CBRN Terrorism and International Legal Constraints

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Abstract

Development of international terrorism as the most brutal form of international organised crime connected with trafficking drugs, arms, human beings, money laundering and corruption, and of the global system of combating terrorism is overviewed. Thirteen global agreements of combating terrorism as well as regional initiatives are presented and their link to new forms of terrorism (chemical, biological, radiological and nuclear terrorism) is assessed.

Keywords: CBRN terrorism, UN antiterrorist system, global and regional agreements

1 Introduction

International terrorism as the most violent form of organised crime has been developed in connection with trafficking drugs, arms, human beings, money laundering and corruption. This was impetus for gradual responding by international community, creating global system against organised crime and seeking measures for combating international terrorism, when it became one of the undesired consequences of ever increasing economic, social and political divergences (reflected in national, racial, ethnic and religious clashes) in contemporary totally interdependent and globalised world. The main milestones of developing global system for combating organised crime and terrorism as its most brutal form, starting already in the first decade of the 20th century, are shown as follows [1,2]:

1909 – Opium Commission, Shanghai
1912 – First Opium Agreement
1946 – Establishing UN Commission on Narcotic Drugs
1955 – UN Congress on Crime Prevention and Treatment of Offenders
1961 – Convention on Narcotic Drugs
1968 – Establishing International Narcotics Control Board
1971 – Convention on Psychotropic Substances
1979 – UN organs for narcotics move from Geneva to Vienna
1979 – UN organs for crime prevention move from New York to Vienna
1987 – UN adopts Programme for activities in combating drug abuse
1988 – Convention against Illicit Traffic in Narcotics and Psychotropic Drugs
1990 – UN General Assembly adopts Global Anti-Drug Programme
1991 – Establishing UN International Drug Control Programme (UNDCP)
1997 – Establishing UN Centre for International Crime Prevention (CICP) in Vienna
1999 – Establishing Terrorism Prevention Branch (TPB) as a part of CICP
2000 – International Convention against Trans-national Organised Crime
2001 – Establishing UN Counter-Terrorism Committee (CTC) by UN Security Council [3].

Note: The recent act was evoked by the events of September 11, 2001 (but paradoxically, official UN definition of terrorism is still lacking).
There are already thirteen global agreements on combating terrorism, adopted according to the development of executed terrorist acts, analysed below, which are rather target- than tool-oriented, starting with the most frequent acts onboard aircraft. Attempts to draft a global comprehensive antiterrorist treaty (that would include also CBRN terrorism) on the soil of UN already exist but it seems that achieving the final goal is still far. On the other hand, many regional and sub-regional organisations and many states have already adopted legal political, and administrative incentives on combating terrorism in its most brutal forms, oriented to preventive, repressive, protective, rescue and recovery measures.

2 Global agreements on combating international terrorism

Existing thirteen global agreements against terrorism, adopted till now, can be summarised as follows [4]:

- **Convention on Offences and Certain Other Acts Committed on Board Aircraft** (Tokyo, September 14, 1963, EIF December 4, 1969) is the oldest convention applying to acts affecting in-flight safety.
- **Convention for the Suppression of Unlawful Seizure of Aircraft** (The Hague, December 16, 1970, EIF October 14, 1971) is oriented against aircraft hijackings.
- **Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation** (Montreal, September 23, 1971, EIF January 26, 1973) applies to acts of aviation sabotage such as bombing aboard aircraft in flight.
- **International Convention against the Taking Hostages** (New York, December 17, 1979, EIF June 3, 1983) was adopted by the UN General Assembly.
- **Convention on Physical Protection of Nuclear Material** (Vienna, March 3, 1980, EIF February 8, 1987) is connected with the Statutes of IAEA and nuclear safeguards related to the Treaty on Nuclear Non-proliferation (NPT).
- **Convention on the Marking of Plastic Explosives for the Purpose of Detection** (Montreal, March 1, 1991, EIF June 21, 1998) provides for chemical marking to facilitate the detection of plastic explosives, e.g. to combat aircraft sabotage.
- **International Convention for Suppression of Terrorist Bombing** (New York, December 15, 1997, EIF May 23, 2001) was adopted by the UN General Assembly.
- **International Convention for the Suppression of the Financing of Terrorism** (New York, December 9, 1999, EIF April 10, 2002) was adopted by the UN General Assembly.
- **International Convention for the Suppression of Acts of Nuclear Terrorism** (New York, April 13, 2005, not yet in force) was adopted by the UN general Assembly (it tackles both radiological and nuclear terrorism.

As it can be seen, all these agreements were adopted subsequently in response to prior executed crimes of the respective art of terrorism. They are mostly rather target- than tool-oriented. Only those, related to protection of fissile material, marking plastic explosives, to bombing, and
obviously to the nuclear terrorism, have something to do with technological tools of violence. The legal and technological problem of marking plastic explosives was developed according to the joint initiative of Czechoslovakia and UK shortly in the aftermath of the Pan-Am crash over Scottish Lockerbie (1988), suspected to be executed (and confirmed recently) by Libyan terrorists using reportedly (but never proved) Czech-originated industrial plastic explosive Semtex\textsuperscript{r}. The problem is that at the time being, many people depict plastic explosives generally as “sentex”. Only two from the named documents, i.e. that, dealing with protection of fissile materials (actually belonging to the arms-control issues) and the other dealing with nuclear terrorism, can be considered as explicitly associated with the radiological and nuclear terrorism. The other one, i.e. on suppression of terrorist bombing is intercorrelated with advanced forms of terrorism implicitly. If we look at the wording of this document carefully, we can undoubtedly find this connection, because the terrorist bombing implies by no doubt all possible instruments of killing, encompassing beside explosives also other moods of intentional causing death including those associated with toxic chemicals, biological agents and radionuclides even if they are not mentioned explicitly. It can be concluded that these thirteen existing global agreements on combating terrorism reflects imminent and ever increasing threat of various forms of CBRN terrorism [5] rather exceptionally. A Comprehensive Convention against International Terrorism that should fill this gap is now under ongoing negotiations on the soil of UN. An advanced draft was presented at the (closed) International Symposium: Combating International Terrorism: The Contribution of United Nations, held in Vienna, June 3-4, 2002 but it seems that its finalisation and expected adoption by the UN General Assembly and opening it for signature seems to be very far due to still divergent views among negotiating nations on the soil of the respective UN Ad hoc Committee, according to actual information from this committee. As a positive shift in reaction of the UN system on CBRN-terrorism, the last UN Security Council resolution on global non-proliferation and counter-terrorism [6] can be mentioned.

3 Regional and similar joint political and legal constraints against terrorism

Consistently with the experience from negotiating any global agreement, e.g. in arms-control issues, it is clear how difficult it is to achieve general consensus of the world community necessary for adopting global general and comprehensive convention for combating international terrorism that seems to be much complex. On the other hand, there are already several regional, sub-regional and other joint political initiatives reflected in binding documents on combating terrorism. Examples can be found in the first line in America as well as on the Old Continent, where the oldest regional agreements of this art exist for more than a quarter of century: Organisation of American States (OAS) Convention to Prevent and Punish Acts of Terrorism, Taking the Form of Crimes against Persons and Related Extortion that are of International Significance was signed in Washington, February 2, 1971 (EIF October 16, 1973). European Convention on Suppression of Terrorism was adopted by the (all-European) Council of Europe in Strasbourg already on January 27, 1977. (EIF August 4, 1978). It is worth to be noted that this document has been amended recently by the Protocol, adopted in Strasbourg on May 15, 2003. Many regional and sub-regional political documents were actualised after events of September 11, 2001. Principal point of outcome for some of them was the Resolution of the UN Security Council No 1373 (adopted on September 28, 2001), but most of them were adopted much earlier. European Union belong to regional organisation, reflecting the new situation in many relevant documents, to name at least those, connected with protection of population [7], deepening the previously adopted action programme of Civil Protection. Another document is worth to be specially emphasised, i.e. the Common Position of the EU Council Concerning International Terrorism [8], because of containing the first “official” concise definition of terrorism and of some other terms (terrorist acts, terrorist groups), not to speak about more than hundred more-or-less “academic” definitions that can be found in various literary sources worldwide in the last two decades. This EU paper can be considered at the same time as the first international document tackling also (maybe still in developing and disputable form) problem of nuclear, chemical and biological weapons, including R&D of CB weapons. Also other regional
organisations adopted relevant international legal measures in combating terrorism, all of them long before the September 2001 and before the above mentioned resolution by the UN Security Council. Following documents can be named in this connection:

- **Arab Convention on the Suppression of Terrorism** (Cairo, April 22, 1998, EIF May 7, 1999)
- **Convention of the Organisation of Islamic Conference on Combating International Terrorism** (Ougadou July 1, 1999)
- **SAARC Regional Convention of Suppression of Terrorism** (Kathmandu, November 4, 1987, EIF August 22, 1988)
- **Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism** (Minsk, June 4, 1999)
- **Inter-American Convention against Terrorism** (Bridgetown, June 3, 1999).

These activities can be documented by the materials, published by UN [9] and by the mentioned international organisations themselves [10]. Any deeper analysis of the activities and adopted documents by these organisations goes beyond the framework of this paper but it seems, that it was difficult to reach consensus in some of these organisations especially on forms and means of combating terrorist groups, balance between police and military force, use of extensive military force, targets of military operations, approval by the UN Security Council etc., which was valid in the first line for NATO due to the divergent views of the US and most of its other Allies on this issue in the aftermath of September 2001, especially with regard to military interventions in Afghanistan and Iraq most recently.

4 Conclusions

The global system for combating terrorism as the highest and most brutal form of organised crime has been developed within the framework of UNO in connection with trafficking drugs, arms, human beings, money laundering and corruption. Otherwise, there are already thirteen global agreements on combating various forms of international terrorism adopted in reaction on the most frequently executed terrorist acts. Since the oldest, adopted 40 years ago, they address various problems gradually tabulated by the executed terrorist acts, starting with offences and other acts committed onboard aircraft (1963), unlawful seizure of aircraft (1970) and acts against the safety of civil aviation (1971), crimes against internationally protected persons (1973), over the problem of taking hostages (1979), physical protection of nuclear material (1980), safety of civil aviation (1988), of maritime navigation (1988) and of fixed platforms on the continental shelf (1988), to the problem of marking plastic explosives for the purpose of detection (1991), suppression of terrorist bombing (1997), financing of terrorism (1999), up to suppression of nuclear terrorism (2005). As it can be seen, these special global agreements are mostly rather target- than tool oriented. But at least three of these documents are closely connected with the CBRN issues. A draft of the Comprehensive Convention against International Terrorism (involving the forms of ultra-terrorism) was presented at the (closed) International Symposium on Combating International Terrorism in Vienna in 2002 but it seems that its finalisation is still far. Beside, a couple of political and legal documents have been already implemented into the legal system of many states creating thus a concrete point of outcome for preventive, repressive, protective, rescue and recovery measures connected even with the CBRN attacks. Many older documents have been actualised pursuant to the UN SC Resolution 1373 (2001) even if there is still lack of any UN-official definition of terrorism. Beside, many relevant documents have been adopted on regional level. In the European space, it is worth to remind the oldest valid (but generally nearly not known even among state officials) European Convention on Suppression of Terrorism, adopted by the Council of Europe (1977) as well as relevant new EC documents oriented to protection of population (2001), reflecting the mentioned UN SC Resolution. Also other prestigious regional organisations and defence communities have developed incentives in combating terrorism, long before the events of
September 2001. In this connection, one can mention the OSCE, EU, NATO and other regional and interest organisations, such as the League of Arab States (LAS), Commonwealth of Independent States (CIS), Organisation of Islamic Conference (OIC), Organisation of African Unity (OAU), Organisation of American States (OAS), South-Asian Association for Regional Cooperation (SAARC) and like. Lessons learned from the past development of terrorism show that build-up of a reliable worldwide system for combating international terrorism, encompassing preventive, repressive, protective, rescue and recovery measures is a never-ending agenda in the interdependent and globalised world due to continuous development of instruments of violence by terrorist groups utilising the last achievements of scientific and technological development. This is therefore an actual and extremely complex challenge for crisis management and protection of population.

References

[8] 2001/931/EC.