Canada, and the U.K. joined the list of sanctioning states. These sanctions, however, do not target top officials in Xinjiang.

Some European countries like Germany and France have summoned Chinese ambassadors for urgent talks. The reason for the ‘urgency’ was the Chinese government’s retaliation. The Communist Party [rapidly responded](#) by sanctioning ten people and four entities from Europe. The Chinese foreign minister [said](#) that the western sanctions are based on false accusations and lies and cannot be accepted by the international community, a statement that was [fully backed up](#) by Russian foreign minister Lavrov. It is worth noting that although China is accused of discriminating against the Muslim population, several members of the Organization for Islamic Cooperation still [praise](#) the Xinjiang policies.

Individual Sanction Regimes and Their Legal Implications: The Example of the EU Global Human Rights Sanctions Regime

The individual sanctions regimes are becoming a popular political tool to show a country’s stance on various issues like violation of human rights or corruption. However, several uncertainties and procedural problems still exist inside such regimes.

According to the [Global Sanctions Database](#), almost 50 percent of currently introduced sanctions aim at challenging undemocratic practices and protecting human rights. Yet, no international treaty explicitly deals with the legal limits of individual economic and human rights sanction regimes and the legal status of unilateral sanctions has not been explicitly enshrined in international law. Customary international law [allows](#) for unfriendly acts (including individual sanctions) as a response to violations of international obligations but only if they were imposed within the limits set in the International Law Commission’s articles on responsibility of states for internationally wrongful acts (ARSIWA).

Legal documents like the US Sergei Magnitsky Rule of Law Accountability Act and EU Council Regulation 2020/1998 concerning restrictive measures against serious human rights violations and abuses (EU Magnitsky Act) and legislation of this kind in a number of other countries can be seen as references for the legal basis for imposing individual sanctions in practice. Nevertheless, the evolution of state sanctions to individual sanctions has caused several uncertainties with regard to the character of such sanctions. The EU Committee on Legal Affairs and Human Rights [stated](#) that there has been no

consensus reached with regard to whether targeted sanctions are of criminal, administrative, or civil nature. Moreover, unlike the UN sanctions, individual sanction regimes might not be limited in time and thus, cause uncertainties and detrimental effects on various issues, including economy and trade.

Another major concern for international lawyers is the potential violation of the human rights of a targeted individual (property, freedom, privacy). The UN Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights, Alena Douhan, [highlights in her recent report](#) that currently there are no mechanisms (except [diplomatic protection](#) and individual appeals to regional courts) for the protection of the rights of sanctioned persons as well as for accountability. Without proper safeguard mechanisms under both national and international law systems and clarity in the terminology, individual sanction regimes can become a tool for political abuse. The European Parliament [claims](#) that the listing (and delisting) in the EU individual sanctions regime “should be based on clear, transparent and distinct criteria [...] in order to guarantee a thorough judicial review and redress rights.” Yet, it is not certain whether the EU’s new sanctions regime actually includes these criteria.

The EU Global Human Rights Sanctions Regime covers gross human rights violations, for which benchmarks for demarcation are established: *jus cogens*, the nature of a violation (widespread and systematic), and contradiction to the objectives of the EU’s foreign policy (e.g. democracy, the rule of law, and human rights – Article 21 of the [TEU](#)). However, the line between this EU human rights sanctions framework and the country-specific restrictive measures is somehow blurred. This ambiguity in the scope of different sanctions regimes can result in arbitrary decisions or decisions that might be contested by the international community, and therefore, lead not only to reputational risks of such regimes but also to double standards.

Another question is how the EU Sanctions Regime and Magnitsky-like acts are legally structured to tackle the prevention of human rights violations and to guarantee accountability. International human rights law provides for obligations to respond to international crimes both within states territory and extraterritorially, also called universal jurisdiction (however, when interpreting the Genocide Convention, the ICJ [stated](#) that there is permissive universal jurisdiction, not an obligation).

Against this background, individual sanction regimes could potentially become a very useful tool in combating impunity but only if such regimes were properly espoused by a clearer understanding of the obligation to respond and prevent international crimes. The ARSIWA (article 41(1)) could be read as an obligation for states to make joint efforts to end violations of *jus cogens* norms. However, it is important to remember that individual sanctions have humanitarian effects on bigger groups of people as well. Thus, states must be as transparent as possible about the sanctions they introduce. Undoubtedly, human rights sanctions regimes mostly reflect the need for the fight against dictatorships and impunity not only of those economically vulnerable states but also the most powerful. However, sanctioning states should be mindful of the possible arbitrary application of such countermeasures. The effectiveness of targeted sanctions alone is, nevertheless, still weak and they rarely result in drastic behavioral changes. But together with other mechanisms, they can bring about justice to affected societies. So what other accountability avenues exist to back up the goals pursued by targeted sanctions against China?

Alternative Accountability Avenues

Generally speaking, the extensive use of individual sanctions may alter the accountability initiatives by

various international institutions. While this might well be the case with the UN sanctions [overlapping](#) with the mandate of the International Criminal Court, the EU, UK, and US individual sanction regimes might avoid this obstacle by focusing on pursuing justice in their national jurisdictions. Another viable option could be clear communication and committed cooperation between international institutions and states that should be enshrined in the legal framework of such sanction regimes.

Beijing's political and economic power makes most efforts to pressure China difficult. Since any action via the UNSC will not pass, the legal accountability avenues are very limited. China has not accepted the jurisdiction of the ICJ over the crime of genocide and crimes against humanity. Neither is it a member of additional protocols to the main human rights treaties. One of the few options might be the establishment of an independent fact-finding mission (most likely under the auspices of the UN), which will collect evidence for potential universal jurisdiction cases (although not without obstacles to gather sufficient data). A similar mechanism already exists. In September 2020, an independent people's tribunal – [the Uighur Tribunal](#), was established to investigate the crimes in Xinjiang. This tribunal is in fact a UK private company and therefore, has no powers of enforcement or sanctions. Yet, it is supported by the UK's Essex Court Chambers, which recently published a report (by the time of the publication of this post, the legal opinion [was removed after China imposed sanctions against the Chambers](#)) confirming the crime of genocide, and thus, a universal jurisdiction case seems not so elusive. The recent ICC's decision to start an investigation for transboundary crimes in Bangladesh might open a door for another accountability avenue for the crimes against Uighurs. This option is currently explored [by Turkistan's organizations](#).

While these criminal accountability initiatives have not been put on the table by any state, there is another field where pressure can be put on China: private business. While states, including EU member states (especially given the aforementioned investment pact), might now be reluctant to disrupt their trade agreements with the Asian economic giant, individuals and businesses can play a significant role in holding Beijing accountable.

A number of foreign and Chinese companies were (some still are) allegedly [involved](#) in abusive labor transfer programs for the Uighur detained workers. While it is clear that under the [business and human rights \(BHR\) framework](#) these companies have the duty to withdraw from such practices, businesses can go beyond their mere compliance with BHR rules. Companies could relocate their productions or at least their parts and by doing this, show their stance on the non-acceptance of gross human rights violations. [Corporate keepers of international law](#), as Jay Butler labels private entities that willingly engage in upholding human rights, have a potential for putting real pressure on China to reconsider its conduct. “[...] a review of recent business behavior reveals a wide range of examples of corporations contributing in potentially constructive ways to carrying out international law,” argues Butler. Therefore, a more active outreach by corporations acting on the territory of China might be an effective interim measure to stop violations in Xinjian. Though the motivation to behave ethically might be low, individuals also have a role to play by prioritizing corporate keepers of international law over those who decide to maintain their businesses in problematic regions.

Consumers possess ‘buying power’ that can change the flow of international trade. Boycotting corporations that still ignore the calls for behavioral changes can bring more attention to the accountability issues for gross human rights violations. Promotion of alternative economic governance could espouse tackling the root causes of violations, such as forced labor in China. In conclusion, to maximize leverage over China, individual sanctions, and other accountability initiatives, international

efforts could expand beyond the traditional mechanisms and include social corporate responsibility as well as robust action on the Uighur issue by individuals.

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