

## Evaluation of Counter-Terrorism Measures at the International Level

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**Abstract:** The paper evaluates the measures taken by the international community to prevent and counter terrorism. It discusses the UN activities aimed at filling the international law gaps that prevent effective unification in the efforts of countries in the fight against terrorism; the operations to remove members of terrorist groups with the help of regular troops, special forces or killers; and litigation in national courts. The article also addresses the problems that arise in the implementation of these measures.

**Key words:** Counter-terrorism • United Nations • The comprehensive convention on international terrorism  
• Violation of international law • The elimination of terrorists • Legal trials • Litigation

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### INTRODUCTION

Despite the active cooperation of the states in the fight against terrorism, the phenomenon is still a major threat to the security of the international community and provides an effective influence on the domestic and foreign policies of individual countries. After the explosions at railway stations in Madrid in 2004, the withdrawal of Spanish troops from Iraq soon followed. After the capture of South Korean citizens by the Taliban in Afghanistan in 2007, the South Korean government was forced to withdraw its troops from the aforementioned country.

Terrorism is diverse in its nature, objectives and modalities. It appears in different forms in different countries and regions, therefore the methods of combating terrorism must also be varied. Principles and norms derived from various branches of international law are applicable to the prevention and punishment of terrorist acts [1]. Yet the fight against terrorism cannot be effective if it remains only on paper-real violence requires a real response. These measures manifest themselves, not only in the prosecution of the perpetrators, but also in counter-terrorism operations, which, unfortunately, often overstep legal boundaries. This in turn is a bad precedent for international law.

To truly see a difference, international law must progress, as indicated by V. F. Antipenko, "terrorism is

inexorably shifting to the sphere of international relations, including at the level of the external manifestations. In connection with this, the rule of law to regulate the fight against terrorism, particularly in respect of the elimination of the circumstances of the offense, should be concentrated in international law" [2].

In the area of combating terrorist crimes, the modern science of international law should include development in the field of regulations to combat terrorism as an international crime [3][4]. This issue is widely discussed, not only in academic circles, but also at the level of international organizations.

In 2003, the Secretary General of the United Nations, at the time Kofi Annan, appointed the High-Level Panel to study global threats and analyze future challenges to international peace and security. In December 2004, the Report of the High-level Panel on Threats, Challenges and Change, "A More Secure World: Our Shared Responsibility" [5] was presented to the Secretary General.

The report provides a description of international terrorism in its modern trends and indicates the need to develop better instruments for global cooperation in the fight against terrorism. It also mentions that too many states remain outside the Conventions Against Terrorism and it is necessary that UN member states consider signing and ratifying all International Conventions on terrorism.

The problem of the definition of terrorism was not ignored either: “Nevertheless, we believe there is particular value in achieving a consensus definition within the General Assembly, given its unique legitimacy in normative terms and that it should rapidly complete negotiations on a comprehensive convention on terrorism” [5].

The task of developing the comprehensive convention on international terrorism was assigned to the Ad Hoc Committee, established by the General Assembly in the 1996 [6]. The idea of a comprehensive convention received some support, in particular from the Indian delegation who wrote a first draft of the proposed convention. At subsequent meetings of the General Assembly of the United Nations and in the United Nations Global Counter-Terrorism Strategy, adopted in 2006, the need “to make every effort to reach an agreement on and conclude a comprehensive convention on international terrorism” was stressed [7].

However, the debate continues to this day. As noted in the fifteenth session Report of the Ad Hoc Committee, held in April 2011, “concerning the outstanding issues surrounding the draft convention, several delegations reiterated that the convention should contain a definition of terrorism that would provide a clear distinction between acts of terrorism covered by the convention and the legitimate struggle of peoples in the exercise of their right to self-determination or under foreign occupation” [8].

It was also noted that the convention should address terrorism in all of its forms and manifestations, including State terrorism and that activities undertaken by the armed forces of states not regulated by international humanitarian law should also fall within its scope. As the Russian Foreign Minister Sergey Lavrov stated at the “Government Hour” in the State Duma in May 2006, “the best will be to adopt a comprehensive convention on international terrorism. But there is a disagreement and inconsistency in understanding. Some states uphold the admissibility of the use, in fact, terroristic methods in the struggle for national liberation against foreign occupation” [9].

One more obstacle to widespread terrorism combat is the lack of an inter-state judicial body that would consider cases of terrorist crimes.

When the International Criminal Court was created, there was significant interest in including terrorism cases in the Court's jurisdiction. In the end, however, those cases were not included. The question is still open and it is possible that terrorism will fall under the jurisdiction of the court by the adoption of the comprehensive convention on international terrorism.

Meanwhile, the manifestations of international terrorism provoke military counterterrorism operations which often lead to the violation of international law.

On October 7, 2001, U.S. NATO troops began “Operation Enduring Freedom” in Afghanistan in response to the terrorist attacks of September 11. There is an interesting fact that there was no legal basis for entry of U.S. and British troops into Afghanistan and the arguments that these were measures of self-defense in accordance with Article 51 of the UN Charter have been criticized [10]. And only on 20 December, 2001 United Nations Security Council Resolution 1386 was adopted, which created the International Security Assistance Force—an international military contingent “to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas” [11].

The Bush administration defined terrorism as a “phenomenon lying outside and beyond any law—civil law as well as moral law, international law, the law of peace, as well as the law of war” [12]. Still, this does not mean that the methods to fight against terrorism must also lie beyond the law.

Violations of international humanitarian law also occurred during the Israeli military operation “Operation Cast Lead” in the Gaza Strip. This operation began on the 27th of December, 2008 and aimed at the destruction of the ruling military infrastructure in Gaza, the Islamic organization Hamas, which was classified as a terrorist organization by the European Union, Israel, Canada, USA and Japan.

As a result, on 12<sup>th</sup> of January, 2009 the United Nations Human Rights Council adopted the S-9/1 Resolution, which established a Commission of Inquiry to the conflict in Gaza “to investigate all violations of international human rights law and international humanitarian law by the occupying Power, Israel, against the Palestinian people throughout the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, due to the current aggression” [13]. Subsequently, the United Nations declared that the purpose of the commission was to investigate violations of international and humanitarian law during the conflict, committed by both sides. The commission's work was completed with a 575-page report [14] containing examples of deeds by Israeli and Palestinian armed groups, which can be classified as war crimes. Subsequently, the police investigation was initiated and Israel began to bring perpetrators to justice. The Palestinian side rejected the accusations.

The states in the fight against persons responsible for terroristic attacks sometimes neglect necessary legal procedures by bypassing not only international standards, but also breaking the rules and law of other states.

For example, until 1984, Spanish security services in France were killing and destroying representatives of the nationalist organization ETA (Euskadi Ta Askatasuna), known for using terrorist methods for its operations. The Ambassador of Spain commented this situation as follows: "Until 1984, when France started to extradite terrorists to Spain, the operations were held to neutralize the terrorists in France. This was understandable, since France has become a safe haven for terrorists, the state was giving them the documents of political refugees. Of course, those actions deserve absolute condemnation in a democratic society. But they showed the French that granting asylum for terrorists is intolerable and as a result, no matter how cruel it is to say, the situation was unlocked" [15].

In February of 2009, the Chechen warlord Mursa Ataev, who was in Turkey under a false name, was killed by unknown persons. He was considered to be the representative of Doku Umarov in Istanbul, who, also a notorious international terrorist, has taken responsibility for several large terroristic attacks including the attacks in the Moscow subway in March 2010, which killed 40 people.

In 2011, several members of the "Riyad-us Saliheen" organization were shot in Ankara by a drive-by shooter. "Riyad-us Saliheen" is included in lists of terrorist organizations in Russia, the U.S. and the UN. The group was also involved in a series of terrorist attacks in Russia, including the taking of hostages in Moscow's Dubrovka Theater in October 2002, as well as the Domodedovo airport bombing in January 2011.

Turkish security officials believe that the murders were committed with the help of the Russian security services. These accusations were made by Turkish human rights organizations that integrate refugees from Caucasia.

Head of the working group for North Caucasia, Maksim Shevchenko, said in response that "everything that has happened is a normal phenomenon in the war" [16]. He explained that if the victims of the shooting were involved in suicide bombings, it is logical that the intelligence services had to respond since the fighters had "declared war on the Russian state."

It is worth mentioning that the Federal Law "On Counteraction Against Terrorism" gives the Russian President the right "to use formations of the Armed

Forces of the Russian Federation for accomplishing tasks aimed at suppressing international terrorist activities outside the Russian Federation" [17]. Also, Federal Law "On the Federal Security Service" gives the right to the Federal Security Service "to use special-purpose subdivisions of federal security service organs and deploy military equipment, arms and special means approved for the arming of federal security service organs and also physical force against terrorists and/or their bases located outside the territory of the Russian Federation in order to eliminate a threat to the security of the Russian Federation" [18].

It's hard to say whether such measures are justified, but they often resort to such actions in circumstances when a separate state on whose territory the terrorist organizations is located does not want to initiate the criminal prosecution against terrorist or does not want to initiate extradition proceedings, thereby ignoring ratified international conventions.

The operation to eliminate Osama bin Laden, held on May 2, 2011 by the United States special forces, was also ambiguous from a legal standpoint.

Joint Resolution to authorize the use of the United States Armed Forces against those responsible for the recent attacks launched against the United States, adopted by US Congress on the 18th of September, 2001, authorizes the United States President to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001" [19].

However, the disputes arose about the legality of the operation in the international community. Former Pakistani President Pervez Musharraf said that the operation was "a violation of our sovereignty" [20]. Martin Scheinin, the United Nations' special rapporteur for human rights, commented on the actions of the United States by saying that "the United States offered bin Laden the possibility to surrender, but he refused. Bin Laden would have avoided destruction if he had raised a white flag" [21]. He also said that "acts of terrorism are the antithesis of human rights, in particular the right to life. In certain exceptional cases, use of deadly force may be permissible as a measure of last resort in accordance with international standards on the use of force, in order to protect life, including in operations against terrorists. However, the norm should be that terrorists be dealt with as criminals, through legal processes of arrest, trial and judicially decided punishment" [22].

Still, it is worth mentioning that the fight against terrorism is not confined to the physical elimination of terrorists. A big contribution to the fight has been made by the national courts.

The indicating trial was Zacarias Moussaoui's, who is a member of the terrorist organization Al-Qaeda and has become known as the "twentieth hijacker". Till now, he remains the only convicted criminal on charges of the September 11, 2001 terrorist attacks.

In early 2002, the United States District Court for the Eastern District of Virginia charged Moussaoui with six counts of crime, particularly in the conspiracy that led to the September 11<sup>th</sup> attacks. In April 2005, Moussaoui pleaded guilty to conspiracy, but denied his direct involvement. The case collected around 1,200 witnesses and on May 3, 2006, the defendant was sentenced to life imprisonment without possibility of parole [23].

In Paris on March 1, 2012, the trial of three members of the international terrorist organization the Fatah Revolutionary Council ended. They were found guilty of attacking a Greek passenger ship "City of Poros" in 1988. The attack killed nine people, including three French citizens. All three offenders were sentenced to 30 years in prison [24]. An interesting fact is that the process took place *in absentia* without the presence of the accused. The whereabouts of the convicted are not known, nor even if they are still alive. However, if any of convicted are arrested, the case will hold a new trial.

In 2003, Zaurbek Talhigov was accused of aiding terrorism during the hostage situation at Moscow's Dubrovka Theater in October 2002. According to the investigation, Talhigov was contacting the terrorists by cell phone and was supplying them with information about the location of snipers and armored vehicles around the theater. Moscow City Court sentenced him to eight and half years in prison and the Supreme Court of the Russian Federation upheld the verdict [25].

In September 2011, the Tver Region Court began to examine the bombing of the "Nevsky Express" train in 2009. Charges were brought against 10 people for various items, including the commission of an act of terrorism, brigandage, murder and illegal possession of weapons. Four of the criminals were sentenced to life imprisonment; the other six were given various prison times from seven to eight years [26].

Summarizing all of the above, it can be noted that in present conditions, when the problem of international terrorism remains valid, the states carries out large-scale actions to curb this phenomenon:

- At the level of international cooperation within the framework of the United Nations;
- In the area of the prosecution of persons engaged in terroristic activity;
- Through conducting counterterrorist operations.

All of this also raises a number of problems related to the consistency of actions with international law and national legislation of individual countries. In general, we can trace the desire of the states for cooperation within the framework of the law and an understanding of the need to improve the mechanism of combating the global threat of international terrorism.

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