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

A Human Rights in China Whitepaper

March 2011
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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>
</tr>
<tr>
<td>CICA</td>
<td>Conference on Interaction and Confidence-Building Measures in Asia</td>
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<tr>
<td>CSTO</td>
<td>Collective Security Treaty Organization</td>
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<tr>
<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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<tr>
<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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<tr>
<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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<tr>
<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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<tr>
<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>
</tr>
<tr>
<td>XPCC</td>
<td>Xinjiang Production and Construction Corps</td>
</tr>
<tr>
<td>XUAR</td>
<td>Xinjiang Uyghur Autonomous Region</td>
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Human Rights in China (HRIC) thanks the International Federation for Human Rights (FIDH) for its invaluable support, strategy consultations, and Russian translation assistance. HRIC also thanks the FIDH June 2009 Kazakhstan/Kyrgyzstan mission team for the field insights HRIC gained through participation in that mission. Special thanks to Antoine Madelin, Shiwei Ye, and other reviewers who wish to remain anonymous. Deep thanks to Professor Jerome Cohen for his inspiration and his support for this report. Warm thanks also to HRIC’s dedicated team of interns in the New York and Hong Kong offices (2008-2011).
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.

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. 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, 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.)


- **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, 2005.6

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.
I. Introduction: Counter-Terrorism, Human Rights, and the SCO

Over the past decades, the international community has identified global terrorism as a major threat 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. In the efforts to protect the right to life and security of the person against terrorist acts, a broad range of fundamental rights have come under increasing threat, in the Eurasian region as well as in Western nations such as the United States. The climate of fear created by the fight against terrorism has facilitated the undermining of universal human rights principles, and national security has often been invoked as justification for questionable government action affecting fundamental rights and freedoms recognized under both domestic and international law. A major challenge to counter-terrorism efforts on national, multilateral, and regional levels is how to ensure that these concerns are fully addressed.

Drawing upon Chapter VII of the Charter of the United Nations (“UN Charter”) concerning action with respect to threats to peace, breaches of peace, and acts of aggression, as well as UN Charter Article 55 on the obligations of states to ensure stability, peace, and universal respect for human rights and fundamental freedoms, and Article 56 regarding joint and separate action among states to achieve these goals, the UN General Assembly and Security Council have established an international framework for countering terrorism that explicitly and clearly states that all counter-terrorism measures must comply with international law, in particular, human rights, humanitarian, and refugee law.

The UN has highlighted the need for multilateral cooperation in counter-terrorism and taken positive steps to push cooperation forward, including through development of its Global Counter-Terrorism Strategy. Steps have also been taken at the regional level to develop counter-terrorism frameworks tailored to the specific circumstances and goals of nations in the region. One such regional framework, spearheaded by the People’s Republic of China (PRC or “China”), is the Shanghai Cooperation Organization, which is comprised of six member states: China, the Russian Federation (“Russia”), Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan. Reflecting a significant regional manifestation of China’s domestic agenda and counter-terrorism practices, the SCO and regional security cooperation have served as a key conduit for China’s policies – with significant human

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rights implications – to spread throughout the region, as well as to the international community.

However, despite the high profile of the problems posed by terrorism, and notwithstanding over a dozen international conventions related to terrorism, as well as the efforts of UN bodies, human rights mechanisms and procedures, and experts, there is still no universal, comprehensive, and precise definition of “terrorism.” As argued by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (“Special Rapporteur on countering terrorism”), the absence of a clear definition of terrorism impacts the assessment and promotion of proper compliance with international obligations regarding counter-terrorism and human rights protection, poses difficulties for extradition and mutual law enforcement assistance, prompts misunderstandings and misuses of the term.


“terrorism,” and risks unintentionally legitimizing conduct by oppressive regimes conducted under the label of countering terrorism.¹⁰

In the Eurasian region, the SCO has stepped into this gray zone by adopting broad and conceptually unclear definitions of “terrorism,” linked to “separatism” and “extremism,” in a framework with significant potential for abuse. This whitepaper examines the definitions promulgated through the 2001 Shanghai Convention on Countering Terrorism, Separatism, and Extremism (“Shanghai Convention”) and the 2009 Convention on Counter-Terrorism of the Shanghai Cooperation Organization (“SCO Counter-Terrorism Convention”). The analysis takes as its starting point the working formulation of terrorism drawn from Resolution 1566 of the UN Security Council and advanced by the Special Rapporteur on counter-terrorism, with a view towards ensuring that “the term ‘terrorism’ is confined in its use to conduct that is of a genuinely terrorist nature.”¹¹ While not offering a definition of terrorism, this formulation focuses on three cumulative characteristics of terrorist acts – intent, purpose, and a threshold “trigger offense” – that together serve to establish terrorism. (See discussion at Section IV.A infra.)

This whitepaper further evaluates the SCO’s normative framework; the ways in which SCO norms are operationalized, including through counter-terrorism practices, policies, and cooperation among member states; and impacts on three areas of substantive rights: privacy, non-refoulement and protection of asylees, and due process protections.

In addition to examining human rights impacts on citizens of SCO member states, Human Rights in China also analyzes the SCO’s impact on the international human rights framework and approaches to promotion and protection of human rights while countering terrorism, with a focus on China’s role in advancing an “anti-terrorism policy with Chinese characteristics.”¹² While China is only one of six members of the SCO – and the important roles of other member states, particularly Russia, should not be underestimated – China has played a leading role in the formulation of the SCO framework, policies, and practices. The SCO budget also depends heavily on the contributions of its two largest members, China and Russia. As of 2005, the PRC State Council had approved an SCO budget plan allocating responsibility for 24 percent of the

¹¹ Ibid., para. 42.
organization’s annual budget to China. Russia was also allocated 24 percent; while Kazakhstan was allocated 21 percent; Uzbekistan, 15 percent; Kyrgyzstan, 10 percent; and Tajikistan, 6 percent. With its enormous economic, military, and political influence, China has a clear impact on shaping the approach to terrorism by the SCO and its individual member states – an approach that has often failed to adequately ensure that counter-terrorism measures comply with obligations under international law, including international human rights, humanitarian, and refugee law.

Despite the SCO’s formal recognition of its international obligations as a regional organization, and despite the international obligations of individual SCO member states, the SCO counter-terrorism framework has instead largely adopted China’s domestic approach to counter-terrorism and expanded it throughout Central Asia. This approach links the concept of terrorism to the overbroad, politicized notions of separatism and extremism in a collective campaign to crack down on these “Three Evils,” and is used as a vehicle for social and political control over ethnic groups and other vulnerable targets. Such an approach is problematic in light of the Chinese government’s history of restricting the legitimate exercise of religious, ethnic, cultural, and other rights perceived by the Communist Party of China as separatist or extremist threats, particularly in the Tibet Autonomous Region and in the Xinjiang Uyghur Autonomous Region (XUAR). The Chinese government and other SCO member states have thus used “counter-terrorism” measures as a tool to secure domestic “social stability,” often at the expense of human rights.

While the Three Evils approach has marked China’s domestic policy for some time, the SCO has adopted and harmonized this approach throughout Central Asia, in the Asian

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13 See Guowuyuan guanyu hezhun Shanghai hezuozu yusuan bianzhi he zhixing xieding he guanyu xiugai 2003 nian 5 yue 29 ri qianshu de Shanghai hezuo zuzhi yusuan bianzhi he zhixing de yidingshu de pifu [国务院关于核准《上海合作组织预算编制和执行协定》和《关于修改二○○三年五月二十九日签署的〈上海合作组织预算编制和执行协定〉的议定书》的批复] [Response concerning the approval of the “Agreement on Budget Planning and Implementation of Shanghai Cooperation Organization” and the “Protocol for Revising the ‘Agreement on Budget Planning and Implementation of Shanghai Cooperation Organization’ signed on May 29, 2003”], issued by the State Council [国务院], signed July 9, 2005, http://www.gov.cn/xxgk/pub/govpublic/mrlm/200803/t20080328_31930.html.

14 Ibid.

15 To facilitate a critical examination and substantive discussion of the SCO among governments and in international fora, this whitepaper refers to the territories of the autonomous regions of the People’s Republic of China (PRC) using their official designations. Additionally, “East Turkistan” or “East Turkestan,” which may be used to refer to the Xinjiang Uyghur Autonomous Region, and is also used by many Uyghurs to designate their homeland, is employed within this whitepaper when appearing in cited source materials or when necessary to understand political context. Both the PRC Ministry of Public Security, and the United Nations in its Consolidated List (see Section III.B, infra), employ the phrase East Turkistan (or East Turkestan) when referring to alleged terrorist groups, such as the East Turkistan Islamic Movement, or to alleged extremist or separatist movements. Finally, given that there is no standard form of Romanization for the Uyghur language, Human Rights in China uses the spelling “Uyghur.”
region, and more recently through efforts to deepen and expand bilateral cooperation with the UN. This Three Evils approach has also allowed China and the SCO to subsume their efforts into the global war on terror, in which most governments already have a stake, undermining effective scrutiny of national and regional security practices.

The scope of the SCO’s impact in the region and beyond the territories of the member states is expansive and continues to develop. The individual governments of the SCO together oversee a cumulative population of over 1.5 billion people across over 30 million square kilometers of territory. The scale is even more staggering when accounting for the officially recognized SCO observer status of Mongolia, India, Iran, and Pakistan, and greater still considering the dialogue partner status of Sri Lanka and Belarus. Each of these countries – occupying geopolitical “hot spots” – are potential permanent SCO members, with both Iran and Pakistan having overtly lobbied for full membership. Moreover, the so-called SCO-Afghanistan Contact Group, designed to

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16 Observer status states do not have “the right to participate in preparation and signing of documents,” nor can they “participate in formulating decisions of the SCO institutions.” Regulations on Observer Status at the Shanghai Cooperation Organization, April 24, 2004, Art. 8, http://www.sectsco.org/EN/show.asp?id=65. States with observer status at the SCO can attend open meetings of the Council of Ministers of Foreign Affairs of SCO member states as well as conferences of both heads of ministries and heads of departments of SCO member states, participate in discussions relating to issues of their concern so long as they have advance consent of the chairperson of the relevant meeting, and gain access to documents of the SCO institutions mentioned in Article 4 of the Charter of the Shanghai Cooperation Organization. Ibid., Art. 7. (For more information on the SCO implementing bodies, which include the Heads of State Council and the Council of Ministers of Foreign Affairs, see Charter of the Shanghai Cooperation Organization (hereafter, SCO Charter), June 15, 2001, Art. 4, http://www.sectsco.org/EN/show.asp?id=69.) It should also be noted that Article 12 of the Regulations on Observer Status at the Shanghai Cooperation Organization specifies that any state with observer status that “commits actions or makes statements targeted against the Organization, the decisions of the SCO institutions or the principles, set out in the Charter . . . can be stripped of its observer status.” Regulations on Observer Status at the Shanghai Cooperation Organization, supra, Art. 12. Meanwhile, SCO dialogue partners can participate in meetings of heads of ministries and departments, working groups, and scientific and expert meetings, among others, that pertain to “the subject of partnership” or “areas of cooperation.” Regulations on the Status of Dialogue Partner of the Shanghai Cooperation Organization, August 8, 2008, Art. 2.2.1, http://www.sectsco.org/EN/show.asp?id=64. Dialogue partners are also able to, with the consent of the member states, request that particular documents appear on the SCO Secretariat website, the SCO Regional Economic Cooperation website, or the Regional Anti-Terrorist Structure website. Ibid., Art. 2.2.3. In addition, dialogue partners can take part in an advisory vote on designated issues of cooperation. Ibid., Art. 2.3.3.

17 As of March 2011, both Iran and Pakistan were presented as having SCO observer status on the SCO’s official website. SCO, “The Shanghai Cooperation Organization,” http://www.sectsco.org/EN/ (accessed March 10, 2011) (listing each country’s flag next to “observer states”). Iran has sought to join the SCO since 2008. “Iran’s SCO Membership to be Beneficial,” Press TV, November 24, 2010, http://www.presstv.ir/detail/152492.html. At its annual summit in Tashkent on June 11, 2010, however, just two days after the UN approved sanctions against Iran, the SCO announced new procedures stipulating that any country under UN sanctions would be barred from becoming a full member of the SCO. “Shanghai Cooperation Organization opens to India and Pakistan, not Iran,” Asia News, June 12, 2010, http://www.speroforum.com/a/34725/Shanghai-Cooperation-Organization-opens-to-India-and-Pakistan-not-Iran. With respect to Pakistan, the SCO has been reviewing its application for membership since prior to
strengthen the SCO members’ vested interests in the stability of Afghanistan, further expands the SCO’s scope of influence into regions of critical and immediate significance.18

All told, in light of its various dimensions of multilateral interface, the SCO can directly impact the fundamental rights and freedoms of almost a third of the world’s population across three-fifths of the Eurasian continent, which includes some of the most economically, politically, and militarily volatile regions in the world. And while the SCO has itself cited as a guiding principle the promotion of human rights and fundamental freedoms in accordance with international obligations,19 the structure, policies, and practices of the SCO – and the human rights records of its member states – raise serious concerns about compliance with international human rights obligations and the effective implementation of human rights protections.

As documented in relevant UN treaty body reviews and through the UN Human Rights Council’s Universal Periodic Review process, the human rights situations in the SCO member states are plagued by systemic problems, such as corruption, lack of independent courts, serious social inequalities, and discrimination against ethnic and national minorities and women, as well as ongoing abuses, such as secret detentions, torture, attacks on human rights defenders and independent civil society organizations, and restrictions on the media, including the Internet. Instead of addressing these


18 Given the SCO’s focus on the so-called “Three Evils” of terrorism, separatism, and extremism, it is little surprise that much of its attention has centered on Afghanistan, which borders the SCO member states China, Uzbekistan, and Tajikistan, as well as the SCO observer states Iran and Pakistan. As long as religious extremism, terrorism, and drug trafficking in Afghanistan continue to have regional impacts on SCO-affiliated states, the SCO will continue to have a vested interest in Afghanistan’s political and economic stability. The SCO’s engagement of Afghanistan has manifested in many ways, including the November 4, 2005 establishment of the SCO-Afghanistan Contact Group, which consists of SCO representatives and senior Afghan diplomats, and is aimed at supporting mutual political, economic, and security-related cooperation. Protocol on Establishment of the SCO-Afghanistan Contact Group Between the Shanghai Cooperation Organization and the Islamic Republic of Afghanistan, November 4, 2005, http://www.sectsco.org/EN/show.asp?id=70. More recently, the SCO held a Special Conference on Afghanistan in Moscow on March 27, 2009, which focused on mutual efforts to combat the drug trade, transnational terrorism, and organized crime, including the illegal arms trade. SCO, “Declaration of the Special Conference on Afghanistan Convened under the Auspices of the SCO,” March 27, 2009, http://www.sectsco.org/EN/show.asp?id=98; SCO, “Statement by the SCO Member States and the Islamic Republic of Afghanistan on Combating Terrorism, Illicit Drug Trafficking, and Organized Crime,” March 27, 2009, http://www.sectsco.org/EN/show.asp?id=100. Notably, the Special Conference was attended by several non-SCO dignitaries, including UN Secretary-General Ban Ki Moon. Office of the U.N. Secretary-General, “Secretary-General, at Special Conference on Afghanistan, Underscores Importance of Unified Action against Terrorism, Drug Trafficking, Organized Crime,” March 27, 2009, http://www.un.org/News/Press/docs/2009/sgsm12153.doc.htm.

19 See, e.g., SCO Charter, supra n. 16, Art. 1.
problems in an effective and coherent manner, the international community has readily welcomed the SCO as a regional body into various bilateral and multilateral fora, and turned its attention away from the serious human rights problems of each individual SCO member state. At the same time, as a regional body of member states that have faced common human rights scrutiny, the SCO has provided a mechanism for these states to reject international pressure and counter-balance human rights criticisms from the international community. What is at stake now is the credibility and effectiveness of the international counter-terrorism framework and efforts to promote and protect human rights and fundamental freedoms – the foundation of an effective and sustainable approach to fighting terrorism.

The development of a “bilateral relationship” between the SCO and the UN underscores the timeliness and urgency of these issues and their impact on the UN. Citing the SCO’s commitments to the UN Charter and the goals and principles of the UN, the UN has granted the SCO observer status and continues to pursue expanded cooperation, including technical assistance and capacity building. In developing the specific modalities for SCO-UN cooperation, the international community must not contribute to the strengthening of a regional approach that is undermining international human rights, nor should it allow the cloak of a regional organization to conveniently mask serious ongoing human rights problems within each SCO member state.

By presenting this whitepaper, Human Rights in China aims to contribute to advancing greater accountability and transparency of regional frameworks such as the SCO, and to promote compliance by the SCO and its member states with their international human rights obligations. The structure for the remainder of this whitepaper is as follows:

- Part II provides an overview of the SCO’s structure and decision-making bodies, and describes the role of economic cooperation among SCO states and the growing international expansion of SCO influence.
- Part III outlines the international counter-terrorism framework, including key documents and implementation bodies, as a context for Part IV.
- Part IV analyzes the structural challenges within the SCO and specific SCO policies and practices to assess the SCO’s compliance with international human rights law.
- Part V assesses recent developments concerning the SCO’s deepening formal engagement with the UN and outlines key concerns that must be addressed in order to support both SCO accountability on human rights and the sustainable, effective implementation of the UN Global Counter-Terrorism Strategy.
As a resource for further research and policy engagement, an extensive appendices section presents: a compilation of core SCO normative documents; analysis of SCO member state human rights obligations and implementation records; relevant domestic legislation and official statements of the People’s Republic of China; analysis of reported or suspected extraditions and forcible returns of individuals between SCO member states; analysis of military and law enforcement cooperation within the SCO framework; and a select bibliography.

The framework for this whitepaper’s analysis draws upon international human rights standards and frameworks, including guidance provided by resolutions, reports, and other documents issued by the UN General Assembly and Security Council, the Office of the High Commissioner for Human Rights, treaty bodies, and the special procedures of the Human Rights Council, particularly the invaluable conceptual, strategic, and practical contributions of the UN Special Rapporteur on counter-terrorism.

Human Rights in China obtained the information contained in this report regarding the substance and activities of the SCO through publicly available English, Chinese, and Russian sources, and through its participation in a June 2009 fact-finding mission of the International Federation for Human Rights (FIDH) to Kazakhstan and Kyrgyzstan. However, the lack of transparency regarding the SCO’s operations presents ongoing challenges to an effective assessment of its human rights impact.

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20 See FIDH, Kazakhstan/ Kyrgyzstan: Exploitation of Migrant Workers, Protection Denied to Asylum Seekers and Refugees, supra n. 5.
II. Overview of the SCO

The SCO is a regional intergovernmental mechanism intended to enhance mutual security and cooperation between its member states – China, Russia, Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan. Among its stated goals, the SCO’s primary aims involve coordination against the so-called “Three Evils” of terrorism, separatism, and extremism, and the facilitation of regional economic growth. The SCO was established on June 15, 2001, when the members of the now-defunct Shanghai Five – a multilateral forum for resolving border tensions between China, Russia, Kazakhstan, Kyrgyzstan, and Tajikistan – formally included Uzbekistan in their collaborative security efforts.21

One of the first documents adopted by the SCO member states was the 2001 Shanghai Convention, which preceded even the SCO’s organizational charter, and signaled that a paramount priority of the regional framework would be national security and counter-terrorism. The Shanghai Convention is unique in that it obligates member states to take measures against the “Three Evils”: not only “terrorism,” but also “separatism” and “extremism.” The document is particularly significant because, as the SCO members recognized, “For the first time at the international level, [the Shanghai Convention] fixed the definition of separatism and extremism as violent, criminally prosecuted acts.”22

A. SCO structure and decision-making bodies

The SCO is structured in a way that maximizes cooperation between member state representatives responsible for their nation’s key security functions. In accordance with the Charter of the Shanghai Cooperation Organization ("SCO Charter"), the organization’s primary decision-making body is the Heads of State Council, consisting of the presidents of the SCO’s six member states; China’s representative is President Hu Jintao.23 The Heads of State Council meets once a year to adopt resolutions, guidelines on SCO policy, and the issuance of a declaration setting forth the priorities of the SCO for the coming year. These meetings have also resulted in the adoption of various treaties, conventions, and declarations that govern the work of the SCO.

23 Membership of the Heads of State Council includes President Hu Jintao of China, President Nursultan Nazarbayev of Kazakhstan, President Roza Otunbaeva of Kyrgyzstan, President Dmitry Medvedev of the Russian Federation, President Emomali Rahmon of Tajikistan, and President Islam Karimov of Uzbekistan.
Below the Heads of State Council is the **Council of Heads of Government**, which also meets once a year, but is responsible for the more detailed strategy of cooperation and direction within the SCO, as well as budgetary issues. This council is made up of the prime ministers or premiers of the member states; China’s representative is Premier Wen Jiabao. A third council, the **Council of National Coordinators**, coordinates interaction within the SCO framework of the SCO’s various ministries and agencies. Regular meetings to exchange on practices and progress are conducted between specific organs of the member states, including defense ministers, general prosecutors, and law enforcement agencies. Secondary leadership bodies include respective councils of prime ministers, national security coordinators, and ministers of foreign affairs, defense, domestic economy, and culture, as well as high court officials, attorneys general, and law enforcement ministers.

The day-to-day operations of the SCO are handled by the **SCO Secretariat based in Beijing** and the **SCO Regional Anti-Terrorist Structure (RATS) based in Tashkent, Uzbekistan**. The Heads of State Council appoints a Secretary-General to lead the Secretariat, and an Executive Committee Director to lead RATS, for a period of three years. Each of these bodies collaborates with their own “institute of permanent representatives of the SCO member states,” which appears to ensure that the SCO operational bodies closely track the interests of the states themselves.

The structure of the two bodies is revealing. The SCO Secretariat is the more public, executive face of the SCO. Working with the permanent representatives assigned to it, it drafts documents and proposals, plans activities, arranges consultations, provides briefings and organizational and technical support for meetings, prepares information, carries out assessments, serves as a depositary, and handles other administrative matters.  

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25 See SCO, “Secretary-General of the Shanghai Cooperation Organization,” [http://www.sectsco.org/EN/secretary.asp](http://www.sectsco.org/EN/secretary.asp). The preceding Secretary-General was Bolat Nurgaliev of Kazakhstan, who served from January 2007 through December 2009, and presided over a number of security-related developments within the SCO. Ibid. Notably, Nurgaliev moved on to a role with another regional organization, the Organization for Security and Cooperation in Europe (OSCE). He served as Kazakhstan’s Special Representative of the OSCE Chairman-in-Office for Protracted Conflicts during Kazakhstan’s OSCE Chairmanship in 2010. See OSCE, “Provisional list of the incoming Kazakh Chairmanship appointments to the positions of Special and Personal Representatives and chairpersons of the three committees,” January 8, 2010, [http://www.osce.org/cio/41099](http://www.osce.org/cio/41099).
member state security cooperation: “its function is to coordinate the activities of SCO states’ law enforcement structures and special services.”

RATS was established through the Shanghai Convention and the SCO Charter with a vaguely defined mandate to combat acts of terrorism, separatism, and extremism. While RATS currently does not itself deploy special forces, “it is a framework for coordination, information and analytical support for the competent agencies in the SCO member countries with relevant material on combating terrorism, extremism, and separatism.” Along with its institute of permanent representatives, RATS is comprised of two key units: the RATS Council and the RATS Executive Committee.

The RATS Council has the attributes of a powerful unit, instrumental to overall security cooperation of the member states. Notably, the RATS Council is made up of high-ranking officials of the national security apparatuses of the SCO member states. This includes, for Russia, Sergey Smirnov, First Deputy Director of the Federal Security Service (one of the successor agencies to the KGB, focusing on domestic security), and for Kazakhstan, Adil Shayakhmetov, First Vice Chairman of the Kazakh National Security Committee (also a KGB successor institution). Meng Hongwei, China’s Vice Minister of Public Security, is the RATS Council representative for China, and was reportedly appointed to

26 2009 SCO Summit in Yekaterinburg, “Yekaterinburg will host 2009 session of Shanghai Cooperation Organization leaders council,” supra n. 22.
28 This could change in light of the SCO’s 2009 “Agreement on training personnel for anti-terrorist forces of SCO member states,” which has been ratified by some SCO member states. InfoSCO, “Госдума ратифицирует антитеррористическое соглашение в рамках ШОС” (“State Duma ratifies anti-terrorism agreement in the SCO framework”), June 11, 2010, http://infoshos.ru/ru/?idn=6116; Official Site of the President of Russia, “Speech at Meeting of Shanghai Cooperation Organisation Council of Heads of State,” June 11, 2010, http://eng.kremlin.ru/transcripts/419. The language of this agreement, however, is not publicly available.
29 2009 SCO Summit in Yekaterinburg, “Yekaterinburg will host 2009 session of Shanghai Cooperation Organization leaders council,” supra n. 22.
chair the RATS Council in September 2010 for a one-year period. The RATS Council is responsible for recommending a candidate for the position of RATS Executive Committee Director for vote by the Heads of State Council. It also “determine[s] the manner in which the fundamental objectives and functions of RATS . . . shall be carried out,” and makes “resolutions of a mandatory nature on all matters of substance, including financial issues.” The RATS Council appears to report directly to the Heads of State Council.

The RATS Executive Committee, led by RATS Director Dzhenisbek Dzhumanbekov of Kazakhstan, heads the center’s coordination of operations and data exchange among individual member states. The committee is comprised of representatives from the SCO member states and “is divided into 5 sectors: 1) Coordination and operational activities; 2) Information and analytical activities; 3) International legal support; 4) Administration and financial activities; 5) Security and staffing issues.” Its primary activities are “to establish and maintain operation of the SCO RATS data bank; to maintain contacts and..."
exchange of materials on the issues of combating terrorism, extremism, and separatism with other international organizations and states; to assist in the detection of terrorist attacks prepared within the SCO member states; to prepare information and analytical reviews on the issues of combating terrorism, extremism, and separatism both within the SCO member states and on the global scale.”

The RATS Executive Committee reportedly began functioning on January 1, 2004, and the official opening of the RATS office in Tashkent took place on June 17 of the same year. Notably, officers of the RATS Executive Committee are appointed by the Director, with the consent of the RATS Council, “from among the citizens of the Parties, taking into consideration the contributions of the respective Parties to the budget of the SCO . . . .” It is therefore probable that China’s influence weighs heavily, in light of its financial contribution.

Publicly-available details on the actual operations of RATS are limited. (Normative documents concerning RATS operations that have been made public are included in Appendix A.) The body has evolved significantly over the past few years, and while the full extent of its operations is unclear, it appears poised to become a major hub for data exchange and counter-terrorism cooperation. (See Section IV.F infra.) The SCO Charter noted the existence of RATS as a standing body of the SCO, but specifically provided that RATS’s main objectives, functions, constitutive principles, and rules of procedure would be governed by a separate international treaty between the SCO members.

On June 7, 2002, SCO member states entered into an Agreement Between the Member States of the Shanghai Cooperation Organization on the Regional Anti-Terrorist Structure (“2002 RATS Agreement”), which lays out these aspects of RATS. According to this agreement, RATS was “intended to assist in the coordination and collaboration of the Parties’ competent agencies in combating terrorism, separatism, and extremism, as these acts are defined in the [Shanghai] Convention.” The problematic Three Evils approach of the Shanghai Convention is therefore institutionalized within RATS.

As the primary body responsible for implementing counter-terrorism cooperation within the SCO, RATS’s integration of, and compliance with, international human rights norms and standards in its operations are crucial. The limited documentation on the body that

38 Ibid.
41 2002 RATS Agreement, supra n. 35, Art. 11.
42 SCO Charter, supra n. 16, Art. 8.
43 2002 RATS Agreement, supra n. 35, Art. 3.
is publicly available indicates that RATS’s powers of implementation are quite far-reaching, with the potential to impact broadly on human rights. (See Section IV.F infra.) The 2002 RATS Agreement tasks the organization with the following:

1. developing of proposals and recommendations concerning the development of cooperation in combating terrorism, separatism, and extremism for the relevant SCO structures, including at the request of the Parties;
2. assistance to the competent agencies of the Parties at the request of one of the Parties in combating terrorism, separatism, and extremism, including in accordance with the provisions of the [Shanghai] Convention;
3. collection and analysis of information received by RATS from the Parties regarding issues of combating terrorism, separatism, and extremism;
4. formation of the RATS database, specifically regarding:
   - international terrorist, separatist, and other extremist organizations, their structure, leaders, and members, other individuals associated with these organizations, as well as the financing sources and channels of these organizations;
   - status, dynamics, and trends in the spread of terrorism, separatism, and extremism that affect the interests of the Parties;
   - non-governmental organizations and individuals providing support for terrorism, separatism, and extremism;
5. providing information upon requests by the competent agencies of the Parties;
6. assistance in preparing and executing anti-terrorist command and staff exercises and operational and tactical exercises upon request by the Parties concerned;
7. assistance in the preparation and execution of operational search and other actions in combating terrorism, separatism, and extremism upon the request of the Parties;
8. assistance in conducting international searches for individuals alleged to have committed activities set forth in Article 1(1) of the [Shanghai] Convention in order to criminally prosecute them;
9. participation in preparing international legal documents affecting issues of combating terrorism, separatism, and extremism;
10. assistance in **training specialists and instructors** for anti-terrorist subdivisions;
11. participation in preparing and conducting research and practice conferences and seminars, and assistance in exchanging experience regarding issues of combating terrorism, separatism, and extremism;
12. establishment and support of **working contacts with international organizations** engaged in issues of combating terrorism, separatism, and extremism.\(^{44}\)

In addition to the foundational *2002 RATS Agreement*, in July 2005, RATS operations were further concretized through the adoption of a *Concept of Cooperation Between SCO Member States in Combating Terrorism, Separatism, and Extremism* (“*Concept of Cooperation of the SCO Member States*”), which “determine[d] the fundamental goals, objectives, principles, avenues, and forms of cooperation between SCO member states in combating terrorism, separatism and extremism, as well as the mechanism of its implementation.”\(^{45}\) According to this concept:

The fundamental forms of cooperation are:

1. Conducting **concerted preventive activities**.
2. Conducting **concerted operational search and investigative actions**.
3. Conducting joint **anti-terrorist** activities.
4. **Exchanging operational search, informational, and forensic information**, including information on acts of terrorism, separatism, and extremism in the course of preparation or that have been committed, the individuals and organizations associated with them, and the creation of specialized databases and communication systems, including a confidential one.
5. Providing **legal assistance**.
6. Organizing and conducting **joint anti-terrorist exercises, personnel development, exchanging work experience** and methodical literature on issues of combating separatism, and extremism, and carrying out

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\(^{44}\) *2002 RATS Agreement*, supra n. 35, at Art. 6 (emphasis added).

joint academic research in said field.\textsuperscript{46}

The RATS Council has also regularly promulgated programs for cooperation between member states in fighting terrorism, separatism, and extremism, which appear to provide the basis for RATS activities during particular years – the first “plan of organizing cooperation,” for the 2004-2006 period, was approved on April 30, 2004.\textsuperscript{47} Programs of cooperation were subsequently adopted for the 2007-2009 and 2010-2012 periods.\textsuperscript{48} The contents of these programs of cooperation, however, have not been made public.

\textbf{B. Economic cooperation among SCO member states}

The SCO’s mutual security efforts are further bolstered through economic ties facilitated under the SCO framework. This is particularly apparent through recent SCO member interactions in the wake of the global financial crisis that began in 2007. For instance, on June 16, 2009, at the annual SCO summit in Yekaterinburg, President Hu Jintao of China offered economic recovery assistance in the form of a $10 billion dollar loan to fellow SCO member governments.\textsuperscript{49} SCO members have also launched the so-called \textit{Joint Initiative of Global Economic Crisis Counteraction}, an agreement between SCO members that was adopted on October 14, 2009.\textsuperscript{50} As stated by the SCO, the purpose of the initiative is to enhance multilateral economic cooperation in tackling the consequences
of the global financial crisis and ensuring further economic development of the SCO member states.\textsuperscript{51}

The SCO’s economic development agenda provides insight into the uniquely influential role played by the Chinese government within the SCO. As one of the world’s biggest and fastest-growing economies, protected by one of the largest military forces in the world, China’s clout within the SCO outweighs all other SCO members. In addition to its $10 billion loan to fellow SCO governments, China is a strong and vocal supporter of the \textit{Joint Initiative of Global Economic Crisis Counteraction}. China has also played a vital role in a number of key SCO-facilitated enterprises in recent years, including the 1,833 kilometer China-Central Asia natural gas pipeline linking China, Kazakhstan, Turkmenistan, and Uzbekistan, officially opened on December 14, 2009.\textsuperscript{52} China’s President Hu Jintao marked the occasion by declaring the project a “carrier of goodwill for friendship and mutual benefits of the four countries.”\textsuperscript{53} He similarly described the completion of a 620-mile oil pipeline linking China and Russia: “The smooth completion of the pipeline project is a model for the two countries’ mutually beneficial win-win cooperation and a milestone for China-Russia energy cooperation.”\textsuperscript{54} 2009 also saw the signing of $3.5 billion in transactions between Chinese and Russian companies, including inter-bank lending and natural gas sales agreements, during side meetings held in parallel with the October 2009 SCO summit in Beijing.\textsuperscript{55}

In addition, Chinese state-owned enterprises can extend the scope and impact of economic activities. For example, the China Metallurgical Group Corporation, a Chinese state-owned conglomerate, has undertaken a $3.4 billion project to extract up to 11 million tons of copper from SCO contact Afghanistan, amounting to by far the largest

\textsuperscript{51} Joint Communiqué of Meeting of the Council of the Heads of Government of the Shanghai Cooperation Organization Member States, supra n. 50.


\textsuperscript{53} “Chinese Turkmen, Kazakh, Uzbek Presidents Unveil Gas Pipeline,” supra n. 52. Relevant here is China’s interest in natural resources and an expansion of its export market, specifically to Central Asia, which offers untapped natural resources and investment opportunities. See Richard Weitz, “Afghanistan in China’s Emerging Eurasian Transport Corridor,” \textit{China Brief} 10, no. 14 (2010), http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=36604&tx_ttnews[backPid]=7&cHash=2df324decf. It has also been emphasized that Central Asian countries are a logical conduit through which the PRC could import and export goods from and to other economically important regions of the world. Ibid. Furthermore, increasing the volume and types of goods available from and to China requires improving the region’s means of transportation, something the SCO’s activities naturally facilitate. Ibid.


foreign investment project in that country. These kinds of economic cooperation projects involving actors beyond SCO member states, including partners and others, expand the influence of the SCO’s policies and practices.

China has also proposed the creation of an SCO development bank to broaden financing for Central Asian energy exploration and infrastructure projects, including oil and gas pipelines across SCO member state borders. In December 2010, China reportedly proposed an initial $8 billion investment in the bank, to be joined with an investment of only $2 billion from all other SCO members combined. This raises concerns about the implications of a Central Asian development financing mechanism structured so heavily in China’s favor.

C. Expansion of SCO influence internationally

Ten years since its establishment, the SCO’s influence has increased, as have its interactions with states and multilateral organizations seeking to benefit from cooperation with the group. Recent developments related to and statements of the international community, as well as the SCO, its member states, observer status states, and dialogue partners, reflect the SCO’s desire to expand its scope and several of its constituents’ interests in establishing a more prominent position within the SCO. Currently, Belarus and Sri Lanka are dialogue partners; states with observer status at the SCO include India, Iran, Mongolia, and Pakistan.

The SCO appears on track to expand. At the SCO’s ninth prime ministers’ meeting in Dushanbe on November 25, 2010, Wen Jiabao pointed out:

The global political and economic situation is undergoing profound and complicated changes. We must rely on collective strength to better maintain regional peace and stability and promote comprehensive and balanced economic, social and cultural development. This is not only in the interest of

58 Ibid.
member states but will contribute to the enhancement of the SCO’s rallying force and appeal.\textsuperscript{60}

The SCO has also recently concretized the channels through which multilateral organizations and countries may become involved with the SCO.

\textit{i. Membership}

At the SCO’s 2010 annual summit,\textsuperscript{61} SCO leaders approved \textit{Regulations on the Procedure for Admitting New Members to the Shanghai Cooperation Organization} (\textit{“SCO New Member Regulations”}).\textsuperscript{62} With respect to extending the number of SCO participants, it was also announced that the Council of National Coordinators “will prepare a standard Memorandum and other documents regulating legal, organizational and financial aspects of the membership to the Organization for entering states.”\textsuperscript{63} Neither the \textit{SCO New Member Regulations} nor the Memorandum, however, were made publicly available.\textsuperscript{64} However, given announcements made at the summit, it appears that the \textit{SCO New Member Regulations} will “limit[] membership to countries within the Eurasian continent that have diplomatic relations with other [SCO] members and are either SCO observers or dialogue partners.”\textsuperscript{65} In addition, in a declaration announced at the 2010 summit, it was indicated that countries under UN sanctions would be barred from membership.\textsuperscript{66} As SCO Secretary-General Imanalieva indicated in February 2010, “One

\textsuperscript{60} Zhang Jinhai, Feng Jian, and Xu Song [张金海、冯坚及徐松], “Shanghai hezuo zuzhi chengyuanguo di jiu ci zongli huiy juxing, Wen Jiabao chuxi bing fabiao jianghua” [上海合作组织成员国第九次总理会议举行, 温家宝出席并发表讲话] [Wen Jiabao Attends and Addresses the Ninth Prime Ministers’ Meeting of SCO Member States], Xinhua News Agency [新华社], November 26, 2010, \url{http://politics.people.com.cn/GB/1024/13321348.html}.

\textsuperscript{61} The summit was held in Tashkent, Uzbekistan from June 10-11, 2010.

\textsuperscript{62} Joint Communiqué of the Tenth Meeting of the Council of the Heads of the Member States of the Shanghai Cooperation Organisation, June 11, 2010, \url{http://www.sectsco.org/EN/show.asp?id=223}.

\textsuperscript{63} Ibid.

\textsuperscript{64} As of March 2011, these documents were not publicly available on either the SCO’s or RATS’s website.

\textsuperscript{65} Shanghai Cooperation Organization Opens to India and Pakistan, not Iran,” Asia News, June 12, 2010, \url{http://www.speroforum.com/a/34725/Shanghai-Cooperation-Organization-opens-to-India-and-Pakistan-not-Iran}. For further information regarding the rights of observer status states and dialogue partners, see supra n. 16.

\textsuperscript{66} “Shanghai Cooperation Organization opens to India and Pakistan, not Iran,” Asia News, June 12, 2010, \url{http://www.speroforum.com/a/34725/Shanghai-Cooperation-Organization-opens-to-India-and-Pakistan-not-Iran}. It is speculated that this requirement regarding UN sanctions is a response to the June 9, 2010 UN sanctions against Iran. Iran applied for full SCO membership on March 24, 2008. “Iran Wants Full SCO Membership,” RIA Novosti, March 26, 2008, \url{http://en.rian.ru/analysis/20080326/102299498.html}. Former Secretary General of the SCO, Bolat Nurgaliyev, welcomed Iran’s bid for membership at that time, stating, “Iran’s claim for the Shanghai Cooperation Organization full membership will not bring any negative moments in relations with the regional and international organizations.” “SCO Chief Welcomes Iran’s SCO Membership,” Mathaba, March 28, 2008, \url{http://www.mathaba.net/news/?x=587013}. The SCO had also welcomed the presence of Iran’s President Mahmoud Ahmadinejad at SCO summits, and in 2009 SCO
important principle is that the new member should be good for [the] SCO’s growth and unification, not the other way round.... Enlarging membership is an important task for [the] SCO at present and for a long time in the future.”

The *SCO New Member Regulations* are meant to lay “the foundation for [the SCO’s] future expansion,” which is a noteworthy change of course from the SCO’s original charter. Indeed, the *SCO Charter* only provided a generalized foundation for expansion based on a potential member’s commitment to the SCO’s obligations: “membership shall be open for other States in the region that undertake to respect the objectives and principles of this Charter and to comply with the provisions of other international treaties and instruments adopted in the framework of SCO.”

Shortly after the 2010 summit in which the SCO created an institutional framework for expansion, India, Iran, and Pakistan expressed interest in obtaining membership status at the SCO’s ninth prime ministers’ meeting in Dushanbe. India’s External Affairs Minister, S. M. Krishna, said, “We have been playing a role as an observer, and now want to play a bigger role in SCO which has countries as our extended neighbourhood.” Iran has been seeking to join the SCO since 2008. At Dushanbe, Iranian First Vice President Mohammed Reza Rahimi asserted that “Iran is one of the leaders even congratulated him on his disputed election victory. “Shanghai Cooperation Organization opens to India and Pakistan, not Iran,” Asia News, June 12, 2010, [http://www.speroforum.com/a/34725/Shanghai-Cooperation-Organization-opens-to-India-and-Pakistan-not-Iran](http://www.speroforum.com/a/34725/Shanghai-Cooperation-Organization-opens-to-India-and-Pakistan-not-Iran). But with respect to the 2010 Summit, which took place shortly after the announcement of the UN sanctions against Iran, Ahmadinejad reportedly declined an invitation to visit. “Iranian President Rejects Invitation to SCO Summit,” RIA Novosti, June 11, 2010, [http://en.rian.ru/world/20100611/159381127.html](http://en.rian.ru/world/20100611/159381127.html).


SCO Charter, supra n. 16, Art. 13. While the *SCO Charter* refers to states “in the region,” no definition of region or its limitations was provided. See Bailes, supra n. 21, 17. It is possible that the new requirement that a potential member must be part of the Eurasian continent, and the creation of other membership standards such as those specified at the summit, is meant to fill this gap.

influential nations of the region and its membership in the Shanghai Cooperation Organization will be to the benefit of the countries of the region.” And Pakistan’s Prime Minister Yousaf Raza Gilani reiterated his country’s interest in becoming a full member of the SCO given its “great potential to shape the future of our region in terms of security and development.” (The SCO has been reviewing Pakistan’s application for full membership since prior to February 2010.)

Given the prospect of additional security, expansive cooperation, and economic development, it is not surprising that countries including Mongolia, Pakistan, and Sri Lanka are involved within the SCO framework. Similarly, countries and multilateral organizations that do not have member status, dialogue partner status, or observer

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71 “Iran’s SCO Membership to be Beneficial,” supra n. 17. Rahimi further asserted that “the member states cannot take any significant measures regarding the transit of goods without Iran’s cooperation,” and stated, “In the meeting, we made some suggestions on accepting Iran’s membership in this organization, creating regional currency (common currency), the transit of goods, and the campaign against drugs and terrorism.” “VP Says Iran Willing to Win Full SCO Membership,” Tehran Times, November 27, 2010, http://www.tehrantimes.com/index_View.asp?code=230930. Rahimi also indicated that “most of the SCO members [were] willing to accept Iran as a full member, but certain countries postpone[d] discussing the issue.” Ibid.

72 “Gilani’s Firm Stance at SCO Forum to Benefit Pakistan Seeking Full Membership,” Associated Press of Pakistan, November 28, 2010, http://ftpapp.app.com.pk/en_/index.php?option=com_content&task=view&id=123051&Itemid=1. Gilani stressed the importance of [the] SCO’s framework of cooperation on issues of security, stability, and peace in a comprehensive manner. ‘It must focus on bringing durable peace and stability to the larger SCO region....i want to assure you that Pakistan will always be on your side in the common quest for ensuring a better future for the peoples of our region, as a whole,’ Gilani told the SCO leaders.” Ibid. In a meeting with Tajik President Emomali Rahmon, Gilani emphasized that “Pakistan wanted to play an active role at the SCO and that his country already signed a transit-trade agreement with Afghanistan.” “Shanghai Cooperation Organisation: Pakistan Eyes Full Member Status,” The Express Tribune, November 25, 2010, http://tribune.com.pk/story/81525/shanghai-cooperation-organisation-pakistan-eyes-full-member-status/.

73 See “SCO Appraises Membership of Iran, Pakistan,” supra n. 17. Russian Foreign Minister Sergei Lavrov indicated that Russia views the SCO as a useful mechanism to address issues between India and Pakistan, stating, “Our position is that relations between Delhi and Islamabad should be settled gradually . . . I am glad Delhi and Islamabad both are observers (in SCO) and this will be conducive to settlement.” “Russia Backs India, Asks Pak to Stop Infiltration,” Outlook India, November 29, 2010, http://news.outlookindia.com/item.aspx?703027.

74 One author has asserted that Mongolia’s interest is in having “a new opportunity to multilateralize its own highly asymmetric and sometimes sensitive strategic relations with China,” and that this is in part because “Mongolia is a country with a well-attested commitment to multilateral approaches to peace and confidence building in general.” Bailes, supra n. 21.


76 At the UN General Assembly, a Sri Lankan official emphasized that the country would remain “vigilant about the possibility of [terrorism] rearing its ugly head again via international means.” Ibid. She went on to stress that terrorism “could only be defeated effectively through international cooperation and pragmatic action.” Ibid.
status have expressed interest in developing new ties with the SCO. For example, in September 2010, a Ukrainian diplomat noted that “‘Ukraine is now considering the possibility of joining the Shanghai Cooperation Organization as a guest.’”

**ii. Role in regional security and stability**

The SCO’s substantial regional appeal derives in part from the framework it offers for improving relations with China, Russia, and key Central Asian states, particularly regarding security. As a security organization, Article 1 of the *SCO Charter* lays out the SCO’s goals of consolidating “multidisciplinary cooperation in the maintenance and strengthening of peace, security and stability”; jointly counteracting “terrorism, separatism and extremism in all their manifestations”; and fighting against “illicit narcotics[,] arms trafficking and other types of criminal activity of a transnational character.”

The response of states in the region and elsewhere to the SCO’s promises on security has been positive. As one Indian official noted, “whatever the perception earlier, India believes that [the] SCO has a major role to play in terms of regional security.”

Additionally, while it must be considered within a broader context of government policy-making processes and debates, a leaked U.S. diplomatic cable from January 2009 provides some insight on the perceived role of regional cooperative frameworks such as the SCO. The cable emphasized China’s influential leading role in the SCO framework, and the ability of regional frameworks to contribute to global security and economic stability. In particular, it asserted that formal regional mechanisms could serve as an impetus for China to become more vocal in calling out nations with particularly

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78 *SCO Charter*, supra n. 16, Art. 1.

79 “India Keen to Become Member of SCO,” *The Times of India*, June 1, 2010, [http://timesofindia.indiatimes.com/india/India-keen-to-become-member-of-SCO/articleshow/5995619.cms](http://timesofindia.indiatimes.com/india/India-keen-to-become-member-of-SCO/articleshow/5995619.cms). That official further specified that the SCO “share[s] India’s concerns over [the] rise of the Taliban in Afghanistan.” Ibid. It has also been asserted that “India’s interests concerning its security in the Central Asian region strategically coincide with those of Russia, China and other SCO member-states” and that India’s addition to the SCO would significantly expand “the resources and opportunities for anti-terrorist activities and the struggle against the drug trafficking.” “SCO to be Fortified by India,” *The Voice of Russia*, September 24, 2010, [http://english.ruvr.ru/2010/09/24/22167015.html](http://english.ruvr.ru/2010/09/24/22167015.html).


81 Ibid.
troublesome records of conduct, and more meaningfully engaged in global discourse on economic and environmental concerns.82

iii. Role in addressing Afghanistan conflict

States and international organizations have embraced the SCO as a potential partner in resolving the Afghanistan conflict. The international community echoed these themes during the July 2010 International Conference on Afghanistan, attended by more than 40 foreign ministers and international leaders,83 including representatives from NATO84 and the United States.85 As stated in the Communique issued following the conference,86 the process of Afghanistan’s transition to full independent Afghan leadership and responsibility, known as the Kabul Process, “is built upon deep and broad international partnerships.”87 According to the Communique, “[p]articipants noted the importance of regional cooperation to prosperity, peace and stability, and applauded the recent joint efforts of Afghanistan and its regional partners to combat terrorism by ending support, sustenance and sanctuaries for terrorists from wherever they are, and the drugs trade . . . .”88 Participants specifically welcomed “the meeting of regional organizations, notably . . . the Shanghai Cooperation Organization (SCO) . . . and commended the agreement by these organizations for a plan for enhanced coordination of Afghanistan’s regional engagement.”89 They also welcomed Afghanistan’s “intent to strengthen the cooperation with . . . the SCO in the field of border control.”90

The UN Security Council, in an October 13, 2010 resolution, also acknowledged the SCO’s involvement in Afghanistan by “[r]ecognizing the importance of the contribution of neighbouring and regional partners as well as regional organizations including EU,

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82 Ibid.
85 “Clinton’s Remarks at the International Conference on Afghanistan, July 2010,” Council on Foreign Relations, July 20, 2010, http://www.cfr.org/publication/22662/clintons_remarks_at_the_international_conference_on_afghanistan _july_2010.html. Secretary of State Clinton spoke at the Conference, where she stated, “This conference makes it clear: the world is with Afghanistan. And the world stands in opposition to al Qaeda, the extremist militant Taliban, and to those who are trying to deny Afghanistan the future it deserves.” Ibid.
87 Ibid., para. 3.
88 Ibid., para. 21.
89 Ibid., para. 22.
90 Ibid., para. 26.
the Organization for Security and Cooperation in Europe (OSCE)], Shanghai Cooperation Organization and the [Collective Security Treaty Organization (CSTO)] to the stabilization of Afghanistan.\textsuperscript{91}

These developments are not surprising given growing ties between Afghanistan and the SCO. On November 4, 2005, the SCO-Afghanistan Contact Group was established with the purpose of “elaborating proposals and recommendations on realization of cooperation between the SCO and Afghanistan on issues of mutual interest.”\textsuperscript{92} In 2010, Afghan President Hamid Karzai delivered a speech at the Tenth SCO Summit in Tashkent,\textsuperscript{93} and in the Declaration following the Summit,\textsuperscript{94} the SCO explicitly cited Afghanistan:

A continuing escalation of confrontation in Afghanistan, terrorism, drug trafficking and transnational organized crime rooted from this country remain a big source of threats in the region. Achieving peace and stability in the [Islamic Republic of Afghanistan] is a crucial factor in ensuring security that promotes sustainable social and economic development of the region.\textsuperscript{95}

The SCO itself has emphasized its support of the UN’s central role in coordinating efforts to resolve the situation in Afghanistan, as well as the efforts of member states in implementing economic projects there.\textsuperscript{96} Indeed, China has become one of the world’s largest investors in Afghanistan.\textsuperscript{97} The SCO has also expressed readiness to cooperate


\textsuperscript{92} Protocol on Establishment of the SCO-Afghanistan Contact Group Between the Shanghai Cooperation Organization and the Islamic Republic of Afghanistan, supra n. 18.


\textsuperscript{95} Ibid., Art. 8.

\textsuperscript{96} Ibid.

with international and regional efforts to counter the drug threat from Afghanistan. A leaked U.S. diplomatic cable, Russia “considers narco-trafficking to be its highest priority vis-à-vis Afghanistan,” and concerns have been raised over the illicit financing of the drug trade at meetings of the SCO.

iv. Cooperation in non-security sectors

The breadth of SCO cooperation in non-security sectors also has appeal to potential SCO members. At the 2010 annual SCO summit, President Hu urged that “the potential of cooperation among SCO members should be fully tapped,” specifying that “[m]embers should work to facilitate customs clearance, quality inspection and transportation, innovate new cooperation models, study ways to establish an SCO regional e-commerce platform and conduct joint studies on agricultural cooperation.”

This is a logical extension of the statement included in the Joint Communiqué of the SCO Heads of State Council Meeting in Tashkent 2010: “Member states [intend] to carry out close mutually beneficial cooperation in the framework of the SCO in all spheres in order to strengthen the role of the Organisation as an effective mechanism to ensure security, stability and prosperity in the region and worldwide as a whole.”

Of course, the sphere of cooperation that facilitates and informs all others is economic development, in areas ranging from financial institutions to energy infrastructure. As described above in Section II.B, the scope and magnitude of economic cooperation, particularly through cooperative financing of large-scale infrastructure, transportation, and resource extraction projects, and notably led by disproportionately large investments by China, underpin the practical implications of the SCO’s regional influence.

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101 Ibid.

102 Joint Communiqué of the Tenth Meeting of the Council of the Heads of the Member States of the Shanghai Cooperation Organisation, supra n. 62 (emphasis added).

103 See, e.g., Bailes, supra n. 21 (“The one motive for association with the SCO that may reliably be attributed to all [potential SCO members] is an interest in the opening up of trade across Central Asia in general and joint approaches to (and possible Chinese investments in) trans-Asian energy deliveries and infrastructure links in particular.”).
v. Cooperation with multilateral organizations

Finally, the SCO has established ties to a number of multilateral organizations. Emphasis on such ties was reiterated at a May 2010 meeting of the SCO Foreign Ministers Council, during which “[t]he permanent bodies of the SCO were recommended to boost cooperation with the UN, ASEAN and other international organizations and structures on issues of security and stability, as well as economic and social development.” The SCO has been carrying out this work in earnest. For example, at the session of the Foreign Ministers Council of the SCO in Tashkent on May 22, 2010, OSCE Chairman-in-Office and current Secretary of State and Minister of Foreign Affairs of Kazakhstan, Kanat Saudabayev, explained that the SCO and the Conference on Interaction and Confidence-Building Measures in Asia (CICA) “complement each other very well” and “propose[d] to support the proposition of the CICA Secretariat to establish partnership relations with the SCO.” And on October 12, 2010, at a meeting involving the SCO, CSTO, the Commonwealth of Independent States (CIS), and the Eurasian Economic Community (EurAsEC), participants discussed countermeasures to regional crises and new plans to deal with current issues in Central Asia, including security, drug trafficking, and illegal immigrants. Participants also shared their views on security cooperation between the four organizations and “agreed to enhance information exchange, carry out mutual emergency aid, and send delegates for cooperation.” The four sides anticipated creating a mechanism for regular meetings, noting the date of the next meeting as autumn of 2011, in Moscow; and agreed to create a working group on cooperation between the organizations, including among the respective deputy executive secretaries and deputy secretary-generals from each organization.

106 See Section V infra for more information on the SCO’s engagement with the UN.
109 Ibid.
110 Ibid.
III. The International Counter-Terrorism Framework and Human Rights

As a regional organization made up of member states which themselves are parties to a number of important international agreements, the SCO’s policies and practices must comply with international obligations, including under human rights, humanitarian, and refugee law. These fundamental obligations are also explicitly recognized and referenced in SCO core documents. In addition, emerging norms of international law reflect consensus on the obligations of international organizations to respect international law, and on the responsibilities of constituent member states for the wrongful acts of international organizations. This section provides an overview of the international counter-terrorism framework within which relevant policies and practices of the SCO must be assessed.

The international legal framework for promoting and protecting human rights while countering terrorism is enshrined in the UN Charter; a number of human rights declarations, conventions, and treaties; and in resolutions promulgated by the General Assembly and by the Security Council – including Security Council resolutions adopted pursuant to Chapter VII of the UN Charter on maintenance of international peace and security. As members of the United Nations and the international community, states are required under the UN Charter to incorporate human rights into their activities. For example, Article 55 of the Charter provides:

> With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.


Article 56 effectuates this principle, requiring that “all Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.”

The *Universal Declaration of Human Rights*, adopted by the UN General Assembly in 1948, further enumerates a foundational set of individual rights, the protection of which states should strive to incorporate in their counter-terrorism policies. These rights include:

- the right to **life**, **liberty**, and **security** of the person (Art. 3);
- the right to be free from **torture** and cruel, inhuman or degrading treatment or punishment (Art. 5);
- the right to **equal protection** of the law (Art. 7);
- the right to **effective remedy** (Art. 8);
- the right to be free from **arbitrary arrest or detention** (Art. 9);
- the right to a fair and public hearing by an **independent and impartial tribunal** (Art. 10);
- the right to be **presumed innocent** until proven guilty (Art. 11);
- the right to be free from arbitrary interference with one’s **privacy** (Art. 12);
- the right to seek and to enjoy in other countries **asylum** from persecution (Art. 14);
- the right to freedom of **thought**, **conscience and religion** (Art. 18);
- the right to freedom of **opinion and expression** (Art. 19); and
- the right to freedom of **peaceful assembly and association** (Art. 20).

In addition to these universal principles, the SCO member states are parties to the key international human rights treaties and conventions relevant to counter-terrorism, and as such are responsible for compliance with treaty obligations setting forth relevant human rights norms and principles. As codified in the *Vienna Convention on the Law of Treaties*, “Every treaty in force is binding upon the parties to it and must be performed by them in good faith,” and “A party may not invoke the provisions of its internal law

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113 Ibid., Art. 56.
115 Article 14 notes, however, that “This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.” Ibid., Art. 14.
as justification for its failure to perform a treaty.” 117 These treaties include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention against Torture”), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol (“UN Refugee Convention”).

Collectively, these instruments cover the rights to security of the person, due process and access to justice, freedom of opinion and expression, freedom of religion, freedom of association, privacy, and self-determination – rights that are often negatively impacted by counter-terrorism efforts, especially when national security priorities and concerns are invoked.

Under international law, a system of safeguards exists to ensure that states implement human rights obligations to their fullest extent under all but the narrowest of circumstances, and to impose demanding restrictions on state measures that infringe on guaranteed rights in the rare instances when such measures are justified.

For instance, international law permits states to legitimately impose limitations on the exercise of certain rights, including the right to freedoms of opinion and expression, association and assembly, and movement. 118 As a matter of law, reflected throughout relevant mechanisms for human rights protection, these limitations must meet three general criteria in order to be justified. 119 First, such limitations must be prescribed by law in a manner that is adequately accessible by individuals, formulated with sufficient precision, and non-retroactive. 120 Second, they must be in pursuance of specific legitimate purposes, generally understood to include national security, public safety, public order, health, morals, and the human rights and freedoms of others. 121 Third, they must be “necessary in a democratic society,” meaning that any limitation on human rights must be necessary in the pursuit of a pressing objective, and that its

117 Ibid., Art. 27.
119 See generally Fact Sheet No. 32, supra n. 118, at 22-29.
120 Ibid.
121 Ibid.
human rights impacts are strictly proportional to the nature of that objective.\footnote{122}{Ibid.}

In addition to the limitations above, there also exists a set of exceptional circumstances under which states may be permitted to derogate from certain human rights obligations. The opinion of the Human Rights Committee in its General Comment No. 29, on the scope and parameters of state derogation from human rights obligations in times of public emergency under Article 4 of the ICCPR, provides authoritative guidance on precisely when states are permitted to enact measures that potentially threaten the enjoyment of certain rights, and, when permitted, what characteristics those measures must have in order to minimize human rights threats.\footnote{123}{U.N. Human Rights Committee, “General Comment No. 29: States of Emergency (Article 4),” U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), \url{http://www.unhchr.ch/tbs/doc.nsf/0/71eba4be3974b4f7c1256ae200517361/$FILE/G0144470.pdf}.}

At the threshold, states have the burden to demonstrate that any deviation from their obligation to enforce guaranteed civil and political rights is conditioned on the existence of a genuine “public emergency,” and even then, “only if and to the extent that the situation constitutes a threat to the life of the nation.”\footnote{124}{Ibid., para. 3. Importantly, “[n]ot every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation,” and even during times of armed conflict, rules of international humanitarian law are fully applicable, in addition to principles governing derogation from human rights obligations, to prevent the abuse of a state’s emergency powers. Ibid.} Moreover, any state derogation on these grounds must follow an official, publicly communicated declaration of an emergency state, a condition “essential for the maintenance of the principles of legality and rule of law at times when they are most needed.”\footnote{125}{Ibid., para. 2.}

Even in the rare instances when the threshold requirements are met, each and every state measure following from these circumstances is subject to a framework of restrictions intended to minimize threats to guaranteed human rights. For instance, any such measures must be proportional and limited to the extent strictly required by the exigencies of the situation, with attention to the specific duration, geographical coverage, and material scope of the state of emergency and any measures of derogation resorted to because of the emergency.\footnote{126}{Ibid., para. 4.}

Additionally, it is a condition for the justifiability of any derogation of human rights obligations that the measures taken do not discriminate on the basis of race, color, sex, language, religion or social origin.\footnote{127}{Ibid., para. 8.} State derogation must also be consistent with the state’s other obligations under international law, including international human rights
and humanitarian law.\textsuperscript{128} There are also certain fundamental rights from which no derogation may be made, including the right to life; protections against torture or cruel, inhuman or degrading punishment; the right to legality in criminal law and procedure, including “the requirement of both criminal liability and punishment being limited to clear and precise provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty”; and the freedom of thought, conscience and religion.\textsuperscript{129}

One clear guiding principle underpins the system of safeguards governing state limitations on and derogations of fundamental human rights obligations: states are required to substantively and meaningfully articulate clear, valid justifications for any and all deviations from their human rights obligations, not only as a general matter, but in each and every instance when a state measure threatening to violate guaranteed rights is put forth as necessary to achieve a state interest.\textsuperscript{130}

To adequately protect human rights in the pursuit of national security, these safeguards and mechanisms under international law must be understood not only as an independent consideration, but as a substantive ingredient of every counter-terrorism measure.

\textbf{A. The international counter-terrorism framework}

Within the framework and principles of the \textit{UN Charter} and international human rights law, the UN, particularly over the past decade, has emphasized the importance of respect for human rights in counter-terrorism efforts, and sought to encourage states to address the promotion and protection of human rights as the key to effective and sustainable counter-terrorism measures. Several key Security Council resolutions govern the counter-terrorism efforts of the international community, including the following:

- In 1999, acting under Chapter VII of the \textit{UN Charter}, the Security Council called on states to take significant action to counter terrorism, including the

\textsuperscript{128} Ibid., para. 9.
\textsuperscript{129} Ibid., para. 7. Additionally, states “may in no circumstances invoke [a state of public emergency under] article 4 of the [ICCPR] as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.” Ibid., para. 11.
\textsuperscript{130} Ibid., para. 4. For instance, in the context of derogations, “the mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation.” Ibid.
requirements of **Security Council Resolution 1267** (and its subsequent clarifications) to target Usama bin Laden, Al-Qaida, the Taliban, and known associates with an assets freeze, travel ban, and arms embargo, in what has become known as the Al-Qaida and Taliban sanctions regime.

- **Security Council Resolution 1373**, adopted shortly after the September 11, 2001 terrorist attacks, went much farther to establish a comprehensive range of activity that states must undertake in order to prevent and punish acts of terrorism, including: freezing funds that could be directed to terrorism; refraining from providing any form of support to those involved in terrorism; providing early warning to other states through exchange of information; denying safe haven to those involved in terrorism; preventing the movement of terrorists by effective border controls; and cooperating with other states in the areas of information exchange and extradition requests. Security Council Resolution 1373 also established the **Security Council Counter-Terrorism Committee** to monitor Resolution 1373’s implementation.

- **Security Council Resolution 1456**, adopted in 2003, requires that “States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.”

- **Security Council Resolution 1624**, adopted in 2005, calls upon states to take the additional step of adopting measures to counteract incitement of terrorism, specifically such measures as may be “necessary and appropriate and in accordance with their obligations under international law” to:

  - (a) Prohibit by law incitement to commit a terrorist act or acts;
  - (b) Prevent such conduct;
  - (c) Deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct.

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The Security Council also noted in this resolution that such measures must conform with state obligations under international human rights law and refugee law.\textsuperscript{134}

Subsequent General Assembly resolutions reiterated the need to respect human rights in counter-terrorism efforts,\textsuperscript{135} most notably in the \textbf{UN Global Counter-Terrorism Strategy}.\textsuperscript{136} The Global Counter-Terrorism Strategy, “recognizing that development, peace and security, and human rights are interlinked and mutually reinforcing,” laid out four pillars for countering terrorism:

- measures to address the conditions conducive to the spread of terrorism;
- measures to prevent and combat terrorism;
- measures to build states’ capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard; and
- measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.\textsuperscript{137}

This final pillar, focusing on human rights, describes the promotion and protection of human rights as “essential to all components of the [Global Counter-Terrorism] Strategy,” and reaffirms that states “must ensure that any measures taken to combat terrorism comply with international law, in particular human rights law, refugee law and international humanitarian law.”\textsuperscript{138} In 2009, the General Assembly reiterated that “terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group,”\textsuperscript{139} and called upon states to, among other measures, not resort to racial or ethnic profiling;\textsuperscript{140} respect non-refoulement obligations;\textsuperscript{141} ensure due process guarantees;\textsuperscript{142} and ensure that “laws criminalizing acts of terrorism are accessible, formulated with precision, non-discriminatory, non-retroactive and in accordance with international law, including human rights law.”\textsuperscript{143}

\textsuperscript{134} Ibid., para. 4.
\textsuperscript{136} United Nations Global Counter-Terrorism Strategy, supra n.7.
\textsuperscript{137} Ibid., Annex Section IV.
\textsuperscript{138} Ibid., Annex para. IV.2.
\textsuperscript{140} Ibid., para. 7.
\textsuperscript{141} Ibid., para. 10.
\textsuperscript{142} Ibid., para. 12.
\textsuperscript{143} Ibid., para. 18.
Thirteen international conventions also exist to combat terrorism, including the *International Convention for the Suppression of Terrorist Bombings*, the *International Convention for the Suppression of the Financing of Terrorism* (“Terrorist Financing Convention”), and the *International Convention for the Suppression of Acts of Nuclear Terrorism* (“Nuclear Terrorism Convention”).\(^{144}\) China has ratified the first two, and signed the *Nuclear Terrorism Convention*. These instruments require parties to take measures to prevent, prohibit, and cooperate with other states concerning the terrorism-related offences on which the conventions focus, and reflect a scope of offences generally agreed upon by the international community to constitute terrorism. Notably, the *Terrorist Financing Convention* also provides a foundation on which to define terrorism, stating that terrorism includes activities “intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.”\(^{145}\)

**B. International counter-terrorism bodies and human rights inputs**

A number of international bodies exist with mandates focused on counter-terrorism or protection of human rights within counter-terrorism. These bodies were established under the auspices of the UN Security Council, Secretariat, or Human Rights Council. Security Council bodies include:

- **Counter-Terrorism Committee (CTC):** Established in 2001 under Security Council Resolution 1373, the Counter-Terrorism Committee’s mandate is to monitor implementation of Resolution 1373. The Security Council further directed the CTC in 2005 to work with states on implementation of Security Council Resolution 1624,

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which calls for prohibition of incitement to terrorism and denial of safe haven to persons involved in terrorist acts.  

- **Counter-Terrorism Committee Executive Directorate (CTED):** Established in 2004 under Security Council Resolution 1535, CTED’s mandate is to further assist the CTC and enhance its ability to monitor implementation of Resolution 1373. CTED carries out the policy decisions of the CTC, conducts expert assessments of each UN member state, and facilitates counter-terrorism technical assistance to countries.  

It was not until May 2006, however, that the CTC adopted policy guidance for CTED in the area of human rights. Pursuant to this guidance, the CTED provides advice to the CTC on compliance with international human rights, refugee, and humanitarian law in the implementation of Security Council Resolution 1373 and Resolution 1624, and liaises with the Office of the High Commissioner for Human Rights and other human rights organizations in matters related to counter-terrorism. A human rights expert was also appointed to the CTED staff. As a result of Security Council Resolution 1805 in 2008, which recalled that the CTED should continue to advise the CTC on matters concerning human rights, a working group was established to enhance expertise and develop common approaches by CTED staff on human rights issues, as well as to consider ways in which the CTC might more effectively encourage UN member states to comply with their international obligations in this area.  

- **1267 Committee (also known as the Al-Qaeda/Taliban Sanctions Committee):** Established in 1999, pursuant to Security Council Resolution 1267, its mandate is to consolidate information concerning state efforts to target Usama bin Laden, Al-Qaeda, the Taliban, and known associates with an assets freeze, travel ban, and arms embargo. The 1267 Committee is made up of all 15 members of the Security Council and holds regular meetings in both formal and informal sessions. The committee maintains the UN’s Consolidated List of individuals, groups, undertakings, and

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146 S.C. Res. 1624, supra n. 133.  
149 Ibid.  
150 Ibid.  
151 Ibid.  
entities that are part of or associated with Al-Qaida and the Taliban, and considers listing and delisting requests.

In addition to these bodies, the **Counter-Terrorism Implementation Task Force (CTITF)** was established in 2005 by the **UN Secretary-General** and chaired by his office.\(^{153}\) In June 2009, the Secretary-General made initial arrangements to institutionalize the CTITF by establishing a CTITF-Secretariat in the UN Department of Political Affairs.\(^{154}\) The CTITF, made up of 31 entities and observers and eight working groups,\(^{155}\) works to ensure overall coordination and coherence among various UN entities involved in counter-terrorism efforts and to provide a platform for information sharing. The UN Global Counter-Terrorism Strategy and CTITF are mutually reinforcing: the Global Counter-Terrorism Strategy gives support to the work of CTITF,\(^{156}\) and CTITF supports the implementation of the Global Counter-Terrorism Strategy through the activities of the entities that comprise the task force.\(^{157}\)


\(^{155}\) The entities are: Counter-Terrorism Committee Executive Directorate (CTED); Department of Peacekeeping Operations (DPKO); Department of Political Affairs (DPA); Department of Public Information (DPI); Department of Safety and Security (DSS); Expert Staff of 1540 Committee; International Atomic Energy Agency (IAEA); International Civil Aviation Organization (ICAO); International Maritime Organization (IMO); International Monetary Fund (IMF); International Criminal Police Organization (INTERPOL); Monitoring Team of 1267 Committee; Office for Disarmament Affairs (ODA); Office of the High Commissioner for Human Rights (OHCHR); Office of Legal Affairs (OLA); Office of the Secretary-General (OSG); Organization for the Prohibition of Chemical Weapons (OPCW); Special Rapporteur on the promotion and protection of human rights while countering terrorism; United Nations Development Programme (UNDP); United Nations Educational, Scientific and Cultural Organization (UNESCO); United Nations Interregional Crime and Justice Research Institute (UNICRI); United Nations Office on Drugs and Crime (UNODC); World Customs Organization (WCO); World Bank; World Health Organization (WHO). See United Nations, “UN Action to Counter Terrorism: Counter-Terrorism Implementation Task Force,” supra n. 153. The observers are: International Organization for Migration (IOM); Office of the Coordinator for Humanitarian Affairs (OCHA); United Nations Department for Economic and Social Affairs (DESA); United Nations Office of the Special Adviser on Africa (UNOSAA); United Nations High Commissioner for Refugees (UNHCR); United Nations Alliance of Civilizations. Ibid. The working groups focus on: Preventing and Resolving Conflicts; Supporting and Highlighting Victims of Terrorism; Preventing and Responding to WMD Attacks; Tackling the Financing of Terrorism; Countering the Use of the Internet for Terrorist Purposes; Strengthening the Protection of Vulnerable Targets; Protecting Human Rights While Countering Terrorism; Border Management relating to Counter-Terrorism. See United Nations, “UN Action to Counter Terrorism: Working Groups,” [http://www.un.org/terrorism/workinggroups.shtml](http://www.un.org/terrorism/workinggroups.shtml).


\(^{157}\) See United Nations, “UN Action to Counter Terrorism: Counter-Terrorism Implementation Task Force,” supra n. 153; United Nations, “UN Action to Counter Terrorism: Coordinating counter-terrorism actions
Finally, the international framework for counter-terrorism includes the work of the **Special Rapporteur on counter-terrorism**. In April 2005, Resolution 2005/80 of the UN Commission on Human Rights established the mandate of the Special Rapporteur on counter-terrorism.\(^{158}\) Martin Scheinin, Professor of Public International Law at European University Institute (Florence), accepted the appointment as Special Rapporteur on counter-terrorism on August 8, 2005.\(^{159}\) The Special Rapporteur on counter-terrorism’s mandate was initially for three years, but in December 2007, the Human Rights Council extended the mandate for an additional three years under Human Rights Council Resolution 6/28.\(^{160}\)

Since 2005, the Special Rapporteur on counter-terrorism has laid the foundation for analysis of state compliance with international human rights law while countering terrorism. The Special Rapporteur on counter-terrorism’s approach incorporates **four key features**:

- **complementarity** with the work of other UN bodies addressing human rights and counter-terrorism;
- **comprehensiveness** of the analysis, both in terms of the full spectrum of human rights and the counter-terrorism measures employed;
- **a proactive nature**, such that the Special Rapporteur on counter-terrorism’s advice and reporting is aimed at pending legislation, countries where human rights violations are allegedly occurring, and development of best practices; and

within and beyond the UN system,” [http://www.un.org/terrorism/what.shtml](http://www.un.org/terrorism/what.shtml) (“CTITF aims to catalyze and mobilize counter-terrorism efforts of various UN system entities to assist Member States in implementing the United Nations Global Counter-Terrorism Strategy.”); see also U.N. Department of Public Information, “UN Action to Counter Terrorism: Fact Sheet – Implementing the Global Counter-Terrorism Strategy” (March 2009), 1, [http://www.un.org/terrorism/pdfs/CT_factsheet_March2009.pdf](http://www.un.org/terrorism/pdfs/CT_factsheet_March2009.pdf) (“The United Nations departments, programmes, funds and agencies have been taking actions in a number of areas in line with the four pillars of the Strategy both in their individual capacity and through joint efforts in the framework of the Counter-Terrorism Implementation Task Force.”).


\(^{159}\) U.N. General Assembly, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism” (Special Rapporteur, Martin Scheinin), supra n. 9, at para. 1.

- **a focus on thematic issues**, the substance of which have not been addressed by other bodies, such as the impact of counter-terrorism on freedom of association.\(^{161}\)

The Special Rapporteur on counter-terrorism takes "a holistic approach focusing on legislative issues, which [is] complemented by taking up individual cases of alleged victims of human rights violations."\(^{162}\)

During his mandate, the Special Rapporteur on counter-terrorism has reported on a number of thematic issues, including: freedom of expression and association; racial, ethnic or other forms of profiling in fighting terrorism; the promotion of economic, social and cultural rights; right to a fair trial for terror suspects; best practices for intelligence agencies; ten areas of best practices for countering terrorism; and the integration of a gender perspective throughout all counter-terrorism measures. The Special Rapporteur on counter-terrorism’s compilation of 35 elements of good practices for intelligence agencies are of special relevance for the SCO and RATS in particular, given its collection and sharing of information practices. It should also be noted that the Special Rapporteur on counter-terrorism’s communications with governments have included communications with four of the six SCO member states (China, Kyrgyzstan, Tajikistan, and Uzbekistan) regarding individual cases of concern; and communications with all six SCO member states raising concerns regarding sharing of data, and for some member states, concerns regarding use of the death penalty and secret detentions, and the rights to due process and compensation and rehabilitation for victims.\(^{163}\)

The following discussion examines in greater depth the SCO’s formal and structural framework and its compliance with the international framework for promoting and protecting human rights while countering terrorism.

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\(^{161}\) U.N. General Assembly, "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism" (Special Rapporteur, Martin Scheinin), supra n. 9, paras. 6-10.

\(^{162}\) U.N. Commission on Human Rights, "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism" (Special Rapporteur, Martin Scheinin), supra n. 8, para. 10.

\(^{163}\) See Section IV.C infra.
IV. SCO Compliance with the International Framework for Promotion and Protection of Human Rights

The SCO, as a regional organization bound by Chapter VIII of the *UN Charter*, and as an organization made up of member states that are themselves party to international human rights agreements, must comply with obligations under the international counter-terrorism framework outlined above, including under international human rights, humanitarian, and refugee law, as the fundamental basis of an effective and sustainable counter-terrorism approach. SCO normative documents, such as the 2002 *SCO Charter* and the 2007 *Treaty on Long-Term Good Neighborliness*, explicitly recognize the supremacy of international obligations and cooperation, and include specific references to international human rights, humanitarian, and refugee law.

International human rights principles, however, are undermined by the more prominent and questionable security principles enumerated in SCO normative documents. Without transparent and effective human rights safeguards and oversight mechanisms, the SCO’s policies and actual practices negatively impact rights protected under international law. Further, the formal principles of the SCO and its member states have also underscored the primacy of respect for sovereignty and territorial integrity, security cooperation, and asserted differences in culture, traditions, and political and social systems as justifications for resisting international scrutiny and accountability.

In analyzing the SCO’s compliance with the international framework for counter-terrorism, the following sections examine:

- The problematic normative framework of the SCO, based on the organization’s imprecise and overbroad definitions of terrorism and the Three Evils doctrine;
- Challenges presented by the SCO’s structure and rhetoric, including lack of transparency; the prioritization of regional frameworks over international frameworks; and the re-invocation of “relativism,” sovereignty, and territorial integrity as barriers to international scrutiny;
- SCO member states’ human rights records;
- China’s influence and impact within the SCO, most prominently its role in shaping the SCO’s Three Evils approach;
- The SCO’s impact on harmonization of counter-terrorism legislation in member states; and
- Specific SCO policies, operations, and practices that negatively impact fundamental rights and freedoms – specifically, the RATS database and blacklist.
system, extradition and denial of asylum in violation of non-refoulement principles, and military cooperation efforts.

A. Defining terrorism

In the absence of a clear international definition of terrorism, there is a risk that states may fill the void with politicized, custom-tailed definitions of the term, meant to fit the needs of the regime in power and undermining a necessary global consistency in addressing terrorism. The SCO has gone a step further, by laying the groundwork for an expansive regional approach to the matter – one that relies on a regional consensus regarding domestic threats to the regime. This consensus is evident in the 2001 Shanghai Convention and the 2009 SCO Counter-Terrorism Convention, which govern counter-terrorism cooperation between SCO member states.

In analyzing the definitions adopted within the SCO framework, this whitepaper takes as its starting point the working formulation of terrorism drawn from Security Council Resolution 1566 and advanced by the Special Rapporteur on counter-terrorism, with a view towards ensuring that “the term ‘terrorism’ is confined in its use to conduct that is of a genuinely terrorist nature.”\footnote{U.N. Commission on Human Rights, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism” (Special Rapporteur, Martin Scheinin), supra n. 8, para. 42.} While not offering a definition of terrorism, this formulation focuses on three cumulative characteristics – a specific intention, purpose, and “trigger offense” level – that together may serve as a basis to establish terrorism:

(a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages; and

(b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act; and

Under international law and as a matter of effective counter-terrorism, a state may not apply the label of terrorism to random acts at its discretion; at a minimum, the criteria enumerated by the Security Council must exist for an act to genuinely constitute terrorism. The principle of legality – part of customary international law based on Article 15 of the ICCPR\(^\text{166}\) – requires that imposition of criminal liability and punishment, including for acts of terrorism, be limited to clear and precise provisions in the law.\(^\text{167}\) Moreover, the principle of legality is non-derogable, applying even in times of emergency.\(^\text{168}\) Accordingly, the definitions and counter-terrorism structure advanced by the SCO must include precise articulations of the following baseline criteria in order to comply with international standards:

- **intent** to inflict death or serious bodily injury upon members of the population, or to take hostages;
- **the outcome sought** is to provoke a state of terror within or intimidate a population, or to compel action or inaction by a government or international organization; and
- **the act itself** is within the universe of criminality associated by the international community with terrorism, as evidenced by its inclusion in one of the existing international conventions and protocols related to terrorism.\(^\text{169}\)

The heart of SCO cooperation and its conceptual approach to terrorism, however, is the Three Evils doctrine, a concept with roots in Chinese government policies.\(^\text{See Section IV.D infra.}\) The Three Evils are the focus of the SCO’s key normative agreement – the Shanghai Convention – which “recogniz[es] that these phenomena seriously threaten territorial integrity and security of the Parties as well as their political, economic and social stability.”\(^\text{170}\) This Three Evils approach presents serious concerns when assessed against the elements and characteristics of terrorism identified by international experts fundamental freedoms while countering terrorism,” (Special Rapporteur, Martin Scheinin), supra n. 8, at paras. 37, 42 (citing Security Council Resolution 1566); see also Fact Sheet No. 32, supra n. 118, at 40-41 (noting the three-criteria approach as compatible with the principle of legality).

\(^\text{166}\) “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.” International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, [entered into force March 23, 1976], Art. 15, [http://www2.ohchr.org/english/law/ccpr.htm](http://www2.ohchr.org/english/law/ccpr.htm).


\(^\text{168}\) Ibid.

\(^\text{169}\) For further discussion of the international conventions and protocols related to terrorism, see supra n. 144-45 and accompanying text.

\(^\text{170}\) Shanghai Convention, supra n. 27, at preamble.
and UN bodies and required by the principle of legality. Ultimately, the primary purpose of the SCO normative framework appears to be to protect regimes from threats to their power, rather than individuals from threats to their safety.

Article 1(1) of the *Shanghai Convention* defines the Three Evils as follows:

1) “Terrorism” means:
   
   a) any act recognized as an offence in one of the treaties listed in the Annex to this Convention (hereinafter referred to as “the Annex”) and as defined in this Treaty;

   b) any other act intended to cause death or serious bodily injury to a civilian, or any other person not taking an active part in the hostilities in a situation of armed conflict or to cause major damage to any material facility, as well as to organize, plan, aid and abet such act, when the purpose of such act, by its nature or context, is to intimidate a population, violate public security or to compel public authorities or an international organization to do or to abstain from doing any act, and prosecuted in accordance with the national laws of the Parties;

2) “Separatism” means any act intended to violate territorial integrity of a State including by annexation of any part of its territory or to disintegrate a State, committed in a violent manner, as well as planning and preparing, and abetting such act, and subject to criminal prosecuting in accordance with the national laws of the Parties;

3) “Extremism” is an act aimed at seizing or keeping power through the use of violence or changing violently the constitutional regime of a State, as well as a violent encroachment upon public security, including organization, for the above purposes, of illegal armed formations and participation in them, criminally prosecuted in conformity with the national laws of the Parties.\(^{171}\)

Article 1(1) presents two key problems: first, the definition of terrorism itself; and second, the intertwining of the concepts of terrorism, separatism, and extremism in a single purported “counter-terrorism” framework.

\(^{171}\) Ibid., Art. 1.1.
The *Shanghai Convention*’s definition of terrorism, while referencing a number of elements consistent with the international standard, is overbroad in that it permits inclusion of crimes against the state rather than the population. The intent can be to “cause major damage to any material facility,” as opposed to causing death or serious bodily injury to members of a population; and the outcome sought can be to “violate public security,” which is a much broader and more ambiguous concept than provoking a state of terror in or intimidating the public, or compelling action or inaction by a government or international organization. While such acts could amount to crimes, they may not rise to the level of genuine terrorism. This ambiguity could permit a state to cast as terrorism those social movements it characterizes as a threat to “public security,” without any evidence of actual or threatened harm to individual members of a population.

Additionally, by linking the concepts of separatism and extremism to terrorism, an individual alleged to have committed *any one* of these acts is within the scope of the SCO counter-terrorism apparatus, as member states are obliged to take the same measures with respect to all three offenses — each offense having equal weight under the *Shanghai Convention*. The *Shanghai Convention* requires the parties to “cooperate in the area of prevention, identification and suppression of acts referred to in Article 1(1) . . . . [T]he parties shall consider acts referred to in Article 1(1) of this Convention as extraditable offenses.” It is unclear whether states must specify which of the three acts is at issue when they obtain cooperation through the SCO or pursue particular individuals as security threats.

Such conflation of offenses and blurring of legislation in the name of counter-terrorism contradicts international law and undermines international efforts to combat terrorism. While the Security Council has recognized that extremism may *motivate* acts of terrorism, neither “separatism” nor “extremism” as defined by the SCO includes the elements necessary to qualify as terrorist activity under international law. Yet, these offenses trigger the same apparatus and cooperative activities that SCO member states use to combat terrorism, creating significant potential for abuse. The Special Rapporteur on counter-terrorism stated that, pursuant to the principle of legality, “it is essential that offences created under counter-terrorist legislation, along with any associated powers of investigation or prosecution, be limited to countering terrorism. Crimes not having the quality of terrorism, regardless of how serious, should not be the subject of counter-terrorist legislation. Nor should conduct that does not bear the quality of

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172 Ibid., Art. 2.
173 See, e.g., S.C. Res. 1373, supra n. 131 (“Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism . . . .”) (emphasis in original).
terrorism be the subject of counter-terrorism measures, even if undertaken by a person also suspected of terrorist crimes."\(^{174}\)

Moreover, the Three Evils doctrine presents the problem of a politicized and vague concept of the targets of the SCO’s counter-terrorism and cooperation measures. As such, the SCO framework risks expanding the label of terrorism to acts that do not constitute terrorism under the international framework, and risks legitimizing as counter-terrorism the targeting of a wide array of conduct that governments may perceive as a threat to their political authority. In the case of China, such conduct includes the alleged “separatist” or “extremist” activity of ethnic groups, particularly Uyghurs and Tibetans, advocating for self-determination and religious freedom.

In addition to this normative framework laid out in the *Shanghai Convention*, a recent development that may affect SCO member state counter-terrorism legislation, the implementation of which will require additional monitoring, is the new *SCO Counter-Terrorism Convention*. At the meeting of the SCO Heads of State Council that took place in Yekaterinburg, Russia, in June 2009, member states “signed the *SCO Counter-Terrorism Convention*[,] which cements the legal base for counter-terrorism interaction in the SCO framework[,] and its potential cooperation in this field was taken to a new level.”\(^{175}\) China appears eager to employ the convention, with President Hu Jintao himself “suggest[ing] we take advantage of the signing of the SCO Convention of Counter-terrorism to promote cooperation on joint pursuit and repatriation of suspects among member states.”\(^{176}\) Kazakhstan and Russia have since both publicized their ratification of the convention.\(^{177}\)

The actual text of this document, however, was only made available publicly (in Russian) when it came up for ratification by the Russian State Duma in the fall of 2010 – as of the time of this writing the SCO had yet to include the convention on its own website. (An unofficial English translation of the text of the *SCO Counter-Terrorism Convention* is included in Appendix A.)


\(^{176}\) President Hu Jintao, “Join Hands to Deal with the International Financial Crisis and Build a Harmonious and Beautiful Future Together” (address at the ninth meeting of the SCO Heads of State Council, Yekaterinburg, Russia, June 16, 2009), available at [http://ft.china-embassy.org/eng/xwdt/t572628.htm](http://ft.china-embassy.org/eng/xwdt/t572628.htm).

The **SCO Counter-Terrorism Convention** operationalizes more concretely the obligations of the member states, setting forth substantive measures pursuant to which member states are to conduct their counter-terrorism cooperation. The convention “shall apply in cases where detection, prevention, and investigation of offenses covered herein implicate the jurisdiction of more than one Party”\(^ {178} \), i.e., when cooperation between states is necessary to resolve the matter. It is intended to “promote effective cooperation between contracting states in a common struggle against terrorism.”\(^ {179} \)

While the SCO continues to regularly invoke China’s Three Evils rubric, the **SCO Counter-Terrorism Convention** employs a new, separate definition of terrorism that appears based on Russian law, as it incorporates “ideology” as an actionable offense. Article 2 of the **SCO Counter-Terrorism Convention** includes the following relevant definitions:

* **Terrorism** - an ideology of violence, and the practice of exerting influence on the decision-making of governments or international organizations by threatening or committing violent and (or) other criminal acts, connected with intimidating the population and aimed at causing injury to private individuals, society or the state;

* **Terrorist act** - any act connected with intimidating the population, endangering human life and well-being, and intended to cause significant property damage, ecological disaster or other grave consequences in order to achieve political, religious, ideological or other ends by exerting influence on the decision-making of governments or international organizations, or the threat of committing such acts[.]

By comparison, Russia’s domestic law defines terrorism as “the ideology of violence and the practice of influencing the adoption of a decision by state power bodies, local self-government bodies or international organizations connected with frightening the population and (or) other forms of unlawful violent actions.”\(^ {181} \)


\(^{179}\) Ibid., Art. 1.

\(^{180}\) Ibid., Arts. 2(1)(2), (3) (emphasis added).

Much like the *Shanghai Convention*’s Three Evils definitions, the definitions of the *SCO Counter-Terrorism Convention* suffer from a degree of ambiguity that is contrary to the principle of legality, and have significant potential for abuse. An assessment of these definitions against the international standard presents the following shortcomings:

- The definitions do not require intent to cause death or serious bodily injury to members of the population, or the taking of hostages. Rather, the definition of terrorism covers acts committed with the intent to “caus[e] injury to private individuals, society or the state.” This latter phrasing explicitly permits the authorities to include as terrorism acts causing injury to the state rather than the public. Moreover, the intent behind a “terrorist act” can be to “cause significant property damage, ecological disaster or other grave consequences” – property damage may qualify in lieu of death or serious bodily injury. The definition of “terrorist act” also uses the more pliable phrase “endangering human life and well-being,” the ambiguity of which could cover any number of acts not involving infliction of death or serious bodily injury.

- Actual perpetration of violence is unnecessary pursuant to the definition of terrorism: “violent and (or) other criminal acts” suffice.

- The phrase “connected with” modifies “intimidating a population” in both definitions, and it is unclear how tenuous such a connection can be while still qualifying as terrorism or a terrorist act.

- No trigger offense within the scope of the international conventions countering terrorism is required.

The definitions of the *SCO Counter-Terrorism Convention* also exhibit a clear preoccupation with impact on the state: they designate the outcome sought through terrorism or a terrorist act as exerting influence on the decision-making of the government or international organizations, whereas that is only one of three purposes of terrorism enumerated by the Security Council (the other two being to provoke a state of terror or to intimidate a population). The lack of requirement of an impact on or the use of violence against the public is conspicuous.

Perhaps the most questionable aspect of the *SCO Counter-Terrorism Convention*’s definitions, however, is the inclusion of “ideology of violence” as a criterion for terrorism. The Special Rapporteur on counter-terrorism identified the similar Russian
definition of terrorism as problematic because of its overreliance on ideology, noting that “terrorism should not be defined through its political or ideological aims, unless the two other conditions [use of deadly or serious violence against the population, and intent to cause fear among the public or compel government action] are also met. . . . While [the Russian] provision sets out the intent and aim as mentioned above, this definition, even read in conjunction with the defined terms of ‘terrorist activity’ and ‘terrorist act’, does not meet the requirement of clear and precise provisions so as to respect the principle of legal certainty of the law.”182 As the Russian definition failed to enumerate the criteria of use of deadly or serious violence against the population, and instead relied on the vague notion of “ideology of violence,” the Special Rapporteur viewed it as incompatible with the principle of legality. The SCO Counter-Terrorism Convention relies upon the same deficiency.

In response to a question about the draft of the SCO Counter-Terrorism Convention during an interview in April 2009, then-RATS Director Myrzakan Subanov revealed the following piece of “legislative history” on the reference to ideology:

> The need for a new international legal framework on counter-terrorism stems from the growing influence of the ideology of terrorism in its contemporary form. Today there is a real and pressing need to establish a legal framework that will permit us to fight terrorism effectively in the new reality.

> It is essential to understand terrorism as a socio-political phenomenon, which will permit us to strike at one of its root causes: an ideology that posits violence and terror as a justified and necessary means to political, social and other ends.183

This focus on combating ideology, and understanding terrorism “as a socio-political phenomenon,” is cause for concern. By its very nature, the definition’s ideology component is imprecise, as ideology can refer to beliefs and values that are highly subjective. Moreover, an individual’s ideology typically implicates his or her rights to freedom of expression and freedom of religion. SCO member state efforts to target

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ideology could easily spill over into preemptive measures against specific faiths or individuals and groups seeking to promote legitimate political goals.

It is further unclear which concept of “terrorism” – that of the *Shanghai Convention* or the *SCO Counter-Terrorism Convention* – will be utilized in practice as the basis for SCO action. The *Shanghai Convention* and the *SCO Counter-Terrorism Convention* seem intended to exist side-by-side, with the *SCO Counter-Terrorism Convention* providing an additional basis on which to criminalize “terrorist” activity.184 This conclusion is reinforced by the entry of China and the Russian Federation into a bilateral *Agreement between the Russian Federation and the People’s Republic of China on Cooperation in Combating Terrorism, Separatism and Extremism* in September 2010, which explicitly covers acts of terrorism, separatism, and extremism as enumerated in the *Shanghai Convention*.185 However, it appears that the role of ideology in terrorism as articulated in the *SCO Counter-Terrorism Convention* is poised to become a dominant theme in the SCO framework. Indeed, during the UN’s 65th General Assembly Session, the SCO’s representative raised the matter during discussions of the General Assembly’s Sixth Committee, which addresses questions of international law, on the draft international convention on and definition of terrorism, “emphasiz*ing+ that widespread prevention of terrorism, including countering the ideology that ‘nourishes it’, [is] crucial when developing anti-terrorism partnerships.”186

**B. Structural and rhetorical challenges**

1. **Lack of transparency and oversight mechanisms**

In order to ensure that SCO member states honor their international human rights law obligations, and their own human rights principles as referenced in SCO normative documents, these states must deploy credible accountability and monitoring mechanisms. Moreover, as a regional organization subject to Chapter VIII, Article 54 of the *UN Charter*, the SCO is obliged to keep the UN Security Council informed of its

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184 See *SCO Counter-Terrorism Convention*, supra n. 178, at preamble (“*Pursuant to the provisions of the Shanghai Convention on Combating Terrorism, Separatism, and Extremism of 15 June 2001 . . .*”) and Art. 2(2) (“This Article [containing definitions] is without prejudice to any international instrument or national law which does or may contain provisions of wider application of terms used herein.”).


efforts to fight terrorism.\textsuperscript{187} Yet, the SCO suffers from a lack of transparency, and without independent oversight mechanisms, it is difficult to fully assess international compliance or ensure that SCO states are fully accountable for their impact on human rights.

The SCO itself recognizes the importance of transparency – perhaps due to concern that it not be misunderstood as a “bloc” entity hostile to Western interests. As early as 2001, the SCO stated that it “adheres to the principle of non-alignment, does not target any other country or region, and is open to the outside. It is ready to develop various forms of dialogue, exchanges and cooperation with other countries, international and regional organizations.”\textsuperscript{188} And in 2009, SCO Secretary-General Nurgaliiev stated, “Everything on the agenda of the SCO main bodies and decisions adopted within the Organisation is transparent. We would like the international community to have a correct understanding of the goals and activities of the SCO, aimed to contribute to the creation of a new architecture of global security . . .”\textsuperscript{189} However, the SCO has not yet taken real steps to increase transparency in its dealings with member states’ own citizens, or the international community, for example by making concrete information about its policies and activities publicly available.

In practice, key information necessary to correctly “understand the goals and activities of the SCO” is not publicly available. Certain information is designated confidential or secret according to member state agreement. According to Article 11(4) of the \textit{Shanghai Convention}, “Information about methods of conducting operational search activities, specifications of special forces and means and supporting materials used by central competent authorities of the Parties in order to provide assistance within the framework of this Convention, shall not be subject to disclosure.” Additionally, Article 13 of the \textit{Shanghai Convention} obligates member states to ensure confidentiality of all information exchanged within the SCO framework.

The SCO has not released official statistics regarding extraditions or data exchange actually carried out pursuant to the SCO framework, nor a complete list of individuals and organizations it has designated as terrorist, separatist, or extremist. As for the contents of the RATS database, “the information that is contained in the data bank is

\textsuperscript{187} “The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.” U.N. Charter, supra n. 112, at Art. 54.


\textsuperscript{189} “Statement of the Secretary-General of the SCO Bolat K. Nurgaliiev at the IV International Turkish-Asia Congress ‘Regional Organizations in Asia / Institutionalization and Cooperation,’” May 27, 2009, \url{http://www.sectsco.org/EN/show.asp?id=80}. 

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divided into classified and non-classified. Access to classified information shall be provided only to parties that are members of the Agreement on Protection of Classified Information of [RATS (June 17, 2004)]. The structure of the database, the procedure for handling non-classified information, and access to that information shall be determined by [the RATS Council]. Issues regarding the technical protection of information contained within the database shall be regulated by a separate agreement."\(^{190}\)

The Special Rapporteur on counter-terrorism has raised lack of accountability of intelligence operations as a major impediment to protection of human rights in counter-terrorism, which holds true in particular for SCO intelligence cooperation through RATS. As the Special Rapporteur has stated, “lack of oversight and political and legal accountability has facilitated illegal activities by intelligence agencies,” particularly in the context of intelligence cooperation within multilateral frameworks such as the SCO, which incorporate “secrecy and security of information policies [that] . . . provide an insurmountable wall against independent investigations into human rights violations.”\(^{191}\)

RATS poses a complex problem because, while it interacts with and draws on information collected by security agencies that are within and presumably accountable to individual member states (such as China’s Public Security Bureau, Russia’s Federal Security Service, etc.), RATS itself operates at a supra-national level, which raises concerns regarding intelligence oversight and usage. Indeed, the 2002 RATS Agreement between the member states provides that the RATS Director, his deputies, and the RATS Executive Committee “shall not seek or receive instructions from the authorities or officials of the Parties, as well as organizations or individuals external to the SCO.”\(^{192}\)

Moreover, the 2002 RATS Agreement grants RATS and its officials immunity – though immunity may be waived by the SCO Heads of State Council – and specifically provides that RATS “archives and documents, including official correspondence, regardless of location, shall be immune from search, requisition and expropriation or any other form of interference that prevents its normal activities.”\(^{193}\) And with respect to the RATS database, the 2004 Agreement on the Database of RATS indicates that oversight of the

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\(^{192}\) 2002 RATS Agreement, supra n. 35, Art. 11.

\(^{193}\) Ibid., Arts. 13, 15.
database and its usage is the responsibility of the RATS Executive Committee – lodging all oversight within the intelligence agency itself rather than an independent body.\textsuperscript{194}

While a degree of confidentiality is essential to certain forms of information implicating national security, the SCO’s practices appear to go well beyond acceptable limitations on transparency. As the UN High Commissioner for Human Rights has noted, “all measures taken by law enforcement agencies must be lawful under national and international law, and compatible with States’ human rights obligations. This means that all activities undertaken by intelligence agencies, including intelligence-gathering, covert surveillance activities, searches and data collection must be regulated by law, monitored by independent agencies, and subject to judicial review. . . . States are required to ensure that confined powers, review of accountability and oversight mechanisms are established against the misuse of exceptional powers granted to intelligence, military agencies or special police to counter terrorism.”\textsuperscript{195} Such regulation and review does not appear to exist within the SCO framework generally, or within RATS specifically.

To address these structural problems and better protect human rights, SCO member states will need to take steps to incorporate into the SCO framework the best practices for intelligence cooperation recommended by the Special Rapporteur on counter-terrorism.\textsuperscript{196} In particular, these steps should include incorporation of the following practices:

- Intelligence sharing among the intelligence agencies of SCO member states, including within RATS, should have \textbf{clear basis in national law}, which should indicate the parameters for intelligence exchange, including criteria on the \textit{purposes} for which intelligence may be shared, the \textit{entities} with which it may be shared, and the \textit{procedural safeguards} that apply to intelligence-sharing. In addition, the details of intelligence sharing within RATS should be further articulated by \textbf{written agreements} between the member states specifying \textbf{rules} governing the use of shared information and a \textbf{statement of human rights compliance}. (Practice 31)\textsuperscript{197}

\textsuperscript{194} 2004 Agreement on RATS Database, supra n. 190, Art. 5.
\textsuperscript{197} Ibid., para. 45.
• National law should outline the process for government authorization of intelligence sharing, with requirements for executive approval of any sharing with foreign entities. (Practice 32)\textsuperscript{198}

• Intelligence sharing among the intelligence agencies of SCO member states, including within RATS, should be necessary, and preceded by an assessment of the counterpart’s record on human rights and data protection, and the legal safeguards and 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)\textsuperscript{199}

• Assessment of the impact on individuals of the sharing of data should also be undertaken, and such sharing should be explicitly prohibited when it could lead to violation of an individual’s rights. (Practice 33)\textsuperscript{200}

• All outgoing data should be screened for accuracy and relevance to avoid dissemination of flawed information, and exchanged pursuant to written agreement. (Practice 33)\textsuperscript{201}

Moreover, measures to ensure transparency and access to relevant and accurate information by independent monitoring bodies are crucial – for both the SCO itself and for each of its member states – to effective oversight and accountability for human rights obligations mandated under international and relevant domestic law. Such measures are also in line with the clear public commitments of the SCO’s leadership to openness and accessibility in achieving genuine international cooperation and exchange in matters of global security.

\textit{ii. Regional and international frameworks}

In addition to the structural challenges of transparency and lack of oversight mechanisms within the SCO framework, the SCO as a regional organization implicates a number of difficult theoretical and practical issues regarding the relationship between regional and international frameworks. The international community recognizes the special role of regional organizations, with their local experience and expertise, in the promotion of international peace and security. However, UN bodies including the General Assembly, the Security Council, and the Human Rights Council and its various mechanisms, have clearly stated that obligations under international law, especially human rights, refugee, and humanitarian law, must be respected to ensure effective and sustainable counter-terrorism efforts. Beyond public statements and principles, the

\textsuperscript{198} Ibid., para. 46.
\textsuperscript{199} Ibid., paras. 47-48.
\textsuperscript{200} Ibid.
\textsuperscript{201} Ibid.
policies and actual practices of any regional organization such as the SCO must be assessed with critical attention not only to conformity with international norms and obligations, but also to the impacts of the regional framework on international human rights standards and norms.

A number of normative SCO documents recognize the supremacy of member states’ international obligations over those contained in the regional framework, and include references to human rights and fundamental freedoms. (See Appendix A.) For example, the *Shanghai Convention* notes that, “In the course of implementation of this Convention with regard to issues concerning extradition and legal assistance in criminal cases, the Parties shall cooperate in conformity with international treaties to which they are parties and national laws of the Parties.”\(^{202}\) It further states that the *Shanghai Convention* will not “affect the rights and obligations of the Parties under other international treaties to which they are Parties.”\(^{203}\) This is in line with international principles concerning priority of treaty obligations, as articulated under the *Vienna Convention*, which provides, “When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.”\(^{204}\)

While the SCO has carefully asserted its conformity with international law and cooperation in the international arena, it also emphasizes the principles of respect for sovereignty, non-interference in internal affairs, and territorial integrity. The poor human rights records of the SCO member states and the policies and practices of the SCO underscore the need for careful scrutiny to ensure that the invocation of such principles are not strategically and selectively invoked to evade international accountability of member states or of the SCO as a regional organization.

With respect to cooperation and combating the Three Evils, the 2005 *Concept of Cooperation of the SCO Member States* provided that one principle guiding member state cooperation is “acknowledgment of the priority of joint decisions on combating terrorism, separatism, and extremism.”\(^{205}\) Such acknowledgement of priority of SCO decisions in counter-terrorism efforts raises concerns about the SCO’s impact on the international obligations of the member states related to counter-terrorism. The SCO has also specifically asserted the primacy of the more politically-conducive regional

\(^{202}\) *Shanghai Convention*, supra n. 27, at Art. 2(3).


\(^{204}\) *Vienna Convention*, supra n. 116, Art. 30(2).

\(^{205}\) *Concept of Cooperation*, supra n. 45, Art. II.3.
framework, stating, “What specific means and mechanism should be adopted to safeguard security of the region is the right and responsibility of countries in the region.” Furthermore, SCO heads of state have emphasized that “stability and security in Central Asia can be provided first and foremost by the forces of the region’s states on the basis of international organizations already established in the region.”

In effect, the SCO has engendered a policy of selective displacement: SCO member states rely on the regional framework to provide international legitimacy for their cooperation, at the same time that it provides an “alternative,” preferred set of obligations – which may better suit certain existing practices of the states, but may not fully incorporate international human rights protections. Indeed, a June 2009 interview by FIDH with then-Deputy General Prosecutor of Kyrgyzstan, S. Nasiza, confirmed that in practice, officials have consciously decided to prioritize their SCO obligations over international ones. Nasiza indicated that the Kyrgyz government’s decision to return Uzbeks fleeing the 2005 Andijan crackdown – despite the likelihood that they would be tortured or executed upon their return – took place after he had weighed the extradition requirements of the SCO treaties against the prohibitions of the Convention against Torture. In the face of these conflicting obligations, the Kyrgyz government had concluded that the SCO framework took precedence.

The SCO has also advocated respect for sovereignty and territorial integrity – non-interference in internal affairs – above all else. As set forth in the Declaration on the Establishment of the Shanghai Cooperation Organization:

The SCO member states shall abide by strictly the purposes and principles of the Charter of the United Nations, mutually respect independence, sovereignty and territorial integrity, not interfere in each other’s internal affairs, not use or

206 Declaration on the Fifth Anniversary of Shanghai Cooperation Organization, June 15, 2006, Art. III, http://www.sectsco.org/EN/show.asp?id=94. The Treaty on Long-Term Good-Neighborliness, Friendship and Cooperation Between the Member States of the Shanghai Cooperation Organization also provides that SCO member states, “respecting principles of state sovereignty and territorial integrity, shall take measures to prevent on their territories any activity incompatible with these principles.” Treaty on Long-Term Good-Neighborliness, supra n. 203, Art. 4. This language serves to further emphasize the SCO’s preoccupation with perceived threats to domestic control and interference with “internal affairs.” See also “China, Kazakhstan to Enhance Cooperation on Economy, Anti-Terrorism,” Xinhua, March 30, 2009, http://news.xinhuanet.com/english/2009-03/30/content_11101743.htm (“Kazakhstan gives high priority to ties with China and firmly adheres to the one-China policy and supports China’s principle stance on the issues relating to Taiwan and Tibet.”).


208 See FIDH, Kazakhstan/ Kyrgyzstan: Exploitation of Migrant Workers, Protection Denied to Asylum Seekers and Refugees, supra n. 5, 23.

209 Ibid.
threaten to use force against each other, adhere to equality and mutual benefit, resolve all problems through mutual consultations and not seek unilateral military superiority in contiguous regions.\textsuperscript{210}

This position is elaborated upon in the \textit{Declaration on the Fifth Anniversary of the Shanghai Cooperation Organization}, which states:

[The] SCO will make constructive contribution to the establishment of a new global security architecture of mutual trust, mutual benefit, equality and mutual respect. Such an architecture is based on the widely recognized principles of international law. It discards “double standards” and seeks to settle disputes through negotiation on the basis of mutual understanding. It respects the right of all countries to safeguard national unity and their national interests, pursue particular models of development and formulate domestic and foreign policies independently and participate in international affairs on an equal basis. . . .

Differences in cultural traditions, political and social systems, values and model of development formed in the course of history should not be taken as pretexts to interfere in other countries’ internal affairs. . . .

[SCO member states] support each other in their principled positions on and efforts in safeguarding sovereignty, security and territorial integrity. They will not join any alliance or international organization that undermines the sovereignty, security and territorial integrity of SCO member states. They do not allow their territories to be used to undermine the sovereignty, security or territorial integrity of other member states, and they prohibit activities by organizations or gangs in their territories that are detrimental to the interests of other member states.\textsuperscript{211}

This assertion of state sovereignty and cultural, political, and social differences – especially in light of the lack of appropriate SCO human rights safeguards and oversight mechanisms – presents serious challenges to effective promotion of human rights. The impact of asserting the principles of sovereignty, non-interference, and territorial integrity can be clearly seen in disputes where the SCO has firmly supported the member states’ domestic priorities, policies, and actions – for example, concerning allegations of extremism, separatism or splittism, and terrorism in the context of events

\textsuperscript{210} \textit{Declaration on the Establishment of the Shanghai Cooperation Organization}, supra n. 188, at para. 5. See also SCO Charter, supra n. 16, Art. 2.

\textsuperscript{211} \textit{Declaration on the Fifth Anniversary of Shanghai Cooperation Organization}, supra n. 206, Sections III-IV.
in Andijan in May 2005, the Tibet Autonomous Region in March 2008, and XUAR in July 2009; the Georgia-Ossetia conflict and the situation in Chechnya throughout the 2000s; and ongoing tensions between China and Taiwan.\textsuperscript{212} (See discussion at Section IV.C infra.) Some illustrative SCO statements include:

- “Extremism is [a] current and actual danger, threatening friendly relations among nations. I referred to this in the context of the recent [March 2008] events in the Tibet Autonomous Region of the People’s Republic of China and acts of extreme hooliganism during the Olympic torch relay in some of the cities along the route. . . . We, in the SCO resolutely support the efforts of the Chinese government to maintain public order and rule of law.” – Speech by SCO Secretary-General Bolat Nurgaliev at the International Conference on Security for Beijing Olympic Games, April 25, 2008\textsuperscript{213}

- “Reaffirming that Taiwan represents an inseparable part of China, the SCO member states consistently support the position of the Government of the PRC on the Taiwan issue, resolutely oppose any form of ‘independence of Taiwan,’ and deem its attempts to join the United Nations Organisation and other international organisations to be counterproductive and dangerous.”
  – Statement by SCO in connection with referendum of the Taiwanese authorities on joining the United Nations, March 17, 2008\textsuperscript{214}

- “The latest reports of disturbances in the Tibet Autonomous Region of the People’s Republic of China cannot remain unnoticed by the Shanghai Cooperation Organisation. The government of the PRC is known to have taken the necessary measures to prevent unlawful actions and normalise the situation

\textsuperscript{212} In addition to the SCO statements concerning Taiwan, the Tibet Autonomous Region, and XUAR outlined in this section, see also RATS, “About new displays of religious-extremist organization of «Hizb-ut-Tahrir» and its followers,” June 29, 2005, \url{http://www.ecrats.com/en/news/226} (condemning “religious-extremist organizations” for “skillfully exploiting the world mass-media” following the 2005 Andijan uprising and supporting Uzbekistan’s “corresponding actions on normalizing the situation in the country and suppressing the actions of terrorists, separatists and extremists”); RATS, “Hu Jintao and V.V.Putin about fighting with terrorism and the role of the SCO in strengthening the regional security,” February 11, 2004, \url{http://www.ecrats.com/en/news/185} (joint statement from Chinese President Hu and Russian President Putin reaffirming that “international terrorism, separatism and extremism posed a serious threat and threatened to stability of the entire world,” and that “China understands undertaken acts by Russia upon restoration of a constitutional order in the Chechen Republic,” while “Russia supports all measures of China towards terrorists and separatists of ‘East Turkistan’”).

\textsuperscript{213} SCO, “Speech by SCO Secretary-General at the International Conference on Security for Beijing Olympic Games,” April 25, 2008 (on file with Human Rights in China).

in this autonomous region...The SCO member states consider Tibet to be an inalienable part of China, and proceed from the fact that settlement of the situation in the TAR is an internal affair of China.” – Statement by SCO Secretary-General Bolat Nurgaliev in connection with March 2008 events in the Tibet Autonomous Region, March 21, 2008215

- “The SCO member states consider the XUAR to be an inalienable part of the People’s Republic of China and believe whatever happens there is a solely internal affair of the PRC. We hope that the measures of the Chinese authorities to maintain public order in Xinjiang being taken within the framework of the law will bring calm and restore normal life there as soon as possible. The SCO member states stand ready to further deepen practical cooperation in the field of fighting against terrorism, separatism, extremism and transnational organised crime for the sake of the regional security and stability.” – Statement by SCO Secretary-General Bolat Nurgaliev in connection with July 2009 events in Urumqi, XUAR, July 10, 2009216

The SCO’s unequivocal support for China’s stance on the 2010 Nobel Peace Prize is another high profile example of the SCO’s assertion of non-interference in internal affairs and its commitment to solidarity with member states’ positions. On October 8, 2010, the Norwegian Nobel Committee announced that the 2010 Nobel Prize for Peace would be given to Liu Xiaobo – an activist and writer serving an 11-year prison sentence in China – “for his long and non-violent struggle for fundamental human rights in China.” The Chinese government angrily and publicly responded, calling Liu a criminal. It then made threats to discourage foreign governments from attending the ceremony in Oslo, accused the U.S. government, including the U.S. Central Intelligence Agency, of instigating the decision to award Liu the prize, and even launched an alternate “peace prize” – the “Confucius Peace Prize.” China’s outraged rhetoric also asserted that the Nobel Prize decision was an insult to China and the Chinese people.

Taking up China’s argument, the SCO demonstrated that it would serve as a voice in defense of SCO member state failures to respect human rights, again invoking the principle of non-interference in internal affairs. SCO Secretary-General Imanaliev, echoing official Chinese rhetoric, “voiced his opposition to the politicization of the Nobel Peace Prize . . . saying the award should not be used as a tool to interfere in [an]other

215 Ibid. (indicating SCO Secretary-General Bolat Nurgaliev issued this statement on March 21, 2008, regarding the events in the Tibet Autonomous Region).
country’s internal affairs.”217 In the Secretary-General’s words, “It is very regrettable that the [Nobel] Prize was awarded to a criminal who is now in prison.”218 Joining China in its refusal to send any official representatives to the Nobel Peace Prize ceremony, two other SCO member states – Russia and Kazakhstan – were absent from the event. The remaining SCO members – Kyrgyzstan, Tajikistan, and Uzbekistan – do not maintain official diplomatic offices in Norway and were therefore not in a position to accept or decline an invitation. Such support for China among the SCO member states raises strong concerns about the SCO’s commitment to and respect for international principles of freedom of expression, thought, and conscience, as enshrined in the Universal Declaration of Human Rights – and in the international obligations of the SCO member states.

### Human Rights References of the SCO

“*The main goals and tasks of SCO are ... [among others,] to promote human rights and fundamental freedoms in accordance with the international obligations of the member States and their national legislation.*”

- Charter of the SCO, Article 1 (June 7, 2002)

“*In the area of human rights it is necessary to respect strictly and consecutively historical traditions and national features of every people, sovereign equality of all states.*”

- Declaration of Heads of Member States of the SCO (“Astana Declaration”), Section II, Paragraph 3 (July 5, 2005)

“*The [SCO member states] shall develop cooperation in such fields as promoting the implementation of human rights and fundamental freedoms in accordance with their international obligations and national legislations.*

“The [SCO member states] in accordance with their international obligations as well as national legislations, shall guarantee in their territories the observance of legitimate rights and interests of citizens of the other [SCO member states] residing in their territories, and shall facilitate the provision of necessary mutual legal assistance.”

- Treaty on Long-Term Good-Neighborliness, Friendship and Cooperation between the Member States of the SCO, Article 11 (August 16, 2007)

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218 Ibid.
“The member states of the SCO reaffirming their commitment to basic documents and standards in the field of protection and encouragement of human rights:

- promote the observance of basic human rights and civil liberties in accordance with international obligations and national legislation;
- share experience in enforcing international treaties on human rights;
- implement existing agreements in the framework of multilateral and bilateral treaties in the field of social and cultural cooperation;
- launch active consultations and cooperation at the UN on human rights issues;
- maintain interaction of the SCO with other regional organisations and integration-oriented associations on issues of social and cultural cooperation and human rights encouragement.”

- Dushanbe Declaration of the Heads of the Member States of the SCO, Article 10 (August 28, 2008)

“Understanding the need for ever-expanding efforts in counter-terrorism, and reaffirming that all such efforts must abide by the rule of law, democratic values, fundamental human rights and freedoms, as well as the precepts of international law…”

- Convention on Counter-Terrorism of the Shanghai Cooperation Organization, Preamble (June 16, 2009)

iii. National conditions and relativism

Finally, while invoking international human rights obligations on paper and occasionally in their rhetoric, SCO member states also claim that implementation of human rights obligations and assessment of progress are subject to the different histories, national conditions, resources and capacities, and cultures of the member states. The SCO is therefore invoking these differences both as an argument for member states’ heavy-handed practices of social and political control and against “interference in internal affairs.” This strategic invocation of relative national differences is very much in line with the statist arguments raised, by Asian states in particular, during the cultural relativism debates at the end of the twentieth century, which are now resurfacing in various international fora.\(^\text{219}\)

In addition to specific international obligations to respect fundamental rights and freedoms, the SCO and its member states must also respect cultural diversity as a core value and as a “living process.” For example, a group of United Nations experts issued a statement that warns against the inappropriate invocation of cultural diversity and explores the value of promoting and respecting cultural diversity:

No one may invoke cultural diversity as an excuse to infringe on human rights guaranteed by international law or limit their scope, nor should cultural diversity be taken to support segregation and harmful traditional practices which, in the name of culture, seek to sanctify differences that run counter to the universality, indivisibility and interdependence of human rights.

Cultural rights include the right to question the existing parameters of ‘culture’, to opt in or out of particular cultural entities, and to continuously create new culture. Individuals have multiple plural identities and inhabit societies which are also pluralistic. Promoting cultural diversity is thus the preservation of a living process, a renewable treasure for the benefit of present and future generations that guarantees everyone’s human rights as an adaptive process nurturing the capacity for expression, creation and innovation.220

When viewed against the realities of regimes that target and suppress ethnic, religious, and other vulnerable groups, and impose social and political control through censorship, information control, and repressive laws, the assertion of different national conditions and an implicit relativism in the context of fundamental human rights obligations is suspect, partial, and problematic.

C. Human rights records of SCO member states

All six SCO member states have signed or ratified core international human rights treaties, including treaties addressing torture, racial discrimination, civil and political rights, and economic, social and cultural rights. There are only two exceptions to SCO member state ratification of or accession to key international human rights instruments: China has signed – not yet ratified – the ICCPR, but as a signatory is still “obliged to refrain from acts which would defeat the object and purpose of [the] treaty”\(^{221}\); and Uzbekistan is not a party to the *UN Refugee Convention*. (A chart of SCO member state obligations under international human rights treaties and progress in their implementation is included at Appendix B.) To account for these member state obligations, activities and cooperation undertaken through the regional mechanism of the SCO must protect the individual rights enumerated in the treaties.

In accordance with key international human rights treaties, independent expert bodies monitor and assess compliance of states, and issue findings, observations, and recommendations on state implementation of treaty obligations to protect human rights. For example, all six SCO states have undergone reviews by the Committee against Torture; the Committee on the Elimination of Racial Discrimination; and the Committee on Economic, Social and Cultural Rights; while all member states except China have undergone review by the Human Rights Committee. These bodies have identified a wide range of serious human rights concerns and abuses that exist across the six SCO member states: lack of domestic legal definitions for torture, racial discrimination, and terrorism; corruption; widespread reports of torture and its use to extract confessions; secret detention centers; lack of independent judiciaries; attacks on lawyers, human rights defenders, and independent civil society groups; restrictions on media and the Internet; and systemic inequalities in access to healthcare, education, work, and housing, with disparate impacts on women and ethnic groups. (See Appendix B.)

While the Special Rapporteur on counter-terrorism has made only one unofficial visit to an SCO member state (Kazakhstan in May 2006), he has sent to SCO member states numerous communications on individual cases and thematic issues of concern, including lack of due process, practice of secret detentions, inadequate definitions of terrorism, and lack of access to data on death penalty and executions.\(^{222}\) With respect to individual

\(^{221}\) Vienna Convention, supra n. 116, Art. 18.

cases, the Special Rapporteur inquired about the targeting of individuals, including members of ethnic and other vulnerable groups (such as Uyghurs, Tibetans, and Chechens, as well as women), opposition politicians, and alleged organizers of the May 2005 Andijan events in Uzbekistan. The responses of individual SCO member states have included statements disputing the Special Rapporteur’s findings and concerns.

(highlighting communications to the Uzbekistan government [issued jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on the question of torture] regarding the trial of 15 individuals accused of organizing the 2005 Andijan incident, as well as 106 other detainees expected to face trial on similar charges, with concerns about due process and minimum fair trial standards guaranteed under international law); U.N. Human Rights Council, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Addendum: Communications with Governments,” U.N. Doc. A/HRC/4/26/Add.1 (2007) (Special Rapporteur, Martin Scheinin), paras. 20-21, [http://www2.ohchr.org/english/issues/terrorism/rapporteur/reports.htm](http://www2.ohchr.org/english/issues/terrorism/rapporteur/reports.htm) (highlighting communications to the Chinese government [issued jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture] regarding the treatment of Ismail Semed, alleged to be at imminent risk of execution following confession extracted through torture); U.N. Human Rights Council, “Report of the Special Rapporteur on the promotion and protection human rights and fundamental freedoms while countering terrorism, Addendum: Communications with Governments,” U.N. Doc. A/HRC/10/3/Add.1 (2009) (Special Rapporteur, Martin Scheinin), paras. 28-41, 180-220, [http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.3.Add.1_EFS.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.3.Add.1_EFS.pdf) (highlighting communications to the Chinese government regarding the treatment of Ismail Semed, Husein Dzhellil, Mukhtar Setiwaldi, and Abduweli Imin, raising concerns about the practice of extracting confessions through torture, definition of terrorism under Chinese law, denial of due process rights, and the practice of public executions; also highlighting communications to the Russian Federation concerning a definition of terrorism under domestic law, the existing legal regime of counter-terrorism operations, lawful infliction of damage against terrorist suspects under domestic law, trials in absentia of terrorist suspects, and compensation and social rehabilitation of victims of terrorism).

223 For examples of the types of targeted groups and individuals that are the subject of the Special Rapporteur’s government communications, see ibid., U.N. Commission on Human Rights, U.N. Doc. E/CN.4/2006/98/Add.1, paras. 13-14, 26 (highlighting communications to the Tajikistan government with concerns about the trial of opposition politician Mahmadruzzi Iskandarov, as well as to the Uzbekistan government regarding the alleged organizers of the 2005 Andijan incident); U.N. Human Rights Council, U.N. Doc. A/HRC/4/26/Add.1, paras. 72-73 (highlighting communication to the Kyrgyzstan government concerning the deaths of Mohammadrafiq Kamoluddin, Ayubkhodja Shahobidinov, and Fathullo Rahimo [issued jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on freedom of religion and belief], followers of Islam targeted as “terrorists” by the Kyrgyzstan government); U.N. Human Rights Council, U.N. Doc. A/HRC/10/3/Add.1, paras. 28-41 (highlighting communications to the Chinese government regarding the treatment of ethnic Uyghurs Ismail Semed, Husein Dzhellil, Mukhtar Setiwaldi, and Abduweli Imin). For the Special Rapporteur’s attention to the incorporation of gender perspectives into his mandate, see U.N. Human Rights Council, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,” U.N. Doc. A/HRC/6/17 (2007) (Special Rapporteur, Martin Scheinin), paras. 21 and 73(c), [http://www2.ohchr.org/english/issues/terrorism/rapporteur/reports.htm](http://www2.ohchr.org/english/issues/terrorism/rapporteur/reports.htm) (echoing concerns about “violence against women [and] the economic, social and cultural rights of Chechen women in the context of military operations described by the [government of the Russian Federation] as counter-terrorism measures,” and recommending “attention be paid systematically to the rights of women and gender issues in the context of combating terrorism, including by securing the effective enjoyment by women of economic, social and cultural rights as another cornerstone in sustainable long-term strategies for the prevention of terrorism”).
accusing the Special Rapporteur of “prejudgment,” or simply long delays or no response at all.\textsuperscript{224}

In addition to these reviews and inquiries by independent expert bodies and mechanisms, the Human Rights Council (which replaced the UN Commission on Human Rights in 2006) is mandated to review under the Universal Periodic Review (UPR) procedure “fulfillment by each of the United Nations’ 192 Member States of their human rights obligations and commitments.” With the exception of Tajikistan (scheduled for review in October 2011), all remaining SCO member states have each undergone UPR – the Russian Federation and Uzbekistan in 2008, China and Kazakhstan in 2009, and Kyrgyzstan in 2010.

As part of the UPR process, the UN member state under review engages in an exchange with the Human Rights Council and responds to human rights concerns and recommendations raised by other UN member states. The UN member state under review then responds as to which concerns and recommendations it accepts, rejects, views as already implemented, or are in the process of being addressed. Such reviews have raised significant human rights concerns. China, for example, rejected recommendations made by UN member states to implement specific measures and reforms including those that would advance freedom of information and expression, ensure independence of the judiciary and lawyers, safeguard detainees’ access to counsel, protect lawyers from attacks and harassment, and protect the freedoms of religion and movement of ethnic groups such as Tibetans and Uyghurs. China also took the opportunity to repudiate the work of the UN Committee against Torture by rejecting their 2008 recommendation regarding the inadmissibility in court of statements made under torture.\textsuperscript{225}

\textsuperscript{224} For examples of the types of government responses to the Special Rapporteur’s communications, see ibid., U.N. Commission on Human Rights, U.N. Doc. E/CN.4/2006/98/Add.1, paras. 26-27 (describing response of the Uzbekistan government, concerning alleged organizers of the 2005 Andijan incident, claiming that the Special Rapporteur had “prejudged the matter by doubting the competence of the investigative and judicial bodies of the sovereign State of Uzbekistan”); U.N. Human Rights Council, U.N. Doc. A/HRC/4/26/Add.1, paras. 20-21, 39-40, 73-74 (highlighting the Chinese government’s response concerning the treatment of Ismail Semed, which included additional case information, but which did not address allegations of torture; also pointing out that neither the Kyrgyzstan government nor the Uzbekistan government had responded concerning the cases of Mohammadrafiq Kamoluddin, Ayubkhodja Shahobidinov, and Fathullo Rahimo as of the publication of the Special Rapporteur’s report); U.N. Human Rights Council, U.N. Doc. A/HRC/10/3/Add.1, paras. 180-220 (describing the Russian Federation’s response to concerns about domestic counter-terrorism law, including claims disputing the Special Rapporteur’s findings on the basis of asserted particularities of domestic law and adherence to international legislative instruments – including the \textit{Shanghai Convention}).


In sum, while the international legal human rights framework is extensive, there are serious challenges presented for promoting full respect by SCO member states for international human rights and cooperation with human rights bodies, mechanisms, and special procedures, including the many Special Rapporteurs established to monitor and promote implementation of these rights. As the SCO pursues expanded cooperation with the UN, any cooperation modality must reference the SCO’s and its member states’ cooperation with UN human rights bodies and procedures, including member states’ responsiveness to treaty body recommendations and communications or requests for information from the Special Rapporteur on counter-terrorism and other independent expert mechanisms.

The remainder of this whitepaper focuses on specific human rights challenges presented by the SCO’s formal structure, policies, and practices. However, in any assessment of the compliance of the SCO with its international obligations as a regional organization, the individual human rights policies and practices of the SCO’s member states must also be addressed to avoid the concealment of these human rights problems under the mask of a regional body. The specific human rights issues documented by independent expert UN bodies need to also be addressed in international cooperation, including in expanded SCO-UN cooperation. Otherwise, the international community will risk allowing these cooperation efforts to actually undermine, rather than build, the capacity of states concerned.

D. China’s influence and impact within the SCO

i. The Three Evils doctrine: Counter-terrorism with Chinese characteristics

China has played a leading role in shaping the SCO’s approach to countering terrorism, especially in the SCO’s adoption of the Three Evils doctrine – which links terrorism, separatism, and extremism as co-equal targets. From its inception, the SCO adopted the Chinese government’s approach, with the June 15, 2001 *Shanghai Convention* and its targeting of acts ascribed to the Three Evils. Indeed, according to former Kyrgyz Foreign Minister Kadyrbek Sarbaev, “The fight against the ‘East Turkestan’ forces has been ‘the top priority of the SCO since it was established, and we are confident that we will emerge the winner.’” In the context of China’s extensive use of the Three Evils rhetoric to cast ethnic groups who express discontent with official policies or seek greater autonomy as proponents of terrorism, separatism, and extremism, this

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expansion of the influence of the Three Evils doctrine to the SCO raises serious human rights concerns. In its vagueness and politicized application to target ethnic groups, the doctrine violates the principle of legality and has compromised freedoms of expression, religion, and association.

China has applied the Three Evils approach in particular to the ethnic Uyghur population concentrated in XUAR. Uyghurs and international human rights monitoring groups have voiced strong concerns regarding policies and practices of the Chinese government, including Han settlement in XUAR, and the resulting impact on Uyghurs’ distinct culture, language, and practice of Islam.\(^{227}\) China has characterized Uyghur demands for greater autonomy and resulting tensions in the region as a threat to social stability and national security.

While the concept of the Three Evils has existed in official parlance for some time, the Chinese government has intensified its reliance on this concept since July 5, 2009, when ethnic tensions between Uyghurs and Han Chinese erupted as widespread riots broke out in Urumqi, capital of XUAR. Official estimates indicate that the July 5 riots and subsequent backlash resulted in 197 lives lost, 1,700 injuries, and extensive property damage.\(^{228}\) The government vociferously argued that the riots “were masterminded by terrorist, separatist and extremist forces both inside and outside China”\(^{229}\) — relying on the Three Evils doctrine to defend against international criticism and justify additional repressive measures.\(^{230}\) One entity accused by Chinese authorities of “instigating” the July 5 riots was the World Uyghur Congress, the U.S.-based NGO and critic of Chinese government policies in XUAR, headed by Uyghur activist and spokeswoman Rebiya Kadeer, whom the Chinese government has labeled a “separatist.” Official media have even gone so far as to assert that the World Uyghur Congress is connected to the East

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\(^{229}\) Ibid.

\(^{230}\) For example, the XUAR Standing Committee passed the “Information Promotion Bill” in September 2009, banning people in the region from using the Internet to undermine national unity or incite ethnic separatism, and requiring establishment of information communications technology monitoring systems. See “Xinjiang authorities ban online separatist talk: state media,” Agence France Press, September 27, 2009, http://www.google.com/hostednews/afp/article/ALeqM5g7LP1delq2HXJrj5F6EqfGwFfu_G.
Turkestan Islamic Movement\textsuperscript{231} – an entity designated as a terrorist organization associated with Al-Qaida by the UN Security Council.\textsuperscript{232}

The linking of unrest in XUAR to terrorism has facilitated the government’s failure to acknowledge the underlying grievances of Uyghurs that contributed to the July 5 riots. This observation has been made by independent monitors, including the UN Committee on the Elimination of Racial Discrimination, which in August 2009 urged the Chinese government to “carefully consider the root causes of [the July 2009] events, including inter-ethnic violence, and the reasons why the situation escalated.”\textsuperscript{233} As one Uyghur reportedly stated, illustrating the source of much anger against the government, “Give us jobs, stop holding our passports hostage, and let us worship the way we want to . . . That would solve these problems. That is all it would take.”\textsuperscript{234} Instead, the government has responded by severely restricting the civil and political rights of Uyghurs (see Section IV.D.ii infra), while prioritizing unsustainable economic development that risks exacerbating inequalities in the region.

The Three Evils doctrine thus presents the problem of a politicized and vague concept of the targets of the SCO’s counter-terrorism and cooperation measures. The principle of legality mandates that criminal liability may only be imposed pursuant to clear and precise provisions of law – provisions that may not be interpreted to unduly broaden the scope of proscribed conduct. Yet China – both domestically and regionally through the SCO – has relied on the catch-all concept of the Three Evils to avoid having to limit the scope of its crackdowns, which can target not only criminal acts, but also acts as varied as participation in a peaceful protest or communication via the Internet. By tying political dissent to “scare words” such as terrorism, extremism, and separatism, the government has attempted to promote its crackdowns as legitimate security measures and perpetuate policies that serve the interests of the Communist Party of China (CPC) at the expense of citizens. In violation of the principle of legality, China’s domestic law is broad enough to permit terrorism, separatism, and extremism to apply to anything perceived by the Chinese government as a “threat” to its control, whether violent or not.


\textsuperscript{232} See “The Consolidated List established and maintained by the 1267 Committee with respect to Al-Qaida, Usama bin Laden, and the Taliban and other individuals, groups, undertakings and entities associated with them,” March 10, 2011, http://www.un.org/sc/committees/1267/consolist.shtml (listing the Eastern Turkistan Islamic Movement under entry “QE.E.88.02”).


Official Chinese government references to the Three Evils terminology appeared as early as March 15, 2001, prior to the establishment of the SCO in June of that year, in the *Tenth Five Years Planning Outline of the People’s Republic of China’s Development on National Economy and Society*. Chapter 23 of the document, on “Rule by Law, Building a Socialist Country Governed According to Law,” sets out the following priorities: “seriously study the new situations and new issues threatening social stability, correctly handle the inner conflicts among people during the new period, ensure social stability,” and “crack down on ethnic splitting activities, religious extremist forces, violent terrorist activities, cults and illegal activities conducted in the name of religion.”

Reference appears again, this time after the creation of the SCO, in the State Council’s September 5, 2001 *Opinions on Further Strengthening the Comprehensive Management of Social Order* (“State Council Opinion on Social Order”), which states:

> Our country still faces intertwined and complicated environments both within and overseas; factors affecting social stability continue to exist. Mainly: hostile forces intensify the infiltrating and destroying activities against our country; ethnic splitting forces within and outside the country, religious extremist forces and violent terrorist forces collude together, using so-called issues of ethnicity, religion and human rights, etc., to create problems, attempting to destroy the social stability of our country.

In these documents, the Three Evils doctrine – connected explicitly with ethnic groups, religion, and human rights in the *State Council Opinion on Social Order* – is clearly tied to CPC fears surrounding social stability. In China, social stability depends to a great extent on how popular discontent with official policies is managed or channeled – particularly when those policies implicate marginalized ethnic and religious groups. Indeed, in the explicit language of the *State Council Opinion on Social Order*, the qualifiers surrounding the politically-charged terms “terrorism,” separatism (“splitting”), and “extremism” are revealing, suggesting the true focus of the government’s concern: “*ethnic splitting*”

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235 Zhonghua Renmin Gongheguo guomin jingji he shehui fazhan dishige wunian jihua gangyao [中华人民共和国国民经济和社会发展第十个五年计划纲要] [Tenth Five Years Planning Outline of the People Republic of China’s Development on National Economy and Society], submitted by the State Council [国务院] and approved by the National People’s Congress [全国人民代表大会], promulgated and effective on March 15, 2001, [http://www.people.com.cn/GB/historic/0315/5920.html](http://www.people.com.cn/GB/historic/0315/5920.html).

236 Ibid. (emphasis added).

forces” and “religious extremist forces,” equated rhetorically with “violent terrorist forces” under the Three Evils doctrine.

At the same time, clear and precise definitions of each of the Three Evils – as required by the principle of legality in order to impose criminal liability – do not exist domestically. China’s domestic legislation on counter-terrorism is actually quite limited, providing ample room for official (and unofficial) policy to take its place. While China has made statements about its efforts to draft an anti-terrorism law, such efforts have yet to come to fruition. The key provision under Chinese domestic law applicable to terrorism is Article 120 of the Criminal Law, which was amended on December 29, 2001, to state:

Whoever forms, leads or actively participates in a terrorist organization shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; other participants shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.

Whoever, in addition to the crime mentioned in the preceding paragraph, commits other crimes of homicide, bombing or kidnapping shall be punished in accordance with the provisions on combined punishment for multiple crimes.240

The focus of the Criminal Law is participation in an organization – reflecting the CPC’s preoccupation with organized opposition – without including a definition of what constitutes a “terrorist” or “terrorism.” Article 4 of the State Security Law could also apply to acts of terrorism as linked under the Three Evils to extremism and splittism, as it broadly states, “Any organization or individual that has committed any act of endangering state security of the People’s Republic of China shall be prosecuted

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238 See generally Zhao Bing-zhi and Wang Xiu-mei, supra n. 12 [noting, “Chinese criminal law does not explicitly regulate the concept of ‘terrorism crime’, [such that] the terrorism crime must be presented in [the] form of ordinary crime,” including such criminal acts as murder, arson, etc.; the intent to commit terrorism is usually ignored due to lacking of legal provisions;” and the identification of “terrorist organizations” per se is under the authority of both the People’s Court [judicial identification] and the Ministry of Public Security [administrative identification]].
according to law.” An “act of endangering state security” includes “conspiring to overthrow the government, splitting the country or overthrowing the socialist system.” Finally, China’s Supreme People’s Procuratorate and Ministry of Public Security recently promulgated a regulation outlining the prosecution standards for the crime of financing terrorism, but the regulation does not provide a definition of terrorism itself.

ii. The Three Evils doctrine in practice: Targeting of and impact on Uyghurs

In practice, counter-terrorism in China is left largely to the Ministry of Public Security (MPS) and other public security organs. The MPS has made three major statements concerning terrorism since 2001, each one focusing on East Turkestan-related entities and individuals of Uyghur ethnicity. The first was issued on December 15, 2003, when the MPS released a list of four alleged terrorist organizations – the East Turkistan Islamic Movement (ETIM), East Turkistan Liberation Organization, World Uyugur Youth Congress, and East Turkistan Information Center – as well as eleven alleged individual terrorists, all of whom were also tied to East Turkestan. At that time, the MPS also released guidance on identification of terrorist organizations and terrorists, in the form of a circular list that, while lacking clear definitions for the terms “terrorist” or “terrorism,” included the following as “Specific Criteria for Identification of Terrorist Organizations”:

(1) A group (regardless of whether the headquarters is within the country or overseas) which, through violent terrorist means, engages in acts that endanger national security, destroy social stability, and endanger lives and properties of the people;

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242 Ibid.
(2) has a certain degree of structure, leading division of work, or work division system;
(3) satisfying the above criteria, and with any of the following circumstances:

(i) organized, planned, incited, implemented or participated in implementing terrorist acts, or is in the process of organizing, planning, inciting, implementing or participating in implementation of terrorist acts;

(ii) subsidizes, or supports terrorist acts;

(iii) establishes a base for terrorist activity; or recruits, trains, or cultivates terrorists systematically;

(iv) in collusion with other international terrorist organizations, accepts subsidy, training, cultivation of other international terrorist organizations, or participates in the activities thereof.

While the phrase “through violent terrorist means” is vague and circular as guidance for defining terrorism, the criteria do indicate that an act is considered indicative of terrorism if its effect is the endangerment of national security, destruction of social stability, or endangerment of the lives and property of the people. Unlike the characteristics of terrorism laid out by the UN Security Council, however, or even the definition of terrorism contained within the Shanghai Convention, the MPS criteria do not include the element of intent. Moreover, endangerment of national security and destruction of social stability are overbroad, subjective elements that the government can assert when facing political threats that would not objectively qualify as terrorism. These criteria therefore do not sufficiently comply with the principle of legality. (An English translation of the criteria released by the MPS is included in Appendix C.)

In October 2008, the MPS released another list of eight individuals wanted for terrorism;246 again, all of these individuals were allegedly tied to East Turkestan forces, specifically, ETIM (the only East Turkestan entity noted as a terrorist organization on the UN Security Council’s Consolidated List – see Section IV.F.i.1 infra). Notably, the MPS

245 Zhao Lei and Quan Xiaoshu [赵磊、全晓书], “Zhongguo rending kongbu zuzhi he kongbu fenzi de juti biaozhun” [中国认定恐怖组织和恐怖分子的具体标准] [China Sets Out Specific Criteria for Identifying Terrorist Organizations and Terrorists], Xinhua News Agency [新华社], December 15, 2003,
246 Ministry of Public Security [公安部], “Gong’anbu tongbao di-er pi rending de ba ming ‘Dong-tu’ kongbu fenzi mingdan” [公安部通报第二批认定的8名“东突”恐怖分子名单] [Ministry of Public Security Announces Second List of Eight Identified “East Turkestan” Terrorists], October 21, 2008,
indicated that this second list was based on, inter alia, China’s implementation of UN Security Council resolutions 1267, 1373, 1456, and 1624.\(^{247}\) (An English translation of this MPS statement is included in Appendix C.) The MPS thus explicitly tied its efforts targeting East Turkestan forces to international counter-terrorism efforts, which could serve to enhance the legitimacy of such crackdowns.

Finally, on June 24, 2010, the MPS announced that it had broken up a major terrorist plot of ETIM.\(^{248}\) This incident raised a number of questions concerning China’s compliance with its human rights obligations in counter-terrorism. The vaguely-worded announcement indicated that Chinese public security agencies had “recently” captured “more than ten” leaders, agents, and members of a “terrorist organization,” including two individuals asserted to be plot leaders – Abdurixit Ablet (an alleged member of ETIM) and Imin Semai’er (simply noted as “a key actor in the East Turkestan terrorist forces”). The identities of the other captured individuals were not revealed. The MPS statement did indicate, however, that the information leading to this arrest was obtained through the investigation of “twenty individuals of Chinese citizenship” who were deported to China on December 20, 2009, after an illegal border crossing – facts that exactly match reports of Cambodia’s deportation in December 2009 of 20 Uyghurs who had sought refuge in the country after the July 2009 unrest.\(^{249}\) Additionally, the MPS statement indicated that Abdurixit Ablet, Imin Semai’er, “and others” confessed to participating in a wide array of terrorist activities during interrogation.

Serious issues therefore exist concerning China’s treatment of these Uyghurs, including the principle of non-refoulement and potential use of torture during the interrogations, which require additional investigation. Yet, again, the MPS asserted compliance with international law, stating, “Chinese public security agencies will firmly uphold and fulfill the resolutions of the United Nations General Assembly and the Security Council, striking a serious blow to every type of terrorist activity according to the law, and conscientiously uphold social stability.”\(^{250}\) (An English translation of this MPS statement is included in Appendix C.)

\(^{247}\) Ibid.
\(^{249}\) See infra n. 372.
\(^{250}\) “Gōng’ānjīnguānpōhuò ‘Dōng-yì-yùn’ kōngbù zuzhī jīngjiè (shílù)” [公安机关破获“东伊运”恐怖组织案件(实录)] [Public Security Agencies Foil “East Turkestan Islamic Movement” Terrorist Plot (Transcript)], supra n. 248.
In addition to these national-level efforts, regulations specific to XUAR have become a key part of China’s domestic counter-terrorism legal framework, and it is here that the Three Evils doctrine is most fully incorporated. As part of enhanced security efforts, the XUAR People’s Congress Standing Committee made revisions to the XUAR Regulation on the Comprehensive Management of Social Order on December 29, 2009 (“2009 XUAR Regulation Amendment”), which took effect on February 1, 2010.\(^{251}\) An English translation of the text of the revised regulation is included in Appendix C.) The 2009 XUAR Regulation Amendment was designed specifically to crack down against the three forces of terrorism, separatism, and extremism in XUAR after the July 5 riots, and includes multiple references to “ethnic separatist forces, violent terrorist forces, and religious extremist forces.” These regional changes appear to be unique to XUAR, with the “new emphasis on state security […] largely unseen in other localities as well as in the XUAR’s own previous social order provisions.”\(^{252}\)

Such singular focus by the Chinese government on the “East Turkestan threat” in its counter-terrorism efforts, and its crackdown in response to the July 5 riots, suggests that the concept of terrorism has been applied in a biased fashion, with the Uyghur community the subject of intense scrutiny and suspicion. China, like other states, does face real threats of terrorism, as demonstrated to some degree by attacks launched against public targets in the run-up to the 2008 Olympics in Beijing.\(^{253}\) It has also been reported that some individuals of Uyghur ethnicity, and groups such as the Turkestan Islamic Party, were involved in terrorist activities linked to Al-Qaida.\(^{254}\) Yet the limited

\(^{251}\) Xinjiang Weiwu zizhiqu shehui zhi’an zonghe tiaoli [*新疆维吾尔自治区社会治安综合治理条例*] (Regulations of the Xinjiang Uyghur Autonomous Region on Comprehensive Management of Social Order), issued by the Standing Committee of Xinjiang Uyghur Autonomous Regional People’s Congress [*新疆维吾尔自治区人民代表大会常务委员会*], adopted January 21, 1994; amended December 11, 1997; revised December 29, 2009; revision promulgated December 29, 2009; and effective February 1, 2010 (as revised 2009), http://www.xinjiang.gov.cn/10100/10160/10001/10000/2009/66254.htm. (Unofficial translation from the original Chinese by Human Rights in China; see Appendix C, “People’s Republic of China Domestic Law and Official Statements.”)


involvement of Uyghurs in terrorist acts cannot serve as justification of widespread repression throughout XUAR or the labeling of peaceful Uyghur activists under the rubric of the Three Evils.

As China’s Ministry of Foreign Affairs itself noted in 2002, “China holds that all actions against terrorism should have solid proof and a clear target and adhere to the purposes and principles of the UN Charter. China opposes arbitrarily widening the scope of strikes in the name of fighting terrorism and it also opposes identifying terrorism with any specific country, ethnic group or religion.” The Three Evils doctrine undermines this principled approach and, in doing so, compromises human rights guaranteed under international law, and international counter-terrorism efforts as a whole.

E. Harmonization of legislation in SCO member states

Despite the inherent dangers of the SCO’s Three Evils approach – exemplified in China – the SCO has promoted the spread of legislation designed to combat terrorism, extremism, and separatism within individual member states. Incorporation of the Three Evils doctrine into the domestic law of member states both extends the control of China and Russia, the SCO’s dominant regimes, and provides a counterweight to international influence and pressure on human rights. The SCO’s clear support for, and perpetuation and extension of, the Three Evils doctrine – which has had drastic effect on the rights of the Uyghur populace in XUAR – suggests a lack of political will to respect, protect, and promote essential human rights.

Harmonization of security-related domestic legislation on the basis of the Three Evils has been identified by the SCO repeatedly as a key area for work and a priority for resolution – which the SCO is coming closer and closer to attaining. The Shanghai Convention requires member states to “take such measures as can prove necessary, including, as appropriate, in the field of their domestic legislation, in order to ensure that in no circumstances acts referred to in Article 1 (1) of this Convention [terrorism, separatism, and extremism] should be subject to acquittal based upon exclusively


political, philosophical, ideological, racial, ethnic, religious or any other similar considerations and that they should entail punishment proportionate to their gravity.”257 Regional consensus on rejecting justifications for acts characterized as one of the Three Evils was thus of paramount importance from the SCO’s inception.

As early as 2004, in a meeting between the RATS Director and Russian officials, the need to “adjust[] national legislations of SCO country members in accordance with the policy of fighting terrorism, extremism, and separatism [was] noted.”258 As later set forth under the 2005 Concept of Cooperation of SCO Member States, fundamental objectives of SCO cooperation include “developing and harmonizing the legislation of SCO member states in the realm of combating terrorism, separatism, and extremism,” and “assisting in the strengthening of international anti-terrorist cooperation and in the creation of a world atmosphere that completely rejects terrorism, separatism, and extremism.”259 The 2005 Concept of Cooperation of SCO Member States also enumerated that a guiding principle for member states is the “reciprocal recognition of a terrorist, separatist, or extremist act regardless of whether the legislation of SCO member states includes a corresponding act in the same category of crimes or whether the act is described using the very same terms.”260 These provisions indicate that a primary obligation of SCO membership is to target any individual designated terrorist, extremist, or separatist by another member state, irrespective of differences in the states’ characterizations of such threats. Indeed, the ultimate goal appears to be elimination of differences in member state characterizations of and responses to such threats.

The SCO Counter-Terrorism Convention of 2009 further advanced efforts to harmonize domestic approaches to counter-terrorism by identifying a number of legislative and other measures that all parties should implement on a national level.261 Many of these measures raise human rights concerns, including:

- Encouraging public participation in identifying terrorist threats by means of payment to informers, “assisting non-governmental organizations, groups, and private individuals in countering terrorism and promoting non-acceptance of terrorism in society,” and “educating the public regarding the dangers and negative effects of terrorism, as well as the legal consequences of offenses

257 Shanghai Convention, supra n. 27, Art. 3.
259 Concept of Cooperation, supra n. 45, Art. II.2.
260 Ibid., Art. II.3 (emphasis added).
261 See SCO Counter-Terrorism Convention, supra n. 178, Arts. 7-10.
covered” under the *SCO Counter-Terrorism Convention*. Each of these approaches may promote state interference in civil society and creation of incentives to characterize legitimate activities as terrorism – a strong possibility in light of the convention’s ambiguous definition of the term.

- Requiring criminalization of “public calls to terrorism or public justification of terrorism,” namely, “the dissemination of any appeal to the public for the purpose of inciting the commission of” certain offenses enumerated under the *SCO Counter-Terrorism Convention*, or “public declarations calling for the support and emulation of terrorism.” This approach to criminalization for incitement to terrorism includes only two of three elements required by international law, and puts legitimate expression at risk.

While the UN Security Council has recognized the role that incitement could play in the commission of terrorist acts and called for its prohibition, the UN has reiterated that incitement to terrorism should be understood as having all of the following elements:

- a direct call to engage in terrorism (an act of communication);
- with the intention that this will promote terrorism (subjective intent);
- in a context in which the call is directly causally responsible for increasing the actual likelihood of a terrorist act occurring (objective danger that the conduct will incite terrorism).

The *SCO Counter-Terrorism Convention*’s approach, however, does not include the element of objective danger of increasing the actual likelihood of commission of a

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262 Ibid., Arts. 7(2)(5), (11), (12). Notably, such measures are quite similar to those outlined in the XUAR Regulation on the Comprehensive Management of Social Order. See Xinjiang Weiwuer zizhiqu shehui zhi’an zonghe tiaoli [新疆维吾尔自治区社会治安综合治理条例] (Regulations of the Xinjiang Uyghur Autonomous Region on Comprehensive Management of Social Order), supra n. 251, Arts. 38-42 (available in English translation in Appendix C).

263 Ibid., Art. 9(1)(4).


terrorist act. Moreover, criminalization of “public justification of terrorism” and “public declarations calling for the support and emulation of terrorism” goes beyond permissible prohibitions on incitement to terrorism. Incitement must not be equated with the mere glorification or promotion of terrorism, or the expression of support for past acts, as such activity does not possess the three elements of incitement outlined above.\textsuperscript{266} As stated by the UN Secretary-General, “\textsl{It is important that vague terms of uncertain scope such as ‘glorifying’ or ‘promoting’ terrorism not be used when restricting expression.}”\textsuperscript{267}

In requiring harmonization of the legislation of SCO member states on these matters, the SCO framework risks perpetuating counter-terrorism practices that do not fully integrate human rights principles and safeguards.

**F. SCO policies, operations, and practices: The fourth pillar meets the Three Evils**

Given the fundamental problems presented by the formal SCO framework and the lack of transparency and accountability in its actual practices, it is no surprise that counter-terrorism cooperation within that framework has compromised member states’ compliance with international law. The SCO has significant potential to impact individual rights that are protected by international law, including security of the person, freedom of expression, freedom of religion, freedom of association, privacy, and fair treatment under the law. While publicly-available information on the operations of the SCO is limited (\textit{see Section IV.B.i supra}), SCO trends documented thus far raise concerns regarding the widespread acceptance of the targeting of legitimate organizations and individuals who have voiced dissent against member state policies. SCO member states have relied on the Three Evils doctrine as the basis for severe restrictions on and violations of the human rights of SCO member states’ citizens.

The SCO framework has greatly expanded the reach of SCO member state governments to effectuate domestic policies and priorities in the region. The impact of this reach on individuals is significant, as the SCO structure obligates all member state governments throughout the Eurasian region to track, target, and punish persons or organizations identified as threats, no matter where they are located within that region. The 2009 \textit{SCO...}


Counter-Terrorism Convention codified the bases for a member state’s jurisdiction over “terrorist” offenses – and control over the individuals or entities alleged to have committed them – as follows:

1. Each Party shall take the necessary measures to establish its jurisdiction over the offenses covered by this Convention in the following cases:

1) when the offense has been committed in the territory of that Party;
2) when the offense has been committed on board a vessel flying the flag of that Party or an aircraft registered under the laws of that Party;
3) when the offence has been committed by a national of that Party.

2. Each Party may also establish its jurisdiction over offenses covered by this Convention in the following cases:

1) when the offense was aimed at or resulted in the commission of a terrorist act inside the territory or against a national of that Party;
2) when the offense was aimed at or has been committed against a Party’s facility abroad, including its diplomatic missions or consular premises;
3) when the offense was aimed at or resulted in the commission of a terrorist act for the purpose of compelling that Party to do or abstain from doing any act;
4) when the offense has been committed by a stateless person with habitual residence in the territory of that Party;
5) when the offense has been committed on board a vessel operated by that Party. 268

According to the SCO Counter-Terrorism Convention, the jurisdiction of a state is not confined to that state’s own citizens. Nor is jurisdiction confined to offenses committed on that state’s territory or against its overseas facilities. Instead, the SCO Counter-Terrorism Convention permits member states to claim jurisdiction whenever the alleged offense is “aimed at” commission of a terrorist act on the state’s territory or against one of its citizens, regardless of the location of the citizen or the perpetrator, and regardless

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268 SCO Counter-Terrorism Convention, supra n. 178, Art. 5 (emphasis added).
of whether the terrorist act ultimately transpired. Most disturbingly, a state may also claim jurisdiction by asserting that an offense was “aimed at” commission of a terrorist act that had as its purpose an impact on that state’s decision-making (an act with the “the purpose of compelling [an SCO member state] to do or abstain from doing any act”). For example, pursuant to this formulation, China could assert that it had jurisdiction over Kazakh citizens of Uyghur ethnicity, located in Kazakhstan and alleged to be plotting a terrorist act in Kazakhstan – so long as China asserts that such act, which may or may not have even transpired, is intended to send a message to China.

Such an amorphous basis for jurisdiction raises considerable doubts about the safeguarding of individuals’ due process rights in the SCO framework. Combined with the SCO Counter-Terrorism Convention’s loose, politicized definition of terrorism, the provisions above give states jurisdictional authority over virtually any perceived threat in which they have an interest. Should member states disagree as to who may properly exercise jurisdiction, they shall “consult with a view to determine the most appropriate jurisdiction.” This raises serious concerns that outcomes of such consultations would weigh heavily in favor of China or Russia – the SCO member states with the greatest economic and political clout.

Taking into account the extended reach of SCO member states in this framework, three specific areas of cooperation are of particular concern for their negative impact on human rights: exchange of information on individuals; extradition or returns of, and denial of asylum to, member state citizens; and joint military and law enforcement exercises.

i. Impact of exchange of individual information on the right to privacy and due process

Law enforcement bodies of SCO member states are obligated to share a great deal of information and data that have been identified as related to terrorism, separatism, and extremism. The Shanghai Convention indicates that the “central competent authorities of the Parties shall exchange information of mutual interest” on planned or committed terrorist, separatist, or extremist acts, as well as information about “organizations, groups and individuals preparing and/or committing acts referred to in Article 1(1) of this Convention or otherwise participating in those acts, including their purposes, objectives, ties and other information.” Such cooperation has deepened over time: in June 2009, SCO Secretary-General Nurgaliev stated that the SCO member states “have a

269 Ibid., Art. 5(5).
270 Shanghai Convention, supra n. 27, Art. 7 (emphasis added).
legal obligation to share information about terrorists and terrorist organizations so that
competent services will be able to trace them on the territory of any member state. This
proved to be an effective mechanism resulting in the achievement of specific goals.
Cooperation in this field will be intensifying. All six members of the SCO are determined
to prevent terrorists and extremists of different kinds from destabilizing the situation in
the region.”271 The SCO Counter-Terrorism Convention reiterated that “competent
agencies of the Parties, upon request or on their own initiative, shall exchange
information (documents, materials, or other information) regarding issues covered by
this Convention for the purpose of preventing or combating terrorism.”272 The SCO’s
RATS is the operational center that makes this happen.

The SCO’s establishment and operation of RATS raises serious human rights concerns
with its multilateral approach to targeting organizations, groups, and individuals
deemed threats by any one of the six SCO member state governments. Of the tasks with
which RATS is charged, its activities to assist in the search for persons alleged to have
committed acts of terrorism, separatism or extremism, as well as to exchange individual
identifying and NGO information through the RATS database – the parameters of which
are governed by separate agreement – raise serious questions as to conformity with
international law.

In an April 2009 interview, the Director of the Executive Committee of RATS provided
the following insight into RATS and its role in member states’ national security measures:

Our organization is not directly involved in counter-terror operations. We were,
however, actively engaged in facilitating security measures implemented at the
2008 Olympic Games [in Beijing]. Documents prepared by our organization
formed the legal framework for inter-agency cooperation in this field. As far as I
know nothing like this has ever been done: there is no international precedent
for it. To be frank, it was not an easy task, but we were able to accomplish our
goals. The joint efforts of SCO member states in facilitating security at the 2008
Olympic Games fully reflects the “Shanghai spirit” and offers the international
community a working model of cooperation between states on a global scale.

When it comes to the Sochi Olympics [site of the 2014 Winter Olympics in
Russia], I believe that we will be able to build on our past experiences to
develop effective strategies in facilitating security. Needless to say, our

271 “Statement of the SCO Secretary-General Bolat K. Nurgaliev at the Security Forum of the Euro-Atlantic
272 SCO Counter-Terrorism Convention, supra n. 178, Art. 12(1).
organization could never replace Russia’s law enforcement agencies, but we are certainly capable of assisting their efforts with relevant and strategic information.\(^{273}\)

In light of the ever more powerful technology tools that SCO member states have at their disposal, “assisting [their] efforts with relevant and strategic information” is perhaps the most potent form of cooperation these states can supply in the modern era. Technology deployed by these governments can track and expose the activities, identities, and other significant details of individuals and organizations, as well as predict and analyze patterns of behavior – to eliminate “problems” before they even materialize.

The aforementioned coordination by RATS of national security measures in connection with “mega-events” (large-scale public events) is a good example of such capacity, which will continue to develop into the future, and not only with respect to the Sochi Olympic Games. At a RATS meeting in October 2009, “complex measures of assistance to the People’s Republic of China and the Republic of Kazakhstan in the maintenance of security at World Expo 2010 in Shanghai (PRC), 2010 Guangzhou Asian Games and Asian Winter Games in Kazakhstan in 2011 have been approved.”\(^{274}\) It is worth noting, however, that security for the Beijing Olympic Games in 2008, in which RATS was “actively engaged,” included crackdowns on human rights defenders, massive surveillance operations, and restrictions on peaceful dissent.\(^{275}\) As this approach was deemed a success, it is likely to be exported and repeated among the SCO member states.

Under the *Shanghai Convention* and the *SCO Counter-Terrorism Convention*, information exchange can be initiated at the request of one member state to another, or a member state can offer information on its own initiative.\(^{276}\) The required elements of a request are surprisingly minimal, the most complicated under the *Shanghai Convention* being “purposes of and grounds for the request,”\(^{277}\) and under the *SCO Counter-Terrorism Convention*, a summary of facts upon which the operation, investigation, or proceeding...

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\(^{273}\) “На переднем крае борьбы с ‘трema силами зла’” (“At the Forefront of the Struggle Against the ‘Three Evils’”), supra n. 183 (emphases added).


\(^{276}\) *Shanghai Convention*, supra n. 27, Art. 8(1); *SCO Counter-Terrorism Convention*, supra n. 178, Art. 12(1).

\(^{277}\) *Shanghai Convention*, supra n. 27, Art. 8(3).
is based, and statement that the requested measure is in accordance with relevant legislation.\(^{278}\) There is no indication that a request for individual data must be accompanied by any evidence of criminality or specification of the act or charge for which an individual is wanted. The *Shanghai Convention* does, however, provide that a request for information may be refused on the ground that “it contradicts the legislation or international obligations of the requested Party.”\(^{279}\) Likewise, the *SCO Counter-Terrorism Convention* permits refusal if compliance “threatens the sovereignty or national security of the requested Party or contravenes its laws.”\(^{280}\) Whether or not such a request has ever been denied on these grounds is unknown.

Over the years the SCO and RATS have developed two key forms of information exchange with serious implications for individual rights: SCO “blacklists” and the RATS counter-terrorism database.

1. **Blacklists**

Within the international community, there is a growing awareness of the human rights risks of blacklists developed for counter-terrorism purposes. The due process questions are significant – for instance: What evidence is used to place individuals and entities on the list? Who makes the listing decision? Are such decisions subject to oversight? Can they be challenged through a legitimate delisting procedure? Can an individual or entity wrongfully placed on the list receive reparation?

All of these questions have surfaced in connection with the work of the UN Security Council’s 1267 Committee (also known as the Al-Qaida/Taliban Sanctions Committee), established pursuant to Security Council Resolution 1267 to impose a sanctions regime against individuals and entities associated with Al-Qaida, the Taliban, and Usama Bin Laden, wherever located.\(^{281}\) These sanctions measures include assets freezing, travel

\(^{278}\) *SCO Counter-Terrorism Convention*, supra n. 178, Art. 14.

\(^{279}\) *Shanghai Convention*, supra n. 27, Art. 9(6).

\(^{280}\) *SCO Counter-Terrorism Convention*, supra n. 178, Art. 17(2).

bans, and arms embargoes; the measures have no expiry date. All states are required under Chapter VII of the *UN Charter* to impose sanctions against individuals and entities that have been designated as “associated with” Al Qaida, the Taliban or Usama Bin Laden and placed on the Security Council’s consolidated list, known as the 1267 Consolidated List. Clearly, the consequences of inclusion on the 1267 Consolidated List are immense — yet due process protections associated with listing and delisting are lacking. The 1267 Committee considers listing and delisting requests and reaches its decisions by consensus of its members — the 15 member states of the Security Council. There are no appeal procedures, no standard of proof, no public hearings, and no right to answer, and no reasons need to be given for listing and delisting decisions. In fact, a criminal charge or conviction is not necessary for inclusion on the 1267 Consolidated List “as the sanctions are intended to be preventive in nature.”

In response to arguments that the Security Council Resolution 1267 sanctions regime does not adequately incorporate due process and transparency, the Security Council passed Resolution 1904, establishing an independent ombudsperson with human rights credentials to assist in the consideration of delisting requests and implement more transparent procedures. The resolution also laid out a deadline for completion of the 1267 Committee’s first review for accuracy of the 1267 Consolidated List, and requirements for further review and updating of the list. Even so, Resolution 1904 reiterated that the sanctions regime was “preventative in nature and not reliant upon criminal standards set out under national law”;

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283 The definition of “associated with” includes the following elements: “participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of; supplying, selling or transferring arms and related materiel to; recruiting for; or otherwise supporting acts or activities of; Al-Qaida, Usama bin Laden or the Taliban, or any cell, affiliate, splinter group or derivative thereof.” S.C. Res. 1617, supra n. 281, para. 2.


285 See, e.g., Thomas Hammarberg, “Arbitrary Procedures for Terrorist Black-listing Must Now be Changed,” Council of Europe Commissioner for Human Rights, December 1, 2008, http://www.coe.int/t/commissioner/Viewpoints/081201_en.asp (“Arbitrary procedures for terrorist blacklisting must now be changed...the measures have affected a number of rights of the targeted individuals, including the right to privacy, the right to property, the right of association, the right to travel or freedom of movement. Moreover, there has been no possibility to appeal or even know all the reasons for the blacklisting, eliminating the right to an effective remedy and due process...”).

286 S.C. Res. 1904, supra n. 281.

287 Ibid.

288 Ibid., preamble.
the Consolidated List in July 2010,\textsuperscript{289} the list still evidences problems. Notably, the one individual connected with XUAR who is currently included on the list – Abdul Haq, entry QI.H.268.09, alleged “overall leader and commander of the Eastern Turkistan Islamic Movement” – was reportedly killed in the North Waziristan region of Pakistan in February 2010.\textsuperscript{290}

While acknowledging progress by the Security Council, the Special Rapporteur on counter-terrorism has continued to voice serious concern over the framework engendered by Security Council Resolutions 1267 and 1373, arguing that the Security Council has exceeded the powers conferred by it by the \textit{UN Charter}, and that its practices have posed risks to the protection of international human rights standards.\textsuperscript{291} He recommends that the Security Council replace these key counter-terrorism resolutions with a new, single resolution, not adopted under Chapter VII of the \textit{UN Charter}, that incorporates a proper human rights clause and extinguishes the problematic aspects of the old framework, while still maintaining States’ reporting duties, which should fully address human rights questions. Additionally, he asserts that, as the 1267 regime amounts to \textit{ultra vires} action, all UN-listed individuals and entities should have access to domestic judicial review before sanctions are applied – i.e., the 1267 Consolidated List should no longer be considered “proof” of the terrorist nature of an entity or individual, such as the Eastern Turkistan Islamic Movement.

The SCO’s regional version of a counter-terrorism blacklist presents the same problems that the UN system itself is building momentum to address – but, unlike the UN, the SCO does not yet appear to have tackled the due process issues inherent in blacklisting. Indeed, the ability to obtain multilateral, uncritical acceptance of the state’s specific designation of enemies within the SCO framework is a valuable tool for SCO members. This multilateral acceptance has served as a platform for member states to rebut the criticism of Western nations about domestic human rights records and targeted groups, providing a legitimized counterpoint for defending state actions. It also has the effect of expediting mutual legal assistance in the elimination of state enemies when such enemies are outside of the state’s borders and direct control. Moreover, this regional


blacklist, administered through RATS, has its foundations in the concept of the Three Evils.

Under Article 14 of the ICCPR, however, SCO member states are required to respect and protect individuals’ rights to equality before the courts and tribunals, presumption of innocence until proven guilty, a fair trial, minimum due process guarantees, and review by a higher tribunal.292 The UN High Commissioner for Human Rights elaborated that inclusion on a blacklist denies an individual the right to a fair hearing, and often lacks the following essential aspects: uniformity in evidentiary standards and procedures; proper notice to individuals concerning the listing and reasons behind it; an expiration date; methods to challenge the listing; and the right to a remedy.293 The Special Rapporteur on counter-terrorism also noted that blacklisting may infringe on the right to property, freedom of association, and political rights.294 He highlighted that blacklisting must comply with the principles of legality and legal certainty, proportionality, and necessity.295 He further stressed that any inclusion on a blacklist must be subject to procedural guarantees, including the right to be informed of grounds for inclusion and delisting procedures, the right to judicial review, the right to a remedy, and humanitarian exemptions.296

Publicly-available documents of the SCO and RATS do not indicate incorporation of any such safeguards in the SCO’s blacklisting process. What is known is that the blacklist has evolved since 2005, when RATS identified the creation of a list as a main direction of SCO cooperation. The 2005 *Concept of Cooperation of the SCO Member States* specified as a guiding principle the “inescapability of punishment” for organizations and individuals wanted for terrorism, separatism, and extremism,297 and noted one of the desired results of blacklisting as confiscation of assets.298 These planned measures directly implicate the right to property, freedom of association, and political rights as articulated by the Special Rapporteur on counter-terrorism. The “fundamental avenues of cooperation” laid out in the 2005 *Concept of Cooperation of the SCO Member States* include:

295 Ibid., paras. 32-33.
296 Ibid., paras. 38-41.
297 Concept of Cooperation, supra n. 45, Art. II.3.
298 Ibid., Art. III.2.
1. The formation of a single policy by SCO member states in the realm of combating terrorism, separatism, and extremism and the effectuation of inter-state coordination of this activity.

2. The development of unified approaches to stopping the activity of terrorist, separatist, and extremist organizations prohibited in SCO member states, including the creation of a unified list of such organizations with subsequent confiscation of their property and financial resources.

3. The development and implementation of the anti-terrorist capacity of SCO member states.

4. The inevitability of punishment for terrorism, separatism, and extremism.

5. Creating and maintaining a single search registry of individuals wanted internationally for committing crimes of a terrorist nature or who are suspected of committing crimes of a terrorist nature.299

The exact contents of the SCO blacklist are unknown, and it appears to remain a work in progress for RATS. According to publicly available information, in early 2006, the RATS Council agreed on a first common list of 15 designated terrorist organizations, which included Al-Qaida, the Congress of Peoples of Chechnya and Dagestan, Hizb ut-Tahrir, and the Islamic Party of Turkestan.300 A list of 400 alleged individual terrorists was reportedly also agreed upon, but not publicly released.301

In May 2007, at a meeting of Secretaries of Security Councils of SCO member states, “the meeting heard a report on preparing a single list of terrorist, separatist and extremist organizations whose activity on the territory of the SCO member states are prohibited, as well as a single list of individuals wanted by the special services and law enforcement agencies of the SCO member states for committing or being suspected of

299 Ibid., Art. III (emphases added).
300 See Mikhail Vinogradov, “Борцы с терроризмом договорились о сотрудничестве” (“Anti-terrorist fighters have agreed on cooperation”), Izvestia, April 3, 2006, http://www.izvestia.ru/politic/article3091651/index.html. The full list identified the following 15 organizations: Supreme Military Majlisul Mujahideen Shura United Forces of the Caucasus (Russia); Riyadh al-Salihin (Russia); Al-Qaida; Congress of Peoples of Chechnya and Dagestan (Russia); Asbat al-Ansar (Lebanon); Al-Jihad (Egypt); The Islamic Group (Egypt); Muslim Brotherhood; Hizb ut-Tahrir; Lashkar-e-Taiba (Pakistan); Taliban (Afghanistan); The Islamic Party of Turkestan; Jamiat al Islam al Idzhtimai (Kuwait); Jamiat Ihya at-Turaz al-Islami (Kuwait); and Al-Haramain (Saudi Arabia).
301 Mikhail Vinogradov, “Борцы с терроризмом договорились о сотрудничестве” (“Anti-terrorist fighters have agreed on cooperation”), supra n. 300.
committing the crimes of terrorist, separatist and extremist nature.”\textsuperscript{302} Reports indicate that this meeting produced a list of 39 terrorist, separatist, and extremist organizations – including Al-Qaida, the Taliban, the Islamic Movement of Uzbekistan, Hizb ut-Tahrir, and the East Turkestan Islamic Movement – and a most-wanted list of 944 individuals.\textsuperscript{303} RATS indicated that it was continuing its work on such a list in 2009.\textsuperscript{304}

In April 2010, RATS Director Dzhenisbek Dzhumanbekov noted that RATS maintains within its database a list of 42 organizations “the activities of which pose a potential threat to certain SCO member states, and have accordingly been outlawed in those countries,” as well as a list of over 1100 persons “sought internationally in connection with acts of terrorist, separatist, or extremist nature.”\textsuperscript{305} Thus, regional consensus appears to be growing concerning which organizations and individuals represent terrorist, separatist, and extremist threats.

Echoing the SCO’s approach to the definition of terrorism, however, member states appear to have neglected the principle of legality in maintaining the blacklist. No mention is made of a need to specify which of the Three Evils an individual is blacklisted for, nor the nature of his or her connection to an alleged criminal act. Official RATS documentation from 2006 noted some of the overriding considerations behind the blacklist:

- [T]here can be no double standards when it comes to terrorism;
- we must evolve a consistent definition of “terrorism” and establish a legal framework to ensure that a subject identified as a terrorist in one country will be regarded as such in other countries, thus becoming ineligible for political asylum;
- there is a need for an international accord on counter-terrorism, adopted by all SCO member states, setting out the criteria that must be met before an entity may be designated as a terrorist organization, and the sanctions that may be applicable to it or its individual members.

\textsuperscript{303} Yu Bin, “China-Russia Relations: Partyi

- [T]here can be no double standards when it comes to terrorism;
- we must evolve a consistent definition of “terrorism” and establish a legal framework to ensure that a subject identified as a terrorist in one country will be regarded as such in other countries, thus becoming ineligible for political asylum;
- there is a need for an international accord on counter-terrorism, adopted by all SCO member states, setting out the criteria that must be met before an entity may be designated as a terrorist organization, and the sanctions that may be applicable to it or its individual members.

These conclusions should serve as a precondition for any Register of Terrorist Organizations adopted by all SCO member states.

Expert delegates of the RATS Executive Committee and SCO member states are working together to bring our countries closer in a common struggle against international terrorism, and making first steps toward creating such a register. This will permit us to hasten the process of establishing a legal framework for a Single Register of Terrorist Organizations that may include such entities as Al-Qaida, the Taliban Movement of Afghanistan, the Islamic Movement of Uzbekistan, Hizb ut-Tahrir al-Islami, and the East Turkestan Islamic Movement.306

Through the use of such blacklists, an SCO member state may bypass the step of independently determining according to law whether an individual has committed an act of terrorism; rather, another country’s identification of the individual as a terrorist will suffice. Any blacklist based on such identification, particularly in light of the Three Evils doctrine, the human rights records of SCO member states, and the RATS reference to preventing political asylum, may serve as a tool for states to guarantee the “inevitable” punishment of individuals and entities targeted for domestic crackdown. While RATS noted the need for “criteria that must be met before an entity may be designated as a terrorist organization” – which criteria the SCO Counter-Terrorism Convention has now supplied – the SCO framework does not indicate whether a member state’s evaluation of, and blacklisting based upon, such criteria should include human rights safeguards, such as independent oversight mechanisms or appeal procedures. It is therefore probable that the member states’ politicized application of the Three Evils labels – including that of China to Uyghur groups – carries over to the regional blacklist as well.

While no official and complete list of SCO-recognized terrorists, separatists, or extremists is presently available, SCO member states do appear to rely heavily on blacklisting in their cooperation, including with respect to border control, surveillance, and extradition (see Section IV.F.ii infra). These areas of cooperation are laid out in the 2005 Concept of Cooperation of the SCO Member States, which, in addition to requiring coordinated denial of asylum,307 indicates that member states should develop “legal,

307 Concept of Cooperation, supra n. 45, at Art. II.3.
organizational and other measures aimed at strengthening border and customs control with the goal of preventing terrorists, separatists and extremists from penetrating SCO territory, and halting the illegal transfer across the borders of SCO member states of resources used to commit terrorism, separatism and extremism.\textsuperscript{308} Both Kazakhstan and Uzbekistan have confirmed in reports to the UN Security Council that they utilize SCO lists as a basis for monitoring, denying entry to, and sharing intelligence on specific individuals.\textsuperscript{309} As the Special Rapporteur on counter-terrorism has stated, such practices may violate individuals’ freedom of movement as protected under ICCPR Article 12,\textsuperscript{310} as well as the principle of non-refoulement.\textsuperscript{311}

2. RATS Database

Compounding the problem of regional blacklisting is the creation of a comprehensive, well-financed, and well-sourced database within RATS, with the potential to augment SCO member states’ powers of surveillance and control, but lacking mechanisms for accountability.\textsuperscript{312} Publicly available sources are vague on what specific information is

\textsuperscript{308} Ibid., Art. III.8.
\textsuperscript{312} For more discussion regarding accountability, see supra Section IV.B.i.
circulated through RATS, what stage of development and implementation the database and its data-mining capabilities are at, and how member states use or contribute to the database. The SCO member states’ own domestic practices concerning surveillance and data collection, however, suggest cause for serious concern. The member states have track records of failing to respect international human rights in the monitoring of their own citizens, such that the pooling of these member states’ resources into a single database creates the potential for large-scale, widespread abuse.

The practice of collecting, sharing, and data-mining information on individuals suspected of terrorism, separatism or extremism implicates a number of human rights obligations. These include the principle of non-discrimination embodied in UDHR Articles 1 and 2, ICERD, and ICCPR Article 26; the right to privacy embodied in UDHR Article 12 and ICCPR Article 17; and due process rights. States may compromise such rights when they employ an overbroad approach to the collection and use of individual data, lacking structured human rights protections.

The Special Rapporteur on counter-terrorism raised the following due process concerns regarding the impact of multilateral intelligence databases:

> When profiles and watch lists are developed using information from a variety of sources with varying reliability, individuals may have no knowledge of the source of the information, may not question the veracity of this information, and have no right to contest any conclusions drawn by foreign authorities. A mosaic of data assembled from multiple databases may cause data-mining

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313 For an overview of SCO member state human rights obligations, see Appendix B.
314 As a step toward redressing this problem, the UN General Assembly adopted “Guidelines for the regulation of computerized personal data files,” which laid out a number of minimum guarantees applicable to the use of individual data. See U.N. Commission on Human Rights, “Human Rights and Scientific and Technological Developments: Revised version of the guidelines for the regulation of computerized personal data files prepared by Mr. Louis Joinet, Special Rapporteur,” U.N. Doc. E/CN.4/1990/72 (1990), http://www.un.org/Docs/journal/asp/ws.asp?m=E/CN.4/1990/72; G.A. Res. 45/95, U.N. Doc. A/RES/45/95 (1990), para. 3, http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/45/95 (adopting the revised guidelines). The guidelines elaborate that minimum guarantees should be based on the following principles, inter alia: lawfulness and fairness (“Information about persons should not be collected or processed in unfair or unlawful ways, nor should it be used for ends contrary to the purposes and principles of the Charter of the United Nations”); accuracy (“entities maintaining databases have the obligation to regularly check their accuracy”); purpose-specification (“The purpose which a file is to serve and its utilization in terms of that purpose should be specified, legitimate and, when it is established, receive a certain amount of publicity or be brought to the attention of the person concerned . . .”); interested-person access; and non-discrimination (except in limited circumstances, entities should not compile “data likely to give rise to unlawful or arbitrary discrimination, including information on racial or ethnic origin, . . . political opinions, religious, philosophical and other beliefs . . .”). See also U.N. Human Rights Council, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism” (Special Rapporteur, Martin Scheinin), supra n. 182, para. 35.
algorithms to identify innocent people as threats. . . . One of the most serious effects of surveillance measures is that they may lead to miscarriages of justice and violate due process guarantees. The challenge of gaining access to judicial review is that some legal regimes may prevent access to the courts unless individuals can show that interference has taken place, which is precluded by the secretive nature of the surveillance programmes.315

Additionally, collection and usage of data must not be based on, or result in the perpetuation of, impermissible profiling316 that incorporates assumptions concerning ethnic origin or religion, which “may lead to practices that are incompatible with the principle of non-discrimination.”317 Moreover, failure to incorporate protections for these rights may actually have the effect of weakening state efforts to counter terrorism.318

A brief survey of the current domestic information practices of the SCO member states reveals that, in maintaining the RATS database, SCO member states may draw on an extensive network of data, including digital and biometric data. China’s efforts are particularly advanced, based in large part on the Golden Shield project — “a nationwide digital surveillance network, linking national, regional and local security agencies with a panoptic web of surveillance.”319 Such surveillance encompasses vast amounts of information transmitted through the Internet, mobile phones, and video cameras; co-opts the participation of Internet service providers and other information and communications technology businesses; and employs data-mining systems to make

317 Ibid., para. 34. The Special Rapporteur on counter-terrorism elaborated that profiling on the basis of ethnic origin or religion could only be permissible if such profiling pursues a legitimate aim, and there exists proportionality between the difference in treatment and the legitimate aim sought to be realized. He noted that this test would be difficult to meet, as profiling on the basis of ethnicity or religion is regularly inaccurate and over- and under-inclusive. Ibid., paras. 45-55.
318 Ibid., paras. 56-62.
sense of the resulting wealth of information. In XUAR alone, the Chinese government has deployed an extensive network of security cameras: in the run-up to the one-year anniversary of the July 2009 unrest, approximately 40,000 cameras with protective shells were installed throughout XUAR – with approximately 17,000 installed in Urumqi – including in buses, bus stations, schools, markets, and along roads. Moreover, reliable sources indicate that the figure of 40,000 significantly undercounts the true scale of deployment.

Russia has also taken aggressive steps towards comprehensive surveillance, passing the Law on Systems for Operational Investigation Activity (SORM) in 1995 to authorize Federal Security Service (FSB) monitoring of telecommunication transmissions, and enacting SORM-II in 1999, which expanded permissible FSB surveillance to monitoring of Internet traffic. The law requires Internet service providers to “install monitoring devices on their servers and route all transmissions in real time through the FSB’s local offices,” as well as turn over to the FSB individual user data. Following Russia’s lead, Kazakhstan, Tajikistan, and Uzbekistan have developed similar practices. With such comprehensive information regularly obtained for political purposes at their disposal, the prospect of the SCO member states combining their efforts and data unchecked raises serious concerns regarding rights to privacy and due process, especially in light of the significant consequences flowing from the use of this data.

As for the RATS database itself, according to a 2004 Agreement on the Database of the Regional Anti-Terrorist Structure of the Shanghai Cooperation Organization (“Agreement on the RATS Database”), the database “function[s] on the basis of an automated information system with the use of computer technology.” The agreement outlines the following data for inclusion, including information on:

- international terrorist, separatist, and extremist organizations, their structures, forms, and methods of action, their leaders, members, and other individuals

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323 Ibid., 219.

affiliated with these organizations, as well as on the funding sources and channels of these organizations, including illegal trafficking in narcotic substances, psychotropic substances, and their precursors;

the status, dynamics, and trends in the spread of terrorism, separatism, and extremism;

organizations and individuals providing support to terrorist, separatist, and extremist organizations;

countermeasures to terrorism, separatism, and extremism;

the legislation of each of the Parties, including that regulating the activity of the competent agencies that collaborate with the Regional Anti-Terrorist Structure;

terrorist acts committed, and their forms and methods of commission; [and]

the use of explosive devices (components of explosive devices), weapons, ammunition, and poisonous and other substances in the commission of terrorist acts.\(^{325}\)

Additionally, “[w]ith a view of promoting effective intelligence exchange between counterpart enforcement agencies,” RATS has explored “the prospect of creating a dedicated database (DDB), tracking weapons, ammunition, and explosive substances (WAEs) in illegal circulation, within the larger framework of the existing RATS Executive Committee Database. The criteria for tracking WAEs used in terrorist acts are presently being formulated.”\(^{326}\)

Information flow into the database can take place at the direction of member state security organs, or on the initiative of the RATS Executive Committee, which “may send requests to one or several competent agencies, both upon the initiative of any of them and upon its own initiative.”\(^{327}\) Concerning the scope of database sourcing, the 2004 Agreement on the RATS Database notes that the database “shall be formed on the basis of information related to the competence of [RATS] and that is received from the competent agencies of the Parties, from the agencies of the [SCO], and from other sources, among which shall be the mass media (including print publications), telecommunications systems, and the Internet.”\(^{328}\)

\(^{325}\) 2004 Agreement on RATS Database, supra n. 190, Arts. 1, 3.

\(^{326}\) “На переднем крае борьбы с ‘трьмя силами зла’” (“At the Forefront of the Struggle Against the ‘Three Evils’”), supra n. 183.

\(^{327}\) 2004 Agreement on RATS Database, supra n. 190, Art. 4.

\(^{328}\) Ibid., Art. 3.
It has taken a few years for the SCO to realize the RATS database and expanded powers, but it appears the database is currently functional. References to progress have been made over time since the establishment of RATS. In August 2004, Uzbekistan’s president, I. Karimov, explained that “the Regional Anti-Terrorist Structure had not reached an appropriate level to work out the recommendations, giving a chance to prevent acts of terrorism, and it was premature to demand it. For achieving expected results from the RATS one needed to create a database, where the appropriate materials from the competent services should flow in with the aim of further analyses and giving proposals with predicting features to work out the models of joint measures of the SCO member countries.”³²⁹

The following years saw RATS making progress towards that goal. On May 12, 2005, the RATS Executive Committee updated members on the status of the database and the list of terrorist, separatist, and extremist organizations.³³⁰ As of 2006, it was reported that over 250 “terrorist acts” on the territories of SCO members were avoided as a result of RATS’s efforts.³³¹ Most recently, RATS has been reported to have the capacity to analyze and compare information in the database – in multiple languages – to target specific individuals.

According to an interview with RATS Executive Committee Director Dzhenisbek Dzhumanbekov in April 2010:

Work on one of the most useful and essential of RATS projects – the Secure Database (SDB) and the Single Tracking Register (STR) – is already yielding positive results in international counter-terrorism efforts and promoting greater efficiency in cooperation within the Organization. [...] Thanks to the STR, we have seen improved levels of cooperation between counterpart tactical agencies in the course of a series of operations, aimed at establishing up-to-date locations of individuals listed in the register. [...] With a view to promoting cooperation between member states in their common struggle against principal threats, in 2010 the SCO RATS Executive Committee

³³¹ Mikhail Vinogradov, “Борцы с терроризмом договорились о сотрудничестве” (“Anti-terrorist fighters have agreed on cooperation”), supra n. 300.
prepared a comparative table of registers in Russian, Chinese, and English, allowing for more targeted enforcement actions against listed organizations. [...] 

Generally speaking, a timely collection and assessment of intelligence on the current state of and the emerging trends in the spread of international terrorism, as well as other manifestations of religious extremism, gives law enforcement agencies an upper hand in identifying and neutralizing individuals intent on perpetrating grievous crimes, sooner rather than later.  

The statement suggests that the RATS database is used in a predictive and preventive manner, to “identify” and “neutralize” individuals who possess the “intent” to engage in criminal activity, “sooner rather than later.” This usage creates due process concerns, as “preventive measures that deprive a person of his or her liberty must not be based solely on intelligence. In these cases, intelligence has to be turned into concrete evidence and proof after a period of time so that the affected person can challenge the evidence against him or her. If intelligence cannot be transformed into evidence over time, or the State fails to obtain new evidence, the preventive measures need to cease.” It is unknown whether RATS takes such measures to establish concrete evidence on individuals of concern to the SCO member states – no such function is specified in publicly-available normative documents.

Such a database is a powerful tool for the coordination and exchange of individual data between member states regarding their citizens, and accordingly requires legal parameters and oversight to ensure that the inclusion of information in the database does not violate an individual's right to privacy as enshrined in ICCPR Article 17. Any restrictions on the right to privacy must be necessary, proportionate, and legitimate, and “every instance of interference needs to be subject to critical assessment.” There is no apparent limit, however, to what type of information RATS can gather, and it is not clear what laws have been applied to collection and protection of the information on individuals in the RATS database, whether the information was collected in a manner

333 Ibid.
that did not employ discriminatory racial or ethnic profiling, or how that information is now being used by SCO members.

The Special Rapporteur on counter-terrorism has voiced concern specifically with respect to these practices of the SCO, stating that within the SCO framework, “sharing of data and information is not subject to any meaningful form of oversight and there are no human rights safeguards attached to data and information sharing.”

Moreover, any mining of such data – of which RATS appears fully capable – “should not be allowed to include variables that result in compromising the right to non-discrimination.” Yet if the RATS database draws on information collected and transmitted by member states such as China, the surveillance practices of which are incredibly broad and well-known to incorporate profiling, it is inevitable that the RATS database will also compromise human rights unless steps are taken to filter that data.

The trend of coordinated data exchange has advanced rapidly, within the SCO and other contexts, yet states’ consideration of the human rights impact of such measures have not kept pace. Notably, another database has emerged in tandem with that of RATS, the “International Counterterrorism Database” (ICTDB), which appears to be a broader but related system – in that it is also led by Russia’s FSB – for information exchange among numerous states’ security and intelligence agencies. The database is a product of the Meeting of Heads of Special Services, Security Agencies and Law-Enforcement Organization, a “Russian FSB initiative of creating a mechanism of multilateral co-operation among security / intelligence and law enforcement agencies,” which is designed to provide “high level officials, responsible for the decision-making in the sphere of their countries’ national security, with an opportunity to conduct round-table discussions. . . . Besides that, law-enforcement and security heads usually enjoying confidence and authority on the highest level of government, are in the ability to influence directly the process of shaping national security policies in their respective countries . . . [which] facilitate[s] the consolidation of anti-terrorist efforts of the entire global community.”

As the FSB has held these meetings annually for the past eight years, it can be presumed that such consolidation has matched Russia’s own preferences for global counter-

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337 Ibid., para. 33.

terrorism policy. RATS delegations as well have participated in these meetings. According to official documentation, the ICTDB consists of two segments: unclassified data, which has been accessible since fall 2007, and classified data, which was to become available in late 2009. As of March 2009, the ICTDB was accessed by “authorized security / intelligence subscribers in 16 countries.” And while reports concerning the work of the Russian-led group have been made regularly to the UN Security Council Counter-Terrorism Committee – including significant details on the proposed contents and purpose of the ICTDB – accountability for use of the ICTDB has not been publicly discussed.

The SCO, as well as the international community, must assess and implement protections for individual information incorporated within databases that are used for multilateral intelligence cooperation, in order to prevent serious damage to individuals and intelligence efforts themselves. Moreover, vetting of information added to multilateral databases – prior to making the information available to intelligence services of all member states – is essential to ensure not only that the facts are accurate, but also that the information was obtained legally and without the use of torture. The Special Rapporteur on counter-terrorism has provided clear and useful standards towards implementation of such safeguards in his recommended best practices for intelligence agencies.

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340 Ibid.

341 Ibid.

342 The types of data shared via the ICTDB include categories ripe for abuse: identifying information of watch-listed individuals; “specific activities carried out by terrorism ideologists under the umbrella of different nongovernmental organizations, that could be resulting in the general increase of community radicalization (conferences, open discussions, demonstrations, rallies, and other public events involving ideological indoctrination of the participants, advocating terrorist methods of action, and iconizing terrorists)”; and “data on the involvement of nongovernmental organizations and educational institutions located in different regions of the world in terrorist propaganda.” U.N. Security Council CTC, “The International Counterterrorism Database Briefing Presentation at the UNSC CTC Working Session: Supplementary Report,” January 24, 2008, [http://www.un.org/en/sc/ctc/docs/statements/2008_01_24_database.eng.pdf](http://www.un.org/en/sc/ctc/docs/statements/2008_01_24_database.eng.pdf). At the operational level, Russian technical experts are responsible for the input and security of the data, which is ultimately intended to fulfill “analytical requests in order to find possible links between different subjects.” See ibid.

343 See supra Section IV.B.i.
ii. Impact of extradition and denial of asylum on security of the person, due process rights, and non-refoulement

Perhaps the most serious consequence to individuals under the SCO framework is its potential to undermine their fundamental rights to liberty and physical security, without sufficient legal cause, through extraditions, forcible returns, or denials of asylum. The SCO member state practice of denying asylum to and extraditing or returning individuals designated by member states as “terrorist, separatist or extremist” calls into question compliance with the fundamental, binding principle of non-refoulement under international law, as well as explicit protections under the UN Refugee Convention and the Convention against Torture.

Under the Shanghai Convention, member states are obligated to implement measures to prevent, identify, and suppress acts of terrorism, extremism, and separatism in their territories, and to consider any such acts extraditable offences. RATS appears to be the SCO body that addresses “the question of extradition of all detainees to face justice in their respective countries.” Later agreements of the member states elaborated further on SCO extradition- and asylum-related obligations, requiring member states to cooperate on border control, and to “build up their interaction in searching, apprehending, extraditing and transferring persons suspected of, charged with or sentenced for committing crimes related to terrorist, separatist, extremist activities or other crimes.” Such cooperation is particularly effective given the geographical proximity and shared borders of the states – it is highly probable that any individuals exiting their home country will cross the border into another member state. In 2005, the SCO member states even went so far as to agree to deny asylum to all individuals accused or even suspected by other member states of terrorism, separatism, or extremism.

This last initiative was made public in the Declaration of the Heads of Member States of the Shanghai Cooperation Organization (“Astana Declaration”) at their annual meeting in Astana, Kazakhstan, on July 5, 2005. According to the Astana Declaration:

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344 See Shanghai Convention, supra n. 27, at Art. 6.
345 Ibid., Art. 2.
347 “The Contracting Parties shall develop cooperation in the field of state border security and customs control . . .” Treaty on Long-Term Good-Neighborliness, supra n. 203, Art. 8.
348 Ibid.
349 Concept of Cooperation, supra n. 45, Arts. I, II.3; Declaration of Heads of Member States of the Shanghai Cooperation Organization, supra n. 45, Art. III.
The SCO member states will prevent any attempts on their territories to prepare and commit acts of terror, including those aimed against the interests of other countries, not provide asylum for individuals, accused or suspected of conducting terrorist, separatist and extremist activity, and extradite such individuals at respective requests on the part of another SCO member state in strict accordance with the current legislation of the member states.\(^{350}\)

This pronouncement on asylum appears to be based on the 2005 *Concept of Cooperation of the SCO Member States*, adopted on the same day, which states as one of its guiding principles the “non-provision of asylum to individuals associated with terrorist, separatist and extremist activity” – including persons “accused or suspected of committing such acts.”\(^{351}\)

The 2009 *SCO Counter-Terrorism Convention* further elaborated member state obligations concerning extradition\(^{352}\) and prevention of granting of asylum status.\(^{353}\) Pursuant to this agreement, the scope of cooperation includes not only extradition, but also detention of individuals,\(^{354}\) “questioning persons suspected or accused of crimes, witnesses, victims, or other persons,”\(^{355}\) and “locating persons suspected of committing any one of the offenses covered by th[e] Convention.”\(^{356}\) The agreement also contemplates authorization for cross-border law enforcement entry in pursuit of suspects within other member states’ territories.\(^{357}\) Should an SCO member state reject a request to extradite an individual “solely on the grounds that that person is its national” – and here the default position suggested by the language of the *SCO Counter-Terrorism Convention* is that an extradition of the requested state’s own citizen should take place – that state “is obliged to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that Party.”\(^{358}\)

Such broad cooperation on the basis of the Three Evils framework, combined with application of the *SCO Counter-Terrorism Convention’s* overbroad definition of terrorism, has serious potential to contravene the fundamental, non-derogable principle of non-

\(^{350}\) Declaration of Heads of Member States of the Shanghai Cooperation Organization, supra n. 45, Art. III (emphasis added).

\(^{351}\) Concept of Cooperation, supra n. 45, Arts. I, II.3.

\(^{352}\) SCO Counter-Terrorism Convention, supra n. 178, Arts. 11, 15.

\(^{353}\) Ibid., Art. 23 (“The Parties shall take the necessary measures to prevent the granting of refugee status and corresponding documents to persons complicit in offenses covered by this Convention.”).

\(^{354}\) Ibid., Art. 15(1)(2).

\(^{355}\) Ibid., Art. 15(1)(3)(b).

\(^{356}\) Ibid., Art. 15(1)(6).

\(^{357}\) Ibid., Art. 18.

\(^{358}\) Ibid., Art. 11(9).
refoulement, as well as undermine the protections contained within the UN Refugee Convention and the Convention against Torture. As the Special Rapporteur on counter-terrorism has stated:

Vague or broad definitions of terrorism are extremely problematic. For example, persons seeking international protection are in fact prosecuted for “terrorist-related” offences in their countries of origin when it may actually be that such persons and such prosecutions fall within the definitions of a “refugee” and the concept of “persecution” in the meaning of article 1A (2) of the 1951 Refugee Convention. Therefore, careful examination of the legislation and practice of countries of origin of asylum-seekers is necessary to accurately assess the possible application of exclusion clauses in the consideration of applications for refugee status or other status of international protection.359

Within the SCO, however, no guidance exists publicly as to what evidence, if any, states must provide in designating the particular individuals accused or suspected of terrorist, separatist, or extremist activity, or what assessments should take place concerning conditions in the state of origin. It therefore would again seem that one state’s characterization of a “terrorist” (or a “separatist” or “extremist”) is accepted by all, to the point of refusing protection to individuals who may be persecuted for political reasons. Indeed, as noted previously, one of the main enumerated functions of the SCO blacklists is to preclude the possibility of obtaining political asylum in a neighboring country.

With respect to any individuals seeking asylum within their respective territories, every SCO member state is obligated to uphold the binding, fundamental principle of non-refoulement under international law.360 At a minimum, as a matter of binding

359 U.N. General Assembly, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism” (Special Rapporteur, Martin Scheinin), supra n. 311, para. 67.
360 There is broad consensus that, at a minimum, the principle of non-refoulement has the status of binding customary international law. For instance, the Office of the UN High Commissioner for Refugees takes the position that “the prohibition of refoulement of refugees, as enshrined in Article 33 of the [UN Refugee Convention] and complemented by non-refoulement obligations under international human rights law … constitutes a rule of customary international law” because it satisfies the criteria of “consistent State practice and opinio juris, that is, the understanding held by States that the practice at issue is obligatory due to the existence of a rule requiring it.” Office of the U.N. High Commissioner for Refugees, “Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol,” January 26, 2007, paras. 14-15, http://www.unhcr.org/refworld/pdfid/45f17a1a4.pdf. Therefore, “it is binding on all States, including those which have not yet become party to the [UN Refugee Convention] and/or its 1967 Protocol.” Ibid. Moreover, there is growing consensus that the principle of non-refoulement has, over time, attained the rank of a peremptory norm of international law, or jus cogens, making it non-derogable as a matter of law. See, e.g.,
international law, the principle of non-refoulement “imposes an absolute ban on any form of forcible return [of asylum-seekers] to a danger of torture,” as well as “an inherent obligation not to send any person to a country where there is a real risk that he or she may be exposed” to “arbitrary deprivation of life.” These binding principles of international law are also enshrined and articulated in international agreements, which create additional, independent bases upon which states are bound under international law to respect and uphold the principle of non-refoulement. These include the UN Refugee Convention and the Convention against Torture.

For example, the UN Refugee Convention provides under Article 33(1), “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” SCO member states are therefore prohibited from returning individuals to their country of origin on the basis of SCO agreements when it is clear that the individual will be subjected to imprisonment, torture, or execution on account of their political opinions or ethnic or religious identity. It is well-documented that certain categories of people, such as Uyghurs, Chechens, and Uzbeks, face exactly this risk in SCO member states. Indeed, the Special Rapporteur on counter-terrorism noted the impermissible practice of legislating exclusion of “broad categories of asylum-seekers from being granted refugee or other protected status.” Yet such is the practical effect of banning asylum on the basis of the Three Evils doctrine, which overwhelmingly targets ethnic groups.

Perpetrators of genuine acts of terrorism, however, are excluded from the UN Refugee Convention’s protections concerning non-refoulement – an exception that may prompt over-reliance by states on counter-terrorism and national security as the basis asserted for denials of asylum and extraditions. Exceptions to the prohibition on non-refoulement are established in Article 1(F) and Article 33(2) of the UN Refugee Convention. Article 1(F) provides, “The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) He has committed a crime against peace, a war crime, or a crime against humanity, as


For examples of observations and recommendations by independent UN human rights treaty bodies on these issues, see Appendix B.

U.N. General Assembly, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism” (Special Rapporteur, Martin Scheinin), supra n. 311, para. 68.
defined in the international instruments drawn up to make provision in respect of such crimes; (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.” Individuals who have committed the acts laid out in Article 1(F) are thus wholly outside the scope of the protections of the *UN Refugee Convention*.

The Security Council has explicitly declared that “acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations.” As such, no protection is afforded by the *UN Refugee Convention* to individuals who have committed acts of or incited terrorism. Moreover, Article 33(2) states, “The benefit of the present provision [on non-refoulement] may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.”

However, by its terms, this limitation under the *UN Refugee Convention* is strictly limited to individuals regarding whom there exists some clearly demonstrable basis to conclude that they pose a real, legitimate danger to national security. Moreover, nothing in the *UN Refugee Convention* may be deemed to impair any other guaranteed rights and benefits originating from outside the *UN Refugee Convention*. This includes general principles of non-refoulement and the explicit prohibition under the *Convention against Torture* of extraditions and forcible returns in circumstances of risk of torture.

In order to act on a basis of danger to national security as grounds to deny asylum to or return an individual, therefore, an SCO member state must have real cause for asserting the individual’s commission of terrorist or other serious non-political criminal acts. States must account for due process considerations, including evidentiary standards. The UN General Assembly has noted that states should “fully respect non-refoulement obligations under international refugee and human rights law, while at the same time, [] review, with full respect for these obligations and other legal safeguards, the validity of a refugee status decision in an individual case if credible and relevant evidence comes to light that indicates that the person in question has committed any criminal acts.

364 S.C. Res. 1373, supra n. 131, para. 5.
including terrorist acts, falling under the exclusion clauses under international refugee law.”

The Counter-Terrorism Committee Executive Directorate has noted that appropriate legal safeguards include the right to respond to evidence or information, right to legal assistance, right to an interpreter, right to appeal and to protection against removal until all legal remedies have been exhausted. SCO procedures, however, do not indicate the requirement of any of these safeguards. Nor do they specify what evidence, if any, a state must supply in cooperating to extradite or refuse asylum to individuals. The SCO also does not require member states to assert which of the “Three Evils” an individual is charged with prior to cooperating on his or her return; yet, depending on the circumstances, acts of extremism or separatism could be considered political crimes, and – unlike terrorism – have not been explicitly designated as contrary to the purposes and principles of the UN, such that the aforementioned limitations to the protections of the UN Refugee Convention may not apply. This lack of procedural safeguards and legal precision is impermissible under principles of international refugee and human rights law, including the principle of legality.

Moreover, even when the basis for extradition or denial of asylum is genuine suspicion of involvement in a terrorist act, SCO member states still may not return individuals to any state where they would face a risk of torture, pursuant to the Convention against Torture. The Convention against Torture provides, “No State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” In a 2008 resolution on the “Protection of human rights and fundamental freedoms while countering terrorism,” the General Assembly noted with concern “the return of suspects [of acts of terrorism] to countries without individual assessment of the risk of there being substantial grounds for believing that they would be in danger of subjection to

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366 G.A. Res. 60/158, A/RES/60/158 (2006), para. 5, http://www.undemocracy.com/A-RES-60-158.pdf. Cf. U.N. Convention Relating to the Status of Refugees, supra n. 365, Art. 32 (Indicating that expulsion of refugees on national security grounds “shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.”).


torture” and went on to emphasize the importance of “properly interpreting and implementing” obligations under the Convention against Torture. ¹⁰³

The following year, in an apparent attempt to make this message crystal clear, the General Assembly specifically called upon states to “refrain from returning persons, including in cases related to terrorism, to their countries of origin or to a third State whenever such transfer would be contrary to their obligations under international law . . . including in cases where there are substantial grounds for believing that they would be in danger of subjection to torture, or where their life or freedom would be threatened in violation of international refugee law on account of their race, religion, nationality, membership of a particular social group or political opinion, bearing in mind obligations that States may have to prosecute individuals not returned.” ³⁷⁰

Extraditions between SCO member states have failed to comply with the provisions of the Convention against Torture. The UN Committee against Torture has expressed serious concerns about widespread reports of torture of detainees in each and every SCO member state, giving member states significant reason for conducting a full evaluation of the treatment likely to await an individual who is returned to his or her home state. ³⁷¹ Indeed, the circumstances surrounding the Cambodian government’s deportation of 20 asylum-seeking Uyghurs to China in 2009 confirms cause for alarm. ³⁷²

³⁷¹ For further information about the concerns raised by the UN Committee against Torture and other international human rights treaty monitoring bodies regarding the policies and practices of the SCO member states, see Appendix B.
³⁷² In December 2009, the Cambodian government deported to China 20 Uyghurs who had fled the country and sought asylum in Cambodia from the UN High Commissioner for Refugees. The Chinese government urged that these 20 individuals had been involved in crimes related to the July 2009 ethnic rioting in XUAR. Despite their pending asylum applications, Cambodian officials deported the individuals, including two infants, immediately before a visit to Cambodia by Chinese Vice President Xi Jinping. See Edward Wong, “China Hints at Trials for 20 Seeking Asylum,” New York Times, February 13, 2010, http://www.nytimes.com/2010/02/14/world/asia/14uighur.html?ref=uighurs_chinese_ethnic_group. An editorial in the official newspaper China Daily subsequently indicated that “official sources have identified seven of the 20 deported Uygurs [sic] as fugitives on the run after the July 5 massacre in Urumqi.” See “The case for disquiet,” China Daily, December 24, 2009, http://www.chinadaily.com.cn/opinion/2009-12/24/content_9222949.htm. On June 24, 2010, the Ministry of Public Security (MPS) announced that it had broken up a major terrorist plot of the East Turkestan Islamic Movement. The vaguely-worded announcement indicated that Chinese public security agencies had “recently” captured “more than ten” leaders, agents, and members of a “terrorist organization,” including two individuals asserted to be plot leaders, Abdurixit Ablet (an alleged member of ETIM) and Imin Semai’er (simply noted as “a key actor in the East Turkestan terrorist forces”). The statement did indicate, however, that the information leading to these arrests was obtained through the investigation of “twenty individuals of Chinese citizenship” who were deported to China on December 20, 2009, after an illegal border crossing – facts that exactly match the reports of the Uyghur deportation from Cambodia. See “Gong’an jiguang pohuo ‘Dong-yi-yun’ kongbu zuzhi...
Additionally, it is well-established that diplomatic assurances from the receiving state are insufficient to protect against torture, and cannot substitute for an independent evaluation of the real risk posed to an individual by his or her return.\textsuperscript{373}

The numbers of extraditions and denials of asylum made pursuant to SCO agreement are difficult to assess, given the lack of transparency surrounding SCO operations. As documented in a June 2009 mission by FIDH to Kazakhstan and Kyrgyzstan, however, member states have in fact executed these obligations, and have done so in highly questionable situations.\textsuperscript{374} One such instance was Kyrgyzstan’s return of Uzbeks who had fled the country after the Andijan crackdown in 2005 – with the virtually certain prospect of torture or execution upon their return. The Deputy General Prosecutor of Kyrgyzstan, S. Nasiza, “in responding to an FIDH inquiry about the documented refoulement of Uzbeks from the country, stated that the decision to return the

anjian [shilu]” [“公安机关破获"东伊运"恐怖组织案件(实录)"] [Public Security Authorities Foil “East Turkestan Islamic Movement” Terrorist Plot (Transcript)], supra n. 248.

This announcement reveals the following troubling issues. First, the MPS explicitly linked the discovery of the alleged “terrorist plot” to information obtained from the deported Uyghurs, thus attempting to justify Cambodia’s deportation – which violated the principle of non-refoulement – as a necessary counter-terrorist measure. Second, it stated that “the Chinese police quickly released one woman and two children among those [returned] individuals, in line with humanitarian sentiment, and set up living arrangements for them. The remaining 17 were investigated according to the law, which revealed that three of them were fugitive terrorist suspects wanted by the police, all of whom were core members of the terrorist organization.” The fact that 20 people were deported and 17 were subjected to investigation on the basis of their ethnicity and their attempt to acquire asylum in Cambodia is disturbing, particularly when considering that at the end of such investigation, the MPS only considered three of the 20 returned individuals “terrorist suspects.” (This also contradicts the \textit{China Daily} editorial, which stated that seven of the returned individuals were fugitives. See “The case for disquiet,” \textit{China Daily}, December 24, 2009, \url{http://www.chinadaily.com.cn/opinion/2009-12/24/content_9222949.htm}.) Third, the announcement notes that Abdurixit Ablet, Imin Semai’er, “and others” confessed to participating in a wide array of terrorist activities during interrogation. The MPS announcement therefore raises serious issues concerning non-refoulement, due process, lack of transparency, and the possible use of torture in detention and interrogation. Indeed, both the UN Special Rapporteur on torture and the Committee Against Torture have found that the use of torture is widespread in China and pervasive in the criminal justice system, including for the purpose of obtaining confessions. See U.N. Commission on Human Rights, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: MISSION TO CHINA,” U.N. Doc. E/CN.4/2006/6/Add.6 (2006) (Special Rapporteur, Manfred Nowak), \url{http://www.un.org/Docs/journal/asp/ws.asp?m=E/CN.4/2006/6/Add.6}; U.N. Committee Against Torture, “Concluding Observations of the Committee Against Torture,” U.N. Doc. CAT/C/CHN/CO/4 (2008), para. 11, \url{http://www.un.org/Docs/journal/asp/ws.asp?m=CAT/C/CHN/CO/4}. Credible reports of torture in detention have also continued to surface since these UN reports were issued. See, e.g., Ng Tze-wei, “Lawyer Reveals Grim Details of Client’s Torture,” \textit{South China Morning Post}, July 29, 2010. Accordingly, the cases raised in the MPS announcement require further explanation and investigation to ensure that the human rights of the individuals involved were and are respected.


\textsuperscript{374} See FIDH, \textit{Kazakhstan/ Kyrgyzstan: Exploitation of Migrant Workers, Protection Denied to Asylum Seekers and Refugees}, supra n. 5.
individuals to Uzbekistan was a difficult one, because he had to consider whether to apply the extradition requirements of the Shanghai Cooperation Organization treaties or the prohibitions of the UN Convention against Torture. In the end, regional commitments on security trumped international obligations concerning human rights.”

Aside from the constant risk of forcible return to countries where individuals may face the gravest human rights abuses, refugees and asylum seekers also endure harsh conditions in the countries to which they have fled, often implicating serious human rights violations by those countries as well. For example, as documented by FIDH and other observers, Uzbek and Uyghur individuals that have fled to Kazakhstan and Kyrgyzstan seeking refuge or asylum often face extreme conditions, including regular police harassment and brutality, and the legitimate risk of extrajudicial methods of forcible return, including kidnapping and disappearance at the hands of Kazakhstan and Kyrgyzstan authorities. These refugees and asylum seekers and their families also endure threats to economic, social, and cultural rights in their host countries. These include burdens arising from a lack of official status, such as lack of legitimate employment opportunities; restricted access to social benefits such as medical care, education and training, housing, and family support; and lack of access to judicial or administrative redress for injuries and violations. Moreover, all these threats are compounded by severe social stigmas, often invoking racial and ethnic intolerance and hatred against refugees and asylum seekers.

Statistics and information that are available regarding extraditions and denials of asylum between SCO member states also suggest that the practice is widespread. (A chart of reported or suspected extraditions or returns between member states is contained in Appendix D.) In the past few years, it has been publicly reported that at least 78 people have been extradited or returned, or are at risk of being extradited or returned, to China from other SCO member states. This number likely under-represents the true scope of cooperation, but the SCO itself has not released statistics or facts regarding such cooperation.

Such cooperation confirms the trend that member states may be using regional frameworks to circumvent or undermine international frameworks of which they are a part. Indeed, an obligation to deny asylum without further inquiry, based on member state labeling, on its very face contradicts the UN Refugee Convention, the Convention

375 Ibid., 23.
376 Ibid., 54-74.
377 Ibid.
378 See Appendix D.
against Torture, and the fundamental, non-derogable principle of non-refoulement. Mechanisms to increase the accountability and transparency of this form of cooperation, including clear legal guidelines regarding the process for review of asylum-seeker applications and extradition requests, are essential to ensure SCO member state compliance with international law.

iii. Chilling messages sent by military cooperation

Joint military and law enforcement exercises have taken place within the framework of the SCO since 2002, when China and Kyrgyzstan staged a joint military exercise within their border areas. 379 Notably, this intra-SCO cooperation marked the first time China’s People’s Liberation Army (PLA) held a joint military maneuver with a foreign army, 380 and China has participated in nearly every SCO joint exercise staged since, 381 signaling the importance of the exercises to Chinese authorities. SCO members have staged two primary types of operations: military joint exercises and coordinated exercises of law enforcement and special services. 382 At least thirteen such joint exercises have occurred among SCO member states, including the full-fledged SCO “Peace Missions” involving thousands of troops. The largest such operation, Peace Mission 2005, included approximately 10,000 troops, with at least 8,000 of those from China. Military exercises have also involved a wide array of equipment, including armored vehicles, aircraft, naval ships and submarines, and surface-to-air missiles. (A table detailing each of the SCO’s joint exercises is included in Appendix E.)

380 Ibid.
381 China did not participate in the 2008 Volgograd Antiterror Exercises, nor in the 2010 law enforcement exercises. See Appendix E, “Military and Law Enforcement Cooperation between Member States of the Shanghai Cooperation Organization.”
382 There have been other joint SCO exercises focusing on border protection and disaster relief, rather than training for joint deployment of military or special forces. For example, from May 19 to May 22, 2009, China, Kazakhstan, Russia, and Tajikistan participated in the Bogorodsk Joint Disaster Relief Exercise. The exercise took place in Noginsk, a province of Moscow, Russia, and involved reconnaissance and inspection, leak repairs, as well as rescuing individuals from high rise buildings and with multi-functional stretchers. “Chinese servicemen attending SCO joint disaster relief exercise return,” PLA Daily, August 25, 2009, http://english.chinamil.com.cn/site2/special-reports/2009/05/25/content_1777399.htm; Roy Kamphausen et al., The PLA at Home and Abroad: Assessing the Operational Capabilities of China’s Military (Strategic Studies Institute: June 2010), 399-400, http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB995.pdf. There have also been border protection exercises including an unnamed training event involving China and Russia that took place along the Heilongjiang border in January 2003. It was aimed at the “apprehension of illegal border crossers.” Kamphausen, ibid., 384. Another exercise, the “Border Blockade Exercise,” also involved China and Russia, this time on February 26, 2009, in the Heihe-Blagoveschensk border area. Ibid., 428.
The SCO member states’ rhetoric concerning their military and law enforcement cooperation, as delivered to international audiences, has emphasized preparation for and deterrence of threats billed as “terrorism.” The actual staging of such exercises, however, suggests that another critical purpose of engagement may be the targeting of “problem” populations. As with other forms of SCO cooperation, application of the Three Evils doctrine to military and law enforcement cooperation clouds the fundamental, necessary question – crucial in a context implicating the potential use of force – of what constitutes genuine and permissible counter-terrorism activity. In SCO member states, the concept of terrorism is so closely linked to “separatist” and “extremist” threats that military and law enforcement counter-terrorism exercises have quickly brought control of internal populaces within their rubric – essentially militarizing and multilateralizing state efforts to enforce “social stability” in domestic environments. SCO joint exercises have not only improved member states’ capacity to coordinate their armed forces and law enforcement personnel against perceived threats to stability; at the same time, the sheer display of troops, equipment, and power in troubled regions has sent a chilling message to the populace that threats deemed terrorist, separatist, or extremist in nature will be met with heavy-handed force.

SCO military and law enforcement cooperation is conducted under the auspices of RATS, pursuant to the 2002 RATS Agreement and the 2008 Agreement on the Procedure for Organizing and Conducting Joint Anti-Terrorist Exercises by Member States of the Shanghai Cooperation Organization (“Joint Exercises Agreement”). (Translations of these agreements are provided in Appendix A.) The Joint Exercises Agreement codified the procedures and logistical protocols for handling issues relevant to joint military exercises, such as organizational systems, troop transit, provisions, and legal jurisdiction and liability waivers.

Notably, the language of the Joint Exercises Agreement is confined to countering terrorism – without mention of separatism or extremism – and articulates the goal of the joint exercises as “the preparation of special anti-terrorist units for joint activities of the Parties upon the commission or arising of a threat of commission of a terrorist act

383 2002 RATS Agreement, supra n. 35, Art. 6(6) (“The fundamental objectives and functions of RATS shall be: . . . assistance in preparing and executing anti-terrorist command and staff exercises and operational and tactical exercises upon request by the Parties concerned.”).
385 Ibid.
The fact that the 2008 Joint Exercises Agreement focused exclusively on terrorism instead of incorporating the broader concept of the Three Evils suggests that member states may have had some reluctance to characterize their military cooperation and use of force as anything other than pure counter-“terrorism” in their normative documents.

In practice, however, SCO member states have developed their military and law enforcement cooperation well beyond “terrorism” per se, and have emphasized the role that joint exercises play in dealing with “separatist” and “extremist” threats. (See “Stated Objectives,” Military and Law Enforcement Cooperation Chart, Appendix E.) The goals of these exercises, as publicly reported and as articulated by the SCO member states, demonstrate their potential to devolve into government enforcement actions aimed at control of their own populations. For example, joint exercises conducted in 2007 – staged in XUAR – were officially described as demonstrating “how to deal with non-traditional threats such as terrorists, secessionist forces and extreme religious groups.” Concerning Peace Mission 2005, it was reported that deterrence of not only terrorists, but also “national separatists” and “religious extremists” was the main concern of SCO member states:

To be more specific, the war game showcasing the two countries’ military might is aimed to help them get ready for a joint fight against international terrorists, national separatists and religious extremists, said Sergey N. Goncharov, charge d’affaires of the Russian Embassy in China, in an exclusive interview with Xinhua in Beijing on Thursday.

According to the Russian diplomat, the forces of terrorism, extremism and separatism have conducted activities in both China and Russia, and have been growing in the member countries of the Shanghai Cooperation Organization . . . .

“Let them have a look at our joint military exercises and think it over whether it is worth continuing their activities,” said Goncharov, adding, “We hope the joint military exercises could help cool down the ‘fervor’ of these terrorists, separatists and extremists.”

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386 Ibid., Art. 2.
Major General Meng Guoping, deputy commander of the Chinese military participating in the Peace Mission 2010 exercises, echoed these words, stating, “Through many years of joint exercises, we have clearly understood that these (SCO) exercises could not only showcase power and deter the ‘three evil forces (of terrorism, separatism and extremism),’ but also serve as an important way to train our armed forces.”438 Joint exercises thus support domestic social control by preparing multilateral forces for dispatch to troubled regions, and demonstrating to the public for deterrent effect the SCO member states’ joint military and law enforcement capacity.

The SCO has also apparently rejected any consideration of the human rights ramifications of the joint exercises. During the Peace Mission 2010 joint military exercise, China’s official media outlet Xinhua noted:

[T]he participating troops revealed their determination and strength to combat the “Three Evil Forces” – terrorism, separatism and extremism – and maintain peace, security and stability in the region. . . . Despite the overall stable situation in Central Asia, the “Three Evil Forces” still make frequent appearances, with international illegal drug groups, external forces and terrorism organizations colluding to produce disturbances and destroy stability in the region, such as the Uzbekistan riots, which claimed 169 deaths in 2005, and the Urumqi riot in July 2009 in China’s Xinjiang region.

All of these show the “Three Evil Forces” remain a common threat to the member states, who need to make concerted efforts to fight them.439

It is noteworthy that the two examples cited by Xinhua as “appearances” of the “three evil forces” – the May 2005 Andijan crisis in Uzbekistan431 and the July 2009 Urumqi

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riots in XUAR, China – were incidents of domestic unrest initially prompted by citizen grievances and lacking substantiated ties to terrorism, but on which the member states cracked down severely, resulting in significant human rights violations, including deaths, disappearances, and a multitude of due process violations for those arrested and detained.

Perhaps the most disturbing indication of the likelihood of misuse of military cooperation within the SCO framework was Peace Mission 2007, which SCO member states reportedly modeled on the events that took place in Uzbekistan’s Andijan region in 2005. The scenario for the exercises incorporated a group of simulated “terrorists” capturing a town, in reaction to which SCO forces, including air support and artillery, eliminated the “terrorists” and retook the town. Russian forces were subsequently...


See supra Section IV.D.i.

tasked with arresting the surviving “terrorists.” The concept of the exercise was reported as follows: “[U]nder the support of an international terrorist organization based in the north border of country N, a terrorist organization of country A launched an anti-government movement. At the headquarters of the joint drill, commanders from the six SCO members decide to annihilate the terrorists.” The fact that Peace Mission 2007 drew on the Andijan crisis to develop plans for military cooperation suggests that SCO member states equate the concept of “terrorists” capturing a town with the gathering of large crowds demonstrating against the government, with little concern for the human rights implications of such cooperation.

Finally, the context surrounding the various joint exercises is instructive as to China’s own priorities within the SCO. Three joint military exercises have been staged at least in part in XUAR, including along borders with Kazakhstan and Kyrgyzstan, and in XUAR’s capital, Urumqi. Additionally, one law enforcement and special service exercise has taken place in XUAR. (See Military and Law Enforcement Cooperation Chart, Appendix E.) These SCO military and law enforcement maneuvers within XUAR have provided a complement to China’s existing domestic measures to enforce social stability and government control over the region.

Since 1954, the Chinese government has maintained a special semi-military force in XUAR, the Xinjiang Production and Construction Corps (XPCC, or “bingtuan”). The bingtuan is a governmental organization with administrative jurisdiction over areas within XUAR in the place of normal government, and functions as an economic and semi-military organization composed of over 2 million personnel. The bingtuan’s presence in XUAR has been increased in recent years to “combat separatism and attempts at ‘sabotage and infiltration,’” but it is considered a source of tension within XUAR due to its control over resources and land. Additionally, the government maintains People’s Armed Police (PAP) units in XUAR, an elite paramilitary force organized for the purpose of maintaining social stability and order, increasingly in response to “growing instances of demonstrations and uprisings.”

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397 Ibid., 25.
398 Ibid.
399 Ibid.
The domestic effect of such a significant military presence in XUAR is to demonstrate that political control of the region is a “priority” for the central government.\textsuperscript{400} It is also worth noting that the timing of PLA exercises in relation to those of the SCO has, on occasion, suggested that China is using SCO exercises as a means to bolster its domestic agenda with respect to XUAR in particular. One example is China’s staging of a domestic counter-terrorism exercise in XUAR on August 23, 2003, just eleven days after the conclusion of the SCO joint exercise Coalition 2003.\textsuperscript{401} Given this track record, China’s regular involvement in SCO exercises and staging in XUAR, irrespective of how tenuous the connection to terrorism, suggest that China views the exercises as another component of its social stability efforts.

The climate of fear maintained through SCO joint exercises in targeted regions thus has broad potential to intimidate and compromise domestic populations, particularly ethnic groups such as Uyghurs, by deterring them from exercising their legitimate rights, including freedoms of association, expression, and religion – activities that officials regularly characterize as “separatism” or “extremism.” Moreover, the SCO is well-positioned to magnify the role and impact of its joint exercises in the future, including in the context of cooperation with the UN Security Council, as “agreements [between RATS and the Security Council’s CTED] have been reached on conducting coordination over the issues of sharing information, staging counter-terrorism exercises, conferences and seminars on the fight against terrorism, separatism and extremism.”\textsuperscript{402}

\begin{itemize}
\item \textsuperscript{400} Ibid., 25.
\end{itemize}
V. The SCO’s Engagement with the UN and the Global Counter-Terrorism Strategy

As the UN moves forward with the Global Counter-Terrorism Strategy adopted in 2006, its reliance on regional organizations such as the SCO for the maintenance of international peace and security is growing. The UN has long recognized that regional organizations have a useful role to play in counter-terrorism. In 2005, the Security Council adopted Resolution 1631, focused exclusively on the contribution that regional organizations could make to maintaining international peace and security. In it, the Security Council noted that the UN should promote the development of regional organizations’ capacities to prevent and settle conflicts, deploy peacekeeping forces, and counter the illicit arms trade, under Chapter VIII of the UN Charter. The Security Council also stated that it:

Welcomes the efforts undertaken by its subsidiary bodies with responsibilities in counter-terrorism to foster cooperation with regional and subregional organizations, notes with appreciation the efforts made by an increasing number of regional and subregional organizations in the fight against terrorism and urges all relevant regional and subregional organizations to enhance the effectiveness of their counter-terrorism efforts within their respective mandates, including with a view to develop their capacity to help Member States in their efforts to tackle the threats to international peace and security posed by acts of terrorism.

Moreover, as part of the Global Counter-Terrorism Strategy adopted in 2006, the UN “encourage[d] relevant regional and subregional organizations to create or strengthen counter-terrorism mechanisms or centres,” and indicated that the CTC and the CTED would cooperate with and provide assistance to regional organizations in order to...
achieve that goal. The Global Counter-Terrorism Strategy also included, as a capacity-building measure, “taking advantage of the framework provided by relevant international, regional and subregional organizations to share best practices in counter-terrorism capacity-building, and [facilitating] their contributions to the international community’s efforts in this area.” Regional organizations such as the SCO are thus an important part of the international framework to counter terrorism.

Notably, the Security Council indicated in Resolution 1631 that the regional organizations originally envisioned as the targets of expansive cooperation were those working on the African continent. Successes through certain regional frameworks, such as the African Union, may have resulted in a level of trust and credibility bestowed on regional organizations by the international system well beyond that which would be afforded to an individual state. Yet regional organizations such as the SCO, operating in other contexts and with member states with weak human rights records, present serious challenges to this assumed level of trust and credibility.

On the initiative of individual SCO member states – with China in particular exerting its influence, including as a permanent member of the Security Council – the SCO has taken this opportunity to rapidly expand its collaboration with the UN. Formal collaboration

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408 Ibid., Art. III.2.
409 See also G.A. Res. 64/118, U.N. Doc. A/RES/64/118 (2010), http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/64/118 (referencing the SCO and “noting regional efforts to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever and by whomsoever committed, including through the elaboration of, and adherence to, regional conventions”).
410 S.C. Res. 1631, supra n. 405.
411 The SCO member states have identified the UN and other international fora as key conduits for propagation of the SCO Three Evils-based counter-terrorism strategy. Indeed, “main directions of cooperation” specifically detailed in the 2005 RATS concept of cooperation include “[alignment of positions for participation in international organizations and forums regarding issues of combating terrorism, separatism, and extremism” and “[p]articipation in uniting the forces of the world community in formulating a global strategy for counteracting terrorism, separatism, and extremism.” See Concept of Cooperation, supra n. 45, Arts. III.16-17. Note that the global strategy referred to is not simply the fight against terror, but also against “separatism” and “extremism” – essentially, an effort to obtain international consensus on these politicized notions. Additionally, RATS Executive Committee Dzhenisbek Dzhumanbekov indicated that a main activity of RATS for the 2010-2012 period is to develop contacts and cooperation with Interpol, other regional organizations (OSCE, CIS, CSTO, ASEAN), and UN bodies, including the Regional Mission in Central Asia; the Office on Drugs and Crime; and the Security Council CTC – with which RATS seeks to collaborate regarding “the ratification of a comprehensive convention on international terrorism,” and to which RATS has submitted a proposal for “a series of joint operations, aimed at strengthening the counter-terrorist potential of SCO member states.” See RATS, “РАТС ШОС: сообща против терроризма” (“SCO RATS: United Against Terrorism”), April 29, 2010, http://infoshos.ru/ru/?idn=5810. RATS and the CTED have already “considered signing a memorandum of understanding,” and “agreements have been reached on conducting coordination over the issues of sharing information, staging counter-terrorism exercises, conferences and seminars on the fight against terrorism, separatism and extremism.” See U.N.
between the SCO and the UN began in 2004, when the Permanent Representative of China to the UN requested that the General Assembly include on its agenda the issue of observer status for the SCO. The explanatory memorandum of the SCO Secretariat, included with the request, highlighted the SCO’s organizational emphasis on security and economic cooperation. Disturbingly, it raised the Three Evils doctrine as a strength of the organization, noting that “SCO security cooperation focuses on the fight against three forces, namely, terrorism, separatism and extremism, in order to maintain regional peace and stability. As the first international organization that explicitly advocates combating the above-mentioned ‘three forces,’ SCO adopted the Shanghai Convention against Terrorism, Separatism and Extremism upon its inception.”

The UN General Assembly allocated the question of SCO observer status to its Sixth Committee, which deals with legal questions. During the meeting of the Sixth Committee on the topic, the only representatives who spoke on the matter were representatives of SCO member states China, Kyrgyzstan, Russia, and Kazakhstan – all in favor of granting observer status, and reiterating the SCO’s role in maintaining peace and security and combating the Three Evils, particularly terrorism. The draft resolution granting observer status was adopted by the Sixth Committee without a
vote. The General Assembly granted the SCO observer status on the basis of the Sixth Committee’s recommendation in December 2004 – without discussion or a vote.

Since that time the SCO has participated in a variety of meetings and discussions at the UN, and ultimately sought to formalize its cooperation with the UN in a resolution during the fall session of the General Assembly in 2009. The representatives of the six individual SCO member states to the UN jointly requested inclusion of “cooperation between the United Nations and the Shanghai Cooperation Organization” on the General Assembly’s agenda. Unlike the themes raised when the SCO first sought observer status, the explanatory memorandum and draft resolution included as annexes to this request did not emphasize security – rather, they focused on the SCO’s potential to work with the UN in development-related areas, such as the economy, humanitarian problems, environmental and social issues, etc. As the explanatory memorandum stated, “in order to enhance the practical component of this cooperation and ensure its synergy for the purpose of addressing tasks in the socio-economic field, it is necessary to make relations between the Organization and the United Nations more systematic. This would be the aim of the General Assembly resolution.” The explanatory memorandum also noted the SCO’s partnership with the development-oriented UN Economic and Social Commission for Asia and the Pacific (ESCAP), with which the SCO had signed a memorandum of understanding in January 2008 to cooperate in the areas of economy, trade, environment, energy, and transportation infrastructure. This time, the General Assembly’s General Committee allocated the agenda item “cooperation between the United Nations and the Shanghai Cooperation Organization” to the plenary session, rather than a specific committee, under heading “I (organizational, administrative and other matters).”

421 Ibid., 4 (emphasis added).
Yet, while the resolution’s original incarnation focused on interaction in the socio-economic field, between February and December 2009 – after “informal consultations” – the resolution was recalibrated to again emphasize the SCO’s security credentials. Uzbekistan, which held the chairmanship of the SCO during 2009, took the lead in pushing the issue forward. In a September 2009 plenary meeting of the General Assembly, Uzbekistan’s Minister of Foreign Affairs urged, “The interdependence of regional and global problems necessitates close cooperation between the United Nations and such regional structures as the [SCO]. In its capacity as the current Chair of the [SCO], Uzbekistan intends to intensify interaction between the United Nations and the [SCO] by turning the cooperation into a real partnership.”

Uzbekistan’s representative to the UN also urged closer partnership between the UN and SCO in discussions of the Sixth Committee on measures to eliminate international terrorism – noting in particular that the “chief focus of the work of SCO was on combating international terrorism, illicit drug trafficking and organized crime,” and that “regular contact should be established between the Regional Anti-Terrorist Structure of SCO in Tashkent and the relevant United Nations bodies, such as the Counter-Terrorism Committee.”

On December 7, 2009, the SCO member states introduced a revised draft resolution, which added language that the SCO “has become an essential forum for addressing security in the region in all its dimensions,” taking note of SCO activity “aimed at strengthening peace, security, and stability in the region, countering terrorism, separatism and extremism . . . .” The six SCO member states were joined by Pakistan (which has SCO observer status) and the Dominican Republic as sponsors of the draft resolution. 
The General Assembly adopted the revised resolution by consensus, apparently without consideration of the dangers of the SCO framework that this whitepaper outlines – including the Three Evils approach enshrined in both the *Shanghai Convention* and the language of the cooperation resolution itself.

Instead, the cooperation resolution “not[ed] with satisfaction that the declaration on the establishment of the Shanghai Cooperation Organization confirms the commitment of its States to the principles of the Charter of the United Nations,” proposed that the UN Secretary-General hold regular consultations with the Secretary-General of the SCO, and further proposed that “the specialized agencies, organizations, programmes and funds of the United Nations system cooperate with the Shanghai Cooperation Organization with a view to jointly implementing programmes to achieve their goals.”

The resolution took into consideration that some SCO member states have “economies in transition” – a priority target of support for the UN. Again, however, during the meeting of the General Assembly in which the resolution was considered, only representatives associated with the SCO spoke: the representative of Uzbekistan, who introduced the resolution on behalf of the SCO member states, and the Secretary-General of the SCO itself, given that the SCO could now participate in meetings of the General Assembly as an intergovernmental organization with observer status.

The SCO, RATS, and China in particular have used this momentum as an opportunity to advance the objectives and standing of the SCO on the international stage. Notably, when China assumed its Security Council presidency in January 2010, it took the opportunity “to convene a thematic debate to explore ideas and measures for strengthening the cooperation between the United Nations and regional and subregional organizations in the maintenance of international peace and security.” This was the *first time* that China ever organized a thematic debate on its own initiative.

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431 G.A. Res. 64/183, supra n. 430, preamble, paras. 2-3.

432 Ibid.


during its presidency. Thus, in January 2010, a two-day retreat took place that brought together officials from 11 regional organizations, including the SCO, and the UN Secretary-General. The retreat was followed by the Security Council’s thematic debate.

As initially laid out in China’s concept paper for the debate, however, the premise of the discussion was that regional organizations offer clear advantages, and that synergies should be formed between regional organizations and the UN. The debate and presidential statement that followed accepted that regional organizations – due to their proximity to the problems – were inherently beneficial; no examination of the risks or particular biases of regional organizations appears to have been undertaken. During the discussion, the representative of the Russian Federation asserted that “regional organizations had better awareness of situations in their areas and had tailored preventive mechanisms.” Moreover, the representative from Lebanon stated that it was a strength that “regional organizations were close to the conflicts and had historical and cultural bonds with the parties involved.”

At the conclusion of the debate, the representative of China issued a Presidential Statement, in which the Security Council “recall[ed] that cooperation with regional and subregional organizations in matters relating to the maintenance of international peace and security, consistent with Chapter VIII of the Charter of the United Nations, can improve collective security.” It also “acknowledge[d] the important contribution of regional and subregional organizations to the peaceful settlement of local disputes and preventive diplomacy, as they are well positioned to understand the root causes of many conflicts and other security challenges.”

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439 Ibid.
440 Ibid.
442 Ibid.
On April 5, 2010, the SCO and the UN issued a Joint Declaration on SCO/UN Secretariat Cooperation. The declaration emphasized continuing cooperation in the fight against terrorism and developing information sharing and capacity building. In signing the declaration, UN Secretary-General Ban Ki-moon stated as a given the key assumptions underlying the issue of regional partnership: “Regional problems demand regional solutions . . . This is part of the United Nations' efforts to increase its partnership with regional organizations like the SCO. The United Nations and the Shanghai Cooperation Organization share the same principles and goals in peace, security, development and human rights and all the important principles of the United Nations.” On April 7, just two days after the declaration was signed, SCO Secretary-General M. Imanaliev met in Beijing with Cheng Guoping of China’s Ministry of Foreign Affairs to discuss “the issues of regional security, international cooperation and the current activity of the SCO” – further suggesting China’s hand in the process.

Finally, a recent opportunity that has emerged for the SCO to influence the UN Global Counter-Terrorism Strategy is an initiative sponsored by the European Commission (EC) and Norway to “establish” a Central Asian regional counter-terrorism plan – an effort that seems to neglect the fact that such a “plan” already exists in the form of the well-developed and problematic SCO framework. Announced in September 2010, the goals of the EC-Norway initiative are to “help Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan establish a regional counter-terrorism plan in line with the UN Global Counter-Terrorism Strategy” and “boost cooperation against the threat posed by terrorism and build consensus on common solutions to fight the scourge.” The program will involve cooperation with the UN Regional Centre for Preventive Diplomacy for Central Asia (UNRCCA), and will “pave the way for a ministerial-level conference [in 2011] to lead to the adoption of a joint action plan for the implementation of the UN Global Counter-Terrorism Strategy by Central Asian nations.”

Already, RATS Executive Committee Director Dzhenisbek Dzhumanbekov has indicated that RATS is taking part in drafting this action plan on implementation of the UN Global

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444 Ibid., paras. 2-3.
448 Ibid.
Counter-Terrorism Strategy.\textsuperscript{449} Its influence on the Central Asian states in this process, given the economic and other support made available to them through the SCO, is likely to be significant. If the goal of the EC-Norway initiative is to support all four pillars of the UN Global Counter-Terrorism Strategy, however, the program must assess and address the SCO counter-terrorism framework’s negative impact on the fourth pillar of the Global Counter-Terrorism Strategy: “Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.”\textsuperscript{450}

In sum, the approach of the UN and the international community has thus far failed to address the political biases and human rights risks that a regional organization like the SCO may bring to security cooperation, or to recognize that regional mechanisms may not be able to offer necessary impartiality, particularly in the protection of internationally-recognized human rights. As demonstrated in this whitepaper, regional organizations such as the SCO may count as members states that have reached political consensus on national security issues in which the compromise of human rights is considered wholly acceptable – if not expedient – for national and regional purposes. Regional organizations have the potential to gather like-minded states into a forum that actually reinforces practices that violate international law in order to achieve political objectives.

Coordination of counter-terrorism measures across fora, particularly within the UN, is essential to preventing abuses or the spread of bad policies. The Security Council has reiterated “the obligation for regional organizations, under article 54 of the [UN] Charter, to keep the Security Council fully informed of their activities for the maintenance of international peace and security.”\textsuperscript{451} Counter-terrorism cooperation, which is a significant part of the SCO’s mission, qualifies as an activity aimed at the maintenance of international peace and security, and is therefore an area of which the Security Council should be kept appraised. The lack of transparency that the SCO has demonstrated thus far, however, suggests the organization has not met this Chapter VIII obligation.

The UN and the governments of its member states must insist on compliance with international human rights obligations in any UN cooperation or assistance programs involving the SCO. Otherwise, they risk not only aiding and abetting member states in actions that violate the human rights of their citizens, but also missing a critical opportunity to promote the key pillar for advancing effective and sustainable counter-terrorism measures – respect for human rights.

\textsuperscript{449} “SCO RATS to improve anti-terror work through joint efforts of its member states, Dzhumanbekov,” Kazinform, February 9, 2011, \url{http://www.inform.kz/eng/article/2349905}.

\textsuperscript{450} United Nations Global Counter-Terrorism Strategy, supra n. 7.

\textsuperscript{451} S.C. Res. 1631, supra n. 405, para. 9.
VI. Conclusion

Despite a broad international consensus that the promotion and protection of international human rights, including rights enumerated under humanitarian and refugee law, is not only the legal and moral obligation of states, but also an essential pillar in the international counter-terrorism framework, the effective promotion and protection of human rights and fundamental freedoms remains a critical challenge. In its efforts to address this challenge since 2001, the international community has made substantial and necessary progress in integrating human rights with counter-terrorism measures, as reflected in the fourth pillar of the UN Global Counter-Terrorism Strategy, and due in large part to the sustained efforts of the Special Rapporteur on counter-terrorism and other UN bodies. This progress includes the development of best practices in countering terrorism and in intelligence cooperation, recommended by the Special Rapporteur on counter-terrorism.

To contribute to the international progress underway toward developing a more coherent, effective, and sustainable approach to counter-terrorism and promoting the key pillar of human rights, this whitepaper assesses the impact of the Shanghai Cooperation Organization on the rights of member state citizens and the international human rights framework. It also advances a number of concrete policy and practice recommendations directed to the SCO and its member states, as well as to UN bodies and national governments.

This whitepaper argues that 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 international community, and the UN in particular as it deepens and expands its engagement with the SCO, must address in a more effective and coherent manner the human rights risks posed by each SCO member state and by the collective SCO framework, policies, and practices.

Each of the six SCO member states has individually ratified or signed core international human rights treaties, committing themselves to obligations for national implementation of human rights under international law. As parties to these important instruments, each SCO member state must undergo regular periodic assessment of its progress implementing treaty-based human rights obligations. However, this whitepaper’s examination of the observations of and conclusions drawn by the various human rights assessment bodies and mechanisms reveals wide-ranging human rights
abuses in every member state, including what appears to be a systematic targeting of disadvantaged groups, including rural and ethnic groups.

Specifically, these international expert reviews reveal stark patterns of abuses common to all SCO member states, including the use of politically-motivated judicial and administrative procedures that lack minimum due process requirements, such as the right of accused individuals to legal representation; systematic arbitrary arrests and detentions; the practice of torture and other unlawful treatment to extract confessions or gather evidence in criminal investigations, and the forced extradition of individuals to states likely to inflict such treatment upon an individual’s return; the practice of enforced or involuntary disappearances; and the occurrence of summary and arbitrary executions without minimum due process requirements.

The SCO, however, has a unique and unparalleled opportunity to exercise regional leadership in advancing compliance with international human rights obligations – both in its own efforts and by its individual member states. As a regional body with rapidly growing influence at the national, regional, and international levels, it is up to the SCO to lead by example, and to demonstrate the positive impact that integration of human rights protections will have on the effectiveness of counter-terrorism measures and on the lives of member state citizens. Human Rights in China urges the SCO and its member states to seize this opportunity.

At the same time, as the UN and individual governments move forward to deepen their cooperation with the SCO, they must also take concrete steps to ensure that any cooperation modalities – including technical assistance, training initiatives, and joint exercises – integrate adequate human rights benchmarks, indicators, and accountability mechanisms. Instead of uncritically contributing to strengthening a regional approach that is undermining international human rights – and ignoring the serious ongoing human rights problems in each SCO member state – international cooperation with the SCO must address these human rights challenges. Failure of the international community to demand accountability from regional frameworks such as the SCO will only compromise the effectiveness and integrity of the international system in countering terrorism and advancing rule of law, peace, and security.

At stake are the peace and security of the region, the human rights of over 1.5 billion people, and the credibility and effectiveness of the international counter-terrorism framework.