

Silencing the Silk Road: China’s Language Policy in the Xinjiang Uyghur Autonomous Region

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“Successive administrations and Chinese governments have been poised back and forth on [human rights] issues, and we have to continue to press them. But our pressing on those issues can’t interfere with the global economic crisis, the global climate change crisis, and the security crisis.”

-Secretary of State Hillary Clinton¹

I. INTRODUCTION

The Confucian sage Mencius once said, “I have heard of man using the doctrines of our great land to change barbarians, but I have never yet heard of any being changed by barbarians.”² By the term “barbarian,” Mencius meant anyone who was not a Han Chinese,³ referring not only

1. *Clinton: Chinese Human Rights Can’t Interfere with Other Crises*, CNN POLITICS.COM, Feb. 22, 2009, <http://www.cnn.com/2009/POLITICS/02/21/clinton.china.asia/>.

2. Matthew D. Moneyhon, Note, *China’s Great Western Development Project in Xinjiang: Economic Palliative, or Political Trojan Horse?*, 31 DENV. J. INT’L L. & POL’Y 491, 505 (2003). Mencius was alive during the fourth century b.c. *Id.*

3. See ARIENNE M. DWYER, *THE XINJIANG CONFLICT: UYGHUR IDENTITY, LANGUAGE POLICY, AND POLITICAL DISCOURSE* 8 (2005). There is a misperception that the Han are a unified ethnic group; the definition of Han was not originally grounded in ethnic similarities, but on geographical proximity and the “pursuit of settled agriculture.” Hayden Windrow, Note, *From State to Nation: The Forging of the Han Through Language Policy in the PRC and Taiwan*, 37 N.Y.U. J. INT’L L. & POL. 373, 384–85 (2005).

to foreigners, but also to China's fifty-five recognized ethnic minorities,⁴ including Uyghurs,⁵ the indigenous population of China's Xinjiang Uyghur Autonomous Region (XUAR).

Fearing separatism in the XUAR, China commenced an active campaign to integrate and assimilate Uyghurs into the Han mainstream at the expense of fundamental freedoms, and without regard to the rich body of literature, culture, and customs that are being sacrificed at an altar of unchecked political whim. On the international front, China has attempted, since September 11, 2001, to assert a link between its problems in the XUAR and international terrorism, support of Osama bin Laden, and even support of the Taliban.⁶ To some extent, they may have succeeded. Seventeen Uyghurs were captured in the Afghanistan response attacks and taken to Guantanamo Bay to be held as "enemy combatants."⁷ In summer 2002, the United States declared the Chinese Uyghur East Turkestan Islamic Movement a terrorist organization, and the U.N. soon followed.⁸

As part of its push for mono-culturalism throughout China in general, and in the XUAR in particular, China's language policy is at the forefront of what some have labeled China's program of "cultural

4. See Howard W. French, *Uniting China to Speak Mandarin, the One Official Language: Easier Said than Done*, N.Y. TIMES, July 10, 2005, at A4, available at <http://www.nytimes.com/2005/07/10/international/asia/10chinese.html>.

5. There are several alternate spellings of the term "Uyghur," including: Uighur, Uygur, and Ouighour. CHRISTIAN TYLER, *WILD WEST CHINA: THE TAMING OF XINJIANG 44* (John Murray 2003); see also Natasha Parassram Concepcion, *Human Rights Violations Against Muslims in the Xinjiang Uighur Autonomous Region of Western China*, 8 HUM. RTS. BRIEF 19 (2000) (using "Uighur").

6. *Ethnic Minorities in China: Tibetans and Uighurs, Roundtable Before the Cong.-Exec. Commission on China*, 107th Cong. 49 (2002) (statement of Justin Rudelson, Executive Director, Univ. of Md. Inst. for Global Chinese Affairs), available at <http://www.cecc.gov>; see also DWYER, *supra* note 3, at 2.

7. Human Rights Watch, *US: Resettle Guantanamo Uighurs in the United States*, Feb. 18, 2009, <http://www.hrw.org/en/news/2009/02/18/us-resettle-guantanamo-ughurs-united-states>. Although the men were cleared of their enemy combatant status, the majority remain indefinitely detained, awaiting re-settlement. *Id.*

8. Comm. on Human Rights, Sub-Comm. on Promotion & Prot. of Human Rights, Working Group on Minorities, *China's Minorities: The Case of Xinjiang and the Uyghur People*, U.N. Doc. E/CN.4/Sub.2/AC.5/2003/WP.16, at 1 (May 5, 2003) (prepared by Dru C. Gladney). Having no specific term for "terrorist" or "terrorism" in their language, Uyghurs were forced to borrow English terms to even discuss this designation. *Ethnic Minorities in China: Tibetans and Uighurs, Roundtable Before the Cong.-Exec. Commission on China*, 107th Cong. 49 (2002) (statement of Dolkun Kamberi, President, Uighur Language Service for Radio Free Asia), available at <http://www.cecc.gov>.

genocide.”⁹ While most agree that this provocative terminology is overstated,¹⁰ China’s language policy may well be at the root of various human rights violations. Part II of this article will describe the historical context and modern realities of China’s language policy in the XUAR, which is comprised of both overt policies in the form of laws, regulations, and policy statements as well as more covert policies, which may be gleaned from the contents of international reports and the pages of news stories worldwide. Part III will discuss the status of language policy in international law, including the major relevant multinational treaties, regional agreements and bodies, and other informative sources. Part IV will analyze how China’s language policy violates human rights standards. Finally, Part V will summarize and conclude that the international community has a duty to take action in order to prevent the further destruction of Uyghur culture in the XUAR.

II. FACTUAL CONTEXT

As an initial matter, this Part will lay the foundation for the forthcoming legal discussion by briefly chronicling China’s language policy in the XUAR. Section A will first provide the contextual framework within which China’s policies have developed. Section B will then discuss the various laws, regulations, and covert and overt policies that form China’s language policy in the XUAR today.

A. Background

The majority of the world’s Uyghurs reside in the XUAR, a region that covers approximately one-sixth of Chinese territory¹¹ and borders several former Soviet Central Asian States.¹² From ancient times until the fifteenth century, this was the region where East met West and hosted three of the major trade routes collectively known as the Silk Road.¹³ The Uyghur culture is both ancient and distinct, with its own national dress and traditions, many of which are tied to religion.¹⁴ The

9. “Cultural genocide” is not a recognized legal term of art, although some scholars have tried to argue that China’s actions in certain provinces could meet the legal standard for genocide. Randall Peerenboom, *Assessing Human Rights in China: Why the Double Standard?*, 38 CORNELL INT’L L.J. 71, n.324 (2005).

10. *Id.*

11. DWYER, *supra* note 3, at 2.

12. Concepcion, *supra* note 5, at 19. The XUAR borders India, Pakistan, Afghanistan, Tajikistan, Kyrgyzstan, Kazakhstan, Russia, and Mongolia, along with the fellow Chinese provinces of Tibet, Qinghai, and Gansu. CENTRAL ASIA-CAUCASUS INSTITUTE, XINJIANG: CHINA’S MUSLIM BORDERLAND at xv (S. Frederick Starr ed., 2004).

13. TYLER, *supra* note 5, at 32–33.

14. Concepcion, *supra* note 5, at 19.

term Uyghur also denotes the language spoken, not only by native Uyghurs, but also as the *lingua franca* of the XUAR.¹⁵ There are an estimated eight to eleven million native speakers of Uyghur worldwide, with over eight million residing in China.¹⁶ The Uyghur language dates back to ancient times and was considered a “common literary language among the Turki peoples.”¹⁷

Although the centuries of battles, diplomatic marriages, and trade along the Silk Road produced interactions between the Uyghurs and the Han,¹⁸ the region did not fall under Chinese political control until the 1750s,¹⁹ and the XUAR did not officially become a province of China until 1884.²⁰ The battle for control, however, did not end there. Twice, without success, the Uyghurs attempted to regain their independence.²¹ In addition, during the 1900s, both the Russians and the British also engaged in the battle for influence over the XUAR, mainly out of a desire to assert control over the XUAR’s abundant natural resources, such as oil and gas.²²

After the formation of the People’s Republic of China (PRC) in 1949, the Chinese government sought to establish tolerant cultural policies and promote diversity;²³ yet the relaxed attitude did not last. For almost

15. DWYER, *supra* note 3, at 13.

16. *Id.* at 12. In China, Uyghur is a class II language, along with languages such as Standard Cantonese and Lhasa Tibetan (Mandarin is the only Class I language). *Id.* at 14. Being a Class II language, Uyghur is afforded some prestige, being one of four minority languages to appear on the Chinese currency. *Id.* at 15.

17. Kamberi, *supra* note 8, at 48. In his statement to the Congressional Committee, Uyghur scholar Dolkum Kamberi described the following five linguistic periods:

- (1) pre-historical Uyghur language, before the 6th CE. No written material in Uyghur has been found so far, but the language came to us through Uyghur oral literature, idioms, idiomatic phrases, folk stories, folk songs, folk literature, and ancient mythology and legends in other language records.
- (2) ancient Uyghur Language, 6th Century to 10th Century CE. Mostly pre-Islamic literatures, which were influenced by non-Altaic language.
- (3) medieval Uyghur language, 10th–15th Century CE. Mostly Islamic literature influenced by Arabic and Persian languages.
- (4) contemporary Uyghur Language, 16th–19th Century CE. Elishir Nawayi’s works represent this era.
- (5) modern Uyghur language, late 19th Century-present.

Id.

18. TYLER, *supra* note 5, at 24–56.

19. Concepcion, *supra* note 5, at 19.

20. *Id.*

21. *Id.*

22. *Id.*

23. DWYER, *supra* note 3, at 7.

thirty years during the Great Leap Forward and the Cultural Revolution,²⁴ minority languages and culture as well as almost every other aspect of traditional Chinese culture were suppressed.²⁵ During the 1980s, support for cultural rights was reborn; however, it would not last.²⁶ A backlash in policy began in the mid-1990s, and²⁷ by the late 1990s, reports of escalating violence and separatism were being published by various NGOs.²⁸ The fighting was purportedly “in response to the U[y]ghurs’ growing discontent over government discrimination, interference with their religious and cultural rights, official corruption, and denial of equal economic opportunity.”²⁹

In conjunction with this unrest, China has labeled several Uyghur organizations as terrorist. Among such organizations are the East Turkestan Islamic Movement, the East Turkestan Liberation Organization and the German-based groups: the East Turkestan Information Center, and the World Uyghur Youth Congress.³⁰ As a “solution” to separatist movements, and out of a desire to gain from the region’s rich resources, China has initiated its “Great Western Development Drive” or “Go West Development Plan,” which seeks to integrate and assimilate Chinese minorities into the Han majority by “taming the ‘Wild West.’”³¹ In its ambitious planning, China has taken cues from American history and the success of Manifest Destiny ideals as well as commenced implementing a strategy referred to as “mixing sand,” whereby it dilutes the local minority population with high numbers of Han migrants.³² China’s policy of “taming” its “barbarians” is not only anachronistic, but also stands in violation of universal standards of human rights.

Unfortunately, however, enforcing human rights on a national level has been difficult for many reasons.³³ For example, the Chinese believe or at least believed for many years, that their values already represent

24. This period has been referred to as the “horrific twilight of Chinese internationalist-cosmopolitan nationalism.” Windrow, *supra* note 3, at 398.

25. DWYER, *supra* note 3, at 8.

26. *Id.* at 11–12.

27. *Id.* at 12.

28. Concepcion, *supra* note 5, at 19.

29. *Id.*

30. Peerenboom, *supra* note 9, at 94–95. The U.N. and U.S. are in agreement with China as to the ETIM. *Id.* at 95. While China maintains the ETIM are involved in violent activities, Amnesty International eye-witnesses reports sometimes contradict the official Chinese story. *See, e.g., id.* at 95–96 (discussing a peaceful demonstration that was forcefully dispersed by security officers).

31. Moneyhon, *supra* note 2, at 492.

32. *Id.* at 493–94, 504–05.

33. China falls in the lowest ten percent on the World Bank’s human rights ranking. Peerenboom, *supra* note 9, at 98 (discussing the World Bank’s voice and accountability index).

universal values; Confucian thought equated “civilization” with Han Chinese norms, seen as “universally appealing and applicable,”³⁴ thus the idea of a superseding set of international human rights standards is not easily accepted. Additionally, any human rights efforts must be compatible with China’s goal of maintaining political stability.³⁵ Furthermore, even where rights are accepted in theory, China’s lack of a true independent judiciary gives rise to problems for citizens attempting to assert any such right that may contradict local political interests,³⁶ and up until recently, the Chinese Constitution was, and arguably remains, not directly justiciable.³⁷ Although issues of sovereignty still hinder efforts to promote human rights in China from abroad,³⁸ the international community retains a considerable duty to protect vulnerable populations through the enforcement of international law,³⁹ which is not to be ignored simply because of economic woes and political friendships.⁴⁰ With this in mind, the following will provide a summary of the laws and policies in question.

B. China’s Overt and Covert Language Policies

In addition to the various languages spoken by China’s fifty-five ethnic minorities, there are as many as 1,500 dialects of “Chinese” spoken amongst the Han.⁴¹ Mandarin, originally known as *guanhua* (bureaucrat speech) became the language of choice during the *Baihua* (Plain Speech) Movement, which occurred between the 1911 overthrow of the Qing Dynasty and the 1949 establishment of the PRC as a

34. Windrow, *supra* note 3, at 385 (citing MODERN CHINA: AN ENCYCLOPEDIA OF HISTORY, CULTURE, AND NATIONALISM at viii (Wang Ke-wen ed., 1998)).

35. Peerenboom, *supra* note 9, at 114.

36. Ellen S. Reinstein, *Turn the Other Cheek, or Demand an Eye for an Eye? Religious Persecution in China and an Effective Western Response*, 20 CONN. J. INT’L L. 1, 36 (2004).

37. Peerenboom, *supra* note 9, at 124.

38. *Id.* at 81.

39. *See, e.g.*, International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), at 21, U.N. GAOR Supp. (No. 16) at 49, U.N. DOC. A/6316 (Dec. 16, 1966), 993 U.N.T.S. 3 (“*Considering* the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms”) (emphasis added) [hereinafter ICESCR].

40. *See Clinton: Chinese Human Rights Can’t Interfere with Other Crises*, CNN POLITICS.COM, Feb. 22, 2009, <http://www.cnn.com/2009/POLITICS/02/21/clinton.china.asia/>.

41. French, *supra* note 4.

pragmatic solution to promote education and literacy.⁴² Recent official Chinese estimates state, however, that only fifty-three percent of China's population can communicate in Mandarin.⁴³ Although the Chinese government does not claim that other languages should be eliminated, there is a sentiment that a unifying language is a necessity.⁴⁴

Language planning and policy, which regulate the permitted and required use of majority and minority languages, are indeed effective means of nation-building and restructuring cultural identity since language "permeates all aspects of society."⁴⁵ A language policy's influence stretches into the media, education, ethnic identity, and freedom of expression.⁴⁶ Although nation-building is a legitimate and important government function, it must not be done at the expense of human rights. Not only can overt policies, such as discriminatory regulations, fly in the face of international standards, but covert policies and the refusal to enforce domestic protective legislation also symbolize a lack of any meaningful rule of law, thus creating further violations of these standards. Thus, this Section will address China's overt language policies through relevant provisions in its constitution, laws, regulations, and policy statements as well as its covert language policies as gleaned from reported actions or inactions and seemingly unrelated policies that are effectuating limitations on minority language use.

1. The Constitution

Technically, all minorities and minority languages have certain legal protections under China's constitution:

All nationalities in the People's Republic of China are equal. The state protects the lawful rights and interests of the minority nationalities and upholds and develops a relationship of equality, unity and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality are prohibited; any act which undermines the unity of the nationalities or instigates division is prohibited.

The state assists areas inhabited by minority nationalities in accelerating their economic and cultural development according to the characteristics and needs of the various minority nationalities. Regional autonomy is practiced in areas where people of minority nationalities live in concentrated communities; in these areas organs of self-government are established to exercise the power of autonomy. All national autonomous areas are integral parts of the People's Republic of China.

42. Windrow, *supra* note 3, at 389.

43. French, *supra* note 4.

44. *Id.*

45. FERNAND DE VARENNES, LANGUAGE, MINORITIES AND HUMAN RIGHTS 90–92 (1996) (discussing both the positive and negative aspects of nation-building through language policy); *see also* DWYER, *supra* note 3, at 6.

46. DWYER, *supra* note 3, at 6.

All nationalities have the freedom to use and develop their own spoken and written languages and to preserve or reform their own folkways and customs.⁴⁷

Aside from its protection of minority freedoms, China's constitution also includes provisions asserting the principle that the group takes precedence over the individual, that group interests may trump individual freedoms and rights, and that the people have a duty to create a unified society.⁴⁸

2. *Laws, Regulations, and Policy*

In addition to its constitution, China's laws, regulations, and policies merge to form the remainder of China's language policy. This policy affects both internal and external aspects of the Uyghur language. Internal language policy seeks to shape the language itself, such as by selecting which orthographic writing system will be implemented. On the other hand, external policies control when and where the language may and must be used.⁴⁹

a. *External Aspects*

First, there are some general laws that regulate the use of language in the XUAR. For instance, since 1955, Uyghur Autonomous Regional Law has stipulated that Uyghur is the official language of the XUAR government,⁵⁰ and Article 8 of the Law of the PRC on the Standard Spoken and Written Chinese Language protects minorities' right to speak and write in their native languages.⁵¹ Article 4 of that law, however, states that the "[l]ocal people's governments at various levels and the relevant departments under them shall take measures to popularize [Mandarin] and the standardized Chinese characters."⁵² Articles 26 and 27 provide administrative enforcement for violations of the language law.⁵³

47. XIAN FA art. 4 (1982) (P.R.C.) (emphasis added).

48. Windrow, *supra* note 3, at 402 (quoting XIAN FA, *supra* note 47, arts. 51, 52).

49. DWYER, *supra* note 3, at 6.

50. Kamberi, *supra* note 8, at 47.

51. Law of the P.R.C. on the Standard Spoken and Written Chinese Language (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 31, 2000, effective Jan. 1, 2001), art. 4, GOV.CN, available at <http://english.gov.cn> (last visited Apr. 16, 2006) (P.R.C.) [hereinafter Standard Spoken and Written].

52. *Id.*

53. *Id.* arts. 26–27.

Besides these general provisions, China's language policy can be divided into laws, regulations and policy statements that affect the use of Uyghur in: (1) the media; (2) education; (3) business and trade; (4) government access and the legal system; and (5) culture and the arts.

i. Media

With respect to language in the media, the Law of the PRC on the Standard Spoken and Written Chinese Language includes several articles that affect the use of Uyghur. Article 11 requires that “[p]ublications in Chinese shall be in conformity with the norms of the standard spoken and written Chinese language”⁵⁴ Article 12 mandates that Mandarin “be used by the broadcasting and TV stations as the basic broadcasting language”⁵⁵ Article 14 requires that Mandarin “be used as the basic spoken and written language” for broadcast, film and television as well as for signs and advertisements.⁵⁶

The use of local languages is permitted only under limited circumstances. For example, Article 16 provides that minority languages may be used “in broadcasting with the approval of the broadcasting and television administration under the State Council or of the broadcasting and television department at the provincial level” and “where they are needed in traditional operas, films and TV programs and other forms of art.”⁵⁷ Still, reports indicate that all movies produced in China, including Uyghur productions, are required to be filmed first in Mandarin and only after production may they be dubbed into the local language.⁵⁸

ii. Education

As for language and education, Article 10 of the Law of the PRC on the Standard Spoken and Written Chinese Language also regulates by stating that “[Mandarin] and the standardized Chinese characters shall be used as the basic language in education and teaching in schools and other institutions of education, *except where otherwise provided for in laws.*”⁵⁹ The Education Law of the PRC, in Article 12 states:

[Mandarin], both oral and written, shall be the basic oral and written language for education in schools and other educational institutions. Schools or other educational institutions which mainly consist of students from minority nationalities may use in

54. Windrow, *supra* note 3, at 403 (quoting Standard Spoken and Written, *supra* note 51, art. 11).

55. *Id.* at 404 (quoting Standard Spoken and Written, *supra* note 51, art.12).

56. *Id.* (quoting Standard Spoken and Written, *supra* note 51, art. 14).

57. Standard Spoken and Written, *supra* note 51, art. 16.

58. DWYER, *supra* note 3, at 49.

59. Standard Spoken and Written, *supra* note 51, art. 10 (emphasis added).

education the language of the respective nationality or the native language commonly adopted in that region.

Schools and other educational institutions shall in their educational activities popularize [Mandarin] and the standard written characters.⁶⁰

Similarly, Article 6 of the Compulsory Education Law of the PRC provides for promotion of the use of Mandarin, with the exception that “[s]chools in which the majority of students are students of minority nationalities may use the spoken and written languages of those nationalities in instruction.”⁶¹

While these laws appear balanced, reports paint a different picture. First, classrooms where Uyghur is the language of instruction have received only half the number of supplies, such as paper and toys, as Mandarin speaking schools.⁶² At the same time, education in minority languages has been increasingly restricted to the transitional phase of learning, and is only being used as a primary method for instruction long enough to enable the student to learn in Mandarin.⁶³ Moreover, while the law provides that “minority nationalities shall whenever possible, *use textbooks in their own language, and use their languages as the media of instruction . . .*,”⁶⁴ reports demonstrate that educational books are published in Mandarin only.⁶⁵ Furthermore, many parents feel pressured to send their children to Mandarin-speaking schools, and as a result, Uyghur children are losing proficiency in their native Uyghur tongue.⁶⁶

60. Education Law (promulgated by Order No. 45 of the President, Mar. 18, 1995, effective Sept. 1, 1995), art. 12, PRC MINISTRY OF EDUCATION, *available at* <http://www.moe.edu.cn/english/index.htm> (last visited Apr. 16, 2006) (P.R.C.) (emphasis added) [hereinafter Education Law].

61. Compulsory Education Law (promulgated by Order No.38 of the President, Apr. 12, 1986, effective July 1, 1986), art. 6 (P.R.C.), *available at* http://www.china.org.cn/government/laws/2007-04/17/content_1207402.htm (emphasis added) [hereinafter Compulsory Education Law].

62. DWYER, *supra* note 3, at 38.

63. *Id.* at 35.

64. *Id.* (quoting Regional Ethnic Autonomy Law, (promulgated by Order No. 13 of the President, May 31, 1984, amended February 2001), art. 37 (P.R.C.), *available at* <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=9507> [hereinafter Regional Ethnic Autonomy]).

65. U.N. Econ. & Soc. Council [ECOSOC], *Written Statement Submitted by the International Federation for the Protection of the Rights of Ethnic, Religious, Linguistic and Other Minorities* [IFPRERLOM], U.N. Doc E/CN.4/2006/NGO/147 (Mar. 3, 2006) (IFPRERLOM is a non-governmental organization on the Council’s Roster).

66. *Id.*

Regulation is even stricter at the university level. Since the early 1990s, Mandarin Competency Tests have been introduced in minority schools and have become a requirement at most universities.⁶⁷ In contrast, no standardized tests exist for Uyghur.⁶⁸ In May 2002, the Chinese government decided that Xinjiang University⁶⁹ would no longer instruct in Uyghur as they had since its opening.⁷⁰ Professors have even been restricted from teaching Uyghur poetry in its original language,⁷¹ and a group of persons referred to as language police (*til saqchi* in Uyghur) conduct spot checks to ensure compliance with such laws.⁷²

iii. Business and Trade

The use of Uyghur in business and trade is also affected by the Law of the PRC on the Standard Spoken and Written Chinese Language. Article 13 requires that, “[t]he standardized Chinese characters shall be used as the basic characters in the service trade People working in the service trade are encouraged to use [Mandarin] when providing services.”⁷³ Furthermore, Article 14 requires Mandarin not only for advertisements, but also for “packaging and specifications of commodities marketed in the country.”⁷⁴ Similarly, Article 15 requires that the Mandarin “used in information processing and information technology products shall be in conformity with the norms of the State.”⁷⁵

iv. Government Access and the Legal System

The Law of the PRC on the Standard Spoken and Written Chinese Language indicates that “[Mandarin] and the standardized Chinese characters shall be used by State organs as the official language, except where otherwise provided for in laws.”⁷⁶ Article 46 of the Regional Ethnic Autonomy Law provides, “[c]itizens of various nationalities are guaranteed the right to use their own spoken and written languages in court proceedings.”⁷⁷ Yet, accounts indicate that even where the dominant

67. DWYER, *supra* note 3, at 33–34.

68. *See id.* at 34.

69. Xinjiang College was upgraded to the level of university in 1960. Linda Benson, *Education and Social Mobility Among Minority Populations in Xinjiang*, in *XINJIANG: CHINA’S MUSLIM BORDERLAND 195–96* (S. Frederick Starr ed., 2004).

70. DWYER, *supra* note 3, at 39–40; *see also* Kamberi, *supra* note 8.

71. DWYER, *supra* note 3, at 39–40.

72. *Id.* at 51.

73. Standard Spoken and Written, *supra* note 51, art. 13.

74. *Id.* art. 14.

75. *Id.* art. 15.

76. *Id.* art. 9.

77. Regional Ethnic Autonomy, *supra* note 64, art. 46.

language of a region is not Mandarin, government administration, courts, education, and the media are still expected to be conducted in part, if not almost fully, in Mandarin.⁷⁸ Furthermore, U.S. Country reports indicate that “[r]egulations require U[y]ghurs to use Mandarin Chinese characters for their names on identification documents.”⁷⁹

v. *Culture and the Arts*

Finally, the Law of the PRC on the Standard Spoken and Written Chinese Language does allow local dialects to be spoken for the purposes of art and cultural activities.⁸⁰ As discussed earlier, however, even though local languages are permitted for use in certain cultural activities, movies are nonetheless required to be produced in Mandarin first.⁸¹ Furthermore, poetry may not be taught at the university level in Uyghur,⁸² and the publication of books on the history, art, literature, and culture of the Uyghur people have been restricted.⁸³

b. *Internal Aspect*

A number of China’s language policies also affect internal aspects of the Uyghur language. These include China’s policies on orthography and loan words.

i. *Orthography*

China’s internal linguistic policy in the realm of Uyghur orthography has been chaotic.⁸⁴ Although nearly all Uyghurs prefer using Arabic script, China’s official policy, for a variety of reasons, has vacillated between mandating and restricting the use of a Cyrillic writing system, sometimes changing their policy each year (often as a response to China’s rocky relationship with the Soviet Union during the early years of the PRC).⁸⁵ Furthermore, there has been some promotion of a Latin

78. DWYER, *supra* note 3, at 7.

79. Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices: China*, Feb. 28, 2005, <http://www.state.gov/g/drl/rls/hrrpt/2004/41640.htm>.

80. Standard Spoken and Written, *supra* note 51, art. 16.

81. *See supra* Part II.B.2.a.i.

82. *See supra* Part II.B.2.a.ii.

83. *See supra* Part II.B.2.c.ii.

84. DWYER, *supra* note 3, at 18–19.

85. *Id.*

script, as well as subsequent restrictions due to the will of the PRC to distinguish XUAR from neighboring countries such as Uzbekistan, Turkmenistan, and most recently the Kyrgyz Republic (all of which have moved towards the use of Latin script).⁸⁶

ii. Loan Words

China has also been active in introducing Mandarin words into the Uyghur language.⁸⁷ As early as 1970, the Kazakh Uyghur linguist É. Nadzip reported that specific Mandarin words were “being introduced in a compulsory manner as a result of the official language policy and . . . numerous [Mandarin] words in the realm of sociopolitical, scientific technological, and other terminology [were] infiltrating the language by dislodging U[y]g[h]ur, Arabic, Persian, and Russian words.”⁸⁸ During the 1980s, new terms had been created for the Uyghur language, but were later mandatorily excised in favor of Mandarin loan words.⁸⁹ In addition, some terms have been forbidden from use, in Uyghur as well as in Mandarin, such as those that would suggest a Pan-Turkic identity for Uyghurs.⁹⁰

At the same time, Mandarin is undergoing its own internal linguistic struggle with the exponentially increasing influx of English loan words.⁹¹ The director of the Department of Language Information Administration under the Ministry of Education, Li Yuming, said, “[w]e should scientifically deal with the relationship between our mother language and foreign languages and never allow foreign languages to eat away our mother language, despite our need for foreign language education to intensify our opening-up drive.”⁹² This same protection and rigor has not carried over into minority language policy. Furthermore, these fears are leading some to mimic the policies of countries such as France and push for Mandarin only laws.⁹³ Although intended to prevent the westernization of Mandarin, these laws would also have a negative effect on minority languages within China.

86. *Id.* at 18–22.

87. *Id.* at 27.

88. *Id.* (quoting from MICHAEL BRUCHIS, *THE USSR: LANGUAGE AND REALITIES* 221 (1998)).

89. *Id.* at 28.

90. *Id.* at 31.

91. See generally, *Purity of Chinese Language Debated*, CHINA DAILY, Sept. 13, 2004, http://www.chinadaily.com.cn/english/doc/2004-09/13/content_373918.htm

92. *Id.*

93. *Id.*; see also *infra* note 176 and accompanying text (for a discussion of France’s language policy).

c. Other Relevant Policies

The Chinese Communist Party asserts that, “[a]ll nationalities within the boundaries of the [PRC] are equal. They shall establish unity and mutual aid among themselves, and shall oppose imperialism and their own public enemies, so that the PRC will become a big fraternal and cooperative family composed of all its nationalities.”⁹⁴ In order to effectuate this “unity,” China has, instead of embracing diversity, practiced cultural dilution, book banning, and scare tactics to eliminate fora in which the Uyghur language may thrive.

i. Dilution

As previously mentioned, China’s “Great Western Development Drive” or “Go West Development Plan” seeks to integrate and assimilate Chinese minorities into the Han majority by “taming the ‘Wild West.’”⁹⁵ Its strategy of “mixing sand” dilutes the local minority population with high numbers of Han migrants.⁹⁶ The idea of “taming” echoes the Han Chinese belief that minority Chinese are in some way “backward” and “without culture,”⁹⁷ including the perception that minority languages are inferior and inadequate for dealing with a modern, advanced society.⁹⁸

By infusing the region with Han Chinese, laws that permit the use of Uyghur in schools with dominant Uyghur speakers may be circumvented as the proportion of Han Chinese speakers shifts to the majority. Furthermore, the policy reduces opportunities in daily life for children and adults to use their native tongue.

ii. Book Banning

In 2002, thousands of Uyghur books were burned in Kashgar without a single public comment from Uyghurs residing within Chinese

94. Moneyhon, *supra* note 2, at 511 (quoting *The Common Program of the Chinese People’s Political Consultative Conference* art. 50 (Sept 29, 1949), reprinted in HENRY G. SCHWARZ, CHINESE POLICIES TOWARDS MINORITIES: AN ESSAY AND DOCUMENTS 52 (1971)).

95. *Id.* at 492.

96. *Id.* at 504–05. The Han population increased in Xinjiang between the 1940s and the 1980s by a staggering 2500%. Comm. on Human Rights, *supra* note 8.

97. DWYER, *supra* note 3, at 7.

98. *Id.* at 10.

territory.⁹⁹ Specifically, reports indicated the burning of 128 copies of *A Brief History of the Huns* and *Ancient Uyghur Literature*, as well as 32,320 copies of *Ancient Uyghur Craftsmanship*.¹⁰⁰ The Kashgar Daily also reported the censoring of over 330 books in addition to the discontinuation of others by the Kashgar Uyghur Publishing House.¹⁰¹ Book burning not only violates China's constitution,¹⁰² but it also reduces opportunity for research, study, and education for Uyghurs in their native language. It furthermore sends a message that expression through and concerning the Uyghur language and culture is being closely monitored and considered unequal to that of the majority Han.

iii. Scare Tactics and Imprisonment

Along similar lines, the U.S. Country Report on Human Rights Practices for China observed that:

U[y]ghurs whose work emphasized pride in cultural identity have also been harassed and detained by the Government. Writer and translator Abdulghani Memetemin was convicted in June 2003 of sending state secrets abroad and sentenced to 9 years in prison for translating news articles into Chinese from the U[y]ghur language and forwarding official speeches to the East Turkestan Information Center. In late 2001, the U.N. Working Group on Arbitrary Detention ruled that U[y]ghur scholar and researcher of Xinjiang's ethnic minorities Tohti Tunyaz had been arbitrarily detained. He was sentenced in 1999 to an 11-year prison term for "inciting separatism" and illegally acquiring state secrets" and remained in prison at year's end.¹⁰³

These tactics, such as book banning, scare tactics, and imprisonment, have a similar chilling effect on the use of the Uyghur language in media and academia.

The totality of China's language policy in the XUAR discourages and even punishes the use of Uyghur on many levels, promoting and perpetuating the notion that Uyghur is not a "civilized" language, and thereby implying that Uyghurs are not a "civilized" people. Part III will discuss the manner by which international law seeks to address the effects language policy may have on human rights, with particular reference to China's obligations under this supranational body of law.

99. Kamberi, *supra* note 8. The books detailing and documenting Uyghur history originally had been published with the approval of the authorities. Bureau of Democracy, *supra* note 79.

100. Kamberi, *supra* note 8.

101. *Id.*

102. *Id.*

103. Bureau of Democracy, *supra* note 79; *see also infra* note 146 and accompanying text (for a discussion of the Tohti Tunyaz case).

III. INTERNATIONAL LAW AND LANGUAGE POLICY

Sources and evidence of international law include treaties, customary law, general principles of law, judicial decisions, and scholarly writings.¹⁰⁴ Treaties are the contracts of international law¹⁰⁵ while customary law is inferred from the practice of states and international legal entities, and followed out of a sense of legal obligation, or *opinio juris*¹⁰⁶ (as distinguished from customs practiced “out of a sense of kindness, courtesy or convenience”¹⁰⁷). Many scholars see “[g]eneral principles of law recognized by civilized nations”¹⁰⁸ as a third-tier international legal source¹⁰⁹ only applicable absent a relevant treaty or customary law.¹¹⁰ These “general principles” are discernable from national practices and may be used to fill in gaps where international law is silent.¹¹¹ This article will now move into a discussion about international law in relation to language policy, arranged into the following categories: (1) Multilateral Treaties and Agreements; (2) Regional Bodies and Instruments; and, finally, (3) Other Sources of International Law.

A. *Multilateral Treaties and Agreements*

Treaties function as contracts in international law,¹¹² and therefore may be binding on the parties.¹¹³ The trilogy of multilateral treaties relevant to our discussion includes: (1) the International Covenant on Economic, Social and Cultural Rights (ICESCR);¹¹⁴ (2) the International Covenant on Civil and Political Rights (ICCPR);¹¹⁵ and (3) the International

104. VALERIE EPPS, *INTERNATIONAL LAW* 5 (2d ed. 2001); Statute of the Court, Rules of Court, 1926 P.C.I.J. (ser. D) No.1, at 20 (July 31); *see also* The Paquete Habana, 175 U.S. 677 (1900).

105. EPPS, *supra* note 104, at 53.

106. *Id.* at 5.

107. *Id.*

108. Statute of the Court, *supra* note 104, at 20.

109. EPPS, *supra* note 104, at 21.

110. *Id.*

111. *Id.* at 22.

112. *Id.* at 53.

113. Vienna Convention on the Law of Treaties art. 14, May 23, 1969, 1155 U.N.T.S. 331.

114. ICESCR, *supra* note 39.

115. International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

Convention on the Elimination of All Forms of Racial Discrimination (CERD).¹¹⁶

1. *International Covenant on Economic, Social and Cultural Rights (ICESCR)*¹¹⁷

China ratified the ICESCR on March 27, 2001,¹¹⁸ creating a binding obligation as to its terms.¹¹⁹ The ICESCR begins by recognizing the universal rights embodied in the U.N. Charter¹²⁰ and the Universal Declaration of Human Rights (UDHR).¹²¹ It mandates that states, to

116. International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 [hereinafter CERD].

117. ICESCR, *supra* note 39.

118. *Id.*; see 2142 U.N.T.S. 185, 186.

119. See Vienna Convention on the Law of Treaties, *supra* note 113, art. 14.

120. U.N. Charter (*entered into force* Oct. 24, 1945). The U.N. Charter “reaffirm[s] faith in fundamental *human rights*, [and] in the *dignity* and worth of the human person” The purpose and principles of the U.N. Charter, as outlined in its first article, include the determination, “[t]o achieve international cooperation in solving international problems of economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for *human rights* and for fundamental freedoms for all *without distinction* as to race, sex, *language* or religion.” Article 2 asserts that “[a]ll members, in order to ensure to all of them the rights and benefits resulting from membership, *shall fulfill in good faith* the obligations assumed by them in accordance with the present Charter.” This respect for human rights and pledge to take action are also echoed in Articles 55 and 56 of the U.N. Charter. *Id.* (emphasis added).

121. ICESCR, *supra* note 39, at preamble (referencing the U.N. Charter and the UDHR). The UDHR is a general assembly resolution. Its preamble professes, “[w]hereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,” and “that human rights should be protected by the rule of law,” and “therefore, [t]he General Assembly”:

Proclaims [the UDHR] as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, *shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international*, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves *and among the peoples of territories under their jurisdiction*.

Article 2 states that, “[e]veryone is entitled to all the rights and freedoms set forth in [the UDHR] *without distinction* of any kind, such as race, colour, sex, *language*, religion, political or other opinion, national or social origin, property, birth or other status,” and “no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.” Article 8 provides that “[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” Article 18 provides a “right to freedom of thought, conscience and religion,” and Article 19 provides “the right to freedom of opinion and expression,” which includes the “freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” The UDHR furthermore, in Article 26, ensures that, “[e]ducation shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms,” and that, “[p]arents have a prior right to choose the kind of

“the maximum of [their] available resources . . . [U]ndertake to guarantee that the rights enunciated in the [ICESCR] will be exercised without discrimination of any kind as to race, colour, sex, *language*, religion, political or other opinion, national or social origin, property, birth or other status.”¹²² These rights may be limited for the “promotion of general welfare in a democratic society” and “only in so far as [the limitation] may be compatible with the nature of [the ICESCR].”¹²³ Among the substantive rights, Article 13 of the ICESCR recognizes a right to education that shall “enable all persons to participate effectively in a free society” and a respect for parents’ choice of education for their children.¹²⁴ Article 15 recognizes the right “[t]o take part in cultural life.”¹²⁵ This article mandates that “[t]he steps taken by the States Parties to the [ICESCR] to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.”¹²⁶ Furthermore, “[t]he States Parties to the [ICESCR] recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields.”¹²⁷

education that shall be given to their children.” Finally, Article 27 of the UDHR also provides that, “[e]veryone has the right freely to participate in the cultural life of the community, [and] to enjoy the arts . . .” Universal Declaration of Human Rights, G.A. res. 217A (III), at 71, U.N. Doc. A/810 (Dec. 12, 1948) (emphasis added).

122. ICESCR, *supra* note 39, art. 2.

123. *Id.* art. 4.

124. *Id.* art. 13.

125. *Id.* art. 15.

126. *Id.* para. 2.

127. *Id.* para. 4. Many of the rights recognized in the ICESCR are also recognized with respect to children in the Convention on the Rights of the Child (CRC). Convention on the Rights of the Child, G.A. Res. 44/25, Annex, U.N. Doc. A/RES/44/25/ Annex (Dec. 5, 1989). The CRC recognizes that children’s rights deserve special protection and notes the “importance of the traditional values of each people for the protection and harmonious development of the child.” Similar to the ICESCR, rights must be ensured “without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.” Among substantive rights, Article 8 obligates, “States Parties [to] undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.” Article 13 ensures children with “the right to freedom of expression,” including the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice,” and Article 14 supports the “right of the child to freedom of thought, conscience and religion.” As with the ICESCR, these rights are subject to limitations in order to protect public safety and morals. The CRC provides that children’s right to

In its ICESCR Initial Report, China acknowledged that, “[s]ome unique languages, writing systems and customs are facing extinction,” and stated that:

“[i]n view of this situation, the State has accelerated the legislative process aiming to protect China’s ethnic and folk cultures. By further clarifying the scope of the necessary protection and clearly stating the rights and responsibilities proper to the State, to the relevant groups and to individuals, new protective mechanisms have been established.”¹²⁸

China also cited to its constitution.¹²⁹

The ICESCR Committee, in its responding remarks, however, “note[d] with concern the reports from sources other than the State party relating to the right to the free exercise of religion as a right to take part in cultural life, and the use and teaching of minority languages, history and culture in the Xinjiang U[y]ghur Autonomous Region (XUAR) and the Tibet Autonomous Region (TAR).”¹³⁰

2. *International Covenant on Civil and Political Rights (ICCPR)*¹³¹

On October 5, 1967, China signed¹³² (but has not yet not ratified) the ICCPR. Thereby it “is obliged to refrain from acts which would defeat the object and purpose of [the] treaty.”¹³³ The ICCPR, like the ICESCR, echoes state obligations under both the U.N. Charter and the UDHR.¹³⁴ It further creates a binding obligation on state parties to ensure the rights recognized within the covenant.¹³⁵ Similar to the UDHR, among the

education “shall be directed to . . . [t]he development of respect for the child’s parents, his or her own cultural identity, language and values” Perhaps most relevant, Article 30 of the CRC indicates that:

In those States in which ethnic, religious or linguistic minorities or person of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

Additionally, Article 30 obligates that states “shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.” *Id.*

128. U.N. Econ. & Soc. Council [ECOSCO], *Implementation of the International Covenant on Economic, Social and Cultural Rights*, para. 248, U.N. Doc. E/1990/5/Add.59 (Mar. 4, 2004).

129. *Id.* para. 249.

130. U.N. Econ. & Soc. Council [ECOSCO], Comm. on Econ., Soc., and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, para. 38, U.N. Doc. E/C.12/1/Add.107 (May 13, 2005).

131. ICCPR, *supra* note 115.

132. *Id.*; see 999 U.N.T.S. 260.

133. Vienna Convention on the Law of Treaties, *supra* note 113, art. 18.

134. ICCPR, *supra* note 115, at preamble.

135. *Id.* art. 2.

rights recognized are the rights to “freedom of thought, conscience and religion” in Article 18,¹³⁶ and “the right to freedom of expression” in Article 19.¹³⁷ Both rights may be restricted as necessary for the protection of public order or morals.¹³⁸ Significantly, Article 27 of the ICCPR avows that, “[i]n those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, *in community with the other members of their group*, to enjoy their own culture, to profess and practice their own religion, or *to use their own language*.”¹³⁹ An examination of the *travaux préparatoires* of Article 27 reveals that, while countries such as the Soviet Union had wished to include “positive obligations to provide resources in order for minority communities to conduct their own cultural, religious or linguistic activities,” the end result was a compromise designed “to ensure a minimum level of rights, not necessarily available to other individuals, which would not restrict the ability of minorities to freely use their own language”¹⁴⁰

In *Ballantyne, Davidson and McIntyre v. Canada*, the U.N. Human Rights Committee (UNHRC) upheld an individual’s right to use his or her language of choice under the ICCPR in media, commerce, politics, the arts, and cultural expression.¹⁴¹ In *Ballantyne*, the petitioners, including a painter, a designer, and an undertaker were anglophone Canadian citizens residing in Quebec.¹⁴² They sought to challenge a French-language bill that regulated commercial signage as a violation of several articles of the ICCPR.¹⁴³ The UNHRC held that because English

136. *Id.* art. 18.

137. *Id.* art. 19.

138. *Id.* arts. 18–19.

139. *Id.* art. 27.

140. DE VARENNES, *supra* note 45, at 150.

141. *Ballantyne, Davidson and McIntyre v. Canada*, Communications Nos. 359/1989 and 385/1989, May 31, 1993, U.N. Doc. CCPR/C/47/D/385/1989. The UNHRC, under the ICCPR, has on several occasions also discussed the relationship between freedom of expression and language, dealing with France’s language policy. On all these occasions, the Complainants were already proficient in French, and, therefore, their arguments were deemed inadmissible. DE VARENNES, *supra* note 45, at 38–40 (citing *Dominique Guesdon v. France*, UN GAOR, Vol. II. 45th Sess., at 61, UN Doc. A/45/40 (1990); *T.K. v. France*, UN GAOR, Vol. II. 45th Sess., Appendix X at 188, UN Doc. A/45/40 (1990); *M.K. v. France*, UN GAOR, Vol. II. 45th Sess., Appendix X at 127, UN Doc. A/45/40 (1990); *Yves Cadoret and Hervé Le Bihan v. France*, Communications Nos. 221/1987 and 33/1988, (Apr. 11, 1991).

142. *Ballantyne*, *supra* note 141, para. 1.

143. *Id.*

speakers are the majority in Canada, Article 27 could not apply to the petitioners.¹⁴⁴ It did hold, however, that the law violated the Article 14 right to freedom of expression, stating:

Article 19, paragraph 2, must be interpreted as encompassing every form of subjective ideas and opinions capable of transmission to others, which are compatible with article 20 of the Covenant, of news and information, of commercial expression and advertising, of works of art, etc.; it should not be confined to means of political, cultural or artistic expression. In the Committee's opinion, the commercial element in an expression taking the form of outdoor advertising cannot have the effect of removing this expression from the scope of protected freedom. The Committee does not agree either that any of the above forms of expression can be subjected to varying degrees of limitation, with the result that some forms of expression may suffer broader restrictions than others.¹⁴⁵

The Working Group on Arbitrary Detention has specifically addressed violations of the ICCPR by China in relation to freedom of expression in *Tohti Tunyaz v. China*.¹⁴⁶ Tunyaz was a Uyghur scholar who was imprisoned on the basis of stealing state secrets in the alleged publication of a book on Uyghur history.¹⁴⁷ In China's responding briefs submitted to the Working Group, China referenced Articles 18 and 22 of the ICCPR that deal with freedom of expression as well as the freedom of expression embodied in China's constitution, but noted that the ICCPR provided exceptions for the protection of national security, and argued that an exception was necessary in this case.¹⁴⁸ The Working Group found China's argument unpersuasive and held "that Mr. Tohti Tunyaz cannot be sentenced merely for writing a research paper, which, even if it were published, lay within his right to exercise the freedoms of thought, expression and opinion which are enjoyed by everyone and which can by no means be regarded as reprehensible if exercised through peaceful means, as they were in this case."¹⁴⁹

3. *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*¹⁵⁰

On December 29, 1981, China ascended to CERD,¹⁵¹ and is therefore bound by its provisions.¹⁵² China has, however, expressed reservations

144. *Id.* at para 11.2.

145. *Id.* at para 11.3.

146. U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Human Rights, Working Group on Arbitrary Detention, *Civil and Political Rights, Including the Question of: Torture and Detention*, at 50, U.N. Doc. E/CN.4/2002/77/Add.1, (Apr. 26, 2000).

147. *Id.* paras. 5, 9.

148. *Id.* para. 12.

149. *Id.* para. 22.

150. CERD, *supra* note 116.

151. *Id.*; see 1272 U.N.T.S. 418.

regarding Article 22¹⁵³ which allows for settlement before the International Court of Justice (ICJ).¹⁵⁴ States Parties under CERD agree they are “[c]onvinced that any doctrine of superiority based on racial differences is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere.”¹⁵⁵ Obligations under CERD include: (1) refraining from practices that would promote discrimination; (2) reviewing laws, policies, and legislations to make sure they do not promote discrimination, and the eradication of any such laws; and (3) an “undertak[ing] to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.”¹⁵⁶ In particular, states have agreed “to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups.”¹⁵⁷

In China’s report to the CERD Committee, it recognized its diverse ethnic population, and cited to various “ethnic-related statutes” designed to foster equality without providing much detail as to their contents.¹⁵⁸ In regards to minority languages, the report summarily states that, “[a]ccording to statistical data, over 10,000 schools across China provide bilingual education in Chinese and the languages of [non-Tibetan] ethnic minorities. The languages in question total over 60.”¹⁵⁹ The Committee on CERD, in its concluding remarks expressed concern, however, and:

[w]hile recognizing efforts made, which have resulted in an increased number of schools and a decrease of illiteracy in minority regions, the Committee [was] concerned about continuous reports of discrimination with regard to the right to education in minority regions . . . and recommend[ed] that [China] urgently ensure that children in all minority areas have the right to develop knowledge about their

152. Vienna Convention on the Law of Treaties, *supra* note 113, art. 15.

153. 1272 U.N.T.S. 419.

154. CERD, *supra* note 116.

155. *Id.* at preamble.

156. *Id.* art. 2.

157. *Id.* art. 7.

158. U.N. Int’l Convention on the Elimination of all Forms of Racial Discrimination, Comm. on the Elimination of Racial Discrimination, *Reports Submitted by States Parties Under Article 9 of the Convention*, paras. 1–11, U.N. Doc. CERD/C/357/Add.4 (Part I) (Apr. 3, 2001).

159. *Id.* para. 69.

own language and culture as well as the Chinese, and that they are guaranteed equal opportunities, particularly with regard to access to higher education.¹⁶⁰

Thus, via these treaties and international bodies, China is at least encouraged to re-evaluate the way in which its language policy may be violating its international obligations.

B. Regional Bodies and Instruments

Regional sources also provide a helpful framework when addressing human rights issues by demonstrating comparative standards, international norms, and concrete examples under which China's language policy may be understood. This Section will, therefore, briefly give some further illustrations of international law in relation to language policy from the European, American, and African systems.

1. The European System

The European Human Rights System generally operates under the [European] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention),¹⁶¹ which, like the ICCPR, secures protections for individuals without distinction as to language.¹⁶² Other relevant agreements within the European system are the European Charter for Regional or Minority Languages¹⁶³ and the Central European Initiative and Instruments for the Protection of Minority Rights¹⁶⁴ which provide various frameworks for encouraging the protection of minority languages.

The European court system has also addressed various issues of language protection. Among the most referenced cases are *Groener v. Minister for Education*,¹⁶⁵ the so-called *Belgian Linguistic Case*,¹⁶⁶ and

160. U.N. Comm. on the Elimination of Racial Discrimination, *Concluding observations of the CERD Committee*, China, para. 245, U.N. Docs. CERD/C/SR.1468 and 1469 (Sept. 8, 2001).

161. [European] Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222 (*entered into force* Sept. 3, 1953, amended by Protocols Nos. 3 (*entered into force* Sept. 21, 1970), 5 (*entered into force* Dec. 20, 1971), 8 (*entered into force* Jan. 1, 1990), 11 (*entered into force* Nov. 1, 1998)) [hereinafter European Convention].

162. *Id.* art. 14.

163. European Charter for Regional or Minority Languages, Council of Europe, CETS no. 148, opened for signature Nov. 5, 1992, *available at* <http://conventions.coe.int/treaty/en/Treaties/Html/148.htm> (last visited Apr. 18, 2006).

164. See CEI: Central European Initiative, <http://www.ceinet.org/main.php?pageID=1> (last visited Apr. 18, 2006), for information about the Central European Initiative and their work regarding minorities.

165. Case C-379/87, *Groener v. Minister for Educ. and the City of Dublin Vocational Educ. Comm.*, 1989 E.C.R. 3967 (1989). *Ministère Public v. Mutsch* is also often cited.

Association Ekin v. France.¹⁶⁷ In *Groener*, the European Communities Court of Justice maintained that some restrictive language policies may, in fact, be justified. The petitioner in *Groener*, a Dutch national working as an instructor in Ireland, was refused appointment to a full teaching position after failing an Irish language examination.¹⁶⁸ The court held that the requirement was not discriminatory or unreasonable given that Irish was the first official language and applicants were permitted to retake the exam.¹⁶⁹

In the *Belgian Linguistic Case*, the European Commission of Human Rights emphasized that language policy may not create unnecessary and discriminatory distinctions. The case challenged the regulation of languages in Belgian education under the European Convention.¹⁷⁰ Although all applicant families were francophone and lived in French speaking “communes” within Dutch speaking municipalities, the school districts where the applicants resided provided no French language education.¹⁷¹ The applicants argued that the particular circumstances of this case evidenced that the Belgian regulations were a part of a greater discriminatory plan aimed at “‘assimilating part of the population by compulsion’ especially in ‘liquidating the French-speaking minorities’ in Flanders by obliging their members to become ‘Flemicised’ or to ‘move away’.”¹⁷² The Commission held that the Belgian policy did not violate the European Convention where there was a monolingual Dutch education program in the predominately Flemish part of the country and

Case 137-84, *Ministère Public v. Mutsch*, 1985 E.C.R. 2681 (1985). In *Mutsch*, the European Court of Justice held that:

The principle of free movement of workers . . . requires that a worker who is a national of one member state and habitually resides in another member state be entitled to require that criminal proceedings against him take place in a language other than the language normally used in proceedings before the court which tried him, if workers who are nationals of the host member state have that right in the same circumstances.

Id. See also Application 808/60, *Isop v. Austria*, 1962 Y.B. Eur. Conv. on H.R. 108 (Eur. Comm’n on H.R.) (relating to language use in the courtroom).

166. Apps. Nos. 1474/62; 1671/62; 1691/62; 1769/63; 1994/63; 2126/64, case “Relating the Certain Aspects of the Laws on the Use of Languages in Education in Belgium,” 1968 Y.B. Eur. Conv. on H.R. 832 (Eur. Comm’n on H.R.) [hereinafter *Belgian Linguistics Case*].

167. *Ass’n Ekin v. France*, 2001-VII Eur. Ct. H.R. 325, 326.

168. *Groener*, *supra* note 165, para. 2.

169. *Id.* paras. 23–24.

170. *Belgian Linguistics Case*, *supra* note 166, para. 1.

171. *Id.* paras. 2–3.

172. *Id.* at pt. II, para.4.

a monolingual French education program in the predominately francophone part of the country.¹⁷³ It did find, however, that there was a violation of the European Convention where there existed a “distinct administrative district” and both French and Dutch language instruction were offered; yet, the Dutch schools were permitted to accept students from outside the district, and the French schools were not.¹⁷⁴ This created an explicit discriminatory distinction based on language, and therefore did not comply with the European Convention.¹⁷⁵

The European Court of Human Rights, like the UNHRC, has also determined that language policy must not infringe on the right to freedom of expression. In *Association Ekin v. France*, the European Court of Human Rights determined that a French language law which regulated foreign texts (similar to the recently enacted the *Loi Toubon*)¹⁷⁶ violated the European Convention.¹⁷⁷ The law in question read:

[T]he circulation, distribution or sale in France of newspapers or texts written in a foreign language, whether periodicals or not, may be prohibited by a decision of the Minister of the Interior. Newspapers and texts of foreign origin written in French and printed abroad or in France may also be prohibited.¹⁷⁸

The applicant argued that, “the provision gave rise to discrimination as regards freedom of expression on the legal basis of language or national origin and was therefore in breach of Article 14 of the Convention taken

173. *Id.* at pt. II, para. 7.

174. *Id.* at pt. II, para. 32.

175. *Id.*

176. French language laws have brought much attention from the international community, especially with the enactment of the *Loi Toubon* in 1994. Elizabeth Manera Edelstein, Comment, *The Loi Toubon: Liberte, Egalite, Fraternite, but Only on France's Terms*, 17 EMORY INT'L L. REV. 1127 (2003). This law mandates that only French may be used for the purposes of education, commerce, media, employment, public service, and gatherings. *Id.* Furthermore, France has no legislation protecting minority languages (though the *Loi Toubon* is seen as a law to restrict “foreign contamination” more than a law intended to eradicate French minority dialects). *Id.* at 1148. In fact, France does not even recognize that it has ethnic, religious or linguistic minorities. *Id.* Various international bodies have criticized France's peculiar position in relation to ethnic minorities—such as the U.N. Committee on the Elimination of Racial Discrimination—and have reaffirmed their linguistic rights:

The Committee is . . . unable to agree that France is a country in which there are no ethnic, religious or linguistic minorities . . . [and] . . . the mere fact that equal rights are granted to all individuals and that all individuals are equal before the law does not preclude the existence in fact of minorities in a country, and their entitlement to the enjoyment of their culture, the practice of their religion or the use of their language in community with other members of their group.

U. N. Human Rights Comm., *Concluding observations of the Human Rights Committee*, paras. 24, 27, U.N. Doc. CCPR/C/79/Add.80 (Aug. 4, 1997) (emphasis added).

177. *Ass'n Ekin v. France*, 2001-VII Eur. Ct. H.R. 325 (2001).

178. *Id.* para. 18.

in conjunction with Article 10.”¹⁷⁹ Article 10 of the European Convention provides for “freedom of expression . . . regardless of frontiers,”¹⁸⁰ while Article 14 ensures that, “[t]he enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as . . . language, religion, political or other opinion, national or social origin, association with a national minority . . . or other status.”¹⁸¹ The court determined the law to be a violation of Article 10, and thus did not address whether the law was also a violation of Article 14.¹⁸²

2. *The Inter-American and African Systems*

The American Convention on Human Rights (American Convention),¹⁸³ the American Declaration of the Rights and Duties of Man (American Declaration),¹⁸⁴ and the African Charter on Human and Peoples’ Rights (African Charter)¹⁸⁵ echo the previously discussed protections embodied in the ICCPR and the European Convention. Other relevant Inter-American sources include the Draft American Declaration on the Rights of Indigenous Peoples,¹⁸⁶ and perhaps arguably, the Native American Languages Act of 1990.¹⁸⁷ In particular, the Native American Languages Act recognizes that, “the status of the cultures and languages of Native Americans is unique and the United States has the responsibility to act together with Native Americans to ensure the survival of these unique

179. *Id.* para. 39.

180. European Convention, *supra* note 161, art. 10. This right may be derogated “in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.” *Id.* para. 2.

181. *Ass’n Ekin v. France*, 2001-VII Eur. Ct. H.R. 325, para. 39 (2001) (quoting European Convention, *supra* note 161).

182. *Id.* paras. 64–65.

183. Organization of American States, American Convention on Human Rights art. 1, Nov. 22, 1969, O.A.S.T.S. No. 36, at 1, OEA/Ser.L./V/II.23 doc. rev. 2 (entered into force July 18, 1978) [hereinafter American Convention].

184. American Declaration of the Rights and Duties of Man art. 2, Inter-Am. C.H.R., OAS/Ser.L./V/I.4 rev.12 (1997), available at <http://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm> (adopted by the 9th Int’l Conference of American States, Bogota in 1948).

185. Organization of African Unity, Banjul Charter on Human and Peoples’ Rights art. 2, June 27, 1981, OAU Doc. CAB/LEG.67/3 rev. 5, reprinted in 21 I.L.M. 58 (1982) (entered into force Oct. 21, 1986).

186. American Declaration on the Rights of Indigenous Peoples, draft approved by the Inter-American Commission on Human Rights, Feb. 26, 1997, O.A.S. Doc. OEZ/SER/L/V/II.90.

187. Native American Languages Act, 25 U.S.C. § 2901 (2006).

cultures and languages,”¹⁸⁸ and that, “the traditional languages of Native Americans are an integral part of their cultures and identities and form the basic medium for the transmission, and thus survival, of Native American cultures, literatures, histories, religions, political institutions, and values.”¹⁸⁹ The Act emphasizes protective measures for the promotion and respect of Native languages within U.S. educational institutions.¹⁹⁰ It further ensures that “[t]he right of Native Americans to express themselves through the use of Native American languages shall not be restricted in any public proceeding, including publicly supported education programs.”¹⁹¹ In addition, the Act mandates the evaluation of existing procedures to determine whether they comply and promote its goals, and includes a reporting requirement.¹⁹²

The Inter-American Court of Human Rights has also addressed the issue of language requirements in an Advisory Opinion to Costa Rica’s government.¹⁹³ The Government of Costa Rica applied to the Inter-American Court seeking an advisory opinion to determine compatibility of its proposed draft Constitution with the American Convention.¹⁹⁴ The draft constitution required, *inter alia*, competency in the Spanish language and passage of an examination for proof thereof, in order to gain naturalized citizenship.¹⁹⁵ The court held that the provision was in compliance with the American Convention, but it cautioned that, “there exists the risk that these requirements will become the vehicle for subjective and arbitrary judgments as well as instruments for the effectuation of discriminatory policies which, although not directly apparent on the face of the law, could well be the consequence of its application.”¹⁹⁶

C. Other Sources of International Law

While it has been demonstrated that a variety of approaches exist, in integrating human rights and language policy,¹⁹⁷ “[s]tates have manifested their assent to a requirement of affirmative action with particular

188. *Id.* at 102(1).

189. *Id.* at 102(3).

190. *Id.* at 103.

191. *Id.* at 104.

192. *Id.* at 106.

193. *See* Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/84, 1984 Inter-Am. Ct. H.R. (ser. A) No.4 (1984).

194. *Id.*

195. *Id.* para. 7.

196. *Id.* para. 63.

197. *See* JAVAID REHMAN, THE WEAKNESSES IN THE INTERNATIONAL PROTECTION OF MINORITY RIGHTS 188–89 (2000).

regard to language”¹⁹⁸ Some further relevant sources of international law worth mentioning include provisions in the U.N. Draft Declaration on the Rights of Indigenous Peoples,¹⁹⁹ the International Labour Organisation’s Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries,²⁰⁰ the U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,²⁰¹ and the 1960 UNESCO Convention Against Discrimination in Education.²⁰² The fact that so many treaties exist and are being created, which include provisions for minorities and minority languages, speaks to the recognized importance of these issues.

In addition, language policy has been addressed by international courts other than the aforementioned regional courts. For example, from as early as 1935, the protection of linguistic minorities has been upheld by the Permanent Court of International Justice.²⁰³ The court interpreted a provision in the Albanian Declaration that read, “Albanian nationals who belong to racial, linguistic or religious minorities, will enjoy the same treatment and security in law and in fact as other Albanian nationals” as giving “Albanian nationals belonging to racial, linguistic or religious minorities the right to maintain, manage and control at their own expense or to establish in the future charitable, religious and social institutions, schools and other educational establishments, with the right

198. S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 139 (2d ed., Oxford Univ. Press, Inc. 2004) (1996) (citing *inter alia* 1989 Statement by the Government of Brazil to the U.N. Working Group on Indigenous Populations under Item 5, at 2); 1991 Statement of the Government of Columbia to the U.N. Working Group on Indigenous Populations; *Information Submitted to the Working Group by the Government of Finland*, U.N. Doc. E/CN.4/Sub.2/AC.4/1991/1, at 3 (1991); statements of Columbia, Egypt, Finland, Mexico, New Zealand, Norway, Sweden, the United States, and Australia in Partial Revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), Report 4(2A), International Labour Conference, 76th Sess., at 29 (1989).

199. U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm’n on Prevention of Discrimination & Prot. Of Minorities, Working Group on Minorities, *Technical Review of the United Nations Draft Declaration on the Rights of Indigenous Peoples*, U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994).

200. Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169), 72 ILO Official Bull. 59 (entered into force Sept. 5, 1991).

201. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, G.A. Res. 47/135, Annex, U.N. Doc. A/RES/47/135/ Annex (Dec. 18, 1992).

202. Convention Against Discrimination in Education, Dec. 14, 1960, 429 U.N.T.S. 93 (entered into force 1962).

203. Minority Schools in Albania (Advisory Opinion), 1935 P.C.I.J. (ser. A/B) No. 62, at 22 (Apr. 6).

to use their own language”²⁰⁴ Interestingly, Slobodan Milosevic, in representing himself before the International Criminal Tribunal for the Former Yugoslavia (ICTY), referenced Croatian language laws on Cyrillic script as part of his defense, proclaiming Croat persecution of Serbs through its use.²⁰⁵ Unfortunately, due to Mr. Milosevic’s death, no judgment will be entered in this case.²⁰⁶

These sources, both the binding treaties as well as the comparative informative examples, demonstrate the international legal framework under which the international community can, and hopefully will, work to help shift China’s language policy in a more positive direction.

IV. CHINA’S LANGUAGE POLICY AS A VIOLATION OF HUMAN RIGHTS

The discussion of barbarians, terrorists, and separatists set the stage for this paper. The power of these words alone speaks to the significance language plays in our perception of reality. “The issue of language is fundamental because homo sapiens are by definition, ‘language animals.’”²⁰⁷ China’s policy in the XUAR demonstrates the nexus between international law and language policy, and furthermore, emphasizes the variety of ways in which language policy may infringe upon human and cultural rights, such as (1) economic rights; (2) the freedom of expression; (3) a right to equality and non-discrimination; and (4) cultural rights, broadly, as well as the right of a culture to preserve its language specifically.

A. *Economic Rights*

The discussion of the ICESCR—specifically its emphasis on rights guaranteed irrespective of race and language—as well as the warnings by human rights bodies and institutions, such as the warning of the Inter-American Court to Costa Rica, demonstrate a general international awareness of the affects language policy may have on indigenous and other minority populations. While China has been commended for improving economic rights in minority regions, international committees have questioned whether this has extended to the minorities themselves. Furthermore, these committees have emphasized that gains in one area should not be at the expense of protections in another, as is occurring in

204. *Id.* at 18–22.

205. Prosecutor v. Milosovic, Case No. IT-02-54-T, Public Version of the Confidential Decision on the Prosecution’s Motion to Grant Specific Protection Pursuant to Rule 70 (July 25, 2002); testimony of Milosevic, T. 10297-98 (Sept. 27, 2002), available at http://www.icty.org/x/cases/slobodan_milosevic/trans/en/020927ED.htm.

206. *Obituary: Slobodan Milosevic*, THE ECONOMIST, Mar. 18, 2006, at 83.

207. DE VARENNES, *supra* note 45, at 1.

the XUAR. China's language policy is infringing on Uyghur's economic rights and successes by creating a situation in which the *lingua franca* of a region as large as one-sixth of China's landmass is not a recognized means of business or education. This thereby gives the Han migrants a distinct economic advantage by preventing mono-lingual Uyghurs from market access and full educational opportunities, while allowing Han Chinese to flourish at their expense. Uyghurs cannot expect economic equality if they can no longer receive a university education, much less an advanced business degree or legal education, without completing it in a foreign language. Also, as older generations of Uyghurs who were not required to learn Mandarin are now becoming illiterate in their own homeland, they are being stripped of opportunity to advance. At the same time, the distant Beijing-based government is reaping the rewards of their land by pumping the oil and dissecting the countryside to remove valuable minerals.²⁰⁸ While the government may have legitimate reasons in encouraging the spread of a unifying language, it is removing the opportunity for Uyghurs to use theirs, and is thus, violating Uyghurs' economic rights.

B. The Freedom of Expression

China's language policy also infringes on the inherent right to freedom of expression. The relation of language policy to freedom of expression has been recognized since at least the middle of last century.²⁰⁹ In litigation under the ICCPR,²¹⁰ European Convention, and creation of the discussed treaties,²¹¹ the greater international community agrees that the right to express extends to the manner and mode of expression, including a linguistic choice. Yet, China's language policy impedes even the most basic forms of freedom of expression, and despite its treaty obligations and warnings by the Working Group on Arbitrary Detention, the Uyghur voice is slowly being silenced.

An example of China's infringement on Uyghur expression is what could be termed the "Uyghur author's dilemma." Suppose you were a Uyghur author. Not only would China's policy possibly frighten you out of attempting to publish a book, but even if it did not, there still

208. See Concepcion, *supra* note 5, at 19.

209. See ICCPR, *supra* note 115, art. 27.

210. See, e.g., Ballantyne, *supra* note 141.

211. DE VARENNES, *supra* note 45, at 150.

would be little incentive to produce anything new. First, you may be risking long term imprisonment, as with the case of Mr. Tunyaz. If not imprisoned, you would still face the likely possibility that your work will be banned and the fruits of your labor destroyed, even if the government were to pre-approve or even sponsor your project. Moreover, there would be virtually no audience for your work. If even classical Uyghur literature must be filtered through a Mandarin lens in XUAR universities, there is little doubt that the fate of your newly written work would be the same. If you were a movie producer you would confront similar dilemmas, including the outlandish requirement that your actors must first recite movie lines in Mandarin, and later dub them back into their native tongue. China's language policy both stifles and marginalizes the Uyghur. Those who seek to be heard are forced to translate their thoughts, dub their words, and disguise their voice.

China does not appear to be improving its protections of the Uyghur right to freedom of expression. In fact, evidence points to the contrary. The international community should work to discover a way to encourage China to progress towards ratifying the ICCPR, allowing for constitutional litigation in its national courts, and releasing its literary prisoners.

C. Equality and Non-Discrimination

As evidenced in Part IV, the international community has also emphasized and reemphasized that the need for rights to be protected must be done without distinction as to language and race as repeated in documents such as the U.N. Charter, ICESCR, CERD, and even China's own constitution. The particular vulnerability of both indigenous and minority populations has led to the recognition of a duty to uncover discriminatory practices and demand change as seen in the creation of treaties and acts with that specific focus.

The totality of China's language policy, however, represents a transgression of its duty to promote equality and non-discrimination that would contradict regional findings in cases such as *The Belgian Linguistics* case²¹² or warnings by the Inter-American Court²¹³ as well as its binding obligations under the U.N. Charter,²¹⁴ ICESCR,²¹⁵ and CERD.²¹⁶ China's language policy creates specific distinctions based upon race and language

212. Belgian Linguistics Case, *supra* note 166.

213. Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, *supra* note 193.

214. U.N. Charter, *supra* note 120.

215. ICESCR, *supra* note 39.

216. CERD, *supra* note 116.

and perpetuates the stereotype that Uyghurs represent an uncivilized, barbaric group.²¹⁷ Policy actions, like the classification of Uyghur as a second-rate language, the recent restriction of Uyghur to the transitional phase of learning, and the elimination of university level Uyghur instruction promote the image that Mandarin, and therefore the Han majority, is somehow superior in contrast with CERD obligations. The negative effect of the policy on the Han perception of Uyghurs as well as Uyghur self-perception is compounded with the realization of the economic consequences discussed above, particularly those stemming from inequality in education and requirements that Mandarin be used as the language of business. Furthermore, there seems to be something inherently degrading in forcing Uyghurs to produce movies in accented-Mandarin, with the dubbed version only locally available, or the recitation of an ancient Uyghur poem forever removed of its original harmonies and rhythm. Sadly, Uyghurs have been forced to acquiesce to the situation with many parents now choosing for their children to skip even the trivial Uyghur education they are permitted. The totality of China's policy thus perpetuates discrimination against Uyghurs and needs to be addressed.

The reinstatement of Uyghur at Xinjiang University, the teaching of Uyghur as a second language in other regions of China similar to the U.S. policy stated in the Native American Languages Act,²¹⁸ and the revitalization of Uyghur literature would counteract ancient stereotypes and enrich China as a whole. Not only are China's fears that an empowered Uyghur population is a threat to national security probably unfounded, but more importantly, the disenfranchising and discriminatory policies are likely to cause problems such as separatism, violence, poverty, and drug abuse. Regardless of China's discomfort, Uyghur's right to equality and non-discrimination deserves protection.

D. Cultural Rights and Language Preservation

Beyond one's individual freedom of expression and right to dignity, a collective people may have a right to their culture and their past, for, if they do not, how would cultures be defined—by genetic composition alone? References in international agreements such as the ICESCR,²¹⁹

217. See DWYER, *supra* note 3.

218. Native American Languages Act, *supra* note 187.

219. ICESCR, *supra* note 39.

CERD,²²⁰ and the U.N. Charter²²¹ along with Committee statements and other regional sources demonstrate that the international community seeks to protect cultures, in general, from erosion. Indigenous cultures are seen to be in special need of protection, as evidenced in language such as that in the Native American Language Act.²²² As an indigenous and minority population, Uyghurs thus deserve special protections for the preservation of their culture. The obligations in the treaties assert that their protections are owed, not only by China's government, but by the international community as well.

While these duties are owed as to all aspects of Uyghur culture, protection of the Uyghur language is especially necessary as a language's effects on culture are particularly potent. If not to protect Uyghurs' rights for their sake, it may be argued that all of humanity has a stake in the preservation of a language. Much the way communities seek to preserve buildings, artifacts, and paintings, communities may only be able to truly preserve literature by preserving the ability to read and interpret it. Artists and the creatively inclined may argue that beyond a mere tool for the interpretation of literature, a language in itself is something worth preserving, and the extinction of a language—of a rhythm and cadence never to be heard again—may be as abominable as the death of the last passenger pigeon or final eradication of a species of flower or tree. Regardless of the motivation, however, it is clear that specific protections for the preservation and promotion of Uyghur are necessary.

The increasingly forced translation of Uyghur works is pushing Uyghur into the dead language category of those such as Latin or Ancient Greek. Children do not have the opportunity to develop their Uyghur language skills, and will, thus, not be able to produce new works for the coming generations. They are also increasingly unable to communicate with their elders, understand their traditional songs, or read their ancient texts. This problem has been further exacerbated with every mandated orthographic script change. Unless one develops knowledge of the Cyrillic, Latin, and Arabic alphabet, in addition to the mandatory level of Mandarin competency, one would be unable to read at least a portion of the Uyghur texts produced over the last century alone. The light of the Uyghur voice is being extinguished by China's language policy, and while there may not yet be a legal protection against philocide, China's policy does constitute a clear violation of established human rights norms. The international community needs to

220. CERD, *supra* note 116.

221. U.N. Charter, *supra* note 120.

222. *See* Native American Languages Act, *supra* note 187.

merge and find a way to encourage China to change its policy or if that is not effective, politically intervene through sanctions or other effective mechanisms.

V. CONCLUSION

International standards and norms have reached a point where they now recognize the potential human rights violations that language policies, even those intended to benefit the greater good, may cause. China's language policy in the XUAR is representative of such a policy. Inherent in the treaties that demonstrate the international community's recognition of the inter-play between human rights and language policy, is a duty to act, regardless of economic issues and security concerns. This obligation must be addressed. The ancient fabric of the Silk Road is dissolving, and unless either China or the international community intervenes, the fibers of this desert culture will be swept away with the sands of time.

