

# SHANGHAI COOPERATION ORGANISATION: A VEHICLE FOR HUMAN RIGHTS VIOLATIONS

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,



Cover photo: Chinese soldiers march in front of the flags of SCO member States during a parade marking the end of unprecedented joint military exercises, Chebarkul testing range, Russian Federation, August 2007. AFP PHOTO / MAXIM MARMUR.

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# Introduction

The Shanghai Cooperation Organisation (SCO) is composed of the People's Republic of China, the Russian Federation and four Central Asian Republics (Kyrgyzstan, Kazakhstan, Tajikistan and Uzbekistan). Since its foundation in 2001, the organisation has developed a legal and political framework to fight “terrorism, extremism and separatism”.

Human rights NGOs from SCO Member States have highlighted that the SCO framework has enabled Member States to challenge many provisions of international human rights and refugee law.

There is little human rights analysis of the consequences of SCO agreements in Member States. The fact that the SCO's working languages are Chinese and Russian, with not much publicly available documentation in English, makes it difficult for many human rights NGOs to access direct information on its working structure and normative framework.<sup>1</sup> This lack of transparency facilitates the general perception that the organisation focuses merely on military and economic cooperation, with little or no direct relevance to human rights in SCO Member States. Few human rights organisations within those states study the SCO's influence on human rights as a whole. Instead, they usually address individual instances of rights violations against deportees, those subject to extradition, or those accused of involvement with terrorist acts or prohibited organisations. In addition, the human rights situation in all SCO Member States is generally characterized by high levels of repression against human rights defenders. This makes it very difficult for them to collect data on state responsibility for human right violations.

FIDH member organisations and partners from the six SCO Member States gathered in Brussels in May 2011<sup>2</sup>, just a few weeks before the SCO's 10 year jubilee in Astana, Kazakhstan. The aim of the meeting was to share analyses on the compliance of SCO conventions with international human rights and refugee law and build synergies among participants. Case studies from within SCO Member States were examined and the SCO's structure, development and human rights consequences within each state were discussed.

This report, based on the discussions during the seminar and findings of its participants, focuses on how SCO Member States have violated international human rights standards on the basis of SCO norms (section 1). Selected case studies discussed during the seminar illustrate SCO states' practices in this regard (section 2). Section 3 displays the international and regional standards for the protection of human rights within the SCO counter-terrorism framework.

FIDH thanks its member and partner organisations, Human Rights in China (HRIC), the International Bureau for Human Rights and the Rule of Law (Kazakhstan), Citizen Against Corruption (Kyrgyzstan), Legal Clinic Adilet (Kyrgyzstan), Kylym Shamy (Kyrgyzstan), the Institute of Human Rights (Russia), The Tajik Bureau for Human Rights and the Rule of Law (Tajikistan) for their participation in the seminar and their input throughout the drafting of this report.

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1. A recent comprehensive analysis of the SCO's normative framework and structure from a human rights perspective is the White Paper of FIDH member organization, Human Rights in China (HRIC), *Counter-Terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization*, <http://www.hricchina.org/research-and-publications/reports/sco>.

2. The seminar formed part of FIDH's long-standing work on human rights compliance in the context of counter terrorism: *How to respond to human rights violations committed in the context of the fight against terrorism*, September 2010, <http://fidh.org/How-to-respond-to-human-rights>, *Russian society under control - Abuses in the fight against extremism and terrorism*, July 2009, <http://fidh.org/Russian-society-under-control>.

# Executive Summary

## The Shanghai Cooperation Organisation

The Shanghai Cooperation Organisation (SCO), created on 15 June 2001 with the issuance of the Declaration on the Establishment of the Shanghai Cooperation Organisation by China, Russia, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan has as one of its central purposes the fight against terrorism, which is linked in the SCO framework<sup>3</sup> to the fight against extremism and separatism.

## Human rights background of SCO Member States, observer states and dialogue partners

All SCO states and most of its observer states and dialogue partners have authoritarian regimes and/or severely repress independent voices. These regimes associate security and stability with the need to repress religious, political and human rights activists, as well as the representatives of some national minorities, often accusing them of extremism on political grounds.

Observer states include India, Pakistan, Iran, Mongolia and Afghanistan. Sri Lanka, Belarus and Turkey join SCO talks as dialogue partners. Turkmenistan, the Association of Southeast Asian Nations (ASEAN) and the Commonwealth of Independent States (CIS) also frequently participate as guests.

## The SCO's influence at the international level

The SCO's United Nations observer status, and China and Russia's status as permanent members of the Security Council, have considerably expanded the SCO's influence on the international counter-terrorism framework.

The SCO is also often perceived as an anti-Western club, and the United States' recent efforts at rapprochement with the SCO seem unlikely to succeed.

## The SCO framework: a vehicle for human rights violations?

The SCO's core principle is **mutual recognition**. Its 2005 Concept of Cooperation requires Member States to give mutual recognition of acts of terrorism, separatism and extremism, regardless of whether the legislation of the SCO Member States includes the act in the same category of crimes or whether it describes it using the same terminology.

It is important to underline that in implementing the SCO's legal framework through their national legislation SCO Member States do so without a common or precise definition of terrorism.

Moreover, the mutual recognition principle prevents individuals from seeking asylum in neighbouring SCO states because their suspected involvement in separatist or terrorist activities will be recognised and will trigger their refoulement to their home State irrespective of the fact that they could face torture there. Some SCO documents imply that not only those accused of terrorist involvement but also those merely *suspected* of terrorism by one SCO Member State, must be so recognized by other SCO states.

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3. Charter of the Shanghai Cooperation Organization (Article 1), June 7, 2002, see unofficial translation in English, <http://www.sectSCO.org/EN/show.asp?id=69>



Significantly, the principle of mutual recognition has led to the prohibition of organisations and literature deemed extremist by one SCO member, in the territory of all other members. Decisions banning organisations designated as terrorist or extremist are not officially published in their entirety; they are therefore neither accessible nor transparent. As a result, opportunities to appeal such decisions are extremely restricted.

In consequence, individuals defending those facing extradition, or charged with terrorism, separatism or extremism in these states, face extreme pressure and repression. This can particularly be the case for legal representatives.

The incorporation of SCO doctrine into Member States' domestic law, as highlighted by organisation and literature bans, extends the control of China and Russia, the SCO's dominant regimes, over regional counter-terrorism policies and practices and over human rights in SCO countries. In doing so it also counterweighs international efforts on human rights issues in the framework of the fight against terrorism.

Access to international and regional human rights mechanisms and remedies is therefore crucial in such a context .

# I. SCO framework and the principle of mutual recognition

## The Shanghai Cooperation Organisation: An introduction

The Shanghai Cooperation Organisation was founded on 15 June 2001 with the issuance of the *Declaration on the Establishment of the Shanghai Cooperation Organisation* by the People's Republic of China, the Russian Federation, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. The Organisation sought to enhance security and cooperation between its members, building upon existing military cooperation that had taken place between the Shanghai Five<sup>4</sup> since 1996. One of the central goals enumerated in the Organisation's Charter of June 2002 is the fight against terrorism, which SCO Member States associate with the fight against extremism and separatism.

The SCO counts several observer states, namely India, Iran, Mongolia, Pakistan and Afghanistan. It also has three dialogue partners: Belarus, Sri Lanka and Turkey, as well as the SCO-Afghanistan Contact Group. Turkmenistan, the Association of Southeast Asian Nations (ASEAN) and the Commonwealth of Independent States (CIS) also frequently participate as guests.

All SCO Member States and most of its observer states and dialogue partners have authoritarian regimes and/or severely repress independent voices, particularly human rights defenders. These regimes associate security and stability with the need to repress political and human rights activists, often accusing them of extremism on political grounds.

The SCO has established relations with the United Nations (where it has observer status), the European Union, the Association of Southeast Asian Nations (ASEAN), the Commonwealth of Independent States and the Organisation of Islamic Cooperation.

With its observer status at the United Nations (UN) and two of its Member States (China and Russia) being permanent members of the Security Council, the SCO's influence on the international counter-terrorism framework has now increased considerably.

On several occasions, UN Secretary-General Ban Ki-moon has welcomed cooperation between the UN and the SCO. At a 2009 meeting of the Council of Heads of State of the SCO at Ekaterinburg in the Russian Federation, he said:

“I am confident that the work of the SCO will further the collective efforts of the international community in responding to these threats [of terrorism, armed conflict and instability] – and in seizing common opportunities for trade, development and cultural exchange.”

He further added that the UN would reinforce its cooperation with the SCO on preventive diplomacy through the UN Regional Centre for Central Asia.

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4. Composed of the People's Republic of China, the Russian Federation, Kazakhstan, Kyrgyzstan and Tajikistan. The Declaration therefore brought Uzbekistan within this security cooperation framework.

The SCO's international standing has therefore grown considerably. Indeed, it is now often considered to be a future equivalent to NATO in the Eurasia/Asia region. In addition, in recent meetings, the role of the SCO in the economic development in the region has been repeatedly stressed.

On 7 November, 2011, during a meeting of heads of government of the SCO in St Petersburg, Russia, Prime Minister Vladimir Putin declared that the SCO has an increasing role to play in the economic growth and stability of the region. The following day, he posted on his official website as a prime minister:

“With our combined efforts we will be able to bring the work of Shanghai Cooperation Organisation to a whole new level and achieve the ambitious goal of transforming our organisation into a foundational structure of the global economic and political architecture, an effective platform for cooperation between regional associations and an avenue for expanding dialogue with neighbouring countries”.<sup>5</sup>

## SCO Executive organs

The SCO has two main executive organs: the SCO secretariat, whose head is nominated by the Council of Heads of States; and the SCO Regional Anti-terrorist structure (RATS), which is responsible for the implementation of SCO counter terrorism strategies.

Based in Tashkent, Uzbekistan, RATS facilitates cooperation between Member States' own domestic security agencies. This involves coordinating special operations and information collection and sharing, including the maintenance of a database on terrorist, separatist and extremist organisations, their members and associated individuals. Most importantly, RATS participates in the preparation of joint anti-terrorist exercises and special operations. It assists in international searches for individuals listed on the database and is involved in the preparation of international standards on counter-terrorism and cooperation with international organisations on these subjects.<sup>6</sup>

RATS operates with the utmost secrecy. Its list of terrorist, extremist and separatist organisations and individuals is kept secret and is reputedly considerably larger than the Consolidated List maintained by the UN.<sup>7</sup>

In his report to the UN Human Rights Council in 2009, Martin Scheinin, former UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (from August 2005 until July 2011) indeed stressed this issue:

“In this context, the Special Rapporteur has serious concerns about the sharing of data and information between intelligence agencies in China, Russia, Kazakhstan, the Kyrgyz Republic, Tajikistan and Uzbekistan within the framework of the Shanghai Convention on Combating Terrorism,

5. <http://premier.gov.ru/eng/events/2011/11/7/>

6. For a broader analysis of the SCO's normative framework and structure, see the White Paper of FIDH member organization, Human Rights in China (HRIC), Counter-Terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization, <http://www.hrichina.org/research-and-publications/reports/sco>.

7. Indeed, according to the former UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, “the Shanghai regime is largely secret or intransparent so that, for instance, intelligence practices or the terrorist lists within the Shanghai Cooperation Organization are not publicly known. It is known that the list is already far longer than the United Nations list, which comprises at the moment only one living Russian national; whereas, the Shanghai list has 1,100 people. We don't know who they are, but many of them would be from the Russian Federation.” (Statement of Martin Scheinin, *Human Rights in the North Caucasus*, Hearing before the Tom Lantos Human Rights Commission, US House of representatives, 15 April 2011, page 7, [http://tlhrc.house.gov/docs/transcripts/2011\\_04\\_15\\_North\\_Caucasus/Transcript.pdf](http://tlhrc.house.gov/docs/transcripts/2011_04_15_North_Caucasus/Transcript.pdf))



Separatism and Extremism. This 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”.<sup>8</sup>

RATS Executive Committee Director Dzhenisbek Dzhumanbekov, has indicated that a main activity for RATS in the 2010-2012 period is to develop contacts and cooperation with Interpol, other regional organizations (OSCE, CIS, CSTO, ASEAN), and UN bodies. Such bodies include the Regional Mission in Central Asia, the Office on Drugs and Crime, and the Security Council Counter Terrorism Committee. RATS seeks to collaborate with these bodies on “the ratification of a comprehensive convention on international terrorism”. To this end RATS has submitted a proposal for “a series of joint operations, aimed at strengthening the counter-terrorist potential of SCO Member States”.

SCO Member States regularly interact with the Counter-Terrorism Implementation Task Force, and the United Nations Security Council and its counter-terrorism committees. They seek increased interaction between RATS and the corresponding UN agencies, in the belief that many SCO agreements, including the SCO convention against terrorism, will make an important contribution to the development of an international legal framework to fight international terrorism.

In June 2011, the SCO and the UN Office on Drugs and Crime (UNODC) signed a memorandum of understanding on cooperation in countering terrorism, illegal drug trafficking and organized crime.

## **Mutual recognition: a core principle**

The 2005 Concept of Cooperation of SCO Member States requires them, along with other documents, to give mutual recognition of acts of terrorism, separatism and extremism, regardless of whether legislation of the SCO Member States includes the act in the same category of crimes.

SCO Member States are supposed to implement national legislation in accordance with the SCO legal framework. However, the latter is vague and doesn’t comply with international standards. Former Special Rapporteur Scheinin noted that one of the problems of the SCO framework is that “it is not based on a common and precise definition of terrorism but, rather, uncommonly [on] some unilateral definitions by the Member States. Hence, each country’s terrorism definition counts”.<sup>9</sup>

Unlike UN Security Council Resolution 1566, which provides a working definition of terrorism, Article 2 of the SCO Convention on Counter-terrorism of 2009 merely defines terrorism as an “ideology of violence,” connecting it with extremism and separatism. This definition, referred to as the theory of the “three evils” in the 2001 Shanghai Convention on Combating Terrorism, Extremism and Separatism, was initially proposed by the Chinese authorities to justify counter-terrorism measures to repress separatist groups in Xinjiang and other minority areas in China. The same approach was then replicated at SCO-level.

In 2009, the Human Rights Committee stressed in its concluding observations on Russia its concern “about several aspects of the 2006 Federal Law on counteracting terrorism”, pointing out, among other issues, the “lack of precision in the particularly broad definitions of terrorism and terrorist activity”, the lack of any limitation on “derogations that may be made from the

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8. Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, UN Doc A/HRC/10/3/ (2009, Paragraph 35, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.3.pdf>

9. See Statement of Martin Scheinin, *Human Rights in the North Caucasus*, Hearing before the Tom Lantos Human Rights Commission, US House of representatives, 15 April 2011, page 6, [http://tlhrc.house.gov/docs/transcripts/2011\\_04\\_15\\_North\\_Caucasus/Transcript.pdf](http://tlhrc.house.gov/docs/transcripts/2011_04_15_North_Caucasus/Transcript.pdf)

provisions of the ICCPR” and voiced its regret “that the Law lacks a provision explicitly outlining the obligation of the authorities to respect and protect human rights in the context of a counter-terrorist operation”.<sup>10</sup>

The Committee further stressed its “regrets that the definition of “extremist activity” in the Federal Law on Combating Extremist Activity remains vague, allowing for arbitrariness in its application”.<sup>11</sup>

The lack of a precise definition of the subject matter at the core of the SCO’s existence is questionable from a legal point of view. Crucially, it opens the door to a wide range of interpretations, some of which may be used to facilitate human rights violations. Under SCO conventions the boundaries between terrorism and separatism are very thin: opposition members and members of minority groups, such as the Uyghurs in China, are readily accused of the “crime” of separatism.

Moreover, a number of SCO documents imply that an individual not only accused, but merely *suspected* of being a member of a terrorist organisation by a SCO Member State, must also be recognized as such by other SCO states. This makes it practically impossible for such an individual to seek asylum in neighbouring SCO states.

When SCO states request an individual’s expulsion and extradition on terrorism charges, or suspicion thereof, these requests must be unconditionally complied with by recipient Member States. According to former UN Special Rapporteur Martin Scheinin, such unconditional expulsion and extradition contradict international standards requiring double criminality in extradition cases.<sup>12</sup>

SCO states that expulse and extradite individuals are not required to recognise the crimes on which requesting states found their extradition requests. Moreover, individuals sentenced abroad under the principle of mutual recognition for crimes allegedly committed in their country of origin, often risk prosecution for the same offence after their extradition back to their home state.

### Decisions and declarations of UN bodies

Several UN bodies denounced expulsion and extradition practices of SCO members.

For instance, the UN Committee against Torture, examining the situation in **China** in 2008, was “Greatly concerned” about the fact that “persons extradited to and from neighbouring States do not benefit from legal safeguards against return despite the risk of torture”.<sup>13</sup> Examining the situation in **Kazakhstan**, it also denounced “the fact that [Kazakhstan’s] current expulsion, refoulement and extradition procedures and practices may expose individuals to the risk of torture”.<sup>14</sup>

The refoulements and extraditions by **Kyrgyzstan** of asylum seekers from China and Uzbekistan were tackled by the Committee on the Elimination of Racial Discrimination which voiced in 2007 its “Deep concern” about “forcible return of ethnic Uighurs and Uzbeks to their countries of origin pursuant to multilateral agreements and bilateral agreements”<sup>15</sup> with neighbouring states.

10. Human Rights Committee, *Consideration of Reports Submitted by State Parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee (Russian Federation)*, Paragraph 7, UN Doc. CCPR/C/RUS/CO/6 (2009), <http://www2.ohchr.org/english/bodies/hrc/hracs97.htm>,

11. Human Rights Committee, *Consideration of Reports Submitted by State Parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee (Russian Federation)*, Paragraph 24, UN Doc. CCPR/C/RUS/CO/6 (2009), <http://www2.ohchr.org/english/bodies/hrc/hracs97.htm>,

12. Double criminality is a basic rule of international law on extradition. This rule holds that an act shall not be extraditable unless it constitutes a crime in the laws of both the requesting and requested states.

13. UN Committee against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding Observations of the Committee against Torture (China)*, UN Doc. CAT/C/CHN/CO/4 (2008), <http://www2.ohchr.org/english/bodies/cat/cats41.htm>

14. UN Committee against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding Observations of the Committee against Torture (Kazakhstan)*, UN Doc. CAT/C/KAZ/CO/2 (2008), <http://www2.ohchr.org/english/bodies/cat/cats41.htm>

15. UN Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States*

SCO agreements were directly tackled by the Human Rights Committee examining **Russia** in 2009, which was “concerned about reports of extraditions and informal transfers [...] to return foreign nationals to countries in which the practice of torture is alleged while relying on diplomatic assurances, notably within the framework of the 2001 Shanghai Convention on Combating Terrorism, Separatism and Extremism”.<sup>16</sup>

Expulsions and extraditions of refugees to SCO countries by Russia have not stopped. Between August and December 2011, at least 5 refugees disappeared: according to local NGOs, there are strong suspicions that they were sent out.<sup>17</sup>

The situation of asylum seekers in **Tajikistan** was denounced by the UN Committee against Torture in 2006<sup>18</sup> and the UN Committee on the Elimination of Racial Discrimination in 2004.<sup>19</sup> The Committee against Torture,<sup>20</sup> the Committee on the Elimination of Racial Discrimination<sup>21</sup> and the Human Rights Committee<sup>22</sup> denounced expulsions of individuals by **Uzbekistan** and lack of protection of recognized refugees and /or asylum seekers from neighbouring countries and the torture of Uzbek nationals that were extradited back to Uzbekistan after seeking asylum in neighbouring countries.

Specific examples of such treatment are outlined in the case studies in Part II of this report.

## SCO approach on the international arena

In September 2011, SCO members China, Russia, Uzbekistan and Tajikistan presented an “international code of conduct for information security” to the 66<sup>th</sup> UN General Assembly. This Code called upon States to:

“cooperate in combating criminal and terrorist activities that use information and communications technologies, including networks, and in **curbing the dissemination of information that incites terrorism, secessionism, or extremism, or that undermines other countries’ political, economic, and social stability, as well as their spiritual and cultural environment**”.<sup>23</sup>

The proposal of this international code, which vague terms enable multiple, broad interpretations, indicates an attempt to use counter-terrorism rhetoric to establish international agreements facilitating the silencing of dissident voices, thus violating fundamental freedoms such as freedom of expression.

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*Parties under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination (Kyrgyzstan)*, Paragraph 9, UN Doc. CERD/C/KGZ/CO/4 (2007), <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.KGZ.CO.4.pdf>

16. UN Human Rights Committee, *Consideration of Reports Submitted by State Parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee (Russian Federation)*, UN Doc. CCPR/C/RUS/CO/6 (2009), Paragraph 17, <http://www2.ohchr.org/english/bodies/hrc/hr97.htm>

17. Institute of Human Rights, Russia.

18. UN Committee against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding Observations of the Committee against Torture (Tajikistan)*, Paragraph 13, UN Doc. CAT/C/TJK/CO/1 (2006), <http://www2.ohchr.org/english/bodies/cat/cats37.htm>

19. UN Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination (Tajikistan)*, UN Doc. CERD/C/65/CO/8 (2004), <http://tb.ohchr.org/default.aspx?Symbol==CERD/C/65/CO/8>

20. UN Committee against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding Observations of the Committee against Torture (Uzbekistan)*, Paragraph 9 and 24, UN Doc. CAT/C/UZB/CO/3 (2008), <http://www2.ohchr.org/english/bodies/cat/cats39.htm>

21. UN Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination (Uzbekistan)*, Paragraph 12, UN Doc. CERD/C/UZB/CO/6-7 (2010), <http://www2.ohchr.org/english/bodies/cerd/cerds77.htm>

22. UN Human Rights Committee, *Consideration of Reports Submitted by State Parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee (Uzbekistan)*, UN Doc. CCPR/C/UZB/CO/3 (2010), Paragraph 12, <http://www2.ohchr.org/english/bodies/hrc/hr98.htm>

23. *Emphasis added.*

Indeed, this approach is characteristic of how the SCO legal framework is used by SCO Member States to protect the stability of authoritarian regimes, in violation of international human rights conventions.

In the case of Uzbekistan, former UK Ambassador, Craig Murray, highlighted that:

“Uzbek intelligence is [...] primarily aimed at portraying Uzbek dissidents as Islamic terrorists, and linking them to Al Qaida and to Chechen and Uyghur ‘terrorists’ [...]. The Uzbek government’s response to the Andijan massacre was an example of this, with the Russian government providing ‘evidence’ to back the Uzbek government’s story that the massacred demonstrators were terrorists organised by Chechens and funded by the USA.<sup>24</sup>”

In China, Uyghur political and human rights activists from the Xinjiang Uyghur Autonomous Region (XUAR) are also branded with extremism, separatism and terrorism as part of the regime’s strategy to control the population and isolate peaceful separatist groups.

## **The consequences of the SCO’s normative framework: the prohibition of organisations and literature**

A major consequence of the principle of mutual recognition is the acknowledgement of the extremist character of organisations and literature deemed extremist by one SCO Member State, on the territory of all the other Member States. Decisions banning organisations designated as terrorist or extremist are not officially published in their entirety; they are therefore neither accessible nor transparent. Consequently, opportunities to appeal such decisions are extremely restricted.

The incorporation of SCO doctrine into Member States’ domestic law, as highlighted by organisation and literature bans, extends the control of China and Russia, the SCO’s dominant regimes, over regional counter-terrorism and human rights in SCO countries. In doing so it also counterweighs international efforts on human rights issues in those countries.

In Russia, there are considerable grounds for believing that the first list of terrorist organizations compiled by the Federal Security Service and acknowledged in the Russian Supreme Court decision of 14 February 2003<sup>25</sup>, was a consequence of Russia’s adoption of the SCO Convention on Combating Terrorism, Separatism, and Extremism of 15 June, 2001. In consequence, the “Hizb ut-Tahir”, previously legal in Russia but repressed in Uzbekistan since the 1990s, has now been listed as a prohibited organisation in Russia.

Moreover, the Russian authorities have outlawed an organisation called “Nurzhular”, and Russian Security Services have labelled the followers of Turkish theologian, Said Nursi, as its members. Nursi is widely respected in the Muslim world and his works positively evaluated by foreign theologians, including those from Russia. Whilst there is some doubt about the very existence of “Nurzhular”, on 10 April 2008 the Russian Supreme Court recognized it as a terrorist organisation, forbidding its activities on the territory of the Russian Federation. Consequently, followers of Said Nursi in Kazakhstan and Kyrgyzstan, who had been until then tolerated in those states, noticed a brutal change in media reporting about them.

On 14 July 2007, a list of materials considered extremist in the Russian Federation was officially published. This list has been extended through methods that have been sharply criticized by experts.

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24. [http://www.craigmurray.org.uk/archives/2008/08/china\\_and\\_the\\_u/](http://www.craigmurray.org.uk/archives/2008/08/china_and_the_u/).

25. For more detail on the Supreme Court decision of 14 February 2003, see FIDH report *Russian Society Under Control*, part I 2 List of terrorists organisations in Russia, p8.

Criminal and civil trials deemed unfair by observers have been used to demonstrate that suspects are convicted extremists. Moreover, district level courts are considered competent to recognize materials as extremist. Such determinations are made in an utterly opaque manner: those concerned (authors, publishers, translators) are often uninformed about the court decision, have practically no access to the hearings, and face enormous difficulties to appeal the court's decision.

Individuals suspected of belonging to prohibited organisations are often accused merely of belonging to “non-traditional Islam” because of the rituals they practice, or the literature in their possession. This vague and all-encompassing term is utilised by Special Services and has now come to be used even in court documents and the media. Moreover, in general, courts and judges are not truly independent in the countries concerned. As a result, the beliefs and literature of individuals who have neither planned nor committed violent acts nor supported terrorism have been banned in Russia.

According to Elena Ryabinina (Institute of Human Rights, Moscow):

“Apart from the North Caucasus with its clear-cut characteristics, according to our monitoring data to date in Central Russia, Volga Region, the Southern Urals and Siberia, in dozens of criminal cases (over 60) more than 150 people were convicted, the vast majority of which (about 75%) — sentenced to real deprivation of liberty, sometimes for more than 10 years.”

Charges are reportedly regularly fabricated. The planting of explosives, ammunition or banned literature during searches has been used to give weight to accusations relating to the preparation of terrorist crimes. Testimonies obtained under duress are also used; in particular, migrants from Central Asia are often threatened with expulsion to secure such testimony. Experts conducting investigative research have very little independence or refuse to testify in cases involving terrorism allegations. Questions addressed to them often have an answer in their formulation. There were also reports of the torture of those accused, convicted or testifying in pending criminal cases.<sup>26</sup>

In 2009, the UN Human Rights Committee voiced its “Concern about the large number of convictions for terrorism-related charges, which may have been handed down by courts in Chechnya on the basis of confessions obtained through unlawful detention and torture”.<sup>27</sup>

In an intervention at the Tom Lantos Human Rights Commission of the U.S. Congress in April 2011, UN former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism Martin Scheinin stressed that the Kadyrov regime, Moscow's representative in the fight against terrorism in Chechnya, “is using largely the same methods as the terrorists, including extrajudicial and arbitrary killings, collective punishments to [*sic*] family members, terrorizing, creating fear to [*sic*] civilian population, and creating a shield of impunity”.<sup>28</sup>

Similar practices are also reported in Tatarstan and other regions of the Russian Federation in cases on extremism and terrorism.

In Tajikistan, the entire “Salafiyah” religious movement was banned by the Supreme Court on 8 January 2009 at the request of the prosecution service who considered it to be a threat

26. Elena Ryabinina, Institute of Human Rights, Moscow (Russian Federation), intervention at FIDH seminar in May 2011.

27. Human Rights Committee, *Consideration of Reports Submitted by State Parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee (Russian Federation)*, UN Doc. CCPR/C/RUS/CO/6 (2009), Paragraph 8, <http://www2.ohchr.org/english/bodies/hrc/hrcls97.htm>

28. Statement of Martin Scheinin, *Human Rights in the North Caucasus*, Hearing before the Tom Lantos Human Rights Commission, US House of Representatives, 15 April 2011, page 6, [http://tlhrc.house.gov/docs/transcripts/2011\\_04\\_15\\_North\\_Caucasus/Transcript.pdf](http://tlhrc.house.gov/docs/transcripts/2011_04_15_North_Caucasus/Transcript.pdf)



to public safety and state security. Experts have pointed out that whilst a radical Salafist wing exists, there is also a moderate one. The SCO framework enables States simply to ban the entire organization, without having to justify it based on an agreed definition of extremism. This has an impact not only in SCO Member States, but in the whole region.

In China, counter-terrorism 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. These statements have focused on East Turkestan-related entities and individuals of Uyghur ethnicity. The first was issued on 15 December 2003, when the MPS released a list of four alleged terrorist organisations<sup>29</sup> and eleven alleged individual terrorists – all connected to East Turkestan. The MPS simultaneously released guidance on the identification of terrorists and their organisations in the form of a circular list, whilst providing no clear definitions for the terms “terrorist” or “terrorism”.

Under the SCO Convention on Counter-Terrorism of 2009, a state’s jurisdiction is not confined to its own territory, facilities or citizens. Rather, the Convention permits Member States to claim jurisdiction whenever the alleged offence is “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” (Article 5, par 2.3). This rule applies irrespective of the location of the victim or perpetrator, and regardless of whether the terrorist act ultimately takes place.

Under this rule, China could assert its jurisdiction over Kazakh citizens of Uyghur ethnicity, located in Kazakhstan and alleged to be plotting a terrorist act in China.

## Difficulties in defending rights affected

Individuals, particularly lawyers, defending those facing extradition or charged with terrorism, separatism or extremism in SCO states, are subject to extreme pressure and state repression. The Human Rights Committee noted in 2009 in its concluding observations about the Russian Federation that “the extremism laws are being used to target organizations and individuals critical of the Government.”<sup>30</sup> In Russia, this can be aggravated by the fact that lawyers sometimes share the same religion as the accused.

In Tatarstan, Rustem Valiullin, a lawyer specialising in human rights and freedom of speech cases, was “suspected” of being involved with Hizb ut-tahir when he defended an individual accused of being a member of that organisation. In June 2008 the Federal Security Service attempted to have him discharged from defending his client by trying to interrogate him as a witness in the criminal case.<sup>31</sup> An appeal against the removal of defence counsel was eventually lodged with the European Court of Human Rights.

In China, the crackdown on lawyers has intensified over the past few years. Lawyers representing sensitive groups, including minorities accused of terrorism, separatism and extremism, are threatened with losing their licence, are beaten up, and are prosecuted.

Under Article 306 of China’s Criminal Law (CL) lawyers are criminally liable with a prison term of up to seven years for enticing clients to give false testimony or to change their testimony in opposition to the facts. The overarching purpose of this sanction is laudable in seeking

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29. The East Turkistan Islamic Movement (ETIM), the East Turkistan Liberation Organization, the World Uyghur Youth Congress, and the East Turkistan Information Center.

30. Human Rights Committee, *Consideration of Reports Submitted by State Parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee (Russian Federation)*, UN Doc. CCPR/C/RUS/CO/6 (2009), Paragraph 24, <http://www2.ohchr.org/english/bodies/hrc/hrcs97.htm>

31. For more information, read the article (in Russian) <http://www.lawfulstate.ru/index.php/ataka/interrogation-of-the-lawyer-with-the-purpose-to-discharge-of-protection-of-the-client-charge-in-participation-to--terrorist--the-organizations.html>

to prevent lawyers from encouraging their clients to lie. However, Article 306 has been used by police and prosecutors to intimidate defence counsel into not questioning the validity of confessions, even when torture is obvious. In 2010, after representing an organized crime syndicate in a high-profile case in Chongqing, criminal defence attorney Li Zhuang was charged with violating Article 306 by advising his client to recant his confession on the basis that it was obtained through torture. Li was eventually found guilty and sentenced to one year and six months in prison. Article 306 therefore incentivises lawyers to advise their clients not to recant confessions, even when obtained through torture.

The challenges facing lawyers are compounded in China by domestic surveillance and data collection practices. These practices give serious cause for concern in respect of civil liberty. China's surveillance efforts are particularly advanced, mostly because of the Golden Shield project, "a nationwide digital surveillance network, linking national, regional and local security agencies with a panoptic web of surveillance."<sup>32</sup> This surveillance encompasses vast quantities of information transmitted through the internet, mobile phones, and video cameras. It co-opts the participation of internet service providers and other information and communications technology businesses, employing data-mining systems to make sense of the resulting wealth of information. In the Xinjiang Uyghur Autonomous Region (XUAR) alone, the Chinese government has deployed an extensive network of security cameras.

Moreover, as was recalled previously and as a consequence of the aforementioned harassment, it is extremely difficult to find lawyers willing to work on extremism/terrorism cases in SCO countries.

The repression of human rights defenders is further detailed in case studies 5 and 6, Part II of this report.

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32. See White Paper Counter-Terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization, <http://www.hrichina.org/research-and-publications/reports/sco>

## II. Case studies

In practice, SCO Member States refuse asylum to anyone accused or suspected by another SCO State of committing terrorist, separatist and extremist activities. Thus, they extradite such persons to requesting SCO states and assist in detecting individuals suspected of committing acts referred to in the Shanghai Convention.

As a result, people fleeing religious persecution in Central Asian States cannot receive refugee status in Russia, Chinese nationals minorities are extradited back to China. Instead, they are pursued by special security services of the hosting country or country of origin, who can use any available means, including illegal means, to achieve extradition.

According to the Institute of Human Rights (Russian Federation), the Russian Federation's security services use the following means to extradite requested individuals:

- Abduction from Russian territory, including by foreign intelligence services in direct cooperation with Russian special security services.
- Falsification of charges after arrest in order to bring extradition in conformity with Russian criminal law.
- Substitution of extradition proceedings with a much more rapid and simple mechanism of administrative expulsion.
- Cancellation of Russian citizenship obtained by immigrants, in order to eliminate the final obstacle to their extradition.

The following cases studies illustrate the mechanisms involved in securing extradition. Each case is from different period of the SCO's development and relates to a different government. The cases show how state practice contradicting international human rights law has been adopted following the conclusion of SCO agreements, and whatever the political changes in each of the countries concerned.

### **Refoulement: the violation of international refugee law**

#### **Case Study 1: Kazakhstan's refoulement to China of Uyghur journalist Arshidin Israil, in 2011**

At the end of May 2011, Kazakhstan extradited the Uyghur journalist and refugee, Arshidin Israil, back to China. A journalist working with Radio Free Asia (a branch of Radio Free Europe), Israil had reported on the deadly protest in Urumqi in 2009. Subsequent to this report, Israil's brother and two friends were arrested by Chinese special services, and Israil fled to neighbouring Kazakhstan.

Having been recognised as a refugee by the UNHCR's Almaty office in late 2009 and offered resettlement in Sweden in early 2010, Israil was detained by Kazakh migration police and put under house arrest soon after. He was transferred to Chinese custody on 30 May 2010. Neither his lawyer nor his relatives ever saw a copy of the extradition order. Israil was also denied the right to appeal the extradition decision, being extradited the day after his lawyer had filed an appeal against the refusal of the Kazakh authorities to recognise his refugee status.

Israil's extradition was a result of the SCO agreement not to grant refugee status and to extradite those accused or suspected of "extremism, separatism, or terrorism". Indeed, Israil's activities as a journalist had brought him to the attention of the Chinese authorities because of his reporting on the situation of Uyghur, largely depicted by Chinese authorities as separatists and thus terrorists.

## **Case Study 2: the Russian Federation's refoulement to Tajikistan of Makhmadruzi Iskandarov in 2005**

The former Chairman of the Democratic Party of Tajikistan, Makhmadruzi Iskandarov was charged with terrorism, possession of illegal weapons, attempted murder, grand theft of state funds, and misuse of an official position. In 2003, after an inspection of Tadjikgaz had revealed serious irregularities in the financial management of the organisation as well as suspicions of embezzlement, a criminal investigation was opened. M. Iskandarov, then director of the organisation, was heard on the case in August 2004. Before the end of the hearing, M. Iskandarov declared that he had to travel to Moscow on an urgent family matter. He received consent to travel on the condition that he committed to be back in September 2004.

The Russian police arrested him in December 2004 requesting the Tajik authorities to provide supporting documents to facilitate a decision on extradition. Iskandarov was released in April 2005.

On 15 April 2005, Iskandarov was detained by unknown persons in the town of Korolev, near Moscow. From 15 April to the evening of 16 April, Iskandarov was kept incommunicado, first in a bathhouse and later in a forest, before being transferred onto a private plane to Dushanbe (Tajikistan). The Tajik authorities announced that they had detained Iskandarov at Dushanbe airport as he attempted to cross the border illegally. The Supreme Court of Tajikistan sentenced Iskandarov to 23 years imprisonment for attempting a coup, banditry, illegal bearing of arms, and forgery in office.

On 23 September 2010, the European Court of Human Rights found Iskandarov's arrest and extradition to Tajikistan to be illegal. The Court found the Russian authorities to be in violation of the prohibition on inhuman treatment and the right to liberty and security. It found the Russian authorities had illegally detained Iskandarov and flown him to Dushanbe. Russia was ordered to pay Iskandarov 30 000 Euros in non-pecuniary damages and to cover his legal expenses. The decision was not followed by any implementation.

In early 2011, the Chairman of the Supreme Court of Tajikistan, Nusratullo Abdulloev, declared that there was currently no basis for reconsidering the criminal case against Iskandarov.

On 30 March 2011, the UN Human Rights Committee acknowledged the violation of the rights of M. Iskandarov according to articles 7, 9 par 1 and 3, article 14, p 1 and 3 (b), (d) (e), (g) of the ICPPR and urged Tajikistan to guarantee Iskandarov an effective defense, to release him immediately, and ensure adequate compensation. The decisions of the Committee were not implemented.

On 20 August 2011, the sentence of M. Iskandarov was reduced by 2 years in the framework of the law on Amnesty applied on the occasion of the 20 years of independence of the country. There was however no individual decision targeting M. Iskandarov in particular.

In spite of the ruling of the ECHR about the extradition of M. Iskandarov from Russia to Tajikistan, and of the decision of the UN Human Rights Committee on the violations of the rights of M. Iskandarov in Tajikistan, none of these decisions were implemented.

## **Case Study 3: Kyrgyzstan's refoulement to Uzbekistan of five refugees or asylum seekers accused of links to Andijan events, in 2005**

Five Uzbek citizens, Jahongir Maksudov, Rasul Pirmatov, Odiljon Rahimov, Yakub Tashbaev and Fayejzon Tajihalilov, fled to Kyrgyzstan following state persecution in the aftermath of the

events in Andijan in May 2005<sup>33</sup>. Four of the men<sup>34</sup> were recognised as refugees and the fifth, Fayejzon Tajihalilov, had registered with the United Nations High Commissioner for Refugees (UNHCR) and was awaiting determination of his status.

Consequent to an Uzbek extradition request accusing the men of involvement in acts of violence during the Andijan events of 13 May 2005, the four refugees were detained in Kyrgyzstan on 9 June 2005. In Uzbekistan, the men were charged with terrorism, attempts to overthrow the constitutional order in Uzbekistan, and establishment of an armed gang. Uzbek officials also accused Rasul Pirmatov of being linked to the extremist movement “Akromiya”. Djangair Maksudov and Odiljon Rahimov were accused of assisting a prison break and producing explosives for an attack.

The Kyrgyz authorities did not notify the detainees’ lawyers or the UNHCR of the extradition. Indeed, despite their protected status, Kyrgyz officials extradited the men back to Uzbekistan on 8 August 2006, driving them back to the Kyrgyz-Uzbek border, although they risked persecution and torture in Uzbekistan. Doing so was a clear violation of Kyrgyzstan’s obligations under the 1951 Refugee Convention<sup>35</sup> and the 1984 Convention against Torture.<sup>36</sup>

After their arrival in Uzbekistan, all men were tried and sentenced to terms of imprisonment. Jahongir Maksudov, Rasul Pirmatov and Odiljon Rahimov remain in prison to date, though there is very little information available about their conditions of detention. No information is available about Yakub Tashbaev.

#### **Case Study 4: Kazakhstan’s refoulement to Uzbekistan of 29 refugees in 2011**

Kazakhstan adopted a law on refugees in December 2010. As a result, the entire procedure for mandate refugees was transferred from the UNHCR to the government. All cases of mandate refugee and asylum seeker that had previously been under the protection of the UNHCR were transferred to the Migration Committee of the Kazakh Ministry of Labor and Social Protection for review. These cases were largely composed of around 150 people from Uzbekistan, Kyrgyzstan, and China.

The Kazakh government refused to recognize the state of mandate refugee already granted by the UNHCR and re-examined all cases within the framework of Kazakhstan’s refugee status determination procedures. From June through October 2010, approximately 120 refugee cases that had previously been granted status by the UNHCR were re-examined. Of 120 cases, only two Uzbek citizens and three Kyrgyz citizens were granted refugee status. 115 cases were denied.

In examining cases with a particular connection to religious or political activity, members of Kazakhstan’s government commission stated that the Kazakh authorities had no right to comment on the situation within Uzbekistan and China, which constituted part of the internal affairs of those states. Their position was that if Kazakhstan granted refugee status to Uzbeks or Chinese Uyghurs, its relationship with its SCO neighbours would suffer.

In June 2010, Kazakhstan’s special services detained 30 Uzbek citizens, 18 of whom had received refugee status from the UNHCR. These persons were detained on an extradition request from Uzbekistan, where they were charged with committing terrorist acts, illegal religious activity, and attempting to overthrow the government. Kazakhstan provided all detainees with access to government procedures for acquiring refugee status. However, refugee status was issued to only one of those detained.

33. During those events, Uzbek security forces opened fire on protestors denouncing living conditions and corruption, causing at least 187 deaths and many injured. It was followed by large-scale repressions throughout the country. About 400 people fled to Kyrgyzstan to seek asylum. Many of them were brought to safety in a third country.

34. Jahongir Maksudov, Rasul Pirmatov, Odiljon Rahimov and Yakub Tashbaev.

35. Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS. 137. Entered into force 22 April 1954.

36. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, 1465 UNTS. 85. Entered into force 26 June 1987.



On 8 September 2010, the Office of the Prosecutor in Almaty announced that in accordance with the 1993 Minsk Convention and the 2001 Shanghai Convention, and upon request from the Uzbek authorities, the remaining detainees would be extradited to Uzbekistan because they were accused of being involved in “illegal organizations” (Article 159 of the Uzbek Criminal Code) and of “attempting to overthrow the constitutional order” (Article 244.2 of the Uzbek Criminal Code). They never received any order of extradition nor any written notification. The appeals they launched against the decision to deny refugee status were rejected by the Almaty district court N.2. In June 2011, 29 of the detainees were extradited to Uzbekistan. In June 2012, the UN Committee Against Torture examined this case and issued a decision finding that the Kazakh authorities had violated the UN Convention Against Torture.

## **Persecution of human rights defenders challenging refoulement**

### **Case Study 5: Bakhrom Khamroev (Human Rights Center “Memorial”), Russia**

Bakhrom Khamroev is a member of the Human Rights Center “Memorial” in Russia, specializing in the rights of Central Asian migrants in Russia. Khamroev was attacked and beaten twice in December 2010 and June 2011 as a result of his human rights activities. His case illustrates the risks run by human rights defenders focusing on rights violations caused by “anti-terrorist” and “anti-extremist” policies.

On 7 December 2010, security forces attacked Khamroev as he arrived at an apartment in Moscow where a “special operation” against Central Asian migrants was being conducted, namely, searching for “religious literature” as part of the fight against terrorism and extremism. A criminal case was opened on the attack, but no one was identified as responsible.

On 6 June 2011, Khamroev came home to collect his luggage before travelling to Murmansk for a meeting with the detainee Yusip Kasymakhunov.<sup>37</sup> As he arrived at his home Khamroev was hit by a man wearing leather gloves who was joined by another man in beating. One of the men sprayed Khamroev’s face with a chemical product so he could not open his eyes. After their departure Khamroev managed to reach his apartment and was transferred to emergency services. An investigation into the incident was launched by the police.

Moreover, Bakhrom Khamroev was also subjected to judicial harassment. On 23 May 2011, a criminal case was initiated against Bakhrom Khamroev who was accused of insulting a government official in violation of Article 319 of the Criminal Code on 21 April 2011.<sup>38</sup> Interestingly, the case materials contained a reference from the Deputy Chief of the Tekstilshiki Region Police Department, stating that Khamroev “*was watched over by the Federal Security Service of the Russian Federation as a collaborator with terrorist organizations*”. Bakhrom Khamroev was sentenced to a 20000 ruble fine on 29 August 2011.

## **Infringement of freedom of movement**

### **Case Study 6: Kahrman Ghojamberdi and other Uyghur activists living in Kazakhstan or Kyrgyzstan were prevented from travelling to a conference about the future of the Chinese minority**

In May 2011, Kazakhstan and Kyrgyzstan used the SCO framework for the control and prevention of activities deemed to be terrorist, separatist or extremist by any SCO Member

37. An Uzbek Citizen, Yusip Kasymakhunov was the first Uzbek to be condemned in Russia for his links with Hizb ut-Tahrir, under the fight against terrorism framework. He feared extradition to Uzbekistan where he risked torture and a second prosecution. Memorial lodged a complaint with the ECHR.

38. See the full story of the incident, <http://www.memo.ru/eng/news/2011/08/18/1808111.html>

State to prevent Uyghur activists from travelling to a conference in the US. The conference was entitled “The Future of Uyghur People in East Turkestan” and was due to take place in Washington D.C.

The World Uyghur Congress Vice-President, Kahrman Ghojamberdi, was stopped by Kazakh customs officials at the airport, on the basis of claims that his passport was invalid for travel. Other Uyghur activists living in Kyrgyzstan were also pressured by representatives of the government to not attend the conference, and two of them were told that travelling to the conference would “harm Sino-Kyrgyz relations.”<sup>39</sup>

### Chronology of SCO development and events

During the seminar, FIDH and its member and partner organisations deemed it interesting to follow the chronology of the signature of SCO documents with national acts, to illustrate how the SCO framework has been implemented nationally and how it has influenced counter-terrorism strategy and rhetoric. The example of Kyrgyzstan shows how the adoption of the SCO framework is followed by the related national legislative acts and how impunity has grown in the framework of the activities presented as antiterrorist and antiextremist.

Date	SCO Documents	Date	Normative Legal Acts of the Kyrgyz Republic	Date	Some examples of concrete cases in Kyrgyzstan
Shanghai, 15 June 2001	Declaration on the Establishment of the Shanghai Cooperation Organisation and Shanghai Convention on Combating Terrorism, Separatism, and Extremism	10 April 2002	Law No. 50 of the Kyrgyz Republic “On the ratification of the Shanghai Convention on Combating Terrorism, Separatism, and Extremism”.		
Tashkent, 5 September 2003	Protocol on Amendments to the Shanghai Convention on Combating Terrorism, Separatism, and Extremism (2001)	Beijing, 11 December 2002	Agreement Between the Kyrgyz Republic and the People’s Republic of China on Cooperation in Combating Terrorism, Separatism, and Extremism.		
7 June 2002	Shanghai Cooperation Organisation Charter and Agreement Between Member States of the SCO on the Regional Anti-Terrorist Structure (RATS)	7 June 2002	Bilateral Agreements Between the People’s Republic of China and the Kyrgyz Republic on the Regional Anti-Terrorist Structure.		
24 April 2004	Regulations on Observer Status at the Shanghai Cooperation Organisation	17 August 2004	Law No. 137 of the Kyrgyz Republic “On the ratification of the Agreement Between the Kyrgyz Republic and the People’s Republic of China on Cooperation in Combating Terrorism, Separatism, and Extremism (2002).		
28 June 2004	Agreement on the Database of the Regional Anti-Terrorist Structure of the SCO	13 May 2006	Law No. 87 of the Kyrgyz Republic “On amendments and additions to the Law of the Kyrgyz Republic ‘On refugees’”.		

39. See the HRIC press release SCO Member States Kazakhstan and Kyrgyzstan Prevent Uyghur Activists from Attending Conference in United States 4 May 2011, <http://hrichina.org/content/5323>.

Date	SCO Documents	Date	Normative Legal Acts of the Kyrgyz Republic	Date	Some examples of concrete cases in Kyrgyzstan
5 June 2005	Concept of Cooperation Between SCO Member States in Combating Terrorism, Separatism and Extremism	8 September 2005  31 July 2006	Decree of the President of the Kyrgyz Republic “On the authorized agency for combating terrorism financing and the ‘laundering’ of criminal proceeds”.  Law No. 135 of the Kyrgyz Republic “On counteracting terrorism financing and the legalisation (laundering) of criminal proceeds”.	8 August 2006	Kyrgyzstan’s refoulement of five Uzbek citizens accused of links to Andijan events, in 2005 (Case study n. 3, page 17).
16 August 2007	Protocol on Amendments to the agreement on the Regional Anti-Terrorist Structure of 7 June 2002, and Treaty on Long-Term Good-Neighborliness, Friendship and Cooperation Between the Member States of the Shanghai Cooperation Organization	2 June 2009	Law No. 179 of the Kyrgyz Republic “On amendments and additions to the Law of the Kyrgyz Republic ‘On counteracting terrorism financing and the legalization (laundering) of criminal proceeds’”.		
8 August 2008	Regulations on the Status of Shanghai Cooperation Organisation Dialogue Partners			1 October 2008  October -November 2008	32 people were arrested on the Islamic holiday Orozo Ait in the Southern city of Nookat.  Seven arrests of people attending mosque in the Uzgen and Kara-Suy Districts.
28 August 2008	Agreement on the Procedure for Organizing and Conducting Joint Anti-Terrorist Exercises by Member States of the SCO			June 2009	Special forces raid in Jalal-Abad province kills two people. The homes and property of Satyvaldiev and Zholdoshev families were burned down.  Special forces raid in the city of Uzgen kills four individuals. The home and property of Mamadaliev family was burned down.
16 June 2009	The Convention on Counter-Terrorism of the Shanghai Cooperation Organisation and Resolution No. 7 of the Council of Heads of SCO Member States “On confirming the Program of Cooperation of States Parties to the Shanghai Cooperation Organisation for Combating Terrorism, Separatism, and Extremism for 2010-2012”			October 2010  November 2010  December 2010	Special forces raid at Mazhrintal in Osh kills the mosque’s imam.  Mass arrests on suspicion of planning a terrorist act at the Department of Internal Affairs in Bishkek.  Mass arrests on suspicion of planning a terrorist act at the Bishkek Palace of Sports after a blast in front of the Palace of Sports on 30 November, 2010.  Special forces raid in Bes-Kungei kills two individuals. The home and property of Topozov family was burnt down.

# III. Mechanisms relevant to human rights protection within the SCO counter-terrorism framework: a handbook

As the SCO is a regional organisation, made up of Member States themselves parties to other international instruments and mechanisms, SCO norms must comply with both international and regional human rights law.

## International human rights and/or counter-terrorism mechanisms

Some UN human rights mechanisms are of direct concern to the SCO because the Member States are parties to UN treaties. Other mechanisms specifically focused on the Central Asian region, or counter-terrorism issues are also of particular interest.

### International human rights mechanisms

On 15 March 2006, the UN General Assembly (UNGA) created the **Human Rights Council** with the main purpose of focusing on situations of human rights violations and making recommendations on how to address them. In 2007, the Council adopted an institution-building package to guide it in its future work. Among the elements of this package was a revised complaints procedure mechanism that allows individuals and organizations to bring complaints about human rights violations to the attention of the Council.

The Human Rights Council also works closely with UN Special Procedures established and mandated by the former Commission on Human Rights and assumed by the Council. In 2005, the Commission on Human Rights resolution 2005/80, appointed a UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for a period of three years. The work produced under this mandate is therefore of specific relevance to activities carried out within the SCO framework. As seen in Section I of this report, the first Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin<sup>40</sup> voiced repeated, serious criticisms of the SCO.

Some UN human rights mechanisms are treaty-based. Although the Universal Declaration of Human Rights (UDHR), adopted by the UNGA in 1948, is not legally binding in and of itself, the International Covenant on Civil and Political Rights (ICCPR), and the International

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40. His initially three-year mandate was extended by three more years, ending in 2011.

Covenant on Economic, Social and Cultural Rights (ICESCR) create binding obligations. Both treaties were adopted in 1966, and entered into force in 1976.

The UN **Human Rights Committee** is the body of independent experts that monitors the implementation of the ICCPR by its States Parties. All States Parties are obliged to submit regular reports to the Committee on how its provisions are being implemented. In addition to the reporting procedure, Article 41 of the Covenant allows the Committee to consider inter-state complaints. Furthermore, the First Optional Protocol to the Covenant gives the Committee competence to examine individual complaints with regard to alleged violations of the Covenant by States Parties to the Protocol.

Most SCO Member States ratified the ICCPR with the exception of China which signed it but has not ratified it yet<sup>41</sup>.

The Human Rights Committee repeatedly raised its concern concerning violations of human rights in SCO countries linked to the application of SCO agreements, especially in the case of extraditions, torture, State secrecy, discrimination against at-risk groups, impunity, sometimes evoking directly the SCO<sup>42</sup>.

## Derogating from international human rights obligations

Under international human rights conventions, states may legitimately impose limitations on the exercise of certain rights, including those enshrined in the ICCPR. Nevertheless, in imposing limitations on these rights states must respect a number of conditions.<sup>43</sup> International standards relating to equality and non-discrimination are non-derogable. Moreover, limitations must be:

- prescribed by law in a manner that is adequately accessible, formulated with sufficient precision, and non-retroactive;
- in pursuance of one or more specific legitimate purpose. Such purposes are generally restricted to national security, public safety, public order, health, morals, and the human rights and freedoms of others; and
- necessary in a democratic society, i.e. necessary in the pursuit of a pressing objective, strictly proportional to the nature of the objective pursued.

### *States of emergency*

In regulating derogations from human rights provisions during ‘states of emergency,’ Article 4 of the ICCPR is of direct relevance to the SCO framework. This article stipulates that measures derogating from a state’s human rights obligations must be “of an exceptional and temporary nature.”<sup>44</sup> In order to invoke Article 4 to justify derogation, states must establish that the situation to which such derogations are a response amounts to a public emergency threatening the life of the nation. Such a state of emergency must be officially proclaimed by the derogating State before seeking to invoke Article 4. This requirement is “essential for the maintenance of the principles of legality and rule of law at times when they are most needed.”<sup>45</sup> The Human Rights Committee itself has highlighted that:

“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.

41. <http://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=fr>.

42. See examples in Section I, page 10-12 of this report.

43. Siracusa Principles on the limitation and derogation of provisions in the ICCPR, 28 September 1984, E/CN.4/1985/4.

44. Human Rights Committee, *General Comment N°29: States of emergency (article 4)*, 31 August 2001, CCPR/C/21/Rev.1/Add.11, [http://www.unhchr.ch/tbs/doc.nsf/0/71eba4be3974b4f7c1256ae200517361/\\$FILE/G0144470.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/71eba4be3974b4f7c1256ae200517361/$FILE/G0144470.pdf)

45. Ibid.



...[O]ne of the conditions for the justifiability of any derogation from the Covenant is that the measures taken do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

...[T]he Covenant cannot be read as justification for derogation from the Covenant if such derogation would entail a breach of the State's other international obligations, whether based on treaty or general international law.”<sup>46</sup>

### ***Non-derogable rights***

The prohibitions against taking of hostages, abductions or unacknowledged detention are not subject to derogation. The absolute nature of these prohibitions, even in times of emergency, is justified by their status as norms of general international law.<sup>47</sup>

Certain articles of the ICCPR cannot be subject to derogation. These include the following:

- Article 6 (right to life)
- Article 7 (prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent)
- Article 15 (the principle of legality in the field of criminal law)
- Article 16 (the recognition of everyone as a person before the law).

These rights are seriously affected by the issues discussed in section I of this report and the state practices outlined in the case studies in section II.

Indeed, Article 15 of the ICCPR requires both criminal liability and punishment to be limited to the clear and precise provisions in the law applicable at the time that alleged acts took place. The requirement that criminal offences be “prescribed by law” means that they must be framed so that:

- they are accessible enough to allow individuals to know the legal limits of their conduct;
- they are formulated with sufficient precision to allow the individual to regulate their conduct; and
- they do not criminalize conduct that occurred prior to the law's entry into force.

Former UN Special Rapporteur on human rights and counter-terrorism Martin Scheinin has stated that:

“to avoid the use of the fight against terrorism as an excuse to unnecessarily extend the reach of criminal law, it is essential that offences created under counter-terrorist legislation, along with any associated powers of investigation or prosecution, be limited to countering terrorism.”<sup>48</sup>

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46. Ibid.

47. Ibid, paragraph 13(b)

48. Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, before the UN Economic and Social Council, 28 December 2005, E/CN.4/2006/98.

## Regional diplomatic instruments

In December 2007, the five Governments of Central Asia<sup>49</sup> reached a consensus on the establishment of the **UN Regional Centre for Preventive Diplomacy for Central Asia** (UNRCCA).<sup>50</sup> In initiating the proposal for this Centre, the Governments of the region took into account the multiple threats facing Central Asia, including international terrorism and extremism, drug trafficking, organized crime and environmental degradation.

UNRCCA's first 3-Year Programme of Action (2009-2011) had three priorities:

1. Promoting an integrated approach to the management of essential common resources such as water and energy, in order to prevent tensions and environmental degradation.
2. Supporting regional cooperation to counter cross-border threats such as terrorism, organized crime and drug trafficking.
3. Supporting efforts to stabilize Afghanistan.

The 2012-2014 Programme of action<sup>51</sup> further focuses on terrorism, with the three following priorities:

1. The impact of trans-boundary threats facing the region: "The countries of Central Asia are vulnerable to transnational threats including terrorism, extremism and organized crime, particularly drug trafficking."<sup>52</sup>
2. Implications of national developments on regional stability.
3. The management of common resources and environmental degradation.

## International counter-terrorism mechanisms

### Security Council Mechanisms

In resolution 1566 (2004), the UN Security Council (UNSC) established a working group within its administration. This group recommends practical counter-terrorism measures and also was mandated to address the possibility of setting up compensation funds for victims. Aside from this working group, the UNSC has established three subsidiary bodies that deal with terrorism related issues: the Al-Qaida Sanctions Committee, the Counter-Terrorism Committee (CTC), and the 1540 Committee.

The **Al-Qaida Sanctions Committee** (also known as the 1267 Committee) was established in 1999 by resolution 1267 (1999). This resolution imposed sanctions on Taliban-controlled Afghanistan for its support to Osama bin Laden and Al-Qaida. Since then, the sanctions regime has been modified and strengthened by subsequent resolutions.<sup>53</sup> These UNSC resolutions require all States to take the following measures in connection with any individual or entity associated with Al-Qaida, as designated by the Committee:

- freeze the funds and other financial assets or economic resources of designated individuals and entities without delay [assets freeze];

49. Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan

50. <http://unrcca.unmissions.org/Default.aspx?tabid=1980>

51. See the programme, <http://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=fr>.

52. Key priorities, <http://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=fr>.

53. This includes resolutions 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008), 1904 (2009), and resolutions 1988 and 1989 (2011).

- prevent designated individuals from entering or transiting through their territories [travel ban]; and
- prevent the direct or indirect supply, sale and transfer of arms and related material of all types, spare parts, and technical advice, assistance, or training related to military activities, to designated individuals and entities [arms embargo].

In addition to overseeing the implementation of sanctions measures, the Committee maintains a consolidated list of terrorists adding individuals or entities, reviewing them, considering their removal, or granting exemptions.

The sanctions regime has been criticised for a lack of due process and transparency associated with this blacklisting regime. The former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, has said that the UNSC acts “beyond its powers, by maintaining under Chapter VII its Consolidated List of Taliban and Al Qaida terrorists”<sup>54</sup> and failing to stipulate temporal and geographic limitations for the sanctions regime. Sanctions are consequently permanent, or of indefinite duration.

Some UN bodies, independent experts<sup>55</sup> and the European Court of Justice (ECJ),<sup>56</sup> have found this sanctions regime to violate fundamental rights.

More recent resolutions have introduced three main reforms to the committee’s processes:

- Resolution 1904 (2009) created the Office of an **Ombudsperson** in charge of receiving and analysing de-listing requests.
- Resolutions 1888 and 1889 (2011) split the Al-Qaida and Taliban sanctions regime. The 1267 regime was converted into a global Al-Qaida terrorist-listing regime. It therefore includes only the names of those individuals, groups, undertakings and entities associated with Al-Qaida, wherever located. As of July 2011, a total of 339 names (250 individuals and 89 entities and other groups) were listed.<sup>57</sup> Resolution 1888 (2011) created a specific **Taliban sanctions Committee** to oversee relevant sanctions measures concerning the Taliban’s threat to the peace, stability and security of Afghanistan.
- Under the Taliban sanctions regime, when individuals “meet the reconciliation conditions agreed to by the Government of Afghanistan and the international community [including] respect for the Afghan Constitution”<sup>58</sup>, this provides grounds for delisting.

Despite these reforms, the Special Rapporteur continues to maintain that “the procedures for terrorist listing and delisting by the 1267 Committee do not meet international human rights standards concerning due process or fair trial”.<sup>59</sup> He considers the new Taliban sanctions regime to be “a retrogressive step in relation to the human rights concerns expressed and the reforms already undertaken within it”, in particular because the grounds for delisting are “openly political”.

54. *Human rights/counter terrorism: the new UN listing regimes for the Taliban and Al-Qaida*, Statement by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, 29 June 2011.

55. Report of the UN High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism, UN Human Rights Council, A/HRC/4/88, March 9, 2007: “while the system of targeted sanctions represents an important improvement over the former system of comprehensive sanctions, it nonetheless continues to pose a number of serious human rights concerns related to the lack of transparency and due process in listing and de-listing procedures.”

56. See *Kadi v Council and Commission*, ECJ, 3 September 2009, C-402/05 P, para.369; the European Court of Justice overruled the Court of First Instance and annulled the European Council’s regulation freezing Mr. Kadi’s funds pursuant to UNSC resolutions on Al-Qaeda and Taliban terrorist networks. The ECJ found that the European Council’s regulation infringed the appellant’s fundamental rights under EU law, including the right to be heard before a court of law, the right of effective judicial review and the right to property.

57. [http://www.un.org/sc/committees/1267/aq\\_sanctions\\_list.shtml](http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml)

58. Resolution 1888 of 17 June 2011

59. *Human rights/counter terrorism: the new UN listing regimes for the Taliban and Al-Qaida*.

Moreover, the UNSC failed to mandate the Ombudsperson in a manner that would allow it to be truly effective. The Ombudsperson – Judge Kimberley Prost – appointed by the UN Secretary General in June 2010, has no access to confidential information on specific cases should a state choose not to share this with her, including reasons for listing. In addition, the Committee is not bound to follow her recommendations.

Some of the recommendations of the Ombudsperson include:

- any listing proposal requires the submission of the full set of information that is used as the substantive basis for the listing proposal;
- the person or entity subjected to the listing proposal has the right and practical means to effectively challenge the proposal ;
- the Delisting Ombudsperson has access to the full set of information used for the listing; and
- the delisting recommendations by the Ombudsperson or delisting proposals by the designating State are in practice respected, so that they are not overturned through a consensus decision by the 1267 Committee or referred to the full Security Council.

The **Counter-Terrorism Committee** (CTC) was established by resolution 1373 (2001), adopted unanimously in the wake of the September 11<sup>th</sup> 2001 terrorist attacks. The CTC was tasked with monitoring the implementation of resolution 1373 (2001), which requires States to, inter alia, combat terrorism through a series of actions carried out through the adoption of laws and regulations and the establishment of administrative structures. In addition, it evaluates the implementation of resolution 1624 (2005) on incitement to commit acts of terrorism. This resolution calls on UN Member States to prohibit such incitement in law, prevent such conduct and deny safe haven to anyone “with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct”. The resolution also calls on States to continue international efforts to enhance dialogue and broaden understanding between civilizations.

To support the CTC’s work, UNSC resolution 1535 (2004) established the **Counter Terrorism Committee Executive Directorate** (“CTED”). The CTED carries out the decisions of the CTC, conducts assessment through country visits, provides technical assistance, and presents an Implementation Assessment to CTC members.

Resolution 1373 (2001) that established the CTC made no reference to respecting human rights in the design and implementation of counter-terrorism measures, except in the context of the granting of refugee status. It therefore failed to address human rights issues in the policies and measures it was monitoring – an omission that may to some extent have been deliberate.

Former Special Rapporteur Scheinin documented a number of instances of CTC insensitivity to human rights concerns.<sup>60</sup> Notably, the CTC has sought information from states on criminal investigation techniques that contradict basic human rights. These include techniques like “controlled delivery”, pseudo-offences, anonymous informants, cross-border pursuits, the bugging of private and public premises, and the interception of confidential internet and telephone communications. States have thus been given the impression that they are required to expand the investigative powers of their law enforcement authorities irrespective of the human rights impact.

Several measures have been taken to reform the CTC’s work regarding human rights. These include:

- In 2003, the CTC stated that all Member States “must ensure that any measure taken to combat terrorism comply with all their obligations under international law, in particular

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60. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, E/CN.4/2006/98, December 28 2005, para. 60.

international human rights, refugee, and humanitarian law”.<sup>61</sup>

- In March 2005, a human rights expert was appointed among the CTED staff.
- In May 2006, the CTC adopted its first-ever *Conclusions for Policy Guidance regarding Human Rights and the CTC*.<sup>62</sup>

Resolution 1963 (2010) renewed CTED’s mandate for three years and reminded states “that effective counter-terrorism measures and respect for human rights are complementary and mutually reinforcing, and are an essential part of a successful counter-terrorism effort”. Moreover, the CTED was formally encouraged to “interact ... with civil society and other relevant non-governmental actors in the context of its efforts.”

## UN General Assembly Mechanisms

Within the UNGA, there is a specific **Ad Hoc Committee on Terrorism**, established in 1997 by UNGA Resolution 51/210. This committee is open to all UN Member States, members of specialized agencies and members of the International Atomic Energy Agency, and has been charged with elaborating “an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism.”<sup>63</sup>. Since it was established, the Ad Hoc Committee negotiated three treaties that were adopted by the UNGA: the International Convention for the Suppression of Terrorist Bombings (1997), the International Convention for the Suppression of the Financing of Terrorism (1999), and the International Convention for the Suppression of Acts of Nuclear Terrorism (2005).

A **UN Global Counter-Terrorism Strategy** was adopted by Member States in September 2006. The strategy is a global instrument that enhances national, regional and international efforts to counter terrorism. This is the first time that all Member States have agreed to a common strategic approach to fight terrorism. In doing so, states not only send a clear message that terrorism is unacceptable but also resolve to take practical steps individually and collectively to prevent and combat it. Those practical steps include a wide array of measures ranging from strengthening state capacity to deal with counter terrorist threats to better coordinating UN counter-terrorism activities.

The Strategy is composed of four pillars.<sup>64</sup> One of these pillars is the adoption of “measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism”. Here, Member States reaffirm that:

“the promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy, that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.”<sup>65</sup>

In doing so, they resolve to take the following measures:

- Reaffirm that UNGA resolution 60/158 (2005) provides the fundamental framework for the “protection of human rights and fundamental freedoms while countering terrorism”.

61. UNSC Meeting on 23 July 2003, *Threats to International Peace and Security caused by Terrorist Acts*, S/PV/4792,.

62. CTC, *Conclusions for Policy Guidance regarding Human Rights and the CTC*, S/AC.40/2006/PG.2, 25 May 2006.

63. <http://www.un.org/law/terrorism/index.html>

64. These pillars are: (1) measures to address the conditions conducive to the spread of terrorism; (2) measures to prevent and combat terrorism; (3) measures to build states’ capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in that regard; (4) measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism.

65. UN Global Counter-terrorism Strategy, UNGA Resolution 60/288, UN Doc. A/RES/60/288 (2006).



- Reaffirm that States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law.
- Consider becoming parties to the core international instruments on human rights law, refugee law and international humanitarian law without delay, and implementing them. They should also consider accepting the competence of international and relevant regional human rights monitoring bodies.
- Reaffirm the United Nations system's important role in strengthening the international legal architecture by promoting the rule of law, respect for human rights, and effective criminal justice systems, which constitute the fundamental basis of the common fight against terrorism.

The **Counter-Terrorism Implementation Task Force (CTITF)** was established by the Secretary-General in 2005 to enhance the coordination and coherence of counter-terrorism efforts of the UN system. Currently, the Task Force consists of 31 international entities who have a stake in counter-terrorism efforts by virtue of their work. Each entity makes contributions consistent with its mandate. The primary goal is to maximize each entity's comparative advantage by acting as one coordinated body to help Member States implement the four pillars of the Strategy.

CTITF organizes its work through working groups<sup>66</sup> and counter-terrorism related projects and initiatives in areas where cooperation among UN system actors can add value for the implementation of the Strategy. The Protecting Human Rights While Countering Terrorism Working Group has focused on the development of a set of *Basic Human Rights Reference Guides*<sup>67</sup> to assist Member States in strengthening human rights protection in the context of counter-terrorism. These tools aim to provide guidance on how human rights compliant measures can be adopted in a number of counter-terrorism areas. They are designed for states, national and international NGOs, legal practitioners and UN agencies, as well as individuals.

### International legal instruments

Since 1963 the international community has elaborated 13 universal legal instruments and three amendments on the issue of the prevention of terrorist acts.<sup>68</sup> Member States are currently negotiating an additional international treaty, which would form a comprehensive convention on international terrorism. This convention would complement the existing framework of international anti-terrorism instruments and would build on key guiding principles already enshrined in recent anti-terrorist conventions.<sup>69</sup>

66. These Working groups are: (1) Preventing and Resolving Conflict; (2) Supporting and Highlighting Victims of Terrorism; (3) Preventing and Responding to WMD Terrorist Attacks; (4) Tackling the Financing of Terrorism; (5) Countering the Use of the Internet for Terrorist Purposes; (6) Strengthening the Protection of Vulnerable targets; and (7) Protecting Human Rights While Countering Terrorism.

67. The first five Guides deal with stop and search, security infrastructure, detention in the counter-terrorism context, the principle of legality in national counter-terrorism legislation and the proscription of organizations.

68. These instruments consist of the Convention on Offences and Certain Other Acts Committed On Board Aircraft (1963); Convention for the Suppression of Unlawful Seizure of Aircraft (1970); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (1973); International Convention against the Taking of Hostages (1979); Convention on the Physical Protection of Nuclear Material (1980); Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988); Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988); Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005); Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (1988); Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991); International Convention for the Suppression of Terrorist Bombings (1997); International Convention for the Suppression of the Financing of Terrorism (1999); and the International Convention for the Suppression of Acts of Nuclear Terrorism (2005).

69. These principles include the importance of the criminalization and punishment of terrorist offences, including the prosecution or extradition of perpetrators; the need to eliminate legislation which establishes exceptions to such criminalization on political, philosophical, ideological, racial, ethnic, religious or similar grounds; that Members States should take action to prevent terrorist acts; and the need for Member States to cooperate, exchange information and provide each other with the greatest measure of assistance in connection with the prevention,

## Regional human rights and/or counter-terrorism mechanisms

### The European Union

#### Human Rights

A framework for relations between the European Union (EU) and SCO Member States has developed through a series of Partnership and Cooperation Agreements.<sup>70</sup> With this in mind, there are a number of different tools that can be used to address human rights protection in the counter terrorism context. These are:

- **EU Human Rights Guidelines.**<sup>71</sup> These guidelines are a practical tool to help EU representations in the field better advance EU human rights policy. Although not legally binding, they have been adopted at ministerial level and therefore represent a strong political signal that they are priorities for the EU.
- **Dialogues on human rights.** Dialogues occur regularly and each dialogue is established in accordance with the EU Guidelines on Human Rights Dialogues<sup>72</sup>. Dialogues involve officials responsible for human rights. This can include representatives from relevant departments and agencies, such as ministries of justice and the interior, police and prison authorities, ombudsmen, and national parliaments. Dialogues take place once or twice a year, either at local level in the capital of the country concerned, in Brussels, or in the capital of the country holding the Presidency of the European Council. Consultations on cooperation on human rights issues within the UN framework, are also held in New York and in Geneva.
- **Ministerial meetings.** Strong statements and declarations can be made through EU/SCO Member State Cooperation Councils (ministerial meetings taking place under cooperation agreements). For instance, in 2004 the Cooperation Council between the EU and Kazakhstan reaffirmed its commitment to tackling terrorism in accordance with fundamental human rights principles, the UN Charter, and the obligations under UNSC Resolution 1373.

In 2007, European and Chinese leaders recognized that:

any measures undertaken to prevent and combat terrorism must comply with obligations under international law, in particular international human rights law, refugee law and humanitarian law. Effective counter-terrorism measures and the protection of human rights are not conflicting, but complementary and mutually reinforcing goals.<sup>73</sup>

- **Human rights clauses.** All EU agreements on trade or cooperation with third countries contain a human right clause. This stipulates that human rights are an essential element in relations between the parties. It can conclude by saying that in case of a grave violation of this principle, “either Party will be able to take appropriate measures provided that it has first informed the Cooperation Council, except in cases of special urgency”.

These arrangements culminated in a real **sanctions regime** against Uzbekistan in the wake of Andijan events of May 2005. The European Council strongly condemned the “excessive,

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investigation and prosecution of terrorist acts.

70. These agreements were concluded with China in 1985; Russia in 1994; Kyrgyzstan & Kazakhstan in 1995; Uzbekistan in 1996; and Tajikistan in 2004.

71. They include EU guidelines on the death penalty (1998); EU guidelines on torture and other cruel treatment (2001); EU guidelines on human rights dialogues with non-EU countries (2001); EU guidelines on children and armed conflict (2003); EU guidelines on human rights defenders (2004); EU guidelines on the promotion of compliance with international humanitarian law (2005); EU guidelines on the rights of the child (2007); and EU guidelines on violence against women and girls (2008).

72. See European Union Guidelines on Human Rights Dialogues, [http://www.consilium.europa.eu/uedocs/cmsUpload/14469EN\\_HR.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/14469EN_HR.pdf)

73. 10th China-EU Summit Joint Statement, Beijing, 28 November 2007.

disproportionate and indiscriminate use of force by the Uzbek security forces in Andijan, Eastern Uzbekistan”<sup>74</sup>. It expressed “its deep regret regarding the failure of the Uzbek authorities to respond adequately to the United Nations’ call for an independent international inquiry”<sup>75</sup>. Accordingly the European Council applied two types of restrictive measure:

- restrictions on admission to the EU aimed at individuals directly responsible for the indiscriminate and disproportionate use of force in Andijan and for the obstruction of an independent inquiry; and
- an embargo on exports to Uzbekistan of arms, military equipment and other equipment that might be used for internal repression.

The EU lifted its last remaining sanctions on Uzbekistan in 2009 although the benchmarks were not met.

Moreover, in June 2007 the EU Heads of State and Government approved the **EU-Central Asia Strategy for a New Partnership**. In order to strengthen their common approach in Central Asia, EU Members States and the European Commission have committed to collaborate closely in seven thematic areas identified by the Strategy. These areas include human rights, rule of law, good governance and democratization, and combating common threats and challenges. In the 2010 report, human rights concerns were expressed:

despite the initiation of regular human rights dialogues with all Central Asian countries and a limited number of reforms, there has not been a consistent and sustainable improvement in the human rights situation. Overall progress on the ground has been limited and in some instances regression can be observed. The situation in areas such as freedom of expression and of the media, freedom of assembly and association, fairness of the judicial systems, or adequate space for civil society and political participation have not improved significantly. The harassment of NGOs that criticise government continues.<sup>76</sup>

### **Counter-terrorism**

In 2005 the EU adopted the **EU counter-terrorism strategy**, through which it committed to combating terrorism globally while respecting human rights. Counter-terrorism is an integral element of the EU’s relations with third countries, both in terms of political dialogue and co-operation more generally, including through the adoption of counter-terrorism clauses in agreements.

In 2004 an **EU Counter-terrorism Coordinator** was appointed. In June 2011, the current coordinator, Gilles de Kerchove, indicated the potential creation of specific EU counter-terrorism dialogues, based on the human rights dialogue model.

The external dimension of the fight against terror entails close collaboration with the United Nations. The EU is currently working to promote the universal ratification of all 12 UN counter-terrorism conventions. Moreover, it has fully implemented the Al-Qaida and Taliban sanctions regime set out in UNSC Resolutions 1267 and 1373. The list of terrorist organisations and individuals adopted by the 1267 Committee is transposed automatically into Community legislation. The **European Court of Justice** (ECJ) has had to examine this transposed regime several times:

“the Community judicature must [...] ensure the review, in principle the full review, of the lawfulness of all Community acts in the light of the fundamental

74. <http://eur-lex.europa.eu/Notice.do?mode=dbl&lang=en&ihtmlang=en&lng1=en,fr&lng2=cs,da,de,el,en,es,et,fi,fr,hu,it,lt,lv,nl,pl,pt,sk,sl,sv,&val=413387:cs&page=>

75. Ibid.

76. See Joint Progress Report by the Council and the European Commission to the European Council on the implementation of the EU Central Asia Strategy, Page 3, available at [register.consilium.europa.eu/pdf/en/10/st11/st11402.en10.pdf](http://register.consilium.europa.eu/pdf/en/10/st11/st11402.en10.pdf)

rights forming an integral part of the general principles of Community law, including review of Community measures which [...] are designed to give effect to the resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations .”<sup>77</sup>

In applying this principle, the ECJ annulled EU legislation transposing the UN sanctions regime in the *Kadi* case. This annulment was based on the following reasons:

- The legislation violated the rights of the defence, in particular the right to be heard, and the right to effective judicial review of rights infringement . This is because the Council neither communicated to the appellants the evidence used against them to justify the restrictive measures imposed on them nor afforded them the right to be informed of that evidence within a reasonable period after those measures were enacted.<sup>78</sup>
- The legislation imposed an unjustified restriction on the right to property, because it was “adopted without furnishing any guarantee enabling him [an applicant] to put his case to the competent authorities, in a situation in which the restriction of his property rights must be regarded as significant” .<sup>79</sup>

In rendering its decision, the ECJ took in account that “the re-examination procedure operated by the Sanctions Committee clearly fails to offer guarantees of effective judicial protection”.<sup>80</sup> This strong position has been heavily criticised by EU legal experts, who say that it should not be followed in future cases.

## Council of Europe

Among the Council of Europe’s key human rights instruments, the **European Convention for the Protection of Human Rights and Fundamental Freedoms** (ECHR) is the most successfully completed. Adopted in 1950, the rights enshrined in the Convention have evolved through its five protocols and **European Court of Human Rights** (European Court) interpretations.<sup>81</sup> However, it has to be recalled that among SCO States, only the Russian Federation is a member of Council of Europe. Therefore, other SCO countries may be concerned only if the violation addressed by the ECHR was committed by Russian officials or on the Russian territory.

### Derogating from European human rights obligations

Like the ICCPR, the ECHR permits states to impose some limitations on certain rights where such limitations are prescribed by law, in pursuance of one or more specific legitimate purposes and “necessary in a democratic society”.

### States of Emergency

Article 15 of the ECHR allows contracting states to derogate from certain Convention rights in time of “war or other public emergency threatening the life of the nation”<sup>82</sup>. Permissible derogations under Article 15 must meet three substantive conditions: there must be a public emergency threatening the life of the nation; measures taken in response must be “strictly required by the exigencies of the situation”; and must be in compliance with the state’s other obligations under international law.

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77. *Kadi v Council and Commission*, ECJ, 3 September 2009, C-402/05 P, para. 326.

78. *Ibid*, para. 348.

79. *Ibid*, para. 369.

80. *Kadi v Commission*, ECJ, 30 September 2010, T-85/09, para. 127.

81. European Convention on the Protection of Fundamental Rights and Freedoms (1950) and its Protocols, European Social Charter (1961), European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) and its two Protocols (1993), Framework Convention for the Protection of National Minorities (1995).

82. Article 15(2), ECHR: “No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 § 1 and 7 shall be made under this provision”.

### ***Non-derogable rights***

In the counter-terrorism context, the European Court has repeatedly maintained that

“articles 2 [right to life] and 3 [prohibition of torture] of the Convention make no provision for exceptions and no derogation from them is permissible under Article 15, even in the event of a public emergency threatening the life of the nation.”<sup>83</sup>

Stating that it is “well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence”<sup>84</sup>, the Court has reiterated that there is

“an obligation on Contracting States not to extradite or expel an alien, including an asylum-seeker, to another country where substantial grounds had been shown for believing that he or she, if expelled, faced a real risk of being subjected to treatment contrary to the Convention.”<sup>85</sup>

The Court holds that this obligation applies “irrespective of the conduct of the person concerned, however undesirable or dangerous this may be”. In order to determine the risk of rights violations upon return, the Court must examine “the then foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances”.<sup>86</sup> In doing so, the Court can attach “certain importance to the information contained in reports from independent international human-rights-protection associations [...] or governmental sources”.<sup>87</sup>

### ***Regulation of counter-terrorism measures***

In addition to affirming the need for respect for non-derogable rights, the European Court has also reiterated the prohibition to bluntly violate certain derogable rights in the course of talking derogation measures.

Concerning the right to liberty and security (Article 5) it has stated that

“the investigation of terrorist offences undoubtedly presents the authorities with special problems. This does not mean, however, that the investigating authorities have carte blanche under Article 5 to arrest suspects for questioning, free from effective control by the domestic courts and, ultimately, by the Convention supervisory institutions, whenever they choose to assert that terrorism is involved.”<sup>88</sup>

Further, on the right to respect for private and family life (Article 8), the European Court has held that

“[t]he Court, being aware of the danger such a law poses of undermining or even destroying democracy on the ground of defending it, affirms that the Contracting States may not, in the name of the struggle against espionage and terrorism, adopt whatever measures they deem appropriate...; including ‘an unlimited discretion to subject persons within their jurisdiction to secret surveillance.’”<sup>89</sup>

83. *Shamayev and others v. Georgia and Russia*, ECHR, 12 April 2005, app. N° 36378/02, para. 335.

84. *Ibid.*

85. *Ibid*; *Iskandarov v. Russia*, ECHR, 23 September 2010, App. N° 17185/05, para. 125.

86. *Ibid*, para. 127.

87. *Ibid.*

88. *Öcalan v. Turkey*, 12 May 2005, ECHR, App. N° 46221/99, para. 104.

89. *Klass and Others v. Germany*, ECHR, 6 September 1978, app. n° 5029/71, para. 49.

### Specific counter-terrorism mechanisms

As a regional organisation, the Council of Europe (CoE) is committed to facilitating the implementation of UNSC Resolutions 1373 (2001) and 1624 (2005) as well as of the UN Global Counter-Terrorism Strategy. As such, three different CoE bodies address human rights and counter-terrorism issues:

- The **Steering Committee for Human Rights** (CDDH) defines policy and co-operation with regard to human rights and fundamental freedoms. Its Group of Specialists on Human Rights and the Fight against Terrorism produced *Guidelines on Human Rights and the Fight Against Terrorism* in 2002.
- The **Committee of Experts on Terrorism** (“CODEXTER”) coordinates the implementation of the Organisation’s action against terrorism. In 2003 it replaced the Multidisciplinary Group on International Action Against Terrorism.
- The **Council of Europe Anti-terrorism Coordinator**, located within the Council’s Secretariat, is responsible for coordinating the Organisation’s activities against terrorism. The coordinator liaises with the Committee of Ministers and the other Council of Europe bodies, and international organisations in this field.

Of the different Council of Europe conventions on counter-terrorism,<sup>90</sup> two have particular human rights relevance:

- The revised European Convention on the Suppression of Terrorism, relates to the extradition of terrorists. It expressly provides that nothing in that Convention shall be interpreted as imposing an obligation upon a Party to extradite a person who might then be prosecuted or punished solely on the grounds of race, religion, nationality or political opinion.
- The Convention on the Prevention of Terrorism contains several provisions concerning the protection of human rights and fundamental freedoms. These provisions regard measures reinforcing co-operation at national and international level (including grounds for refusal of extradition and mutual assistance), and measures implementing the criminalisation of new offences in the form of conditions and safeguards.

Manuel Lezertua, Council of Europe Director of Legal Advice and Public International Law, has addressed UN bodies<sup>91</sup> about the implementation of the UN Global Counter-Terrorism Strategy on several occasions. Recalling the Council of Europe’s three-pronged approach to terrorism,<sup>92</sup> Lezertua has emphasised the key role that regional organisations, such as the CoE, have to play in implementing UN tools against terrorism.

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90. These conventions include the European Convention on the Suppression of Terrorism (1977) and Amending Protocol (2003); the European Convention on Extradition (1957) and first and second Additional Protocols (1975 and 1978); the European Convention on Mutual Assistance in Criminal Matters (1959) and first and second Additional Protocols (1978 and 2001); the European Convention on the Transfer of Proceedings in Criminal Matters (1972); the European Convention on the Compensation of Victims of Violent Crimes (1983); the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990); the Convention on Cybercrime (2001) and Additional Protocol concerning the Criminalisation of Acts of a Racist and Xenophobic Nature committed through Computer Systems (2003); the Council of Europe Convention on the Prevention of Terrorism (2005); and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005).

91. An address was made to the UN General Assembly’s meeting to review the 2006 Global Counter-Terrorism Strategy, as well as the CTC’s meeting in New York in 2009.

92. This three pronged approach encompasses (1) strengthening legal action; (2) safeguarding fundamental values; and (3) addressing the causes of terrorism.



## The Organisation for Security and Cooperation in Europe

The Organisation for Security and Cooperation in Europe (OSCE) uses the term “human dimension” to describe norms and activities relating to human rights and democracy. The human dimension is regarded by the OSCE to be one of three dimensions composing security. The other two are the politico-military dimension and the economic and environmental dimension. The OSCE has created two *ad hoc* **Human Dimension Mechanisms**. These are composed of the following:

- The **Vienna Mechanism**<sup>93</sup> allows participating States to raise questions relating to the human dimension situation in other OSCE States through an established set of procedures.
- The **Moscow Mechanism**<sup>94</sup> builds on the Vienna Mechanism and provides for the additional possibility of participating States establishing *ad hoc* missions of independent experts to assist in the resolution of a specific human dimension problem - either on their own territory or on the territory of other OSCE participating States.

In practice, the Human Dimension Mechanisms are only rarely applied: to date, the Moscow Mechanism has been used seven times.<sup>95</sup> This is partly due to the development of the OSCE into a permanently functioning organisation, and partly due to the political considerations involved in invoking such *ad hoc* mechanisms.

The OSCE has established a number of permanent institutions to assist participating States with the implementation of OSCE human dimension commitments. The **Office for Democratic Institutions and Human Rights** is the principle such OSCE institution, dealing with elections, human rights and democratization.

Following the attacks against the United States on 11 September 2001, the OSCE recognised the need to establish a focal point in the Organization to co-ordinate and facilitate all its actions against terrorism. Within a short time, the Bucharest Plan of Action for Combating Terrorism, adopted at the OSCE Ministerial Council in 2001, provided the mandate for the establishment of the **Action against Terrorism Unit (ATU)**. The overall objective of the Unit is to respond rapidly and efficiently, in co-ordination with internal and external partners, to requests from participating States for anti-terrorism assistance. One of the ATU’s main goals is to address existing gaps in the anti-terrorism capabilities of participating states. To this end, the Unit has developed an inventory of multilateral and bilateral anti-terrorism capacity-building measures taken in the OSCE region since UNSC Resolution 1373 in September 2001. The ATU also serves as an anti-terrorism information resource for OSCE participating States and other international, regional and sub-regional as well as non-governmental organizations. OSCE action against terrorism is conducted under the auspices of the United Nations, whose legislation and resolutions constitute the legal and political framework for the ATU’s activities.

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93. Established in the Vienna Concluding Document of 1989.

94. Established at the last meeting of the Conference on the Human Dimension in Moscow in 1991.

95. The Moscow mechanism was used in 1992 on the issue of reports of atrocities and attacks on unarmed civilians in Croatia and Bosnia-Herzegovina; in 1992 concerning Estonian legislation and its implementation in line with universally accepted human-rights norms; in 1993 concerning current legislation, inter-ethnic relations and the implementation of minorities’ rights on the territory of Moldova; in 1993 on human rights violations in Serbia-Montenegro (this mission was unable to fulfil its task because of the Federal Republic of Yugoslavia’s lack of co-operation); 1999 in relation to NATO’s military operation in the former Federal Republic of Yugoslavia; in 2003 in relation to Turkmenistan, to examine concerns arising out of investigations into the reported attack on President Niyazov on 25 November 2002, and to investigate all matters relating to the conduct of the investigation (December 2002 - March 2003) ; and in 2011 concerning the situation in Belarus after the presidential election of 19 December 2010.

# Conclusion and Recommendations

The existence of an international framework for the protection of human rights within the fight against terrorism is not sufficient to fight human rights violations in SCO States. Those practices, as described in Section I and II, although in violation of international standards, are enabled by the SCO framework. Therefore, the SCO has a detrimental role on the international framework itself, which is increasing with the expansion of the organisation. China and Russia, crucial players on the international diplomatic level and members of the UN Security Council, delegitimize international safeguard mechanisms since as member of SCO, in parallel, they ignore the recommendations made by international or regional mechanisms for the protection of human rights.

FIDH and its member organisations and partners present at the seminar elaborated the following recommendations concerning human rights compliance under the Shanghai Cooperation Organisation counter-terrorism framework.

## **SCO Member States should:**

- Comply with their international human rights obligations, including international refugee law;
- Develop and implement a SCO mechanism focused exclusively on human rights protection;
- Guarantee the transparency of and access to information such as the SCO list of forbidden organisations, and other black lists;
- Adopt transparent human rights principles and conduct regular assessment of the human rights consequences of the implementation of SCO principles and agreements by SCO Member States;
- Incorporate the ten areas of best practice in countering terrorism, as recommended by the UN Special Rapporteur on counter-terrorism, into the SCO framework;
- Incorporate best practice for intelligence cooperation, as recommended by the UN Special Rapporteur on counter-terrorism, into the SCO framework and RATS operations;
- Abolish the death penalty;
- Involve civil society representatives, including human rights NGOs, in discussions and assessments regarding SCO Member State cooperation;
- Invite the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and cooperate with him for the implementation of his conclusions, including those of his 2009 report;

**The European Union and its Member States should:**

- Reiterate in their relations with SCO officials and SCO Member States representatives the primacy of international human rights law obligations in fighting terrorism, as underlined in the fourth pillar of the UN Counter-Terrorism Strategy;
- Reiterate in their positions in international fora the necessity to separate in language and action the issues of terrorism and separatism;
- Raise the issues of automatic extradition, black listing in the human rights dialogues engaged with Central Asian countries, China and Russia and in exchanges at the SCO level;
- Engage strategically the human rights and rule of law angles in counter-terrorism dialogues with SCO countries, in line with the EU Counter Terrorism Strategy;
- Make sure that future EU counter-terrorism capacity-building schemes to SCO countries and support for the implementation of Counter-Terrorism Action Plans contain an adequate human rights component and safeguards to avoid human rights violations in follow-up and application of the best practices developed by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism;
- Engage strategically with the civil societies of SCO countries with a view to safeguarding their space for autonomy; condemn at EU Delegation and high official levels any abuse of the counter-terrorism framework to control or repress the civil society, human rights defenders, lawyers, and members of ethnic or religious minorities;
- Adopt a regulatory framework to prevent the export by EU-based companies of surveillance technology and knowledge resulting in human rights violations;

**The Council of Europe should:**

- Ensure that the Guidelines on Human Rights and the Fight against Terrorism produced by the Steering Committee for Human rights be implemented;
- Raise the issue of extraditions of persons suspected of terrorism between Russian and other SCO States;

**The OSCE should:**

- Encourage its Member States, also members of SCO to fully abide by their commitments to focus on the Human Dimension and safeguard the rule of law, individual liberties and respect for international human rights law, including international refugee law while fighting terrorism;
- In the framework of the dialogue between the OSCE and the SCO<sup>96</sup>, insist on the respect by SCO framework and practice of human rights and fundamental freedoms;
- Share its expertise on best practices in the respect of human rights in police-related activities in the fight against terrorism with SCO members;
- Encourage SCO States to involve civil society for an effective prevention of and fight against terrorism.

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96. See the Bucharest Plan of Action for Combating Terrorism of 2001, IV.28

**The United Nations, including the General Assembly, the Security Council, human rights treaty bodies, relevant procedures and other mechanisms, should:**

- Call for the integration of independent oversight mechanisms and human rights offices in regional counter-terrorism frameworks such as the SCO;
- Launch independent inquiries into the conformity of the SCO framework – including the Regional Anti-Terrorist Structure – with the international human rights obligations of the SCO Member States, particularly before strengthening any modes of cooperation with the SCO or RATS;
- Encourage the creation of safeguards for terrorist listing, including regular review for accuracy of terrorist lists;
- Enquire into the number of extraditions or returns of individuals made pursuant to SCO agreements, and the current status, location, and condition of these individuals;
- Require SCO Member States to include updates on their implementation of UN human rights treaty body recommendations and details of counter-terrorism cooperation undertaken within the SCO framework, in their reports to the Security Council and counter-terrorism bodies under Security Council Resolution 1373;
- The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism should initiate dialogue with the SCO and request a mission to the SCO Secretariat headquarters in Beijing and RATS headquarters in Tashkent.

# Appendix

## **BASIC SCO DOCUMENTS TRANSLATED INTO ENGLISH BY FIDH, AVAILABLE ON FIDH WEBSITE:**

- Convention Against Terrorism of the Shanghai Cooperation Organization, 16 June, 2009  
[http://fidh.org/The-Convention-Against-Terrorism?var\\_mode=calcul](http://fidh.org/The-Convention-Against-Terrorism?var_mode=calcul)
- Protocol on Amendments to the Agreement Between Member States of the Shanghai Cooperation Organization on the Regional Anti-Terrorist Structure, 16 August 2007  
[http://fidh.org/Protocol-on-Amendments-to-the?var\\_mode=calcul](http://fidh.org/Protocol-on-Amendments-to-the?var_mode=calcul)
- Declaration of the Heads of the SCO Member States on International Information Security, 15 June 2006  
[http://fidh.org/Declaration-of-the-Heads-of-the?var\\_mode=calcul](http://fidh.org/Declaration-of-the-Heads-of-the?var_mode=calcul)
- Concept of Cooperation Between SCO Member States in Combating Terrorism, Separatism, and Extremism, 5 June 2005  
[http://fidh.org/Concept-of-Cooperation-Between-SCO?var\\_mode=calcul](http://fidh.org/Concept-of-Cooperation-Between-SCO?var_mode=calcul)
- Agreement on the Procedure for Organizing and Conducting Joint Anti-Terrorist Exercises by Member States of the Shanghai Cooperation Organization, 28 August, 2008  
[http://fidh.org/Agreement-on-the-Procedure-for?var\\_mode=calcul](http://fidh.org/Agreement-on-the-Procedure-for?var_mode=calcul)
- Decree of 24 July 2004 #310 On Signing the Agreement on the Database of the Regional Anti-Terrorist Structure of the Shanghai Cooperation Organization  
[http://fidh.org/DECREE-of-24-July-2004-310-On?var\\_mode=calcul](http://fidh.org/DECREE-of-24-July-2004-310-On?var_mode=calcul)
- Agreement Between the Member States of the Shanghai Cooperation Organization on the Regional Anti-Terrorist Structure, 7 June 2002  
[http://fidh.org/Agreement-Between-the-Member?var\\_mode=calcul](http://fidh.org/Agreement-Between-the-Member?var_mode=calcul)

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“Joint Communiqué of Meeting of the Council of Heads of Member States of the Shanghai Cooperation Organisation.” August 16, 2007. <http://www.sectsco.org/EN/show.asp?id=93>.

“Protocol on Establishment of the SCO-Afghanistan Contact Group between the Shanghai Cooperation Organisation and the Islamic Republic of Afghanistan.” November 4, 2005. <http://www.sectsco.org/EN/show.asp?id=70>.

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### **Establishing the facts** **investigative and trial observation missions**

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

### **Supporting civil society** **training and exchange**

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level

### **Mobilising the international community** **permanent lobbying before intergovernmental bodies**

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

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FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

**FIDH**  
**represents 164**  
**human rights organisations**  
**on 5 continents**

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inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

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FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

### **A broad mandate**

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

### **A universal movement**

FIDH was established in 1922, and today unites 164 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

### **An independent organisation**

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

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Find information concerning FIDH's 164 member organisations on **[www.fidh.org](http://www.fidh.org)**