

# Assessment of the Counter-Terrorism Committee: Analysis of the effectiveness of the CTC and the International Regime on Terrorism

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***Abstract:** This piece analyses the CTC from a structural point of view. It attempts to show that the CTC is bound by the state-IGO dynamic, and is thus bound its makeup of the Security Council members. The analysis further examines whether the CTC has been, or can be in the future, an effective tool in the fight against terrorism, based on its structural design. The paper also analyses the dynamic between counter-terrorism and human rights, and what the CTC has done and what it can do to ensure the protection of human rights in assessing counter-terrorism operations. The paper comes to the conclusion that, because the CTC is bound by the member states of the Security Council, political posturing will more often than not supersede efforts to curb terrorism. In fact, some of the members of the CTC are the worst violators of human rights, such as the U.S., Russia, and China, when it comes to counter-terrorism operations.*

## Counter-Terrorism Committee

### Introduction

Terrorism has plagued mankind since its inception, and has long been a tool used by the weak against the strong. However, it was not until the terrorist attacks against the United States (US) on September 11<sup>th</sup>, 2001 that terrorism itself was brought to the forefront of the international stage. As a direct result of the attacks against the US, the United Nations (UN) created the Counter-Terrorism Committee (CTC) through Resolution 1373. The CTC attempts created “to bolster the ability of United Nations Member States to prevent terrorist acts both within their borders and across regions.”<sup>1</sup> In essence, the Counter-Terrorism Committee was designed to act as a means to facilitate cooperation between UN member states through a standardization of counter-terrorism strategies. Such standardization is found in Resolution 1373, which requires all UN member states to implement the following practices:

Criminalize the financing of terrorism, freeze without delay any funds related to persons involved in acts of terrorism, deny all forms of financial support for terrorist groups, suppress the provision of safe haven, sustenance or support for terrorists, share information with other governments on any groups practicing or planning terrorist acts, cooperate with other governments in the investigation, detection, arrest, extradition and prosecution of those involved in such acts, and criminalize active and passive assistance for terrorism in domestic law and bring violators to justice.<sup>2</sup>

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<sup>1</sup>“Security Council Counter-Terrorism Committee Home,” last modified March 26, 2014, <http://www.un.org/en/sc/ctc/>

<sup>2</sup>Counter-Terrorism Committee “Home.”

In order to achieve this goal, the CTC uses country visits, technical assistance, country reports, “best practices,” and special meetings to help UN member states achieve the implementation of the resolution, as stated above. Country visits are requested by the CTC and used to monitor and gather data on the progress of implementation efforts as well as to assess the possible needs of member states. Technical assistance helps states gain access to available technology and finances to combat terrorism. Country reports are intensive and thorough analyses of member states’ counter-terrorism efforts; the CTC has chosen not to make these reports public following 2006. “Best practices” encourage states to apply the best known practices, standards, and codes that have been provided through cooperation between states and facilitated by the CTC. Special meetings operates as a means to develop closer ties between member states and relevant international, regional, and sub-regional organizations to further cooperation and eliminate duplication.<sup>3</sup>

However, as is all too common in the international community, cooperation is difficult and often times, states do not follow international norms. Although the Counter-Terrorism Committee has created a more centralized and proactive international counter-terrorism strategy, the CTC has not succeeded in its attempts to form a more cohesive international regime on terrorism, or in its efforts to improve counter-terrorism activities among UN member states. This dilemma for the CTC is a product of a phenomenon known as the principal-agent problem.

The principal-agent problem pertains to when a principal (an organization) and an agent (an individual) cannot reach a state of good cooperation known as “optimal contracting.”<sup>4</sup> This problem can manifest in three ways: risk sharing, moral hazard, and adverse selection. The first, risk sharing, occurs when both parties agree to risk sharing the information between them. The risk, in this case, is that the principal will have leverage over the agent, while the agent has information on the principal and can, potentially, share the information with an outside source. The second, moral hazard, is also known as hidden action. This instance is when the agent hides its actions from the principal. In such a situation, the principal will always get the second best result. The third case, adverse selection, is when the agents themselves are hidden to the principal.<sup>5</sup>

With the principal-agent problem in mind, the moral hazard state best suits the relationship between International Governmental Organizations (IGOs) and individual state actors. The agent, or each state in this case, can hide its actions from the principal, the Counter-Terrorism Committee. Hidden actions will be further explored, but the essence of the moral hazard is that states are the main actors that drive IGOs. Such a dynamic is evident by exploring the counter-terrorism strategies of the United States, Russia, and China and the response, or lack thereof, of the CTC. As a result of the principal-agent problem, the Counter-Terrorism Committee cannot fully accomplish its stated goals. Systemic changes are necessary to create a cohesive international regime on terrorism, and the Counter-Terrorism Committee in its current form can only do as much as states are willing to allow it to do.

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<sup>3</sup>Counter-Terrorism Committee “Home.”

<sup>4</sup>“Contract Theory in Continuous Time Models” Jakša Cvitanović, Jianfeng Zhang, 1

<sup>5</sup>Ibid.

## Organization

The analysis is broken down into three sections. First, there will be a discussion of the international regime on terrorism before September 11<sup>th</sup>, in order to gain historical context. The context serves as a basis for comparison between the regime before and after September 11<sup>th</sup>. Second, an examination of terrorism and its meaning is necessary to provide a foundation. The discussion focuses on the relationship between terrorism and human rights, and the dangers of counter-terrorism. Third is the creation and structure of the Counter-Terrorism Committee and what it can and cannot do, so as to examine how the principal-agent problem affects the workings of the CTC. Finally, the analysis moves to the case studies of the US, Russia, and China for two purposes. First, these states are arguably the most powerful members of the UN, as all three sit permanently on the Security Council (and by extension the CTC itself). Second, these states have also been notorious violators of human rights in their counter-terrorism efforts despite the Counter-Terrorism Committee's attempt to safeguard human rights, further serving to enhance the principal-agent problem.

## What is "Terrorism?"

To begin the analysis, a discussion of terrorism itself is necessary since there is no official definition of terrorism. Paul Hoffman, then the chair of the International Executive Committee of Amnesty International, perfectly captures the dilemma; "one man's terrorist is another man's freedom fighter,"<sup>6</sup> a theme that will be explored throughout the analysis. However, in order to have something by which to gauge violent acts, the UN General Assembly has operated under the following definition of terrorism since 1994:

Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.<sup>7</sup>

Another useful definition of terrorism for the purposes of this paper is provided by Amos Guiora in his book *Fundamentals of Counterterrorism*, where he states that terrorism is the killing, injuring, or targeting of innocent civilians by those seeking to advance a political or social cause.<sup>8</sup>

However, the problem with defining terrorism is that many states view terrorism from different perspectives. For example, many western governments have not recognized Chechen terror groups in Russia as terror groups. Steven Pifer, then the deputy assistant secretary of state for European and Eurasian affairs, stated that the US did not "...share the Russian Government assessment that equates the separatist movement with terrorism. While we condemn all terrorist attacks...we do not believe that Russia can address the conflict in Chechnya simply as a counter-terrorist operation."<sup>9</sup> Also, the US State Department has not officially recognized any Chechen

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<sup>6</sup>Paul Hoffman. "Human Rights and Terrorism," *Human Rights Quarterly*, 26 (2004): 936.  
<http://www.jstor.org/stable/20069768>.

<sup>7</sup>United Nations. 1994. General Assembly. A/Res/49/60. December 9.  
<http://www.un.org/documents/ga/res/49/a49r060.htm>

<sup>8</sup>Amos Guiora, *Fundamentals of Counterterrorism* (New York: Aspen Publishers, 2008), 7

<sup>9</sup>James Hughes, "The Chechnya Conflict: Freedom Fighters or Terrorists?" *Demokratizatsiya*, 15 (2007): 299.  
*Academic Search Premier*, EBSCOhost

separatist groups as terrorist groups.<sup>10</sup> In response, Russian president Vladimir Putin invited Hamas and Hezbollah, groups recognized as terrorist organizations by the West, to the Kremlin in Moscow, demonstrating that Russia does not share the West's assessment of the two groups.<sup>11</sup> The example above illustrates the issue in identifying and defining terrorism. The UN definition is broad so as to create consensus among UN member states. Therefore, how does one determine the difference between an act intended "...to provoke a state of terror in the general public" from an act intended to fight against an oppressive government?

One reason that defining terrorism is difficult is that such definitions appear to be purely political. For example, Virginia Held argues that governments usually define "terrorism" as a tool used by those who wish to change policies or political systems. Held's government definition appears in sync with the UN definition above, and indeed she notes that international law tends to agree. However, Held notes that such a definition is faulty; she explains that the military government of Argentina causing thousands of opponents to "disappear" to create fear and disunity among political opposition is an example of state terrorism.<sup>12</sup> The example provided above of the West and Russia disagreeing on recognition of terror organizations also suggests that terrorism is defined for political purposes.

Held also notes that Guiora's definition, by nature, does not classify the attacks against the US marine barracks in Lebanon in 1983 nor the attack on the USS Cole in 2000 as terrorism as these attacks were against armed forces. Yet these two attacks are routine examples of terrorism.<sup>13</sup> Furthermore, Held explains that if the targeting of innocent civilians is the only defining characteristic of terrorism, then the bombings of Hiroshima, Nagasaki, and other bombings targeting mainly civilian populations should be considered terrorism. Held's argument is where the UN definition of terrorism becomes useful, as it is easy to interpret "a group of persons or particular persons," as armed forces. The only issue with the UN definition in Held's argument is the phrase "criminal acts." Examples provided above show moments of state terrorism, but since states are sovereign entities, in what way could those acts be construed as criminal? This instance demonstrates where the Counter-Terrorism Committee needs to be willing to create new enforcement mechanisms for harsher penalties on delinquent states, in accordance with international law and the regime of terrorism, to engage and properly punish governments that commit acts of state terrorism.

### **Terrorism, Counter-Terrorism, and Human Rights**

Terrorism is a natural antagonist to human rights, democracy, and the rule of law. It is the duty of states to protect its citizens from these acts of terrorism that infringe upon human rights. Specifically, states have an obligation to protect citizens within their jurisdiction and their rights to life and security.<sup>14</sup> As an example of the threat terrorism poses to human rights, the Center for Strategic and International Studies published data regarding violence in Chechnya. According to the data, there were 1,100 incidents of violence and over 900 deaths in 2009.<sup>15</sup>

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<sup>10</sup>"Foreign Terrorist Organizations," last modified April 10, 2014.

<http://www.state.gov/j/ct/rls/other/des/123085.htm>

<sup>11</sup>Hughes, "The Chechnya Conflict: Freedom Fighters or Terrorists?" 299

<sup>12</sup>Virginia Held, "Terrorism and War," *The Journal of Ethics*, 8 (2004): 62-3. <http://www.jstor.org/stable/25115781>.

<sup>13</sup>Held, "Terrorism and War," 64

<sup>14</sup>Office of the United Nations High Commissioner for Human Rights. *Human Rights, Terrorism, and Counter-Terrorism*. Fact Sheet 32. October 20, 2013, 7-8. <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>

<sup>15</sup>"Violence in the North Caucasus," last modified on March 30, 2010. <http://on.cfr.org/1iFJHIK>

Although counter-terrorism is designed to prevent terrorism and protect the public from terrorist attacks (and by extension protect human rights), these efforts can in fact exacerbate terrorism and create bigger violations of human rights. As Held notes, governments justify counter-terror strategies as having “moral clarity,” or the moral high ground; governments tend to take a hard line view when combating terrorism. That hard line view can lead to a disregard for collateral damage. For example, Held notes that Reagan’s War on Terror in Latin America in the 1980s killed over 200,000 civilians and displaced millions but is not considered terrorism because they did not specifically target civilians.<sup>16</sup> The US also faces heavy criticism for its drone program, with a strike on December 13<sup>th</sup>, 2013 in Yemen killing 13 unconfirmed militants in what appeared to be a wedding convoy.<sup>17</sup> A recent attack on a Doctors Without Borders’ hospital in 2015 that killed 30 staff members, which will be further analyzed in a later section.

Counter-terrorism and human rights violations will be expanded upon in the case studies of the US, Russia, and China, but it is necessary to discuss them in connection with terrorism and human rights. Paul Hoffman argued that the course of the “war on terror” threatens to undermine the international human rights norms built since World War II. Hoffman argues that the way in which the war is waged threatens human security and the rights listed in the Universal Declaration of Human Rights. He actually argues that such destruction through counter-terror efforts poses a greater threat to human rights than any terrorist bombings, and that a failure to uphold universal human rights also undermines international cooperation.<sup>18</sup>

In order to solidify the international response to the September 11<sup>th</sup> attacks, one of the main objectives of the Counter-Terrorism Committee was to establish a legal framework by which counter-terror operations could be conducted while respecting human rights.<sup>19</sup> However, as seen by the US’ treatment of prisoners in Abu Ghraib and Guantanamo Bay, and the treatment of the Uyghurs by the Chinese government as terrorists, the more powerful countries have taken great liberties with human rights in counter-terror operations. Russia as well has skirted such rules; FSB agents have been seen carrying out counter-terror operations in Riazan that were very similar to the apartment bombings in September, 1999 which were blamed on Chechen terror groups, causing the Second Chechen War.<sup>20</sup>

### **The International Terrorism Regime**

As stated above, terrorism is difficult to define because of differing perspectives. The international terrorism regime before September 11<sup>th</sup> further supports the vague nature of terrorism. The regime consisted of twelve treaties, mainly concerned with protecting the rights of citizens aboard air and sea craft. These treaties made it illegal for the hijacking of or violent acts aboard such vessels. It is interesting to note that not one of these twelve treaties made reference to “terrorism” specifically; rather, they referred to “unlawful acts.”<sup>21</sup> Member states, for the most part, chose to deal with terrorism as national and local policies rather than involving

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<sup>16</sup>Held, “Terrorism and War,” 63

<sup>17</sup>Ahmed Al-Haj. “Officials: US drone strike kills 13 in Yemen wedding convoy.” *NBC News* December 12, 2013, accessed December 13, 2013. <http://nbcnews.to/1pteveW>

<sup>18</sup>Hoffman. “Human Rights and Terrorism,” 933

<sup>19</sup>OHCHR, *Human Rights, Terrorism, and Counter-Terrorism*, 19

<sup>20</sup>Hughes, “The Chechnya Conflict: Freedom Fighters or Terrorists?” 299

<sup>21</sup>Counter-Terrorism Committee “Laws”

the UN. In fact, the UN Charter has no mention of terrorism despite the centuries-long existence of terrorism in human history.<sup>22</sup>

The main purpose of the twelve treaties was not to combat terrorism per se, but rather to protect citizens in situations without specific jurisdiction. As an example, one could imagine that a German plane is flying over the Atlantic Ocean. The plane is piloted by a Frenchman, and its passengers are comprised of Spanish, English, and Americans. Who would have jurisdiction should a criminal act occur aboard the plane? For that matter, how could one classify any criminal act? Under whose laws would the act be interpreted? The treaties were created specifically to condemn and make air and sea craft fall under standardized international norms and jurisdiction.<sup>23</sup>

However, these treaties received low party rates among UN member states.<sup>24</sup> Perhaps the reason for the relative lack of concern regarding terrorism is because the US is not nearly as affected by terrorism as is Europe. For example, incidents of terrorism in the US totaled 2,802 since 1970,<sup>25</sup> whereas incidents of terrorism in Europe totaled 16,006 during the same time period.<sup>26</sup> While the US saw violence relating to its civil rights movement, those violent acts pale in comparison to the number of incidents in Europe during the same time period. Europe dealt with roughly five major terrorist groups in five different countries: the IRA in the UK, the ETA in Spain, Algerian insurgents in France, the Red Faction Army in Germany, and the Red Brigades in Italy.<sup>27</sup> In 1979, Europe saw a climax of just over 1,000 incidents of terrorism, while the US saw fewer than 80 incidents in the same year.<sup>28</sup>

Then everything changed when the terrorists attacked on September 11<sup>th</sup>, 2001. On that day, the unthinkable happened. The US was attacked on its own soil, resulting in the deaths of thousands of innocent civilians and the creation of the Counter-Terrorism Committee. As it was created through a Security Council resolution, the CTC's goals, as laid out in the introduction, became binding international law. The CTC also calls on UN member states to become party to the treaties of the old international regime. Since the creation of the CTC, four new treaties have joined the international regime; rather than focus on creating jurisdiction for air and sea craft travel, these new treaties have focused on nuclear and environmental terrorism. For the first time, such treaties used the term "terrorism" rather than "unlawful acts."<sup>29</sup>

The Counter-Terrorism Committee ushered in a new age of the international terrorism regime. Before its creation, only two of the thirteen old regime Security Council Resolutions dealt with terrorism in general terms. Since the creation of the CTC, eleven of twenty Security Council Resolutions have dealt with terrorism in general terms. Such data suggests that the attacks on September 11<sup>th</sup> and the creation of the CTC have led to a more centralized,

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<sup>22</sup>Hilde Haaland Kramer and Steve Yetiv. "The UN Security Council's Response to Terrorism: Before and After September 11, 2001." *Political Science Quarterly*, 122 (2007): 411-2. <http://www.jstor.org/stable/20202886>

<sup>23</sup>Counter-Terrorism Committee "Laws"

<sup>24</sup>Ibid.

<sup>25</sup>START. "Global Terrorism Database, Incidents of Terrorism in the United States." 2011 [http://www.start.umd.edu/start/data\\_collections/tops/](http://www.start.umd.edu/start/data_collections/tops/)

<sup>26</sup>Ibid.

<sup>27</sup>START. "Terrorist Organizational Profiles." Last modified March 31, 2008.

[http://www.start.umd.edu/start/data\\_collections/tops/](http://www.start.umd.edu/start/data_collections/tops/)

<sup>28</sup>Ibid.

<sup>29</sup>Counter-Terrorism Committee "Laws"

preventative counter-terrorism effort by the UN, as opposed to the more ad-hoc, reactionary counter-terrorism effort of the old regime.<sup>30</sup>

### **The Counter-Terrorism Committee - Function, Structure, and the Principal-Agent Problem**

The Counter-Terrorism Committee is a committee that functions as an arm of the Security Council. It was created by the UN Security Council to monitor the implementation of Resolution 1373, calling on states to implement the laws stated in the introduction.<sup>31</sup> It is comprised of all 15 members of the Security Council, a design that will be explored further when discussing the principal-agent problem. It should be noted that although the Counter-Terrorism Committee and Security Council share their members, they are separate groups. The CTC is an individual organization within the UN which is solely focused on the improvement of counter-terrorism practices and the observance of human rights. The Security Council is the governing body of the UN and creates international law through binding Resolutions. It is very important to remember that although these two bodies share members, they operate on two very different levels within the hierarchy of the UN. Along with the laws stated in the introduction, the CTC follows the UN Global Counter-Terrorism Strategy, created in 2006. This strategy calls for states to tackle conditions that spread terrorism, prevent and combat terrorism, build and help other countries and the UN to develop means to combat terrorism, and ensure the respect of human rights and the rule of law.<sup>32</sup>

As mentioned in the introduction, the Counter-Terrorism Committee serves three purposes. First, the CTC is meant to strengthen the counter-terror capacity of UN member states. Second, the CTC delivers technical assistance to member states trying to adopt the mandates set out by Resolution 1373 as well as further cooperation with international, regional, and sub regional organizations. Third, the CTC calls upon member states to report their implementation efforts to the CTC.<sup>33</sup> To help the CTC achieve these purposes, in 2004 the Security Council passed Resolution 1535, establishing the Counter-Terrorism Committee Executive Directorate (CTED).<sup>34</sup>

The CTED functions as the executive arm of the Counter-Terrorism Committee. Its staff is comprised of legal experts who analyze state-submitted reports to the CTC by examining legislation, border and customs control, refugee and migration law, law enforcement mechanisms, and other domestic policies relating to the implementation of Resolution 1373. The CTED is split into two sections: an Assessment and Technical Assistance Office (ATAO) and an Administrative and Information Office (AIO). The ATAO is further split into three geographical subgroups, allowing experts to specialize in specific regions as well as to promote cooperation between regional and sub regional organizations and UN member states.<sup>35</sup> The CTED, along with the CTC, publishes reports on the responses by UN member states to the implementation of Resolution 1624, a resolution that built on Resolution 1535 and emphasized the need for cooperation.

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<sup>30</sup>Kramer and Yetiv, "The UN Security Council's Response to Terrorism," 420.

<sup>31</sup>Counter-Terrorism Committee "About Us"

<sup>32</sup>Counter-Terrorism Committee, "UN Global Counter-Terrorism Strategy."

<sup>33</sup>Kramer and Yetiv, "The UN Security Council's Response to Terrorism." 414

<sup>34</sup>Counter-Terrorism Committee "About Us"

<sup>35</sup>Ibid.

Much like the discussion regarding the vague nature of terrorism, the counter-terrorism goals and strategies disseminated by the UN have been vague in order to create widespread consensus. However, such vague language regarding both terrorism and counter-terrorism can lead to interpretations that suit political agendas. Again, “one man’s terrorist is another man’s freedom fighter” becomes relevant. As Held notes and as previously discussed, governments are capable of state terrorism, but justify such actions by claiming “moral high ground.” To revisit Russia and Chechnya, the Russian government views Chechens as terror groups, while Chechens view the Russian government as a terrorist organization due to oppression. Western governments support the notion that Chechen groups are rebels rather than terrorists, while Russia condemns western intervention and is friendly with western-recognized terrorist organizations.<sup>36</sup>

Hilde Haaland Kramer and Steve Yetiv argue that the Counter-Terrorism Committee has led to greater improvement by the UN in the fight against global terrorism.<sup>37</sup> They note that the Security Council used sanctions against terrorism three times in the 1990s, but they also note that the US was the driving force behind such actions. The anecdote above brings the analysis to the principal-agent problem. As asserted earlier, states are the main actors on the international stage, and that IGOs can only do what states are willing to let them do. In accordance with the principal-agent problem, the agent has the information that allows it to act, while the principal can do nothing but follow the agent since it does not have all of the information necessary to act on its own.

As the Counter-Terrorism Committee is comprised of all fifteen members of the Security Council, it is subject to the individual political agendas of the fifteen member states, especially the permanent five: France, China, Russia, the United Kingdom, and the United States. The US has led the moral crusade against terrorism since the attacks on September 11<sup>th</sup>. Interestingly, the Security Council has not used sanctions against terror groups since September 11<sup>th</sup> and the US deployment in the “war on terror,”<sup>38</sup> suggesting that the Security Council and the CTC are in fact subject to the interests of its individual and powerful members, again showing the principal-agent problem. The fact that the Security Council was unable to stop the US from unilaterally invading Iraq is further evidence to such an argument.

As previously mentioned, the Counter-Terrorism Committee has methods of helping member states implement Resolution 1373. It is the opinion of this paper that for an organization meant to further cooperation and facilitate cohesive counter-terrorism strategies, the decision by the CTC in 2006 to no longer publicly disclose country reports is baffling.<sup>39</sup> For an organization that prides itself on cooperation and transparency, the lack of country reporting is staggering and further suggests the powerful states are guiding the policy direction of the CTC. The CTED also publishes country reports, but since Resolution 1624 was enacted in 2005, member states have either yet to publish a report, or have only published one report; most of those reports were published in 2006, with only Cuba, Serbia, Uruguay, and Yemen publishing at least one follow-up report.<sup>40</sup> Such actions are excellent examples of the principal-agent problem. The agent is able to hide its actions from the principal, while the principal remains powerless without access to the agent’s information.

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<sup>36</sup>Hughes, “The Chechnya Conflict: Freedom Fighters or Terrorists?” 299

<sup>37</sup>Kramer and Yetiv, “The UN Security Council’s Response to Terrorism.” 410

<sup>38</sup>Kramer and Yetiv, “The UN Security Council’s Response to Terrorism.” 421

<sup>39</sup>Counter-Terrorism Committee, “Country Reports”

<sup>40</sup>Counter-Terrorism Committee. “Country reports,” last modified on November 8, 2012, accessed on December 20, 2015. <http://www.un.org/en/sc/ctc/resources/1624.html>



In May 2013, the CTED proposed a revised method for assessing implementation efforts by UN member states. The revised method is comprised of two assessment tools: Overview of Implementation Assessment (OIA), and Detailed Implementation Survey (DIS). These two tools serve as a better way to assess implementation of Resolutions 1373 and 1624. The OIA is a general assessment of the efforts made by UN member states in their attempts to implement and make domestic law concurrent with the previously mentioned Resolutions. It highlights progress and shortfalls, while giving policy recommendations and assesses technical assistance needs. The DIS is a much more detailed document; it asks five specific, closed questions designed to demonstrate how UN member states intend to implement the Resolutions into domestic law. Once these reports are compiled, they are sent to the member states for their use.<sup>41</sup>

The CTED will keep a running list of all member states, the dates on which the documents were sent to the member state, and the date on which a response from the member state was received. The CTED will also keep a list of non-reporting states, updating the list every six months. The Counter-Terrorism Committee then can invite the permanent representative of a non-reporting state to a meeting, prepare a reminder or follow-up letter, or defer the response deadline.<sup>42</sup> Again, we see how relatively weak the CTC is regarding country reports and holding states accountable. What the CTC can do to punish states that do not follow the revised method is no different than a wag of the finger or a scolding. The Counter-Terrorism Committee by itself is powerless to bring those out of line with implementation strategies back into line. As previously discussed, the CTC relies heavily on the Security Council for its binding Resolutions, and powerful member states to guide its direction, often for political purposes. The CTC, as a standalone agency, cannot achieve its desired goals due to its lack of enforcement mechanisms and the vagueness that plagues the task of defining terrorism.

In sum, the principle-agent problem is ongoing. The Counter-Terrorism Committee does not have all of the information it needs, as the agents are not willing to share their information, as show in the above paragraph. Therefore, the CTC cannot properly enforce Resolutions 1373 and 1624, and are thus unable to act when infringements occur. As shown, many agents are unwilling to share their hidden information with the principal, and continue to hold the power to drive policy and actions as a result.

## Case Studies

The following section will analyze the counter-terrorism strategies, and the human rights violations, of three powerful United Nations Security Council states (US, Russia, China) to gain a better understanding as to why the Counter-Terrorism Committee is largely ineffective in enforcement and why it is subject to the whims of powerful states. The US analysis will discuss the US policy in the Middle East, specifically discussing Abu Ghraib as well as the US' extensive use of torture and drone strikes. Russian analysis will discuss Russia's strategy against Chechnya and how it uses state terrorism to combat Chechen terrorism, exacerbating the problems in the North Caucasus. Finally, Chinese analysis will examine the Chinese government's fight against Uyghur terrorists, most notably against the East Turkestan Islamic Movement and how China has purposefully targeted the Uyghur population for terror-related activities, to suppress their Islamic practices, and to safeguard economic interests.

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<sup>41</sup>Counter-Terrorism Committee Executive Directorate. "Security Council Counter-Terrorism Committee," last modified on October 14, 2013, accessed on October 17, 2013. <http://www.un.org/en/sc/ctc/>

<sup>42</sup>CTED "Security Council Counter-Terrorism Committee."

### Case Study - The United States

As previously stated, one of the CTC's goals regarding counter-terrorism and human rights is to hold respect for the rule of law and protect human rights. However, as Paul Hoffman argues, the US has done exactly the opposite. Hoffman notes that the "war on terrorism" refuses to accept that any form of law applies to the way in which such a "war" wages. Hoffman explains that there are no internationally recognized "human rights free zones," and that, despite the US' assertion, there is no loophole or gap between human rights law and humanitarian law that would allow the US to conduct such a brutal war.<sup>43</sup>

To further his point, Hoffman explains that the US classification of the war on terrorism as a "war" allows it to circumvent standard international human rights laws. For example, the US and Yemen in 2002 conducted an operation where the US used an unmanned drone to kill six men classified as "enemy combatants." Under a non-war circumstance, international law would require the US and Yemen to capture these men and hold them for trial under applicable criminal charges. However, because the US is at "war," it can classify targets as "enemy combatants" and therefore justify its actions on a moral basis, claiming that it is protecting its citizens from enemies that would destroy them.<sup>44</sup>

Hoffman also notes the human rights black hole that is the prison in Guantanamo Bay. The US holds over 600 alleged "terrorists," and, as discussed above, the US classification of war allows the US to treat their captives under the laws of war. However, Hoffman notes that these prisoners are denied the hearings required under Article 5 of the Third Geneva Convention that would determine their status as prisoners of war. Not only are prisoners denied international rights to trial, they are also subject to torture; reports from released detainees suggests that prisoners are subjected to sleep deprivation, humiliation, and other tactics of physical and mental fatigue designed to coerce information. Hoffman notes that such practices are illegal under international human rights norms.<sup>45</sup>

To further the case against the US, in December of 2012 the Senate Committee on Intelligence submitted a sweeping, 6,300 page study of the CIA's post 9/11 counter-terrorism methods. However, years after its publication, it is still not available to the public. According to the Senators who viewed the report, it was highly critical of the CIA's counter-terrorism policies and condemned the CIA's use of torture and rendition. The report argues against the commonly held belief that the CIA's torture program led to accurate information in the fight against terrorism. Senator Ron Wyden (D-Ore.) explained that the report showed that the CIA routinely provided inaccurate information regarding its interrogation program to the White House, the Justice Department, and Congress. Senator Wyden's explanation is confirmed by former CIA general counsel Stephen Preston, who noted that the CIA's briefings to Committees included inaccurate information related to the interrogation program.<sup>46</sup>

As the above case study shows, the US has consistently defied international human rights norms and laws, justifying its actions as morally right against terrorists. Held's assertion of governments claiming moral high ground and ignoring collateral damage is supported by the case study. The study also shows that despite the Counter-Terrorism Committee's efforts in maintaining respect for rule of law and protection of human rights, the US, arguably the

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<sup>43</sup>Hoffman, "Human Rights and Terrorism," 939

<sup>44</sup>Hoffman, "Human Rights and Terrorism," 940

<sup>45</sup>Ibid., 941.

<sup>46</sup>Paul W. Smith. "Release the Senate Torture Report," *Politico*. December 13, 2013.  
<http://www.hrw.org/news/2013/12/13/release-senate-torture-report>

champion of morality and human rights, is one of the most egregious violators of human rights regarding counter-terrorism. It imprisons those it can without trials concurrent with Article 5 of the Third Geneva Convention, and it kills those it cannot imprison through drone strikes that have a tendency to cause collateral damage, as seen by the strike against the wedding convoy. The condemnation of terrorists and their label as “enemy combatants” gives the US its justification for its illegal counter-terrorism strategies, and the US’ status as a world power gives it safety from the UN, the Security Council, and the CTC.

Drone and airborne strikes have been a much contested issue for the United States. As mentioned earlier, there was a deadly bombing on a Doctors Without Borders hospital in Afghanistan. On September 29th, 2015, the United States carried out a counter-terrorism operation in Kunduz city, attempting to take the city from the Taliban. Fighting occurred for five days and nights. On October 3<sup>rd</sup>, Afghani forces requested air support in the fight. That air support ended with the bombing of the Doctors Without Borders hospital, leaving 30 staff members dead. As a result of the bombing, the military ordered an investigation into the misfire.<sup>47</sup> General John F. Campbell, in a press briefing at the Pentagon, released the details of the investigation: ““The report determined that the strike on the trauma center in Kunduz city, Afghanistan, was the direct result of human error compounded by systems and procedural failures.””<sup>48</sup>

What were these human errors, made possible by systems and procedural failures? The crew of the AC-130 that took off on October 3<sup>rd</sup> left an hour early in response to an emergency “troops in contact situation.” However, such an early take off did not allow for sufficient time to compile a list of no-strike buildings, which included the hospital. General Campbell even confirmed that they had received the coordinates of the hospital on September 29<sup>th</sup> when the fighting first broke out, yet the hospital remained off of a non-existent “no strike list.”<sup>49</sup>

After taking off, the crew lost electronic systems, preventing transmissions of video footage, as well as email functions. The crew also believed it was targeted by a missile, causing the plane to fly eight miles out of its orbit, disrupting the GPS sensors. When the crew tried to input the coordinates for a believed Taliban stronghold, the GPS located an empty field 300 miles away. However, the GPS eventually was able to realign the proper target after the aircraft regained its orbit, but the crew neglected to double-check their target, instead focusing on the largest building, based on physical descriptions of the target building. That building was, of course, the Doctors Without Borders hospital. The time that the hospital was under fire is disputed. The military claims it was only half an hour, but the Doctors Without Borders call logs show a message nearly an hour after the strikes began, insisting that the firing be stopped.<sup>50</sup>

The ease with which human error and technical difficulties resulted in the bombing of a hospital, that throws much doubt on the entire US drone program. The program has led to thousands of casualties in Pakistan and Afghanistan; since 2004, a total of 423 drone strikes have led to an average estimate of 3,248 deaths in total, with civilian casualties averaging 694.<sup>51</sup> This

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<sup>47</sup>Jessica Schulberg. “U.S. Bombing Of Doctors Without Borders Hospital Result of ‘Human Error.’” <http://huff.to/1Ksyypk>

<sup>48</sup>Ibid.

<sup>49</sup>Ibid.

<sup>50</sup>Jessica Schulberg. “U.S. Bombing Of Doctors Without Borders Hospital Result of ‘Human Error.’” <http://huff.to/1Ksyypk>

<sup>51</sup>The Bureau of Investigative Journalism, “Get the data: Drone Wars” <http://bit.ly/1RxCAtM>

data demonstrates that there is a 21% civilian casualty rate. As the errors of the Doctors Without Borders bombing shows, how can we be sure that such errors are not continuing to occur?

The United States must be held accountable for its actions with torture and its drone strike program. The Counter-Terrorism Committee, as well as the Security Council, must take steps to ensure that the US completes its country reports so that there is greater transparency regarding counter-terrorism. Such transparency can lead to greater cooperation among member states, sharing of best practices (a goal of the CTC), and more efficient methods for combatting terrorism in Afghanistan and the Pakistani border. However, such steps will be difficult to take, as any Counter-Terrorism Committee Resolution can be vetoed by the United States. The CTC should provide incentives for the US to open up its drone strike and counter-terrorism practices, such as passing Resolutions that empower NATO and other US allies in their fight against terrorism in the Middle East. Such a gesture would hopefully allow the United States to share more of its counter-terrorism practices with the CTC, and with the other member states on the Security Council.

### Case Study - Russia

To combat the growing tide of nationalist Chechen terrorism, Russia has led a counter-terrorism operation based on two principles: the denial of political grievances and the illegitimacy of the Chechen separatist movement. In 2000, the Russian government installed a pro-Russian government based in Grozny. The government was meant to suppress the Chechen separatists and to quell the uprisings. However, despite attempting the strategy for over a decade, the pro-Russian government in Grozny has not been successful with its autocratic rule and separatist violence persists in the region, as discussed above. Ramzan Kadyrov, the longtime President of the Chechen government, has been a controversial figure in Chechnya, mainly due to his brutal repression tactics and his counterterrorism tactics; here, counterterror is used literally as he has combated terrorism with terrorism.<sup>52</sup>

Aurelie Campana and Kathia Legare argue that Russia had no clear counterterrorism policy regarding Chechnya at the onset of the Second Chechen War in 1999. They explain that the two-pronged solution was the result of competition among the Kremlin, the FSB, and the military trying to analyze and to interpret the conflict through differing perspectives. Ultimately, the Kremlin took the lead by offering the solution as a combination of the views given by the other main Federal agencies in the Russian government. However, both authors contend that the continuing disagreement regarding interpretation of the conflict led to policies that have no clear goal or objective and that were nowhere near as effective as they should have been.<sup>53</sup>

Campana and Legare found their argument on the idea of framing, that the Russian government would use acts of “terrorism” as justification for the oppression of Chechnya and the surrounding regions. As previously discussed, some of the terrorist attacks in the North Caucasus have not been claimed by Chechen groups but have been pushed to them by the Russian government. Such framing allows the Russian government to justify its actions in using repressive state action (the topic of the previous discussion board) to counter-terrorize Chechen groups and citizens; indeed, there was little public objection to the initiation of the Second

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<sup>52</sup>Aureile Campana and Kathia Legare. “Russia’s Counterterrorism Operation in Chechnya: Institutional Competition and Issue Frames.” *Studies in Conflict & Terrorism* 34 (2013): 47-51. Retrieved from *Academic Search Premier*, EBSCOhost.

<sup>53</sup> Campana and Legare “Russia’s Counterterrorism Operation,” 47-51

Chechen War in 1999. Framing, as the authors point out, is central to policy-making, agenda-setting and problem-solving processes; they note that one can see why some policies win favor based on the nature of power struggles between security professionals.<sup>54</sup>

One of the key features of the Russian counterterrorism policy was the centralization of power in the President of the Federation, Vladimir Putin. Putin's administration substantially influenced the discourse of counter-terror dialogue on Chechnya, and shaped the official position due to the consolidation of power. Putin's strategy, first as prime minister and again as President, was a stress on the "no-war" thesis, in other words, that Chechnya was a counterterrorism operation, not a war. Putin wove framing techniques into his vocabulary, routinely referring to Chechen separatists as terrorists and criminals to drive home the dangers posed to Russia and to gain support for his tough policies. Policy was also shaped by the FSB, which viewed the situation in Chechnya as an international breeding ground for radical Islamic terrorism. The FSB holds the real power in counter-terror operations, and garnered support for their policy by playing at the fears of those old enough to remember the Soviet failure in Afghanistan.<sup>55</sup>

One of the main tactics used in the Russian counterterrorism strategy was the criminalization of the pro-separatist leadership and the separatist Chechen state in general. The policy was designed to undermine the legitimacy of Chechen separatist leaders by alleging connections to criminal syndicates. Russian officials would also accuse Chechen separatist leaders of putting themselves before the Chechen people in an attempt to turn the Chechen groups and ideals on their leaders. The policy backfired somewhat, as the criminalization and attempts to delegitimize Chechen leaders led to Chechen fighters refusal to sit at the peace table for negotiation. In the policy of criminalization, we again see how differing views and differing interpretations created very ambiguous policies and personifications that bolstered the resolve of Chechen separatists, as they viewed such aggressive policy as proof that their plight was real and that their resistance was justified.<sup>56</sup>

As previously mentioned, Russia has now moved to a regime-building operation in an attempt to create order through a regime based in Grozny. The Russian government installed Akhmad Kadyrov because of his popularity among the Chechen public. Kadyrov was "democratically elected" in 2003 as President of the Chechen Republic, with Kadyrov acting as an extension of Kremlin authority. Kadyrov's assassination in 2004 and the subsequent ascension of his son, Ramzan, to the Presidency signal continuing Chechen distaste for Russian rule, while also signaling continuing Russian dominance over Chechnya and the North Caucasus region in general. However, as pointed out by the authors, the pro-Kremlin regime and the subsequent attempts to boost its legitimacy by Moscow have led to a sort of informal culture of violence in Chechnya, violence directed against the Russian state. As shown at the beginning of this piece, violence increased in 2009 from 2008, showing continuing dissatisfaction with Russian rule and the violent nature of the forming national Chechen identity bolstered by the Kadyrov regime's tactics of fear and suppression.<sup>57</sup>

Currently, the Russians have moved to preventing Chechen extremists from joining the Islamic State. The Islamic State has a large following in Russia, with over 2,500 civilians joining the force. In their campaign in the North Caucasus, Russia is focusing on the

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<sup>54</sup>Ibid., 47-57.

<sup>55</sup> Campana and Legare "Russia's Counterterrorism Operation," 47-57.

<sup>56</sup>Ibid., 51-57.

<sup>57</sup>Campana and Legare "Russia's Counterterrorism Operation," 51-57

displacement of terrorist elements that may affect radical drain to Syria. They killed the leader of the proclaimed Caucasus Emirates Doku Umarov in March 2014, and both of his successors in 2015. However, such a strategy has been counter-productive, as the killings have only fractured the Caucasus Emirates, with some groups pledging support to the Islamic State.<sup>58</sup>

The brutal Russian counterterror strategy has been extremely ineffective and counterproductive. The pro-Russian Kadyrov regime has created a stronger sense of national Chechen identity. Chechen terrorist groups have nationalistic motives; therefore, any sort of counterterror strategy that involves the suppression of national Chechen identity will only further enrage Chechen rebel groups, in turn causing them to resist harder and to continue with their acts of terrorism.

The above case study is another example of Held's description of governments taking the moral high ground and using any means necessary to combat terrorism. The Russian government has egregiously violated human rights in its war with Chechen terror groups. As previously stated, Russian special agents have been caught setting up explosives similar to those set off in September, 1999. These operations have been used to justify further brutal oppression of the Chechen people and an escalation of the conflict between Russian and Chechen forces. Russia's status as a permanent member of the Security Council again allows these violations to continue without tangible punishments.

The two Chechen wars show that traditional military confrontation does not work against guerilla tactics, and even if Russia managed to subdue the region for a period of time, it would struggle to maintain total control. Total Chechen independence would see Russia lose a key port on the Caspian Sea, but Russia cannot ignore the atrocities that the Chechens have committed. For now, a stalemate should be observed and both sides should sit at the table and negotiate for the time being. Exchange ideas, concerns, and possible solutions. Observe what would surely be a very tense peace agreement for a few years, and then just respond to how that peace is observed. Should the Chechens decide to re-initiate hostilities, then Russia should re-occupy Chechnya; however, it would be a mistake for Russia to initiate a Third Chechen War. Russia would be wise to observe the Chechens and react to Chechen activities.

The sanctions that have been put on Russia regarding the Ukrainian crisis have drastically effected its economy for the worse; Putin himself is quoted as saying, "Concerning our possibilities on the international financial markets, the sanctions are severely harming Russia."<sup>59</sup> Successful sanctions show that Russia can be affected domestically, which means that sanctions are a powerful weapon against them. Should Russia continue to commit violent oppression of the Chechens, then the Counter-Terrorism Committee should call on its members to levy further sanctions against Russia in an attempt to change its policy towards the Chechens.

### **Case Study – China**

Communist China has a long history of human rights violations, coming most notably in the form of Tiananmen Square in 1989. However, for the purposes of this paper, the analysis will focus on their violations of human rights during counter-terrorism efforts. The biggest terrorist threat that the Chinese fight is the East Turkestan Islamic Movement (ETIM), made up of ethnic

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<sup>58</sup>Warontherocks.com, "Russia's Counterterrorism Gamble in Syria and the Caucasus." October 8, 2015. <http://bit.ly/1UgCV9P>

<sup>59</sup>Newsmax.com, "Putin: Western Sanctions 'Severely' Harming Russia." January 11<sup>th</sup>, 2016. <http://nws.mx/1mPO0RK>

Uyghurs. As Christopher Cunningham argues, the Chinese government has exaggerated the threat posed by the ETIM to justify the oppression of the Uyghurs for political, economic, and strategic interest.<sup>60</sup> The Uyghur have long resisted Chinese attempts at assimilation, and view the Chinese government as one that is oppressive and restrictive of its religion and culture. Ethnic leaders claim that the Chinese government has secretly detained and executed thousands of Uyghurs.<sup>61</sup>

The conflict between the Chinese government and the ETIM is similar to the Russian-Chechen conflict, albeit less bloody. The Uyghurs are a Muslim, Turkic-speaking group of people residing in Central Asia, with the majority living in the Xinjiang Uyghur Autonomous Region in western China. Communist China has a history of suppressing the Islamic practices of this group, which has led to feelings of resentment by the Uyghurs towards the Chinese government, similar to the Chechen-Russian dynamic. Following a somewhat easing of tensions after the death of Mao Tse Tung, the Chinese felt that increase economic and political liberalization of the region would lead to separatist motives. Increases in ethnic violence in the region in the early 1990s exacerbated these fears, so in 1996 the Chinese government enacted “Strike Hard,” campaigns that were officially designated to fight crime by accelerating arrests and trials. These campaigns were aimed at all criminals throughout China, but in Xinjiang they specifically targeted the Uyghur separatists.<sup>62</sup>

After the September 11 attacks, the Chinese immediately reframed their rhetoric against the Uyghur and the ETIM, claiming they were radical jihadists and pushing for US and western support. China also wanted greater military power given to the then-Shanghai Five, most likely to help combat the growing tide of radical Islamic terrorism. However, Cunningham argues that the escalation by the Chinese against the Uyghur separatists and the ETIM is not related to terrorism, but rather to economic and strategic interests. The Xinjiang region borders Mongolia, Russia, Kazakhstan, Kyrgyzstan, Tajikistan, Afghanistan, Pakistan, and Indian-controlled Kashmir. It is also rich in natural resources, such as oil and natural gas reserves. Cunningham also notes that eighty percent of China’s reserves in gold, jade, and other precious metals are in the Xinjiang region.<sup>63</sup>

China recently passed a “landmark law” to battle terrorism domestically and internationally. China’s first anti-terrorism law went into effect on January 1st, and it will require that tech companies hand over encryption keys on demand to security agencies. The law also allows the People’s Liberation Army to be involved in counter-terrorism operations overseas, provided that approval is given by the Central Military Commission and other participating countries. President Obama has expressed concerns over the reach of the law, as its critics claim that it will threaten freedom of expression and intellectual property rights. The law comes as tensions with the Xinjiang region rising; there are “heightened concerns” of violence in the region and reports of radical Uyghurs flocking to Syria to fight for the Islamic State.<sup>64</sup>

As mentioned above, violence in the Xinjiang and East Turkestan regions has been high, regions with high numbers of Uyghurs. From 2013-2014, approximately 700 people died in

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<sup>60</sup>Christopher P. Cunningham. "Counterterrorism in Xinjiang: the ETIM, China, and the Uyghurs." *International Journal On World Peace* 29 (2012): 7

<sup>61</sup>Cunningham. "Counterterrorism in Xinjiang," 18-9

<sup>62</sup>Cunningham. "Counterterrorism in Xinjiang," 12.

<sup>63</sup>Ibid., 15-6.

<sup>64</sup>Teddy Ng and Kwong Man-Ki, “China passes landmark law to battle terrorism at home and overseas.” *South China Morning Post*, December 27, 2015. <http://bit.ly/1OpL5oo>

political clashes. The Uyghur Human Rights Project states that the number of deaths in 2014 doubled that of 2013. Approximately 125 incidents occurred in the East Turkestan area, a Uyghur-dominated region; Uyghur's were three times as likely to die from the violence as traditional Chinese Han minorities, suggesting a bias towards the Islamic minority. There is a reported excessive use of police force.<sup>65</sup> The report notes that “in a troubling number of incidents, police killed all alleged ‘perpetrators,’”<sup>66</sup> which further suggests that China is leading a state policy of oppression against the Uyghurs.

The above case study details an interesting point regarding Chinese counter-terrorism. Cunningham's argument suggests that the Chinese are more concerned with the political and economic interests and ramifications of counter-terrorism strategies than with the protection of human rights and its citizens. However, as detailed by the Uyghur Human Rights Project, oppression and violence against the Uyghurs is on the rise, and does not appear to be stopping soon with the new anti-terrorism law. In fact, one could argue that violence and oppression against the Uyghurs will increase as more of their people join forces with the Islamic State. Held's argument is again seen, as China uses moral justification by condemning the separatists as terrorists and justifying their oppression of the ethnic group. China's powerful economic status and its permanent membership on the Security Council again make it difficult to create tangible punishments against it regarding human rights violations.

As stated, President Obama has given his reservations about the new anti-terrorism law to Chinese President Ji Jinping. However, the new law could be used to the US' advantage to perhaps relax some of the freedom of expression and intellectual property rights concerns. If the United States can allow the Chinese military to join in counter-terrorism exercises, it could possibly allow for a growth in relations. However, it would be very difficult to get the Chinese to loosen restrictions on freedom of expression in general, let alone over terrorism concerns. Here, the United States and the Counter-Terrorism Committee have to bide their time by allowing the Chinese to be involved in these international operations in order to gain trust and faith.

## Conclusion

As this paper has demonstrated, the Counter-Terrorism Committee has centralized the fight against international terrorism within the UN, but it cannot bring about tangible results due to the power and subsequent violations of its member states. As the case studies of the US, Russia, and China show, the CTC has no real enforcement or punishment capabilities. The principal-agent problem explored in this paper is too much of a factor against the Counter-Terrorism Committee. The agents are hiding their actions and policies from the principal, and seem unwilling to share with the principal any time soon. This means that the principal cannot properly enforce its goals and ideals. Since the members of the CTC are seated on the Security Council, and because the CTC relies on the Security Council for binding Resolutions, sanctions, and punishments, the organization cannot succeed in full implementation of Resolutions 1373 and 1624. The broad and vague nature of terrorism and counter-terrorism allows states, especially powerful ones, to justify actions that skirt human rights violations without consequences. Until there are systemic

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<sup>65</sup>Uyghur Human Rights Project, “Legitimizing Repression: China's “War on Terror” Under Xi Jinping and State Policy in East Turkestan,” March 3<sup>rd</sup>, 2015. <http://bit.ly/1puHCAM>

<sup>66</sup>Ibid.



changes in the international realm, the CTC is subject to the whims of UN member states and cannot completely eradicate the vile form of warfare that is terrorism.

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