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Combating the financing of terrorism in the conditions of military aggression on the territory of Ukraine

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Abstract

The article analyzes modern terrorist threats in the context of military operations on the territory of Ukraine, which are associated not only with terrorist attacks on critical infrastructure facilities, but also with the active use of financial assets, the latest technologies and innovative financial instruments. An analysis of the concepts of «military terrorism», «financing of terrorism», as well as of the Ukrainian system of combating the legalization of proceeds of crime, financing of terrorism, was carried out, which allowed to identify and assess the main trends and directions of development of such countermeasures, to indicate the existing shortcomings and develop mechanisms for improving the analyzed system at the local and international level. A conclusion was reached on the need to strengthen interdepartmental and interstate cooperation, to establish links between regional anti-terrorist structures of law enforcement and special services, and to use units and units of the armed forces in the fight against military terrorism.

Keywords: terrorist financing; military terrorism; legalization of funds; counterterrorism; armed forces units.

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Lucha contra la financiación del terrorismo en las condiciones de agresión militar en el territorio de Ucrania

Resumen

El artículo analiza las amenazas terroristas modernas en el contexto de las operaciones militares en el territorio de Ucrania, que están asociadas no solo con ataques terroristas en instalaciones de infraestructura crítica, sino también con el uso activo de activos financieros, las últimas tecnologías e instrumentos financieros innovadores. Se llevó a cabo un análisis de los conceptos de «terrorismo militar», «financiamiento del terrorismo», así como del sistema ucraniano de lucha contra la legalización del producto del delito, el financiamiento del terrorismo, que permitió determinar y evaluar la principales tendencias y direcciones de desarrollo de tales contramedidas, para indicar las deficiencias existentes y desarrollar mecanismos para mejorar el sistema analizado a nivel local e internacional. Se llegó a una conclusión sobre la necesidad de fortalecer la cooperación interdepartamental e interestatal, establecer vínculos entre las estructuras antiterroristas regionales de las fuerzas del orden y los servicios especiales, y utilizar unidades y unidades de las fuerzas armadas en la lucha contra el terrorismo militar.

Palabras clave: financiamiento del terrorismo; terrorismo militar; legalización de fondos; contraterrorismo; unidades de las fuerzas armadas.

Introduction

Terrorism is one of the most threatening socio-political and socio-economic phenomena of the modern world. Global world security, as well as the security environment of individual regions, not to mention even individual countries – all this is the object and actual sphere of manifestation of terrorist activity of the relevant associations, groups, troops (forces). Its extreme form of manifestation – acts of military aggression, terrorist attacks on critical infrastructure facilities and harmful industrial productions not only cause damage by the very fact of committing attacks, but have negative socio-economic consequences of large and long-term scales. Globalization and transnationalization of production, movement of capital and labor reserves, informatization and digitization of social and economic processes – all this creates new opportunities for the development of terrorist groups.

According to the conclusions of the vast majority of the world's leading experts, and this is obvious in our opinion, the real and potential threats

caused by international state terrorism on the part of the Russian Federation (hereinafter – the RF) are currently the most likely and most dangerous for Ukraine. Since the beginning of the Russian aggression and annexation of Crimea, as well as the direct participation of the armed forces of the RF in terrorist activities, the direct leadership of illegal armed forces in the Donbas, the large-scale arming and training of terrorists, the situation in Ukraine has fundamentally changed (Grynenko *et al.*, 2015).

Terrorist activity in Ukraine has its own characteristics. On the one hand, it contains signs of international terrorism that threatens European and global security, and on the other hand, it is one of the means of waging a hybrid war of the RF against Ukraine. At the beginning of the anti-terrorist operation in 2014, terrorist activities were mostly expressed in the commission of explosions, shelling, killings, hostage-taking, obstruction of the Organization for Security and Cooperation in Europe (hereinafter – the OSCE) monitoring mission. Recently, it has become open, comprehensive and massive, combined with special information operations, cyberattacks and cyber incidents, as well as encroachments against critical infrastructure.

The mentioned circumstances create a need to change the approaches to combating and fighting international terrorism, placing new emphasis on preventive measures, wider application of modern technologies in the field of detection and monitoring of potential terrorists.

1. Methodology of the study

In scientific work, in accordance with its purpose, tasks, object and subject, general scientific and special methods of cognition are used. An active methodological approach is used to learn the essence of international terrorism, terrorist financing, the subject, object, mechanism and results of combating the financing of terrorist activities. The use of the historical method contributed to the analysis of individual stages of combating the financing of terrorism in some countries.

The logical-dogmatic method was used in the interpretation of the categorical parastatus used in the study. The comparative legal method is applied to the study of foreign and international experience in combating the financing of terrorism. The system-structural method of knowledge made it possible to reveal the directions of combating the financing of terrorist activities, to assess its role in the strategy of waging a hybrid war of the RF against Ukraine, to analyze the quantitative and qualitative indicators of terrorist crimes, to develop measures to combat terrorist activities.

2. Analysis of recent research

Considerable attention was paid to the study of various aspects of manifestations of terrorism (terrorist activity) and counteraction to this phenomenon by domestic and foreign scientists and practitioners (Tkach, 2013; Malyy, 2016; Tierney, 2018; Zharovska, 2019; Morse, 2019; Wall, 2020). However, their research in this area does not exhaust all aspects of international legal countermeasures to the financing of terrorism, in particular military terrorism, as a certain system of war crimes and military practices connected with it, the manifestations of which are extremely relevant at the current stage of Ukrainian resistance to Russian terror.

Thus, it is obvious that there is an urgent need for a comprehensive analysis of such phenomena as: «military terrorism» as a key legal phenomenon and determination of its role and place in the system of international legal order and peace security, «financing of terrorism», counter-terrorism». The problematic nature of this issue is also due to the fact that the RF constantly tries to export terror and spreads this strain, the strain of «wars» throughout the world.

3. Results and discussion

3.1. The essence of military terrorism and terrorist financing

Today, the problem of ensuring peace and international security is almost the most urgent for every country in the world. Terrorism is a socially dangerous activity that consists in the deliberate, purposeful use of violence by taking hostages, arson, murder, torture, intimidation of the population and authorities or committing other attacks on the life or health of innocent people or threatening to commit criminal acts with the aim of achieving criminal goals (On The Fight Against Terrorism, 2005).

Separating the issue of military terrorism from the general system of the international legal definition of «terrorism», it should be noted that the famous Israeli journalist and public figure A. Entova once noted that: «Terror is the war of the fourth generation... And in war, people must behave morally, and in war there are things that are permissible, there are things that are necessary, and there are things that are unacceptable that you can do without, and if you can do without, you have to do without» (Asya Entova in the 2nd part of the program «With capital letters» explains what Herzl is guilty of and whether « democracy is organized blackmail», 2016).

The «International Convention on the Suppression of the Financing of Terrorism» emphasizes that it is about harming people who do not take

an active part in hostilities. It follows that terrorism is armed violence, but not that in which the state participates. The battle is not conducted by a regular army and the object of attack in it is not the military, but the civilian population, and today it is usually the masses, not the elite. The goal of the terrorist war is territorial conquest, with the goal of changing society itself. It is in such cases that «war» can take the form of terrorism.

Considering «military terror» through the prism of «war», it should be noted that on the one hand, modern terror is indeed a war, since modern terrorists use armed violence using their regular armed forces – on the other hand, terrorists operate in conditions of formal peace between states, but their main calculation is not based on the power factor, which they do not have much of, but on the creation of public pressure or an anti-moral civil position.

At the same time, one should understand the difference between the concepts of «terror» and «terrorism»: terror is the subject of a crime, the state, the object of encroachment is the population; terrorism - the subject of the crime is a person, a group of persons, the object of the attack – the state, state institutions.

Thus, «military terrorism» is armed violence by military formations (private military formations) of the regular army of the aggressor state against the civilian population, which is carried out for the purpose of waging a war of aggression and involves the annexation of territory using terrorist methods.

It is undeniable that international military terrorism and its financing is a threat not only to human rights, the rule of law and democracy, but to all internal and international security. Therefore, such threats require their study and analysis, as well as the strengthening of international determination and multilateral cooperation at all levels.

The intensification of terrorism and separatism in Ukraine, which is taking place against the background of active military operations caused by the aggression of the RF, formulates the task of combating their financing in a new way and requires the adoption of strict measures to control financial flows. Therefore, the activity of identifying and effectively blocking the channels of financial support of terrorist and separatist organizations should be one of the key areas of the long-term strategy of state institutions.

The main external factors that increase the threat of terrorism include: Ukraine's geopolitical position at the intersection of the spheres of influence of the RF, Western countries, the USA, Turkey, and the countries of the Muslim world; the existence of migration flows through Ukraine from terrorist-dangerous regions; terrorist activities of RF mercenaries and sabotage and intelligence groups; large-scale illegal supplies of almost all types of weapons from the RF to some areas of the Donetsk and Luhansk

regions occupied by it; powerful information war of the RF against Ukraine, etc.

Among the internal factors of heterogeneity, the following should be singled out: a combination of criminal and terrorist activity, which is manifested in the involvement of representatives of criminality as perpetrators of terrorist attacks and mercenaries during the military aggression of the RF; corruption of certain sectors of society; spread of illegal weapons circulation in Ukraine; low efficiency of law enforcement and judicial systems of government; heating up «separatist sentiments» (Shamara *et al.*, 2011).

Terrorist activities require financial support. At the same time, the practice of combating the financing of terrorism by the international community shows the fact that terrorist organizations seek to use the simplest, most accessible and understandable methods of transferring funds.

A specific feature of the formation of financial resources by terrorist organizations is that the sources of funding can have both legal and illegal origins – criminal activity, drug trafficking, human trafficking, smuggling, corruption. Therefore, the concepts of «money laundering» and «terrorist financing» are often related to each other, because individuals and organizations that finance terrorism carefully disguise the real origin and direction of funds, which makes it difficult to identify them. However, unlike money laundering, which is mostly aimed at concealing the source of income, the main goal of individuals involved in the financing of terrorism is primarily to conceal the nature of the financed activity (Combating the Financing of Terrorism: Investopedia, 2020). Sources of funds that move through the financial sector can also have a completely legal nature. Typically, terrorist financing includes not only the financing of terrorist acts as such, but also the support of criminal infrastructure.

Thus, the financing of terrorism involves not only the preparation and execution of terrorist acts, but also the provision of their organizations, propaganda of ideology, recruitment, training and training of new members of the organization, payment of bribes, movement between cities or countries. In addition, part of the funds can be used to create the appearance of legal activity, in particular controlled structures engaged in commercial or credit-financing activities (Financing of terrorism, 2020).

Financial support for terrorist and separatist activities can occur both through the direct transfer of assets, funds and weapons, and remotely, that is, using the services of the financial system (State Financial Monitoring, 2014).

It is possible that terrorist organizations and separatist movements independently ensure their existence in places of particularly active presence

by exploiting the local population, mining, processing and production facilities in the region of presence. So, for example, in the temporarily occupied regions of Ukraine, enterprises, in particular, from coal mining, are captured and exploited. Other businesses and the population are forced to pay so-called «taxes» collected by representatives of the occupiers, terrorist organizations and separatist movements.

Criminals can use a number of methods that involve the use of financial infrastructure in order to cover up the financing of terrorism. Banks, non-banking institutions, charitable organizations, non-profit organizations, and alternative money transfer systems may be involved in the financing of terrorist activities.

The movement of funds can be carried out both through international funds transfer systems and through small regional payment systems. The development of the latest payment technologies, the ease and speed of financial transactions on a global scale, combined with a large number of unofficial (or semi-official) money transfer systems create prerequisites for the growing risks of using the financial system for terrorist financing purposes (Combating the Financing of Terrorism: Investopedia, 2020).

RF's military invasion of Ukraine, which was transformed into a full-scale war, became a catalyst for the functioning of terrorist organizations, which re-formulates the task of combating their financing and requires effective preventive measures to control financial flows.

Although financial support in today's conditions comes mostly from outside, the probability of movement of funds through financial institutions within the country is also high, which is caused by more effective mechanisms for identifying and verifying clients of banking institutions, more established cooperation with specially authorized bodies. The foregoing led to the conclusion that the procedures of the non-banking sector to combat money laundering and the financing of terrorism are inferior in their effectiveness to banking ones and need to be improved.

In the context of compliance with the requirements of the law, financial institutions should focus their activities on the use of a risk-oriented approach in the process of identifying and verifying customers, monitoring their transactions, timely identifying and blocking financial transactions for which there is a suspicion that they may be related to the financing of terrorism. Important for the establishment of barriers to the movement of funds to terrorist organizations is the prompt exchange of information between the financial sector and law enforcement agencies, as well as cooperation with the authorities responsible for the fight against terrorism of other countries.

In-depth research on countering the financing of terrorism and the proliferation of weapons of mass destruction will require funding

schemes for terrorist organizations, the financial instruments they use, and mechanisms to counter the attraction of funds from abroad by such organizations. At the same time, special attention is paid to the peculiarities of using innovative financial instruments, in particular cryptocurrencies, for which there is currently no proper regulation and supervision, to attract funds from terrorist organizations.

Evaluation of legislative initiatives and practical measures in the context of the implementation of the best world practices in the field of cooperation with manifestations of terrorism indicates that counteraction to the financing of terrorism is characterized by the adoption of regulations that should take into account not only the need to criminalize all socially dangerous manifestations of terrorist activity, but also be accompanied by strengthening international and interdepartmental cooperation between special services and law enforcement agencies, strengthening control over crossing state borders and countering the financing of terrorism.

It is worth emphasizing that the methods of financing terrorist organizations evolve in parallel with the development of the capabilities of the financial sector in the field of money movement, therefore, along with typical, established instruments, those that involve complex cross-border multi-channel schemes, the detection of which can become a difficult task for financial institutions, may well be used. Often, financial institutions, primarily banks, act as the main mediators of financial transactions.

It is natural that in the case when such a significant share of financial flows in the country moves through banks, the risk of carrying out terrorist financing operations using the banking sector should be considered quite high. Synergy of efforts and interaction of banks and non-bank financial institutions, the State Financial Monitoring Service, as well as law enforcement agencies is of great importance for effective countermeasures against the financing of terrorism.

Ensuring the prompt exchange of information between the public and private sectors, between the financial sector and law enforcement agencies should become an integral element in building a strategy to combat the financing of terrorism (Thony, 2001).

We share V. Rysin's point of view that special emphasis should be placed in such cases on the procedure for investigating criminal offenses related to the financing of terrorist activities and the effectiveness of law enforcement agencies, because informing banks about suspicious financial transactions and stopping such transactions is insufficient in the event, when in the future their initiators or beneficiaries are not brought to criminal responsibility (Rysin, 2020).

Special attention should be paid, among other things, to the identification of those persons in terrorist organizations who are engaged in the collection

and accounting of financial funds. For this, law enforcement agencies need, among other things, to concentrate their efforts on conducting investigations into the final recipients of funds in terrorist organizations, not only on finding out the sources of funds.

Consequently, the relevance of challenges and potential threats caused by international terrorism is increasing for Ukraine, which is caused by the terrorist activities of mostly Russian terrorist mercenaries and sabotage and intelligence groups, and less often by the expansion of Ukraine's political, economic, humanitarian and cultural ties with the countries of the world where armed conflicts, the participation of the Ukrainian military contingent in peacekeeping operations. The foregoing encourages the further development of the anti-terrorist security system, which would meet the standards of developed countries, in order to create an effective mechanism for preventing, responding and countering terrorist threats.

3.2. International mechanisms for combating military terrorism and its financing

According to V. Rysin and A. Stepanova, the tools for countering the financing of terrorism are the most effective means in the system of countering such manifestations and their spread in the global dimension (Rysin and Stepanova, 2020). We agree with this point of view, although we consider an alternative vision to be acceptable, proposed by A. Bergeneva. Thus, the researcher points out that the policy and methods of the EU's fight against terrorism have a utilitarian character only when they acquire the necessary spread or recognition outside the EU (Bergeneva, 2022).

This thesis is relevant due to the fact that terrorism is increasingly becoming a global phenomenon, and therefore its support, dissemination and financing do not necessarily have sources that can be combated or destroyed with the help of the EU legal system or that are within the jurisdiction of the EU.

Currently, the institutional support of the process of combating money laundering and terrorism financing in Ukraine remains a weak link of the national countermeasures system and has certain shortcomings.

The most significant ones include; lack of effective control by state regulators over the implementation by the subjects of primary financial monitoring of the provisions of national legislation; frequent disregard of established procedures in the banking system and, as a result, large-scale use of banks in criminal money laundering schemes; lack of established interdepartmental cooperation by the interstate financial monitoring service and law enforcement agencies; lack of cooperation between law enforcement agencies and the judiciary; the absence of a procedure for the return of proceeds obtained through criminal means, as a result of the

legalization of funds or the financing of terrorism, which were exported abroad.

The transnational and international nature of terrorist activity makes the efforts of one country or groups of countries insufficient. For its effective counteraction, and in particular in the context of the destruction of sources of funding, the EU simply cannot do without international support, as well as in matters of the use of armed forces or police missions to fight against its most radical manifestations, if only due to the fact that it is the military the contingent, unlike police missions, has a corresponding UN mandate.

Therefore, during the development of the Directive of the European Parliament and the Council of the EU No. 2005/60/EU «On the prevention of the use of the financial system for the purpose of money laundering and financing of terrorism» and the Directive of the European Parliament and the European Council of 20.05.2015 No. EU 2015/849 was it is recognized that money laundering and terrorist financing are usually carried out in an international context. Measures taken exclusively at the national level or even at the level of the EU only, without international coordination and cooperation, will have very limited results.

Measures approved by the EU in this area should be coordinated with other measures taken in the framework of other international initiatives. Community measures should continue to take into account the Recommendations of the Group for the Development of Financial Measures to Combat Money Laundering, which is the main international institution in the field of combating money laundering and terrorist financing (On Preventing The Use Of The Financial System For The Purpose Of Money Laundering And Terrorist Financing: Directive Of The European Parliament And Council Of The EU, 2005). Thus, at the level of its own legal documents, the EU recognizes the need for international cooperation in countering terrorism.

It should be noted that with regard to the investigation of the financing of terrorism, in July 2018 the European Parliament adopted a directive to the 5th Anti-Money Laundering Directorate, which is aimed at increasing transparency by establishing publicly accessible registers for companies; expanding the powers of EU financial intelligence units; restrictions on anonymity, users of virtual currencies and wallets, as well as prepaid payment cards; expanding the criteria for evaluating third countries with a high level of risk and improving the guarantees of financial transactions. The introduction of this directive was a reaction of the EU countries to the growing threat of terrorism and an attempt to establish the strictest possible control over financial transactions and instruments that can be used to finance terrorist activities. Ukraine's reaction to AMLD5 was the adoption of a new version of the basic law on combating money laundering and terrorist financing, as well as the implementation of certain projects (Kolesnik, 2019).

In this regard, Z. Gbur and S. Koshova draw attention to the aspect that international counterterrorism with the use of armed forces requires, in addition to destroying the channels of financing terrorist organizations, also disrupting the ways and channels of coordination of their activities (Gbur and Koshova, 2021).

The recognition of the RF as a terrorist state on October 13, 2022 in the resolution of the Parliamentary Assembly of the Council of Europe (PACE) is one of the most important historical diplomatic decisions (This is a political signal: Zelenskyi on the PACE decision to recognize Russia as a terrorist, 2022). At the fall session in Strasbourg, the PACE considered a resolution condemning RF's actions in Ukraine as a war crime, a violation of international law, and a threat to international peace and security.

In general, it should be noted that the international legal system of countering and fighting terrorism currently gravitates towards solving the issues of countering and preventing terrorist manifestations, destroying the financing channels of the relevant organizations, but pays little attention to the coordination and consolidation of efforts to use armed forces in the fight against such manifestations. including in the context of the expansion of such cooperation and the involvement of police structures and formations that would solve the issue of bringing to international criminal responsibility persons guilty of terrorism.

There is no doubt that Ukraine's use of the scientific material and practical experience accumulated by the world community in the further improvement of the national system of combating international military terrorism, legalization of proceeds obtained through crime and financing of terrorism is of crucial importance, as it significantly accelerates the integration process of the state into the international system of cooperation and mutual assistance. in the fight against this negative higher, one of the varieties of transnational criminal activity.

Finally, we note that the problem of combating terrorism is multi-level, the solution of which must be sought in a multilateral partnership with state structures. Despite all international efforts, terrorism not only does not weaken its position, but on the contrary expands its influence. Terrorists, drawing up a plan of operations, even provide for its coverage in the mass media. Such activity is similar to sabotage and reconnaissance, and therefore once again justifies the expediency of using parts and combinations of armed forces for their neutralization.

Conclusions

The functioning of terrorist organizations in the conditions of war formulates the task of combating military terrorism and financing in a new way and requires effective preventive measures to control financial flows. In conditions where financial support comes mostly from outside, the non-banking sector's anti-money laundering and terrorist financing procedures are less effective than banking ones and need improvement.

Financial institutions should focus their activities on the application of a risk-oriented approach in the process of identifying and verifying clients, monitoring their transactions, timely identifying and blocking financial transactions that are suspected to be related to the financing of terrorism.

In the aspect of combating the financing of terrorism and the proliferation of weapons of mass destruction, special attention needs to be paid to the financing schemes of terrorist organizations, the financial instruments they use, in particular cryptocurrencies, in respect of which there is currently no proper regulation and supervision, in order to develop effective mechanisms to counter the attraction of funds from abroad. Effective exchange of information between the financial sector and law enforcement agencies, as well as cooperation with other countries' counter-terrorism agencies, is important for establishing barriers to the flow of funds to terrorist organizations.

The international legal system of combating and combating terrorism should focus on coordinating and consolidating efforts to use units and units of the armed forces in the fight against such manifestations, expanding cooperation and involving police structures and formations that would solve the issue of attracting international criminal liability of persons guilty of terrorism and its financing.

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