

The Legal Definition of Terrorism in the United States and Russia

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Abstract: This article discusses the definition of “terrorism” that was legally formalized in the United States and the Russian Federation, as well as in regional agreements to which these countries are part of. The paper analyzes and compares the definitions and shows the existence of common features that are of practical importance since there is no universally accepted definition of terrorism.

Key words: USA • Russia • Terrorism • Definition • Counter-terrorism legislation • Regional agreement • Terrorism’s characteristics

INTRODUCTION

The definitions of such term as “terrorism” refer to those problems whose solution is of exceptional practical importance. Terrorism is a threat to the entire international community.

Furthermore, it must also be remembered that terrorist crimes may present some element of antecedent, concomitant, or transnationality to their consummation [1]. This is sufficiently recognized by the international community, politicians, academics and, of course, by the special services and law enforcement agencies of different countries, regardless of states’ political, social, or economic structure. The development of a generally accepted legal definition of terrorism is a complex and still unsolved problem.

The League of Nations, before World War II, tried to work out an agreement on terrorism prevention and suppression, but could not achieve success because of the lack of agreement between the participating countries. For the same reason, despite the debate which lasted for decades, the United Nations has also failed to give a universally accepted definition.

In 1991, the International Law Commission of the United Nations concentrated on international terrorism concept development. In the Draft Code of Crimes against the Peace and Security of Mankind, attempt was given to define international terrorism. The final definition they gave was:

“An individual who as an agent or representative of a State commits or orders the commission by another individual of any of the following shall, on conviction thereof, be sentenced [to . . .]:

Undertaking, organizing, assisting, financing, encouraging, or tolerating acts against another State directed at persons or property and of such a nature as to create a state of terror in the minds of public figures, groups of persons, or the general public” [2].

The International Convention of 1999 for the Suppression of the Financing of Terrorism came close to developing a single international legal definition. According to it, any person commits an offense within the meaning of this Convention if they act directly or indirectly “to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act” [3].

At the moment, there is no universal definition of “terrorism”, although its derived types, the national (domestic) and international terrorism, are recognized by the international community. However, the development and, more importantly, the legal confirmation of the definition in the international law are needed to clarify the positions of the members of the international community on this issue. Consequently, it is also required

for the formation of a specific legal framework of international treaty obligations in the fight against this phenomenon.

Theorists have proposed definitions and hundreds of options and all agreed that the “only general characteristic generally agreed upon is that terrorism involves violence and the threat of violence” [4]. Nevertheless, there is no complete unity of the definition of terrorism among scientists. The only unity is in “lack of consensus in the literature on the determinants of terrorism” [5].

To study the concept of “terrorism”, we turn to material which has been developed on this issue in the United States and Russia, as well as consider the definitions in the regional agreements to which these countries are a part of.

In the U.S., while developing the annual reports on terrorism, the State Department relies on a definition of terrorism worked out by the CIA in the early 80s: “Terrorism is a threat or use of violence for political purposes by individuals or groups of persons acting for or against the current in a given country government, when such actions are intended to strike or intimidate a larger group than the direct victim, for which violence is used” [6].

In Section 2656f(d) of Title 22 of the United States Code, the following definition is given: “The term “terrorism” means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents” [7]. International terrorism is defined as “terrorism involving citizens or the territory of more than one country”.

In the meantime, Section 2331 of Title 18 of the United States Code defines domestic and international terrorism as follows:

“the term “domestic terrorism” means activities that

- Involves acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
- Appear to be intended -
 - To intimidate or coerce a civilian population;
 - To influence the policy of a government by intimidation or coercion; or
 - To affect the conduct of a government by mass destruction, assassination, or kidnapping;..”

Interestingly, international terrorism in Section 2331 includes crimes committed outside the United States as:

“the term “international terrorism” means activities that

- Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
- Appear to be intended-
 - To intimidate or coerce a civilian population;
 - To influence the policy of a government by intimidation or coercion; or
 - To affect the conduct of a government by mass destruction, assassination, or kidnapping;
- occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum” [7].

This is of interest because the world accepted that international terrorism is carried out by international terrorist groups and national, i.e., domestic terrorism, exists within states and aims at changing the political situation within that country. Although, of course, it needs to be recognized that modern terrorism has reached a high level of complexity and the involvement of the various structures of terrorist groups and, thus, terrorist groups do not limit their field of action in the boundaries of a single state.

In the Code of Federal Regulations of United States terrorism is defined as “the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives” [8].

The Defense Department officially defines terrorism as the “unlawful use of violence or threat of violence to instill fear and coerce governments or societies. Terrorism is often motivated by religious, political, or other ideological beliefs and committed in the pursuit of goals that are usually political” [9].

Russian and Soviet literature gives multiple definitions of terrorism. A. N. Trainin, the first Soviet researcher of international crimes and the one of the authors of the Charter of the Nuremberg Tribunal, referred to The 1937 Convention for the Prevention and Punishment of Terrorism of the League of Nations, which also did not contain a definition of terrorism. Nevertheless, the Convention did give a list of actions that could be attributed to terrorist crimes. The terrorist attacks, according to the Convention, include: a willful act

causing death or grievous bodily harm or loss of liberty to heads of State, persons charged with public functions; willful destruction of, or damage to, public property or property devoted to a public purpose; any willful act calculated to endanger the lives of members of the public; any attempt to commit the mentioned acts [10]. The Convention highlighted the criminal character of communities which commit terrorist acts.

In Russia, the Criminal Code of Russian Soviet Federative Socialist Republic of 1960 did not provide punishment for the crimes of terrorism. First article, providing responsibility for the terrorism, was added to the Criminal Code in 1994 and defined terrorism as “an explosion, arson, or other acts that endanger people’s lives, causing significant property damage, or other socially dangerous consequences, if committed in order to violate of public security or impact on the decisions of the authorities” [11]. New Criminal Code was enacted in 1996 and operates to this day, providing responsibility for the commission of a terrorist act and for the promotion of terrorism, but does not include the definition of “terrorism” [12].

In 1998, the Federal Law “On the Fight Against Terrorism” was enacted, which provided a broad definition of terrorism as “violence or the threat of violence against individuals or organizations and also the destruction (damaging) of or threat to destroy (damage) property and other material objects, such as threatening to cause loss of life, significant damage to property, or other socially dangerous consequences and are implemented with a view to violating public security, intimidating the population, or influencing the adoption of decisions advantageous to terrorists by organs of power, or satisfying their unlawful material and (or) other interests; attempts on the lives of statesmen or public figures perpetrated with a view to ending their state or other political activity or out of revenge for such activity; attacks on representatives of foreign states or staffers of international organizations enjoying international protection and also on the official premises or vehicles of persons enjoying international protection if these actions are committed with a view to provoking war or complicating international relations” [13].

In 2006 that Law was replaced with the other Federal Law “On Counteraction Against Terrorism” where the legislator defined the concept of terrorism more succinctly: “Terrorism shall mean the ideology of violence and the practice of influencing the adoption of a decision by public authorities, local self-government bodies, or international organizations connected with frightening the

population and (or) other forms of unlawful violent actions” [14]. It is clear that the legislator expands the meaning of “terrorism”, pointing out that it is not just the practice of violence, but a whole ideology. Additionally, the law defines the term “act of terrorism” and lists the acts constituting terrorist activity.

As we can see, different states’ adopted definitions can differ from each other, because “each State unilaterally defines terrorism without any outer legal boundaries set by the international community” [15]. In this connection, let us turn to the definitions developed at the international level within the framework of regional agreements which the Russian Federation and the United States are part of.

The USA is a member of the Organization of American States, uniting the countries of the Americas. In the framework of this organization on the issue of combating terrorism, the Convention To Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance of 1971 [16] and the Inter-American Convention Against Terrorism of 2002 [17] were adopted, although neither include the definition of terrorism.

While Russia has a rich experience of international cooperation on this issue at the regional level, there are a number of agreements within the Commonwealth of Independent States and the Shanghai Cooperation Organization.

The Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism provides the following definition:

“Terrorism is an illegal act punishable under criminal law committed for the purpose of undermining public safety, influencing decision-making by the authorities, or terrorizing the population and taking the form of:

Violence or the threat of violence against natural or juridical persons;

Destroying (damaging) or threatening to destroy (damage) property and other material objects so as to endanger people's lives;

Causing substantial harm to property or the occurrence of other consequences dangerous to society;

Threatening the life of a statesman or public figure for the purpose of putting an end to his State or other public activity or in revenge for such activity;

Attacking a representative of a foreign State or an internationally protected staff member of an international organization, as well as the business premises or vehicles of internationally protected persons;

Other acts classified as terrorist under the national legislation of the Parties or under universally recognized international legal instruments aimed at combating terrorism” [18].

There is also a definition of “technological terrorism” in the agreement, which involves the use of nuclear, radiological, chemical, or bacteriological (biological) weapons or their components, pathogenic microorganisms, radioactive substances, or other substances harmful to human health. It also including the seizure, putting out of operation or destruction of nuclear, chemical, or other facilities posing an increased technological and environmental danger and the utility systems of towns and other inhabited localities.

In Shanghai Convention on Combating Terrorism, Separatism and Extremism of June 15, 2001, Article 1 calls terrorism an “act intended to cause death or serious bodily injury to a civilian, or any other person not taking an active part in the hostilities in a situation of armed conflict or to cause major damage to any material facility, as well as to organize, plan, aid and abet such act, when the purpose of such act, by its nature or context, is to intimidate a population, violate public security or to compel public authorities or an international organization to do or to abstain from doing any act” [19]. The definition of terrorism given in the Shanghai Convention generally follows the provisions of the International Convention for the Suppression of the Financing of Terrorism. However, the Shanghai Convention contains a more complete concept of terrorism, pointing to the fact that the targets of the terrorists are not only people but also material objects and the additional purpose may be a violation of public security.

The Convention on Counter-Terrorism of the Shanghai Cooperation Organization in 2009 gives only a brief definition of terrorism as “an ideology of violence and the practice of exerting influence on the decision-making of governments or international organizations by threatening or committing violent and (or) other criminal acts, connected with intimidating the population and aimed at causing injury to private individuals, society, or the state” [20]. This definition is almost identical to the definition in the Russian Federal Law “On Counteraction Against Terrorism” from 2006.

The above examples are enough to confidently speak about the similarity of the approaches to the definition of terrorism. However, one will notice that in some cases, terrorism is defined as a deed or an act. In this case, we believe that it is necessary to speak specifically about the

terrorist attack (act of terrorism), while terrorism is a more complex phenomenon, something longer lasting, which can be manifested in terrorist attacks.

Based on the analyzed material, the main features of terrorism can be formulated as the following:

- The fact of violence or threat of violence (as well as damage to property);
- The main objective: to influence the decision of a social group (state, international organization);
- A way to achieve the objective: intimidation of a particular social group;
- There is a political (religious, social, economic) motive;
- The violence is directed against the civilian population.

We can see that, even taking into account differences of the legal and political systems, the main signs of terrorism remain the same for the entire international community. Of course, given that the terrorist activity in each state is somewhat different and the specifics of the criminal policy pursued by each state are also different, the discrepancies in the definition of terrorism will continue to exist. Furthermore, there is the view of researchers that the definition of terrorism should be “provisional and situational” in general [21].

In recent years, the legal community periodically expressed the view that terrorism must be assigned to a group of international crimes (today terrorism belongs to a group of crimes of international character), which would include terrorism under the jurisdiction of the International Criminal Court. This in turn would also contribute to overcoming double standards in the fight against terrorism [22]. However, the legal confirmation of “terrorism” is a top priority, the implementation of which will contribute to the unity of the legal practice of states in this area. Today, there are quite a great deal of theoretical and normative frameworks of individual states on the issue of combating terrorism. There are a number of international agreements, including those governing the fight against certain types of terrorism.

Terrorism takes in a number of international and national factors. Nowadays, all countries are potential targets for a terrorist attack, whether or not they proactively fight the terror organization [23].

There comes a time when we need to talk about the global, international criminal policy. Therefore it is necessary to make a global counter-terrorism law-making

process, while taking into account the particularities and traditions of national legal systems. It is of the same importance to develop a universally accepted in international law definition of “terrorism” using all experience from all countries.

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