

DIFFERENTIATION PROBLEM IN THE RESPONSIBILITY FOR INTERNATIONAL CRIMES AND CRIMES OF INTERNATIONAL CHARACTER

Shahla Samedova

(*shahlats@mail.ru*)

Doctor of Laws, Professor

(Baku State University)

Maleyka Bayramova

(*maleyka-bdu@mail.ru*)

Ph.D in Law, Associate Professor

(Baku State University)

Abstract

Several classifications of international offenses have been proposed in international law. In the modern world, international offenses have been divided into three categories: international crimes, crimes of international character and delicts. The article analyzes issues of differentiation problem in the responsibility for international crimes and crimes of international character.

Keywords: *offenses, international law, differentiation problem, international crimes, crimes of international character, terrorism, terrorism financing, war crimes*

It should be noted that the degree of public danger of international crimes and crimes of international character, as defined by international criminal law, was taken into account during the differentiation of responsibilities for these offenses in the national criminal legislation. The differentiation of responsibility for these crimes in the Criminal Code of the Republic of Azerbaijan is defined in the General part as well as in the norms of the Special part. Thus, in the General part, the universal principle of international crimes (article 12.3), non-applicability of release from criminal responsibility in connection with expiration of time limits (articles 75.5, 80.4), as well as the retrospective force of the criminal law (Constitutional law dated May 12, 2006) principles. Only universal principle is referred to the crimes of international character. In this regard terrorism (article 214), financing of terrorism (article 214-1), as well as crimes of international character provided for in section VII of the Criminal Code are exceptions. That is, article 75.5 of the Criminal Code (release from criminal liability in connection with expiration of time limits) states that the provisions of this article shall not apply to persons who have committed crimes against peace and humanity, terrorism, terrorism financing and war crimes as provided for in the relevant articles of the Special part of this Code.

In literature it is noted that terrorism possesses higher degree of international danger among all crimes of international character and corresponding to its status it is equal to international crimes [3, 8]. Western lawyers also pointed out the danger of terrorism and said that the number of these crimes will not decrease in the future. In this case, the mentioned list should include not only financing of terrorism, but also attempt on life of the state or public authority (article 277), attempt on life of a person who is carrying out justice or preliminary investigation (article 287), capture of the hostage (article 215), hijacking of airship, ship or railway train (article 219). S.T. Samedova notes that, although not envisaged by international criminal law norms, the above-mentioned

acts of terrorism would be logical to apply the provision of non-release from criminal liability in connection with expiration of time limits against them, since they are considered to be more severe among crimes of international nature [4, 581].

The Council of Europe's 1977 Anti-Terrorism Convention gives a list of terrorist-related crimes. Although Article 214-1 of the Criminal Code extends this list, it is considered that although this list includes attacks against persons or organizations using international protection, and attempt on life of the state or public authority (articles 102, 277 of the CC), but it does not include attempt on life of a person who is carrying out justice or preliminary investigation (article 287 of the CC).

Another problem is in the definitions of terrorism and terrorism-related acts. Sometimes, in literature it referred to genocide, which is a particularly dangerous international crime, under the name of "terrorism." The Turkish author, Cengiz Bardak, describes the massacres against the Muslims during the crusade movements, massacre of Americans, and the colonization of Africa as terrorism [5, 227]. Sometimes, on the contrary, acts of terrorism are marked by another crime. For example, in 2009, the terrorist act against the students and teachers at the Azerbaijan Oil Academy was assessed as a provocation.

Another problem is the definition of terrorism, which is given in international field. Thus, we first noted that we must distinguish understanding of international terrorism, terrorism and terrorism act. However, the approach of states to this problem is contingent in modern conditions in terms of providing legal unity, which is an issue of international legal integration and its essential requirements. In the CIS countries, for example, in the Criminal Codes of the Russian Federation, Turkmenistan, and Azerbaijan Republic, although the norms on terrorism are almost identical, they are different in other states' Criminal Codes: According to the Criminal Code of Uzbekistan Republic, terrorism is an act that aims to impair international relations, threaten to commit war provocation or provocative actions of the state, to force international organization, physical or juridical person to commit certain acts or refrain from them, or threaten to stifle stability in the Republic of Uzbekistan, by taking the property or take personal pledge with threats of killing, attempts to attack the service buildings of foreign states or international organizations under international protection, as well as attacks against them or rented premises. Apparently, this norm refers to the acts of terrorism attacks of individuals and entities that are under international protection (or use of international protection). However, this act was regarded as another criminal offense, not as a terrorist act under article 220 of the Criminal Code of the Russian Federation, article 125 of the Criminal Code of Belarus, and article 170 of the Criminal Code of Turkmenistan. In addition, Uzbekistan Republic's legislative body, under the norm defining responsibility for terrorism, did not distinguish between international terrorism and domestic terrorism and gave one definition for both acts. Regarding the acts mentioned in the norm, it should be noted that they mainly characterize international terrorism.

According to article 88.1 of the Criminal Code of Latvia, terrorism is the use of explosives, use of fire, the use of nuclear chemical, chemical, biological, bacteriological, toxic or other weapons of mass destruction, mass poisoning, spreading of epidemics and epizootic diseases, kidnapping of persons, taking of hostages, hijacking of air, land or sea means of transport or other activities if they committed for the purpose of intimidating inhabitants or with the purpose of inducing the State, its institutions or inter-

national organizations to take any action or refrain therefrom, or for purposes of harming the State or the inhabitants thereof or the interests of international organizations. The acts mentioned in this article are stipulated in article 28 of the Criminal Code of the Russian Federation, article 60 of the Ukrainian Criminal Code, article 360 of the Belarusian Criminal Code, 173 of the Criminal Code of Turkmenistan Republic and article 161 of the Criminal Code of Uzbekistan Republic as provocation crime. It is noteworthy that there is no norm in the Criminal Code of the Republic of Latvia that defines responsibility for provocation. However, the essence of Article 88 seems to be that the legislator actually identifies terrorism with provocation. In this case, it is not logical to name this article as "terrorism". Because its disposition does not reflect features of terrorism that are fixed in many international legal documents, criminal laws of individual states and scientific works of scholars; especially the purpose of terrorism was not specified in this article.

V.P. Yemelyanov analyzing the norm on terrorism in the Criminal Codes of separate states thinks that the norms on terrorism do not cover the signs of "pure" terrorism by reflecting one or another side of its manifestation, on the contrary, in those norms contains the signs, which "blend" with non-terrorism acts signs. There are. We agree with the author's opinion that the objective and subjective signs of terrorism should be expressed in such a way that any confrontation with crimes such as provocation, attempt on the state or public figure, taking hostage or banditry has been eliminated [3, 67]. It can be argued that the diversity in the problem is in some ways related to the difficulties in identifying the object of terrorism.

The attitude to the object of terrorism in legal literature is not uniform. For example, V.F. Antipenko asserts that public security can not be the object of terrorism. In his opinion, the main object of terrorism should be national institutions (in different variants). V.P. Yemelyanov suggests that terrorism as a core part of "terrorism-related acts" should have its corpus delicti similar to other terrorism-related acts. In his opinion, at the initial stage, the features of the object of terrorism should be compounded and expressed as a complex compound reflecting the signs of two essential (main and additional) features. From the position of the author it follows that life, health, property should be regarded as signs of the optional additional object of terrorism and the activity of the authorities, as well as the activities of international organizations, individuals and legal entities or groups of individuals should be regarded as signs of necessary additional object. Apparently, in the version proposed by the author, the activity of international organizations was included in the list of objects of the encroachment.

V.V. Maltsev's position on this problem is more logical. In his opinion, regardless of how criminal-legal objects are treated in the law, the fact is that public security (relationships that ensure the security of a large number of members of the society) are extensive than objects of property, life, health and embraces all of them.

One of the difficulties in solving the problem is that some experts oppose differentiation between international terrorism and national terrorism and that international terrorism is not a separate type of terrorism but as a continuation of internal terrorism.

Another issue that attracts attention is the identification of terrorism with a terrorist act. It should be noted that the positions do not coincide in this matter. For example, in the Ukrainian Criminal Code, the features characterizing the crime of terrorism are grounded in the norm that defines responsibility for the terrorist act, and the so-called

social danger of terrorism has been groundlessly grounded in the crime of terrorist act, which is distinguished by certain specific signs and relatively low public danger.

According to G.Minkovsky and V.Revin, the concept of terrorism is a basic understanding towards concrete acts of terrorism, their expression in one crime is unacceptable.

J.O.Kuljabayeva considers the act of terrorism as an act of violence committed by a person (group of persons) against national public figures, people or other objects for the purpose of changing public-social structure, creating international conflicts and wars.

The position of I.P.Blishenko and N.V.Zhdanov on this issue varies considerably from the above-mentioned positions. According to them, the terrorist act is under the influence of international law, as it is committed by the subject of international law, dangerous for international relations, the presence of an international element in it, and so on. In this regard, they consider that "an act of terrorism of an international nature" means the use of force, blackmail, kidnap, murder, and other acts of violence, seizure, damage and destruction of property against the officials in political, economic, technical, transport, trade and cultural relations between states, and their family members, seizure, damage and destruction of property necessary for political, economic, technical, transport, trade and cultural relations among states, damage interstate postal, telegraph, telephone, radio and television communications, acts of violence against air, water, railways and motor vehicles and etc.

V.P. Yemelyanov distinguishing terrorism from the terrorist act which is very close to it, justifies that, in contrast to the terrorist act, terrorism can be expressed not only in acts of violence, but also in the form of threat of committing acts. In addition, terrorism is always accompanied by a common danger method of its committing (fire, explosion, etc.), and a terrorist act is a threat to a particular person. Taking into account the similarity of the above-mentioned deeds, the author combines them with a theoretical perspective, calling it "broadly-term terrorism" [3, 62].

According to the above mentioned facts, it can be concluded that international terrorism, terrorism and terror acts, which are not considered to be international terrorism, are different crimes, and therefore, the scope of their actions and the object of their encroachment should be clarified in relevant norms. It may be that some elements of the first two criminal acts coincide but, although both are similar, they are separate crimes for the differences in the degree of public danger and in the content of the objects directly damaged in the course of these crimes.

Regarding the improvement of the norm on terrorism, V.V. Maltsev notes that in article 205.1 of the Criminal Code of the Russian Federation, the identification of terrorist acts with the threat of committing such acts and the imposition of the same penalty for these acts is unacceptable. In this regard, he proposes the following version of this article:

1. Terrorism, or any other act that creates a danger of destruction or other dangerous consequences, if such acts are committed to the detriment of the public security, the threat of the public or to influence the decision-making by the authorities - from five to fifteen years is punished by imprisonment.

2. The same actions, which have resulted in grave consequences or committed by an organized group, as well as repeatedly - shall be punished by imprisonment for a term of ten to twenty years.

3. Acts envisaged in the first and second parts of this article shall be punished with imprisonment for the term from fifteen to thirty years, or life imprisonment, if they are related to the killing of a man.

Although it is worth mentioning that the positive aspect of this proposed variant that terrorism, which resulted in negligent killing of a man, should be noted as "related to killing of people", Ch.Mustafayev notes that some of the points below are out of focus [3, 70].

If we take into consideration the relevant provisions of the Criminal Code of the Russian Federation on terrorism and article 214 of the Criminal Code of the Republic of Azerbaijan, it is possible to observe that these norms are not sufficiently optimal for the purposes of the criminal responsibility and the purposes of the crime in terms of legislation. If terrorism (domestic terrorism) is perceived as a crime different from international terrorism, the expressions "adopting of decisions by international organizations" and "foreign state officials" should not be included in those norms in the relevant Criminal Code norms. Because this statements can be incorporated into international terrorism. According to article 214.1 of the Criminal Code of the Republic of Azerbaijan, Terrorism, that is commitment of explosion, arson or other actions creating danger to destruction of people, causing harm to their health, significant property damage or approaches other socially dangerous consequences committed with a view of infringement of public safety, intimidation of population or rendering of influence to acceptance of decisions by the state authorities or international organizations, and also threat of commitment of a specified actions in a same purposes. The words "terrorist act" were added to the text of Article 214 (Terrorism) by the law of the Republic of Azerbaijan on October 20, 2015, not by taking them from the text of article 277 (attempt on life of the state or public figure, and also representative of the foreign state, committed with a view of a discontinuance of his service or political activity or from revenge for such activity (act of terrorism), but by taking it from its name.

Infringement of public safety, intimidation of population or rendering of influence to acceptance of decisions by the state authorities or international organizations are the aims of this crime. Regarding the actions for its commitment is the commitment of explosion, arson or other actions creating danger to destruction of people, causing harm to their health, significant property damage or approaches other socially dangerous consequences. However, the realization of results, forcing physical or juridical persons to do or refrain from doing any work, and forcing officials to make decisions or to abstain from it are beyond the scope of the criminal law norm. In addition, it is known that terrorism is sometimes committed to "revenge" and "self-confirmation", as a result of terrorist acts people are killed, not only to people, but also to government officials and officials working in them property damage is inflicted or a threat of its infliction occurs. Unfortunately, these aspects are not reflected in the disposition of the norm.

At the same time it should be noted that these defects are also provided in the law of the Republic of Azerbaijan "On Combating Terrorism". According to the requirement of article 1 of that law, terrorism is the commission of acts or the threat to commit acts involving explosives or arson, or other acts which threaten to cause loss of life of human beings, or damage their health, inflict significant damage to property, or other socially dangerous consequences, if these acts are implemented with the aim of undermining public security, spreading panic among the population or forcing State authorities or

international organizations to take decisions that comply with the demands of terrorists.

In the Federal Law "On Combating Terrorism" of the Russian Federation, terrorism has been described as a broader content. According to that law, "terrorism" means the following: the threat of the use or application of explosive, fire, nuclear explosive devices, radioactive, chemical, biological, explosive, toxic, poisonous, potentially harmful substances; destruction, damage or seizure of vehicles or other objects; assassination of the state or public figure, representatives of national, ethnic, religious and other groups of the population; damage to life, health and property of an indefinite number of people by creating conditions for hostages, kidnapping, accidents and man-made disasters; dissemination of threats by any means or form; other acts that threaten people's death, property damage, or other potentially dangerous consequences.

Comparing the relevant articles of the Criminal Code of the Russian Federation and referring to the law, Prof. M.P.Kireyev affirms that the Criminal Code has not been given all the deeds to be regarded as terrorism. The author's opinion is based on the fact that the broader system of these acts is given in the law "on Combating Terrorism". However, given the essence of the above-mentioned actions, it can be seen that some of them are not related to terrorism and that many countries cover these acts by the relevant norms of their Criminal Codes. For example, the responsibility for the kidnapping, hostage taking, the assassination of a public and public representative, and other acts have been established in the separate norms of the Criminal Code of the Republic of Azerbaijan and other states [3, 73]. As we see, the above mentioned laws also provides for the defects we have mentioned in article 214 of the Criminal Code.

For the purpose of eliminating these shortcomings in the criminal law and in the relevant provision of the said law, the first part of the norm on terrorism is understood to mean the fulfillment of the said consequences, "revenge", "self-confirmation", "for the benefit of the terrorist, or for the benefit of third parties in their will" statements, as well as taking into account the above mentioned about officials of the authorities, the following definition shall be provided:

Terrorism, that is, revenge, self-confirmation, the authority or authority employed by a government official in the interest of the terrorists or in the will of third parties in favor of decision-making or refusal to make decisions, as well as any physical person or group of persons physical or legal persons, state bodies or officials employed therein, or other publicly dangerous consequences, such as explosion, fire, or explosion that threatens to cause harm to physical appearance or physical person, or other social danger, threatening public security or committing such acts.

Bearing in mind that the nature and content of this socially-dangerous act is largely accompanied by the mass killing of human beings, we consider that in article 214.2.4 of the Criminal Code, "... causing negligent human death or other severe injuries" words, it would be more expedient to give it as "causing death".

Difficulties in the identification of the signs, objects of terrorism have also led to the establishment of a different relationship in the criminal law. Legal literature suggests that the norm on terrorism should be placed in any other section, not in the section on crimes against public security. For example, the norm on terrorism in the Latvian Republic was put into the state crimes section of the Criminal Code.

There are 3 norms of terrorism in the Criminal Code of the Republic of Belarus. Two of them are terrorism (article 289) and the threat of committing terrorism act (article 290) in chapter on crimes against public security, and international terrorism (article 126) in chapter "on crimes against peace and security of humanity."

It would be expedient to refer to the above-mentioned as well as to the experience of the Republic of Belarus for the justification of the current location of the norm on terrorism in the Criminal Code of the Republic of Azerbaijan that defines the responsibility for terrorism and taking into consideration the definition of terrorism, which is proposed by the author. However, it should be taken into account that, as envisaged by article 290 of the Criminal Code of the Republic of Belarus is covered by article 214 of the Criminal Code of the Republic of Azerbaijan, it is unnecessary to prescribe a separate norm in the law.

We believe that international terrorism is a different act of terrorism as envisaged in article 214, which requires the establishment of a norm that defines responsibility for the international terrorism in chapter "On crimes against peace and humanity" of the Criminal Code of the Republic of Azerbaijan.

Another issue, the provisions of articles 75.5 and 80.4 of the Criminal Code of the Republic of Azerbaijan [1, 2424;261] automatically apply to crimes against peace and humanity contained in section VII of the Criminal Code (articles 101, 102, 114, 118 and 119.1). However, the international danger of these acts is less than the threat of international crimes. Obviously, the legislator did not take into account the difference in the legal status of crimes of international character with international crimes. S.Samedova notes that this problem can be resolved in a certain way. 1. To include into articles 75.5 and 80.4 of the Criminal Code other types of terrorism-related offenses - 215, 219, 219-1, 277 and others; At the same time, as we have noted, it is necessary to exclude the offenses referred to in section VII of the Criminal Code - articles 101, 102, 114, 118 and 119.1. These crimes should be clarified in the Special part of the Criminal Code. For example, articles 118 and 119.1 can be included in the group of crimes against military service. Obviously, in this case, the species object of these crimes will be changed.

By agreeing with S.T.Samedova's opinion, let's note that the Criminal Code should include the definition of international crimes and, in particular, the article which lists this crimes [4, 584]. At this point, it will be necessary to replace the concepts of "crimes against peace and humanity" and "war crimes" in the Criminal Code with the notion "international crimes". It would be expedient to list a specific list of international crimes in the note part of article 100 of the Criminal Code.

As noted in chapter II of this research work, the crimes against peace and humanity are listed in section VII of the Criminal Code of the Republic of Azerbaijan, in chapter I of the Special part, but in other countries, such as the Russian Federation and Ukraine, they are prescribed in the last section XII, and crimes against personality have been instituted in the first chapter of a special part. In our view, it is correct that these crimes were fixed at the very beginning of the Special part due to the degree of public danger and the object, i.e. the scope of public relations. The Criminal Codes of Azerbaijan, Belarus, Estonia and France envisaged in section I of a Special part the international crimes. N.F.Kuznesova also notes that the position of the criminal law of these states is correct. Section 1 of the Special part of the Criminal Code of Turkey is dedicated to international crimes. In Germany, in 2002, an independent criminal code envisag-

ing crimes against international law was adopted. In our view, not just a new Criminal Code, it is possible to define a section in the Criminal Code on “international crimes” as well as prescribe in it separate chapters that can take account of transnational crimes.

Comparison of foreign legislation shows that the Criminal Code of the Republic of Azerbaijan has defined a relatively complete list of international crimes. The provisions of the Rome Statute of the International Criminal Court have been found in the legislation of the Republic of Azerbaijan and have defined 20 types of criminal offenses from the list of 32 crimes. This is higher than in other countries (for example, 8 types of crime in the Russian Federation). This can be regarded as a result of international crimes committed against the population of Azerbaijan and Nagorno-Karabakh problem.

The crimes of genocide and incitement of genocide in the 1999 Criminal Code of the Republic of Azerbaijan were regarded as crimes against humanity, which, in the opinion of most authors, must be considered correct. However, according to the amendment by the law of the Azerbaijan Republic of July 2, 2001, the note part of article 103 passed to article 105, and genocide (article 103) was excluded from the list of crimes against humanity. Thus, it was noted in the note that deliberate acts committed as part of large-scale or systematic attacks against any civilian population during peace or war, as defined in articles 105-113 of this chapter, are crimes against humanity. This is the case in the Rome Statute.

Let's also mention a problem that can be solved. The Criminal Code establishes criminal responsibility for international crimes, as well as for most crimes of international character, at the age of 16. However, according to the Rome Statute, criminal responsibility for crimes against humanity, genocide, war crimes is established at the age of 18. We believe that it would be expedient to determine the age limit of 18 years by making changes in accordance with the position of the Rome Statute on the subject of the offense for these crimes.

References:

1. Comments of the Criminal Code of the Republic of Azerbaijan, Part I, Baku: Law Publishing House, 2018. 704p. (in Azerbaijani)
2. Aliyev AI Azerbaijan for International Crime: Legal Analysis, Baku: NURLAR, 2018. 176p. (in Azerbaijani)
3. Mustafayev Ch.F. Terrorism, Baku: CHINAR-CHAP, 2005. 191p. (in Azerbaijani)
4. Samedova Sh.T. Problems of criminal law: classification of crimes, differentiation of criminal liability and the construction of sanctions, Baku: Ekoprint, 2017. 744p. (in Russian)
5. Bardak C. Açıklamalı-ıçtihatlı Terörlə mücadele kanunu və Devlet güvenlik mahkemeleri kanunu. Ankara: Yetkin Basimevi, 1997. 486s. (in Turkish)

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