



Criminal charge for terrorism in Chinese

Jurisdiction:

Improvement and contradictions

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Her career trajectory includes working for non-governmental and governmental institutions, the United Nations, as well as several training and *in loco* research on humanitarian aid in Lebanon and North Korea.

Renata's large experience in Chinese Politics and Law has allowed her to publish several papers and take part into selective Chinese government meetings. Currently she works for

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Abstract:

As a responsible stakeholder and a veto power, China has shown to be complacent to the global war on terror by signing and ratifying most of international documents on the matter. Domestically, however, the Chinese Criminal Code has shown gaps and controversies, lacking a criminal legal definition and bringing controversial criminal liability of terrorist crimes.

According to the Law, terrorist crimes are similar to ordinary crimes. The main difference between them relies on the global threat terrorism represents, which disturbs social stability as well as threatens national and international security.

The rising concern over terrorism has emerged the need to adequate legal apparatus. As latest development, Beijing's approach focuses on the legal area by defining terrorism, targeting terrorist groups and on the economic front, by boosting economic development in Tibet and Xinjiang.

The success of combating terrorism in China should be understood by a merging of different factors: the understanding of terrorism as global threat, the necessity to implement full legislation and enhancing law enforcement; increasing the punishment, as well as acting pre-emptively by identifying and combating terrorist cells.

Key words: Terrorism, Separatism, China, Xinjiang, Tibet

Criminal charge for terrorism in Chinese Jurisdiction: Improvement and contradictions

The September 11th attacks were, undoubtedly, the most socio-cultural-defining event of the century, through which the world would define a kind of global war ever experienced, the war on terror. In spite of being an American event, the terrorist attacks, not a totally new concept in International Law, reached new dimension and importance in all parts of the globe.

The necessity to establish an accurate criminal law definition and laws arose accordingly. Currently, there are 16 UN legal instruments and four additional amendments dealing with terrorism¹, being 11 of them published after 9/11. This figure represents that the attacks to the World Trade Center were responsible to bring terrorist attacks from local events to a global threat.

There is no consensus amongst scholars and jurists about the international conceptualization of the term terrorism. The United Nations has attempted to pen a definition, without success. The Comprehensive Convention on International Terrorism, the latest UN document on terrorism, is in deadlock due to the lack of agreement amongst its members over the definition and detailed provisions.

The importance of a universal definition relies on the limitation to both combat and prevent terrorist crimes. For the international law, it compromises the judicial oversight and legal binding, as well as limits the United Nations to advocate as an international authority on the issue.²

1 Terrorism was first addressed at the international level in 1937, through the Convention for the Prevention and Punishment of Terrorism. Data from the United Nations Action to Counter Terrorism.

2 (Human Rights Advocate)

It is regionally that more effective legal countermeasures have been put into practice. The European Union, The Association of Southeast Asian Nations (Asean), The African Union had stepped forward to guarantee better international criminal legislations. In Asia, The Shanghai Cooperation Organization has proven to be a successful case.

The SCO is an intergovernmental mutual-security group founded in 2001 in Shanghai by the leaders of China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan. The group works as a platform to confront terrorism, extremism and separatism, or the “three evils”, all big threats to the region. Its main binding document is the Shanghai Convention on Combating Terrorism, Separatism and Extremism.

China has been very active not only in the SCO, but also in the UN and other organizations. China has signed and ratified most of the UN Conventions and the United National Security Council Resolutions on the issue such as the UNSC resolution 1373³. Yet, the People’s Republic has found in the Shanghai Convention on Counter-terrorism the most suitable mechanism to defend its interests in its most problematic region. Through cooperation and extradition treaties, the convention has provided important legal bases for Beijing to pledge trans-border terrorism.

By taken part into UN documents even though they are not legally binding, China reaffirms its engagement to counter international terrorism. As a responsible stakeholder and permanent member of the Security Council, China has taken positive steps towards the issue. Concerning the SCO, more specific determinants arose, such the escalation of terrorism in the borders.

TERRORISM ACCORDING TO THE CHINESE LAW

³ UN resolution 1373/2001: Suppressing, Financing, Improving International Cooperation and the creation of the Counter-Terrorism Committee.

In order to ratify international documents, adjustment of national laws shall be voted in the Congress. Moreover, in Chinese jurisdiction, an international document shall not violate the terms of the Constitution, and it is common practice the implementation of domestic legislation for law enforcement accordingly. In the recent years, amendments to the Criminal Code became more common in order to adequate the terms of terrorism.

The Chinese Criminal Code from 1997 and the article 120, tackled terrorist crimes for the first time, although in a very simplistic way. The 9/11 has reminded China of the vulnerability of any country towards terrorism, the eminent necessity to amend the Criminal Law and elaborate new provisions respectively.

The Amendment of the Criminal Law of the People's Republic of China (III) from 2001 brought about the first attempt to stipulate a prison sentence for terrorist acts, which according to the article 114, "Whoever commits arson, breaches a dike, causes explosion, spreads poisonous or radioactive substances, infectious-disease pathogens or other substances, or uses other dangerous means, thereby endangering public security but causing no serious consequences, shall be sentenced to fixed-term imprisonment of not less than 3 years but not more than 10 years."⁴

The government has acted promptly to adequate its domestic legislation to the new reality since 2001, however two major criticisms were raised: the lack of defining inherent crime of terrorism and the criminal liability itself.

The importance of defining the terms of terrorism, as mentioned previously, has direct impact on the binding effect of the Law, imposing crucial barrier to crackdown terrorism. Since there is no organized body of legislation with clear definition, it is challenging to include terms such as religious extremism as component of terrorism. Domestically, the gap between legal understanding and legal application poses difficulty for the Judiciary to

⁴ The criminal charge for leading terrorist organizations is a fixed-term imprisonment of not less than 10 years or life imprisonment, according to the Chinese Criminal Code, article 120.

deal with terrorist cases, which in most of the cases, terrorism is not mentioned in the trial charge.

It is questionable the reasons the government avoided to apply the definition from the SCO and other articles into the Chinese legislation when the document first passed in the Congress.

The second issue, concerning criminal liability, is also controversial. Chinese Criminal Law does not independently regulate terrorist crimes, as it is presented in form of ordinary crimes⁵. “Terrorism is, by nature, a threat”⁶, which has global dimensions and cells spread in all continents. What differs terrorism from ordinary crime is the motivation and consequences; its harmfulness and impact to social stability as well as threatens to national security.⁷ In rough, ordinary crimes are more of economically than politically motivation.

The Criminal Code suggests crimes of endangering State security, through which separatism is widely discussed. Terrorism, however, is found on the section of ordinary crimes. The main argument that separates separatism and terrorism in the Law relies on the fact that separatism is an old threat to China’s sovereignty as an united country with past and present hazard from North to South, Taiwan, Mongolia, Tibet, Xinjiang, just to name few.

Terrorism and separatism have, however, close linkage, being the second a feasible motivation of the first. Separatism refers to full political secession, seeking governmental

5 (Chien-peng Chung, 2006)

6 (Laura K. Donohue, 2007)

7 It not a unanimous understanding that terrorist crimes should not be considered as ordinary crimes. The American Department Homeland Security released a report in 2012 comparing terrorism to ordinary crimes, which has been strongly criticized, and contradicts the provisions of the United States Law Code accordingly.

autonomy or independence due to ethnicity and religion divergences⁸. In Chinese Criminal Law, separatist movements have no legal definition, though the legal apparatus is much broader.

Terrorism and separatism should have similar charges consequently. According to the article 103, the individual who gets involve with separatist movements shall be sentenced to life imprisonment or not less than ten years of fixed-term imprisonment; and for separatism instigation, the sentence should not be more than five years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights.

As for terrorist crimes, what determines the punishment is the vehicle the individual used to reach his goal, such as arson, explosion, among others, according to the article 114. It is paramount to separate terrorist crimes from ordinary crimes and adequate the punishment to be more similar to separatist crimes. Terrorism should be understood a matter of public security as well.

One real example is the Wang Bingzhang (王炳章) case back in 2003. A United States-based activist with Chinese citizenship got convicted for the crimes of espionage and terrorism. He got accused of organizing and leading a terrorist group, espionage for Taiwan, plotting bombs and building a terrorist training camp in Thailand. His trial happened in Guangdong province, Southern China, where he was convicted of terrorism with a sentence of 10 years imprisonment and life in prison for the crime of espionage, based on the article 10 of the Chinese Criminal Code.

A similar sentence was given to Huseyin Celil (侯赛因江·贾里力), a member of the East Turkestan Liberation Organization, with both Chinese and Canadian citizenships. He was found in Uzbekistan and extradited to China. He was charged in 2006 for 10 year for terrorist activities; sentenced to life over separatism and plotting to split the country⁹.

⁸ Taiwan and Inner Mongolia are other example of 'Chinese provinces' that also seek independence.

⁹ Huseyincan Celil, Uyghur imam with Chinese and Canadian citizenships. He was arrested in Uzbekistan, then extradited to China against the approval of the Canadian government, and

The total sentence of life imprisonment in both cases was mostly due to the crime of espionage and separatism, not to terrorism itself. In other words, terrorist crimes have been common in a form of ethnic separatism but there are other motivations such as religious extremism, political rights, among others. The main characteristic of terrorism in China is separatist or ethno-nationalist religiously motivated.

POLITICAL APPROACH TO TIBET AND XINJIANG

The raising vulnerability in Tibet and especially in Xinjiang has been the main *rationale* for raising concerns over terrorism. The Chinese government has acted in two fronts to improve counter-terrorism actions: by enacting and revising laws and by developing economic strategy; being the last one, a great initiative that goes beyond the Law.

In 2011 and 2012, the China's State Council has reached an agreement to release a more specific legislation on terrorism. The new anti-terrorist Draft bill contains legal definition of terrorist acts and terrorist organizations, as well as a list of terrorist groups that act in China. When adhered by the Criminal Code, the lack of defining inherent crime of terrorism will no longer be a barrier to law enforcement.

The Draft bill states that “terrorist acts are defined as those acts which are intended to induce public fear or to coerce state organs or international organisations by means of violence, sabotage, threats or other tactics... These acts cause or aim to cause severe harm to society by causing casualties, bringing about major economic losses, damaging public facilities or disturbing social order.”

Together with terrorist acts, terrorist organizations and terrorists have also been given attention. But what the main and crucial aspect of the draft bill concerns instigating,

sentenced to life in prison on charges of terrorism. This event had negative impacts to Sino-Canadian relation because of China's refusal to extradict Huseyincan Celil to Canada, amongst other reasons.

funding and assisting terrorist organizations, which are considered as other means of terrorist acts, subject therefore of criminal charge.

By defining specific terms of terrorism as causes as harm to the society and disturb social order, the disparity between that terrorism and ordinary crimes is reinforced. The whole body of legislation might have to be reevaluated in order to avoid further controversies.

The last but not least important information the draft bill states, concerns the need of precise list of terrorist organizations and terrorists.

Due to the worsen situation its Western territory, the Chinese government has anticipated the draft bill and identified and listed several terrorist organizations in the Uyghur community in China and Tibet: Eastern Turkestan Islamic Movement (ETIM), the East Turkestan Liberation Organization (ETLO), the World Uyghur Congress, the East Turkistan Information Center, the United Revolutionary Front of East Turkestan (URFET), the East Turkestan Party of Allah, the Shock Brigade of the Islamic Reformist Party, the East Turkestan Opposition Party, the Islamic Holy Warriors, the East Turkestan International Committee and the Tibet Youth Congress in Tibet¹⁰.

The ETIM group has ties with the Islamist organization Al-Qaeda¹¹. ETIM has used religious fundamentalism to vow for the establishment of the East Turkistan as an independent country. They were responsible for hundreds of terrorist attacks in Xinjiang in the past years.

The Eastern Turkestan Islamic Movement and the East Turkestan Liberation Organization were designated as terrorist groups by the Chinese Ministry of Public Security in 2003, followed by Kazakhstan, Kyrgyzstan and the United Nations.

¹⁰ (Zheng Yongnian & LIM Tai Wei, 2009)

¹¹ Al Qaeda, as a global militant Islamic organization has cells in different countries and continents, such as Africa and Asia. Al Qaeda has provided training and support to local terrorist organizations since its foundation by Osama bin Laden in 1989.

The international designation of those terrorist groups, their leaders and members may contribute to the Chinese government to identify their location, freeze their assets, conduct proper criminal investigation, arrest and conduct criminal eviction domestically. This is, indeed, an effective way to counter-terrorism.

On the economical side, the “carrots and sticks” policy has been given place to a more soft approach. China has implemented preferential policies for economic development in both Tibet and Xinjiang. The government has issued tax incentives for companies that want to relocate to the region especially in the field of infrastructure, production and bases for gas, energy and oil in order to compensate for their economy reliability in the agriculture as well as the scarcity of arable land and water resources.

Beijing believes that by improving living standards of the region, protests and terrorist attacks will diminish. It is important to highlight, however, that the People’s Republic shall not expect drastic changes in the “rebellious provinces” since the major issues with Tibet and Xinjiang are not economic driven, but the cultural, religious and ethnic disparities between the Tibetans, Uighurs and the Han Chinese (汉族).

Despite of engaging internationally in the fight to against global terrorism, the Criminal Code has shown gaps and controversies, mostly towards the lack of legal definition and criminal liability of terrorist crimes. As for the lack of definition, the government is in process of implementing a new draft bill, which brings the constitutions of terrorist acts, yet still fails to distinguish terrorism from ordinary crimes and increase the punishment.

Terrorism has emerged as a major security threat for the world and for China hence it should be distinguished from ordinary crimes. The main difference between them relies on the global threat terrorism represents, which disturbs social stability as well as threatens national and international security.

Beijing’s new approach to terrorism targets terrorist groups and economic development, bringing stability to the region through boosting economic development.

The success of combating terrorism in China has direct linkage between understating the threat it imposes to the society as a whole; implementing a full legislation with criminal legal definition; clear premises and fair punishment, as well as acting pre-emptively. It is, indeed, a continuous exercise of countering terrorism in its most controversial region and globally.

Bibliography:

Chien-peng Chung, "Confronting Terrorism and Other Evils in China: All Quiet on the Western Front?" *China and Eurasia Forum Quarterly*, Central Asia-Caucasus Institute & Silk Road Studies Program, Volume 4, No. 2 (2006), p. 75-87, ISSN: 1653-4212.

Connie de la Vega, "Counter-terrorism and the Protection of Human Rights", Human Rights Council, 13 th Session, Agenda Item 3: Countering Terrorism

Geng Xin, *People's Daily*, "U.S. can learn from China's counter-terrorism wisdom", September 20, 2011. Available at:
<http://english.peopledaily.com.cn/90780/7600452.html>

Laura K. Donohue, "Terrorism and Trial by jury: The vices and virtues of British and American Criminal Law", *Stanford Law Review*, 2007.

Preeti Bhattacharji, "Uighurs and China's Xinjiang Region", *Council on Foreign Relations*, May 29, 2012. Available at: <http://www.cfr.org/china/uighurs-chinas-xinjiang-region/p16870>

Zhao Bing-zhi & Wang Xiu-mei, *International Association of Penal Law*. "Countermeasures against Terrorism through Criminal Justice in China". Available at: <http://www.penal.org/IMG/Guadalajara-Zhao.pdf>

Ronald C. Keith, Zhiqiu Lin, "New Crime in China: Public Order and Human Rights", *Routledge Contemporary China*, 2007.

The Economist, "Let them shoot hoops China's turbulent west is unlikely to be calmed by plans for economic development", Jul. 30th 2011. Available at: <http://www.economist.com/node/21524940>

Xinhua Agency, "China to legally define terrorist activities", October 24, 2011. Available at: http://www.china.org.cn/china/2011-10/24/content_23714214.htm

Zheng Yongnian & LIM Tai Wei, "China's new battle with terrorism in Xinjiang, East Asia Institute Background Brief No. 446, 8 April 2009.