Countering International Terrorism: Problems of Criminal-Legal Qualification

A Konstantin Borichev
B Tatiana Radchenko
C Alyona Moiseeva
D Olga Chasovnikova

A Leningrad state University named by A. S. Pushkin, St.Petersburg (Russia)
B Russian Technological University - MIREA (Russia)
C Krasnodar University of the MIA of Russia (Russia)
D State Institute of Economics, Finance, Law and Technology (Russia)

Abstract

Background: The relevance of the research topic is based on the scientific significance of a comprehensive review of the current problems of establishing and implementing criminal responsibility for organizing activities of an international terrorist organization and participating in its activities in the context of criminal law countering terrorist crimes and terrorism in general.

Objective: problems of criminal responsibility for organizing the activities of an international terrorist organization which are manifested not only in the legislative reflection of the signs of such an organization and the corresponding elements of crimes but also in the doctrinal understanding of the relevant provisions of the legislation and the application of such in investigative and judicial practice.

Methods: author used a complex of system, empirical and comparative methods.

Results: The importance of scientific research of the legislative, theoretical and applied aspects of criminal responsibility for organizing the activities of an international terrorist organization and participation in the activities of such an organization is dictated by the need to further improve the system of measures to combat terrorism and its individual manifestations, the catalyst of which is the criminal activity of organized international terrorist associations, creating conditions for expanding the scope and increasing the public danger of international terrorist activities.

Conclusions: The analysis of the aspects of international cooperation in the implementation of measures to combat terrorism is carried out. The article substantiates the need to implement international legal norms of an anti-terrorist nature in the national legislation in order to increase the interstate cooperation in the fight against terrorism.

Keywords: Counteraction. Criminal liability. Implementation. International cooperation.
1 INTRODUCTION

In recent years, terrorism has become increasingly threatening in its scope and consequences. For example, the activities of a number of international terrorist organizations, especially such as ISIL, the Islamic Liberation Party (Hizb ut-Tahrir al-Islami), the Muslim Brotherhood (Al-Ikhwan al-Muslimun), Al-Qaeda and others, are transnational in nature and are essentially a colossal business project (Information message of the NAC of Russia, 2016). Indeed, the currently existing international terrorist organizations are in fact not only “conduits” of the ideas of terrorism in a particular state, but also carry out full-fledged training of their fighters, participate in open hostilities with the opposing government forces of a particular state, prepare, commit or finance international terrorist activities without taking into account the national borders of specific states. The latter (the financing of terrorism) is largely facilitated by the development of digital economic relations using banking and cryptocurrencies (Pushkarev et al., 2019, pp. 2563-2566; Kaftan, 2015).

In this regard, in order to ensure the security of the international community and develop effective measures to counter international terrorism, it is necessary to coordinate all the accumulated experience in the fight, including in the criminal law sphere. In our opinion, improving the effectiveness of the fight against terrorism currently requires studying the accumulated experience in countering it, as well as studying international and national regulatory legal acts in the field of anti-terrorism. At the same time, analysis and generalization of the existing mechanisms of legal regulation of countering terrorism in general are designed to have an exceptionally positive impact on the success of countering this phenomenon not only in modern Russia, but also in the world.

Moreover, it should be noted that the policy of successful and effective counteraction to terrorism involves the implementation of a deep and detailed study of both the criminological situation and the criminal-legal aspects of terrorist acts, taking into account not only the causal complex of these crimes, the design of their components, but also the conditions, circumstances of their commission, and the personality of the criminals. The need for this work is due to the fact that the effectiveness of the activities of law enforcement agencies, special services and all entities implementing anti-terrorist measures directly depends on the accuracy and completeness of international criminal law norms, as well as on the quality of theoretical study of this issue.

The presence of these problems in the Russian legal (Ivanov et al., 2021) doctrine is a significant, indisputable fact and requires a rethinking of approaches to creation of a single mechanism for regulating this area of activity at the state level as a whole (Ivanov et al., 2020, pp. 753-759; Karpovich, 2017).

2 MATERIALS AND METHODS

The methodological tools of the research are presented by a complex combination of philosophical, general scientific and private scientific means of cognition. Special importance in the
methodology of the research was given to the system method, which acted as a starting premise for solving all the research tasks. Its use made it possible to shift the focus of scientific research from specific problems of countering international terrorism to a complex of topical theoretical and applied issues of improving the entire mechanism of criminal law protection of public relations. Empirical methods (questionnaires, interviews, analysis of documents, printed and electronic publications) were used in the accumulation and study of materials of law enforcement practice, conducting sociological research in order to identify problems of improving criminal law and criminological counteraction to crimes of the studied category. In a number of private-scientific methods of cognition, comparative-legal, historical-legal, formal-legal (dogmatic), etc. were used. The historical-legal method was used both in the analysis of Russian and foreign legislation in terms of the study of the genesis of international terrorism. The comparative legal method made it possible to identify the main models of countering international terrorism, according to the legislation of foreign countries, to identify their advantages and disadvantages, as well as to assess the possibility of implementing individual decisions in domestic criminal legislation.

Taking into account the fact that due to the specifics of higher education in the Russian Federation, the training of specialists of the appropriate profile is conducted not only by universities and departmental educational institutions, but also by technical universities, this will require additional “actualization of the need to create and maintain a humanitarian component in a higher technical educational institution, allowing students to expand their worldview” (Savka, 2021, p. 99).

3 RESULTS ANALYSIS

Turning to the analysis of international cooperation in the field under study, it should be mentioned that the first attempts to develop international legal instruments necessary for the joint struggle of states against terrorism were made in the XIX century. In particular, in 1898, an international conference was held in Rome on the initiative of the Italian government, which was devoted to the protection of the social order from anarchism. On December 21, 1898, following the results of the conference, an act was adopted that contained administrative, political and legal measures to coordinate interstate efforts in the field of countering terrorism (Lantsov, 2004, p. 85; Dershowitz, 2005).

It should be noted that initially, the legal experts of many states set themselves the task of unifying the criminal law norms of national legislation in the field of terrorism. However, due to the excessive politicization of the assessment of terrorist activities, the emphasis on the qualification of internationally dangerous consequences of terrorism, this activity was not a success. Meanwhile, in the resolution of the Third International Conference on the Unification of Criminal Law (Brussels, 1930), an attempt was made for the first time to define the objective side of this crime, but as a result, the definition turned out to be too vague and inaccurate.
Subsequently, the resolutions of the Fourth Paris Conference on the Unification of Criminal Law (1931) and the Fifth Madrid Conference (1933) identified the following as constitutive features of international terrorism: the use of the most dangerous and destructive means; the goal aimed at intimidating the population; public calls for the commission of such acts; the creation of an appropriate community and membership in it. After the murder of King Alexander I of Yugoslavia and French Foreign Minister L. Barth by the Ustashe and terrorists from the Internal Macedonian Revolutionary Organization (VMRO) in Marseille in 1934, the question of the need to consolidate a single mechanism for combating terrorism at the international level became acute. The result of this was the conventions proposed by the League of Nations with the participation of the USSR: "On the prevention and Punishment of Terrorism" and "On the Establishment of an International Criminal Court", in which terrorism was understood as "a deliberate act aimed at killing heads of state, diplomats, destruction or damage to state property or means of transport, actions that endanger human lives, the creation of organizations pursuing such goals, and membership in such organizations" (Malinin, 2013, p. 55).

Thus, the Council of the League of Nations decided on the direct obligation of the participating states "not to encourage or tolerate any terrorist activity on their territory that pursues political goals. Every state should not neglect anything in the prevention and repression of terrorist acts... “ (Tkachenko, Tkachenko, 2015, p. 27).

A new period of international cooperation in countering terrorism began after the Second World War, when the UN General Assembly, in fact the successor to the League of Nations, adopted more than ten resolutions on countering national, regional and international terrorism (Luneev, 2013, p. 133; Andreeva, 2017).

It should be noted that back in 1972, the Eighth UN Congress developed special recommendations in the form of an Annex "On measures to combat international terrorism", in which the most important measures were recognized: the proclamation of the need to develop and implement international legal instruments on the extradition of terrorists, while special attention was paid to the exclusion of obstacles to the extradition of terrorists when they commit crimes for political reasons.

An attempt to clearly define the objective and subjective characteristics of terrorism: the purpose, method, object, place and consequences, was made by the international community only in 1997. The International Convention for the Suppression of Terrorist Bombings has established the characteristics of the objective side of this type of terrorism. At the same time, special attention was paid in the document to the characteristics of possible and real places of its commission: state and government facilities, infrastructure facilities, the transport system and public places. Indeed, until the end of the XX century, terrorist crimes with the use of explosive devices were not properly evaluated and considered in the acts of international law, which, in turn, led to the need to strengthen international cooperation between states in the development and implementation of effective measures to prevent terrorist acts, criminal prosecution and punishment of terrorists (Naumov et al., 2015, p. 291).
The development of international legislation in the field of countering terrorist crimes is not limited to the normative legal acts adopted by the United Nations. The European states, realizing the need to prevent the commission of terrorist acts on the territory of their countries, have also made a significant contribution to the development of the international legal mechanism of regulation in the field of countering terrorism. Thus, at the European level, the crime of “bomb” terrorism is defined in the European Convention on the Suppression of Terrorism of 27 January 1977. In particular, it attempted to define an exhaustive list of crimes that are terrorist, which were attributed to:

1) offences relating to the application of the Hague Convention for the Suppression of the Criminal Seizure of Aircraft of 16 December 1970;
2) offences relating to the application of the Montreal Convention for the Suppression of Criminal Acts against the Safety of Civil Aviation of 23 September 1971;
3) serious crimes involving an attempt on the life, bodily integrity or freedom of persons entitled to international protection, including diplomatic representatives;
4) crimes related to kidnapping, hostage-taking or illegal deprivation of liberty;
5) crimes related to the use of bombs, grenades, rockets, automatic small arms or explosive devices attached to letters or parcels, if such use creates a danger to people.

In addition, the Convention specifically highlighted the fact that terrorist crimes include an attempt to commit one of the crimes specified in it or the participation as an accomplice of a person who commits such a crime or attempts to commit it (Naumov et al., 2015, p. 288).

However, a significant disadvantage of this Convention, in our opinion, is the disposition of Article 12, which states that each state may, at the time of signing or at the time of transmitting the instrument of ratification, indicate the territory or territories to which this Convention applies. Such conditions deprive the Convention of binding and pan-European force (Pavlik, Borichev, 2018, p. 157).

Among other things, the EU anti-terrorism regulatory framework is based on Council Regulation no. 2580/2001 on special restrictive measures related to the fight against terrorism and directed against certain individuals, and the EU Council Framework Decision on Combating Terrorism of 13 June 2002. In contrast to the previously adopted documents, the Regulation pays special attention to the financial aspects of countering terrorism. In particular, it proposes the concept of “transparency and freezing of the activities” of financial structures, including funds, insurance companies, banks, in case of establishing their links with terrorist organizations. It is important to note that one of the main directions of the development of the EU anti-terrorism legislation was the harmonization of the national legislation of the participating states and the creation of conditions for the development of common approaches to the creation of a pan-European criminal code (Chernyadyeova, 2018, p. 92).

Today, European states pay special attention to the issues of countering terrorism. Taking into account the geopolitical, economic, military and other characteristics of most EU countries, they have long had an understanding of the need to jointly confront and combat terrorist threats. In this regard, the positions of individual states are gradually converging. Thus, in October 2001, the European ATLAS structure was formed in Brussels, the purpose of which was to promote cooperation and coordination
between the anti-terrorist units of the European Union. At the moment, ATLAS includes 35 special police units from 27 European countries (Pavlik, Borichev, 2018, p. 161).

Thus, terrorism, which has now become a serious threat to the security of individual states, regions of the world and the entire world community, has put before the authorities and legislators of various countries the problem of finding ways to create a national system of measures to combat terrorism that is adequate to this danger. A. Yu. Sagaidak and N. A. Korsikova absolutely correctly noted in this regard that it is the legislative consolidation of measures to combat terrorist manifestations that is the most important basis of the system of international counteraction to terrorism (Sagaidak, Korsikova, 2018, p. 139).

In the course of considering the norms of international law in the field of countering terrorism, it should be noted that today a particularly significant circumstance is the legal consolidation of the concept of "international terrorism", since the need for a legal definition is dictated by the trends of international cooperation. However, this does not negate the possibility of developing their own national and interethnic concepts shared by limited groups of states or a single country (Zagoruiko, 2017, p. 29).

Thus, in the Model Law “On Combating Terrorism” (2004), Article 1 states that international terrorism is terrorism, the acts of which:
- committed in more than one state;
- committed in one state, but a significant part of their preparation, planning, management or control takes place in another state;
- committed in one state, but with the participation of a terrorist group or a terrorist organization that carries out criminal activities in more than one state;
- committed in one state, but their significant consequences take place in another state (Pavlik, 2011).

At the same time, it is important to take into account that international terrorism is just an additional characteristic of terrorism, which this phenomenon has gradually acquired with its transition from the national to the international level, while the essence of this phenomenon has not changed from such a transition and has remained the same. Such a characteristic only indicates the expansion of the scope of this phenomenon to the level of interstate relations. As an example, we will point out that the same terrorist organization can operate on the territory of several states; terrorist organizations located in different countries can cooperate in the preparation of terrorist acts; terrorist organizations can challenge the entire international community and try to achieve their ultimate goals at this level.

In the field of countering terrorist crimes, the evolution of the national legislation of the leading Western states demonstrates a tendency to implement international legal principles and norms. Meanwhile, the national anti-terrorist legislation has its own peculiarities.

Thus, in the United States, the impetus for the development of anti-terrorist legislation was a series of terrorist attacks on September 11, 2001. In the following decade, all the main normative legal acts on countering terrorist threats were adopted, and a new national security policy was formulated (Pavlik, Borichev, 2018, p. 136).
In particular, the Law “On Anti-Terrorist Actions and the Death Penalty” establishes a penalty in the form of the death penalty for organizing a terrorist act that resulted in the death of people. The law also granted the right to conduct investigations against foreign organizations suspected of participating in terrorist activities. At the same time, to the objections and protests of human rights activists that the changes that have occurred in the US anti-terrorism legislation curtail civil liberties, the US Supreme Court stated that the government cannot have more important interests than the security of the state, and this postulate is obvious and indisputable (Pushkarev et al., 2019, p. 177).

It should be noted that the US legislation provides for criminal liability for certain manifestations of terrorism. At the same time, all terrorist acts against foreign officials and official guests of the United States are classified as ordinary crimes (Sagaidak, Korsikova, 2018, p. 77).

The national criminal law of the United States provides for a detailed definition of terrorism as a special type of federal crime, its specific components and a system of sanctions against organizations and individuals who support and finance terrorist activities in material, financial and informational terms. Thus, the signs of terrorism include

1) the goal is a direct or indirect (through intimidation or coercion of the civilian population) change in the policy of the state;
2) motives - political, national, religious or purely selfish;
3) means - intimidation of the state, or groups of the population, or coercion by means of murder or threats of murder, including mass, as well as mass destruction or impact on infrastructure that threatens the lives of people;
4) objects of a terrorist act - people, as well as objects of material infrastructure (transport, energy, industrial facilities, etc.), the destruction of which can lead to mass death of people and contribute to the intimidation of the population and authorities.

These features together constitute the qualification of a crime (terrorist act), which allows you to distinguish it from other violent crimes and classify it as one of the most dangerous (serious). In addition, the 18th section of the US Federal Code provides for a fairly extensive list of specific elements of terrorist crimes.

It must be stressed that the concept of “international terrorism”, adopted by the US legislator, actually represents the extension of the US jurisdiction in terms of countering terrorism beyond the territory of the United States, i.e. gives the US anti-terrorist legislation an extraterritorial character. Thus, US law defines that a terrorist activity (if it is such from the point of view of US law) is qualified as a crime regardless of where it is committed or prepared, and regardless of whether the crime is directed against the United States, American citizens or property.

It should be emphasized that a number of researchers of terrorism, considering it a new military threat and considering the United States a leader in the anti-terrorist activities of the entire international community, insist on the need for the American government to exert influence on the world community in order to amend international normative legal acts on the conduct of war, to reflect in the legislation a new reality - the fight against terrorism. They believe that the actions of self-defense
of any state should not be "shackled" by anachronistic legislative formulations, with the help of which terrorists are in a preferential position, both in the eyes of public opinion and from the point of view of international legislation (Tkachenko, Tkachenko, 2015, p. 210).

In developing the legal aspects of the fight against terrorism, the criminal law doctrine of the Federal Republic of Germany is based on the provisions formulated in the EU. The definition of "terrorism " contained in Article 1 III of the EU Council Common Position 2001/931/GASP defines the following characteristics: significant use of force, directed not only against State institutions, but also against civilians and infrastructure; the intermediate purpose of the use of force is mental influence, consisting in intimidation and creating an atmosphere of uncertainty; the ultimate political goals can be characterized along with the usual religious attitudes imbued with the spirit of class struggle (Chernyadyeva, 2018, pp. 96-97).

In Germany, a set of legal, organizational and other measures in the field of countering terrorism has been developed and is working quite effectively: restrictions on holding meetings to exclude any possibility of their use to provoke mass riots and commit terrorist acts; high fines and long prison terms (up to 32 years) for false reporting of mining, for publishing instructions on the production of improvised explosive devices, etc. Today, many researchers of the problem of terrorism note that in Germany, the authorities and society have managed to combine their efforts to fight terrorism. At the same time, the main direction of preventing terrorist acts was to identify the main socio-economic determinants of terrorism and eliminate them.

It is also important to note that the anti-terrorist legislation of the Federal Republic of Germany contains many incentive norms. Thus, the German legislator consistently pursues a policy of democratization of criminal legislation, which corresponds to the high legal culture of society. At the same time, anti-terrorist legislation is mainly aimed at preventing terrorism and preventing the conditions and possibility of committing terrorist crimes (Pavlik, 2011, p. 88). However, due to the sharp increase in the number of migrants who arrived in Germany in 2014-2019, and their often aggressive behavior towards local residents, the German public recognized excessive democracy in the field of criminal legislation and the suppression of crimes and offenses, including those that infringe on the life and health of citizens, the inviolability of private property and the security of the state.

In this regard, legislative measures have been taken to ensure the possibility of preventive state activities to prevent terrorist acts, and the improvement of legal instruments, including those used in the information sphere, continues, since terrorists or their donors penetrate into the related areas of advanced technologies for the preparation and commission of terrorist crimes or their financing (Pushkarev et al., 2021, pp. 395-406).

The criminal law of France refers to terrorist criminal acts, based on the following conditions: 1) this crime must be committed with the intent of a dangerous violation of public order; 2) when committing a crime, methods of terror (intimidation) are used. The French Criminal Code defines that "terrorist acts constitute acts intended to seriously disrupt public order through 'intimidation or terror'".
At the same time, this definition is not specific enough and requires additional legislative interpretation (Menshih, 2000, p. 6).

The legislative experience of Spanish legislators in the field of counter-terrorism is also interesting. Such terms as “terrorist organization”, “armed gang” and “rebel organization” are often used as synonyms. However, the Spanish criminal legislation itself is mainly focused on the fight against terrorism, with little or no attention to preventive measures (Pavlik, 2011, p. 88).

While studying the problem of identifying signs of terrorist crimes at the international and national levels, we also consider it necessary to note the existing regional legal instruments of the countries of Asia and Africa. The conventional normative legal acts are mainly aimed at expanding cooperation in the field of anti-terrorism and contain a set of various measures that Member States need to take to combat terrorism. In particular, according to these acts, the participating countries pledged to take the necessary measures to prevent the financing of terrorism, to intensify cooperation between law enforcement agencies and to provide each other with mutual legal assistance in the field of counteracting terrorism.

The analysis of existing legislation allows us to use the experience of regulating public relations in this area in subsequent legislative activity, as well as to identify the most optimal areas for improving legislation, both in these countries and in other states (Ivamov et al., 2020, p. 42).

4 CONCLUSIONS

The development of international and national anti-terrorism legislation in the United States and European countries in the field of counter-terrorism has followed a consistent path of development as threats increase and has the following features.

Anti-terrorist legislation is characterized by sufficient development and the presence of an extensive legal framework that provides for liability for terrorist crimes. However, for the most part, these compositions are fixed by norms aimed at protecting the individual. There is no single generally accepted interpretation of both terrorism itself and the qualifying features of crimes of a terrorist nature. And in general, the current situation is similar to the situation in international criminal law. This is primarily due to the difference in legal systems, the national and political characteristics of individual countries and regions, as well as the peculiarities of the current political situation on the world stage, which does not allow creation of a uniform anti-terrorist legislation.

At the same time, the use of positive international and national experience of developed countries in the field of legal regulation of criminal liability for terrorist crimes and the development of anti-terrorist activities in general can have a positive impact on improving the effectiveness of countering terrorism both in individual countries and on a global scale.
5 REFERENCES


MODEL LAW “ON COMBATING TERRORISM”. (April 17, 2004). Twenty-third plenary meeting of the Interparliamentary Assembly of the CIS Member States (Resolution No. 23-5). Available at: http://docs.cntd.ru/document/901912313


