THE LEGAL NATURE OF CRIMES IN THE SPHERE OF TERRORISM AND INTERNATIONAL LEGAL INSTRUMENTS TO COMBAT THEM

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Abstract

The paper deals with the issues of combating terrorism. The authors draw a distinction between the concepts of "international crime" and "crime of an international character". Particular attention is paid to the lack of a universal definition of the category of "terrorism's" problem and its reasons. A new vision of the solution to the problem mentioned above has been offered. The paper also analyzes the international regulatory legal acts regulating the struggle against terrorism and their impact on the formation of national legislation in the designated area.

Keywords: international crimes, terrorism, crimes of international character, international legal acts.

Problem setting, relevance and significance

Terrorism is an extremely dangerous negative modern phenomenon. By their fearful impact, crimes in the sphere of terrorism are addressed to a wide and, as a rule, indefinite circle of citizens (often this population of entire cities and administrative districts) or to specific officials and authorities. The consequences of committing this group of crimes are always dire: destabilization of the situation, panic, fear, numerous victims. The causes of their committing very painfully damage the public interest[1]. Terrorism becomes a daily practice of resolving territorial, interethnic, interfaith disputes in the areas of interethnic conflicts. The

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unfavorable increase trend of terrorism has recently had the impact on a state economy, property stratification of society, unresolved social and national problems, as well as on an increase of illicit weapons, ammunition, explosives, radioactive and poisonous substances' trafficking, lowering the motivation threshold for criminal acts, increase of terrorists' brutality and ruthlessness. All this is manifested on the background of inconsistency in the actions of law enforcement agencies, special services and other agencies in combating terrorist acts with insufficient information, technical equipment and organization. In this regard, the analysis of the legal nature, concept and tendencies in the development of terrorism, the development of forms, methods and effective means of combating it is of highly importance[2].

Problem analysis

Speaking about crimes in the sphere of terrorism, it is necessary to understand that they are "distributed" across different chapters of the criminal code in most countries. There are exceptions though, e.g., in the Criminal Code of Georgia, the chapter "Terrorism" is highlighted and includes nine offences (articles 323 – 331). In addition, the criminal laws of many countries around the world do not contain a definition of terrorism at all. The object of terrorism is public safety in the broad sense of the word. By its intimidating impact this type of crime is addressed to a wide and, as a rule, an indefinite circle of citizens, sometimes to the population of entire cities or persons entitled to make organizational and management decisions. Additional objects can be property, life, health of citizens and political interests, etc.[3]

Terrorism can be divided into state, domestic and international. State terrorism – the use of terrorists' methods by state authorities to achieve their goals. Domestic terrorism is a terrorist activity within a state with political and criminal overtones. International terrorism is the largest and most dangerous component.

If everything is clear with the state and domestic terrorism, then in the theory of public international law there is still a dispute – which category of international offences these crimes are related to. A number of experts define it as an international crime (a crime against peace and security of mankind), while others characterize it as a crime of an international character.

International crimes are grave, illegal, socially dangerous acts that infringe the international legal order, violate the fundamental norms of international law and affect the interests of the entire international community[4].

Nowadays international crime system doesn't exist. The International Law Commission is working on the codification of crimes against the peace and security of mankind. In 1996, a draft Code of Crimes against the Peace and Security of Mankind was approved. It provides for five international crimes: aggression, genocide, crimes against humanity, war crimes, crimes against UN personnel and related personnel[5].

It is necessary to distinguish international crimes from crimes of the international character, which, to our mind, are provided by international treaties and which encroach not only onto a national law and order, but also onto interests of the international community in development of normal international relations[6]. Crimes of an international character encroach onto relations in the sphere of the countries' international cooperation. These crimes also differ in terms of the object of the attack. International crimes against the peace and security of mankind are encroaching onto the security foundations of mankind and peace between peoples and nations[7]. Simply put crimes of an international character are acts that are governed by international treaties and are not international crimes.

We assume that the main difference between crimes of an international nature and international crimes are their lesser gravity and the percentage rate of danger to humanity. However, it should be noted that there is no clear division between the categories of these crimes, and in some cases there are signs of mass and systematic acts, which can move from one category to another. If the interests of at least two countries have been affected, as a result, it is considered a characteristic of an international character's crimes. The criminalization of an international criminal offence is based on the rules of international criminal law, and the crimes' criminalization of an international character is based on the rules of national criminal law.

The statement of D. Koshkina is just – according to the high level danger of international terrorism and its spread around the globe, associated with attacks on public foundations, hindering the adequate development and functioning of society, it seems appropriate to consider international terrorism as an international

crime, and not as a crime of an international character. But with the possibility of applying criminal penalties not only against the leaders of international terrorist organizations responsible for the implementation of the policy, contributing to the development of international terrorism, but also individuals responsible for specific acts of a terrorist nature[8]. The mechanism for bringing these persons to criminal responsibility should obviously be delimited. It seems that the decision on the guilt of the organizers of terrorist acts and terrorist activities in general, which include the leaders, the founders of an international terrorism organization, as well as other persons, in varying degrees, endowed with "power", should be made by the competent international judicial body. The cases involving direct perpetrators, the persons justifying and spreading the ideology of terrorism, including through the use of the global Internet, providing material assistance or otherwise involved in terrorist activities, should be dealt with by national courts under the law of the country where the court is located, and the existence of an international element in the crime in this case affects only the determination of territorial jurisdiction and, in certain circumstances, the decision on extradition.

Despite the large number of international legal acts (about 30 global and regional agreements), as well as bodies coordinating the combat and prevention of international terrorism, international law has not reached a universal agreement on the definition of this concept, its legal nature and responsibility for the Commission of relevant criminal acts. However, its necessity is dictated at least for the purposes of the right of offence, choice of remedies, jurisdiction, etc. According to M. Andreeva "it is the lack of a clear definition of international terrorism made it impossible to include this part in the competence of the International criminal court"[9]. Despite the excessive categorism of the scientist in the statement, conceptually it is necessary to agree with him. Thus, as a general rule international crimes are dealt with by the International criminal court (ICC), but international terrorism is still outside the jurisdiction of the court. Under the article 25 of the Rome Statute the ICC has jurisdiction over individuals who will be individually responsible for the crimes committed. However, the jurisdiction of the ICC will only include the crimes of genocide, crimes against humanity, war crimes and the crime of aggression[10]. It seems logical to include international crimes of a terrorists' nature on the list.

In April 2015 Spain has announced its intention to transfer a draft resolution on the establishment of an international court to focus exclusively on crimes of international terrorists to the UN Security Council[11]. Such a court has not yet been established, the reason according to UN representatives is the lack of a universal definition of the term "international terrorism". However, the organization of such an institution is now a necessary measure for the implementation of anti-terrorism activities in the international format and the formation of an effective legal mechanism to counter international terrorism. It seems that such an institution could be a permanent specialized international tribunal established as an independent judicial body.

International terrorism as a criminal act cannot be considered unilaterally, which directly affects the formation of a mechanism for bringing to justice of those who have committed crimes of a terrorist nature. It seems that the distinction between the responsibility of organizers and direct perpetrators would not only be an adequate measure in the fight against terrorism, but also a norm that would embody such principles as legality and justice, since it is obvious that any organizer of such an activity should be punished much more severely than an ordinary performer, and this principle of sharing responsibility is implemented in the criminal laws of many countries. International and domestic law cannot exist without each other, without harmonious interpenetration, which is particularly evident at present. Therefore, it should be assumed that such borrowing and projection of certain principles and mechanisms of domestic law into international law in this case would be a consistent and effective measure on the way to building a system of combating international terrorism.

Returning to the concept of international terrorism it should be said that there is no a universally recognized list of international crimes of a terrorism nature in international law along with the uncertainty of its definition and content. Attempts to develop and consolidate a system of criminal acts and penalties for them in international legislation are doomed to failure because of the identity of each of country's involved legal field in the implementation of this idea. Some characteristics of the organization, legal regulation and functioning of major international organizations, unions, associations should be also added. So we must concentrate on the development of criteria for the classification of behaviour unacceptable from international community's point of view and making decisions

about its prevention and control by developing appropriate means and methods in accordance with the accepted principles and norms of international law. In other words, instead of an abstract definition of the phenomenon, it would be useful to develop criteria for attribution to those activities or activities considered unacceptable by the international community and regarded as conduct of a terrorist nature.

The legal framework for countering the threats of international terrorism has been in place for decades at the international level. It seems necessary to pay attention to the most important legal acts.

The Geneva Convention on Terrorism Prevention and Punishment of 1937 consists of a preamble and 29 articles, and define the object of its provisions quite fully and broadly. The concept of an international terrorist attack, the mechanism of combating terrorism, the established procedure of the Convention introduction into effect and the manner of its application at the national and international levels are defined in the articles of the Convention. Although the Geneva Convention has not entered into force for various reasons, it has significance in condemning international terrorism and recognizing it as an international crime. Certain provisions contained in it were used in the preparation of the Code of Crimes against the Peace and Security of Mankind[12] draft.

The next important international agreement in the field of countries' cooperation in the struggle against international terrorism is the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents passed in 1973 at the 28th session of the UN General Assembly (hereinafter – the New York Convention). The Convention defines the subjects, which belong to the persons enjoying international protection, reveals the concept of "alleged offender", "special protection". The articles from 4 to 11 of the New York Convention deal with the system of measures relating to the prevention and enforcement of the the mandatory punishment of persons who have committed acts of international terrorism on the basis of the principle of *"aut dedere, aut judicare"*. The principle of the Geneva Convention's many provisions of are used in the document under review. However, the Convention raises the issue only of a person's (group of persons) terrorism and its criminal responsibility, but the problem of the country's responsibility remains unresolved if a terrorist attack has been organized or encouraged by the state[13].

The European Convention on the Suppression of Terrorism of 04.08.1978 holds a special position among other agreements concerning the problem of cooperation of the countries in the struggle against international terrorism. The peculiarity of the Convention is the broad definition of the range of violence acts related to terrorism. These are crimes against civil aviation and on board, attempts on the life, health and freedom of persons entitled to international protection, hostage-taking or arbitrary deprivation of human liberty, as well as the use of bombs and weapons to the extent that such use poses a danger to persons. A careful study of the provisions of the Convention also gives the impression that countries' parties receive a kind of treaty on mutual assistance in the struggle against terrorism and other violent acts not only in their own countries. The Convention is based on the principle of *"aut dedere, aut judicare"*, but the focus is rightly on extradition. It is stressed that extradition is a particularly effective means of preventing perpetrators of terrorist acts from escaping prosecution and punishment. Article 3 prescribes to bring the provisions of all treaties and extradition agreements in force between members of the European Council, in line with the Convention[14].

On December 17th, 1979 in New York the UN General Assembly at the 34th session passed the resolution 34/146, which offered the International Convention Against Taking of Hostages for signature and ratification. The preamble of it states that the parties to this convention recognize everyone to have the right to life, liberty and security, as provided for in the Universal Declaration of Human Rights and The International Covenant on Civil and Political Rights; consider that hostage-taking is a crime of serious concern to the international community, and that any person who commits an act of hostage-taking is subjected to either prosecution or extradition. And there is an urgent need to develop international cooperation, develop and pass effective measures to prevent, prosecute and punish all acts of hostage-taking as a crime of international terrorism[15]. In the Declaration on Measures to Eliminate International Terrorism, passed at the 49th session of the UN General Assembly in 1994, it was emphasized that "no ideological, racial, ethnic, religious or any other considerations cannot be used to justify the criminal actions aimed at creating an atmosphere of terror among the wide layers of population"[16].

At the G7 in Halifax it was decided to promote practical measures

of multilateral cooperation in the struggle against terrorism. In accordance with this decision, the conference of the Heads of foreign policy and law enforcement agencies of G8 held in December 1995 in Ottawa passed the Final Declaration, which determines political commitments of the member countries of the G8 on cooperation in the struggle against terrorism[17].

Article 5 of the International Convention for the Suppression of the Financing of Terrorism passed by the UN on 9th December 1999, provides: "1. Each state party shall, in accordance with the principles of its domestic law, take the necessary measures to enable a legal person located in its territory or established under its laws to be held accountable in the event of the Commission or control by the natural person responsible for the administration of that legal person, who acts in hisļher official capacity, of the crime referred to in article 2. Such liability may be criminal, civil or administrative. 2. Such liability is without prejudice to the criminal liability of the natural persons who have committed these crimes. 3. Each state party shall ensure, inter alia, that legal persons responsible under paragraph 1 mentioned above are subjected to effective, proportionate and effective criminal, civil or administrative sanctions. Such sanctions may include financial sanctions"[18].

New sources in the field of counter-terrorism include the International Convention for the suppression of acts of nuclear terrorism (2005), the Convention on mutual legal assistance and extradition to combat terrorism (2008), the Convention for the suppression of unlawful acts against international civil aviation (2010) and a number of other legal instruments. They detail specific aspects of the regulation of the fight against terrorist manifestations of modern times: nuclear terrorism, air and sea terrorism, as well as regulate legal relations in the field of legal assistance of the States parties to the Convention agreement[19].

The Framework of the Council of the European Union, signed in June 2002, outlines the range of crimes of a terrorist nature, which includes three groups of acts: terrorist crimes; crimes related to the functioning of a terrorist group; crimes related to terrorist activities. At the same time, along with the "traditional" types of terrorist activities there are kidnapping, hostage-taking, some others. However, such crimes can be considered as terrorist if they were committed with the following objectives: intimidation of citizens, threat, panic, violence, cruelty (with the use of weapons, explosive

devices, etc.).

The Convention of the Council of Europe on the prevention of terrorism (2005) has made a significant contribution to the development of the regulatory framework for combating terrorism. Its purpose was to intensify efforts to prevent terrorism and its negative impact on the enjoyment of human rights (in particular the right to life) through measures taken both at the national level and through international cooperation. Among the measures necessary to improve and develop cooperation of national authorities for the prevention of terrorist crimes are: exchange of information, strengthening of physical protection of people and objects, improvement of preparation and plans of coordination of actions in emergency situations[20].

It is impossible to ignore the adoption of a similar legal document at the regional level – the Convention of the Shanghai cooperation organization against terrorism (2009). This document was adopted as a follow-up to the provisions of the Shanghai Convention against terrorism, separatism and extremism (2001). In accordance with its content, cases are defined when the parties take the necessary measures to establish their jurisdiction over the crimes covered by this Convention[21].

The following documents have been adopted at the United Nations level:

- Convention on the Establishment of an International Criminal Tribunal for the Prosecution of Terrorists;
- Convention Against the Taking of Hostages;
- Declaration on Measures to Eliminate International Terrorism;
- Convention for the Suppression of the Financing of Terrorism;
- Tokyo Agreement on International Terrorism and some other documents[22].

Conclusion

Thus crimes of an international nature encroach not only on the national legal order, but also on the interests of the international community in the development of good international relations. The main difference from international crimes is the lesser severity and

the percentage of danger to humanity. There is a necessity to include international crimes of a terrorist nature into the jurisdiction of the ICC. Instead of an abstract definition of international terrorism, it is advisable to develop criteria for attributing to these types of actions or activities considered unacceptable by the international community and regarded as conduct of a terrorist nature. The legal regulation of international terrorism has a long history. Currently, there are many international legal acts regulating relations in the field of international terrorism. The diversity of these documents and their conceptual framework related to the characteristics of various forms of terrorism undoubtedly have an impact on its portrayal in national legislation.

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Anotācija

Raksts veltīts ar terorismu saistītu noziegumu definējuma un juridiskās izpratnes īpatnībām starptautiskajās krimināltiesībās. Pētījums ietver arī starptautiska rakstura noziegumu izpratnes jēdzienisko nianšu analīzi. Pētījuma rezultātā secināts, ka universāla jēdziena radīšana visa veida teroristisku darbību apzīmēšanai ir visai problemātiska, kā arī norādīti šīs problēmas cēloņi. Rakstā aplūkoti arī starptautiskie nolīgumi terorisma ierobežošanai un to nozīme vienotas terorisma ierobežošanas juridiskās bāzes izveidei atsevišķas valsts ietvaros un starptautiskā mērogā.