

On the Issue of the Definition of "International Terrorism

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Abstract: The article is devoted to the notion of international terrorism, in particular the problem of its regulatory definition. The author describes the traditional and modern points of view relating to the definition and types of international terrorism, analyzes doctrinal points of view on the considered matter, the positions of individual states and the international community as a whole relating to the existing definitions, features and classification of international terrorism; the problem of the perpetrator and the possibility of inclusion of the state and its agencies, etc. in this frame. Main international agreements on combating terrorism adopted by the Council of Europe are evaluated, namely: the 1977 European Convention on Suppression of Terrorism, the Convention on the Prevention of Terrorism of 2005 and the Shanghai Convention on combating terrorism, separatism and extremism of 2001 and internal documents of international organizations (Interpol, United Nations Organization). The author concludes about the need to distinguish clear criteria of the crimes of terrorism instead of expanding the list of acts classified as terrorism by the Convention.

Key words: International terrorism • International conventions • Doctrines

INTRODUCTION

Special danger of international terrorism is that it is essentially an act of indirect aggression, which is disguised as independent actions of individuals or groups of individuals. The real organizer of terrorist attack remains beyond the reach of justice. Measures to Combat International Terrorism adopted at the VIII Congress of the United Nations for the Prevention of Crime and the Treatment of Offenders state: "At the international, regional and bilateral levels there is a need to develop effective measures for international cooperation for the prevention of terrorist violence. Among such measures in the field of cooperation between law enforcement, investigative and judicial bodies there are the expansion of integration and cooperation among various law enforcement and judicial institutions with due regard to respect for the fundamental human rights, the definition of the areas of cooperation between the states in criminal matters at all levels of the system ensuring compliance with laws and criminal justice.

Recently the problem of terrorism in the scientific literature has become not only relevant, but also in a sense fashionable. It is studied in different perspectives,

which is not surprising, since the phenomenon is multifaceted and rapidly evolving.

There are more than a hundred definitions of terrorism and this group does not include definitions that exist in the modern legal acts of the national legislation and international law, as well as the definitions of the crimes which include the phenomenon of terrorism. The absence of the internationally agreed definition of terrorism and, as a result, the existing problem with the completion of work on a Comprehensive Convention against Terrorism are significant barriers to effective implementation of international treaties that are currently in force.

Key part. Modern terrorism has more international character than its predecessors due to the peculiarities of our era. Yuliy Oganis'ian in the article "Terrorism as a factor and the problem of international relations" draws attention to the fact that, since a bipolar world ceased to exist and the Cold War ended, contradictions in international relations have not disappeared. Although the ideological and psychological war between the states with different social systems is a thing of the past, the vacated ideological niches were filled with movements propagating nationalism, chauvinism and racism.

Definitions of terrorism in the doctrinal sources represent the attempts to give a general definition distinguishing the main characters of the phenomenon. For example, I.I. Karpets assessed terrorism as international or internal state organizational and other activity, though having international nature (i.e. covering two or more states), aimed at the creation of special organizations and groups to commit and attempt murder, infliction of grievous bodily injuries, capturing people as hostages for the purpose of obtaining ransom, for forced deprivation of liberty which involves outrage, torture, blackmail, etc. This crime is accompanied, as a rule, by the destruction and robbery of buildings, living quarters and other facilities [1, p. 64-98]. E.G. Lyakhov sees the main feature in a directedness of the act of international terrorism against certain universal values protected not only by national, but also by the international law [2, p. 98].

V.V. Vityuk and I.V. Danilevich distinguish several varieties of terrorism:

social or domestic, aiming at indigenous or partial change (saving) of the economic or political system of the country. It has two basic varieties - the right and the left, which are antagonistic in their ideological and political aspirations, but close in a negative attitude to the existing democratic system;

nationalist (ethnic separatist) that grows in the soil of territorial claims and conflicts, often setting the objectives of the national community separation from the larger public commonality and gaining political independence, the struggle against the dictates of other nationalities (or monopolies);

religious, associated with the struggle of the adherents of one religion against another religion or with an attempt to undermine and overthrow the secular government and to establish the religious power.

In practice, these three types of modern terrorism are rarely manifested in a pure form. Thus, the social terrorism, especially the right-wing, is often painted in the nationalist and religious tone. Its national and religious versions are interwoven with each other and borrow ideas and slogans from the social terrorism [3, p. 25-26].

The Article 1 of the European Convention on the Suppression of Terrorism adopted in 1977 does not provide a new notion, but includes the following in its jurisdiction.

Crimes, subject to the provisions of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at Hague on 16 December 1970;

Crimes within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on 23 September 1971;

Serious crimes related to the attempt of assassination, physical immunity or liberty of persons enjoying international protection, including diplomatic agents;

Crimes of kidnapping, hostage or unlawful detention of people;

Crimes involving the use of bombs, grenades, rockets, automatic firearms or explosive devices put in the letter or parcel, if such use endangers people;

An attempt to commit any of the foregoing offenses or participation as an accomplice in such a crime or attempted crime.

In the same year the U.S. Congress in its internal document "Act on Combating International Terrorism" noted that international terrorism includes any unlawful act, resulting in death, causing physical harm to any person or forcible deprivation of liberty of any person, resulting in the violent destruction of property and attempted or actual threat of such an act; and all this occurs or has effects outside the territory of the state of criminal's citizenship; or outside the territory of the state, against which such act is directed; or in the territory of the state against which the act is directed, but the alleged offender knows or should know that the person against whom the act is directed is a foreigner (for the state of the offense); or in the territory of any state, when the act was supported from abroad regardless of the nationality of the alleged perpetrator. This act is aimed at causing harm or threat to legally protected interests or seeks to obtain concessions from the government or international organization; and it is considered as such an act if committed in the course of military or equivalent operations, directed mainly against the armed forces or the military goals of the state or the regular armed groups.

This position has changed dramatically after September 11, 2001, when it became clear that the U.S. calls for war against international terrorism, in fact, reflected the real position of the country at war, with all the political, military-strategic and legal consequences [4, p. 2]. As a result, this has led to some confusion, both in relation to mixing the areas of humanitarian law and international criminal law and to the philological curios incidents. Thus, the former Assistant of the U.S. Minister of Defense L. Korb said that terrorism is tactics and it is not possible to declare war against tactics [5].

The difficulty in establishing the fact of international terrorism is that usually it is almost impossible to prove that an act of terrorism was committed with the connivance, assistance or even was organized by official

governmental bodies or officials of the state, as the actual perpetrators of terrorism in these cases are individuals or groups of individuals who do not formally act on behalf of the state. The problem is also the double standards in assessment of the actions of terrorists by other countries and granting them political asylum, as it is evidenced by the experience of many countries.

In such circumstances, according to L. Green, it seems improbable to control terrorism on a universal basis until the international organizations or individual countries become ready to apply double standards. Thereby they grant legitimacy and respectability to the acts of violence committed by those whom they sympathize to. Especially when they represent, speaking the language of the new international order, places of self-determination and independence, regardless of any other principles or liabilities. No one can expect public condemnation of such acts, if the media describe them as heroic activity, full of charm, giving them greater respect by replacing the term "murder" with the legal term "penalty" [6, p. 194-195].

2003 Protocol amending the European Convention of 1977 expanded the range of people who assist performers of such acts and have to be liable for the mentioned acts that is covered by the Convention.

In 2005, the Convention of the Council of Europe on the Prevention of Terrorism was signed. Article 1 regulates that for the purposes of this Convention, "terrorist offense" means any offense under the terms and definitions contained in one of the treaties listed under the Appendix:

The Convention for the Suppression of Unlawful Seizure of Aircraft, signed in Hague on December 16, 1970.

The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on 23 September 1971.

The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including diplomatic agents, adopted in New York on December 14, 1973.

International Convention against Hostage Taking, adopted in New York on December 17, 1979.

The Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980.

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done in Montreal on February 24, 1988.

The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done in Rome on 10 March 1988.

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done in Rome on 10 March 1988.

The International Convention for the Suppression of Terrorist Bombings, adopted in New York on December 15, 1997.

The International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999.

In addition, Convention-2005 introduces the liability for public incitement to terrorist act execution, recruitment, training terrorists and stresses that this liability does not depend on the actual crime execution.

Both conventions consider extradition of executors of any terrorist acts or other individuals, who assist them, for the aims of trial and punishment, to be the main way in combating international terrorism. This procedure can be an effective tool against state involvement in the preparation of the acts of terrorism and against individuals and legal entities of another state that is due to the following legal proceedings.

The UN Committee on Crime Prevention and Control at its XI Session in 1990 approved the recommendations to the states, indicating that since the first studies of international terrorism conducted by the UNO, the international community can not reach agreement on the content of the term "international terrorism." The Committee noted that the adoption of a specific definition of international terrorism is questionable for the purpose of combating terrorism.

The preferred approach, according to the Committee, is to define the behavior that, which from the point of view of the international community is unacceptable, in order to make a decision on its prevention and control through the development of effective tools and the implementation of the security measures in accordance with the established principles of international law. According to experts, this means that instead of trying to give a general definition of the phenomenon, it is necessary to develop the list of specific activities or actions that the international community considers unacceptable and which is regarded as the terrorist behavior [7, p. 47-48].

The Guide for combating against international terrorism, developed by the International Criminal Police Organization - Interpol, identifies the individual characteristics of international terrorist acts. In particular, it is recommended to consider an act of terrorism as international, if: goals, declared by terrorists, affect several countries; the beginning and the end of the offense include several countries; the means of criminal

activity come from another country; the damage is done to several countries or international organizations; victims of crime are citizens of different countries or participants of activities carried out by international organizations [8, p. 17].

One of the most successful is the resolution of the Shanghai Convention on Combating Terrorism, Separatism and Extremism of 2001. The Art. 1 defines "terrorism" traditionally, equating it to the crimes enumerated in the Treaties of the Annex to the Shanghai Convention and as an act, aimed at causing death of a civilian or any other person not taking an active part in the hostilities in a situation of armed conflict, or causing such grievous bodily harm; as well as considerable damage to any material objects; organizing and planning such an act, aid and abet, when the purpose of such act by its nature or context is to intimidate the population, violate public security or compel governments or international organization to do or abstain from doing any act; and acts criminally prosecuted in accordance with the national law of the parties.

CONCLUSIONS

As it was noted by some authors: "the existing definitions of international terrorism do not provide a full and accurate idea that it is a criminal act of the person (group of persons) affecting interstate relations" [9, p. 18]. Among the reasons of the insufficiency of international cooperation in combating against terrorism there is the fact that many countries are more likely to consider the definition and criminalization of terrorism, as well as the implementation of countermeasures against terrorists, a matter of politics rather than a legal issue. "Most countries have more important issues of concern to them, than terrorists, especially the foreign terrorists. If lives can be saved and the temporary calm can be reached through the release of several prisoners, it seems reasonable to do so, despite the consequent violation of the law" [10, p. 27].

Analysis and study of terrorism in all its forms, especially after its transformation from a phenomenon associated with individual countries, to the planetary scale threat, is a complex and perplexing problem, which has much fewer clear legal and political settings than it seems at first glance. As a result, the question of the definition of international terrorism remains a critical component of a really effective collaboration of the countries in combating this crime. It is unlikely, given the rapidly progressing forms of terrorism, that all its manifestations will be criminalized, if, along with a list of similar forms we do not indicate at least the most general criteria of the international crime.

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