

8-1-2015

## The Shanghai Cooperation Organization's Bid to Transform International Law

David Ward

Follow this and additional works at: <https://digitalcommons.law.byu.edu/ilmr>



Part of the [International Law Commons](#)

---

### Recommended Citation

David Ward, *The Shanghai Cooperation Organization's Bid to Transform International Law*, 11 BYU Int'l L. & Mgmt. R. 162 (2015).  
Available at: <https://digitalcommons.law.byu.edu/ilmr/vol11/iss2/8>

This Article is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Brigham Young University International Law & Management Review by an authorized editor of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

THE SHANGHAI COOPERATION ORGANIZATION'S BID TO TRANSFORM  
INTERNATIONAL LAW

*David Ward\**

**Abstract**

*This Comment has two principle aims. First, it will argue that the core doctrines of the Shanghai Cooperation Organization (SCO) rest on a problematic legal basis; specifically, that these doctrines contradict well-established human rights norms that SCO members themselves endorsed by treaty. Such norms include non-refoulement (which prohibits the return of refugees to countries where their life or freedom would be threatened), prohibitions against torture and genocide, and the universally accepted right to self-determination with its attendant political, religious, linguistic, ethnic and cultural freedoms.*

*Second, through case studies, this Comment will illustrate the practical results of these SCO doctrines as applied by SCO members. The Comment suggests that the continued application of these doctrines, combined with SCO's imminent expansion, will transform international and human rights law into a more authoritarian-friendly regime marked less by the rule of law than by the will of state leaders.*

*The remainder of this Comment is organized as follows. Part I uses the 2005 Andijan Massacre as a case study to introduce the way in which SCO members rely on SCO doctrines and obligations to override fundamental international laws. This case provides a context to understand the practical implications and consequences of the legal doctrines that are analyzed in detail in Part III. Part II presents a brief overview of SCO's background, including its primary objective, origins and impetus, and imminent expansion. Part III analyzes the problematic legal basis of SCO's core doctrines, including the "Three Evils" doctrine, the "Concept of Cooperation," its secretive blacklist and information-sharing practices, and the principle of "non-interference in internal affairs." Part IV moves beyond theory to illustrate through three case studies the actual ways in which SCO's core doctrines come into conflict with its members' international legal obligations. Between the three case studies in Part IV and the one in Part I, all six SCO members are included, giving a representative view of the application and impact of SCO's core doctrines and policies. Part V states a brief conclusion.*

---

\* Juris Doctor Candidate, 2016, J. Reuben Clark Law School, Provo, UT.

## I. INTRODUCTION

## A. The 2005 Andijan Massacre

In the early morning of May 13, 2005, a band of unidentified men rushed the Andijan Prison in Uzbekistan, freeing twenty-three local businessmen who were awaiting the verdict of their three-month trial for “extremism, fundamentalism, and separatism.”<sup>1</sup> As word of the jailbreak spread, an estimated 10,000 to 15,000 people gathered in Andijan’s Babur Square to air grievances ranging from unemployment to the injustice of the businessmen’s trial.<sup>2</sup> Uzbek security forces clamped down, and by the end of the next day, approximately 300 to 500 people had been killed.<sup>3</sup>

Uzbek forces arrested and tortured hundreds,<sup>4</sup> but roughly 500 people made it thirty kilometers to the Karadarya River where they crossed into Kyrgyzstan as refugees.<sup>5</sup> Under international law, those refugees had a right to asylum.<sup>6</sup> In addition, Kyrgyzstan’s own law on refugees expressly prohibits *refoulement*.<sup>7</sup> Furthermore, UN Secretary-General Kofi Annan specifically asked Kyrgyzstan not to repatriate Uzbeks seeking asylum, stating, “The principle of *non-refoulement* . . . is absolute and may not be derogated or circumvented through any other undertaking, be that bilateral treaty or any other arrangement.”<sup>8</sup>

However, as members of the Shanghai Cooperation Organization (SCO), Kyrgyzstan and Uzbekistan had just signed the 2005 *Astana Declaration*, which requires SCO members to not only deny asylum to,

---

<sup>1</sup> OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE [OSCE], PRELIMINARY FINDINGS ON THE EVENTS IN ANDIJAN, UZBEKISTAN, 13 MAY 2005 6 (2005) [hereinafter OSCE ANDIJAN REPORT].

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 8.

<sup>4</sup> INTERNATIONAL FEDERATION FOR HUMAN RIGHTS (FIDH), KAZAKHSTAN/KYRGYZSTAN: EXPLOITATION OF MIGRANT WORKERS, PROTECTION DENIED TO ASYLUM SEEKERS AND REFUGEES 64 (2009) [hereinafter FIDH].

<sup>5</sup> OSCE ANDIJAN REPORT, *supra* note 1, at 8.

<sup>6</sup> Convention Relating to the Status of Refugees art. 33, Dec. 16, 1966, 189 U.N.T.S. 137 [hereinafter Refugee Convention] (stating “no Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”); *see also* Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter Convention against Torture] (stating “[n]o State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”).

<sup>7</sup> Law of the Kyrgyz Republic on refugees, art. 11 (2002), available at [www.legislationline.org/documents/id/4957](http://www.legislationline.org/documents/id/4957) (“A person, having received a denial of granting refugee status in the territory of the Kyrgyz Republic, or a notice on the revocation of refugee status shall not, under any circumstances, be expelled to the country, where his life or freedom would be threatened on account of his race, ethnic origin, religion, nationality, membership of a particular social group or political opinion or a country, where he might become a victim of torture or a subject to an inhuman treatment.”).

<sup>8</sup> Press Release, Secretary-General, Secretary-General Calls on Kyrgyzstan Authorities to Facilitate Evacuation of Uzbek Refugees, UN Press Release SG/SM/10020-Ref/1184 (July 28, 2005).

but also extradite, those suspected of terrorism, extremism, or separatism.<sup>9</sup>

Faced with the choice of either violating the principle of *non-refoulement*, which some experts consider to be *jus cogens*,<sup>10</sup> or ignoring the 2005 *Astana Declaration* and its SCO treaty obligations, Kyrgyzstan chose the former and sent five refugees back to Uzbekistan.<sup>11</sup>

Kyrgyzstan's Deputy General Prosecutor, Sumar Nasiza, acknowledged the difficulty of the decision, stating, "For these five Uzbeks I didn't sleep for three nights: on the one hand there is the Shanghai Cooperation Organization, on the other hand there is the Convention Against Torture."<sup>12</sup> He justified his decision to extradite, saying Uzbekistan had asked for the return of 129 refugees, and that the five who were extradited were criminals.<sup>13</sup> Nasiza did not mention Kyrgyzstan's own law against *refoulement* or its treaty obligations under both the Convention against Torture and the Convention relating to the Status of Refugees. Ultimately, he trusted in Uzbek guarantees that the refugees would not be tortured upon their return.<sup>14</sup> They are all in prison, "alive and kicking," he said.<sup>15</sup> "We haven't lost any of them."<sup>16</sup>

Kyrgyzstan's Vice-speaker of Parliament offered a different perspective: "[T]hose who fled Uzbekistan were begging that we didn't give them back, because they would be tortured."<sup>17</sup> While it is unclear if those five individuals have been tortured, it is well-documented that Uzbekistan engages in torture and "cruel, inhuman or degrading treatment or punishment," all of which violate the Convention against Torture.<sup>18</sup> As such, Kyrgyzstan's deportation, which its SCO obligations not only made possible but required, was a blatant violation of the well-established international law of *non-refoulement*.

## II. SCO BACKGROUND

### A. The Goal of a New International Order

Kyrgyzstan's *refoulement* of five Uzbek nationals following the 2005 Andijan Massacre may seem to be a minor incident. However, it exemplifies how SCO's policies and practices subvert and even supplant

---

<sup>9</sup> Declaration by the Heads of State of the Shanghai Cooperation Organization (June 5, 2005), available [http://kazakhstanun.org/documents/undocuments/SCO%20Declaration%20\(Eng%2019.07.05\).doc](http://kazakhstanun.org/documents/undocuments/SCO%20Declaration%20(Eng%2019.07.05).doc) at

<sup>10</sup> See, e.g., U.N. High Commissioner for Refugees (UNHCR), *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol* (January 26, 2007); see also Jean Allain, *The Jus Cogens Nature of Non-Refoulement*, 13 INT'L J. REFUGEE L. 533 (2001).

<sup>11</sup> FIDH, *supra* note 4, at 63.

<sup>12</sup> *Id.* at 74.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> U.S. DEP'T OF STATE, UZBEKISTAN 2013 HUMAN RIGHTS REPORT 3–5 (2013).

many of the conventions, customary laws, general principles, and expert opinions that constitute international law.<sup>19</sup>

As the organization expands and matures, its treaty obligations, practices, and values will increasingly constitute the new norm. This is a primary objective of SCO, as stated in Article 1 of its charter: “The main goals and tasks of SCO are: . . . promotion of a *new* democratic, fair and rational *political and economic international order*.”<sup>20</sup>

In the words of Russian president Vladimir Putin, “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.”<sup>21</sup>

## B. Origins and Impetus

Formed in 2001, SCO binds six states – China, Russia, Uzbekistan, Kazakhstan, Kyrgyzstan, and Tajikistan – in a regional treaty designed to protect the states’ shared Central Asia borders from extremist, separatist, and terrorist forces.<sup>22</sup> Except for Uzbekistan, each SCO member was party to the Shanghai Five, which was created in 1996 to resolve border disputes in the region and inject stability into a post-Cold War power vacuum.<sup>23</sup> Each of the Shanghai Five, along with Uzbekistan, faced separatist threats<sup>24</sup> as well as the prospect of American-led NATO enlargement and intervention in their vicinity.<sup>25</sup> These factors led to the creation of SCO.

## C. Imminent Expansion and Its Implications

SCO’s ambitions, which are frequently echoed by officials of SCO nations,<sup>26</sup> are vast but not farfetched. The sheer size of its collective population, landmass, GDP, political clout, and military power render its goals at least conceivable, if not likely.

In September 2014, at SCO’s annual summit, members approved expansion of the organization, with India and Pakistan expected to join in

---

<sup>19</sup> UN Charter, art. 38.

<sup>20</sup> SCO Charter art. 1, available at <http://www.sectSCO.org/EN123/show.asp?id=69> (emphasis added).

<sup>21</sup> Press Release, The Official Site of the Prime Minister of the Russian Federation, Prime Minister Vladimir Putin Takes Part in an Expanded Meeting of the SCO Heads of Government (Nov. 7, 2011), <http://archive.premier.gov.ru/eng/events/news/16987/print/>.

<sup>22</sup> SCO Charter preamble, art. 1, available at <http://www.sectSCO.org/EN123/show.asp?id=69>

<sup>23</sup> Alfred Gerstl, *The China Factor in Regional Security Cooperation*, 1 AUSTRIAN J. OF SOUTH-EAST ASIAN STUDIES, 118, 130 (2008).

<sup>24</sup> Mark N. Katz, *Russia and the Shanghai Cooperation Organization: Moscow’s Lonely Road from Bishkek to Dushanbe*, 32 ASIAN PERSP., 183, 187 (2008).

<sup>25</sup> Kajsa Ji Noe Oest & Peter Toft, *The Shanghai Cooperation Organization – a Threat or Opportunity or Europe?*, Institut for Statskundskab, Kobenhavns Universitet, 25–26, 33 (2007).

<sup>26</sup> See, e.g., Alexander Yakovenko, *The Shanghai Cooperation Organization: Allies of a New Type*, RT.COM (September 12, 2014), <http://rt.com/op-edge/187360-sco-economic-humanitarian-cooperation/> (stating, in the words of the Russian Ambassador to the UK, “SCO has become an influential organization and an important factor in the emergence of a new polycentric world order”; Yakovenko served as Deputy Foreign Minister from 2005 to 2011. *Id.*).

2015.<sup>27</sup> A newly constituted eight-member SCO would represent more than 40 percent of the world's population,<sup>28</sup> one-quarter of its landmass,<sup>29</sup> and nearly 20 percent of global GDP.<sup>30</sup> It would also possess two United Nations Security Council vetoes (Russia and China), four nuclear powers (Russia, China, India, and Pakistan), and three of the world's four most powerful militaries (Russia, China, and India).<sup>31</sup>

While any number of inter-member conflicts could hinder or derail the organization,<sup>32</sup> such conflicts could be outweighed by a common commitment to authoritarian principles,<sup>33</sup> the threat of separatist groups,<sup>34</sup> and a collective desire to reduce American and democratic influences in the world, specifically in Central Asia.<sup>35</sup>

As Parts I, III, and IV indicate, "the new . . . political and economic international order"<sup>36</sup> that the SCO seeks is authoritarian in nature. Those sections also illustrate that such a transformation of the current order is possible because SCO states view their SCO treaty obligations as paramount. Furthermore, since SCO represents an increasingly large segment of the international community,<sup>37</sup> its doctrines, practices, and

<sup>27</sup> Pax Sinica, *China is trying to build a new world order, starting in Asia*, THE ECONOMIST, (Sept. 20, 2014), available at <http://www.economist.com/news/asia/21618866-china-trying-build-new-world-order-starting-asia-pax-sinica>.

<sup>28</sup> Marin Katusa, *How Russia and Putin's Alliances Will Challenge U.S. Hegemony*, EQUITIES, (November 13, 2014, 1:32 PM), <http://www.equities.com/editors-desk/economy-markets/politics/how-russia-and-putins-alliances-will-challenge-us-hegemony>.

<sup>29</sup> *Countries of the World by Area*, ONE WORLD NATIONS ONLINE, [http://www.nationsonline.org/oneworld/countries\\_by\\_area.htm](http://www.nationsonline.org/oneworld/countries_by_area.htm) (last visited Nov. 19, 2014).

<sup>30</sup> *GDP (current US\$)*, THE WORLD BANK, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD> (last visited Nov. 19, 2014).

<sup>31</sup> *Countries Ranked by Military Strength (2014)*, GLOBAL FIREPOWER, <http://www.globalfirepower.com/countries-listing.asp> (last visited Nov. 19, 2014).

<sup>32</sup> E.g., border disputes between China and India, geopolitical political rivalries between Russia and China, conflicts between Pakistan and India, and competition for energy and other resources.

<sup>33</sup> As of 2014, SCO is comprised exclusively of authoritarian regimes. *Undermining Democracy: 21<sup>st</sup> Century Authoritarians*, FREEDOM HOUSE, June 2009, at 60 available at <https://freedomhouse.org/report/special-reports/undermining-democracy-21st-century-authoritarians#.VQmdBY7WiYl>. While India is the world's largest democracy, it remains to be seen whether it will have any influence on SCO's guiding principles once it joins. Arguably, the reverse is more likely. SCO's principles have solidified over a decade and SCO expects new members to conform to these principles. Chinese foreign minister Cheng Guoping stated in May 2012 that states aspiring to SCO membership "must work hard towards political, legal and technical preparations for [membership]." Ananth Krishnan, *Observer Countries 'Must Work Hard' for SCO Membership*, THE HINDU (May 24, 2012), <http://www.thehindu.com/todays-paper/tp-national/observer-countries-must-work-hard-for-sco-membership-says-china/article3450358.ece>.

<sup>34</sup> Katz, *supra* note 24.

<sup>35</sup> See *Expert: Shanghai Group Expands Non-American World*, SPUTNIKNEWS.COM (Sept. 10, 2014, 2:12 PM), <http://en.ria.ru/analysis/20140910/192803481/Expert-Shanghai-Group-Expands-Non-American-World.html>; see also Andrew Scheineson, *The Shanghai Cooperation Organization (Background)*, THE COUNCIL ON FOREIGN RELATIONS (Mar. 24, 2009), <http://www.cfr.org/china/shanghai-cooperation-organization/p10883> (stating "SCO members are uneasy about certain U.S. policies, particularly its support of democratic reforms").

<sup>36</sup> Press Release, *supra* note 21.

<sup>37</sup> In addition to India and Pakistan, current SCO observer states include Afghanistan, Iran, and Mongolia; dialogue partners include Belarus, Turkey, and Sri Lanka. THE SHANGHAI COOPERATION ORGANIZATION, <http://www.sectsc.org/EN123/> (last visited Nov. 19, 2014). The United States' 2005 application to join SCO as an observer state was rejected. Ariel Cohen, *What to Do about the Shanghai Cooperation Organizations Rising Influence*, EURASIANET (Sept. 20, 2006 7:00 PM), <http://www.eurasianet.org/departments/insight/articles/eav092106.shtml>.

values also have the potential to alter customary law, which is, after all, comprised of the general practices that states accept as law.<sup>38</sup>

Thus, the new authoritarian-friendly<sup>39</sup> regime that the SCO envisions would erode the human rights that states, intergovernmental organizations, nongovernmental organizations, and individuals have spent decades working to enshrine in international law.

### III. THE PROBLEMATIC LEGAL BASIS OF SCO'S CORE DOCTRINES

#### A. The Broadly Defined "Three Evils"

To understand SCO and its aims, it is necessary to understand the core doctrine that drives its policies and practices. Known as the "Three Evils," this doctrine provides vast leeway for the aggressive prevention and prosecution of terrorism, separatism, and extremism by SCO's member states.

SCO defines each of the "Three Evils" differently than the UN and other international organizations. Under SCO, separatism is defined to include violent acts, or the planning or aiding of such acts, which are intended to violate the territorial integrity of a state. This includes the annexation of any part of a state's territory or the disintegration of a state.<sup>40</sup> Extremism is broadly defined to include violent acts intended to seize, keep power, or change the constitutional regime of a State, "as well as a violent encroachment upon public security, including organization, for the above purposes, of illegal armed formations and participation in them."<sup>41</sup> Terrorism, under the 2009 SCO Counter-Terrorism Convention, is vaguely defined as "an ideology of violence and [the] practice of attempting to influence the decisions of state authorities or international organisations by committing or threatening to commit violent or criminal acts intended to intimidate the population and cause damage to individuals, society and the state."<sup>42</sup>

The expansive language of these "definitions" begs further clarification, but none is provided. Thus, under the SCO regime, terrorism can be reduced to the mere threat of any criminal act intended to intimidate and cause some type of damage for the purpose of attempting to influence a state or international organization.

Although the international community lacks a "universal and comprehensive" definition of terrorism, a consensus framework

---

<sup>38</sup> *Customary Law*, INTERNATIONAL COMMITTEE OF THE RED CROSS (Oct. 29, 2010), <https://www.icrc.org/eng/war-and-law/treaties-customary-law/customary-law/overview-customary-law.htm>.

<sup>39</sup> Authoritarian: 1. Favoring or enforcing strict obedience to authority, especially that of the government at the expense of personal freedoms. 1.1 Showing a lack of concern for the wishes or opinions of others; domineering; dictatorial. *Authoritarian Definition*, OXFORD DICTIONARIES, [http://www.oxforddictionaries.com/us/definition/american\\_english/authoritarian](http://www.oxforddictionaries.com/us/definition/american_english/authoritarian) (last visited Nov. 19, 2014).

<sup>40</sup> The Shanghai Convention on Combating Terrorism, Separatism and Extremism art. 1, para. 2, June 15, 2001.

<sup>41</sup> *Id.* at art. 1, para. 3.

<sup>42</sup> The Official Site of the President of Russia, Ratification of SCO Counter-Terrorism Convention (Oct. 4, 2010), <http://www.eng.kremlin.ru/news/1055>.

nevertheless exists,<sup>43</sup> and it is much stricter than SCO's. Specifically, it insists that terrorist offenses should be limited to (a) acts that intend to cause at least "serious bodily injury, or the taking of hostages" (b) "for the purpose of provoking a state of terror, intimidating a population, or compelling a Government or international organization" (c) that fall within the scope and definition of international agreements pertaining to terrorism.<sup>44</sup> In addition, consensus holds that "[i]t is essential . . . to ensure that the term 'terrorism' is confined in its use to conduct that is genuinely of a terrorist nature."<sup>45</sup> To that end, "it is important for States to ensure that [anti-terrorism measures] . . . [are] formulated with precision."<sup>46</sup>

Furthermore, Security Council Resolution 1456 stipulates that "states must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, *in particular international human rights, refugee, and humanitarian law*."<sup>47</sup> According to Article 25 of the UN Charter, all members "agree to accept and carry out the decisions of the Security Council."<sup>48</sup>

SCO contradicts UN Resolution 1456 by using the "Three Evils" doctrine to establish policies and take actions that blatantly violate fundamental and universal human rights. The violated rights include: humane treatment during deprivation of liberty; fair and public hearings; adequate time and facilities for preparation of a defense and communication with counsel; freedom from forced confession of guilt; appeal of convictions and sentences; freedom of thought, conscience, and religion; manifestation of religion; holding of opinions without interference; expression of information and ideas of all kinds through any media; peaceful assembly; association with others; electoral rights; freedom from religious discrimination; cultural, religious, and linguistic rights for minorities; freedom from genocide; freedom from torture; freedom from *refoulement*; and self-determination.<sup>49</sup> Section IV provides detailed examples of SCO members' violations of these rights.

These are not just rights that the international community at large has deemed important; SCO members have legally bound themselves to protect and uphold these rights. These rights are contained in the International Covenant on Civil and Political Rights (ICCPR), the

---

<sup>43</sup> Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Promotion and Protection of Human Rights*, para. 33, Commission on Human Rights, U.N. Doc. E/CN.4/2006/98 (Dec. 28, 2005) (by Martin Scheinin) [hereinafter *Special Rapporteur Report*]; see also S.C. Res. 1566, para. 3, U.N. Doc. S/RES/1566 (Oct. 8, 2004).

<sup>44</sup> *Id.* at para. 50.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> S.C. Res. 1456, para. 6, U.N. Doc. S/RES/1456 (Jan. 20, 2003) (italics added).

<sup>48</sup> U.N. Charter art. 25.

<sup>49</sup> See, respectively, International Covenant on Civil and Political Rights arts. 10, 14.1, 14.3(b), 14.3(g), 14.5, 18.1, 18.3, 19.1, 19.2, 21, 22, 25, 26, and 27, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention]; Convention against Torture, *supra* note 6, arts. 2, 3; International Covenant on Economic, Social and Cultural Rights art. 1, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].



Convention on Genocide, the Convention against Torture (CAT), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), all of which are legally binding<sup>50</sup> and which reiterate many of the rights enumerated in the Universal Declaration on Human Rights.<sup>51</sup> Each SCO member has signed and ratified these treaties, with one exception: China signed the ICCPR in 1998, but has yet to ratify it.<sup>52</sup> However, since China has acceded to the Vienna Convention on the Law of Treaties, it is still prohibited from acting in a way that would “defeat the object and purpose” of any treaty it has signed.<sup>53</sup>

To be fair, under the ICCPR and ICESCR, states can restrict freedom of movement and freedom of expression, but only when necessary for the protection of national security or public order.<sup>54</sup> However, prohibitions on genocide, torture, and *refoulement* are so widespread, settled, and fundamental in international law as to constitute or border on *jus cogens*, which cannot be overridden by any exigency.<sup>55</sup>

Thus, the “Three Evils” doctrine poses serious legal difficulties for SCO members in light of their human rights treaty obligations. In particular, by stretching the consensus definition of terrorism beyond its breaking point, this doctrine allows SCO members to target even peaceful dissidents and run roughshod over their fundamental rights. This, however, is not unintentional but rather wholly congruent with SCO’s stated aim to usher in a new international order, one in which it sees itself as the “pioneer organization” dealing with international terrorism.<sup>56</sup>

### B. Reciprocal Recognition under the “Concept of Cooperation”

Compounding the problems of the “Three Evils” doctrine, SCO states agreed in 2005 to the “Concept of Cooperation,” which provides that member states will harmonize domestic legislation to ensure “reciprocal recognition of a terrorist, separatist, or extremist act regardless of whether legislation of SCO member states includes a corresponding act in the same category of crimes or whether the act is

---

<sup>50</sup> *Frequently Asked Questions regarding the Convention on the Rights of Persons with Disabilities*, UNITED NATIONS ENABLE, <http://www.un.org/esa/socdev/enable/convinfofaq.htm> (last visited Nov. 19, 2014).

<sup>51</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

<sup>52</sup> ICCPR, *supra* note 49. The ICCPR was ratified by Russia (1973), Uzbekistan (1995), Kyrgyzstan (1994), Tajikistan (1999), and Kazakhstan (2006); China signed in 1998. *Id.*

<sup>53</sup> Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331. China ratified on Sept. 3, 1997. *Id.*

<sup>54</sup> ICCPR, *supra* note 49, at arts. 8(c), 12.3, 13, 19.3(b), 21, 22.2. Each of these allows for restrictions when necessary to protect national security or public order; however, 8(c), 21, and 22.2 allow restrictions only in “democratic societ[ies].” *Id.*

<sup>55</sup> Jus Cogens Definition, LEGAL INFORMATION INSTITUTE, [http://www.law.cornell.edu/wex/jus\\_cogens](http://www.law.cornell.edu/wex/jus_cogens) (last visited Nov. 20, 2014).

<sup>56</sup> *History of Development of SCO*, CHINA DAILY (June 12, 2006 3:16 PM), available at [http://www.chinadaily.com.cn/china/2006-06/12/content\\_6020347.htm](http://www.chinadaily.com.cn/china/2006-06/12/content_6020347.htm).

described using the very same terms.”<sup>57</sup> Stated simply, the law of one member becomes the law of all members. Thus, an individual deemed a “Three Evils” suspect by China must be considered such by Tajikistan.

A specific provision of the “Concept of Cooperation” provides one illustration of how the concept works. This provision declares that member states will “not provide asylum for individuals, accused or suspected of conducting terrorism, separatist, and extremist activity, and [will] extradite such individuals at respective requests on the part of another SCO member state.”<sup>58</sup> Such reciprocity enables the prosecution and punishment of a vast array of dissent. For example, Tibetan monks who flee to India<sup>59</sup> after being caught planning a self-immolation protest, could be extradited to China as terrorists under the extradition provision of the 2005 Declaration and under SCO’s definition of terrorism.<sup>60</sup> Or, suppose that Karakalpak students peacefully demonstrate for expanded labor rights and then clash with Uzbek police following the police’s detonation of teargas. Under the “Concept of Cooperation,” those students could be prosecuted as extremists using Russia’s expansive anti-extremism laws.

Russia’s definition of extremism is particularly troublesome because it provides a list of twelve general activities rather than a clear, precise statement of characteristics.<sup>61</sup> Included among these is the nebulous “stirring up of social, racial, ethnic or religious discord.”<sup>62</sup> Under Section 280.1 of the Russian Criminal Code, anyone who publicly calls for “extremist activity” can be imprisoned for up to three years.<sup>63</sup> Using mass media to do so can increase the term to five years.<sup>64</sup> Involvement in the activity of a public or religious association that has been deemed “extremist” by a court warrants imprisonment of two years.<sup>65</sup> Particularly powerful is Article 282, which allows authorities to imprison anyone who publicly attempts to incite hatred or enmity or disparagement of a person.<sup>66</sup>

Under SCO’s “Concept of Cooperation,” members must harmonize their domestic legislation regimes to ensure “reciprocal recognition” of

---

<sup>57</sup> Concept of Cooperation Between SCO Member States in Combating Terrorism, Separatism, and Extremism, art. 3 June 5, 2005, available at <http://hrichina.org/sites/default/files/PDFs/Reports/SCO/2011-HRIC-SCO-Whitepaper-AppendixA-SCO-Docs.pdf>.

<sup>58</sup> *Declaration of Heads of Member States of SCO*, CHINA DAILY (June 12, 2006 3:15 PM), available at [http://www.chinadaily.com.cn/china/2006-06/12/content\\_6020345.htm](http://www.chinadaily.com.cn/china/2006-06/12/content_6020345.htm).

<sup>59</sup> That is, once India joins SCO, an event which is expected to take place in 2015. Pax Sinica, *supra* note 27.

<sup>60</sup> See Li Decheng, *Self-immolations Are Not Noble Behavior*, CHINA DAILY, Nov. 30, 2011, at 8 (“Those that encourage monks and nuns to commit self-immolation are engaged in religious extremism and terrorism.”); see also Hua Zi, *Extreme Acts of Violence*, CHINA DAILY, Nov. 25, 2011, at 8 (stating it is “terrorist behavior . . . to incite young Tibetans to commit suicide”).

<sup>61</sup> EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), COUNCIL OF EUROPE, FEDERAL LAW ON COMBATING EXTREMIST ACTIVITY OF THE RUSSIAN FEDERATION 7 (2012) (unofficial translation provided by the Council of Europe) (reflecting amendments made in 2008).

<sup>62</sup> *Id.*

<sup>63</sup> The Criminal Code of the Russian Federation art. 280.1, available at <http://legislationline.org/documents/section/criminal-codes/country/7>.

<sup>64</sup> *Id.* at art. 280(2).

<sup>65</sup> *Id.* at art. 282.2(2).

<sup>66</sup> *Id.* at art. 282(1).

other members' characterizations of "Three Evils" acts even if their criminal codes do not include those acts or address them the same way. Thus, Russia's formulation of "extremism" carries great import and, unsurprisingly, prompted the following statement by the UN Human Rights Committee in a 2009 report:

[E]xtremism laws are being used to target organizations and individuals critical of the Government . . . . [T]he definition of 'extremist activity' in the [Russian] Federal Law on Combating Extremist Activity remains vague, allowing for arbitrariness in its application . . . . [T]he 2006 amendment to this law has made certain forms of defamation of public officials an act of extremism.<sup>67</sup>

The "Concept of Cooperation" also seriously compromises SCO members' obligations under international law to refrain from *refoulement* and to respect individuals' freedom of movement.<sup>68</sup> With the exception of Uzbekistan, every SCO member has ratified the legally binding Convention relating to the Status of Refugees (CRSR).<sup>69</sup> Article 33 of CRSR expressly prohibits *refoulement*: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."<sup>70</sup>

In addition, every SCO member has ratified the Convention against Torture, Article 2 of which states: "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." Article 3 states: "No State Party shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." Furthermore, Article 16 prohibits "acts of cruel, inhuman or degrading treatment or punishment."<sup>71</sup> Thus, the "Concept of Cooperation" poses problems for SCO members, given their legal obligation to each of these treaties.

### C. Secretive Blacklist Formulation and Opaque Information-Sharing Practices

SCO's lack of transparency makes it impossible to know whom it suspects of "Three Evils" activities and how such determinations are made. This is particularly troubling given the size of SCO's blacklist. In 2011, the UN Special Rapporteur on Counterterrorism and Human

<sup>67</sup> Human Rights Committee, *Considerations Submitted by States Parties under Article 40 of the Covenant*, para. 24, U.N. Doc. CCPR/C/RUS/CO/6 (Nov. 24, 2009).

<sup>68</sup> Convention against Torture, *supra* note 49, at art. 2; ICCPR, *supra* note 49, at art. 12; Refugee Convention, *supra* note 6.

<sup>69</sup> The Refugee Convention has been ratified by China (1982), Kazakhstan (1989), Kyrgyzstan (1996), Russia (1993), and Tajikistan (1993). *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Convention against Torture, *supra* note 49, at art. 2, 3, 16.

Rights, Martin Scheinin, stated that SCO's terrorist blacklist, which is known to contain 1100 names, is twice the length of the UN's terrorist list.<sup>72</sup>

The SCO entity responsible for gathering and sharing information on "Three Evils" suspects is called the Regional Anti-Terrorist Structure (RATS). According to its executive director, RATS goes to whatever lengths necessary to gather information about organizations and individuals suspected of "Three Evils" activities.<sup>73</sup> Such information is posted to a secret blacklist website.<sup>74</sup> RATS' secrecy and lack of oversight and accountability create what Scheinin has called "an insurmountable wall against independent investigations into human rights violations."<sup>75</sup>

Under the legal framework of RATS, SCO states possess power to dispatch their agents to pursue suspects in consenting member states.<sup>76</sup> Furthermore, the secret service agency of any SCO state can request assistance from any other state's secret services in gathering information and pursuing suspects.<sup>77</sup> The requesting state need only provide the purpose of and the grounds for the request, as well as the type of assistance desired (e.g. interrogation, detention, or extradition).<sup>78</sup> The responding state must then "take all necessary measures to ensure a prompt and complete execution of the request."<sup>79</sup> The "means and supporting materials used" to fulfill the request "shall not be subject to disclosure."<sup>80</sup>

The opacity of this process has major ramifications for the due process of law. Simply put, the state receiving a request has no means to verify the quality, or even existence, of the evidence used by the requesting state to pursue a suspect. Likewise, the requesting state never knows the means used to fulfill its request.

As a result, and as illustrated via case studies in Part IV, the opacity of the RATS framework threatens fundamental and universal human rights, including: freedom from arbitrary arrest or detention; compensation for unlawful arrest; the presumption of innocence for those charged with crimes; freedom from arbitrary or unlawful interference with one's privacy, family or unlawful attacks on one's honor or reputation; freedom of association with others; prompt and detailed

---

<sup>72</sup> *Human Rights in the North Caucasus: Hearing before the Tom Lantos Human Rights Commission*, 115th Cong. 11 (2011) (statement of Martin Scheinin, U.N. Special Rapporteur on Counterterrorism and Human Rights), available at [http://www.hrichina.org/sites/default/files/publication\\_pdfs/2011-hric-sco-whitepaper-full.pdf](http://www.hrichina.org/sites/default/files/publication_pdfs/2011-hric-sco-whitepaper-full.pdf).

<sup>73</sup> *SCO Anti-terror Agency Successful: Official*, CHINA DAILY (June 13, 2006, 8:57 PM), [http://english.peopledaily.com.cn/200606/13/eng20060613\\_273727.html](http://english.peopledaily.com.cn/200606/13/eng20060613_273727.html).

<sup>74</sup> *Id.*

<sup>75</sup> Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, Cultural Rights, Including the Right to Development*, ¶ 49, Human Rights Council, U.N. Doc. A/HRC/10/3 (Feb. 4, 2009).

<sup>76</sup> The Convention on Counter-Terrorism of the Shanghai Cooperation Organization art. 18, June 16, 2009.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at art. 14.

<sup>79</sup> Shanghai Convention on Combating Terrorism, Separatism and Extremism, *supra* note 40, art. 9.1 (2001).

<sup>80</sup> *Id.* at art. 11.4.

information about the nature and cause of the charges against oneself; and an effective remedy for violated rights.<sup>81</sup> All of these rights are contained in the legally binding International Covenant on Civil and Political Rights (ICCPR). Thus, the secret and opaque nature of RATS' blacklist and information-sharing practices bodes ill for fundamental human rights related to the due process of law.

#### D. Adherence to the Principle of "Non-interference in Internal Affairs"

The SCO Charter seeks to insulate members from human rights criticisms by stressing the principle of "non-interference in internal affairs."<sup>82</sup> Explication of this core principle is found in the 2006 *Declaration on the Fifth Anniversary of the Shanghai Cooperation Organization*, which states:

Diversity of civilization and model of development must be respected and upheld. Differences in cultural traditions, political and social systems, values and model of development formed in the course of history should not be taken as pretexts to interfere in other countries' internal affairs. Model of social development should not be "exported."<sup>83</sup>

However, this declaration runs counter to expert opinion. In 2010, a group of UN human rights experts issued the following statement:

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

.....

We remind States of their responsibility under international law to create an environment conducive to cultural diversity and the enjoyment of cultural rights in which all persons, including national or ethnic, religious and linguistic minorities . . . have the right: to express

---

<sup>81</sup> ICCPR, *supra* note 49, at arts. 2.3(a), 9.1, 9.5, 14.3(a), 14.2, 17.1, and 22.1.

<sup>82</sup> Charter of the Shanghai Cooperation Organization art. 2, May 7, 2009, available at <http://www.sectsc.org/EN123/show.asp?id=69>.

<sup>83</sup> *Declaration on the Fifth Anniversary of SCO* art. 3, CHINA DAILY, (June 15, 2006, 8:30 PM), [http://www.chinadaily.com.cn/china/2006-06/15/content\\_618177.htm](http://www.chinadaily.com.cn/china/2006-06/15/content_618177.htm).

themselves . . . [and] participate in the cultural life of their choice.<sup>84</sup>

While SCO's core principle of "non-interference in internal affairs" is well supported by the fundamental international law of sovereign equality, upon which the UN is based,<sup>85</sup> sovereign equality is itself based on the universal right to self-determination. That is, before a nation can exist, with all of its guarantees of sovereignty and equality within the community of nations, it is first a people—a people with an absolute right to self-determination, which is to say the right to be free from oppression and to pursue their own development, even to build their own nation if such development is denied by their current government.

Thus, international law holds that a sovereign state that represents all of its peoples "on a basis of equality and without discrimination, and respects the principles of self-determination in its own internal arrangements, is entitled to the protection of international law of its territorial integrity."<sup>86</sup> Conversely, a state that denies internal people(s)<sup>87</sup> "meaningful access to government to pursue their political, economic, cultural and social development" forfeits its sovereign authority.<sup>88</sup>

The universal right to self-determination is so well established in international law it "has acquired a status beyond 'convention' and is considered a general principle of international law."<sup>89</sup> It appears in Article 1 of the UN Charter,<sup>90</sup> Article 1 of the ICESCR, and Article 1 of ICCPR, the latter two of which read: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."<sup>91</sup> Every SCO state is party to each of these covenants.

Certainly not every separatist movement possesses a lawful claim to self-determination. However, SCO's doctrines enable its members to engage in practices that deny internal minorities their basic human right to "meaningful access to government to pursue political, economic, culture and social development."<sup>92</sup>

---

<sup>84</sup> Statement by a Group of United Nations Experts on the World Day for Cultural Diversity for Dialogue and Development, "Human Rights are Essential Tools for an Effective Intercultural Dialogue," May 21, 2010, [http://www2.ohchr.org/english/issues/cultural\\_rights/docs/statements/Statement\\_cultural\\_diversity2\\_1052010.doc](http://www2.ohchr.org/english/issues/cultural_rights/docs/statements/Statement_cultural_diversity2_1052010.doc).

<sup>85</sup> U.N. Charter art. 2.1 ("The Organization is based on the principle of the sovereign equality of all its Members.").

<sup>86</sup> Reference re Secession of Quebec, [1998] 2 S.C.R. 217 (Can.), paras. 128, 154.

<sup>87</sup> A definition of a minority people provided by the Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities includes "a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language." *Minorities under International Law*, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, available at <http://www.ohchr.org/EN/Issues/Minorities/Pages/internationallaw.aspx> (last visited Mar. 6, 2015).

<sup>88</sup> Reference re Secession of Quebec, *supra* note 86, at para. 138.

<sup>89</sup> *Id.* at para. 114.

<sup>90</sup> U.N. Charter art. 1.2.

<sup>91</sup> ICESCR, *supra* note 49, art 1; ICCPR, *supra* note 49, art 1.

<sup>92</sup> Reference re Secession of Quebec, *supra* note 86.

The 2014 *Freedom in the World* report, published by the non-governmental organization Freedom House, provides some perspective on the degree of self-determination possible for peoples within SCO countries. SCO country scores are listed in the following table (1 = best score possible; 7 = worst score possible):<sup>93</sup>

	Political Rights <sup>94</sup>	Civil Liberties <sup>95</sup>	Status <sup>96</sup>
China <sup>97</sup>	7	6.5	Not Free
Kazakhstan <sup>98</sup>	6	5	Not Free
Kyrgyzstan <sup>99</sup>	5	5	Partly Free
Russia <sup>100</sup>	6	5	Not Free
Tajikistan <sup>101</sup>	6	6	Not Free
Uzbekistan <sup>102</sup>	7	7	Not Free

This table is meant to provide only a quantitative snapshot. Detailed, documented reports analyzing each SCO member's performance on human rights can be found at the U.S. Department of State website *Country Reports on Human Rights Practices for 2013*.<sup>103</sup>

Thus, SCO invokes the principle of “non-interference in internal affairs” to deflect international criticism of SCO members’ practices that violate internal minorities’ rights to self-determination. Part IV(B) below presents a case study that specifically illustrates the conflict between the SCO doctrines and an internal people’s right to self-determination.

<sup>93</sup> See *Freedom in the World 2014 Methodology*, FREEDOM HOUSE, <https://www.freedomhouse.org/report/freedom-world-2014/methodology#.VGh4q2x0yM9> (last visited Mar. 6, 2015) (explaining that the scores are based on analysis of more than 140 different questions).

<sup>94</sup> *Id.* (explaining that the “Political Rights” score is comprised of analysis of the country’s electoral process, political pluralism and participation, and functioning government).

<sup>95</sup> *Id.* (explaining that the “Civil Liberties” score is comprised of analysis of the country’s freedom of expression and belief, associational and organizational rights, rule of law, and personal autonomy and individual rights).

<sup>96</sup> *Id.* (explaining that the “Status” rating is an average of the “Political Rights” and “Civil Liberties” scores, wherein 5.5 to 7.0 = Not Free; 3.0 to 5.0 = Partly Free; and 1.0 to 2.5 = Free).

<sup>97</sup> *Freedom in the World 2014 China*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/2014/china-0#.VGh40Gx0yM8> (last visited Mar. 6, 2015).

<sup>98</sup> *Freedom in the World 2014 Kazakhstan*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/2014/kazakhstan-0#.VGh5wGx0yM8> (last visited Mar. 6, 2015).

<sup>99</sup> *Freedom in the World 2014 Kyrgyzstan*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/2014/kyrgyzstan-0#.VGh51Gx0yM8> (last visited Mar. 6, 2015).

<sup>100</sup> *Freedom in the World 2014 Russia*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/2014/russia-0#.VGh6OWx0yM8> (last visited Mar. 6, 2015).

<sup>101</sup> *Freedom in the World 2014 Tajikistan*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/2014/tajikistan-0#.VGh4omx0yM9> (last visited Mar. 6, 2015).

<sup>102</sup> *Freedom in the World 2014 Uzbekistan*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/2014/uzbekistan-0#.VGh54Gx0yM8> (last visited Mar. 6, 2015).

<sup>103</sup> See *Country Reports on Human Rights Practices for 2013*, STATE.GOV, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (last visited Jun. 10, 2015).

#### IV. CONFLICTS BETWEEN SCO OBLIGATIONS AND INTERNATIONAL LEGAL OBLIGATIONS: THREE CASE STUDIES

The case studies in this Part and in Part I of this Comment were chosen because, collectively, they involve each SCO state and each core SCO doctrine discussed in Part III. Moreover, collectively, they elucidate the conflict between SCO's core doctrines and SCO members' binding obligations to fundamental international laws.

##### A. Russia's Illegal Extradition of Makhmadruzi Iskandarov to Tajikistan

In October 2005, the Supreme Court of Tajikistan sentenced Makhmadruzi Iskandarov, head of the Democratic Party of Tajikistan (DPT), to twenty-three years in prison.<sup>104</sup> Iskandarov had left Tajikistan eighteen months prior and established residence in Russia.<sup>105</sup> After Iskandarov left, Tajik authorities sought to tie him to an illegal armed organization, issued a warrant for his arrest, and aggressively pressed Russian authorities for his extradition.<sup>106</sup> Accusations against him ranged from terrorism, attempted murder, and illegal arms possession, to abuse of office and theft of state funds.<sup>107</sup> Iskandarov, a former state utility executive who planned to run for president in 2005, was highly critical of President Rakhmonov, who has ruled Tajikistan continuously since 1994. Iskandarov's DPT had called for free and transparent elections.<sup>108</sup>

In response to Tajikistan's request, Russian authorities detained Iskandarov in December 2004, but released him after claiming insufficient evidence for extradition.<sup>109</sup> They detained him again in April 2005 after intense lobbying from Tajik authorities, who wanted to charge him with attempting a coup d'état.<sup>110</sup> Again, however, Russian authorities claimed insufficient evidence for extradition and freed him in Moscow.<sup>111</sup>

Importantly, Iskandarov had appealed to Russian authorities for refugee status.<sup>112</sup> Russia (as well as Tajikistan) is party to the UN Convention relating to the Status of Refugees,<sup>113</sup> which prohibits the return of "a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of

<sup>104</sup> *Tajik Court Sentences Iskandarov to 23 Years*, MOSCOW TIMES (Oct. 6, 2005, 12:00 AM), <http://www.themoscowtimes.com/sitemap/paid/2005/10/article/tajik-court-sentences-iskandarov-to-23-years/209458.html>.

<sup>105</sup> *Tajik Democratic Party Leader-Terrorist or Simple Criminal*, SPUTNIK NEWS (Nov. 12, 2004, 6:46 PM), <http://en.ria.ru/onlinenews/20041211/39775461.html?i>.

<sup>106</sup> *Id.*

<sup>107</sup> *Tajik Court Sentences Iskandarov to 23 Years*, *supra* note 104.

<sup>108</sup> *Tajik Democratic Party Leader-Terrorist or Simple Criminal*, *supra* note 105.

<sup>109</sup> 'Missing' Tajik Opposition Leader Reportedly Arrested, RADIO FREE EUROPE (April 26, 2005), <http://www.rferl.org/content/article/1058646.html>.

<sup>110</sup> Arkady Dubnov, *Tajik Opposition Leader Makhmadruzi Iskandarov Became a Political Refugee in Russia*, FERGHANA NEWS (April 14, 2005, 3:14 PM), <http://enews.ferghananews.com/article.php?id=911>.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Refugee Convention*, *supra* note 6. See also Danielle J. Grigsby, *The Silent Plague: Refoulement in the Russian Federation*, 1 OXFORD MONITOR OF FORCED MIGRATION 33, <http://oxmofm.com/wp-content/uploads/2010/08/OxMo-vol-1-no-2-07-GRIGSBY.pdf>.



his race, religion, nationality, membership of a particular social group or *political opinion*.”<sup>114</sup> Upon Iskandarov’s release in Moscow, Russia’s Directorate of Information Vasily Glushenko stated, “No person applying for the status of a refugee can be extradited from Russia before the decision on the appeal is made.”<sup>115</sup> The next day, however, a group of men seized Iskandarov in Moscow without presenting identification, an arrest warrant, or a judicial order of any kind.<sup>116</sup> They spirited him to a bathhouse where he was beaten,<sup>117</sup> and though he requested a lawyer, his request was denied.<sup>118</sup> The next day he was taken to a forest where his face was covered with a mask, and the following morning he was flown to Tajikistan where he was placed in a Dushanbe prison to await his trial.<sup>119</sup> While in prison, Iskandarov suffered abuse and had only limited access to his family and lawyers.<sup>120</sup>

In July 2005, three months before Iskandarov’s trial, SCO leaders gathered in Astana to sign the Declaration of the Heads of Member States of the SCO.<sup>121</sup> According to this agreement, SCO member states will “not provide asylum for individuals, *accused or suspected of conducting terrorism, separatist, and extremist activity*, and [will] extradite such individuals at respective requests on the part of another SCO member state.”<sup>122</sup>

Thus, this agreement does not require evidence of terrorist, separatist, or extremist activity—only an accusation of such—for extradition to take place. Nor does it require the extraditing state to consider whether the suspect might be tortured upon return to the requesting state. Thus, this SCO agreement conflicts with Article 3 of the UN Convention against Torture, which both Russia and Tajikistan have ratified. Article 3 prohibits the extradition of an individual “where there are substantial grounds for believing he would be in danger of being subjected to torture.”<sup>123</sup>

Iskandarov stated that he was indeed tortured, as well as drugged and subjected to electric shocks after *refoulement* to Dushanbe.<sup>124</sup> Following Iskandarov’s trial, Tajik officials allegedly denied him access to his family and lawyers for at least eight months, and he remained in the pre-trial detention facility instead of a prison camp until February 2007, about three months after President Rakhmonov’s reelection.<sup>125</sup> Incidentally, Rakhmonov won more than seventy-nine percent of the

---

<sup>114</sup> Refugee Convention, *supra* note 6 (emphasis added).

<sup>115</sup> Dubnov, *supra* note 110.

<sup>116</sup> *Iskandarov v. Tajikistan*, Working Group on Arbitrary Detention, Opinion No. 39/2006, U.N. Doc. A/HRC/7/4/Add.1 at 18 (2007).

<sup>117</sup> *Iskandarov v. Russia*, App. No. 17185/05, Eur. Ct. H.R. at para. 28 (2010).

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at paras. 30, 33.

<sup>120</sup> U.S. ‘Concerned’ over Tajik Opposition Leader’s Jailing, RADIO FREE EUROPE (Oct. 7, 2005), <http://www.rferl.org/content/article/1061960.html>.

<sup>121</sup> *Declaration of Heads of Member States of SCO*, *supra* note 58.

<sup>122</sup> *Id.* at para. 3.

<sup>123</sup> *Convention against Torture*, *supra* note 6.

<sup>124</sup> *Iskandarov*, App. No. 17185/05, Eur. Ct. H.R. at para. 92. See also *id.* at paras. 88, 89, 94.

<sup>125</sup> *Id.* at paras. 88, 90, 92; HUMAN RIGHTS WATCH, COUNTRY SUMMARY: TAJIKISTAN (2007).

vote.<sup>126</sup> OSCE, which was invited to observe the process, reported that the election lacked “a genuine choice and meaningful pluralism, and revealed substantial shortcomings,” including the absence of “a framework for democratic elections,” widespread multiple voting, and a failure to follow counting procedures.<sup>127</sup>

The European Court of Human Rights unanimously ruled in 2010 that Russia’s abduction and unacknowledged detention of Iskandarov “constituted a complete negation of the right to liberty and security of person,” in violation of Article 5 of the European Convention on Human Rights, to which Russia is party.<sup>128</sup> It also unanimously concluded that Russia’s failure “to protect him against risks of ill-treatment” violated Article 3, which states, “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”<sup>129</sup> The court cited reports indicating that torture of detainees by Tajik authorities was common and, thus, foreseeable.<sup>130</sup>

Thus, while Russia’s *refoulement* of Iskandarov to Tajikistan flagrantly violated the European Convention on Human Rights, the U.N. Convention against Torture, and the UN Convention relating to the Status of Refugees, it fully comports with SCO’s “Concept of Cooperation,” as outlined above in Part III(B), which requires the on-demand extradition of anyone even suspected of the “Three Evils.”

#### B. Chinese National Security Interests vs. Uyghurs’ Right to Self-Determination

On July 5, 2009, hundreds of ethnic Uyghurs took to the streets of Urumqi, the capital of and largest city in Xinjiang, China’s western-most province.<sup>131</sup> Their peaceful protest of Chinese officials’ failure to investigate the deaths of migrant Uyghurs in a factory fight in Guangdong the prior month turned into a clash with ethnic Han and further escalated as Chinese police confronted demonstrators with tear gas.<sup>132</sup> The conflict injured 1,700 and left 200 dead, including three Han and one police officer.<sup>133</sup>

---

<sup>126</sup> *Tajik President Wins Third Term*, BBC NEWS (Nov. 7, 2006, 3:59 PM), <http://news.bbc.co.uk/2/hi/asia-pacific/6119752.stm>.

<sup>127</sup> OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (OSCE), ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, PRELIMINARY, REPUBLIC OF TAJIKISTAN PRESIDENTIAL ELECTION 6 NOVEMBER 2006 1, 2, 8–9 (Apr. 18, 2007).

<sup>128</sup> *Iskandarov*, App. No. 17185/05, Eur. Ct. H.R. at para. 150.

<sup>129</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms art. 3, Nov. 4, 1950, ETS 5, available at [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf).

<sup>130</sup> *Iskandarov*, App. No. 17185/05, Eur. Ct. H.R. at paras. 87–88, 92.

<sup>131</sup> Edward Wong, *Riots in Western China Amid Ethnic Tension*, N.Y. TIMES, July 6, 2009, at A4, available at [http://www.nytimes.com/2009/07/06/world/asia/06china.html?\\_r=0](http://www.nytimes.com/2009/07/06/world/asia/06china.html?_r=0).

<sup>132</sup> Edward Wong, *China Locks Down Restive Region after Deadly Clashes*, N.Y. TIMES, July 7, 2009, at A1, available at <http://www.nytimes.com/2009/07/07/world/asia/07china.html?pagewanted=all>.

<sup>133</sup> *Feature: Urumqi Licks Its Wounds on Riot Anniversary*, PEOPLE’S DAILY (July 5, 2014, 3:22 PM), <http://english.peopledaily.com.cn/n/2014/0705/c90882-8751421.html>; Wong, *supra* note 131.

Uyghurs, who are mostly Muslim and speak Turkish, make up forty-six percent of Xinjiang's twenty-two million people.<sup>134</sup> However, they comprise just thirteen percent of Urumqi's 2.4 million people, and less than one percent of China's total citizenry; though, at ten million, they exceed the population of many countries, e.g., Tajikistan and Austria.<sup>135</sup> Han Chinese, on the other hand, constitute ninety-two percent of China's population, including thirty-nine percent of Xinjiang and seventy-three percent of the city of Urumqi.<sup>136</sup>

Uyghurs consistently invoke the universal right to self-determination, as well as the freedom of religion, freedom of expression, and freedom from discrimination to justify their protests of Chinese oppression.<sup>137</sup> SCO and China, on the other hand, cite the "Three Evils" doctrine and the principle of "Non-interference in Internal Affairs" to justify the oppressive measures employed by Chinese authorities.<sup>138</sup> Disturbingly, they make little attempt to distinguish between violent and peaceful dissidents.<sup>139</sup>

The riots in Urumqi illustrate Uyghur desperation born of long-standing and increasing Chinese repression. The territory of Xinjiang, which literally means "new borders" in Chinese, was officially annexed as a province by the Qing dynasty in the late nineteenth century.<sup>140</sup> In their 1931 draft constitution, Chinese Communist leaders promised the Uyghurs independence,<sup>141</sup> and even up until the end of World War II

<sup>134</sup> NATIONAL BUREAU OF STATISTICS OF CHINA, CHINA STATISTICAL YEARBOOK 2013, POPULATION AT YEAR-END BY REGION (2013), available at <http://www.stats.gov.cn/tjsj/ndsj/2013/html/Z0305E.xls>. In 1945, Xinjiang was 83% Uyghur and just 6.2% Han. By 1982, it was 46% Uyghur and 40% Han, roughly the same as today. Anthony Howell & C. Cindy Fan, *Migration and Inequality in Xinjiang: A Survey of Han and Uyghur Migrants in Urumqi*, 52 EURASIAN GEOGRAPHY AND ECONOMICS 119, 123 (2011).

<sup>135</sup> *Countries in the World (ranked by 2014 population)*, WORLDOMETERS, <http://www.worldometers.info/world-population/population-by-country/> (last visited Nov. 20, 2014).

<sup>136</sup> Howell & Fan, *supra* note 134 at 125; *Ethnic Groups (All of China)*, THE AMERICAN FORUM FOR GLOBAL EDUCATION, <http://www.globaled.org/curriculum/china/ethnic.htm> (last visited Nov. 20, 2014); Lisa Chiu, *Introduction to the Uyghur People*, ABOUT NEWS, <http://chineseculture.about.com/od/minoritiesinchina/a/Uyghurs.htm> (last visited Nov. 20, 2014).

<sup>137</sup> See Gardner Bovingdon, *Autonomy in Xinjiang: Han Nationalist Imperatives and Uyghur Discontent*, 11 POLICY STUDIES, 1, 12, 35, 48 (2004); Parameswaran Ponnudurai, *Uyghurs Push for Self-Determination*, RADIO FREE ASIA (May 10, 2011), <http://www.rfa.org/english/news/uyghur/uyghurs-05102011012120.html>; *Uyghurs Stage International Demonstrations over Human Rights Abuses*, WORLD UYGHUR CONGRESS (Oct. 1, 2014), <http://www.uyghurcongress.org/en/?p=23540>.

<sup>138</sup> A week after the violent crackdown in Urumqi, the SCO Secretary-General invoked the principle of "non-interference in internal affairs" in an official statement, part of which read, "SCO member states . . . believe whatever happens [in Xinjiang] is a solely internal affair of the PRC." *SCO Secretary-General issues statement in connection with events in Chinese city of Urumqi*, CENTRAL WEB PORTAL OF THE SHANGHAI COOPERATION ORGANIZATION (July 10, 2009), <http://infoshos.ru/en/?idn=4531>. SCO observers Pakistan, Turkey, and Belarus echoed the statement a week later. *Many Countries Say Xinjiang Riot China's Internal Affair*, People's Daily (July 18, 2009, 9:08 AM), <http://english.people.com.cn/90001/90776/90883/6703748.html>.

<sup>139</sup> See Jan Arno Hessbruegge, *The Shanghai Cooperation Organization: A Holy Alliance for Central Asia?*, THE FLETCHER SCHOOL ONLINE JOURNAL, SOUTHWEST ASIA AND ISLAMIC CIVILIZATION 1 (Spring 2004), <http://fletcher.tufts.edu/Al-Nakhlah/Archives/~media/Fletcher/Microsites/al%20Nakhlah/archives/pdfs/hessbruegge%202.pdf>.

<sup>140</sup> Xinjiang Uyghur Autonomous Region, CHINAFOLIO, <http://www.chinafolio.com/provinces/xinjiang-uyghur-autonomous-region/> (last visited Nov. 20, 2014).

<sup>141</sup> CHRISTIAN TYLER, WILD WEST CHINA: THE TAMING OF XINJIANG, 138 (2003).

Mao still favored self-determination.<sup>142</sup> By 1947, however, that policy had changed to “national regional autonomy.”<sup>143</sup>

Today, Xinjiang, which is China’s largest province in terms of both landmass and oil and gas reserves, is too valuable to part with.<sup>144</sup> As a result, Uyghurs have no political voice in Xinjiang’s future, and though they enjoy a plurality of its population, they possess relatively scant representation in positions of industry and government, which are dominated by Han Chinese.<sup>145</sup>

In addition to a lack of meaningful access to government, Uyghurs are subject to religiously, linguistically, culturally, and ethnically dilutive policies that collectively constitute not only discrimination but, arguably, constructive genocide. The legal definition of genocide includes the “intent to destroy, in whole or in part, a national, ethnical, racial, or religious group . . . [by] deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or part; [or] imposing measures intended to prevent births within the group.”<sup>146</sup> The following are only a few examples of Chinese attempts to do exactly that.

In September 2014, Chinese officials in Urumqi began offering rewards “to people who report the illegal production and sale of face-covering gowns and clothing that represent religious extremism.”<sup>147</sup>

In May 2014, following some sixty years of large-scale migration of Han Chinese into Xinjiang,<sup>148</sup> Chinese president Xi Jinping called for the relocation of Uyghurs to other parts of China for education and work, emphasizing the need for Chinese ethnic minorities to develop “correct views about the motherland,” and its greatness.<sup>149</sup> At the same time, Xi pushed for intensified Mandarin education for Turkish-speaking

---

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *China to Double Xinjiang Investment to Boost Economy*, BLOOMBERG NEWS (May 21, 2010, 1:34 AM), <http://www.bloomberg.com/news/2010-05-21/china-to-double-xinjiang-investment-to-boost-economy.html>.

<sup>145</sup> See EXECUTIVE COMMISSION ON CHINA, HAN CHINESE CONTINUE TO DOMINATE TOP LEADERSHIP POSITIONS IN XINJIANG (2005), available at <http://www.cecc.gov/publications/commission-analysis/han-chinese-continue-to-dominate-top-leadership-positions-in>. See also Edward Wong, *China Moves to Calm Restive Xinjiang Region*, N.Y. TIMES, May 30, 2014, at A9.

<sup>146</sup> *Genocide Convention*, *supra* note 49, at art. 2. Since the prohibition on genocide is *jus cogens*, no derogation from it is ever permitted by any country. As such, it does not matter that China has not ratified the Genocide Convention. *Jus Cogens Definition*, *supra* note 55.

<sup>147</sup> Gao Bo, *Urumqi Police to Reward Tip-offs on Terrorism*, CHINA DAILY (Sept. 10, 2014, 7:36 AM), [http://www.chinadaily.com.cn/china/2014-09/10/content\\_18570935.htm](http://www.chinadaily.com.cn/china/2014-09/10/content_18570935.htm). Rewards can exceed \$8,000, more than the average annual salary in Urumqi. *Average Wages in China*, CHINA BRIEFING (Nov. 19, 2013), <http://www.china-briefing.com/news/2013/11/19/average-wages-in-china-determining-minimum-and-maximum-social-insurance-contributions.html>.

<sup>148</sup> See Howell & Fan, *supra* note 134, at 119.

<sup>149</sup> Wong, *supra* note 145.

Uyghurs,<sup>150</sup> and the bestowal of cash, health care, and educational benefits on Han Chinese who intermarry with Uyghurs.<sup>151</sup>

In addition, China has stepped up its “Strike Hard” campaign, which relies on the “Three Evils” doctrine, employing closed-circuit cameras, regular identification checks, and even examinations of cellphone playlists to ferret out Uyghur extremists and terrorists.<sup>152</sup> China has encouraged fellow SCO members to follow suit.<sup>153</sup>

In August 2014, the Xinjiang city of Karamay banned those wearing long beards, headscarves, veils, jilbabs, or clothing with Muslim symbols from using public transportation.<sup>154</sup> In November, officials in Urumqi arrested several people for “illegal preaching” and other activities under religious extremism laws.<sup>155</sup> Kashgar’s mayor applauded the prison sentences, which ranged from five to sixteen years, saying religious extremism had “seriously affected people’s thoughts.”<sup>156</sup> Furthermore, during Ramadan, Chinese authorities forbid Muslim civil servants from fasting.<sup>157</sup> The list goes on. Such a patent denial of internal self-determination lends legal credence to Uyghur calls for independence.

Unsurprisingly, the Uyghur population has resisted these measures. At the end of Ramadan, the government-appointed imam of China’s largest mosque was stabbed to death.<sup>158</sup> Uyghur terrorism against symbols of government has escalated in parallel with China’s “Strike Hard” campaign. Such terrorist acts include an attack on a Xinjiang police station,<sup>159</sup> bomb and knife attacks at the Urumqi train station,<sup>160</sup> the stabbing to death of twenty-nine people by masked, knife-wielding

---

<sup>150</sup> Tania Branigan, *China’s Xi Warns of “Strike-First” Strategy After Militants Bomb Capital of Xinjiang*, THE GUARDIAN (May 1, 2014, 4:58 PM), <http://www.theguardian.com/world/2014/may/01/china-xi-jinping-extremists-bomb-muslim-Uyghur-xinjiang>.

<sup>151</sup> Edward Wong, *To Temper Unrest in Western China, Officials Offer Money for Intermarriage*, N.Y. TIMES, Sept. 2, 2014, at A11, available at <http://www.nytimes.com/2014/09/03/world/asia/to-temper-unrest-china-pushes-interethnic-marriage-between-han-and-minorities.html>. Xi referred to such marriages as “positive energy” that would help facilitate the “Chinese Dream.” *Id.*

<sup>152</sup> Ed Adamczyk, *China Clamps Down on Ethnic Uyghurs*, UPI (Aug. 5, 2014, 1:07 PM), [http://www.upi.com/Top\\_News/World-News/2014/08/05/China-clamps-down-on-ethnic-Uyghurs/8931407256471/](http://www.upi.com/Top_News/World-News/2014/08/05/China-clamps-down-on-ethnic-Uyghurs/8931407256471/).

<sup>153</sup> Michael Martina, *China Urges Central Asian Neighbors to Step Up Extremism Fight*, REUTERS (Sept. 12, 2014, 11:11 PM), <http://www.reuters.com/article/2014/09/13/us-china-xinjiang-idUSKBN0H802S20140913>.

<sup>154</sup> Michael Martine, *China Bans Beards, Veils from Xinjiang City’s Buses in Security Bid*, REUTERS (Aug. 6, 2014, 3:23 AM), <http://www.reuters.com/article/2014/08/06/us-china-xinjiang-idUSKBN0G60AA20140806>.

<sup>155</sup> Andrew Jacobs, *22 Imprisoned in Crackdown on Extremism in Xinjiang*, N.Y. TIMES, Sept. 2, 2014, A12, available at [http://www.nytimes.com/2014/11/12/world/asia/xinjiang-court-sentences-22-to-prison-for-religious-crimes.html?\\_r=1](http://www.nytimes.com/2014/11/12/world/asia/xinjiang-court-sentences-22-to-prison-for-religious-crimes.html?_r=1).

<sup>156</sup> *Id.*

<sup>157</sup> *China Bans Xinjiang Officials from Observing Ramadan Fast*, BBC (July 2, 2014, 8:37 AM), <http://www.bbc.com/news/world-asia-china-28123267>.

<sup>158</sup> Malcom Moore, *Imam of China’s Largest Mosque Killed*, THE TELEGRAPH (July 31, 2014, 5:20 AM), <http://www.telegraph.co.uk/news/worldnews/asia/china/11002042/Imam-of-Chinas-largest-mosque-killed.html>.

<sup>159</sup> Martina, *supra* note 154.

<sup>160</sup> Greg Botelho, *3 Killed, 79 Hurt in Blast, Knife Attack at China Train Station*, CNN (May 1, 2014, 12:14 AM), <http://www.cnn.com/2014/04/30/world/asia/china-xinjiang-explosion/>.

assailants at the Kunming train station,<sup>161</sup> and the bombing of a morning market in Urumqi.<sup>162</sup> Again, the list goes on.

It may be difficult to say whether the current Chinese oppression is the chicken or the egg. Regardless, such oppression does appear to galvanize the Uyghurs' separatist movement.<sup>163</sup> And, without a vote and without the freedoms of expression, association, peaceful assembly, religion, movement, privacy, as well as freedoms from ethnic discrimination and genocide, they have little left to lose.

### C. Kazakhstan's Refoulement of Ershidin Israil

In late September of 2009 Ershidin Israil, a 38-year-old geography teacher traveled four nights on foot to escape from his native Chinese province of Xinjiang to Almaty, Kazakhstan.<sup>164</sup> Days earlier, he and two other men had given an interview to Radio Free Asia about the Chinese government's crackdown on ethnic Uyghurs following the July protests in Urumqi.<sup>165</sup> Specifically, Israil had divulged details of the September 18 torture death of Shohret Tursun at the hands of Chinese authorities, who had been holding the young ethnic Uyghur and some forty other men since the July riots.<sup>166</sup>

The day after the interview, Chinese authorities detained the other two men on suspicion of "leaking state secrets," and sought to arrest Israil as well.<sup>167</sup> Israil, who years earlier served a six-year sentence for "acts of separatism," fled, fearing severe punishment.<sup>168</sup>

Once in Kazakhstan, Israil applied for asylum with Kazakh authorities and for refugee status with the UN High Commissioner for Refugees (UNHCR).<sup>169</sup> In March 2010, UNHCR granted his request and

<sup>161</sup> Jonathan Kaiman & Tania Branigan, *Kunming Knife Attack: Xinjiang Separatist Blamed for 'Chinese 9/11'*, THE GUARDIAN (Mar. 2, 2014, 3:09 PM), <http://www.theguardian.com/world/2014/mar/02/kunming-knife-attack-muslim-separatists-xinjiang-china>.

<sup>162</sup> *31 Killed, 94 Injured in Xinjiang Explosions*, XINHUA (May 22, 2014), [http://www.china.org.cn/china/2014-05/22/content\\_32458170.htm](http://www.china.org.cn/china/2014-05/22/content_32458170.htm).

<sup>163</sup> See RAPHAEL ISRAELI, *ISLAM IN CHINA: RELIGION, ETHNICITY, CULTURE, AND POLITICS* 48 (2002).

<sup>164</sup> Shohret Hoshur, *Kazakhstan Made Conflicting Accusations*, RADIO FREE ASIA (June 8, 2011), <http://www.rfa.org/english/news/uyghur/accusations-06082011171512.html>.

<sup>165</sup> Joshua Lipes, *Deported Uyghur Faces Terrorism Charges*, RADIO FREE ASIA (June 14, 2011), <http://www.rfa.org/english/news/uyghur/charges-06142011163646.html>.

<sup>166</sup> Shohret Hoshur, *Uyghur Repatriation Imminent*, RADIO FREE ASIA (May 27, 2011), <http://www.rfa.org/english/news/uyghur/repatriation-05262011192244.html>. See also Shohret Hoshur, *Police Enforced Family Burial*, RADIO FREE ASIA (Sept. 21, 2009), <http://www.rfa.org/english/news/uyghur/burial-09212009131445.html> (claiming that Chinese authorities reportedly ordered Tursun's family to bury his badly disfigured body in the early morning, surrounded their house with eight trucks of soldiers and two armored vehicles, and blocked off surrounding streets after the family demanded an investigation into how Tursun died).

<sup>167</sup> Shohret Hoshur, *Fabricated Evidence Used in Deportation*, RADIO FREE ASIA (June 15, 2011), <http://www.rfa.org/english/news/uyghur/evidence-06152011173211.html>.

<sup>168</sup> *Id.* (outlining China's "systematic targeting" of Uyghur and other ethnic journalists and their sources).

<sup>169</sup> Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Summary of Information, Including Individual Cases, Transmitted to Governments and Replies Received*, p. 240, Human Rights Council, U.N. Doc. A/HRC/16/52/Add.1 (Mar. 1, 2011) [hereinafter Special Rapporteur Summary], available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.52.Add.1\\_EFSONly.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.52.Add.1_EFSONly.pdf).

secured a resettlement offer from Sweden.<sup>170</sup> Days before Israil's April 1 departure date, however, Kazakh authorities received an extradition request from China on grounds of terrorism.<sup>171</sup> Kazakhstan denied Israil an exit visa, citing his appearance on an Interpol terrorism watch list, which had been arranged by China.<sup>172,173</sup>

On April 3, Kazakh authorities moved Israil into a "safe place."<sup>174</sup> Less than three months later they arrested him on terrorism charges, and over the next eleven months Kazakh courts denied his application for asylum five times.<sup>175</sup> On May 3, 2011, UNHCR revoked his refugee status, and on May 30, 2011, Israil was forcibly extradited to China as a "major terrorist suspect."<sup>176</sup>

The UNHCR refused to disclose its reasons for revoking Israil's refugee status, citing confidentiality. However, the World Uyghur Congress received information from a UNHCR contact who stated that Kazakh authorities had informed the UNHCR that Israil had been sent by Chinese authorities to spy on Almaty's Uyghur population, which numbers nearly a quarter-of-a-million.<sup>177</sup> To date, Israil's whereabouts are unknown. China's last statement came in October 2011 in response to an inquiry from the Office of the High Commissioner on Human Rights.<sup>178</sup> It stated that Israil "was extradited to China in strict observance by both parties of the extradition treaty between China and Kazakhstan. Mr. Ershidin has now fully confessed to having carried out violent illegal terrorist activities and his case is currently being further

---

<sup>170</sup> *Id.* at 239.

<sup>171</sup> *Id.* at 240.

<sup>172</sup> Hannah Beech, *China's Uyghur Problem*, Time (July 28, 2011), <http://world.time.com/2011/07/28/chinas-Uyghur-problem-one-mans-ordeal-echoes-the-plight-of-a-people/>.

<sup>173</sup> In a somewhat analogous episode, Russia placed Ukrainian politician and activist Dmitry Yarosh on Interpol's wanted list in July 2014 for "public incitement to terrorist and extremist activities involving the use of mass media." *Interpol Puts Ukrainian Ultranationalist Yarosh on Wanted List*, RT (July 25, 2014 12:42 PM), <http://rt.com/news/175564-ukraine-interpol-wanted-yarosh/>.

<sup>174</sup> *Special Rapporteur Summary*, *supra* at 169.

<sup>175</sup> Press Release, Amnesty International USA, Urgent Action UA 173/11, (June 17, 2011), available at <http://www.amnestyusa.org/actioncenter/actions/uaa17311.pdf>.

<sup>176</sup> *Id.* Beech, *supra* note 172.

<sup>177</sup> Hoshur, *supra* note 166. Israil's brother, Enver, who later relocated to Kazakhstan, learned from Kazakh authorities that they had received a picture of Israil from Chinese authorities in connection with the extradition request. *Id.* The photo showed Israil with a long beard and was said to have been taken at the time of Israil's 1999 trial for "acts of separatism." *Id.* Enver said his brother had never worn a beard and that Chinese defendants are prohibited from wearing a beard at their trial. *Id.* Another purportedly fabricated court document used to brand Israil with terrorism implicated him with alleged terrorist Repket Abdukerim. *Id.* However, Abdukerim is not known to be involved with any pro-Uyghur activities or organizations. *Id.* China claimed Abdukerim trained in Afghanistan as a member of the Taliban, but did not know his whereabouts. *Id.* Radio Free Asia, however, was able to locate Abdukerim, who now works in Turkey. *Id.* In an interview, Abdukerim said he knew Israil because they grew up in the same town, but that he "was just a schoolteacher." *Id.* He denied he had ever been to Afghanistan. His relatives said he had worked in business and for the Chinese government, but left Xinjiang in 2006. *Id.* According to Enver Israil, Abdukerim was wanted by Chinese authorities but was fortunate enough to reach Turkey on a business visa. *Id.*

<sup>178</sup> The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva, Letter GJ/42/2011 dated Oct. 11, 2011 addressed to the Office of High Commissioner for Human Rights, U.N. Doc. HRC/NONE/2011/174, available at [https://spdb.ohchr.org/hrdb/19th/China\\_11.10.11\\_%2816.2011%29\\_translation.pdf](https://spdb.ohchr.org/hrdb/19th/China_11.10.11_%2816.2011%29_translation.pdf).

adjudicated.”<sup>179, 180</sup> Article 113 of the Chinese Criminal Code stipulates that crimes that endanger national security are punishable by death.<sup>181</sup>

Shortly after Israil’s extradition, Kazakhstan extradited 28 Muslim men to Uzbekistan, which the men had left more than a year before due to religious persecution.<sup>182</sup> Their extraditions, along with Israil’s, took place just days before Kazakhstan hosted the SCO’s ten-year “Jubilee Summit” in Astana.<sup>183</sup>

The pressured extradition of those fleeing religious persecution is not simply an unhappy side effect of SCO policies; it is an integral part of the organization’s “Concept of Cooperation.”

Kazakhstan’s extraditions in the run-up to the SCO summit demonstrate SCO members’ intent to transform the international order via SCO policies and principles. At the summit, the organization released a declaration that stated as much, reading in part: “The member states underline . . . the aim of formulating a comprehensive approach to the issue of reforming the U.N. and its Security Council . . . .”<sup>184</sup>

The extraditions even violated Kazakhstan’s own law, which had been amended just six months earlier to read: “Extradition is not allowed . . . [if] there is a reason to believe that a person may be subjected to torture in the requesting state.”<sup>185</sup> Such wording mirrors Article 3 of the Convention against Torture, which Kazakhstan ratified in 1998.<sup>186</sup>

Two weeks after Kazakhstan’s extradition of Israil to China, the China Development Bank agreed to extend a \$1.5 billion loan to Kazakh mining behemoth Kazkhmys.<sup>187</sup> The timing of the two events was perhaps more than coincidental. China wanted Israil, and Kazakhstan wanted the loan. China is Kazakhstan’s largest trade partner,<sup>188</sup> and the

<sup>179</sup> *Id.*

<sup>180</sup> See LeighAnn McChesney, *Institutionalizing Torture: The Case of Hospitals and Prisons in China*, HUMAN RIGHTS IN CHINA 106 (Fall 2009), available at <http://www.du.edu/korbel/hrhw/researchdigest/china/China.pdf> (stating that torture-induced confessions, while officially illegal and slowly declining, “are still pervasive”).

<sup>181</sup> CRIMINAL LAW OF THE PEOPLE’S REPUBLIC OF CHINA art. 113, available at <http://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm>.

<sup>182</sup> Like Israil, seventeen of the twenty-eight Muslim men were initially granted refugee status by UNHCR only to have it withdrawn following their arrest and detention. *Kazakhstan: Don’t Extradite Uzbeks to Torture*, HUMAN RIGHTS WATCH (June 7, 2011), <http://www.hrw.org/news/2011/06/07/kazakhstan-don-t-extradite-uzbeks-torture>. See Stephanie Nebehay, *Torture Rife in Uzbekistan U.N. Watchdog Says*, REUTERS (Nov. 22, 2013, 8:04 AM), <http://www.reuters.com/article/2013/11/22/us-uzbekistan-torture-idUSBRE9AL0K020131122> (reporting on the 2013 findings of the UN Committee against Torture regarding torture in Uzbekistan).

<sup>183</sup> Lipes, *supra* note 165.

<sup>184</sup> Declaration of the 10th Anniversary of the Shanghai Cooperation Organization (June 15, 2005), available at <http://www.sectsc.org/EN123/show.asp?id=294>.

<sup>185</sup> CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF KAZAKHSTAN art 532.1.5 (as amended January 18, 2011), available at [http://adilet.zan.kz/eng/docs/Z970000206\\_](http://adilet.zan.kz/eng/docs/Z970000206_).

<sup>186</sup> Convention against Torture, *supra* note 6.

<sup>187</sup> Olga Orininskaya, *Kazakhmys \$1.5bn Chinese Loan for Major Copper Development*, MINEWEB (June 13, 2011), <http://www.bbc.co.uk/news/business-13745786>.

<sup>188</sup> *Interview: SCO Economic Cooperation has Huge Potential: Chinese Official*, XINHUA (Sept. 13, 2013, 10:16 PM), [http://news.xinhuanet.com/english/indepth/2013-09/13/c\\_132719394.htm](http://news.xinhuanet.com/english/indepth/2013-09/13/c_132719394.htm).



Kazakhstan-China oil pipeline carries up to twenty million metric tons per year.<sup>189</sup>

This case typifies the way in which the application of the “Three Evils” and the “Concept of Cooperation” can lead to violations of fundamental human rights that SCO members have previously endorsed via ratification of legally binding conventions. Such rights, which are addressed in Part III of this Comment, include: association with others; freedom of thought, conscience, and religion; the holding of opinions without interference; expression of information and ideas of all kinds through any media; freedom from arbitrary or unlawful interference with one’s privacy and family; the presumption of innocence for those charged with crimes; *non-refoulement*; a fair and public hearing; adequate time and facilities for preparation of defense and communication with counsel; freedom from forced confession of guilt; appeal of convictions and sentences; and effective remedy for violated rights.

## V. CONCLUSION

All too often, the ratification of human rights treaties is an easy choice for authoritarian regimes. For one thing, it yields praise and reduces pressure from other states and organizations. For another, failure to comply with such treaties, even those concerning the most fundamental of human rights, seldom results in penalties.<sup>190</sup> Given this, it is no surprise that the ratification of human rights treaties by repressive regimes “is associated with a worsening of human rights.”<sup>191</sup>

This evidence, along with the proliferation of terrorism and national security concerns, highlights the increasingly precarious position of human rights within the international legal system. Now more than ever, the formulation and execution of security policies requires careful consideration of human rights. Yet, SCO’s “Three Evils” doctrine, “Concept of Cooperation,” secret blacklist and information-sharing practices, and adherence to the principle of “non-interference in internal affairs” subvert, and even supplant, human rights conventions, customary law, general principles, and expert opinions which have taken hold as international law only through many painful lessons and decades of hard work.

Thus, SCO’s expanding membership portends a transformation of the international legal system from one in which universal human rights play a fundamental, guiding role to one in which authoritarianism is the controlling principle.

---

<sup>189</sup> *Kazakhstan-China Oil Pipeline Could Start Operating at Its Full Capacity by 2014*, ENERGY GLOBAL (Sept. 11, 2012), available at [http://www.energyglobal.com/news/pipelines/articles/Kazakhstan\\_to\\_China\\_oil\\_pipeline\\_could\\_start\\_operating\\_at\\_its\\_full\\_capacity\\_by\\_2014.aspx#.VF7hx2x0yM8](http://www.energyglobal.com/news/pipelines/articles/Kazakhstan_to_China_oil_pipeline_could_start_operating_at_its_full_capacity_by_2014.aspx#.VF7hx2x0yM8).

<sup>190</sup> Oona Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935, 2001 (2001).

<sup>191</sup> Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?*, 49 J. CONFLICT RESOLUTION 925, 941 (2005).