COUNTER-TERROISM AND HUMAN RIGHTS:
THE IMPACT OF THE SHANGHAI COOPERATION ORGANIZATION

A Human Rights in China Whitepaper
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### Abbreviations

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<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
</tr>
<tr>
<td>CICA</td>
<td>Conference on Interaction and Confidence-Building Measures in Asia</td>
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<tr>
<td>CIS</td>
<td>Commonwealth of Independent States</td>
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<tr>
<td>CSTO</td>
<td>Collective Security Treaty Organization</td>
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<td>CTC</td>
<td>Security Council Counter-Terrorism Committee (UN)</td>
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<td>CTED</td>
<td>Counter-Terrorism Committee Executive Directorate (UN)</td>
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<td>CTITF</td>
<td>Counter-Terrorism Implementation Task Force (UN)</td>
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<tr>
<td>EC</td>
<td>European Commission</td>
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<tr>
<td>ESCAP</td>
<td>Economic and Social Commission for Asia and the Pacific</td>
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<td>EurAsEC</td>
<td>Eurasian Economic Community</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<tr>
<td>MPS</td>
<td>Ministry of Public Security (PRC)</td>
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<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
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<tr>
<td>OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
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<tr>
<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
</tr>
<tr>
<td>PAP</td>
<td>People’s Armed Police (PRC)</td>
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<tr>
<td>PLA</td>
<td>People’s Liberation Army (PRC)</td>
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<tr>
<td>PRC</td>
<td>People’s Republic of China</td>
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<td>RATS</td>
<td>Regional Anti-Terrorist Structure of the Shanghai Cooperation Organization</td>
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<tr>
<td>SCO</td>
<td>Shanghai Cooperation Organization</td>
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<tr>
<td>TAR</td>
<td>Tibet Autonomous Region</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNRCCA</td>
<td>United Nations Regional Centre for Preventive Diplomacy for Central Asia</td>
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<tr>
<td>XPCC</td>
<td>Xinjiang Production and Construction Corps</td>
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<tr>
<td>XUAR</td>
<td>Xinjiang Uyghur Autonomous Region</td>
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Executive Summary

Throughout the world, terrorism continues to pose major threats to peace, security, and stability. Since September 11, 2001, intensified counter-terrorism debates and responses, including national, multilateral, and regional approaches, have been marked by trends posing complex challenges to the protection of international human rights and fundamental freedoms. The current normative international framework and consensus clearly recognize that respect for human rights is not only the legal and moral obligation of states, but an essential pillar in the promotion of sustainable and effective counter-terrorism approaches. Yet, human rights violations related to and resulting from counter-terrorism measures continue; at the same time, there is push-back in the international community against those measures that violate human rights, such as extraordinary rendition, secret detentions, and torture and other inhumane treatment and abuses prohibited by *jus cogens* norms.

Within this international counter-terrorism framework, the role of regional organizations in the promotion of international peace and security is accorded special recognition and legitimacy, in light of these organizations’ presumed local experience and expertise. This whitepaper examines one such regional organization in operation since 2001: the Shanghai Cooperation Organization (SCO), comprising the People’s Republic of China (PRC or “China”), the Russian Federation (“Russia”), Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan, states with a total population of approximately 1.5 billion. As a regional intergovernmental organization, the SCO is intended to enhance mutual security and cooperation between its member states, and takes as its core principles the respect of sovereignty, non-interference in internal affairs, and territorial integrity. While the SCO facilitates multilateral cooperation among its members in a variety of fields, including the economy, cultural exchange, and health initiatives, this whitepaper focuses on the SCO framework for security and counter-terrorism measures and the key role of China in that framework; identifies the human rights concerns raised by SCO structure, policies, and practices; and analyzes the SCO’s impact on international human rights norms and standards and on the international counter-terrorism framework.

As a regional organization holding United Nations (UN) observer status, and with two permanent members on the UN Security Council – the leading UN body tasked with an international peace and security mandate – the SCO plays a critical role in shaping ongoing international counter-terrorism policy debates and developing practices and norms. The impact of the SCO extends well beyond the territories of its member states, through its engagement with India, Iran, Mongolia, and Pakistan (SCO observer status
states), Belarus and Sri Lanka (SCO dialogue partners), and through an expanding bilateral relationship with the UN, including joint cooperation in the fight against terrorism. Reflecting assumptions that regional and subregional organizations are better positioned to understand the root causes of many regional conflicts, however, and the belief that “[r]egional problems demand regional solutions,” the policies and practices of the SCO have been given an uncritical free pass by key UN bodies and officials and in relevant international debates. Indeed, SCO-UN cooperation has expanded rapidly in recent years without critical attention to the human rights issues the SCO presents.

In the span of a decade, the SCO has also emerged on the international stage as an alternative mechanism for consensus-building in Eurasia. References to the SCO in the media and by governments range from assessments of whether the organization constitutes a geo-political “counter-weight” to the North Atlantic Treaty Organization (NATO) and whether it will constrain U.S. involvement in Central Asia, to whether it offers a new world order for the future, as the organization already includes a quarter of the world’s population and its membership is likely to increase. Yet, this geo-political debate overlooks the enormous impact of the SCO on its core constituency – the SCO member states’ own citizens – and on the international human rights system.

This whitepaper analyzes aspects of the SCO that present fundamental challenges to the international community’s efforts to ensure protection of human rights in counter-terrorism approaches, including within the UN Global Counter-Terrorism Strategy. These problematic SCO policies and practices include:

- **An overbroad scope of targeted behavior** to which member state “counter-terrorism” obligations apply, based on the “Three Evils” doctrine advanced by the Chinese government. Each of the Three Evils – terrorism, separatism, and extremism – are of equal weight and criminality in the SCO framework. Reliance on the Three Evils doctrine is highly problematic in light of the Chinese government’s record of characterizing the legitimate exercise of religious, ethnic, cultural, and other rights as separatism or extremism, particularly in the Tibet Autonomous Region and the Xinjiang Uyghur Autonomous Region (XUAR).

- **An overbroad definition of “terrorism”** that relies heavily on ideology, rather than fully incorporating the internationally-accepted components of terrorism relating to intention, purpose, and offensive act. This SCO definition, along with the Three Evils doctrine, raises the issue of compliance with the principle of legality. Further human

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rights concerns are presented by the uncritical acceptance and citation of this broad formulation by key UN bodies and officials, including the UN Secretary-General, and the potential of such formulation to undermine the Global Counter-Terrorism Strategy, in particular the “fourth pillar” of that strategy – respect for human rights and the rule of law as the fundamental basis for the fight against terrorism.

- **Intelligence practices that compromise international due process and non-discrimination guarantees and the right to privacy**, including cooperative surveillance, a shared database, and blacklists, all of which are coordinated through the SCO’s Regional Anti-Terrorist Structure (RATS) and lack transparency, meaningful safeguards, and accountability mechanisms.

- **Guaranteed extraditions or “returns” of wanted individuals among member states** that in many cases contravene the obligation of non-refoulement, a principle of international law; and outright denials of asylum without due process protections.

- **Military and law enforcement cooperation**, including a trend of expanding militarization of the region, that is designed to send a chilling message to targeted groups – member states’ “problem” populations – and reinforce domestic control through the threat of force.

In spite of these serious human rights concerns, the international appeal of the SCO is largely unquestioned. Such appeal – which is currently generating interest in full membership by influential states such as India, Iran, and Pakistan – is most likely due to the SCO’s “come as you are” approach of non-interference in internal affairs, its prioritization of member state stability regardless of the often heavy-handed tactics of member regimes, and its unparalleled capacity to marshal resources to apply to some of the world’s toughest hot spots (such as Afghanistan) in the face of the global economic crisis. Governments and international organizations have turned to the SCO for assistance in addressing such issues as cooperation on energy, the financial crisis, military bases and dialogue, and control of the movement of drugs, weapons, and terrorists within Afghanistan and Central Asian states, without rigorously assessing the long-term impact of this engagement, or challenging the SCO to address its own and its member states’ human rights shortcomings.

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SCO member states for their part have quite deliberately used this opportunity to advance their respective agendas on the international stage, under cover of the regional framework. Doing so has allowed them to deflect critical scrutiny of the serious human rights problems identified by international human rights monitoring bodies and thus avoid the need to account for them. These problems include crackdowns and abuses related to individual exercise of fundamental rights and freedoms, and systemic issues such as torture, inhumane prison conditions, extra-legal detention, corruption, lack of an independent judiciary and of effective remedies, discrimination against and targeting of ethnic and other vulnerable groups, and trafficking of and violence against women and children.

This whitepaper argues that the international community, and the UN in particular as it deepens and expands its engagement with the SCO, must urgently address the human rights risks posed by each SCO member state and by the collective SCO framework, policies, and practices. The SCO approach to counter-terrorism, modeled on China’s Three Evils doctrine, and highlighting principles of territorial integrity, non-interference in internal affairs, and social stability, contributes to supporting repressive regimes at the expense of national, regional, and global human rights. The ongoing failure to demand accountability from regional frameworks such as the SCO also undermines the effectiveness and integrity of the international system in countering terrorism and advancing rule of law, peace, and security.

With a view towards contributing constructively to promoting greater effectiveness and accountability of regional and international frameworks, this whitepaper offers a number of specific and concrete policy and practice recommendations directed to UN bodies, governments, civil society actors, and the SCO and its member states. To advance greater transparency of the SCO’s structure, policies, and practices, this whitepaper also provides an extensive compilation of core documents and resources in the appendices. Human Rights in China hopes that this compilation of key SCO normative documents, publicly-available information on the activities of the organization, and analysis of these materials from an international human rights law perspective, will serve as a resource for generating real accountability within the SCO, and promoting a more constructive engagement between the SCO and the international community that contributes to advancing fundamental rights and freedoms in the region and in the world.
Recommendations

A diverse range of international, national, and multilateral actors have critical roles to play in addressing the impact of regional organizations such as the SCO on the international counter-terrorism framework, and in promoting a human rights pillar as the key to effective and sustainable approaches. To contribute to the international progress underway towards developing a more coherent, effective, and sustainable approach to counter-terrorism and promoting the key pillar of human rights, Human Rights in China respectfully makes the following recommendations:

To UN bodies, including the General Assembly, the Security Council, and human rights treaty bodies, relevant procedures, and other mechanisms:

➢ The Security Council and its subsidiary counter-terrorism bodies should encourage and review the progress of regional counter-terrorism frameworks such as the SCO in implementing the structural reforms and protections for human rights that UN counter-terrorism bodies have themselves incorporated. Such protections include integration of independent oversight mechanisms and human rights offices, and safeguards for terrorist listing, including regular review for accuracy of terrorist lists.

➢ Reporting to the Security Council and counter-terrorism bodies as required by Security Council Resolution 1373 should be augmented to include:

- updates concerning SCO member states’ implementation of the recommendations made by UN human rights treaty bodies (including the Committee against Torture, Committee on the Elimination of Racial Discrimination, Committee on Economic, Social and Cultural Rights, and the Human Rights Committee), and include responses to concerns and inquiries made by human rights mechanisms, including the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (the “Special Rapporteur on counter-terrorism”); updates should also include information on progress made on the Human Rights Council Universal Periodic Review recommendations accepted by the reporting state; and

- documentation of efforts to promote compliance with the best practices advanced by the Special Rapporteur on counter-terrorism, particularly those to enhance protection of privacy rights, including: safeguards for ensuring the
accuracy of data collected; notice to individuals about data collected and opportunity for review; and appropriate limits on data-mining processes.

- UN bodies and officials, when citing the SCO’s **Three Evils formulation** in debates, should pay greater critical attention to the formulation’s potential for creating policy conflicts and negative impact on the international counter-terrorism framework.

- Development of **expanded modalities of UN-SCO cooperation** should ensure that any cooperation, including technical assistance and capacity building, will contribute to the promotion and protection of international human rights. **Any modality should include human rights benchmarks, indicators, and transparent oversight mechanisms**, as well as **expert consultations** on the intersection of technology, human rights, and counter-terrorism.

- UN human rights monitoring bodies and mechanisms should explore cross-mandate exchange and debates to encourage China and the other individual SCO member states to implement the relevant **recommendations of treaty bodies**, including recommendations regarding detention, due process (including the right to legal counsel), torture, and other abuses. UN bodies should closely monitor each individual member state’s observance of international human rights obligations, as the progress of the regional framework as a whole is unlikely to exceed the sum of its parts.

- UN human rights monitoring bodies and mechanisms, and the UN High Commissioner for Refugees, should examine the links between regional cooperation and trends of extraditions, forced returns, and disappearances, and pursue an investigation into and follow-up on **urgent cases of concern**, including:
  
  - the situation of the individuals of **Uyghur ethnicity** who were returned to China from Cambodia in December 2009;
  
  - **Tibetan cases** submitted to the Committee against Torture in 2008.

- The Special Rapporteur on counter-terrorism should initiate dialogue with the SCO and request a mission to the **SCO Secretariat headquarters in Beijing and RATS headquarters in Tashkent**, Uzbekistan. Such a mission should include meetings with SCO Secretary-General Muratbek Imanaliev and RATS Director Dzhenisbek Dzhumanbekov. While the current mandate holder’s term will expire in July 2011,
there should be a transition foundation for such a mission by the next mandate holder. The communications to date between the Special Rapporteur on counter-terrorism and the SCO member states also provide a good foundation for informal outreach and preliminary discussions to inform a possible country mission.

To the SCO and its member states:

- SCO member states should take steps to incorporate into the SCO framework the ten areas of best practices in countering terrorism recommended by the Special Rapporteur on counter-terrorism.\(^3\) As a matter of priority, such steps should include a narrowing of the Three Evils-based normative structure, and reformulation of the SCO’s definition of terrorism.

- SCO member states should take steps to incorporate into the SCO framework and RATS operations the best practices for intelligence cooperation recommended by the Special Rapporteur on counter-terrorism,\(^4\) including the following reforms:
  - Intelligence sharing within RATS should have clear basis in national law, which should indicate the parameters for intelligence exchange, and such sharing should be further enumerated by written agreements between the parties on use of data and human rights compliance. (Practice 31.)
  - National law should outline the process for authorization of intelligence sharing, with executive approval of sharing with foreign entities. (Practice 32.)
  - Any intelligence sharing should be necessary, and preceded by assessment of the counterpart’s human rights and data protection record, and the legal safeguards/controls to which it is subject, as “intelligence received from a foreign entity may have been obtained in violation of international human rights law.” (Practice 33.)

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- **Assessment of the impact on individuals** of the sharing of data should also be undertaken – *sharing should be explicitly prohibited when it could lead to violation of the individual's rights*. All outgoing data should be screened for accuracy and relevance to avoid dissemination of flawed information, and exchanged pursuant to written agreement. (Practice 33.)

- The SCO should **incorporate safeguards regarding extradition practices and measures to ensure due process**, as well as mechanisms to increase the accountability and transparency of SCO cooperation, including clear legal guidelines regarding the process for review of asylum-seeker applications and member state extradition requests.

- The SCO should adopt transparent **human rights principles**, and conduct regular, independent assessments of the implementation by member states and by the SCO itself of such principles. The principles should reflect the full range of individual member states’ international human rights obligations and account for the specific areas in which SCO member states cooperate. These human rights assessments should be included in the SCO member states’ required reporting to UN bodies, including the Security Council.

- SCO member states should adopt and report on concrete measures to address the **root causes of domestic social conflict and instability**, in order to:
  - promote better **understanding, respect, and tolerance** among ethnic groups;
  - address serious systemic **inequalities**, including access to healthcare, education, employment, and housing; and
  - promote **respect for and protection of fundamental rights and freedoms** – including freedom of expression, access to information, religious and cultural expression, and respect for different languages, cultures, and history – that enable effective identification and analysis of the problems and development of concrete solutions.

- The SCO should **promote compliance by individual SCO member states with their human rights obligations** concerning cases and issues documented and reported by treaty bodies and special procedures, as well as those raised in the course of reviews of reports by SCO member states to the Security Council.
Methodology

The research on which this whitepaper is based was conducted by Human Rights in China from 2008 to 2011. Primary sources include: normative documents and public statements of the SCO, including materials of the SCO’s Regional Anti-Terrorist Structure, in English, Chinese, or Russian; Chinese legal materials and official statements; UN Security Council materials, including reporting of the SCO member states to the Security Council pursuant to its counter-terrorism resolutions, and materials issued by the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate; UN General Assembly materials, including resolutions and deliberations; reporting, conclusions, and recommendations associated with international treaty body reviews of SCO member states; and reports of UN Special Rapporteurs.

This whitepaper also draws upon interviews of government officials, NGOs, and asylum seekers conducted by staff of Human Rights in China and the International Federation for Human Rights during a June 2009 fact-finding mission to Kazakhstan and Kyrgyzstan to investigate the situation of asylum seekers and migrants; English, Chinese, and Russian media reports; and research and policy papers related to or regarding the SCO. (See Appendix F for a select bibliography of references.)

The analytical framework of this whitepaper takes international law, including human rights, humanitarian, and refugee law, as the normative foundation of its assessment of the SCO and its counter-terrorism efforts. This echoes and conforms to the UN Global Counter-Terrorism Strategy, and, more broadly, international recognition of the primacy of that strategy’s human rights pillar for peace, security, and sustainable development. However, a number of methodological obstacles limit analysis of the SCO’s impact on human rights. Despite the SCO’s assertions of transparency, the SCO and its counter-terrorism operations unit RATS do not publicly release detailed information concerning member state cooperation, e.g., statistics regarding extraditions between member states, parameters of the shared RATS database, etc. The information that the SCO does make public is in many instances available only in Russian – for example, the RATS website appears to be most complete and current in its Russian form, with the last entry in the English version dated July 27, 2005.5


It is important to note as well that media reports coming out of SCO member states in which the media is largely controlled by the government, such as China, often do not provide a full and accurate picture of relevant details. China’s state secrets system presents an additional hurdle, as a great deal of information pertaining to, for example, ethnic minorities, is classified as top secret under the state secrets regime.

Within these existing constraints, Human Rights in China presents a detailed introduction to the SCO and an analysis of the human rights impacts of its structure, policies, and practices in the region and on the UN Global Counter-Terrorism Strategy and framework, and specific recommendations directed at a range of actors. In light of the limitations outlined, Human Rights in China has also flagged a number of areas about which little is known, including SCO practices related to extraditions, blacklisting, and intelligence cooperation, for further consideration and investigation.