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**LEGAL REGULATION ON COUNTER-TERRORISM**

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anno accademico 2020-2021



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## **INTRODUCTION**

### *1. Topic selection and research significance*

Terrorist crime is the most cruel and bloody form of violent crime in human history. From the appearance of terror as a form of deterrence to the birth of terrorism, and then to the development of terrorist crimes, it is not difficult to find that terror (Fear Psychology) exists all the time since the emergence of mankind. From the formation of primitive human tribes to the creation of human civilization, human beings are constantly fighting against the threat of terrorism. Slash and burn cultivation, reproduction, from ignorance to civilization, from ancient times to the future, while human beings have evolved, terror has also been cultivated. Therefore, the ability of human beings to fight against natural disasters has been gradually strengthened, and human wisdom has been spread, from the Stone Age to the Fire Age, and then to the modern scientific and technological civilization, to explore the unknown space and realize the dream of exploring nature.

The development of human society is not calm, but full of rapids and dangerous shoals. The law of survival of the fittest is also applicable to human society. In the process of human growth, for the survival and strength of each group, human beings compete with nature while competing with other creatures for living space and resources. And to achieve all this, the most effective solution is, of course, to wage war, with the most primitive instinctive attack as a means. However, human survival and reproduction also need to accumulate energy and create a peaceful living space and environment. Just as the civilization of the Yellow River, the Euphrates River, the Tigris River, the Nile River and other river valleys ended the barbaric killing of human beings, the emergence of ancient civilization temporarily curbed the frequent wars between human beings, and the state, as the power controller, began to set the rules and govern the society. Territory, population and resources have been redistributed. Such of the distribution has led to more and more obvious differentiation between the strong and the weak. Different states have begun to emerge. The strength of a country depends on the amount of resources, and the acquisition of resources depends on the strength of the country. However, the creation of shaping resources, such as politics, economy,

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culture, science and technology, environment and ecology, needs more cooperation from human beings. However, facing the reality of limited living space, over exploitation, unlimited population growth and worsening environment, the earth has been unable to have enough resources to meet the endless demands of mankind. The establishment of the state has maintained the orderly development of human society. In order to fight for more resources and interests, the state actively expands its territory to the outside world, exercises autocratic rule over the inside, and constantly occupies the resources of other countries. Under the control of individual power and desire, the state power is increasingly predominated by the dictator, and the terrorist authority replaces the Democratic oath, and this kind of terrorist authority rule is likely to rapidly turn to terrorism.

Of course, in the history of development, human beings kill each other for the sake of belief, which is not considered as a criminal act, but rather an embodiment of self sacrifice. The Jacobins who initiated the strategy of fighting terrorism during the French Revolution called themselves "terrorists"<sup>1</sup>. At that time, in order to fight against evil and injustice, the Jacobins thought that they were one side of justice, and they had to make the other side feel fear, so they used the word "terrorism" to defend and justify themselves, and carried out assassination and other terrorist activities. In China, the meaning of terrorist attacks comes from the assassination activities of ancient "assassins".

Since the beginning of the 21st century, with the changes of international political pattern, the adjustment of the economic interests' distribution and the global flow of civilization and culture, the human soul and thoughts have changed rapidly. The formation of "global village", "the revolution of globalization", "the popularization of Internet" and the development of artificial intelligence bring endless information sharing and a better life to human society, at the same time, they also give birth to the innovation of crime forms. Noticeably, the "Internet+" brings unprecedented creative changes to human beings. In the era of interconnection, the boundary between countries began to be blurred, the concept of border demarcation was redefined, the spread of knowledge was no longer limited by time and space, the communication between people became infinite and convenient, the distance was no longer a wall to block the

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<sup>1</sup> See Zhao Bingzhi: *A Monograph on International Terrorism Crime and Its Prevention and Control Countermeasures*, China People's Public Security University Press, 2005 edition, p.5.

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sharing and exchange of resources, sharing the achievements of human civilization had become a reality, and human society had been recognized and fixed again. However, when human beings share the convenience brought by the Internet, the social companion of crime also evolves and mutates with the progress of the network, making a comeback and threatening the stability of human social order.

When the light comes, the darkness will come as scheduled. Instead of creating a better world, terrorist crimes have become crazy and unbridled. They are no longer satisfied with using threats, assassinations, and other ways to achieve their criminal purposes, but instead, they have armed themselves with the scientific and technological forces of human civilization, and given a relatively stable international rank order with heavy destruction. Terrorist organizations began to realize the dreams and attempts of conquering the world, and terrorist attacks gradually spread all over the planet. Before the cold war, the United Nations dominated by the two superpowers, United States and the Soviet Union, who decided the world's direction of development and the way forward, and the threat of terrorism was temporarily put aside. After the cold war, the competition did not stop, but intensified. Terrorist crimes did not attract enough attention until the "9.11" terrorist attacks in the United States, which immediately awakened the world.

From then on, the whole world woke up from a dream. Terrorist crime was no longer a legend, but a living reality. The U.S. government began to pursue "unilateralism" foreign policy and "pre-emption" war strategy, launched the "Gulf War", the "Operation Desert Fox", and adopted war in Iraq, Afghanistan and other countries to fight against the Al Qaeda, try to eliminate terrorist organizations in a rush. It has been proved that in the traditional security field, war can quickly wipe out the enemy, safeguard national sovereignty and territorial integrity, and protect the people. In the non-traditional security field, however, the military attack has been unable to effectively respond to terrorist attacks, and terrorist crimes transcend the boundaries of the traditional security field and enter into the non-traditional security field. At this time, we need to take a new approach. Here, the most urgent and important is the security of human beings themselves, that is, "human life security". However, the terrorist crime is to create terrorist attacks aimed at "people", to achieve its criminal purpose by endangering people's safety, to exaggerate panic, to provoke unjust wars, to maim innocent people's lives in exchange for political capital and future, to destroy the dynamic balance of the

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development of the whole human society, to make the whole world fall into chaos and disorder, and to put the survival of the whole human being at risk. How to eliminate terrorist crimes has become a global security focus.

There is no doubt that terrorist crimes are endangering the safety of the whole human being. Since "9.11", terrorist attacks have become more and more intense and spread all over the world. Terrorist crimes are like the "Pandora's Box" opened. They are constantly working to test the moral bottom line and tolerance limit of human society, crossing national boundaries and infiltrating every corner of the "global village". Hostages in Russian theatre, terrorist attacks in Beslan, North Ossetian Republic, bombings in London metro, Oslo, Mumbai, Boston Marathon, Kunming Railway Station, Bali, Brussels Airport, Nice, car bomb attack in Damascus, suicide attack in Borno State, Nigeria, etc. Without exception, these incidents are characterized by a large number of innocent people becoming the targets of terrorist attacks and the chips for terrorists to exchange their criminal purposes. In the sound of terrorist shooting and explosion, countless lives have disappeared and become fragments of memories forever. Countless families are broken, silent grief can no longer replace the once fresh life.

Today, such terrorist attacks happen almost every day. In the face of such heinous crimes against humanity, the United Nations, as the highest authority and unity of global security affairs, has repeatedly urged all countries to abandon prejudices and reach consensus, to jointly deal with global terrorist crimes and maintain the common security of human living space. It has continuously passed the resolutions of the general assembly. It calls on all countries to actively join the United Nations Counter-terrorism Convention and reach a common alliance to deal with more and more serious terrorist attacks and threats. In 2014, the UN Security Council passed Resolutions 2133, 2150, 2051, 2160, 2161, 2071, 2178 and 2195; in 2015, it passed Resolutions 2199, 2249, 2253 and 2255; in 2016, it passed Resolution 2322; in 2017, it passed Resolution 2368 and Resolution 2370,<sup>2</sup> reaffirming that terrorism in all its forms and manifestations is

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<sup>2</sup> Before that, the resolutions on the cognition, definition, combating and prevention of terrorist crimes mainly included: Resolution 1267 in 1999; Resolution 1333 in 2000; Resolution 1363 and 1373 in 2001; Resolution 1390 and 1452 in 2002; Resolution 1455 in 2003; Resolution 1526 and 1566 in 2004; Resolution 1617 ,1624 in 2005; Resolution 1699, 1730 and 1735 in 2006; Resolution 1822 in 2008; Resolution 1904 in 2009; Resolution 1988 and 1989 in 2011; Resolution 2083 in 2012 and Resolution 2129 in 2013, which reaffirmed that terrorism, regardless of its form, is a criminal act that poses a serious

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one of the most serious threats to international peace and security, and that any terrorist act, regardless of its motivation, when, where and by whom, is an unjustifiable criminal act. It affirms once again that terrorism is a very serious criminal act, and the threat it poses to international peace and human social security is far greater than the harm caused by war; emphasizes that terrorism in any form is a criminal act, no matter why it occurs, who leads it, and what motivation it is based on, and that all countries should establish cooperation mechanism against terrorism: to effectively implement the UN's counter-terrorism obligations, take comprehensive and lasting counter-terrorism countermeasures, isolate, weaken and contain the threat of terrorist crimes, so as to make them lose the ability of terrorist threat and terrorist attack, so as to completely eliminate the existence of terrorist organizations and achieve global peace, stability and sustainable development.

In June 2020, the Institute of Economics and Peace, an independent think tank based in Sydney, Australia, released the Global Peace Index Report 2020. In November 2019, the Global Terrorism Index Report 2019 was released by the same institution. The area, intensity, frequency, scale, casualties and weapons of terrorist attacks in the world are analyzed in detail, so as to make a clear understanding of global terrorism. From 2014 to 2020, the think tank successively released the Global Peace Index Report. According to the 2014 report, since "9.11", the global terrorist attacks have increased nearly five times. In the 2019 report, the total number of deaths from terrorism declined for the fourth consecutive year in 2018, falling by 15.2% to 15,952 deaths. This represents a 53% reduction since its peak in 2014 when 33,555 people were killed in terrorist attacks. Among all the countries that suffered from terrorist attacks, India ranked the 7th, the United States ranked the 22nd, Russia ranked the 37th, and China ranked the 42nd. The top five countries were Afghanistan, Iraq, Syria, Nigeria and Pakistan. However, this four-year decline in the number of deaths does not mean that the power of terrorist organizations in the world is weakened; on the contrary, this kind of military attack directly leads to the proliferation and spillover of terrorist organizations to other countries, not only actively infiltrating into the Middle East countries, but also actively expanding to European countries. There are mainly ISIL, Boko Haram, Taliban and Al Qaeda which caused death toll accounts for 74% of the global terrorist attacks, and the

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threat to the peace and security of human society. All countries should work together to prevent and combat it and maintain world peace and security.

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Taliban is now the deadliest terrorist group in the world, accounting for 38 per cent of all terrorist deaths. Since 2000, the regions suffering from terrorist attacks in the world are mainly distributed in West Asia and South Asia (9274), the Middle East and North Africa (8068), sub Saharan Africa (2468), Southeast Asia (2420) and North America (236). Since 2015, terrorist attacks have gradually infiltrated into European and African countries, showing a trend of global proliferation and upgrading rapidly. The targets of attacks are still mainly non military targets. Between 2002 and 2018, South Asia, MENA and sub-Saharan Africa accounted for 93 per cent of all deaths from terrorism. Terrorism still remains a global security threat with 71 countries recording more than one death - the second highest number of countries since 2002<sup>3</sup>.

From the perspective of the regions attacked by terrorism in the world, Southwest borders are the most dangerous parts in China, which are next to the most countries attacked by terrorism, and are close to the central zone of frequent activities of such terrorist organizations as Central Asia, the Middle East and South Asia. Therefore, in terms of geographical relations, China is more vulnerable to terrorist attacks; in contrast, the American continent is more secure. According to the report, in 2014, China ranked the 25th out of 163 countries that are vulnerable to terrorist attacks, almost ranking in the top quarter; in 2015, it rose to the 23rd; in 2019, it improved to the 42nd out of 138 countries.<sup>4</sup> Such a grim situation is worrisome. Moreover, from the geographical position of China, it can be seen clearly that China is within the radius of this active zone. In addition, there are many ethnic countries in Central Asia and South Asia, and the differences of religious beliefs often lead to frequent conflicts. Terrorist organizations, religious extremist organizations and national separatist organizations take advantage of such ethnic, racial and religious differences to initiate, create and carry out terrorist attacks, thus threatening the security of neighboring countries.

Although the current counter-terrorism policy system in China has strengthened the intensity of social governance in terms of social policies, the regulation of legal norms is relatively sparse. Most of the existing laws take the means of maintaining social order, and both public security punishment and criminal punishment are used to control the

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<sup>3</sup> Institute for Economics & Peace. Global Terrorism Index 2019: Measuring the Impact of Terrorism, Sydney, November 2019. Available from: <http://visionofhumanity.org/reports> (accessed on 13 October, 2020).

<sup>4</sup> Ibid.

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social hazard. In the criminal substantive law, Article 120 of the Criminal Law revised in 1997 stipulates the crime of “organizing, leading and participating in terrorist organizations”, which stipulates that those who organize, lead and actively participate in terrorist organizations shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; others shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or control. Whoever commits the crime mentioned in the preceding paragraph and commits crimes such as murder, explosion or kidnapping shall be punished in accordance with the provisions on combined punishment for several crimes. The Amendment III to the Criminal Law, adopted at the 25th Meeting of the Standing Committee of the Ninth National People's Congress on December 29, 2001, added one article after Article 120 as Article 120-1, stipulating that "Whoever finances terrorist organizations or individuals who carry out terrorist activities shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance and protection of deprivation of political rights and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined or be sentenced to confiscation of property. Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished in accordance with the provisions of the preceding paragraph. ".Article 191 defines the crime of terrorist activities as the upstream crime of money laundering, and strengthens the legal regulation of the crime of terrorist activities. In addition to the direct and clear provisions, China's laws no longer set more strict charges to combat terrorist crimes till then. However, the Criminal Procedure Law does not set up "special procedure" to regulate the terrorist crime either. In most cases, terrorist crime is dealt with ordinary criminal cases according to the procedure. At the Fourth Plenary Session of the 18th CPC Central Committee, held in October 2014, the Counter Terrorism Law (hereinafter referred to as "the Counter Terrorism Law") and the Criminal Law Amendment IX (hereinafter referred to as "Criminal Amendment IX") were reviewed and passed. Article 2 of the Counter Terrorism Law clearly stipulates: "The state shall combat all forms of terrorism, legally ban terrorist organizations, and in accordance with the law, investigate the legal liability of anyone who organizes, plans, prepares for, or conducts any terrorist activity, advocates terrorism, instigates any terrorist activity, organizes,

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leads or participates in any terrorist organization, or provides assistance to any terrorist activity. The state shall not make concession to any terrorist organization or individual, or offer asylum or give refugee status to any terrorist." It shows China's attitude towards terrorist crimes, extremist crimes and other terrorist attacks, and declares that China holds a "zero tolerance"<sup>5</sup> attitude towards terrorism in all forms, such as terrorist crimes and terrorist activities. Five articles are added after article 120-1 of Criminal Law in Criminal Amendment IX. As Articles 120-2, 120-3, 120-4, 120-5, and 120-6, they respectively stipulate that "the crime of preparing for terrorist activities", "the crime of propagating terrorism, extremism, incitement to carry out terrorist activities", "the crime of using extremism to destroy the law", "the crime of forcibly wearing extremist clothing and symbols and propagating terrorists" and "the crimes of illegally holding and promoting terrorism and extremist articles", which not only increase the personal punishment for such acts, but also increase the property punishment in due time, fundamentally increase the punishment for terrorism, extremist crimes and terrorist activities, maintain social stability and ensure social security. In this regard, China's laws have formed a relatively complete legal system for the prevention, combat and elimination of terrorist crimes. However, from the perspective of the overall national security concept, examining the punishment strength of China's laws for terrorist and extremist crimes, the framework and theoretical research of the whole legal system are still insufficient, and the provisions of criminal laws for the prevention and combating of terrorist crimes are still obviously weak, which has not achieved more effective prevention, combat and elimination of terrorist activities. Therefore, fighting against terrorism and extremist crimes is still a complex social governance system project<sup>6</sup>. It is difficult to effectively prevent terrorism and extremist crimes only by relying on one department, one approach, one nation or even one country.

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<sup>5</sup> Tian Ye: *Research on the Investigation and Prevention of Religious Extremism Crimes*, Zhongnan University of Economics and Law, 2018, p.12.

<sup>6</sup> Yu Haiyang: *Reflection and Exploration of China's Counter-Terrorism Legislation under Zero Tolerance*, Journal of Hubei Police Academy, 2015,28(02):41-43.

## 2. *Research status at home and abroad*

At present, terrorist crimes have spread all over the world. In the traditional security field, the old security concept, marked by arms race, military threat and war, has been unable to deal with terrorist attacks of terrorism, extremism and separatism in order to defend national territory and sovereignty<sup>7</sup>. Terrorist crimes have already gone beyond national boundaries. The popularization of communication devices, mobile terminals and Internet make it possible for terrorist criminal organizations to transmit information, launch terrorist attacks, carry out terrorist attacks, and undermine the peace and security of the world and regions. As far as the theoretical research of terrorism prevention and control is concerned, foreign scholars have paid early attention to the problem of terrorism. For example, in 1978, the United Kingdom and the United States had a special journal "Studies in Conflict & Terrorism"<sup>8</sup> (formerly known as "Terrorism"). After the "9.11" terrorist attack, more and more scholars began to pay attention to and study on terrorist crimes. Among them, Jessica Stern's *The End Of Terrorism* (Harvard University Press, 1999 edition), Laura Donovan's *The UK's Counter-Terrorism Legislation And Urgent Power* (Irish Academic Press, 2001 Edition), *The Handbook Of Counter Terrorism* (Oxford University Press, 2004 Edition), *Digital Crime And Digital Terrorism* (Pearson Education Group, 2004 Edition), *Global Counter-Terrorism Law* by Victor Ramazzi, Michael Hoe and Kent Rocher (Cambridge University Press, 2005), *Globalization And Terrorism* by Lionel Stampley (Carnac Book Publishing House, 2006), *Terrorism, Organized Crime And Corruption* by Leslie Hermes (Edward Arnold Press, 2007), *Terrorism And National Security* by Viotti (CRC Press, 2007), Ghosh, Professor Tushar K., *Science And Technology Terrorism And Counter-Terrorism* (CRC Press, 2010 Edition), Max Taylor, etc., *Evolutionary Psychology And Terrorism (Political Violence)* (Routledge, 2015 Edition), Peter J. Phillips, *Economics of Terrorism* (Routledge, 2016 Edition), etc. are brilliant representative works.

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<sup>7</sup> Yu Wenliang: *On the Criminal Legal Protection of National Security*, Journal of Chinese People's Public Security University (Social Science Edition), 2020,36(04):77-85.

<sup>8</sup> Published by Taylor & Francis, issued monthly, see <https://www.tandfonline.com/loi/uter20>, access at 13 October, 2020.

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Generally speaking, foreign scholars have a wide range of research on terrorist crimes, involving political science, law, sociology, management, economics and other disciplines. These research contents are mainly reflected in three aspects: first, the terrorist crime has attracted the attention of many issues in the global political, economic, cultural and other fields; in view of the threat of terrorism to global security, researchers often conduct research from the perspective of adjustment of international political relations, development of global economy, and dissemination of global culture; second, based on the theory of globalization, the concept, type and characteristics of terrorism, the causes and harm of terrorist crime, the distribution of terrorist crime and the research on its prevention and combat; thirdly, the research on the current situation and improvement of the existing laws and policies for the prevention of terrorist crime. These works make full use of the statistical data of terrorist attacks; analyze the current situation and trend of terrorism, the organizational structure, types and targets of terrorism, etc. Taking a comprehensive view of these theoretical studies, the focus is on the origin of terrorist crimes, the relationship between terrorist crimes and globalization, the relationship between terrorist crimes and international politics, focusing on the macro issues such as the counter-terrorism laws formulated by the international community, the international conventions of the United Nations, the resolutions and declarations of the Security Council, the protection of human rights, and the establishment of the prevention system of terrorist crimes. The study of these macro level problems often involves the causes, current situation and governance of terrorist crimes in a country or a region. In comparison, these studies pay less attention to the prevention and control of terrorism in their domestic laws. Most of them turn their research perspective to the international level, and carry out more research from the macro level.

With the acceleration of the process of the rule of law in China, the theory of Chinese scholars' participation in the innovation of social management mechanism has gradually increased, and the theoretical research on people's livelihood and national governance and social stability has gradually increased, especially in the face of the increasingly rampant terrorist crimes, extremist crimes and national separatism, a series of studies have been carried out. How to effectively prevent and combat terrorist crimes has become an urgent theoretical problem to be solved. Compared with foreign scholars, the study of terrorist crime in China started late, with relatively less theoretical

accumulation, and insufficient research at the macro level, but more researchers study from the micro level. Since 2005, in addition to translating a large number of foreign works, some scholars who study terrorist crimes and have the ability of pioneering work have started to write books in the fields of law, politics, economics, sociology, etc., and began to form their own style of independent research on terrorist crime theory. For many years, most of the researches on terrorism and terrorist crimes carried out by Chinese scholars have focused on the fields of politics, law, history, religion, journalism and communication. First of all, there are many researches on terrorism activities caused by the changes of international political situation; second, there are many researches on the connection between international law and domestic law of counter-terrorism regulation; finally, through the perspective of information technology, network media and financial derivatives, there are more and more researches on terrorism, terrorist crimes and terrorist organizations, especially on the spread of terrorism audios and videos, terrorism under the control of new media and other forms of terrorist crimes are also increasing year by year. The current theoretical research has made a positive response to the problems of terrorism and its crimes from various levels, perspectives and disciplines, not only solving the theoretical shortcomings, but also responding to the practical problems in practice, including: (1) actively introducing foreign relevant theoretical research, translating foreign works, papers and counter-terrorism laws; (2) from multiple disciplines like the political science, international relationship, sociology, law, ethnology, religion, management, etc., especially in view of the definition and characteristics of terrorism, many masterpieces have been written which provides a strong theoretical basis for controlling and preventing terrorist crimes; (3) from the perspective of criminal substantive law, scholars have made theoretical analysis on criminal legislation and criminal policy for terrorist crimes, especially for the non-traditional security field of terrorist crime, which has been made more theoretical discussion; (4) from the criminal procedure law, the criminal procedure setting, the application of compulsory measures, human rights protection and other systems to punish terrorist crime are combed and studied; (5) from the perspective of international law, the prevention and elimination of terrorist crime are combed theoretically. Generally speaking, these achievements reflect the hot trend of criminal law research in the study of terrorist crimes. However, there are also some defects in these theoretical studies, mainly including: first, there has not been a more

mature understanding of the concept of terrorism and terrorist crime, and it is difficult to reach a basic consensus on the causes of terrorism, extremism, terrorist crime, extremist crime, the relationship with religion and other important issues, and even there is a fierce debate. Second, multi-disciplinary theoretical research makes the research on terrorism, extremism, separatism, terrorist crime and extremist crime focus on different aspects. The research findings under different cultural and religious backgrounds are quite obvious and lack of systematic research. These theoretical researches cannot fully integrate with the practice of counter-terrorism in China, and lack of the theory based on the events of terrorist activities in China. On the research, the empirical analysis is insufficient, which is difficult to serve for the prevention and strike of terrorist activities in China. Thirdly, the theoretical research on terrorist crime in criminal law has not formed a holistic and systematic research system. Only discussing crime in terms of terrorist activity crime cannot effectively reduce and curb the occurrence and development of terrorist crime.

### *3. Overall framework, content, research innovation and deficiencies*

#### *3.1 General framework*

This thesis mainly takes the non-traditional security theory as the support, discusses the terrorist crime under the non-traditional security theory frame. Different from the crime form in the traditional security field, pay attention to the crime in the non-traditional security field, especially for the occurrence of terrorist crime and terrorist activity crime in the non-traditional security field, such as network, food, medicine and other fields, and further study the terrorist crime in the non-traditional security field from the perspective of criminal law. According to the research idea of "definition and analysis of the concept of terrorist crime - combing and analysis of the current situation of terrorist crime - construction and expansion of the prevention system of terrorist crime", starting from clarifying the relationship between non-traditional security theory, traditional security theory and terrorist crime, this thesis discusses terrorist crime, and then discusses the construction of a theoretical framework suitable for China's terrorist crime. Basically form a system from the discrimination and decomposition of terrorism concept, discussing the types, characteristics, purposes,

causes, hazards, international criminal law regulatory measures, domestic criminal law regulatory countermeasures, to the domestic prevention of terrorist crimes. Such a relatively logically related theoretical argumentation structure strives to achieve the integrity, systematization and value of research. At present, Chinese scholars' theoretical argumentation on terrorist crime and terrorist activity crime, no matter from the perspective of politics, international relations, ethnology, religion, law, sociology and other disciplines, or from the perspective of other closely related disciplines, basically forms a holistic and systematic research idea and paradigm, rather than a pure stack of scattered argumentation. Most of these theoretical research results integrate the knowledge of law, politics, sociology, criminology and other disciplines to discuss and build a theoretical research system to effectively punish terrorist crimes. However, up to now, these discussions on theoretical level are still limited to one branch and one corner, and have not formed an effective connection. However, the theoretical discussion of terrorist crime in China is still based on the traditional security theoretical system. Although there are more discussions on terrorist crime in the field of non-traditional security, there is no comprehensive review. Therefore, it is necessary to integrate and innovate these research results to make them systematic.

### *3.2 Research content*

This thesis is divided into five chapters to study the terrorist crime in the field of non-traditional security, hoping to make a theoretical response to the causes of terrorism, extremism, terrorist crime, terrorist activity crime and the preventive countermeasures in China through such a theoretical review, combing and exploration, especially to provide a useful theoretical reference for the prevention, strike and elimination of such crimes. At the same time, it is also a theoretical clarification of the terrorist crimes, terrorist activities crimes and extremist crimes in the non-traditional security field.

Chapter one: this chapter mainly clarifies the relevant concepts, and understands the traditional security theory, non-traditional security theory, terrorism, extremism and separatism from the most basic level; distinguishes terrorist activity crime, terrorist crime and extremist crime, including the discrimination of their concepts, characteristics, types and purposes. More importantly, terrorism, which has been

debated over its concepts for a long time, is serious crimes not only endangering the international security, but also endangering the overall national security of China, such as political security, homeland security, military security, economic security, cultural security, social security, network security, science and technology security, information security, ecological security, resource security, nuclear security and so on. The safety of people's lives and property can be ensured only when such crimes are eliminated.

The second chapter discusses the causes and harms of terrorist crimes. From the international political level, national religious belief, interest distribution and other perspectives, this chapter analyzes the causes and harms of terrorism. This kind of harm is analyzed from the aspects of international society and domestic society. As far as the harm of international society is concerned, it causes the internal disintegration of the country, causes the internal management of the country out of control, intensifies regional conflicts and wars, people living nowhere, the number of refugees increases sharply, all kinds of serious crimes rise, global economic development slows down, and the number of global crimes increases. As far as the harm of the domestic society is concerned, it intensifies the escalation of national conflicts and the rise of extreme forces, which leads to the instability of social management order, the destruction of social dynamic balance, the general lack of security and trust of the public, the reduction of trust of the whole people, the destruction of social integrity system, and the loss of moral concepts of social groups, which will form the vicious circle of everyone is in danger, or some scholars call it the so-called "mutual harm mode"<sup>9</sup> of modern society. Finally, the terrorist crimes basically spread all over the world, endangering the international political environment and extending to China, resulting in the slow development of domestic economy, the destruction of the inheritance of local cultural system, endangering everyone's own development and individual survival, etc., causing unprecedented disasters in the whole human society, such as environmental degradation, food shortage, water pollution, and trust crisis.

Chapter three: expound the value orientation and the path of counter terrorism. The biggest harm of terrorist crime lies in the destruction of global security. Therefore, the

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<sup>9</sup> Jiang He Qi, Sun Fanglan: *Moral Redemption and Legal Regulation of "Mutually Harmful" Society*, Journal of Harbin Institute, 2017, 38(02):44-46.

value of counter-terrorism in theory is mainly embodied in: the theory of human existence, the theory of international relations, the value theory of priority of global security interests, the theory of dynamic balance between the protection of basic human rights and the strengthening of state power, the theory of principles, rules and systems of international human rights law. Today's "counter-terrorism model" mainly adopts "war model" (military strike), "criminal justice model" (judicial governance) and "global governance model" (social governance) to control, eliminate and combat the spread and frequency of terrorist crimes. However, looking at these models, we can find that the war model basically failed because the United States withdrew its troops from Iraq and other countries, the judicial governance was in the stage of continuous attempt and improvement because of the poor connection of domestic laws of various countries, and the global governance was impressed by various factors among countries, and also became a theoretical system of continuous attempt to break through and improve. At present, the international community has not created a theoretical model that can completely eliminate terrorist crime and terrorist activity crime. Most countries adopt intelligence early warning, rapid elimination, post elimination and other ways to the occurrence of terrorist attacks, in order to effectively control the spread of terrorist extreme ideas, reduce the overall probability of terrorist attacks, and thus continuously weaken the viability of terrorist organizations around the world.

Chapter four: the current situation and improvement of international response to terrorist crime. Due to the differences of political ideology and the restriction of interest pattern, the counter-terrorism legal system is not perfect, and it is difficult to form a systematic and effective "international unified criminal code system" or "international unified criminal policy" to regulate international terrorist crimes. In this regard, the international level of the regulation of terrorist crimes should mainly adopt international criminal cooperation, criminal judicial assistance, regional alliances, and other ways (such as the Shanghai Cooperation Organization). Therefore, the conclusion of international conventions is particularly important. Only with legal basis can we realize effective cooperation across national sovereignty. It can not only ensure respect for the sovereignty of all countries, but also help to carry out practical cooperation to deal with terrorist crimes of all countries.

Chapter five: expound the path and system construction of dealing with terrorist crime in China. From the perspective of China's society, it is generally in a period of

## INTRODUCTION

stable development, but still unable to cope with sudden terrorist attacks. Terrorist attacks happen under the planning of terrorists, so it is urgent to improve the criminal law of China. Over the years, China has preliminarily constructed the main frame of counter-terrorism, and formed a three-dimensional prevention system in the aspects of counter-terrorism stance, counter-terrorism organization setting, counter-terrorism fund control and counter-terrorism Internet supervision. In terms of specific disposal, China has established counter-terrorism organization and platforms, such as information exchange platform, early warning and prevention platform and public division platform. But fighting terrorism according to law is always one of the goals pursued by the rule of law. Although China has established a relatively complete counter-terrorism legal system, the counter-terrorism legislation has certain defects and deficiencies in three aspects: basic concepts, anti-terrorism substantive law and anti-terrorism procedural law. It is found that there are some specific problems in China's counter-terrorism legislation, such as unclear definition of basic concepts, poor convergence of laws in the field of counter-terrorism substantive law, confusion of identification subject and procedure in the field of counter-terrorism procedural law, confusion of administrative power and criminal investigation power, and poor procedural independence. The definition of the basic concept should strictly abide by the behavior theory of objectivism criminal law, and should be expanded in combination with international practice to cover specific cases from the literal and theoretical extension of the articles. In the field of counter-terrorism substantive law, the power boundary between administrative law and criminal substantive law should be clarified, and legislative conflict of jurisdiction should be solved, strictly implement the concept of modesty of criminal law, and correctly define the specific boundaries between administrative illegal activities and criminal activities, as well as between incriminating and discharging crimes. The choice of procedural legislation of mixed model in the field of counter-terrorism procedural law should conform to the trend of the world, clarify the compartmentalization of subjects, ensure the smooth internal connection of the whole procedure, and establish a special prosecution procedure. At the same time, we insist on using criminal policy of combining punishment with leniency to guide our counter-terrorism practice, and finally realize the balance between counter-terrorism and human rights protection

In a word, based on the complexity of criminal phenomena, the diversity of criminal patterns and the differences of social development patterns, considering the rigor and diversity of the theoretical research of criminal law, we should take a dynamic and open concept to study the criminal law of terrorist crime and terrorist activity crime, and adopt a multi-dimensional research approach.

### *3.3 Research methods*

The research methods adopted in this thesis mainly include normative analysis, statistical analysis (using database), historical research and comparative analysis

#### 1. Normative analysis

Terrorist crime and terrorism activity crime are the most serious and complex crime forms in the world, which are extremely harmful and destructive. Therefore, all countries are strengthening the prevention and control of terrorist crimes and terrorist activities. Since the birth of terrorism, the law has regulated this kind of crime form with its rigorous logic deduction ability, and the criminal law has become the ultimate means of legal norms because of its systematic normative description and regulation of this kind of crime. However, up to now, the product of terrorism, terrorist crime and terrorist activity crime still fails to reach a common understanding in the international community. There are problems such as "double standards and multiple treatment", which cause one country to recognize it as a terrorist, terrorist crime or terrorist activity crime, while the other country does not consider it as a criminal act, resulting in different cognition. Terrorism, terrorist crime and terrorist activity crime cannot be eradicated fundamentally. Therefore, it is necessary to compare and analyze the concepts related to crime such as terrorism, terrorist crime and terrorist activity crime in the field of law (such as criminal law and administrative law), so as to form a logical and semantic conclusion, which is conducive to making strategic response to terrorism, terrorist crime and terrorist activity crime.

#### 2. Data analysis (using databases)

Generally speaking, scientific statistics can reflect some inherent characteristics of things in a quantitative way. Therefore, the study of terrorist organizations, countries, regions, means, methods, weapons use, targets and scope of attack can reflect the intensity and radius of terrorist criminal activities, thus pointing out the targets of

terrorist criminal acts, especially for which countries, regions, industries and people are easy to become the target of the attack shall be analyzed, so as to eliminate terrorism, terrorist crimes and terrorist activities in advance and ensure that innocent lives are not harmed. These databases mainly include: GTD, RDWTI, WITS, MIPT, GTI, NCTC, GPI, etc. Through the data analysis and comparison of global terrorist attacks, we can draw more convincing conclusions, which is conducive to the effective prevention and combat of global terrorism, terrorist crimes and terrorist activities.

### 3. Comparative analysis

Terrorist crime is a kind of special crime form, which has various forms and means, and the field of crime is all over the world. Therefore, the international community needs to work together in order to effectively eliminate terrorism. Based on the existing literature analysis, most researchers observe and analyze this problem from multi-disciplinary and multi field. However, due to the differences in the ideological fields of various countries, scholars in different countries have different emphases and research entry points when studying such issues. Moreover, there will be conflicts in legislation among countries, so there will be differences in international, domestic legislation and international convention making. By comparing the differences and similarities of these scholars' research, the advantages and disadvantages of the legislation of various countries, digest, absorb, eliminate and refine, and improve the criminal legislation of counter-terrorism in China.

### 4. Historical research

Terrorist crime is always rooted in the social environment. The changes of international political situation, the relaxation of domestic political situation and the rapid changes of global politics, economy, culture and society brought about by globalization will change the thoughts and positions of the perpetrators of terrorist crime. Therefore, in the study of terrorist crime, it is a method of this research tendency to study it in the current social environment and explore the prevention and control of such crime, which can also better understand the root causes of terrorism.

#### *3.4 Innovation and deficiency*

The main innovations of this thesis are: first, interdisciplinary application. Although the purpose of this thesis is to study the prevention, control and punishment of terrorist

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crime in criminal law, terrorist crime is a complex social phenomenon. Now most of the studies focus on this kind of crime from the perspective of international politics and international relations. There are not many studies on this problem from the perspective of criminal comparative law, neither from the perspective of interdisciplinary research. Second, based on international law, international criminal law and domestic criminal law, this thesis analyzes the regulation of terrorist crime from domestic criminal law. By the comparison of international criminal law and domestic criminal law, it expounds the legal norms involved in this kind of crime, and proposes that China's counter-terrorism should adopt the "three in one" counter-terrorism path. Third, use multiple databases to interpret the countries, regions, industries and implementation methods of terrorist crimes (such as hijacking and assassination). Fourth, in terms of research methods, adheres to the integrity and systematic. The purpose of this thesis is to study how the criminal law regulates terrorist crimes. Therefore, more attention should be paid to the logical reasoning of theory and the reasonable choice and correct combination of empirical research data. It not only combs the criminal law norms, but also combines the current international and domestic social and political, economic, cultural and other deep-seated factors, studies the operation of criminal law norms as a whole. Fifth, micro and macro research are parallel. On the macro level, it mainly expounds some conceptual and principled theories; on the micro level, it combs and compares the provisions of the current criminal law of China, puts forward the specific construction of special procedures for counter-terrorism criminal litigation, and puts forward the "positive general prevention theory" for the summary of counter-terrorism criminal law theories. Sixth, the research closely combines the current situation, and tries to source and time the research materials. On the one hand, the governance of terrorist crime needs theoretical support; on the other hand, it comes from the practice of counter-terrorism. Therefore, in the process of research, this thesis has always been based on the social development of China, starting from the reality of China, summed up the experience and lessons of counter-terrorism, combined with the current situation of criminal legislation and criminal justice operation, to solve the problem.

## Chapter I

### NON-TRADITIONAL SECURITY AND TERRORIST CRIMES

Security refers to the stability and order of human society, and the existence of human beings is not threatened or violated. Traditional security takes the interests of sovereign states as its core, emphasizing that international social security should take the state as its main body and object, and the maintenance of national security is achieved by means of war and military strength, while the threat of insecurity comes from outside the state. Non-traditional security transcends the limitations of national boundaries and sovereignty, and focuses on constructing national security from the perspective of global security. Its subjects and objects include not only countries, but also individuals, non-state organizations, groups, etc. The arms race can only lead to greater insecurity. The threat of insecurity may come from both outside and inside countries. The solution of threats should be achieved through international rules and cooperation. From the analysis of the scope, field, target, means of attack, political opinions and demands of terrorist activities, the problem of terrorism belongs to the non-traditional security field. Terrorism challenges the authority of the international community, the sovereignty of all countries and the tolerance of crimes, affects the development in many fields around the world, and poses a serious threat to the security of the international community and all countries.

Up to now, there is no global consensus on the definition of terrorist crime, but from the perspective of non-traditional security, the definition of terrorist crime should include: using violence or non-violent threat, pursuing political purpose or influence, adopting indirect methods, violating norms, high success rate of crime and other factors. Terrorist crimes have the following characteristics: strong frequency; violent terrorist attacks dominate and are intertwined with non-violent terrorist attacks; have dual purposes; international terrorist crime is closely combined with domestic terrorist crime; domestic terrorism activities are intensive and scattered, so it is difficult to prevent and control them in advance. According to different standards and research needs, terrorist crimes can be divided into different types.

In terms of defending against terrorism, three modes have been formed: "war path", "criminal justice path" and "global governance path", but none of them can completely eliminate terrorism. In the future, the development trend of terrorism is as follows: the focus of geographical distribution is obvious; local terrorist organizations and "lone wolf" terrorists coexist; the field of crime is moving towards non-tradition; may use weapons of mass destruction as tools; aim at objects such as "soft targets"; regional terrorism is more active; the source of terrorist funds is blocked. Hence the task of counter-terrorism is heavy and far-reaching.

### *1. Non-traditional security and terrorism*

In the 21st century, the focus of human survival is gradually beyond human itself. Human society pays more attention to the impact of global politics, economy, culture, science and technology, information, ecology, environment, etc. Global shared security is considered to be the foundation of peace and development of human society. Since the Copenhagen School put forward the concept of "security", the security field that the international community pays attention to has changed from the traditional security to the non-traditional security, forming the security concept that the traditional security and the non-traditional security factors interweave. However, based on the in-depth study of critical safety by Copenhagen School and Aberystwyth School, the study of safety has turned to the study of language,<sup>10</sup> which is regarded as the construction of language and the result of language description. In the 1990s, "Copenhagen School" thought that the essence of things should be restored through "de security"<sup>11</sup>, while "Aberystwyth School" thought that the real liberation should be realized through actively promoting "security"<sup>12</sup>. However, after the "9.11" terrorist attacks in the United States, security has quietly infiltrated into every aspect of daily life. Ordinary political or social issues, such as energy, resources, food, disease, immigration, refugees, poverty, Internet, terrorism, have unconsciously risen to security issues.

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<sup>10</sup> C. A. S. E. Collective, *Critical Approaches to Security in Europe: A Networked Manifesto*, Security Dialogue, Vol. 37, No.4 2006, p.447.

<sup>11</sup> Ole Waever, *Securitization and Desecuritization*, in Ronnie D. Lipschutz, ed., *On Security*, p. 54.

<sup>12</sup> Ken Booth, *Beyond Critical Security Studies*, in Ken Booth, ed., *Critical Security Studies and World Politics*, Boulder, CO: Lynne Rienner, 2005, p.260.

Human security, comprehensive security, cooperative security, shared security and other security concepts have emerged one after another, and the international community seems to have reached an agreement on security issues. However, the traditional security concept of taking the country as the main body and protecting the country with military force, which is emphasized in the field of traditional security, has been unable to confront the global non-traditional security problems. These non-traditional security problems include natural disasters, uncontrollable primary plagues and diseases, such as tsunamis, hurricanes, earthquakes, volcanoes, deserts, "SARS", COVID-19, and Ebola, as well as human made disasters, such as invasion of other countries, terrorist attacks, drug trafficking, illegal immigration, human trafficking, arms smuggling, nuclear disaster, water crisis and poverty. These problems are beyond the scope of a country's capabilities, and they are also security problems that cannot be solved by traditional military strikes and political means.

The revolutionary significance of non-traditional security is that people find that "peace" is not equal to security, and "development" will even become the source of insecurity, so security has become an open field. Security refers to the object from the state to the individual, gender, human, globalization, and the security field has expanded to the society, economy, environment, health, development and so on outside the military and politics<sup>13</sup>. As Xi Jinping (the President of PRC) attended the opening ceremony of the World Peace Forum in Beijing in July 7, 2012, he pointed out: "the interests of different systems, types and stages of development in the world today are increasingly intertwined and interdependent. Under the new situation, the connotation of the security issue is far beyond the security of the Cold War confrontation balance, the traditional military security, and the security of one country, one region. All countries must adhere to the spirit of cooperation, innovation and a responsible attitude, work together for win-win cooperation, jointly tackle various problems and challenges, and work together to create a harmonious and stable international and regional security environment."<sup>14</sup> In April 15th 2014, Xi Jinping first put forward the "Overall National Security Concept" and set up a national security system at the first plenary session of

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<sup>13</sup> See Yu Xiaofeng: *Shared Security: a New Paradigm of Non-Traditional Security*, Journal of Zhejiang University (Humanities and Social Sciences Edition), 2014, issue 2, pp.24-31.

<sup>14</sup> See People.cn, *Xi Jinping Put Forward Five Ideas and Principles on Safeguarding World Peace and Security*. <http://politics.people.com.cn/n/2012/0707/c70731-18465749.html>, last visited on: August 29, 2019.

the National Security Council of China. He put forward that "we must take people's security as the purpose, take political security as the fundamental, and take economic security as the foundation, and take military, cultural and social security as the guarantee, and promote international security as the basis, and step out of a road to national security with Chinese characteristics. Attach importance to both external security and internal security; traditional security and non-traditional security; development issues and security issues; self security and common security."<sup>15</sup> At present, international terrorist and extremist forces such as "Islamic State" and "Al Qaeda" are rampant in the Middle East, West Asia, North Africa, Central Asia, South Asia and Southeast Asia, posing a serious threat to regional and international security. "East Turkistan" and other terrorist forces continue to create violent terrorist activities in China. The joint effect of the internal and external situations makes the counter-terrorism a struggle concerning the maintenance of the reunification of the motherland, the vital interests of the masses and the overall stability of reform and development. From the perspective of governance, China must take resolute and decisive measures to maintain the situation of cracking down on high pressure and resolutely fight down the arrogance of violent terrorists. At the same time, China needs to establish and improve the counter-terrorism work pattern, improve the counter-terrorism work system, and strengthen the construction of counter-terrorism forces. Just as reported, China will "adhere to the principle of combining special work with mass work and relying on the masses, carry out various forms of mass prevention and control activities, build a wall of iron", and make violent terrorists become "rats crossing the street, people shouting and fighting".<sup>16</sup> Terrorism has become a new force threatening world peace and security. Because of its violent, direct, tyrannical and cruel behavior characteristics, terrorist crime endangers the security of the whole human society. It must be effectively combated and prevented in order to maintain the peace and tranquility of human society.

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<sup>15</sup>See China Communist News Network, *Xi Jinping's national security concept: both attach importance to development and safety*, <http://cpc.people.com.cn/xuexi/nl/2017/0221/c385474-29096939.html>, last visited on: August 29, 2019.

<sup>16</sup> See China Military Network: "*Grasp the Scientific Connotation of the Overall National Security Concept*", [http://www.81.cn/jfjbmap/content/2016/02/29/content\\_2682.htm](http://www.81.cn/jfjbmap/content/2016/02/29/content_2682.htm), last visited on: August 29, 2019.

### *1.1 Non-traditional security theory*

Security is a state of existence pursued in the development of human society. It often refers to the subject's perception of the objective environment, that is, there is no threat, danger and fear.<sup>17</sup> Generally speaking, security refers to a state, a kind of ability and a kind of feeling. The subject of security is in a situation that is not disturbed, threatened or potentially endangered. It has the ability to protect itself from being infringed. It is a degree of reassurance for human's own security, not subject to the domination and coercion of foreign forces, and it is full of human's own living state, future development and a sign of confidence. Usually, security refers to a state in which human society is stable and orderly, and human survival is not threatened or violated. However, at the level of international relations, the meaning of security is different, usually referring to national security. National security means that the interests of a country are not threatened, infringed and usurped. A country should always have the ability to protect itself from being damaged and infringed. The theory of national security originated in Europe. Based on the theory of "the center of sovereign state", it is put forward that any sovereign state has the right to use military force to prevent the invasion of the outside world. The purpose of national security is to ensure the independence of the state, protect the sovereignty of the state from being infringed, the territory from being invaded, and the universal social values and life concepts from being damaged. Of course, due to the different interests of each country, there are differences in the perception of security. For example, scholars such as Barry Buzan<sup>18</sup>, Daniel Frey and Robert Jervis<sup>19</sup>, who study security issues, believe that because there are often contradictions in the interests of sovereign states, different countries have different understanding of national interests, so defining security issues at the level of national interests will show different national security concepts. Therefore, there are new liberalism security view, idealism security view, constructivism security view, new

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<sup>17</sup> See *Webster's Ninth New Collegiate Dictionary*, Merriam Webster Inc., Springfield, Massachusetts, U.S.A., 1994, p.1062

<sup>18</sup> See Barry Buzan, Ole Wæver: *Regions and Powers: The Structure of International Security*. New York, Cambridge, 2003.

<sup>19</sup> Robert Jervis: *Cooperation under the Security Dilemma*. 1978, 30(2), pp. 167-214.

realism security view, sharing security view, new security view, comprehensive security view, human security view, cooperative security view, etc.<sup>20</sup>.

From the perspective of Neo Liberalism and Idealism, based on the security of sovereignty, a state can achieve its national security through the conclusion of international conventions, the establishment of international cooperation mechanisms, the enhancement of trust among sovereign states, and the establishment of harmonious international relations. Furthermore, it believes that human beings are born with good qualities and that people should live in harmony and cooperate with each other to jointly promote the international community and will form a community of stability and solidarity and form good communication and cooperation among the international community. National sovereignty is limited, and an international collective security system should be established, that is to say, all countries have the obligation to fight back and stop the acts of aggression at any time, at any place and in any country, within the scope of legal treaty. Conflicts among countries are inevitable. War is not the only choice to solve conflicts, nor the ultimate means to solve international disputes. Any conflict can be mediated through dialogue. Force is not a powerful tool to solve conflicts. Countries are interdependent. Military forces are in a secondary position in national security<sup>21</sup>.

Based on the Neo Liberalism and Idealism, the security concept of constructivism is developed<sup>22</sup>. It introduces the non-material factors such as system, norm, treaty, mechanism and so on into the field of security for research. It holds that it is completely possible for countries to achieve effective cooperation through the establishment of security cooperation mechanism, and to achieve conflict resolution through the construction of mutual trust between the main bodies of countries. International cooperation is the product of good political and cultural interaction between international communities. The benign interaction between sovereign countries is a

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<sup>20</sup> See FU Yong: *Non-Traditional Security and China*, Fudan University Doctoral Dissertation, 2005, p. 20.

<sup>21</sup> See Men Honghua, *Latitude of Peace: a Study on the Collective Security Mechanism of the United Nations*, Shanghai People's Publishing House, 2002 edition, pp. 1-3; Robert Keohane and Joseph Nye, *Power And Interdependence (3rd Edition)*, translated by Men HongHua, Peking University Press, 2002 edition, pp. 25-27.

<sup>22</sup> See edited by Vendulka Kubalkova, Nicholas Onuf and Paul Kowert, translated by Xiao Feng, *International Relations in a Constructed World*, Beijing: Peking University Press, January 2006, pp.34-37.

kind of construction. Although there is a "security dilemma", this dilemma arises from the interests of sovereign countries. The benign interaction can eliminate the conflicts of interests, realize the harmony and cooperation between countries, reduce the "zero sum game"<sup>23</sup>, and the "security dilemma" can naturally be deconstructed.

According to the realistic security view, there are always threats and competitions between countries<sup>24</sup>. The security of the international community depends entirely on military power. The strength of military power directly determines whether a country is strong or not. The result of a country's external expansion is to obtain living space and resources, which undoubtedly aggravate the contradictions and conflicts between countries. Therefore, the "security dilemma" cannot be eliminated. Whether through the construction of harmonious international relations or through cooperation and dialogue, this kind of conflict is inevitable<sup>25</sup>. The evil habit of human plunder cannot be changed. Therefore, it is impossible to build a safe international society.

According to the new realism security concept, when considering national security, economic factors should also be taken into account. Especially in the perspective of globalization, the development of international economy has gone beyond the security scope of a country, and the development of national economy occupies a more and more important position. The development degree of the overall national economy determines the strength of the comprehensive national strength. Only when the national economic situation is included in the scope of the overall national strength, can the country obtain greater security<sup>26</sup>.

The concept of "shared security" holds that "shared security" is "based on human life, human republic, mutual trust and cooperation, and win-win sharing"<sup>27</sup>. "Sharing security" shows "the diversity of the main body, the openness of the content, the

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<sup>23</sup> Zhao Kejin, Shi Yan: *Theory and Practice of Building a New Type of International Relations*, American Studies, 2018, 32(03), pp. 32-56.

<sup>24</sup> Tang Xiaosong: *On the Development and Destiny of Realism*, World Economy and Politics, 2004(07), pp.7-14.

<sup>25</sup> Song Wei: *Realism: Misunderstanding and Vitality*, International Relations Research, 2014(03), pp.12-14.

<sup>26</sup> See Hans J. Morgenthau, Kenneth W. Thompson, David Clinton, *Politics among Nations*, McGraw Hill Higher Education Press, 2005, pp.31-32; Robert O. Keohane, *Neorealism and Its Critics*, Columbia University Press, 1986, pp.172-175; James P., *Structural Realism and the Cause of War*, Mershon International Studies Review, Supplement 2, 1995, Vol.39, pp.184-185.

<sup>27</sup> Yu Xiaofeng: *Shared Security: a New Paradigm of Non-Traditional Security*, Journal of Zhejiang University (Humanities and Social Sciences Edition), 2014, issue 2, pp.199-200.

win-win goal, the universality of the field, the diversity of the form, the constructive action and the non confrontational strategy of the joint construction"<sup>28</sup>. The key to "shared security" is how to face and solve the "heterogeneous" conflicts that are prevalent in human society, including the diachronic heritage of various "heterogeneous" such as civilization, culture, religion, nation and society, as well as the current "heterogeneous" conflicts and confrontations caused by history, geography, interests, resources, systems, and even misunderstandings, and including the possibility of holding different prospects and pursuing "heterogeneity" in the future<sup>29</sup>.

Non-traditional security is based on the comparison with traditional security, simultaneous interpreting national security concepts based on the concept of state sovereignty. Non-traditional security is generally considered to be more complex than traditional security. From the perspective of traditional security concept, if a country takes measures to ensure its own security, then other countries think that the country has a threat to itself, and their national security will be reduced. Therefore, in a state of "anarchy" in the international community, a state's act of strengthening its national self-defense capacity in order to carry out defense is usually considered as a threat by other states, and corresponding responses are needed to deal with such a hypothetical threat and danger<sup>30</sup>.

The leading thinking of traditional security is based on the security concept of realism and new realism, which holds that: first, the establishment of international social security should take the country as the main body and object, regional security and global security are both extensions of national security; second, the maintenance of national security is mainly realized by means of war and military strength, to defeat international threats and the powerful weapon of insecure factors is state power. The manifestation of state power depends on military power. Marked by the global "military competition"<sup>31</sup>, other factors are not conducive to the realization of global

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<sup>28</sup> Xu Xiujun: *Institutional Non Neutrality and BRICs Cooperation*, World Economy and Politics, 2013, issue 6, pp.77-96.

<sup>29</sup> Yu Xiaofeng: *Shared Security: China's Perspective in Non-Traditional Security Research*, International Security Research, 2014, issue 1, pp. 4-34.

<sup>30</sup> See Kenneth Waltz, *International Political Theory*, translated by Hu Shaohua and Wang Hongying, Beijing: China People's Public Security University Press, 1992 edition, p.3.

<sup>31</sup> Erik Lin-Greenberg: *Non-Traditional Security Dilemmas: Can Military Operations other than War Intensify Security Competition in Asia?* Asian Security, (2018)14:3, pp.282-302.

security, and war is an effective means to eliminate threats. Third, this kind of insecure threat comes from the external part of the state, only the threat of the balance exists between countries, the security body of the international community to achieve. Otherwise, it is difficult to build an international security system.

In contrast, the non-traditional security theory extends the security theory centered on state sovereignty to all fields that affect the development of human society. It transcends the concept of state boundary and the limitation of state sovereignty, examines the security construction of all countries from the perspective of global security, and then thinks from the perspective of idealism, Neo liberalism, constructivism, and sharing security to: First, the construction of the security system of the international community should not be solely based on the state, but also include individuals, non-state organizations, groups, etc. the peace and development of the international community cannot be completely dependent on military strength, and the global arms race can only lead to greater insecurity. Second, regional security and global security are not extensions of national security. National security is a part of global security. Many factors should be considered in response to insecurity. The construction of the international security system lies in good communication. Multilateral and bilateral cooperation among countries can be fully realized, rather than relying on military forces<sup>32</sup>. Third, this kind of insecurity may come from either the outside or the inside of the country, or both. The resolution of this threat and conflict can be fully realized through international rules, systems, cooperation, and other ways. Therefore, non-traditional security is a comprehensive security concept, which does not deny the traditional security, but the deepening and sublimation of the traditional security field, expanding the global security to a broader level. Thus the separation between traditional security and non-traditional security is not absolute, but relative, and the two are intertwined. With the deepening of globalization, traditional security may be transformed into non-traditional security, and vice versa<sup>33</sup>.

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<sup>32</sup> See Liu Yuejin: *The Historical Evolution and Logical Composition of China's Official Non-Traditional Security Concept*, *International Security Research*, 2014,32(02), pp.117-129.

<sup>33</sup> See Yu Xiaoqi: *An Analysis of Non-Traditional Security*, *Modern International Relations*, 2003, issue 5, pp.57-64.

Non-traditional security is a kind of "shared security"<sup>34</sup>. It focuses on a wider range of areas, a wider vision and a finer depth. Due to the differences of national conditions, there are also cognitive differences on non-traditional security. There are still differences in the scope of its concept, and a consensus has not yet been reached, but this difference is gradually narrowing due to the global threat of insecurity factors. At present, the main concerns in the field of non-traditional security are:

(1) International political security. Although international political security belongs to the field of traditional security concerns, the focus of traditional security concerns has always been on the competition of military power as the weighing instrument, while non-traditional security concerns are the factors other than military power, such as the signing of international conventions, the definition of international security system, the constraint of international legal norms and other "soft law" establishment<sup>35</sup>.

(2) Global economic security. According to the traditional security theory, the strength of economic power belongs to the internal affairs of each country, which depends on the strength of the country's state power<sup>36</sup>. However, with the deepening of globalization, the operation of economy has gone beyond the scope of sovereignty of a country, such as transnational trade and financing, which make the distribution of wealth in the global scope. The operation and distribution of economic capital is no longer limited to a country, but to each country participating in the distribution of economic benefits. Therefore, a country's economic crisis may cause the global "Butterfly Effect", harm the global economy, and bring different degrees of attack and harm to the global economy. For example, the financial crisis in Southeast Asia broke out in 1998<sup>37</sup> and U.S. subprime mortgage crisis in 2006.

(3) Environmental and ecological security. Environmental deterioration seriously endangers human survival, which not only destroys the ecological balance of nature, but also causes abnormal climate (such as greenhouse effect, smog), shortage of

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<sup>34</sup> See Yu Xiaofeng: *Shared Security: The Chinese Perspective of Non-Traditional Security Research*, International Security Research, 2014, 32(01), pp.4-34.

<sup>35</sup> See Liao Danzi: *40 Years (1978-2017) of Chinese Non-Traditional Security Research: Context, Significance and Prospect*, Social Science Abstracts, 2018(09), pp.36-38.

<sup>36</sup> Zhang Shuai, Gu Haibing: *China's Economic Security Research: Misunderstanding and Reflection*, Academic Research, 2020(03), pp.80-87.

<sup>37</sup> See Keith Suter: *Think Tanks and Non-Traditional Security: Governance Entrepreneurs in Asia*, Journal of the Indian Ocean Region, (2017) 13:1, pp.125-126.

resources, global disasters (e.g. hurricanes, tsunamis, earthquakes, floods, volcanic eruptions), multiple primary diseases and pestilence (such as SARS, AIDS, COVID-19 and Ebola)<sup>38</sup> lead to the lack of water, food, land and other basic means of human life, leading to conflicts between and within countries, threatening global security.

(4) Transnational organized crimes. Transnational crime is a serious disaster area in the field of non-traditional security, which seriously endangers international security, including terrorism, drug trafficking, arms smuggling (biological and chemical weapons, nuclear devices, and nuclear materials), illegal immigration, piracy, financial crime, cyber crime, etc.<sup>39</sup>. Transnational crimes often belong to organized crime.

It has been pointed out traditionally a dividing line existed between terrorism and transnational organized crime (e.g. different purposes although similar methods<sup>40</sup>; lack of commonly accepted definition of the former contrary to the latter), a fact that provoked a separated legal approach to and regulation of these two forms of criminality.

However, evolution experienced by both phenomena and, in particular, paths followed by new terrorism make these crimes appear to be closer, according to last methods and practices used by Daesh mainly, but also by other jihadist terrorist groups (e.g. Boko Haram, Al-Shabab). These new terrorist organizations use old traditional criminal practices such as theft and extortion, but they also pursue a main goal: exercising political and economic control, adopting new methods familiar to those used by all kind of criminal organizations for those purposes: e.g. hierarchical military internal structure of Daesh according to its territorial claimed basis of the “Caliphate”, in contrast with a rather common horizontal structure with autonomous cells practiced by previous terrorist organizations (Al-Qaida). Or the fact of making recourse to killing in case of members abandoning the organization, following in this regard the example of e.g. Latin American “*maras*”, mafia groups or drug-trafficking groups, currently using these methods. Thus, contradictory models cohabit nowadays and centralized and hierarchical practices coexist with rather decentralized terrorist groups more prone to

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<sup>38</sup> Wang Xiaoli: *Biosafety Era: New Biotechnology Transformation and National Security Governance*, International Security Research, 2020, 38(04), pp.109-135.

<sup>39</sup> Xie Guiping: *Cross-Border Non-Traditional Security in China's Border Areas: Challenges and Countermeasures*, International Security Research, 2020, 38(01), pp.131-156.

<sup>40</sup> Santiago Ballina, *The Crime Terror Continuum Revisited*, Journal for Policing, Intelligence and the Power of Informal Networks, Vol 6, No2, 2011, pp.121-124.

merging, precisely due to this fact, with transnational organized crime groups.<sup>41</sup> Additionally, meanwhile some criminal services used to be outsourced by terrorist organizations with transnational criminal groups in the past, we witness today the appropriation of such criminal “services” by the very terrorist organizations in a do-it-yourself dynamics.

Therefore, nowadays it’s difficult to strictly maintain in all cases that terrorist associations or groups are not simultaneously criminal organizations *per se*, according to the methods used and their meant purposes<sup>42</sup>, but using in the case of terrorist groups a legitimizing political, religious or moral discourse. In this regard a clear-cut division between both forms of criminality is not always easy to establish but sometimes even rather artificial. According to detailed analysis offered of different terrorist groups’ *modus operandi* the proposal of a unique self explaining theoretical model to be applied to all cases seems nowadays unrealistic<sup>43</sup>.

Transnational organized crime contributes significantly to undermining the rule of law and compromising the integrity of democratic institutions. Taking into consideration the sophisticated tools and the violence used by criminal organizations to achieve their goals, transnational organized crime poses a serious threat to human beings as well as to the rule of law. The negative impact on national economies cannot be overstated. Significant amounts of money are lost through tax evasion, money laundering and illegal economic markets, not to mention the indirect economic harm

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<sup>41</sup> See discussion by DISMAN, Ch., *The leaderless Nexus: When Crime and Terror Converge*, Studies in Conflict and Terrorism (28):237-252.

<sup>42</sup> Different forms of interaction between TOC and terrorism have been proposed by academia. They can be sum up in four different models, according to Makarenko: alliances, operational motivations, convergence and birth of a hybrid organization, and black holes or terrorist states. In this regard see Tamara Makarenko (2004): *The Crime-Terror Continuum: Tracing the Interplay between Transnational Organized Crime and Terrorism*, Global Crime (1):129-145; Tamara Makarenko & M. Mesquita (2014): *Categorising the crime-terror nexus in the European Union*, Global Crime (15): 259-274; M. D. Phillips & E. A. Kamen (2014): *Entering the Black Hole: The Taliban, Terrorism, and Organized Crime*, Journal of Terrorism Research (5):39-48; A. Hubschle (2011): *From Theory to Practice: Exploring the Organized Crime-Terror Nexus in Sub-Saharan Africa*, Perspectives on Terrorism (5):1-7. Others have adopted a different view, considering social, economic and geographical context as the hardcore explaining the relationship between terrorism and TOC, being each case unique and different and, therefore, avoiding the construction of a single, theoretical model to be applied to all cases.

<sup>43</sup> See UN International Peace Institute, *Transnational Organized Crime and the Palermo Convention: A Reality Check*, 2010.

caused by organized crime as a criminal activity that can undermine the credibility and competitiveness of a state's financial and commercial sectors.

There are many other areas that should be covered in the fight against transnational organized crime under non-traditional security circumstances: prevention, awareness, good governance, and in general the implementation of the rule of law is also crucial.

(5) Food and drug safety. Crimes in the field of food and drug are considered to be one of the crimes with serious harmfulness. The safety of food and drug is related to public health and basic people's livelihood. Food and drug safety incidents will directly affect consumer confidence, form a heavy blow to the whole industrial chain, and cause many economic problems<sup>44</sup>. Not only may that, as a product, the inherent defects of food and drug constitute a threat to individual health or even life. However, with the advancement of modernization and urbanization, the production of food and medicine, and the extension of consumption chain, the damage caused by the defects of food and medicine is often no longer "individual", and one incident will affect a wide range of groups, such as Sanlu milk powder incident<sup>45</sup> in China. The social risks caused by food and drug are no longer individual, but regional, national and even global, which will lead to more extensive harm once unfortunate events happen<sup>46</sup>. Their consequences in modern society are no longer single and predictable, but tend to be highly complex and complicated, and it is difficult to accurately meet and regulate<sup>47</sup>. In recent years, the practice shows that the risk in the field of food and medicine presents a kind of "democratic distribution", breaking the tradition of different levels of hierarchical society with different ability to resist risk. No matter whom, what social class and status, some risks need to be faced with the same, and cannot be exempted<sup>48</sup>. Therefore, once there is a problem in the field of food and drug, the scope of the risk will be huge, and the damage will affect the whole national management order and endanger the overall

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<sup>44</sup> Wang Yang: *Food and Drug Safety Focuses on Supervision*, Seeking Truth, 2013, issue 16, pp.34-45.

<sup>45</sup> Ma Huaide, Zhao Peng: *"People's Livelihood" And "Public Safety" In Food And Drug Issues: Implications, Motivations And Challenges*, China Administration, 2015, Issue 9, pp.71-84

<sup>46</sup> See Anthony Giddens, *Modernity and Self Identification*, translated by Zhao Dongxu, et al., Sanlian Bookstore, 1998 edition, p.157.

<sup>47</sup> See Zhuang Yougang: *A Review of the Theoretical Study of Risk Society*, Philosophical Trends, 2005, issue 1, pp.12-26.

<sup>48</sup> U. Beck, *Risk Society: Towards a New Modernity*, London: Sage Publications Ltd., 1992

national security. Once the destructive power of this risk is used by terrorist organizations and individuals, its deterrent power will be greatly strengthened.

(6) Cultural security. Xi Jinping further stated in the "Overall National Security Concept" that "national security work seeks to build a national security system that integrates political security, homeland security, military security, economic security, social security, science and technology security, information security, biological safety, resource safety and nuclear safety" in the current and future period. It shows that cultural security is a kind of national security. Cultural relations are not only embodied in "native culture and alien culture", "native culture and foreign culture", "advanced culture and backward culture", "capitalist culture and communist culture", but also in "the relationship between big and small countries", "strong culture and weak culture", "capitalist country and socialism state relations ".Therefore, to emphasize cultural security, the most important thing is the ability of our own culture to resist foreign invasion culture<sup>49</sup>. China should learn from other countries' advanced culture, create its own advanced culture, inherit and carry forward its traditional culture, develop the connotation of special culture, and constantly create new Chinese culture." Cultural prosperity and cultural security cannot be placed on leaders with power, virtue and wisdom, nor can we place cultural prosperity and cultural security on intellectual elites alone."<sup>50</sup> "Cultural officials, intellectual elites and ordinary citizens are not only the three main bodies of cultural security awareness and judgment, but also the three important forces and three power parameters. For complex cultural and cultural security issues, only relying on any one of the forces and any parameter to make decisions, there will inevitably be deviation, and even lead to a huge disaster in cultural security. Only when these three cultural forces and cultural power parameters are considered as a whole can a relatively good cultural security choice be formed. "<sup>51</sup> Therefore, cultural security is not only related to the overall national security, but also to the security of each individual. Terrorism constantly invades the field of cultural communication by means of printing and distributing propaganda materials,

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<sup>49</sup> Hu Huilin: *How Does a More Open China Define National Cultural Security? -China's Approach and Future Thinking of National Cultural Security Research*, Study and Practice, 2020(08), pp.115-125.

<sup>50</sup> Qi Chongwen: *On the Legal Governance of Cultural Security*, Administrative Management Reform, 2019(08), pp.105-111.

<sup>51</sup> Liu Yuejin: *Three Ways of Thinking and Policy Guidance of Cultural Security*, International Security Research, 2015, issue 3, pp.43-57.

disseminating violent and terrorist audio and video, forming a "brainwashing" cultural language atmosphere, so as to entice more people to join in violent terrorist activities, create violent and terrorist events, and become the core members of terrorist organizations.

(7) Security in other areas. The focus of non-traditional security is no longer on national sovereignty, but on the complex of state, individual, organization and group. Therefore, non-traditional security concerns also extend to domestic ethnic conflicts, refugees, poverty, human rights, desertification, population expansion and other issues. Compared with traditional security, non-traditional security has multiple concerns and multi polarization factors<sup>52</sup>, which are all realistic threats that human society urgently needs to solve. Global security can only be established through good dialogue among the international community.

Therefore, the main difference between traditional security and non-traditional security lies in:

(1) Different contents. Traditional security threats involve political, military and diplomatic security. They resort to political intervention and military forces to resolve conflicts between countries and international conflicts safeguard their sovereignty and defend their territory. Non-traditional security threats involve security threats in many different fields, such as finance, ecology, environment, information, resources, food, immigration, refugees, poverty, terrorism and weapons proliferation.

(2) Different subject and object. The subject and object of traditional security is the state body, while the subject and object of non-traditional security involve a wide range, surpassing the state body, and non-state body, organization and individual may become its subject and object.

(3) The threats are different. Traditional security threats come from outside a country, that is, external threats; non-traditional security threats can come from both outside and inside a country, that is, both external and internal threats can produce non-traditional security threats<sup>53</sup>. As far as China is concerned, especially after the "9.11" terrorist attacks in the United States, how to deal with terrorist crimes has become one of the

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<sup>52</sup> Zhou Ran: *Research on Identification, Assessment and Response of Non-Traditional Security Threats*, Zhejiang University Doctoral Dissertation, 2016, p.21.

<sup>53</sup> See Cong Riyu: *Comparison between Traditional Security and Non-Traditional Security*, Academic Theory, 2014, issue 2, pp.36-38.

urgent tasks to maintain national security in the face of the opportunities and challenges brought by globalization<sup>54</sup>. In 2002, the concept of "non-traditional security" was put forward for many times in order to clarify the problems in the field of non-traditional security, which has become the primary factor threatening our security.

In the year 2014, at the 4th Plenary Session of the 18th CPC Central Committee, China further stressed that the interweaving of non-traditional security and traditional security has seriously threatened China's national security. It mainly includes: (1) transnational crime. Transnational crimes involve serious international crimes such as terrorism, drug crimes, human trafficking, arms smuggling, illegal immigration and money laundering. China's geographical position is just in the semi encirclement of Central Asia, the Middle East, Southeast Asia and Northeast Asia. The continuous political turmoil and vicious crimes in these areas continue to affect China's control over transnational crimes<sup>55</sup>. Most of these areas are the regions where terrorist organizations are most rampant, which directly or indirectly threaten China's national security. Among them, terrorist crime has become one of the most dangerous factors endangering China's security, and China has raised "counter-terrorism" to an unprecedented level. Therefore, the Counter-Terrorism Law, the Criminal Law Amendment 9 and the Cyber Security Law promulgated in time are crucial to eliminate and prevent the harm of this crime to the maximum extent. (2) Population resources. Population expansion, aging, unemployment and other population problems<sup>56</sup>, as well as the shortage of oil, clean water and other resources, are still the biggest "bottleneck" restricting China's social development. (3) Ecological environment problems. A series of ecological and environmental problems such as desertification, acid rain, greenhouse effect, smog, marine ecology and air pollution have become very serious. Over exploitation of natural resources leads to ecological imbalance and industrial pollution caused by scientific and technological development, such as haze in Beijing and sandstorm in Inner Mongolia. (4) Network security issues. As of June 2020, the number

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<sup>54</sup> Li Heng, Deng Fengbin: *The Derivative of Non-Traditional Security Terrorism and Counter-Terrorism Intelligence Response Measures*, Police Research, 2018(06), pp.32-41.

<sup>55</sup> Xie Guiping: *Cross-Border Non-Traditional Security in China's Border Areas: Challenges and Countermeasures*, International Security Research, 2020 (01), pp.1313-156.

<sup>56</sup> Wang Lei, Liu Hongbin: *Study on the Social Risk of Immigrants and Migrants from Mainland China*, Journal of Chinese People's Public Security University (Social Science Edition), 2019, 33(05), pp.133-141.

of Internet users in China reached 940 million, the Internet penetration rate reached 67.0%, the number of mobile Internet users in China has reached 932 million, and the proportion of Internet users using mobile terminals has reached 99.2%<sup>57</sup>. Mobile terminals such as tablet computers and mobile phones have become important Internet devices, and the network has become the main tools for business office, personal finance, shopping and friends making, family entertainment, domestic service, business trade, capital flow, etc<sup>58</sup>. The use of instant messaging software aggravates the instability of network security. Network rumor, terror audio and video, network fraud, etc., have become the biggest hidden danger threatening network security<sup>59</sup>. (5) Genetically modified food problems. There is still a debate on the safety of genetically modified food. Although Chinese authorities have repeatedly stated that genetically modified food can be safely eaten as traditional food, the public still have doubts about it<sup>60</sup>, affecting the safety and stability of China. (6) Plague, disease and alien invasion. "With more and more frequent international trade and the flow of entry-exit personnel, non-traditional security threats such as epidemic diseases, biological invasion, ecological damage and GDP loss are increasing in China."<sup>61</sup>

In the report of the 19th National Congress of the Communist Party of China held on October 18, 2017, it was clearly pointed out that "we should adhere to the overall concept of national security. It is a major principle of our party's governance to coordinate development and security, enhance awareness of hardship, and think of danger in peace. We must uphold the supremacy of national interests, take people's security as our tenet, and take political security as our foundation, coordinate external security and internal security, homeland security and national security, traditional

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<sup>57</sup> See *The 46th China Statistical Report on Internet Development*, issued by National Internet Information Office of China, <http://cnnic.cn/gywm/xwzx/rdxw/202009/W020200929343125745019.pdf>, the last visit date: October 15, 2020.

<sup>58</sup> *2015 Statistical Report on the Development of China's Internet*, [http://www.cnnic.net.cn/hlwfzyj/hlwzbg/hlwtjbg/201502/t20150203\\_51634.htm](http://www.cnnic.net.cn/hlwfzyj/hlwzbg/hlwtjbg/201502/t20150203_51634.htm). The last visit date: March 15, 2019.

<sup>59</sup> Cheng Guilong, Xie Jun: *Network Ideological Security Governance from the Perspective of Non-Traditional Security*, *Chongqing Social Sciences*, 2020(04), pp.121-130.

<sup>60</sup> Such debates are manifested in Fang Zhouzi's and "Greenpeace's" debates on genetically modified issues in "One Tiger One Talk" on Phoenix TV in 2010, and the "golden rice" event in Hengyang, Hunan Province in 2012.

<sup>61</sup> See Xie Yunting: *China's International Trade Faces Non-Traditional Security Threats*, *Xinhua Daily*, January 8, 2015, 6th Edition.

security and non-traditional security, self security and common security, improve the national security system, strengthen national security capacity-building, and resolutely safeguard national sovereignty, security and development interests. Effectively maintain national security. National security is an important cornerstone of national stability, and safeguarding national security is the fundamental interests of all ethnic groups. We need to improve national security strategies and policies, resolutely safeguard national political security, and comprehensively promote security work. We will improve the national security system, strengthen the legal protection of national security, and improve our ability to prevent and resist security risks. We will strictly guard against and resolutely crack down on all kinds of infiltration, subversion and sabotage activities, violent terrorist activities, ethnic separatist activities and religious extremist activities. We will strengthen national security education, enhance the awareness of national security of the whole Party and the whole people, and promote the formation of a strong joint force of the whole society to safeguard national security."<sup>62</sup>

### *1.2 The basis of terrorism belonging to non-traditional security*

Terrorism, as far as its concept is concerned, has more than 100 concepts. Because of the differences in religious basis, political beliefs, interest maintenance, party positions and other aspects held by various countries, the cognition of terrorism is different<sup>63</sup>. However, with the globalization and spread of terrorism, all countries actually feel the existence of this threat. From a small number of countries actively cultivating terrorist organizations and providing them with financial and material support to achieve the purpose of curbing the development of "other countries", to gradually refusing to provide support until such a change of attitude as a complete break, modern countries tend to agree on upon the basis of cognition of terrorism. They believe that terrorism is

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<sup>62</sup> See Xi Jinping: *Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era*, [http://www.xinhuanet.com/english/download/Xi\\_Jinping's\\_report\\_at\\_19th\\_CPC\\_National\\_Congress.pdf](http://www.xinhuanet.com/english/download/Xi_Jinping's_report_at_19th_CPC_National_Congress.pdf), the latest visit date: Oct.15th, 2020.

<sup>63</sup> Karabulatova Irina, Lyusheva Svetlana Aslanovna, Sovetovna Yanguzin Aibulat Rimovich, et al: *The Transformation of the Concepts "Terror/Terrorism" in Contemporary Socio-Philosophical Discourse*. Astra Salvensis, 2019, V (11), pp.739-748.

a huge "cancer" of the development of human society and must be exterminate<sup>64</sup>. The means and methods of terrorist activities are mainly realized by "starting war" and "creating violent terrorism". The targets of attacks include defenders of national security departments such as the army and police, innocent people and property. They create terrorist events, release terrorist video and audio, threaten the government to meet its political requirements, and achieve the purpose of establishing counter-government regime<sup>65</sup>.

Nowadays, the rapid rise of terrorism has brought great threat to governments and society. Therefore, all countries should take effective measures to prevent and combat terrorism, including the use of intelligence, information, law, military, political, diplomatic, economic, financial and other ways. First of all, since the cold war, the threat of terrorism has replaced nuclear weapons and become the biggest hidden danger to the security of the international community. Traditional security barriers have been broken, non-traditional security is dominant, and the paradigm of using military force to solve existing problems has been unable to deal with various problems faced by the international community<sup>66</sup>. Traditional security relies on political deterrence and military force to solve disputes, which can no longer be applied to all problems in the field of non-traditional security. Terrorism, because of its harm to the subject, object and target, is not limited to one country, one region, but diffuses and spreads to the whole world in a divergent form. It has already gone beyond the traditional concept of taking national territory as the margin and national security as the center, safeguarding territory and safeguarding sovereignty. Secondly, the traditional security theory takes the country as the protection object, and the maintenance of national security mainly depends on politics and military and military deterrence is used to maintain domestic and international security<sup>67</sup>. However, the "Jihad" launched by terrorism has long

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<sup>64</sup> Bryan C. Price, *Terrorism as Cancer: How to Combat an Incurable Disease*, *Terrorism and Political Violence*, (2019) 31:5, pp.1096-1120.

<sup>65</sup> Since 2013, the number and intensity of global terrorist attacks have increased significantly, reaching more than 10,000 times, and the death toll has reached nearly 18,000, 61% higher than that in 2012. The international community strongly condemns the terrorist crimes committed by terrorism in various countries. According to statistics, there are more than 1,000 global terrorist organizations.

<sup>66</sup> Alice Martini: *Rethinking terrorism and countering terrorism from a critical perspective*. *CTS and Normativity*, *Critical Studies on Terrorism*, (2020) 13:1, pp.47-55.

<sup>67</sup> Richard E. Berkebile, *What Is Domestic Terrorism? A Method for Classifying Events from the Global Terrorism Database*, *Terrorism and Political Violence*, (2017) 29:1, pp.1-26.

excluded the individual's life and death, which has doubled its strength. Therefore, the complete elimination of terrorism through war is basically an "impossible task"<sup>68</sup>. After the 9.11 terrorist attacks, the United States pursued a unilateral foreign policy and adopted a "war model" to launch a series of military attacks on the regions where terrorist organizations were located. However, it was against its will to completely destroy terrorist forces. The large-scale war can only lead to the embarrassing situation of "fighting more and terrorism more"<sup>69</sup>. The old terrorist organizations are eliminated, and the new terrorist organizations that replace them are rampant. Nevertheless, the military strike is still conducive to weakening the original sphere of influence of terrorist organizations, forcing them to "spill over" and "return" and narrowing their expected "territory" scope. Finally, the traditional security theory is applicable to the security theory among sovereign states, and the main body involved is sovereign state; while terrorist organizations do not have legal state status, not "state body", not to mention state sovereignty, nor legal state identity<sup>70</sup>. Therefore, it does not have the dominant position in traditional security theory. Moreover, the terrorist crime does not belong to the crime category which the traditional security can prevent and control.

Nevertheless, there are still disputes over whether terrorism belongs to traditional or non-traditional security. In terms of safeguarding national security, safeguarding sovereignty, protecting national territory, using military action to fight against terrorism, and maintaining the security of the international community and regional security, terrorism belongs to the category of traditional security<sup>71</sup>. If we compare non-traditional security with traditional security in terms of the scope, target groups, means of attack, political opinions and appeal requirements of terrorist activities, terrorism belongs to non-traditional security. Therefore, based on the following reasons, researchers of modern security theory began to generally believe that terrorism should be the concern of non-traditional security.

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<sup>68</sup> Peter S. Henne: *Assessing the Impact of the Global War on Terrorism on Terrorism Threats in Muslim Countries*, Terrorism and Political Violence, Published online: 17 Jul 2019.

<sup>69</sup> Lee Jarvis: *Terrorism, Counter-Terrorism, and Critique: Opportunities, Examples, and Implications*, Critical Studies on Terrorism, (2019) 12:2, pp.339-358.

<sup>70</sup> Alexandra Homolar & Pablo A. Rodríguez-Merino: *Making Sense of Terrorism: A Narrative Approach to the Study of Violent Events*, Critical Studies on Terrorism, (2019) 12:4, pp.561-581.

<sup>71</sup> Katja Weber: *Recalibrating Sovereignty-Related Norms: Europe, Asia and Non-Traditional Security Challenges*, Journal of European Integration, (2013) 35:1, pp.19-35.

(1) Non-traditional security theory is an extension of traditional security theory, which is deepened and transformed from traditional security theory

The non-traditional security theory originates from Copenhagen School's security view, constructivism security view, postmodernism security view, postcolonial security view, structuralism security view and so on. According to these security theories, national security and national interests are not only determined by "material factors", but also dominated by "concept factors" in essence, and "mutual construction" between social structures is dominated by "concept factors". Social security is the "mutual construction" between the "actors" of social threats and social structures. The interests of actors are determined by "ideas", not just "materials". In today's international security construction, the right to speak occupies an important position. In international relations, the "agreement" of interstate relations is mainly constructed by "discourse". The structure of discourse determines its "security". Both security and threat are expressions of discourse. The construction of international relations is mainly realized by the "security" of discourse. The "existence of danger and threat" largely depends on the "discourse" used in the "mutual construction" of social structure<sup>72</sup>. The Western security theory, through social "mutual construction" security theory, discourse security theory, eventually transcends the political security and military security advocated by the traditional security theory, enters the fields of economic security, cultural security, environmental security and social security, breaks the inherent "dual opposition" security thinking mode of "international and domestic", "military and non military", and opens up. The new safety logic thinking, followed by "feminist safety research"<sup>73</sup>, "critical safety research"<sup>74</sup> and "human safety research"<sup>75</sup>, further pushes the traditional safety theory research to the research field of non-traditional safety theory. Pay attention to the security of individuals, society, organizations, communities, etc., and bring threats that do not endanger national

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<sup>72</sup> See Barry Buzan and Linna Hansen: *The Evolution of International Security Research*, compiled by Yu Xiaofeng, Zhejiang University Press, 2011 edition, pp. 166-299.

<sup>73</sup> Brooke A. Ackerly, Maria Stern and Jacqui True, *Feminist Methodologies for International Relations*, Cambridge University Press, 2006, p.1.

<sup>74</sup> Soumita Basu and Joao Nunes, *Security as Emancipation*, in Laura J. Shepherd, *Critical Approaches to Security London*, New York: Routledge, 2013, pp.63-79.

<sup>75</sup> In 1993, the concept of "human security" was put forward in the *Human Development Report* of the United Nations Program, and it was elaborated in the 1994 *Human Development Report*.

security into the perspective of security research. However, western scholars pay too much attention to "human security" and neglect the complementarities between "national security" and "human security". Chinese scholars believe that "human security" and "national security" are mutually promoting and interconnected common development systems. Therefore, non-traditional security is not a security threat between countries, a product that one country makes and forcibly distributes to other countries, or a security problem that one country can recognize independently and then deal with, but a common threat, danger, harm and crisis that the whole human being and the whole national cluster need to face. This kind of security problem has gone beyond the scope that a country can bear and face. It is no longer the mutual competition and threat between countries, but the common security threat that all countries in the world gather to think about how to deal with and how to unite to solve the problems of danger, threat and crisis<sup>76</sup>.

Before the "9.11" terrorist attacks, terrorism has been developing and growing. The targets of attacks are often locked in a certain country, creating terrorist events, threatening the government, in exchange for political capital and economic interests to maintain the operation of its terrorist activities. After the "9.11" terrorist attacks, terrorism spread rapidly all over the world. Terrorist attacks are no longer directed against a country or region, but against any country, several countries or regions. The means of terrorist attacks are diversified. In addition to recruiting members, building military forces, launching "Jihad" and other "war ways" to carry out terrorist attacks, transnational crimes such as smuggling arms, drug trafficking, illegal immigration, financial fraud, etc. have become crazy. They have raised funds illegally, recruited and trained members, and attempted to build a Jihadist empire. South Asia, the Middle East, North Africa, sub Saharan Africa, Southeast Asia and North America have suddenly become the main regions of terrorist "Jihad", many national security is threatened, terrorist attacks emerge in endlessly, and the whole human life begins to fall into unprecedented potential danger and crisis<sup>77</sup>. Terrorist attacks involve economy, culture, science and technology, information, network, finance, resources, etc. security is fixed

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<sup>76</sup> See Qin Yaqing: *The Failure of Global Governance and the Reconstruction of the Concept of Order*, *World Economy and Politics*, 2013, issue 4.

<sup>77</sup> Katja Weber: *Recalibrating Sovereignty-Related Norms: Europe, Asia and Non-Traditional Security Challenges*, *Journal of European Integration*, (2013) 35:1, pp.19-35.

on the potential risk of "insecurity". Terrorism in the world adopts the distribution strategy of "breaking up into parts", which makes terrorist attacks elusive. Terrorists increase the difficulty of defense and control of terrorist attacks through "decentralized" latent<sup>78</sup>. So far, no country has been able to deal with such a decentralized "matrix" terrorist threat. It must unite with other countries and form a community to deal with it. From this perspective, terrorism is a threat to global security, not a security issue of one country, one region. It has already crossed the traditional security threats between countries.

(2) Non-traditional security puts traditional national security issues into a broader global security perspective

Through paying close attention to politics, economy, culture, society, environment and many other microcosmic fields of vision, this thesis holds that in the process of globalization, all the problems of human existence and social development faced by all countries should be solved together. The non-traditional security not only integrates the traditional security concept of national security, but also expands the non-traditional security concept into the non-traditional national security view and non-traditional national security issues<sup>79</sup>. It also pays attention to the high-level non-traditional security thinking and low-level non-traditional security thinking in the non-traditional security, and places the traditional security threat and non-traditional security threat in the research field of non-traditional security (See Figure 1-1). Based on traditional security, it should develop non-traditional security thinking, which emphasizes both traditional security and non-traditional security<sup>80</sup>. Build a comprehensive national security system integrating political security, economic security, cultural security, scientific and technological security, military security, information security, ecological security, social security, homeland security, resource security and nuclear energy

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<sup>78</sup> Guiping Xie & Tianyang Liu: *Navigating Securities: Rethinking (Counter-)Terrorism, Stability Maintenance, and Non-Violent Responses in the Chinese Province of Xinjiang*, Terrorism and Political Violence, Published online: 15 Apr 2019.

<sup>79</sup> Yihua XU: *Studies on Religion and China's National Security in the Globalization Era*, Journal of Middle Eastern and Islamic Studies (in Asia), (2013) 7:3, pp.1-21.

<sup>80</sup> See Liu Yuejin: *Non-Traditional Overall National Security Concept*, International Security Research, 2014, issue 6, pp.24-31.

security<sup>81</sup>. Terrorist crimes not only touch the traditional national security interests, but also pose a major threat to the non-traditional security field. This kind of threat involves many aspects. The purpose of terrorist crime is political, and its aggression does not belong to the traditional security field.

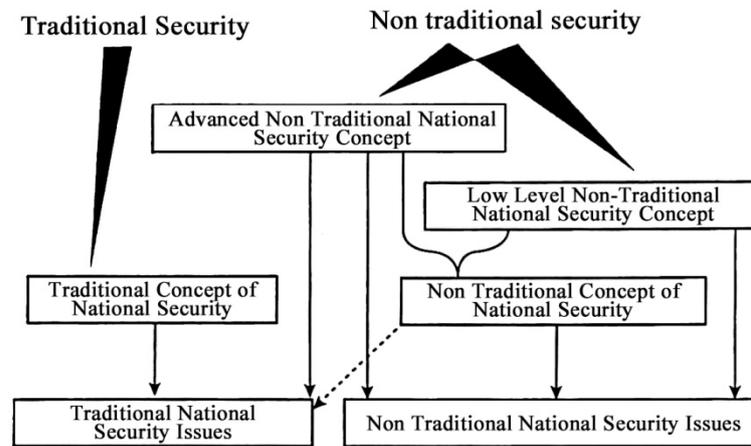


Figure 1-1 Relationship between National Security Concept and National Security Issues

First of all, terrorism includes domestic terrorism and international terrorism. Domestic terrorist crimes often infiltrate and disrupt national security from the inside, leading to the overthrow of state power. International terrorist crimes are used to invade national security from the outside. However, terrorism is a non-traditional security issue in any aspect. As shown in Figure 1-1, non-traditional security actually involves two aspects, namely, the concept of national security and the issue of national security. Terrorism directly causes problems in national security, rather than directly targeting national security. On the one hand, terrorism usually causes the tension between countries through war, and the region is full of fear, so as to realize the political appeal; on the other hand, it is difficult to distinguish which groups of people are terrorists and which are not terrorists on the surface because of the "decentralized" occupation of terrorism. Practice shows that terrorist organizations begin to absorb a large number of high IQ, high education and high-tech personnel, who have good educational

<sup>81</sup> Xi Jinping, "Adhering to the Overall National Security Concept and Taking the Road of Chinese Characteristics with National Security", <http://news.xinhuanet.com/politics/2014/04/15/c1110253910>, the last visit time: December 18, 2019.

background, economic ability, stable work, easy to conceal their identity and make terrorist attacks<sup>82</sup>.

Secondly, terrorist organizations began to go deep into various fields and industries, such as politics, economy, culture, science and technology, environment, network, energy, information, ecology, education and society. Therefore, more terrorist attacks are no longer centered on national security, but are carried out in many fields. Members are recruited through Internet, and "Jihad" is called in the name of religion. Financial loopholes are used to create financial crisis. Deterioration of environmental ecology is used to create panic information and widely spread. All these show that terrorism is not only the original "simple appearance", but also the unprecedented complexity of terrorism. This threat directly enters into the field of human life and goes deep into the center of social security. All these factors are areas of non-traditional security concern, and terrorism is particularly clear.

Finally, terrorism usually takes innocent people, non military personnel, non armed personnel in the military and non military facilities (civil buildings and civil facilities) as the direct targets of attacks, resulting in casualties and property losses, and less direct attacks and wars against the state, thus endangering the sovereignty and territorial integrity of the state. Terrorist organizations often commit criminal acts against innocent people, public property, organizations, groups and society of a country, destroy international and domestic political relations, peace and stability, economic and financial order, destroy public and private property, create panic and chaos, and spread information of terrorism, so as to threaten the government to meet its requirements. According to statistics, from 2000 to 2013, the number of terrorist attacks carried out by terrorism was more and more frequent, the scale and intensity were gradually increasing, and the proportion of casualties and property losses were also increasing (see Figure 1-2)<sup>83</sup>. Terrorist attacks on innocent people and property exceeded 35% in 2001, reaching a peak of more than 10 years; from 2002 to 2006, they fluctuated from

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<sup>82</sup> For example, Osama bin Laden, the former head of Al Qaeda, was born into a rich business family and graduated from King Abdullah University, with an inheritance of more than 300 million US dollars (now generally considered to be 25 million US dollars); in the September 11 terrorist attacks in the United States, Muhammad Atta, the hijacker, graduated from Cairo University and later studied in Germany, receiving good education and family affluence, decent work, generous pay.

<sup>83</sup> Figure 1-2 data source: 2014 *Global Terrorism Index Report* (GTI) issued by the Institute of Economics And Peace has been partially revised.

20% to 30%; from 2002 to 2006, they exceeded 30%. Since 2011, the targets of terrorist attacks have changed significantly. Attacks on people and property have begun to decline, accounting for 24% - 30%, less than 30%, while attacks on police have increased significantly, from 15% to about 25%, an increase of nearly 10%<sup>84</sup>. But they are all far higher than those targeted at governments, businesses, transportation, religious groups and other organizations. Therefore, the main victims of terrorist events are still innocent people and public and private property, which makes "human security" be threatened and endangered, rather than directly endangering national interests and national security.

According to the 2019 Global Terrorism Index Report released by the Institute of Economics and Peace, bombings and armed assaults have been the most common type of terrorist attack over the past two decades, and the low-cost terrorist attacks began to increase significantly<sup>85</sup>. The targets are still innocent people and national public infrastructure, through the implementation of terrorist attacks; threatening national security and endangering human security (see Figure 1-2).

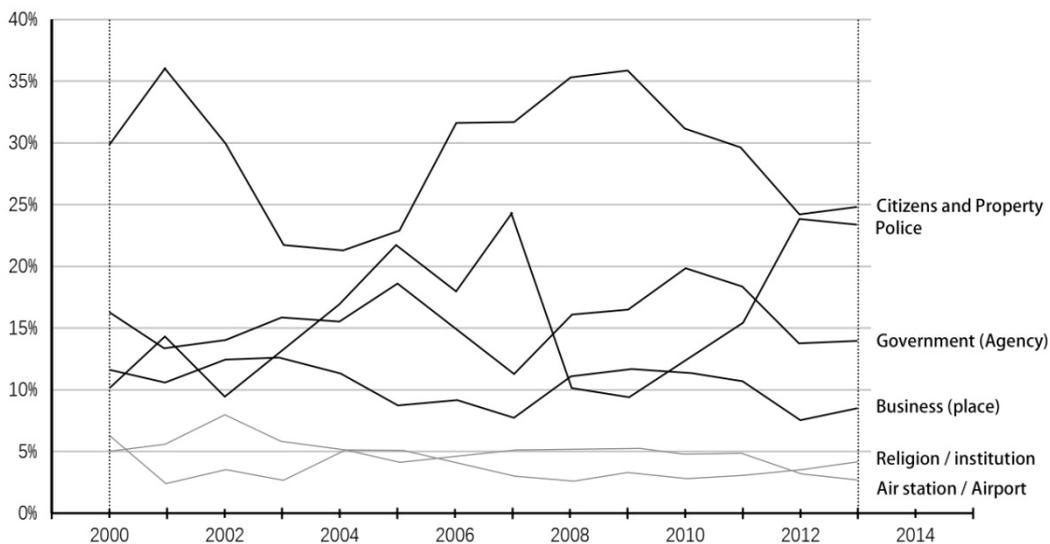


Figure 1-2 Annual Change of Target Proportion of Terrorist Attacks from 2000 to 2013

The statistics are from the global terrorism database, <http://www.start.umd.edu/gtd/>

As mentioned before, traditional security pays attention to national security and the elimination of security risk factors between countries, which belong to the adjustment of the relationship between a country and "the other", so it is difficult to separate from

<sup>84</sup> See 2019 *Global Terrorism Index Report* (GTI) issued by the Institute of Economics And Peace.

<sup>85</sup> See 2019 *Global Terrorism Index Report* (GTI) issued by the Institute of Economics and Peace.

the main body of the country. However, terrorist attacks do not belong to the mutual threat between countries, and there is no political confrontation and cooperation between state subjects<sup>86</sup>. Terrorists are basically targeted at individuals and organizations outside the country. By causing damage to these subjects, they exert political and public opinion pressure on the government, threatening the government to give up some national interests and achieve its political demands and aspirations<sup>87</sup>. Compared with national security and human security, non-traditional security pays more attention to "human security", that is, the safety of life and property of innocent people, while focusing on national security. Terrorism is just trying to create terrorist events, endanger life and destroy property. Therefore, terrorism remains a non-traditional security issue. Although such terrorist organizations as "Islamic State" and "Boko Haram" claim to be "state" and have territorial sovereignty, they are not really sovereign states<sup>88</sup>. Terrorism does not have the capacity to become a controversial dispute between the national politics and military threats studied in the field of traditional security. Terrorism, extremism and separatism are still strictly non-traditional security issues. (See Figure 1-3)<sup>89</sup>

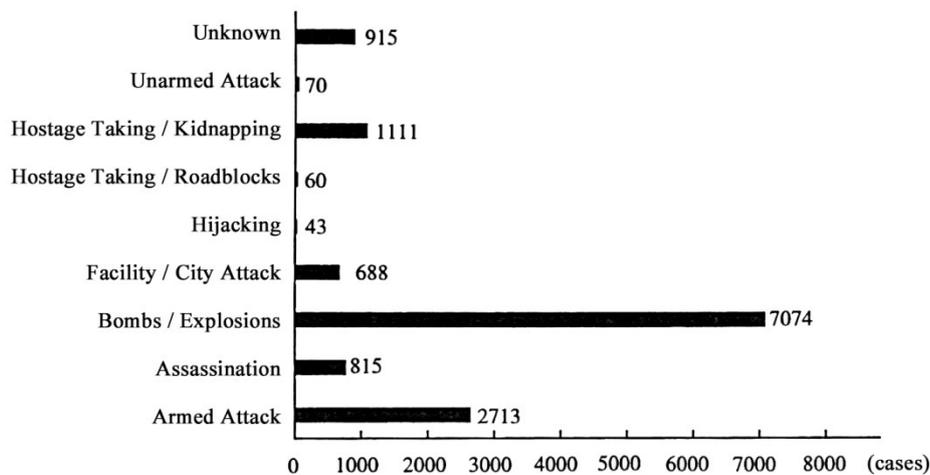


Figure 1-3 Statistics of Global Terrorist Attacks in 2016

<sup>86</sup> Or Honig & Ido Yahel: *A Fifth Wave of Terrorism? The Emergence of Terrorist Semi-States*, *Terrorism and Political Violence*, (2019) 31:6, pp.1210-1228.

<sup>87</sup> Daniel Milton & Bryan Price: *Too Central to Fail? Terror Networks and Leadership Decapitation*, *International Interactions*, (2020) 46:3, pp.309-333.

<sup>88</sup> Or Honig & Ido Yahel: *A Fifth Wave of Terrorism? The Emergence of Terrorist Semi-States*, *Terrorism and Political Violence*, (2019) 31:6, pp.1210-1228.

<sup>89</sup> See 2017 *Global Terrorism Index Report* (GTI) issued by the Institute of Economics and Peace.

### *1.3 The impact of terrorism on non-traditional security*

In the field of non-traditional security, there are a lot of unsafe factors. Although these factors are still in the "incubation period" or "initial stage", they pose unexpected risks and threats to the living environment of human beings, such as political crisis, economic stagflation, cultural collapse, ecological damage, food shortage, drug shortage, water depletion, environmental degradation, scientific and technological stagnation, information congestion, network paralysis and energy exhaustion. The risk factors and problems faced by human society are gradually increasing, and will continue to affect the existence and development of human beings. Although terrorism is only one of these many unsafe factors, it is a kind of crime with the greatest harm, the widest influence, the deepest damage and the most vicious. In light of this, the war continued for several years in some areas, the loss of state power, the collapse of social order and the collapse of economic operation. Therefore, in a civilized modern society, the rapid growth of terrorism has put forward serious warnings and announcements to all countries in the world: the era of terrorism has come and will continue to affect the development of all countries in the world, destroy the existing international political, economic, cultural and other operational order, and the task of preventing and combating terrorism has been shouldered. Terrorism has become a major threat to non-traditional security, which mainly includes:

(1) In violation of the UN Security Council Resolutions and challenging the authority of the international community, international law and international conventions. Terrorist organizations attack UN peacekeeping forces (such as the Middle East War), injure innocent people, destroy civil buildings, cause a large number of casualties and property losses, expand the war area, and increase the number of refugees. According to UNHCR, the number of refugees and displaced persons worldwide is 65 million<sup>90</sup>, which had caused international community panic and local concussion; created a new

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<sup>90</sup> See *The Report of UNHCR: 65 Million Refugees and Displaced People in the World*, reported by China economic network. According to the *Global Trend Report* released by UNHCR on June 19, 2017, by the end of 2016, the number of forced displacements globally had reached 65.6 million, 300,000 more than a year ago. By the end of 2016, the number of internally displaced people had fallen from 48 million a year ago to 40.3 million. Among them, research on internal displacement in Syria, Iraq and Colombia accounts for nearly two-thirds of the global total.

[http://intl.ce.cn/special/zxgjzh/201706/20/t20170620\\_23733779.shtml](http://intl.ce.cn/special/zxgjzh/201706/20/t20170620_23733779.shtml), Date of last visit: October 24, 2019.

"no man's land". How to eliminate and eradicate terrorism effectively and thoroughly has become an urgent issue for the United Nations and all countries in the world to consider.

(2) Challenge the sovereignty of States and tolerance of crime. Terrorism does not only cause casualties and property damage, but also harm purposefully and intentionally. The implementation of terrorist attacks and terrorist events is only a means; to achieve its political and other requirements is the ultimate goal. Terrorism seriously endangers the national dignity and homeland security of all countries in the world, often colludes with national separatism and religious extremism, creates terrorist violence, threatens the state and government, declares it a legitimate organization and threatens the sovereign state to cede its territory, attempts to create a plot to split the country and achieve the goal of establishing an independent state. Therefore, how to effectively prevent and combat the harm of the "three forces" to national sovereignty through effective domestic social policies, systems and domestic legislation, so as to avoid terrorism turning international terrorist activities into domestic terrorist activities and domestic terrorist activities into international terrorist activities, has become a dangerous signal sent by terrorist organizations to all countries<sup>91</sup>.

(3) It affects the development of the world. Terrorist crime is no longer limited to traditional violence such as killing, bombing, hijacking, etc. It shows a trend of diversification and multi polarization, and extends to many fields. More attention should be paid to challenges to non-traditional security fields, such as Internet, energy, environment, health care, ecology, culture, economy, science and technology, food and medicine. These areas cover a wide range and are prone to security omissions. Compared with the violent crime issues of concern to traditional security, the security issues in these areas are easily to be ignored by the state, the government and the general public. In most people's view, terrorist crimes are usually committed through violence, non violence will not constitute a terrorist crime, and these areas are far from terrorism and will not be attacked. However, such an idea just caters to the expectation of terrorists, and unconsciously commits crimes, forming an extremely effective "halo"

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<sup>91</sup> See Zhang Xiaowei: *"Three Forces" and "Three Organizations" — Analysis of Terrorist Organizations in Central Asian Countries and Xinjiang Region of China*, Research on Crime and Reform, 2017(04), pp.13-19.

effect, which gradually generates and spreads this terrorist atmosphere<sup>92</sup>, such as terrorist attacks by mailing "anthrax" virus. Such a terrorist activity is not only the most terrible, but also the most cruel threat and challenge of new terrorism to the security of the international community and the security of all countries in the modern and even future.

## 2. *Terrorist crimes*

Terrorist crime has always been the only violent crime with strong political color in the world<sup>93</sup>. It relies on the threat and violence (or cold violence) to achieve its political purpose and criminal appeal. If terrorism is a mental lexicon with strong color, and if doctrine is a kind of theory, then terrorism is undoubtedly a theory or doctrine about psychological feelings. Therefore, terrorist crime is a kind of systematic and intentional criminal behavior that violates the laws and regulations. It seeks to influence the broad audience by producing psychological products that make people afraid. The most important way is to attack innocent people (soft targets) to obtain political discourse rights (including political behaviors such as opposing national unity and political leaders). Similarly, terrorist organizations will attack national security personnel and departments (hard targets) and threaten sovereign countries to make political compromises or concessions. Terrorist crimes are different from ordinary crimes. The main motive of terrorist crimes is to pursue political purposes and economic interests, which is usually beyond the requirements of ordinary crimes. They will reshape ideology, religious beliefs and moral concepts. The ultimate goal of its crime is to rebuild its own regime system and establish its own country as a terrorist organization. Terrorist organizations always aim at political demands, build up military forces, gather economic wealth, and then acquire political capabilities to achieve the goal of building a country<sup>94</sup>. This is different from the just war for national independence and liberation.

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<sup>92</sup> Erik Lin-Greenberg, *Non-Traditional Security Dilemmas: Can Military Operations other than War Intensify Security Competition in Asia?* *Asian Security*, (2018) 14:3, pp.282-302.

<sup>93</sup> Wang Xiumei, Ren Chengxi: *On the Era Context and Scientific System of Counter-Terrorism Concept*, *Criminal Law Essays*, 2016,48(04), pp.36-53.

<sup>94</sup> Sarah V. Marsden, *Conceptualising "Success" with Those Convicted of Terrorism Offences: Aims, Methods, and Barriers to Reintegration*, *Behavioral Sciences of Terrorism and Political Aggression*, (2015) 7:2, pp.143-165.

Therefore, the analysis and clarification of the meaning of terrorist crimes will directly relate to the identification of terrorism, extremism and separatism.

### *2.1 The meaning of terrorist crime*

So far, there is no consensus on the definition of terrorist crime in the world. However, terrorism, as a criminal phenomenon, has already attracted extensive attention of many scholars at home and abroad. In more than a decade after 9.11 in the United States, many scholars have used various methods to elaborate this complex criminal phenomenon from different fields<sup>95</sup>. When defining the concept of terrorist crime, we will face many experiential difficulties, that is, people are most likely to start from subjective experience, with experience to obtain intuitive feelings of terrorist crime. In the international community, governments have different perceptions of terrorist crimes for their own interests. For the problem that "one country is considered as a terrorist crime while the other country is not considered as a terrorist crime"<sup>96</sup>, there are different perceptions among governments, media, scholars and the public. For example, the government prefers a broader definition, emphasizing the secrecy and criminality of terrorist organizations; while the media reporters need to attract the public's attention and tend to describe the violent performance and anxiety factors of terrorist crimes; the public is more aware of terrorist crimes from the violence intensity of terrorist crimes and the risks posed by their own security<sup>97</sup>. In the field of traditional security, terrorist crime is basically defined as a threat and improper interference from one country to another, mainly the counter colonialism movement in which the nation-state strives for independence through the form of war. With the independence of the nation-state, the old international political order has been replaced by the new one. After four waves of terrorism, terrorist crimes have been closely related to

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<sup>95</sup> Schmid A.(Ed.) , (20 11), *The Routledge Handbook of Terrorism Research*, London: Routledge; Martin G. (Ed.), *The Sage Encyclopedia of Terrorism (2nd ed.)*, Los Angeles, CA: Sage; Jackson R., Sinclair S. (eds), (2012), *Contemporary Debates on Terrorism*, New York, NY: Routledge.

<sup>96</sup> Boaz Ganor, *Defining Terrorism: Is One Man's Terrorist another Man's Freedom Fighter?* Police Practice and Research, (2002) 3:4, pp.287-304.

<sup>97</sup> See Gilbert Ramsay, *Why Terrorism Can, But Should Not Be Defined*, Critical Studies on Terrorism, (2015)8:2, pp.211-228.

religious beliefs and ideologies, and the scope of terrorism has been expanded<sup>98</sup>. Terrorism has been further marked as "criminal acts with political violence". Therefore, no one can give a complete and accurate definition of terrorist crime. Even the most famous scholars admit that defining terrorist crime is a "simple and impossible task"<sup>99</sup>. No matter how difficult to define the terrorist crime, there is a need to carry out specific extraction and stripping, make the simple impossible possible, grasp the essence of terrorist crime, and seek a balanced meaning between complexity and simplification. In other words, generalize the complex phenomenon of terrorism as widely as possible, making abstract concepts measurable and perceptible. In defining the meaning of terrorist crime, we need to first clarify the relationship between terrorism and crime, then we can define the difference and connection between terrorist crime and other crimes, so as to summarize its meaning.

### *2.1.1 The link between terrorism and terrorist crime*

Many scholars confuse the two concepts of terrorism and terrorist crime, and think that terrorism and terrorist crime are different terms with the same connotation. In my opinion, the meaning of the two is by no means the same. "-sim" is "a systematic theory and proposition of the objective world, social life and academic issues". The crime must be stipulated in the criminal law. Therefore, terrorism should be defined by the theoretical circle, and the crime of terrorism must be legal. In the sense of criminal law, the word "terror" in terrorist crime must be combined with the essential characteristics of the instrumentality of terrorist crime. The terrorist instrumentality of terrorist crime not only causes the public's psychology of terror, but also embodies in the instrumentality of behavior, that is, terrorists always take terrorist attacks as a tool to publicize their ideas. "Terrorism can be simply defined as intimidation. Or more comprehensively, it is defined as the systematic use of assassination, injury and destruction, the threat of using the above means to create a climate of terror, promotes a cause, and forces more people to submit to its objectives."<sup>100</sup> Therefore, terrorist crime always takes creating social terror as the means to achieve its ultimate goal, which is the

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<sup>98</sup> See Jean E. Rosenfeld (Ed.). *Terrorism, Identity and Legitimacy: the Four Waves Theory and Political Violence*, New York, NY: Routledge, 2011, p.55.

<sup>99</sup> See Laqueur W., *Terrorism*, Boston, MA: Litter, Brown, 1977.

<sup>100</sup> Gary A. Ackerman & Michael Burnham, *Towards a Definition of Terrorist Ideology*, *Terrorism and Political Violence*, Published online: 22 Apr 2019.

terrorist instrumentality of terrorist crime. As for the understanding of "crime" in the concept of terrorist crime, in addition to understanding "crime" as an act endangering society, we must also make the concept of terrorist crime reflect the characteristics of the concept of criminal law. Therefore, the "crime" here should be an act in violation of criminal law. In this way, the crime of terrorism should be to achieve a certain political purpose, to create social terror as a means to harm society and violate the criminal law.

From the formal point of view, terrorist crime and ordinary crime have the same or similar behavior, both of which are against the legitimate rights and interests of the state or individuals. But they are still different. There are two characteristics of terrorist crime: one is that terrorist crime has political purpose<sup>101</sup>, the other is that terrorist crime has terrorist instrumentality. However, the crimes of homicide, arson, poisoning, kidnapping and explosion stipulated in the criminal law are ordinary crimes, although they are cruel and may produce terrorist effects. Although terrorism crime and ordinary crime are both acts that infringe on the life and property of others (including the state and society), and both use violent or non violent means to create social terror in terms of behavior mode, the differences between them are obvious. First, the nature of their acts is different. The terrorism crime has the political characteristic, but the ordinary crime does not have this characteristic. Second, the status of the "terror effect" in the criminal act of the two is different. In terrorist crimes, criminals always regard creating terror effect as the tool to achieve their ultimate goal, which is the direct goal pursued by terrorists<sup>102</sup>. However, ordinary criminals do not directly pursue terror effect. Third, the characteristics of their behavioral goals are different. The targets of terrorist crimes are obviously stratified. Terrorists usually take the innocent as the direct targets, take the specific groups as the influence targets, and the ultimate goal is to change the national system or political system of a country. In the ordinary crime, the criminal's behavior goal lacks this kind of stratification.

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<sup>101</sup> See Max Abrahms: *What Terrorists Really Want: Terrorist Motives and Counterterrorism Strategy*, *International Security*, (2008) 32(4), p. 78.

<sup>102</sup> Simon Cottee & Keith Hayward: *Terrorist (E)motives: The Existential Attractions of Terrorism*, *Studies in Conflict & Terrorism*, (2011) 34:12, pp. 963-986.

### 2.1.2 *The development of the meaning of terrorist crime*

Although terrorism lacks a fixed and acceptable definition, scholars analyze terrorism as a coherent phenomenon and divide it into different stages of development "wave". Professor David C. Rapoport's theoretical analysis of modern terrorism began in Russia in the 1880s. He believes that modern terrorism consists of four waves: the wave of anarchism, the wave of counter colonialism, the wave of new left and the wave of religious belief<sup>103</sup>. The wave of anarchism began to attack the ruling order of Czarist Russia, and then spread rapidly throughout Europe. The counter colonial wave referred to the fight of terrorist organizations to obtain "supreme power without retreating". The third wave of terrorism is composed of the leftist organizations in the 1970s, which directly points to the modern capitalist social system. Today, the world is in what Rapoport called the fourth and final wave - religious belief terrorism. Although Rapoport put the classification into the whole development process of terrorism, which has continuity, integrity and systematicness, however, there is a lack of sufficient position to show the current threat of terrorism<sup>104</sup>.

According to the study of the concept of terrorism by Alex P. Schmid, a Dutch scholar, there are at least 109 definitions of the concept of terrorism in the world<sup>105</sup>. However, there is still no unanimous concept, let alone consensus, at the international level under the auspices of the United Nations. After analysis, Russian scholars believe that there are at least 100 to 200 interpretations of the meaning of terrorism, but there is still no authoritative summary. After a quantitative analysis of the frequency of words in the 50 concepts of terrorism after 1982, Hu Lianhe, a Chinese scholar, found that: violence, force (direct use) was 92%, political (target) was 90%, threat (use of violence), psychology (fear, terror), planned behavior (systematic organization), submission (coercion, intimidation), social goal, innocent people (target), criminal, publicity, symbolism (illegality), randomness (uncertainty), injustice were 54%, 54%, 40%, 34%, 32%, 20%, 16%, 14%, 12%, 6% and 2% respectively<sup>106</sup>. It can be seen that when

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<sup>103</sup> See David C. Rapoport, *Assassination and Terrorism*, Toronto: Canadian Broadcasting Corporation, 1971.

<sup>104</sup> Zhang Jiadong: *Four Waves of Modern Terrorism*, International Watch, 2007(06), pp.62-68.

<sup>105</sup> Alex Schmid, *Terrorism - the Definitional Problem*, 36 Case W. Res. J. Int'l L. 375 (2004), Available at: <https://scholarlycommons.law.case.edu/jil/vol36/iss2/8>.

<sup>106</sup> See Hu Lianhe, *On Global Counter-Terrorism*, China Encyclopedia Press, 2011 edition, p.26.

defining terrorism, the factors that should be included in the definition of terrorism are firstly violence, force, political objectives, threat of violence, psychological fear, etc.; secondly, planning, submission, social objectives and innocent injury; and finally, other factors. It is not difficult to find that the core phrases of the identification of terrorism are: obtain political purpose → use violence or force directly → use (non) violence threat indirectly → hurt innocent people and destroy public and private property → make people have fear. It is generally believed that the cognition of terrorist crime must have four factors: violence, political purpose, threat and psychological fear. If any factor is missing, it cannot be defined as terrorism. Therefore, these factors need to be reflected when describing the meaning of terrorist crimes. However, in recent years, terrorist crimes have gradually broken through the limits of national territory and turned to non-traditional security areas. In the field of non-traditional security, security factors are related to human security and national security. As mentioned before, non-traditional security no longer focuses on the political threats and military power comparison between countries, but focuses on many crises in the global human living space (real space and virtual space), such as environment, energy, resources, economy, culture, food, medicine, ecology, nuclear materials, network, etc. These aspects have also attracted the close attention of the perpetrators of terrorist crimes. In the future, the field of terrorist crimes may actively turn to infiltration in these aspects. Therefore, the definition of the meaning of terrorist crime should also be examined from the perspective of non-traditional security.

At present, in the Charter of the United Nations, international conventions, regional conventions and domestic laws and other relevant legal norms, the definition of terrorist crime mainly includes the following three situations. (1) International conventions tend to maintain the peace and security of the international community and protect human rights<sup>107</sup>. They believe that terrorist crimes have the following elements:

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<sup>107</sup> These international conventions include: *1963 Convention on Crimes And Certain Other Acts on Board Aircraft* (hereinafter referred to as "Tokyo Convention"), *1970 Convention for The Suppression of Unlawful Seizure of Aircraft* (hereinafter referred to as "Hague Convention"), *1973 Convention on the Prevention And Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents*; *1979 International Convention Against The Taking of Hostages*; *1980 Convention on the Physical Protection of Nuclear Materials*; *1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Used for International Civil Aviation to Supplement the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, Montreal, 23 September 1971 (hereinafter referred to as the Montreal Protocol); *1988 Protocol for the Suppression of Unlawful Acts*

anyone (individual or organization); the illegal use of violence, force, threat of violence, intimidation, attack, illegal destruction, capture, control; the use of weapons; the provision of funds; causing panic and terror with political purpose and the attempt. (2) Regional conventions are made to ensure regional peace and security, eliminate regional conflicts and national conflicts, and protect human rights, security and freedom<sup>108</sup>. They believe that terrorist crimes include: anyone (individual or organization); endangering human life, body or self-reliance; using violence, threat of violence, intimidation; using weapons; distinguishing political crimes; to seize, control, cause panic or fear; have a political purpose. (3) According to the domestic laws formulated by China, Russia, the United States, Britain, France, Germany, Japan, Italy, Canada and India, the elements of terrorist crimes include<sup>109</sup>: violation of criminal law or counter-terrorism law; individual or collective (organization); use of violence, violent attempt, intimidation, threat, mass destruction of property and social stability, kidnapping or assassination; and threatening people's life safety; influencing government's decision-making or policy; causing social fear and panic; inciting religious and national hatred; harming civilians; propagating terrorist thoughts, opinions and behaviors; ideas and behaviors to achieve their political and ideological purposes, etc.

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*Against the Safety of Civil Aviation Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation; 1988 Agreement for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms on the Continental Shelf; 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection; 1994 Declaration on Measures to Eliminate International Terrorism; 1998 International Convention for the Suppression of Terrorist Bombings; 1999 International Convention on the Provision of Financing; Measures to Eliminate International Terrorism, 1999; Condemnation of Terrorist Attacks in the United States of America, 2001; International Convention for the Suppression of Acts of Nuclear Terrorism, 2005.*

<sup>108</sup> Regional conventions mainly include *The American Convention on the Prevention and Punishment of Terrorist Acts* (hereinafter referred to as the American Convention) in 1971, the *European Convention on the Punishment of Terrorism* (hereinafter referred to as the European Convention) in 1977, and the *Shanghai Convention on Combating Terrorism, Separatism and Extremism* in 2001.

<sup>109</sup> China's Counter-Terrorism Law, Russia's Counter-Terrorism Law, USA's Patriot Act, Patriot Law Supplement And Reauthorization Law, UK's Counter-Terrorism Law, France's Counter-Terrorism Law, Germany's counter International Terrorism Law, Japan's Counter Terrorism Special Measures Law, Italy's Counter-Terrorism Law, Canada's Counter-Terrorism Law, India's Terrorism Prevention Act 2002, and relevant laws of Turkey, Belarus, Azerbaijan, Mongolia, South Korea, Philippines, Singapore, Cuba, Australia, New Zealand, etc.

For 20 years after the terrorist attacks in the United States, scholars at home and abroad have made a lot of comments on how to define terrorist crimes. These concepts are defined from different perspectives and levels to examine terrorist crimes, including:

(1) some foreign scholars believe that "terrorist crimes are irrational use, or the impact of non violent threats, or violent acts, including the use of explosive devices, assassinations or other destructive means, in order to achieve political goals or its purpose. The use of such violence is intentional and is intended to have a threatening impact. A strategy linked to other political crimes is still independent of other crimes."<sup>110</sup> "Today's terrorist crime is described as a wider range of strategies, wars, crime strategies and political violence. For political purposes, intentional violence has a far greater psychological impact on the target than the direct effect of violence. Terrorist crime is a systematic process."<sup>111</sup> "Terrorist crime is a phenomenon. Terrorist attacks within a country and terrorist attacks beyond a country have a global nature through cultural interaction."<sup>112</sup> "Terrorist crime is different from ordinary crime. It takes obtaining political purpose as its main motive. Through violence or threat of violence, under the intentional psychological control, it causes people to panic, so it obtains public political control."<sup>113</sup> "Today's terrorism (called new terrorism) is different from the previous terrorism. It has its own religious beliefs and secret motives. The most important feature of terrorist attacks is the domination of religious beliefs. The internal structure of terrorist organizations has changed. There is no hierarchy and separate leaders, commanders and headquarters. There may be multiple leaders. The target of terrorist attacks aims at a large number of casualties and property losses, including the use of weapons of mass destruction."<sup>114</sup> "Terrorism is a term without any legal significance. It is just a convenient description of the implied behavior. No matter the state or the individual, the illegal use or protection target or both, it is not allowed to

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<sup>110</sup> Paul R. Viotti, *Towards a Comprehensive Strategy for Terrorism and Homeland Security*, Terrorism and Homeland Security, New York, CRC Press, 2007, pp.26-27.

<sup>111</sup> James M. Smith and Brent J. Talbot, *Terrorism and Deterrence by Denial, Terrorism and Homeland Security*, New York, CRC Press, 2007, pp.54-55.

<sup>112</sup> Lionel F. Stapley, *Globalization and Terrorism*, Great Britain, London, KARNAC, 2006, p.37.

<sup>113</sup> Graeme C. Steven and Rohan Gunaratna, *Counterterrorism a Reference Handbook*, ABC-CLIO, 2004, pp.477-479.

<sup>114</sup> Ersun N. Kurtulus, *The "New Terrorism" and Its Critics*, Studies in Conflict & Terrorism, 2011, pp.477-479.

use it on a large scale."<sup>115</sup> "Terrorism is deliberately threatening indirect targets, using credible threats to harm the interests of civilians or noncombatants, in order to cause panic among other civilians or noncombatants and direct targets."<sup>116</sup> According to these analysis, the core phrases in these concepts are: violation of the law; use of violence; threat of violence; intentional psychology; causing panic or fear; causing casualties and property damage; causing harm to civilians and non combatants. There are controversial issues: first, whether political attempt or political purpose must have to be identified as a terrorist crime; second, whether seeking other social purposes can be included in the terrorist crime.

(2) Some domestic scholars hold the view that "terrorist crime, with the characteristics of violent acts, attacks random targets, threatens or intimidates the public, causes shocking panic, and achieves its expected criminal purpose. Political purpose is not a necessary condition but a selection element, and the social harmfulness caused by acts is the main feature that distinguishes it from other crimes."<sup>117</sup> "Terrorist crime does not include political crime; its essence is reflected in the randomness of the target, the violence of the behavior, and the great panic and shock in the whole crowd caused by anyone's implementation."<sup>118</sup> "The definition of terrorism includes the theory of crime, the theory of ideology, the theory of dual attributes of ideological trend and crime, the theory of special political violence, the theory of terrorist system, the theory of non terror, the theory of state terrorism, the theory of dual definition and the theory of definition system. Generally speaking, terrorist crime and terrorism are used as the same concept."<sup>119</sup> "Terrorist crime refers to any act planned, organized, led, financed or carried out by anyone who, by means of violence, threat or danger, causes personal injury, property damage or creates a climate of social terror, endangering

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<sup>115</sup> R. Higgins, *The General International Law of Terrorism*, in R. Higgins, M. Flory (Eds.), *Terrorism and International Law*, London, 1997, p.24.

<sup>116</sup> Angela Thurmond, *A Moral Evaluation of Terrorism*, 2010 PHD Dissertation of the University Of Oklahoma , pp.23-24.

<sup>117</sup> Zhao Bingzhi, Wang Xiumei: *International Terrorism Crime and Its Punishment Concept*, published in *Jianghai Academic Journal*, 2002, issue 2, pp.117-127.

<sup>118</sup> Qi Wenyuan, Guo Zeqiang: *A New Theory on International Terrorist Crimes*, *Journal of Hangzhou Normal University (Social Science Edition)*, 2005, issue 5, pp.92-99.

<sup>119</sup> Mo Hongxian, Ye Xiaoqin: *A Review of The Definition of Terrorism in China*, *Journal of Beijing Institute of Administration*, 2005, issue 5, pp.121-127

public security."<sup>120</sup> "Terrorist crime (excluding terrorist activities committed by individuals) refers to the use (or threat of use) of explosion, homicide or other dangerous acts, aiming at unspecified targets, the public or property, causing social panic, fear and terror, so as to achieve political, religious or other social purposes."<sup>121</sup> "Any person (individual, group, organization and country) uses violence or threat of violence (asymmetric) to cause fear, panic and form a terrorist atmosphere in the whole of the intended goal, so as to achieve their own political opinions or other goals."<sup>122</sup> "Terrorist crime refers to the general term of criminal acts committed by organizations, groups or countries (excluding individuals), which are aimed at unspecified persons, property or public facilities by means of destructive (acts or threats), cause social disorder and achieving their political purposes."<sup>123</sup> According to this, domestic scholars focus on: using violence or threat of violence; causing physical injury or termination of life; destroying (public and private) property, facilities and equipment; seeking political interests or ideology; causing panic or fear; endangering national security and normal social order.

Through combing the views of domestic and foreign scholars on terrorist crime, we can see that the current definition of terrorist crime mainly focuses on the subject, object, target, means and purpose of terrorist crime. There is no obstacle in the cognition of the essence of terrorism, but there is a debate on whether the subject of terrorist crime includes "individual" and "state", whether the object includes "political crime", whether the purpose must have "political nature", and whether the means must have "violence". In this regard, the author believes that in the field of non-traditional security, whether it is an international terrorist crime or a domestic terrorist crime, to investigate the meaning of terrorist crime, we should focus on the following factors:

First, use violence (threat) or non violence threat. In the current theory, terrorist crimes are generally considered to be "violent". Only through violence can threats be generated, which can achieve a frightening social divergent effect, that is, bloody,

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<sup>120</sup> Wang Xiumei: *On the Punishment of Terrorist Crimes and the Development and Improvement of China's Legislation*, China law, 2002, issue 3, pp.153-166.

<sup>121</sup> Tian Hongjie: *Definition of Terrorist Crime*, Legal Science, 2003, issue 6, pp.31-39.

<sup>122</sup> Zhang Shaoyan: *An Analysis of the Origin of Terrorism: an Ontological Understanding Based on Facts*, Modern Law, 2013, issue 5, pp.33-42.

<sup>123</sup> Cheng Hong and Guo Yirong: *Definition of Terrorist Crime*, Journal Of Yunnan University, 2014, issue 5, pp.79-84.

barbaric, cruel physical injury, large-scale property damage, which can be achieved by "atrocities". The basic expression element of terrorism is "the use of violence", which is obviously too general. The fact is not all like this, or at least under the support of such a theory, we should make appropriate restrictions on it, otherwise it will present a generalized statement. First of all, the most important definition of "violence" lies in the implied damage to the body (more generally, life) or property loss. Here, it must be considered that such damage also includes "functional damage" (such as physical function, social function), that is, such violence or threat of violence puts the whole social function at risk. Secondly, violence "creates social risks that are not allowed, increases the risk of social order, and puts the whole social system in an emergency situation"<sup>124</sup>. Finally, the definition of terrorist crime should also cover environment, ecology, health and other specific areas of terrorist crime in cyberspace; otherwise, terrorist crime will lack some content. So, as Alex Schmid said, "violence is a necessary but not sufficient condition"<sup>125</sup> when defining terrorist crimes. The difference between terrorist crimes and short-term violent crimes lies in that terrorist acts are conceived as a model, which can be copied and spread, including factors of destruction (or interference factors), and factors such as coercion and intimidation to threaten others.

Second, have political purpose or political influence. This condition is set to distinguish between "public violence" and "individual violence" (although not excluded, it is usually a criminal act). Here, we need to emphasize that terrorist crimes are often connected with some political aspects, or, as the American scholar Tilly said, "Terrorism belongs to a part of political violence"<sup>126</sup>. The most common is that terrorism bears a form to achieve political goals, such as opposing and maintaining (such as state terrorism) an established state power, claiming independence, calling for social revolution and promoting policy change. Even when the ultimate goal of terrorist crime is not politics (even if it is only for neuropathy or other criminal purposes), political purpose is still an integral part of terrorism. Therefore, to achieve political goals or political influence is the essence of terrorist crimes.

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<sup>124</sup> Long Min: *The Collision between Order and Freedom-On the Value Conflict and Coordination Of Criminal Law In Risk Society*, Journal of Gansu University of Political Science and Law, 2010(05), pp.145-149.

<sup>125</sup> Schmid A. (ed.), *The Routledge Handbook of Terrorism Research*, London: Routledge, 2011, pp.78-79.

<sup>126</sup> Tilly C., *Regimes and Repertoires*, Chicago IL: University of Chicago Press, 2006, pp.87-90.

Third, use indirect way. Terrorist crime is an indirect way. Terrorism implies a dual objective: one is that the target of violent attack is not the ultimate goal; the other is the "enemy itself" that terrorism targets. In many terrorist activities, the strategy is to weaken the "enemy" by attacking its weak points or agents. This strategy has different titles in different works. Some scholars call it "terrorism is a form of communication", or "terrorism highlights the distinction between civilian victims and ultimate victims", or "terrorism is a kind of coercion". Even so, the underlying principles of terrorist crime have not changed. Just like Blaine Jenkins' famous saying: as the word terror itself shows, the ultimate goal of frequent expression of terrorist organizations is "to attract a lot of attention, not to want a lot of people to die"<sup>127</sup>. In other words, it causes public panic, creates a sense of terror and atmosphere, causes social order out of control, and endangers national and international security.

Fourth, violate rules (norms). Many scholars have been emphasizing the dimensions of the immorality and illegality of terrorist crimes, and regard this as the core element of defining terrorist crimes, which is also controversial. It makes the value and belief of terrorist crime an arbitrary definition, and it is difficult to distinguish terrorist crime. If terrorist crimes are defined in this way, there may be a situation where the view that "terrorists in one's eyes are freedom fighters in the eyes of another" is confirmed.<sup>128</sup> Therefore, the core element of terrorist crimes is the violation of certain rules (norms). The rules (norms) referred to here are not only the domestic and international laws that have been compiled, but also the rules (norms) that embody such characteristics: first, the rules (norms) that can distinguish soldiers and terrorists during war; second, many strategies relied on by terrorist criminal attacks (from kidnapping to mass killing) in peacetime can be proved that these rules (norms) have been violated.

Fifth, the related force of crime exceeds the defense (prevention) force. The meaning of this point is that the attack success rate of terrorist crime is higher than the price, which is often ignored when defining terrorist crime. The balance between defense and aggression is broken. For terrorist crimes, it is easier and cheaper to organize a terrorist attack than to prevent it, and the success rate is very high. In this regard, the success of terrorist crimes is their strategy, not tactics, that is, individual terrorist attacks are easily

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<sup>127</sup> Schmid A.(ed.), *The Routledge Handbook of Terrorism Research*, London: Routledge,2011, p.3.

<sup>128</sup> Vlatko Cvrtila, Anita Peresin, *The Transformation of Terrorism and New Strategies*, Political Misao (Croatian Political Science Review), 2009, Vol.46, Issue 5, p.124.

defeated, but the higher the level of strategy, the greater the probability of success<sup>129</sup>. Therefore, when defining terrorist crimes, we should also consider listing the strategic ways of terrorist crimes.

To sum up, the definition of terrorist crime is a complex systematic generalization, which should be put in a systematic thinking space by considering the above factors (elements). Moreover, terrorist crime is a kind of social phenomenon, which appears and develops with the development of society. It is obviously unrealistic to eliminate it completely. It can only reduce the negative forces it brings to the society. From the perspective of the development history of human society, the effective control of terrorist crimes is, in the final analysis, a "human problem", which may lie in the release of certain human nature that is difficult to eliminate. However, despite some defects of human society, terrorism is always a social disease, which needs to be treated and eliminated slowly. Therefore, it is still necessary to speculate on the meaning of terrorist crime: terrorist crime is a social phenomenon. Anyone (individual, group, organization) strikes at the indirect goal based on an indirect way (violence or non violence), in order to achieve the direct goal of political appeal, and then there is a special political violence, which violates the existing rules (norms) system of society, and is more strategic than the social prevention strategy.

## *2.2 Characteristics of terrorist crimes*

Terrorist crime is different from ordinary crime, organized crime and political crime. Its special interest demand, complex "legal interest" infringement, excessive behavior, complex psychological state and so on result in the diversity of terrorist criminal organizations and criminal forms. Today's terrorist crimes are not the peaceful forces that human beings expect. The criminal atmosphere of terrorism is like "disease and pestilence" eroding the existing survival sequence of human society<sup>130</sup>. The tribulation brought by the global terrorist crime is taking root. If it is not eradicated in time, it will bring unprecedented disaster to human society. When the terrorist crime changes from

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<sup>129</sup> Qian Xuemei: *Al Qaeda's "Evolution": Re-examining Contemporary Terrorist Threat*, Foreign Affairs Review (Journal of Foreign Affairs University), 2015, 32(01), pp.113-135.

<sup>130</sup> Xie Bixia, Liu Qingwu: *Terrorism: a "Political Plague" Threatening the World-the Development Trend of Global Terrorism After "9.11"*, Contemporary World, 2006(10), pp.29-31.

theoretical research to practical existence, we should be vigilant. Terrorism is not far away, and it should be determined to curb the spread and abuse of terrorist crime. Therefore, to understand the meaning of terrorism and grasp its characteristics will help to prevent the generalization of the cognition of terrorist crime or the phenomenon of excessive judgment. In addition to the characteristics of using violence (threat), non violence (threat), publicizing political demands, and publicizing responsibility for terrorist attacks, terrorist crimes in the field of non-traditional security show more obvious characteristics in the process of transforming traditional security into non-traditional security.

(1) Increase in the number and frequency of international terrorist crimes

The Middle East, Central Asia, West Asia and South Asia have become the centers of terrorist crimes and the most active regions of terrorist organizations. They have the status of "leaders and commanders"<sup>131</sup>. Terrorist attacks spread rapidly to the world. This area is the area with the most frequent activities of ethnic separatism, religious extremism and terrorist organizations. In addition, these areas have special natural conditions. They are far away from prosperous cities and towns. They are located in basins and canyons, where the population is relatively small and the economy is still in the developing period. The deep mountains and deserts help terrorist organizations easier to be hidden and hard to be found and more difficult to be stricken.

(2) Violent or armed terrorist attacks still occupy the dominant position, while non violent terrorist attacks are in the secondary position of supplement. The two methods are interwoven.

Suicide bomb (explosion) terrorist attacks become the main way to realize terrorist crimes. There are still two ways for terrorism to create fear: one is to "wage war", the other is to "create terrorist attacks". Based on the existing data, the crimes committed by terrorist organizations take "war mode" as a positive and active main attack means<sup>132</sup>. Through the network, they recruit militants, purchase and smuggle weapons and ammunition, equip and train the army, and strengthen the military survival ability, technical and tactical application ability, and individual combat ability of the recruited

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<sup>131</sup> Or Honig & Ido Yahel, *A Fifth Wave of Terrorism? The Emergence of Terrorist Semi-States*, *Terrorism and Political Violence*, (2019) 31:6, pp. 1210-1228.

<sup>132</sup> Xie Bixia, Liu Qingwu: *Terrorism: a "Political Plague" Threatening the World-the Development Trend of Global Terrorism After "9.11"*, *Contemporary World*, 2006(10), pp.29-31.

members, so as to strengthen their military deterrence and attack power. In order to expand its territory and establish a certain scale of terrorist attack army and military training base, it is a prerequisite for its survival and development to establish its own base and activity space. In the era of highly developed modern military and science and technology, terrorism aims to seize territory, resources and protect itself from extinction through the expansion of military forces. Making terrorist events is a kind of terrorist crime from the side and secondary angle. Terrorist organizations ensure the consolidation of their power by actively creating terrorist incidents to attack the government forces and UN peacekeeping forces of the host country<sup>133</sup>. Terrorist attacks in various countries, depriving innocent people of their lives and property, creating fear from within the country and creating a sense of insecurity for the people and the government. On the one hand, it causes public opinion, causes people's dissatisfaction with the government, and takes the opportunity to carry out disintegration and differentiation; on the other hand, it shows the ability of terrorism, which makes people dare not expose the identity of terrorists, so as to facilitate their concealment. For example, suicide terrorist attacks, which are extremely cruel and violent criminal acts, often have a profound impact on people's judgment. Therefore, for the time being, violence is still the main form of de facto terrorist crimes (see Figure 1-4)<sup>134</sup>.

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<sup>133</sup> Tang Chao, Meng Xiangyun: *Study on the Surrounding Security Risk Environment Related to Terrorism*, Journal of Information, 2017, 36(05), pp.31-36.

<sup>134</sup> Data from 2014 *Global Terrorism Index Report* (GTI) issued by the Institute of Economics and Peace.

NON-TRADITIONAL SECURITY AND TERRORIST CRIMES

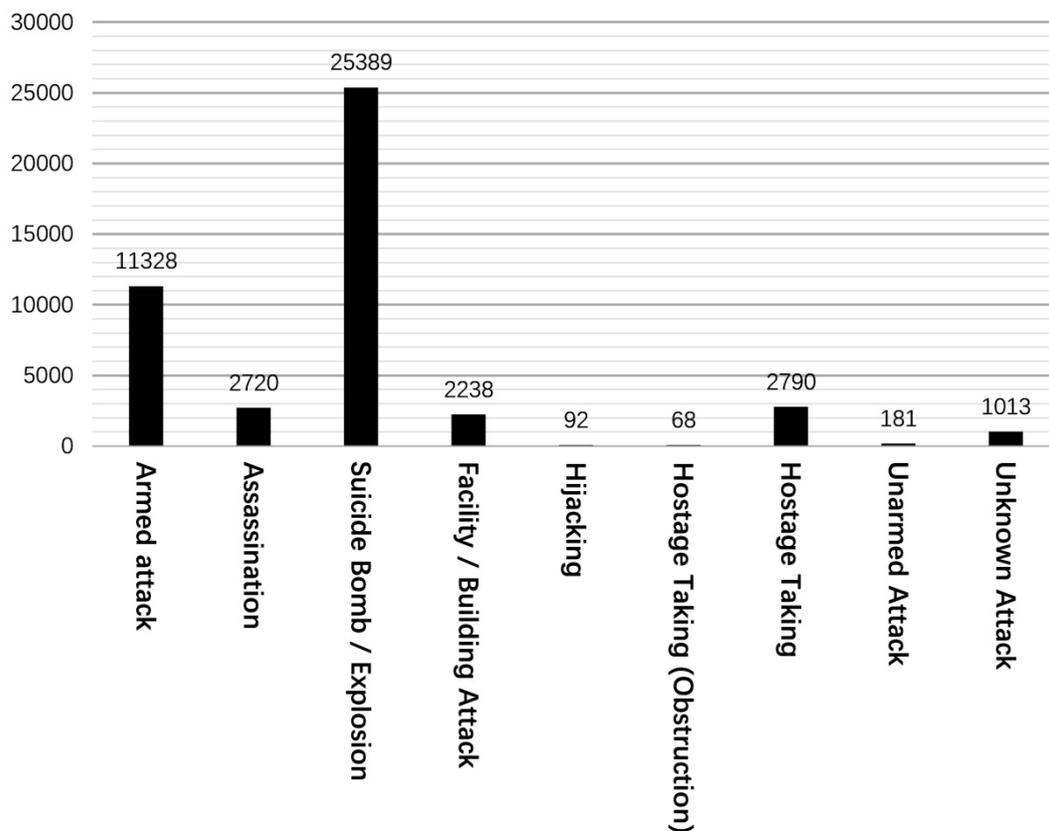


Figure 1-4 Patterns of Global Terrorist Attacks from 2006 to 2013

(3) Terrorist crime has dual purposes

The main purpose of terrorist crimes is to obtain political interests, while the secondary purpose is to obtain other interests. The most basic difference between terrorist crimes and other crimes is that they form a certain deterrent and fear force by attacking the direct target, which makes people feel uneasy, so as to realize their "political interest demands"<sup>135</sup>. The target of terrorist attack is not single, but dual. It causes damage to the indirect target by attacking the direct target, and then requires obtaining the preset purpose of the crime. According to the statistics of GTD (Global Terrorism Database), from 2018 to 2019, there were 16,571 violent terrorist attacks in the world. The main targets of the attacks were: 6,246 civilian and property, 2,983 police, 1,863 government, 1,097 business and 791 military. The secondary targets are as follows: 890 times for unknown civilians and non special citizens, 460 times for religious institutions, 353 times for educational institutions, 283 times for

<sup>135</sup> Xie Bixia, Liu Qingwu: *Terrorism: a "Political Plague" Threatening the World-the Development Trend of Global Terrorism After "9.11"*, Contemporary World, 2006(10), pp.29-31.

transportation, 231 times for journalists and media, 145 times for violent political party, 98 times for NGO, 121 times for telecommunication and 52 times for airports and aircrafts (see Figure 1-5)<sup>136</sup>.

Target Type	Number of Targets	
	2019	2018
Private Citizens & Property	2987	3259
Police	1359	1624
Government (General)	875	988
Business	486	611
Military	400	391
Religious Figures/Institutions	203	257
Educational Institution	164	189
Terrorists/Non-State Militia	279	186
Transportation	140	143
Utilities	72	140
Journalists & Media	121	110
Government (Diplomatic)	71	92
Violent Political Party	59	86
NGO	51	47
Telecommunication	81	40
Airports & Aircraft	31	21
Maritime	18	21
Food or Water Supply	11	14
Other	14	14
Tourists	12	13
Abortion Related	0	1
Unknown	345	545
<b>Total</b>	<b>7779</b>	<b>8792</b>

Source: Global Terrorism Database (Statistical Annex Dataset)

Figure 1-5 Target(Type) of Global Terrorist Attacks in 2018~2019

(4) International terrorist crime and regional terrorist crime are closely combined to jointly create terrorist attacks.

The economic benefits, resources, energy and energy consumption brought about by globalization are distributed around the world, and knowledge and culture flow globally, especially the popularity and convenience of the network, so as to promote the

<sup>136</sup> Data from GTD. available at:

[https://www.start.umd.edu/pubs/START\\_GTD\\_GlobalTerrorismOverview2019\\_July2020.pdf](https://www.start.umd.edu/pubs/START_GTD_GlobalTerrorismOverview2019_July2020.pdf). The last access date: October 18th, 2020.

information exchange and sharing of the whole human society. Terrorist organizations are good learners. They use the Internet to exchange, communicate and deliver information; use computer technology to carry out Internet terrorist activities, drug trafficking, smuggling goods, etc., in order to obtain economic benefits. What's more, the most outstanding thing is to realize "domestication of international terrorist crimes" and "internationalization of domestic terrorist crimes"<sup>137</sup>. Domestic terrorist organizations and international terrorist organizations collude with each other to create transnational and domestic terrorist attacks by using domestic and international conditions respectively. Moreover, with the rapid development of network technology, it is more convenient for domestic terrorist organizations to obtain terrorist information (including terrorism audio and video, terrorist propaganda materials, clothing, flags, logos, etc.). International terrorist organizations use Internet to send signals to terrorist organizations in various countries and regions, publicize terrorist ideas and spread terrorist letters, encourage people with counter social, counter human and counter civilization thoughts and people with revenge thoughts to join terrorist organizations and carry out the so-called "war of justice"<sup>138</sup>. This way of "recruiting volunteers through the Internet" has greatly transcended national boundaries and border, making the boundaries between countries blurred. The tide of Internet globalization, economic globalization and cultural assimilation is promoting the integration of terrorist crimes, thus terrorism is becoming powerful, violent and terrifying.

(5) It is difficult to carry out prevention and control in advance due to the intensive and decentralized criminal activities of domestic terrorism

Under the direct command of international terrorist organizations (through network or secret language), domestic terrorism conducts attacks against condemning terrorism voices. On the one hand, the formation of terrorist influence and atmosphere will increase the panic of social groups; on the other hand, political influence will be created, which will force the state to improve the level of counter-terrorism and counter-terrorism measures. On January 7, 2015, the headquarters of the French satirical magazine Charlie Hebdo in Paris was attacked by terrorists, killing at least 12

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<sup>137</sup> Tang Chao, Meng Xiangyun: *Study on the Surrounding Security Risk Environment Related to Terrorism*, Journal of Information, 2017, 36(05), pp.31-36.

<sup>138</sup> Qian Xuemei: *Al Qaeda's "Evolution": Re-examining Contemporary Terrorist Threat*, Foreign Affairs Review (Journal of Foreign Affairs University), 2015, 32(01), pp.113-135.

people. French Prime Minister Vals declared a state of emergency in the Paris region and raised France's counter-terrorism plan to the highest level.<sup>139</sup> At the same time, the United Nations, China, the United States, Russia, Italy and other countries expressed "strong condemnation" of this terrorism and called on the international community to establish a coalition to jointly deal with terrorist crimes. Since then, European countries have declared a state of emergency against terrorism. In the joint comprehensive counter-terrorism operation of Germany, France and Belgium on January 15, 2015, more than 20 criminal suspects of terrorist organizations were arrested, and a large number of weapons and communication equipment were found in Belgium and Germany for premeditated terrorist attacks.<sup>140</sup>

### 2.3 Types of terrorist crimes

The type of terrorist crime is a part that needs special emphasis after the general description and generalization of the concept and characteristics of terrorist crime. At present, the classification of terrorism presents the trend of diversification, multi angle and multi dimension<sup>141</sup>.

First of all, we need to think about whether there is "state terrorism" and whether the state will rule by terror because of its own interests. Some scholars firmly believe that there is state terrorism, such as ethnic cleansing<sup>142</sup>; others believe that state terrorism only exists in the system of dictatorship and violence, and there is no state terrorism in modern civilized nation-state<sup>143</sup>. In this regard, the latter's view may be reasonable.

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<sup>139</sup> On January 9, 2015, two policemen were killed when a miscellaneous goods store was taken hostage. Since then, the Yemen branch of Al Qaeda in the Arabian Peninsula has claimed to plan terrorist attacks in France. On February 14, Copenhagen, Denmark, suffered another terrorist shooting. According to <http://news.hexun.com/2015--1-11/172258123.html>, [http://news.xinhuanet.com/world/2015-01/11/c\\_127375893.htm](http://news.xinhuanet.com/world/2015-01/11/c_127375893.htm), <http://news.dahe.cn/2015/02-15/104351697.html>, the last date of visit: February 18, 2019.

<sup>140</sup> *A Large Number of Terrorist Attack Equipment Is Found in the Counter Terrorist Actions of Three European Countries*, published on Global Network. <http://world.huanqiu.com/hot/2015-01/5425281.html>, the last visit time: March 10, 2019.

<sup>141</sup> Enders W, Sandler T, Gaibullov K., *Domestic Versus Transnational Terrorism: Data, Decomposition, and Dynamics*. *Journal of Peace Research*, 2011, 48(3), pp.319-337.

<sup>142</sup> Tamura Y., *War and State Terrorism: The United States, Japan, and the Asia-Pacific in the Long Twentieth Century*, *Contemporary Sociology*. 2005, 34(1), pp.51-52.

<sup>143</sup> See T Nairn, P James, *Global Matrix: Nationalism, Globalism and State-Terrorism*, Pluto Press, London, 2005, pp.257-258.

State terrorism is a kind of power which is controlled by the state as the holder of the legal monopoly of violence through the revision of domestic law. It is basically extremely difficult to identify the acts of states as terrorism. How to define state terrorism? In my opinion, such a situation can only occur in an extremely authoritarian state, and it is impossible for a state ruled by law to have state terrorism. The criminal act of state terrorism is on the edge of the law, and the harm it causes to the public is basically impossible to resort to the law or the court for protection. If the state entity itself does not need to use violence to control the state, a democratic state will not appear. In order to maintain its normal social order, fight against crime and restrict human freedom, a democratic and civilized country ruled by law cannot be regarded as "state terrorism"; if the state is to strengthen political dictatorship and highly centralization, and wantonly trample on and violate human rights and freedom, it should be "state terrorism".

Secondly, the question to be considered is how to distinguish between domestic terrorism and international terrorism. Domestic terrorism refers to that terrorist crimes occur in the territory of one country, and the injured people and damaged property are only limited to people and things within a country; international terrorism refers to that terrorist crimes do not occur in a country, but involve multiple countries and regions, and the victims and destroyed property exceed the territory of a country<sup>144</sup>. Therefore, based on the harmfulness of the two existing forms of terrorist crime, the recognition and determination of the type of terrorist crime mainly aims at international terrorism. Chinese scholars classify the terrorist crime from the following seven aspects: subject, nature, characteristics, purpose, content, means and political goal. They think there are national terrorism, religious terrorism and extreme left and right terrorism<sup>145</sup>. Ethnic and religious terrorism is the most far-reaching and destructive terrorist organization. Some scholars have classified the fields of terrorism, including network terrorism, state supported terrorism, electromagnetic terrorism, single problem terrorism and super terrorism<sup>146</sup>. Paul Wilkinson believes that there are four types of terrorist crimes:

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<sup>144</sup> See Graeme C. S. Steven, Rohan Gunaratna, *Counterterrorism a Reference Handbook*, ABC-CLIO, 2004, p.5.

<sup>145</sup> See Zhao Bingzhi: *A Monograph on International Terrorism Crime and Its Prevention and Control Measures*, China People's Public Security University Press, 2005 edition, pp.7-9.

<sup>146</sup> Yu Junping: *Basic Types of Modern Foreign Terrorism and Organizations*, Journal of Liaoning Police Academy, 2003, issue 5, pp.23-29.

political terrorism, criminal terrorism, war terrorism and spiritual terrorism, which are characterized by: murder, injury or intimidation by cruel and violent means for the purpose of revolution or politics, creating a terrorist atmosphere, not abiding by any legal rules, and being suddenly arbitrary<sup>147</sup>. According to Frederick J. Hacker, terrorism can be divided into crazy type, criminal type and fighter type<sup>148</sup>. According to Alex P. Schmid, terrorism, as a kind of violent crime, can be divided into state type, riot type (including revolutionary type, national split type, and single issue type) and compulsory police type according to its violence degree. In addition, he divides international terrorism into transnational terrorism and interstate terrorism<sup>149</sup>. According to Jonathan R. White, terrorist crimes have different strength of violence, response degree and nature of behavior. Therefore, terrorism can be divided into political terrorism (including state supported and non state supported) and criminal terrorism (including individual crime, group crime, organized and drug-related crime)<sup>150</sup>.

Therefore, just like the concept of terrorism, the types of terrorism are difficult to define accurately, and there are many kinds of classification methods. According to the regional scope of terrorist activities, it can be divided into domestic and international terrorist crimes. According to the cultural thought, religious belief, ideology and so on, it can be divided into ideological terrorist crime, ethnic terrorist crime, political and religious terrorist crime and other terrorist crimes. From the perspective of non-traditional security, terrorist crime can be divided into traditional security field and non-traditional security field. According to terrorists and terrorist organizations, it can be divided into single terrorism (such as lone wolf type), "death party" terrorism and other terrorism. According to the attacked industries by terrorist crime, it can be divided into cyber terrorism, ecological terrorism, nuclear terrorism, computer terrorism, drug terrorism and so on. All in all, there are various forms of terrorist crimes and industries in the field of aggression. Especially when the issue of non-traditional security has

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<sup>147</sup> See Paul Wilkinson, *Terrorism and the Liberal State*, London: Macmillan, 1977, pp.47-64.

<sup>148</sup> See Frederick J. Hacker, *Crusaders, Criminals, Crazies: Terror and Terrorism in Our Time*, New York: Bantam, 1978, pp.3-40.

<sup>149</sup> See Alex P. Schmid, Janny de Graf., *Violence as Communication: Insurgent Terrorism and the Western News Media*, Beverly Hills: Sage, 1982, pp.58-61.

<sup>150</sup> See Jonathan R. White, *Terrorism: an Introduction*, 3rd Edition, California: Wadsworth Thomson Learning, 2002, pp.13-15.

become the focus of the contemporary international community, in addition to the use of "war means" to carry out terrorist criminal activities, it is expected that a considerable number of attacks will occur in the field of non-traditional security, such as water, food, medicine and other areas closely related to people's lives. In China, terrorist criminal organizations mainly carry out terrorist attacks and create terrorist events, supplemented by terrorism and religious extremism, forming a terrorist criminal pattern of "three forces" intersection<sup>151</sup>.

(1) Ideological terrorist crime

For example, far right terrorist organizations, with the purpose of promoting social reform, advocate maintaining state rule and carrying out radical social reform. Most far-right terrorism organizations are against Jews, such as new Nazi, new fascist and racial discrimination, etc. Most of them were located in North America and Western European countries, and attacked immigrants and refugees more<sup>152</sup>. Compared with other terrorist organizations, far right terrorist organizations use lower threat to achieve their purpose. However, with the change of international political pattern, far right terrorist organizations also use violence frequently, and use high threat to achieve criminal purpose, such as Ukraine's "Right Zone" organization.

(2) Ethnic terrorist crimes

There are three kinds of contemporary ethnic terrorism: the terrorist organization fighting for independence, the terrorist organization fighting for unification and the terrorist organization fighting for reunification<sup>153</sup>. Compared with other kinds of terrorist organizations, ethnic and racial conflicts are the most harmful, which are very likely to cause domestic unrest, people's lives are not easy to be stable, and the number of homeless refugees is increasing and floating. Such terrorist crimes are the most serious violations of human rights. They often use malicious national ideology to bring great threats to other nations, races or governments.

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<sup>151</sup> Wang Hongwei: *Internal and External Integration of National Security Governance: Taking the Fight Against "East Turkistan" Terrorism as an Example*, International Security Research, 2019, 37(03), pp.70-95.

<sup>152</sup> Such as the KKK Party of the United States, CCAN, CJCC, the Aryan Liberation Front (ALF), and the United Self-Defense Forces of Colombia (AUC).

<sup>153</sup> Such as the Al-Aqsa Martyrs Brigade in Palestine, Jammu and Kashmir Liberation Front in India, Liberation Tigers of Tamil Eelam in Sri Lanka, Irish Republic Army in Ireland, Basque Fatherland And Liberty in Spain.

## (3) Terrorist crime of political belief

Driven by clan belief, such terrorist organizations maliciously interpret religious doctrines and distort to quote religious doctrines. Their destructive power is more serious than ethnic and racial terrorist crimes<sup>154</sup>. In contrast, such terrorist organizations aim to encourage religious leaders to distort religious doctrines, promote wrong doctrinal interpretations and the "great" beliefs they represent, and incite believers to commit terrorist crimes.

## (4) "Lone wolf" terrorist crime

So far, "lone wolf" terrorist attacks are very difficult to prevent. Generally, terrorists carry out terrorist activities and accept terrorist instructions alone, which is difficult to be found. They are lurking in social groups which can hardly be distinguished, with high randomness; any person or thing may be the target of their attacks; using cruel means, small-scale attacks, and a wide range of influence. Such terrorists have been called "thousand knife strategies" by Al Qaeda through the online magazine "Incentive" and vigorously promoted<sup>155</sup>.

## (5) Data terrorist crime

Data terrorism includes information terrorism and cyber terrorism.

## a. Information terrorism

The essence of information terrorism belongs to "information war". "Information war" is usually used in military war. Electronic countermeasures are used to interfere with the transmission and reception of information signals of the other side, obtain local intelligence, provide accurate target strike positioning, and protect our side from being found. Wikipedia points out that "Information War refers to the use and management of information to ensure the comparative advantage with competitors. Including collecting intelligence, verifying, spreading propaganda and false intelligence to opponents, etc."<sup>156</sup> It consists of seven parts: psychological control, electronic warfare, mental injury, military deception, security measures and information attack.<sup>157</sup>

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<sup>154</sup> Such as the "Army of God" of the United States, the "Islamic Resistance Movement" of Palestine, HAMAS, Algeria's Armed Island Group, Japan's AUM Shinrikyo, Iraq's Al Qaida, Libya's Libyan Islamic Fighting Group, the Taliban in Afghanistan, the Islamic State of Iraq and the Levant in Syria.

<sup>155</sup> Load [http://www.baike.com/wiki/Lone\\_wolf\\_terrorists](http://www.baike.com/wiki/Lone_wolf_terrorists), last visited on January 11, 2019.

<sup>156</sup> Load [http://zh.wikipedia.org/wiki/Information\\_war](http://zh.wikipedia.org/wiki/Information_war), last accessed: January 11, 2019.

<sup>157</sup> See United State Air Force, "*Cornerstones of Information Warfare*", <http://www.af.mil/lib/corner.html>.

Information terrorism is not limited to these ways. In order to control and influence decision-makers, information terrorist organizations can use any equipment such as telephone, radio signal, radar, electronic device, etc. to implant the Trojan horse virus into enemy computers. Once they launch terrorist attacks, even if there is no network, they can complete the whole terrorist criminal activities through other equipment.

b. Cyber terrorism

Cyber terrorism is called "war without gunpowder". In contrast, terrorism is often defined as any person (organization, group) using violence or threat of violence to intimidate the government and its people for political purposes or other purposes.<sup>158</sup> However, the damage caused by the "soft violence" of cyber terrorism is hard to calculate. One is that terrorist organizations spread violent audio and video through the network, expand terrorist propaganda, teach terrorist attack technology, train violent terrorists, plan terrorist attacks, recruit volunteers, raise funds, etc.; the other is that terrorist organizations control electricity, water, transportation, medicine and food etc. through the "hacker technology" of the network<sup>159</sup>. Cyber attack will cause power paralysis, water pollution, traffic disaster, food crisis, etc., so as to achieve the purpose of terrorist attacks. Nowadays, the network has penetrated into various fields of economy, education and culture, and the consequences of the crime of network terrorism are unimaginable. Therefore, it is necessary to strengthen the defense and fight against data terrorism.

(6) Mass destruction terrorist crime

Crimes of mass destruction terrorism include nuclear terrorism, biochemical terrorism, etc. Weapons of mass destruction usually include three categories: nuclear weapons, chemical weapons and biological weapons.

a. For a long time, nuclear weapons, biological and chemical weapons have been explicitly prohibited by the international community. Since the 9.11 terrorist attacks on the United States, the international community launched the "Operation Desert Fox" under the leadership of the United States, invaded Iraq, Afghanistan and other countries to fight terrorism and search for weapons of mass destruction. However, after more

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<sup>158</sup> See Denning, Dorothy, *Information Warfare and Security*, Reading, MA: Addison-Wesley, 1999, p.68.

<sup>159</sup> Solomon Samuel Gonina, Linus Mun Ngantem: *Mass Media, Terrorism and National Security: Defining the Threats*, Cross-Cultural Communication, Volume 15, Issue 3, 2019, pp.10-15.

than a decade, there has been no effective reduction of terrorist organizations or detection of such weapons. Terrorist attacks have kept the countries in the Middle East, Central Asia, West Asia, South Asia, Southeast Asia and Western Europe in fear. This has forced the international community to raise such concerns - whether terrorist organizations have weapons of mass destruction? No matter whether such doubts are established or not, the international community should take measures to deal with them as soon as possible. The acquisition of nuclear weapons is relatively difficult; however, the acquisition of nuclear materials is relatively easy, especially after the end of the cold war and the upheaval in Eastern Europe<sup>160</sup>. Terrorist organizations supported by some countries need to rely on their own strength to obtain living space. Smuggling weapons and ammunition, nuclear materials (highly enriched uranium) and "dirty bombs" have become means for them to seek development and expansion. Therefore, on the one hand, terrorist organizations rely on smuggling to obtain raw materials so to manufacture nuclear weapons or "dirty bombs"; on the other hand, terrorist organizations also purchase raw materials or nuclear weapons through the international underground market, posing a potential threat to the security of the international community. However, although nuclear materials may be relatively easy to obtain, the manufacture, production and purchase of nuclear weapons are extremely difficult in the international underground market<sup>161</sup>. Therefore, terrorist organizations are less likely to use nuclear weapons for large-scale terrorist attacks.

b. In the world, most countries have mastered the technology of biological genetic engineering, and biological weapons mainly include "bacteria", "toxin" and "virus". Russian and American scientists have long used modern genetic engineering technology to modify the gene sequence of viruses to fight against natural diseases, or to improve the army's adaptability to biological warfare in the field of war<sup>162</sup>. Most researchers believe that terrorists will eventually master this technology and use the laboratory to make bacteria, viruses or toxins. In spite of this, if terrorists want to use

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<sup>160</sup> Brecht Volders: *Nuclear Terrorism: What Can We Learn from Los Alamos?* Terrorism and Political Violence, (2019) 31:5, pp.1006-1025.

<sup>161</sup> This is not to say that terrorist organizations will not use nuclear weapons to carry out attacks, but the time when terrorist organizations will use nuclear weapons to carry out attacks, that is, when will they have the ability to use nuclear weapons. (See Jonathan Laqueur, *Terrorism: An Introduction*, 3rd Edition, 2002, pp.242-243.)

<sup>162</sup> See Ken Alibek with Stephen Handelman, *Biohazard*, New York, Delta, 1999, pp.53-57.

biological weapons to cause a large number of casualties, they must overcome some technical and operational obstacles, even if the outbreak of a deadly epidemic in the absence of national treatment and medical facilities, it may not let many people lose their lives. Therefore, if terrorists want to carry out bioterrorism attacks, they may only target those who oppose them. After all, biological weapons attacks are not easy to achieve<sup>163</sup>.

c. Chemical weapons have existed for a long time. During the World War II, Japan's biological and chemical forces "731", notorious for their bad deeds, used chemical weapons and operated human experiments in large quantities<sup>164</sup>. Chemical weapons mainly damage the functional organs of human body, leading to its failure and eventually death, such as asphyxia, edema, bleeding and nerve agents. At least 25 countries in the world have chemical weapons or "poisons". However, in the production, preservation and use of chemical weapons, the requirements for equipment and personnel are relatively high. In terms of effect, it can't be compared with nuclear weapons and biological weapons at all, and the number of casualties and social impact caused by it are far less than the former two. For example, although 11 people were killed and more than 5,000 people were injured in the 1995 Sarin gas terrorist attack on the Japanese subway, which was made by the terrorist organization "AUM Shinrikyo" in Japan, it was far less terrible than the disaster caused by nuclear weapons and biological weapons<sup>165</sup>. A large number of chemical weapons attacks can be prevented by many effective measures, which is easy to locate. Compared with other attacks, ordinary clothes can be used for protection. In view of this, terrorist organizations generally do not directly use a large number of chemical weapons for terrorist attacks.

#### (7) Financial terrorist crime

Scholars holding the view of financial terrorism believe that, first of all, with the acceleration of globalization, transnational groups, transnational corporations and transnational organizations frequently appear in international economic trade, and

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<sup>163</sup> For example, the Ebola virus broke out in 2014. Although the virus is serious enough to carry out terrorist attacks, it has not been used by terrorist organizations at present. However, the well-known "anthrax" virus has only occurred in one case in 2001 for decades.

<sup>164</sup> Katrien Devolder, *U.S. Complicity and Japan's Wartime Medical Atrocities: Time for a Response*, *The American Journal of Bioethics*, (2015) 15:6, pp.40-49.

<sup>165</sup> Chen Jisheng: *Modern Terrorism and Modern Chemical Terrorism*, *China Emergency Management*, 2007(08), pp.28-30.

some transnational criminal organizations also possess economic resources through legal means. Terrorist organizations use these transnational criminal groups to obtain funds, or force legal transnational groups (companies or organizations) to do "money laundering" which will disturb the normal financial operation order and easily lead to the collapse of the financial system<sup>166</sup>. Secondly, terrorist organizations use the network to commit fraud, or attack the network system of financial institutions (banks, stock exchanges, etc.) to obtain funds, which can cause financial system shocks and affect the normal operation of the national economy. Finally, the terrorist attacks carried out by terrorist organizations cause a lot of damage to people and property, while frequent attacks will also cause the decline of national GDP to a certain extent. Therefore, economic terrorism will bring invisible and fatal attack to the national and even international economic development.

#### (8) Crime of cultural terrorism

Cultural terrorism scholars believe that culture covers a wide range of people's thoughts, speech and behavior will be affected. Terrorist organizations carry out terrorist propaganda to a certain extent, which is a kind of "brainwashing". Terrorists, separatists and extremists are easy to become their members. According to the plan of terrorist organizations, terrorist attacks will be carried out, and those who retaliate against society and complain about injustice will also be affected and may become its member<sup>167</sup>. Some scholars believe that "media culture" is far more destructive than other cultural communication methods. The extensive coverage of terrorist attacks by the media has played a "catalytic role" in the occurrence of terrorist crimes. Especially after the terrorist attacks, the media reports make people "feel more worried", and their sense of security is significantly reduced, resulting in social panic. Moreover, it is easy to bring substantial obstacles and difficulties to the elimination of terrorists by bringing terrorists "opportunities" and exposing too much the action plans of "counter-terrorism" command agencies<sup>168</sup>. Therefore, the influence of cultural propaganda is extensive and far-reaching. It will be one of the powerful weapons to

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<sup>166</sup> See Adetunji, J.A., *Rethinking The Internal Mechanism of the EGMONT Group in Financial Crime Control*, Journal of Money Laundering Control, (2019) Vol. 22 No. 2, pp. 327-338.

<sup>167</sup> Wang Chunmei, Yang Jialei: *Analysis of the Causes of Terrorist Crimes in Northwest China: from the Perspective of Cultural Conflict Theory*, Crime Research, 2018(03), pp.2-9.

<sup>168</sup> See Jared Ahmad, *Book Review: Media and Terrorism: Global Perspectives*, Global Media and Communication, pp.75-76.

deal with the terrorist culture to actively guide the people to learn the mainstream culture, limit the excessive propaganda of the media culture and establish the correct cultural form.

On the whole, there are three standards to classify the types of terrorist crimes: first, according to the nature of terrorist organizations, they can be divided into domestic terrorist crimes and international terrorist crimes, or state terrorist crimes, state supported terrorist crimes and non state terrorist crimes. Secondly, according to the ultimate goal of terrorism, it can be divided into types of regime change, policy change, territory change, social control and status quo maintenance. Third, according to the perpetrators of terrorist acts, they can be divided into single person type and organizational movement type.

#### *2.4 The purpose of terrorist crimes*

As a criminal form, the realization of the criminal act must be purposeful. At present, some scholars think that there are "political purpose theory", "political purpose + other purpose theory", "social panic theory", "political purpose + social purpose + personal purpose theory" and so on. The ultimate aim of terrorist crime is "counter - state"<sup>169</sup>. Some scholars believe that the purpose of terrorist crime is multiple and progressive, that is, "direct purpose, terrorist purpose, pursuit purpose and ultimate purpose" are progressive layer by layer, which constitutes the purpose of terrorist crime<sup>170</sup>. Some scholars think that the terrorist crime has no purpose, only from the objective effect caused by terrorist acts to evaluate the harmfulness<sup>171</sup>. Some scholars also think that if the purpose of terrorist crime is simply defined as "political purpose", on the one hand, it will narrow the scope of the crime, which is not conducive to the fight against such crimes; on the other hand, it may cause the suspect of "political crime", if identified as a political offender, according to the provisions of "aut dedere aut punire" in international

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<sup>169</sup> See Yu Yidong: *Distinguishing the Aims of Terrorist Crimes*, Hunan Social Sciences, 2006, issue 3, pp.46-48.

<sup>170</sup> See Zhao Kan: *On the Criminal Purpose of Terrorism*, Journal of the Party School, 2011, issue3, pp.77-80.

<sup>171</sup> Zhang Jiadong: *Conceptual Analysis of Terrorism*, World Economics and Politics, 2003(03), pp.37-42.

law, which is not conducive to the fight against terrorist crimes either<sup>172</sup>. Therefore, it is not appropriate to think that the purpose of terrorist crime has political purpose. Some scholars believe that: the purpose of international terrorist crime has "political purpose", while domestic terrorist crime does not require "political purpose", as long as the implementation is enough to cause social harm, the violation of the criminal law can be recognized as the crime<sup>173</sup>. There are different opinions on how to understand the purpose of terrorist crimes. In my opinion, from the analysis of the concept, characteristics and types of terrorism, the purpose of terrorist crime has dual characteristics, that is, it has primary and secondary purposes. The main purpose is to obtain "political interest appeal", and the secondary purpose is to "pursue social effect".

### *3. Current situation and future trend of terrorist crime defense*

Since the European Enlightenment in the 18th century, there has been a heated debate on whether criminal acts should be punished by criminal law or should measures be taken to prevent them. Beccaria's "deterrence theory" emphasizes that the effective means of crime control lies in crime prevention, rather than reducing crime through severe torture sanctions<sup>174</sup>. As Durkheim said, the reason why deterrence can produce enlightenment prevention is that people are not afraid of being severely punished, but they are afraid of losing social status and no longer being respected. Once losing social respect, it will have the opposite effect. Therefore, deterrence may be more effective than simply using criminal law<sup>175</sup>. However, terrorist crime is different from ordinary crime and political crime, but a special form of crime. Whether the control of terrorist crimes can be realized by deterrence is a problem worthy of attention, and it may also be an alternative way to prevent terrorist crimes.

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<sup>172</sup> Wang Yong, Sun Haifeng: *On The Countermeasures to Punish and Prevent International Terrorism Crimes-Also on China's Countermeasures*, Crime Research, 2003(01), pp. 29-33.

<sup>173</sup> Xia Yong: *A Review of the Research on the Definition of Terrorism Crime in China*, Research on Law and Commerce, 2004, issue 1, pp.129-138.

<sup>174</sup> See C. Beccaria, *On Crime and Punishment*, translated by Huang Feng, Peking University Press, 2008 edition, p. 66.

<sup>175</sup> See Emir Durkheim, *On Social Division of Labor*, translated by Qu Dong, SDX Joint Publishing Company, 2013 edition, p.173.

### 3.1 *The current situation of the defense to terrorist crimes*

Since September 11, 2001, the United States has suffered terrorist attacks from Al Qaeda, the UN has repeatedly urged all countries to strengthen close cooperation with each other in dealing with terrorist crimes; conventions, declarations and decisions on combating terrorist crimes have been made through resolutions and documents of the General Assembly for many times, hoping to promote the international community to jointly eliminate the threat of terrorism. However, after more than ten years of fighting against and eliminating the terrorist crime, it did not effectively eliminate the terrorist crime, but made the terrorist crime show the adverse reaction of "more counter more terrorism". As the leading body of international counter-terrorism, the United Nations, which strongly advocates the cooperation of all countries and the "war on terrorism" led by the United States and its alliance, has failed to eliminate terrorism in essence, and terrorist crimes are becoming more and more rampant<sup>176</sup>.

At present, terrorist organizations have developed from simple and scattered "semi-automatic" arms to "full-automatic" arms. They have their own independent military training bases, precise armed military forces, abundant and reliable sources of funds, unswerving religious beliefs, and the ideal of political and religious unity<sup>177</sup>. Therefore, it has created necessary conditions for "domestication of international terrorism" and "internationalization of domestic terrorism"<sup>178</sup>. The "three forces" formed by religious extremism, national separatism and terrorism make the situation in Central Asia more complicated. The combination of the three forces will directly threaten the security of China, Russia and neighboring countries. After the terrorist attacks on the American mainland, the United States has shown strong concern for the Central Asia region. It has redesigned the Middle East strategic plan of the United States, established the counter-terrorism alliance, sought to establish a variety of "international counter-terrorism" cooperation mechanisms, and maintained peace and security in the Asia Pacific region. However, it is difficult for all countries to reach

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<sup>176</sup> According to the 2014 Global Terrorism Index Report (GTI) released by the Institute of Economics and Peace, 162 countries suffered more than 10000 terrorist attacks in 2013, killing nearly 18,000 people.

<sup>177</sup> Zeng Xianghong, Chen Ya: *Organizational Structure of Terrorism: Type Discrimination and Its Influence*, *World Economics and Politics*, 2016(08), pp.80-103.

<sup>178</sup> Tang Chao, Meng Xiangyun: *Study on the Surrounding Security Risk Environment Related to Terrorism*, *Journal of Information*, 2017, 36(05), pp.31-36.

consensus and mutual trust on the cognition, counter-terrorism strategies and ways of terrorist crimes, which weakens the counter-terrorism ability. Moreover, due to the constraints of political position, ideology, values, cultural background and interest maintenance among the great powers, the fight against terrorist crimes is in an awkward position.

However, terrorism will not be stopped because of the poor cognitive situation of the international community, and will "evolve" with the development of human society. The Middle East, Central Asia, South Asia and West Asia have become the "command center" of global terrorist crimes<sup>179</sup>. With the popularization of Internet technology, terrorist organizations recruit volunteers through the Internet and expand their ranks. Terrorist attacks may be even more rampant. It is expected that in the future, it will affect global security in a new way: the frequency and scope of terrorist crimes will increase, especially in the field of non-traditional security. Terrorist crimes will be redefined, and their targets will exceed diversification, involving network, economy, education, ecology, environment, food, medicine, water, energy, health, nuclear materials, etc., as well as human beings and other means of production and living closely related to life; radical Muslim terrorist organizations will dominate, armed terrorist organizations will increase, and means will be more violent, intelligent and diversified. Violence and non violence will be used alternately. Non violent attacks may rise to the main attack mode, and cyber terrorist attacks will increase; terrorist crimes and organized crime are closely combined, with the complexity of criminal organization system and the tightness of terrorist attacks, small-scale terrorist attacks may become the norm, and terrorist crimes in the economic field will increase significantly<sup>180</sup>.

(1) "War" to combat terrorism is a necessary means of global counter-terrorism

Although war can effectively suppress the rapid spread of terrorism and eliminate its living forces, terrorist organizations do not have the status of state subjects, do not have the principles required by the war rule to be abided by, thus we cannot fundamentally

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<sup>179</sup> Zeng Xianghong, Chen Ya: *Organizational Structure of Terrorism: Type Discrimination and Its Influence*, World Economics and Politics, 2016(08), pp.80-103.

<sup>180</sup> See Global Terrorism Index Report (GTI) in 2014; Liu Tao: *Definition and Development Trend of Terrorism*, Crime Research, 2011, issue 5, pp.79-89; Yin Binghua: *Research on the Current Situation and Development Trend of International Terrorism*, Journal of Jilin Public Security University, 2010, issue 1, pp.103-106.

destroy terrorist crimes. Irrational military attack, on the contrary, makes terrorist crimes flat, fragmented and intelligent, intensifies the escalation of terrorist attacks within regions and countries, and creates a global terrorist crisis.

According to the Washington Post, the CIA has secretly set up prison networks in eight countries in four years; including Guantanamo prison and Abu Ghraib prison. These "black facilities" provide an important place for the US "counter-terrorism operations" to achieve torture. About 82,400 non-U.S. persons have been arrested, of whom 14,500 are in long-term custody<sup>181</sup>. Moreover, in total disregard of the United Nations Declaration of Human Rights and relevant laws and regulations, the United States has put suspected terrorists into secret prisons without trial by the International Criminal Court, where they have been tortured for interrogation, in violation of international law and relevant conventions. However, the decision of the United States and its allies to fight against terrorism by means of war did not make the terrorists disappear. Instead, it encouraged the flames of terrorist crimes and made them grow stronger with the help of the media. Practice has proved that this kind of suppression of "another terror" by "one terror" cannot eliminate the threat of terrorism, but make terrorist activities "more counter more terrorist", "violence against violence" has never been an effective means to solve conflicts in a rational society ruled by law.

According to Dworkin, an American scholar, "the internal hierarchical structure of terrorist groups is unknown, and officers and soldiers can't identify themselves without military uniforms. Such a loose organization cannot be regarded as a belligerent in a conventional war. We can capture Kabul and Baghdad, but where is the state that has an excessive terrorist population called 'terror'?"<sup>182</sup> It can be said that terrorist attacks are not equal to the outbreak of war. The terrorist attacks carried out by terrorism do not comply with the war conflicts stipulated in the war law. It is not appropriate for the United States and its allies to take military strikes to try to eliminate terrorism. Generally speaking, war is "an armed battle carried out by the hostile parties for the purpose of achieving certain political, economic and territorial integrity."<sup>183</sup> It is an

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<sup>181</sup> See Lu Jianping: *It Is Necessary To Reasonably Organize The Global Counter-Terrorism Struggle*, in Monograph On China's Counter-Terrorism Legislation, edited by Zhao Bingzhi, China People's Public Security University Press, 2007 edition, p. 472.

<sup>182</sup> R. Ronald Dworkin, *Terrorist Attacks on Civil Liberties*, translated by Li Jian, World Philosophy, 2004, issue 2, pp.12-16.

<sup>183</sup> See Baidu Encyclopedia, [www.baidu.com/baike/War](http://www.baidu.com/baike/War), final visit: October 27, 2019.

armed conflict between countries, regulated by the war law generally observed by the international community. However, terrorist organizations are neither state bodies nor government bodies. They do not have legal status to exercise the power stipulated in the war law. Terrorist targets are randomly selected due to different political interests. They often threaten other countries to compromise by attacking innocent civilians and destroying property. Such "networked" terrorist attack structure cannot be adjusted by using the rules of war. Moreover, both belligerents will abide by the provisions of the law of war. Although war follows the setting of "violence against violence", full of blood and violence, full of terror and fear, which makes people suffer a lot, but in the end, war is still an armed conflict under the legal regulation, full of fighting rules; however, there are no rules to abide by for terrorist crimes.

The "war model" of US military action against terrorism does not meet its expectation. The Bush administration adopts the strategy of "unilateral action" and "preemptive action". In some way, it is a manifestation of the Bush administration's eagerness to retaliate and maintain the dominant position of the United States<sup>184</sup>. The repeated efforts of the United States in history have led the Bush administration to believe that the fight against terrorism is a war, which can completely eliminate terrorism in a limited period of time. Moreover, war is the fastest and most effective means to eliminate the living forces of terrorist organizations. However, it is precisely the over optimistic historic site of the Bush administration that causes the United States to be quite passive in the "war on terror". The terrorist crimes did not disappear under the strong military attack of the United States, but made the United States completely unsafe<sup>185</sup>. The "lone wolf" terrorist attack began to worry the American society (such as the Manhattan shooting in New York). The constantly renovated terrorist attack means made the United States, a superpower, become more and more deeply trapped in a dilemma. The United States and its allies began to think about the practical effect of "war against terrorism". While actively promoting the global strategic plan against terrorism, the Obama administration began to stop using the expression "war on terrorism" and seek effective means of global cooperation to eliminate terrorism. In the

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<sup>184</sup> Wang Zhen: *Six Lost in American Global War on Terrorism*, Journal of Social Sciences (newspaper), 2016-02-25, p.3.

<sup>185</sup> Wu Bingke, Zhang Jiadong: *Analysis Framework and Historical Evolution of American National Counter-Terrorism Strategy*, International Security Research, 2019, 37(03), pp.96-127.

face of the failure of the United States in its military fight against terrorism, the Trump government adjusted and improved its counter-terrorism strategy and adopted radical "political witchcraft" and irrational improper strategies, which resulted in that "Trump's counter-terrorism strategy not only could not be adjusted and improved in a targeted way, but also remained in the stage of irrational demagogues, even suspected of incitement to the whole Muslim community group hatred and violence"<sup>186</sup>. History shows that almost all wars of human beings have obvious political tendency. Terrorist crimes need to be adjusted by an objective evaluation mechanism. Relying solely on military means of attack, they cannot eliminate the political tendency in charge of war. The United States and its allies are easy to interfere in the internal affairs of any sovereign country in the name of counter-terrorism, resulting in unlimited expansion of hegemonism and power politics<sup>187</sup>. Moreover, due to the different understanding of terrorist crimes in different countries, it is impossible to make a consistent evaluation of the identification of terrorist crimes. The way of fighting against terrorism by war is very easy to cause internal and external conflicts and greater insecurity between countries and regions.

(2) As a basic assumption, the criminal justice model takes precedence over the principle of democratic reservation in the process of counter-terrorism, which can effectively reduce the operating cost of counter-terrorism measures<sup>188</sup>

Based on the principle of "deterrence theory" and "coercion theory", terrorist crime is assumed to be a controllable crime type; however, the occurrence of terrorist activities is not calculated by the cost, but by the expected successful actions<sup>189</sup>. Therefore, the criminal justice model is still insufficient to deal with terrorist crimes.

Terrorist crime is a kind of crime in essence. Since it is a crime, it will inevitably violate the criminal laws and regulations, bear the sanctions of criminal laws and bear the corresponding criminal responsibility. To determine whether a person is guilty or

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<sup>186</sup>"Political Witchcraft" And Irrationality in Trump's Counter-Terrorism Strategy, published by China National Religion Network: <http://www.mzb.com.cn/html/report/170825342-1.htm>, last visited on: November 27, 2019.

<sup>187</sup> Wang Zhen: *Re-understanding of the Transformation of the Global War on Terrorism*, Arab World Studies, 2016(05), pp.32-49.

<sup>188</sup> See Graeme C. S. Steven, Rohan Gunaratna, *Counterterrorism: A Reference Handbook*, ABC-CLIO, 2004, pp. 97-102.

<sup>189</sup> See Pi Yong and Yang Miaoxin: *Micro Terrorism and Its Legislative Governance in the Internet Age*, Journal of Wuhan University (Philosophy and Social Sciences Edition), 2017, issue 2, pp.73-84.

not, we need to go through strict legal procedures to determine, rather than fabricating or imagining. However, terrorist crime is different from ordinary crime, not only infringing one legal interest, but also infringing many legal interests. If the crime is treated according to the provisions of the general criminal code, it is inevitable that the punishment is too light, and it is difficult to play the role of punishment fundamentally, so it needs to be completed through the establishment of special criminal justice procedures. Moreover, terrorist crimes often have strong political purposes. At present, the fight against terrorism by all countries is far from forming an effective joint force. If other forms are adopted, it will inevitably be stranded due to political differences. However, criminal justice can effectively alleviate the disadvantages of ineffective cooperation due to political reasons, which is conducive to the formation of the international judicial cooperation mechanism against terrorism.

However, the elimination of terrorist crimes cannot be achieved in a short period of time. The terrorist crime has always existed but can be reduced by effective legal means. Therefore, criminal justice can not only effectively combat crime, but also realize human rights protection. Before the "9.11" terrorist attacks, countries basically used ordinary judicial procedures to control terrorist crimes, and the United Nations also actively advocated the establishment of judicial cooperation response mechanism at the international level. However, the "9.11" terrorist attacks broke through this surface mechanism of criminal judicial cooperation. Countries began to realize that they must eliminate political opinions in the ideological field and strengthen cooperation among countries, so that criminal judicial cooperation can be used to eliminate the evil of terrorist crimes within a limited range<sup>190</sup>. At the level of international law, the United Nations Declaration has long defined terrorism as a criminal act. In addition to the principle of non extradition of political prisoners, the provision of prosecution or extradition is conducive to the unity of the international community's counter-terrorism position<sup>191</sup>. Today, terrorist crimes have far exceeded the controllable scope of criminal justice, and the crisis and threat caused by them are spreading to the whole world, especially in the non-traditional security field. Terrorist crimes are turning from mainly

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<sup>190</sup> Zhang Yi: *Transnational Organized Crime from the Perspective of International Criminal Justice Cooperation*, Journal of Jiaying University, 2016,34(06), pp. 55-60.

<sup>191</sup> See Zhao Bingzhi (ed.): *International Terrorism Crimes and Prevention Countermeasures*, Beijing, China People's Public Security University Press, 2005, pp.77-78.

armed terrorist attacks to non armed terrorist attacks, and more soft deterrents are used to threaten sovereign countries, such as the use of weapons of mass destruction, toxic and harmful substances, which promote violent terrorism, create terrorist attacks and cause international panic.

Generally speaking, the criminal justice model has a high demand for the proof of evidence. Some criminal investigation activities cannot obtain the evidence of the terrorist attacks, and cannot let terrorists bear the due criminal responsibility through the criminal justice process. However, it is certain that the criminal justice model is still more acceptable than the "war model". War can't judge guilty or not guilty objectively and often takes morality as the commanding point<sup>192</sup>. Once triggered, its moral banner can drag innocent countries into the mire of counter-terrorism war; however, criminal justice can effectively avoid such unfair treatment of sovereign countries, protect the basic human rights at least when terrorist crimes are committed, and not allow the international community to violate the declaration of human rights. In 2005, international criminal law experts unanimously adopted the "Cleveland Principle", reaffirming that in the counter terrorism-criminal activities, we must adhere to the statement of the principle, adhere to the priority of human rights, especially the protection of human rights of criminal suspects.

(3) The "global governance model" is based on the global threat and security issues to effectively eliminate terrorism

This hypothesis holds that terrorist crimes should be "multi-level actors, through the coordination and cooperation of measures and means in the fields of politics, economy, society, culture, justice, military, etc., in order to gradually eliminate the threat of terrorism and create a safe environment that is not conducive to the existence and operation of terrorism."<sup>193</sup> "Global governance consists of national governance and non-national governance. It is an organizational system and network composed of multiple complex and multi-level."<sup>194</sup> Therefore, global governance requires countries to form a community with a shared future in counter-terrorism and jointly deal with

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<sup>192</sup> Wang Zhen: *Re-understanding of the Transformation of the Global War on Terrorism*, Arab World Studies, 2016(05), pp.32-49

<sup>193</sup> Zang Jianguo: A Study on the Response Mode of Terrorist Crimes, published in *Crime Research*, 2014, issue 2.

<sup>194</sup> See Liu Zhongmin: *Global Governance of Non-Traditional Security Issues and Transformation of International System*, International Watch, 2014, issue 4.

terrorist crimes. However, this kind of loose compound multi-layer body is difficult to form an effective joint force, which leads to a lack of power in the fight against terrorist crimes.

Terrorist crime is manifested as international and domestic terrorist crime. The fundamental purpose of global governance of terrorist crime is to eliminate terrorism, eliminate the damage caused by terrorist crime, minimize the loss, or reduce the impact of terrorist crime to zero. The damage caused by terrorist crimes is both short-term and long-term. The goal of global governance is to immediately gather limited resources to repair the trauma and eliminate the negative impact of terrorist crimes, such as the status quo of the transfer of terrorist crimes to non-traditional security fields. This kind of governance means requires strengthening the supervision in the field of non-traditional security and avoiding the destruction of terrorism by non-traditional means.

The idea advocated by global governance is to build an open and interconnected world and solve the common problems faced by mankind, including terrorist crimes. As Xi Jinping said, "No country can deal with the challenges faced by mankind alone, nor can any country return to a closed island".<sup>195</sup> However, in the face of global common difficulties, some countries have formed so-called strategic alliances, created isolation and counter multilateralism with the traditional "zero sum game" thinking, adopted negative coping strategies, formed a national community with a few countries as the core, carried out the idea of power hegemony, rejected and suppressed the development of other countries, and built an unfair and unreasonable international order. As a result, the counter-terrorism model of global governance fundamentally loses its support, so it can't cope with the expansion of terrorist crimes in the world.

In 2016 there were 108 countries suffering from terrorist attacks in the world, with more than 13,400 terrorist attacks, resulting in more than 34,000 deaths, including 11,600 terrorists<sup>196</sup>. In 2019, deaths from terrorism fell for the fourth consecutive year, after peaking in 2014. The decline in deaths corresponds with the military successes against ISIL and Boko Haram, with the total number of deaths falling by 15.2 per cent

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<sup>195</sup>Xi Jinping: *Adhering To The Path Of Peaceful Development And Promoting The Construction Of A Community With A Shared Future For Mankind*, published on phoenix.com: [http://news.ifeng.com/a/20171019/52698306\\_0.shtml](http://news.ifeng.com/a/20171019/52698306_0.shtml), last visited November 10, 2019.

<sup>196</sup> Data from the Institute for Economics & Peace, *Overview: Terrorism in 2016*, [http://www.start.umd.edu/pubs/START\\_GTD\\_OverviewTerrorism2016\\_August2017.pdf](http://www.start.umd.edu/pubs/START_GTD_OverviewTerrorism2016_August2017.pdf), 2019-11-10.

between 2017 and 2018 to 15,952. The largest fall occurred in Iraq, which recorded 3,217 fewer deaths from terrorism in 2018, a 75% decrease from the prior year. For the first time since 2003, Iraq is no longer the country most impacted by terrorism<sup>197</sup>.

ISIL's decline continued for the second successive year. Deaths attributed to the group declined 69 per cent, with attacks declining 63 per cent in 2018. ISIL now has an estimated 18,000 fighters left in Iraq and Syria, down from over 70,000 in 2014. Other than Afghanistan only three other countries recorded a substantial increase in deaths from terrorism in 2018: Nigeria, Mali, and Mozambique. Each of these countries recorded more than 100 additional deaths<sup>198</sup>. The rise in terrorist activity in Afghanistan, coupled with the winding down of the conflicts in Syria and Iraq, meant that the Taliban overtook ISIL as the world's deadliest terrorist group in 2018.

The "Islamic State" has suffered unprecedented war failure and despair, "suicide" terrorist attacks and attacks on civilians have increased significantly, and more countries will inevitably suffer at least one terrorist attack. With the loss of "Islamic State" territory, its fiscal and tax revenue will also suffer a great loss. It is estimated that the "Islamic State" fiscal revenue will fall by 30% compared with 2015 and 2016, and this trend will extend consistently<sup>199</sup>. Due to the loss of territory, the reduction and destruction of oil reserves, the "Islamic State" will greatly cut the expenditure from tax revenue. In addition, due to the defeat in the battlefield, many other countries and their own terrorists will flee or return, and become potential producers of terrorist attacks. The global terrorist crime will once again present the development trend of strong frequency, involving a wide range of countries, threatening the traditional security and non-traditional security fields, and choosing to attack the diversified targets.

At present, there is no effective model to deal with terrorist crimes. From the macro level, the effective way to curb terrorist crimes is still attributed to the global joint military attack means (war model) against terrorist organizations, resulting in the loss

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<sup>197</sup> Institute for Economics & Peace. *Global Terrorism Index 2019: Measuring the Impact of Terrorism*, Sydney, November 2019. Available from: <http://visionofhumanity.org/reports> (accessed 19 October 2020).

<sup>198</sup> Institute for Economics & Peace. *Global Terrorism Index 2019: Measuring the Impact of Terrorism*, Sydney, November 2019. Available from: <http://visionofhumanity.org/reports> (accessed 19 October 2020).

<sup>199</sup> Data from the Institute for Economics & Peace, *Overview: Terrorism in 2016*, [http://www.start.umd.edu/pubs/START\\_GTD\\_OverviewTerrorism2016\\_August2017.pdf](http://www.start.umd.edu/pubs/START_GTD_OverviewTerrorism2016_August2017.pdf), 2019-11-10.

of their basic survival soil. To reduce the harm of terrorism from the micro level, we should still adopt the way of criminal justice cooperation and global governance. However, the national limitations of criminal justice cooperation and global governance make the joint fight against terrorist crimes ineffective. China calls on the whole people to participate in the counter-terrorism struggle at home, according to the logic of social mobilization, responsibility sharing and system incentive,<sup>200</sup> give full play to the "two-dimensional" counter-terrorism strategy of the government's guiding ability and citizens' active cooperation, build the collaborative growth and interactive improvement of the counter-terrorism ability and awareness of the government and citizens, and respond to domestic terrorist crimes. Externally, China has actively proposed and promoted the "Belt and Road Initiative", which is to build up a new "Global Silk Road Economic Strategy Belt" to form a new global governance model by strengthening the economic capacity of the countries along the "one belt" line, strengthening win-win cooperation among countries, and safeguarding peace and security in the surrounding areas<sup>201</sup>. Therefore, "China is not only the traditional adherent of global governance standards, but also the promoter of the new global governance model"<sup>202</sup>. It may be an effective way to prevent terrorist crimes in the future to strike and eliminate terrorist crimes, and to build a new type of global governance model, war strike defense model, global criminal justice cooperation model and preventive counter terrorism-criminal legislation model.

### *3.2 The future trend of terrorist crimes*

Over the past decade, those complex and closely integrated traditional terrorist organization network systems have been marginalized by measures such as military attack, intelligence collection and law enforcement. However, it is hard for us to imagine what other possible way a terrorist attack, large or small, will take. At present,

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<sup>200</sup> Guo Yongliang: On Institutional Incentives for Citizens to Participate in the Fight against Terrorism, *Journal of the People's Public Security University of China (Social Sciences Edition)*, 2017, issue 4.

<sup>201</sup> Xu Junhua: *China's International Law Strategy Of International Cooperation Against Terrorism Under The Background Of "The Belt And Road Initiative"*, *Law Review*, 2019, 37(01), pp.136-147.

<sup>202</sup> Martin Jacques, *The "One Belt, One Road" Initiative Has Made A Great Contribution to Global Governance*. <https://www.yidaiyilu.gov.cn/ghsl/hwksl/36476.htm>, last visited on: November 27, 2019.

due to severe military attack on terrorist organizations in the global scope, their territory is completely lost, the personnel are sharply reduced, the scale, quantity and scope of terrorist organizations are gradually shrinking, and the tendency of "return", "infiltration" and "spillover" is obvious<sup>203</sup>. With the end of the cold war and the recombination of the world political structure, the international order led by the United States has not changed much, and the situation of "one super and many strong" is still continuing. However, the US foreign policy and counter-terrorism strategy have been adjusted constantly, which has triggered a stronger response to the criminal activities of terrorist organizations. As far as the future development trend of terrorist crime is concerned, it will continue to endanger the fields of culture, economy, education, ecology, environment, network, food, medicine, water source, energy, health, nuclear materials and other means of production and life closely related to human life.

Armed terrorist organizations will not be reduced. The means of terrorist attacks are more violent, intelligent and covert. Violence and non violence are used alternately. Violent attacks are still the main means of terrorist activities. The criminal pattern of cyber terrorism will be further strengthened. Terrorist crime and organized crime are closely combined, the criminal organization system is complex, terrorist attacks are rigorous, terrorist organizations are fragmented, small-scale "low-cost" terrorist attacks become the norm, "lone wolf" terrorist attacks are significantly increased, terrorist crimes in the economic field are significantly increased, high-tech (such as UAV, unmanned aerial vehicle, intelligent robot, dark network space) terrorist attacks will gradually become the main way of terrorist attacks<sup>204</sup>.

Since 2014, the targets of terrorist attacks have shifted to non-traditional security areas and soft targets mainly aimed at civilians. Bomb attacks and explosions have become the main means of terrorist activities, which involve many people and are easy to be detected. However, it is disconcerting that the international community's devastating military attack on terrorist organizations such as the Islamic State has resulted in many potential stubborn "Jihadists" and "leaders" fleeing Iraq and Syria, or joining the remaining radical organizations of the Islamic State, or joining the branches

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<sup>203</sup> David Romano, Stephen Rowe & Robert Phelps, Greg Simons (Reviewing editor), *Correlates of Terror: Trends in Types of Terrorist Groups and Fatalities Inflicted*, Cogent Social Sciences, 5:1, pp.1-18.

<sup>204</sup> Guo Yongliang: *Global Terrorism Wave and China's International Counter-Terrorism Discourse Construction*, Public Security Studies, 2018,1(02), pp.107-121.

of the Islamic State existing in other countries, or lurking back to their countries of origin to implement "low-cost" terrorist attacks. However, such terrorist attacks are hard to detect, which aggravates the terrorist activities in these countries. Because China is in the "seismic zone" of terrorist activities, the links between terrorist organizations in China and international terrorist organizations are intensified, threatening China's overall national security, and making it more difficult to fight against terrorist crimes in China<sup>205</sup>. Therefore, the analysis of the future development trend of terrorist crimes will help to build a defense line against terrorism and eliminate potential terrorist attacks.

(1) The regional center of terrorist crimes is still obvious

Southeast Asia, the Middle East, North Africa, sub Saharan Africa and Europe will still be the hot spots of terrorist attacks, and the center of terrorist crimes may be transferred to Southeast Asian countries. Along with the collapse of the "Islamic State", Iraq, Afghanistan, Pakistan, Syria and other Islamic countries had reorganize their national order, but the embers of terrorist organizations did not die. Although the "Islamic State" is defeated in Syria and Iraq, it does not mean that terrorism will die out completely. Terrorist organizations may turn into the state of "guerrilla warfare". The internal line will stay dormant and wait for the opportunity to fight back. The external line will speed up to return, reorganize "Jihad" and use the way of "breaking up into parts" to flare Iraq, Syria and Libya, Yemen, Pakistan, Afghanistan, Nigeria, etc. again into terrorist attacks<sup>206</sup>. Countries with wars, disputes and disorder will once again become the natural "source" of terrorist organizations. The international community should still pay close attention to the development trend of terrorism, adopt a positive strategy to combat and prevent terrorism, ensure regional security and stability, and avoid turbulence and conflict.

(2) Local terrorist organizations and "lone wolf" terrorists continue to exist

With the fall of the Islamic State, the vengeful and trained Jihadist fanatics may return to their home country from Syria or other conflict zones, which may cause killings, kidnappings and other forms of harm. At the same time, Islamic States and Al

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<sup>205</sup> XU Yihua: *Studies on Religion and China's National Security in the Globalization Era*, Journal of Middle Eastern and Islamic Studies (in Asia), (2013)7:3, pp.1-21.

<sup>206</sup> Peng Ruxiang, Zhang Aobo, Yang Tao, Kong Huafeng: *Research on the Current Situation and Development Trend of Global Terrorism Based on GTD*, Computer Applications and Software, 2019,36(01), pp.1-5.

Qaeda in the Islamic Maghreb and the Arabian Peninsula will continue to operate successfully and produce deadly terrorist attacks, as the attackers of Charlie Hebdo claimed: "their power, killing and the ability to recruit and inspire followers cannot be underestimated."<sup>207</sup> According to Peter Singer, an American cyber security analyst, "whether or not the cyber attacks carried out by terrorists are advanced, in the future, they will easily get more dangerous tools to carry out terrorist attacks."<sup>208</sup> Terrorist organizations will be further integrated, and the internationalization of domestic terrorism and the domestication of international terrorism will become the main way for terrorism to launch terrorist crimes; terrorist organizations will be more strict, rigorous and secretive; terrorist organizations will pay more attention to the "fission" command system structure of "breaking into parts"; and "lone wolf" terrorism attacks will replace large-scale terrorist attacks, "guerrilla warfare" may become the main mode of terrorist organizations' attacks, "low-cost" terrorist attacks may become the norm.

### (3) From tradition to non-tradition in the field of terrorist crime

The non-traditional security field involves the network, economy, culture, science and technology, information, ecology, environment, food, medicine and many other means of life and production closely related to human life. The criminal activities of cyber terrorism will be more rampant, and the Internet will become an important area and scope of terrorist crime. Synchronization of open net and dark net will become the implementation mode of cyber terrorism activities. The rapid proliferation of Internet derivatives will bring a variety of network defects, which will increase the risk of cyber terrorist attacks. It is estimated that by 2020, more than 30 billion people around the world will use wireless networking devices, which are vulnerable to attack<sup>209</sup>. What's more worrisome is that with the wide access to a large number of deadly and destructive technologies, some experts with a large amount of information in this field may be directly employed by higher bidding terrorist organizations to help them create terrorist attacks, casualties, obtain huge economic benefits, destroy the financial system, etc.

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<sup>207</sup> Peonidis, F., *Freedom of Expression, Secularism and Defamation of Religion: The Case of Charlie Hebdo*. Social Sciences. 2019, 8(10), p.276.

<sup>208</sup> P.W.Singer, Allan Friedman, *Cybersecurity and Cyberwar: What Everyone Needs to Know*, Electronic Industry Press, 2015, p.118.

<sup>209</sup> P.W.Singer, Allan Friedman, *Cybersecurity and Cyberwar: What Everyone Needs to Know*, Electronic Industry Press, 2015, p.94.

## (4) Weapons of mass destruction may become tools of terrorist attacks

Weapons of mass destruction, viral weapons, biological and chemical weapons, etc. may become the main tools for terrorist crimes. It will be more difficult to fight against terrorism in the way of war. Nuclear terrorism, bioterrorism and chemical terrorism are all possible crimes. Terrorists may be able to create new and spreading diseases and viruses to carry out damage. The disease and virus can be transmitted through insect, human contact or Internet of Things package mailing, etc., thus killing thousands of people, plants and animals on which human survival depends<sup>210</sup>. Therefore, increasing the control of weapons of mass destruction, lethality and virus will become one of the important tasks for the international community to fight against terrorism.

## (5) "Soft target" becomes the main target of terrorist attacks

The so-called "soft targets" of terrorists may become their main targets, including the blocking of computer system and the paralysis of electronic banking system<sup>211</sup>. In the future, as the world becomes more global, compact and automated, everyone living on the earth will face great risks. The counter-terrorism front formed in cyberspace will undoubtedly be the most unstable, and each participant claims to improve its ability to deal with cyber terrorist crimes. However, some cyber terrorism attacks cannot be prevented, which may be fatal attacks, such as hacker intrusion and Internet shock virus<sup>212</sup>. Many aspects of the modern world are fragile, because the design of the social operation system is not perfect. Some aspects are designed to be open and easily connected, such as data collection and use, which means that a potential person or everyone can destroy the operation system. Transnational corporations will become the main target of terrorist attacks. With the continuous progress of globalization, transnational corporations may become as rich and powerful organizations as countries.

## (6) Regional terrorist crimes are more active

In Central Asia, Southeast Asia, Europe, sub Saharan Africa and North Africa, the criminal activities of terrorism will surpass those of other regions, and the task of

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<sup>210</sup> Anne-Yolande Bilala & Francisco Galamas, *A Bioterrorism Prevention Initiative: a Collaborative Approach*, *The Nonproliferation Review*, (2015) 22:1, pp.83-92.

<sup>211</sup> P.W.Singer, Allan Friedman, *Cybersecurity and Cyberwar: What Everyone Needs to Know*, Electronic Industry Press, 2015, p.79.

<sup>212</sup> P.W.Singer, Allan Friedman, *Cybersecurity and Cyberwar: What Everyone Needs to Know*, Electronic Industry Press, 2015, p.107.

counter-terrorism of each country will be increased. Joint counter-terrorism will become a powerful means to effectively prevent and combat terrorist crimes.

(7) Sources of financing for terrorist crimes are blocked

The source of funds for terrorist crimes has declined, and the global economy has been affected by terrorism, but it will still bring adverse social consequences. The global economic impact of terrorism peaked in 2014. Countries suffering from armed conflict experience a significantly higher economic impact of terrorism. The economic impact of terrorism is smaller than many other forms of violence, accounting for approximately 0.2% of the global cost of violence in 2018.<sup>213</sup> This figure is significant, at least indicating that compared with other violent transnational organized crime, terrorist crime has a negligible impact on the global economy, which only accounts for 0.2% of the impact of violent transnational organized crime on the global economy. However, this does not mean that terrorist crimes will not have a direct impact on the global economy, investment and security sector's counter-terrorism expenditure; on the contrary, terrorism is a small part of global violent crimes, and the cost of combating terrorist crimes may far exceed the losses it causes. Violence stemming from terrorism and the fear of terrorism creates significant economic disruptions. Terrorism also results in a large number of indirect costs on economic growth, trade, financial markets, tourism, foreign direct investment, etc. Although this kind of economic influence is small, it will still have critical, potential and rapid spread of adverse social consequences.

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<sup>213</sup> Institute for Economics & Peace. Global Terrorism Index 2019: Measuring the Impact of Terrorism, Sydney, November 2019. Available from: <http://visionofhumanity.org/reports> (accessed October 19, 2020)

## Chapter II

### CAUSES AND HARMS OF TERRORIST CRIMES

The causes of terrorism are diverse. From the historical and realistic situation, the emergence of terrorism is the product of the evolution of international political pattern; is a by-product of globalization; is the result of unfair distribution of global resources; and is also the result of the failure of international governance. From the perspective of non-traditional security, the harms of terrorist crimes in the international community are as follows: the security threat is aggravated, local conflicts are heating up, domestic management is out of control, and refugee crisis is triggered; terrorist crime is rising, terrorist attacks are frequent, global management order is disorderly, and everyone is at risk; economic slowdown and financial disorder affect the stability and development of international and domestic society. Both at the macro level and the micro level, it is imperative to combat terrorism.

#### *1. Causes of terrorist crimes*

The causes of terrorism are quite complex. According to Jenkins, an American scholar, the causes of terrorism are "population growth, poverty aggravation, ethnic conflict, inflation, unemployment aggravation, tension between state and non state, refugee flow, migration conflict from poor country to rich country, civil resentment, rapid urbanization, disintegration of traditional state power, globalization, etc."<sup>214</sup> However, it is relatively difficult to explore the substantive causes of terrorism.

In recent years, terrorist attacks by terrorist organizations have been "intensive and frequent",<sup>215</sup> which makes the international community deeply angry and uneasy. At the beginning of 2015, four European countries (France, Belgium, Germany, and Spain) were declared as the primary area of terrorist activities by terrorist organizations, and the atmosphere of terrorist attacks and counter-terrorism suddenly rose. Therefore, it

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<sup>214</sup> Schmid A. ed., *The Routledge Handbook of Terrorism Research*, London: Routledge, pp.6-7.

<sup>215</sup> "Europe Suffered 14 Terrorist Attacks and Threats in 10 Days, a Detailed Account of the Terrorist Moments in Europe", published in: <http://n.cztv.com/wy/652144.html>, last visited on January 18, 2019.

not only raises the question of how to prevent and combat terrorist crimes, but also needs to think about the question that there has been no "standard answer" for a long time - why does terrorism come into being and continue to grow, and even form such a powerful terrorist criminal organization system?

In this regard, the causes of terrorism are diverse. On the one hand, terrorism is not only related to diversified social, political and economic factors, but also needs to be examined through the prism of history, culture, democracy, economy, society and politics;<sup>216</sup> on the other hand, terrorism is becoming more and more powerful, which is difficult to reduce and eliminate. Hegemonism and power politics, indiscriminate defamation and criticism of the beliefs of terrorist organizations in some countries, intensification of national feelings, covert financing of certain terrorist organizations in some countries, and adoption of "double standards" in the identification of terrorist crimes in some countries are closely related to the expand of terrorism.

### *1.1 The product of the evolution of international political landscape*

After the World War II, facing the rapid independent movements' rise of Central Asia, East Asia, Latin America, North Africa and other national countries, especially the rise of the Soviet Union as a socialist country, the United States made a new assessment of the world political situation. In order to consolidate the dominant power of the United States in East Asia, occupy more abundant monopoly power of resources and international discourse power, the United States launched the "Gulf War" to seize the oil control power in the Gulf region. Soon afterwards, the Soviet Union announced its dissolution. So far, the cold war situation after World War II has come to an end. The "Bipolar" of the international political pattern dominated by the two superpowers of the United States and the Soviet Union no longer existed, only the "unipolar" of the United States left. The United States has almost completely realized to control the international political and economic order. In order to further enhance its dominant power in controlling Eastern Europe, Central Asia, the Middle East and North Africa, the United States intervened in the "Somali Civil War" and the "Kosovo War" in spite of the opposition of the international community. In 1998, the United States and Britain

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<sup>216</sup> See Joseph. F. Pliot, *The Causes of Terrorism*, Journal of Organizational Transformation and Social Change, 2009, pp.171-172.

launched an "Operation Desert Fox" military operation against Iraq, which put the United States in a disadvantageous position of international public opinion. Soon after, the "9.11" terrorist attacks made the United States and Americans fully aware of the great power of terrorist attacks. In order to completely eliminate terrorist organizations, the United States and its allies listed most countries in Central Asia and the Middle East as the "axis of evil". The Bush administration believed that there were terrorist organizations and weapons of mass destruction in these countries, and that they must carry out thorough military suppression. In 2001, the U.S launched military strikes against terrorist organizations such as Al Qaeda and the Taliban in Afghanistan, aiming to eliminate terrorist groups. However, this military action did not achieve the expected goal; on the contrary, it made the already chaotic Central Asia, the Middle East and East Asia once again fall into crisis, and terrorist criminal organizations did not reduce but increase. In 2003, Iraq's intruding invasion of Kuwait led to the United Nations forces led by the United States and Britain to carry out military strikes against Iraq, eventually toppling Saddam Hussein's regime and establishing a temporary government of Iraq. As of December 18, 2011, the last batch of American troops had withdrawn from Iraq, and the Iraq war was over. Subsequently, the United Nations forces, composed of the United States, Britain, France, Canada and other countries, actively intervened in Libya's civil war, leaving Libya still in chaos. The escalation of the conflict between Palestine and Israel makes the chaos in the Middle East, North Africa and Central Asia irremediable.

Based on the above analysis of the evolution history of the international political pattern, it is not difficult to find that the birth of contemporary terrorism has profound historical reasons - hegemonism and the global expansion of power politics, leading to the inequality of the international political order<sup>217</sup>. Some national countries are oppressed, violated, ignored, and finally marginalized. The people become refugees who lose their country and dignity. History will always restore the truth. At the beginning of the formation of the "western international system", the United States, Britain and other western countries violated other nations, resulting in the majority of them becoming colonial or semi colonial countries. National dignity and national sovereignty have been lost. In order to win national sovereignty and national

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<sup>217</sup> Wang Jun: *War, Peace and Global Governance*, International Security Research, 2014, 32(06), pp.26-46.

independence, the people of colonial and semi colonial countries are carrying out arduous national liberation struggle. During this period, the liberation organizations that are born in most countries bear the responsibility of national liberation. With the independence of the nation-state, the national liberation movement gradually subsided, and some organizations were dissolved or transformed. However, some independent nation states have no power to speak in international affairs, and they can only depend on the western countries and listen to them. This has been the disappointment and dissatisfaction of the people to the country and the government. Some non-governmental armed organizations, through launching revolutionary coups and so on, demand to change the government and hope to rebuild a new one. At this time, western countries are reluctant to see the "puppet kingdom" supported by themselves be replaced or lose the rich strategic resources of the region. They are looking for excuses to intervene in their internal affairs or directly launch military invasion, resulting in the death of innocent people, destruction of property, displacement of civilians, and no dependence<sup>218</sup>. Under such circumstances, both the government armed forces and the counter-government armed forces have been strengthened. Because of their unwillingness to submit to the western international system or their "disappointment with the state's authoritarian regime"<sup>219</sup>, the counter-government armed forces have been engraved with the mark of terrorist organizations. In order to maintain their own survival, these organizations have been constantly launching military attacks with the United Nations forces and their own government forces organized by western countries. The counter-terrorism alliance, with the United States as its political leader, constantly strikes the terrorists and terrorist criminal organizations that are creating revenge emotions and constantly sublimating through war. Some terrorist organizations (such as the Taliban in Afghanistan)<sup>220</sup>, which were originally secretly supported by some countries to curb the rapid development of other countries, were transformed into new

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<sup>218</sup> According to the statistics of the United Nations report, during the war in Afghanistan, from 2006 to 2009, the number of civilian deaths reached more than 5,600, and that of coalition forces was more than 1,000; in the war in Iraq, the number of direct civilian deaths was 66,081, and that of coalition forces was 4,477. (data from <http://baike.haosou.com/doc/5367288-5603047.html>, <http://baike.haosou.com/doc/5366621.html>, last visited on January 18, 2019).

<sup>219</sup> See Giovanna Borradori, *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida*, translated by Wang Zhihong, China Press, 2005 edition, P. 58.

<sup>220</sup> See Wesley K. Clark, *Winning the Modern War: Iraq, Terrorism and the American Empire*, translated by Zhang Xu, Qingdao press, 2004 edition, p.115.

forces of terrorism in an instant when they were no longer needed but could not be disbanded due to the change of international political situation. From the 2014 Global Terrorism Index Report, it can be seen that Central Asia has become a hot area of terrorist activities, and Iraq has become a "paradise" for terrorist organizations<sup>221</sup>. Therefore, from the above analysis, it should be concluded that the emergence of terrorism is not a simple process, but a complex process through historical screening, and terrorist crimes are not always existing, but with the continuous development of human society and the division and integration of international political pattern, it is the inevitable outcome of the adjustment of international social political order pattern.

### *1.2 By-products in the process of Globalization*

The 21<sup>st</sup> century is also known as "the century of globalization", which indicates that the era of globalization will come as scheduled. Nowadays, the most active factors of globalization are economic globalization and cultural globalization. When globalization is regarded as a modern innovation revolution beyond the traditional national boundaries, economy, culture, ideas, goods, capital, population, etc. flow freely all over the world. The traditional concept of state has been broken, and the innovative ideas have begun to spread beyond the state in a wide range. With the rapid change of society, the diversification of immigrants, the complexity and uncertainty of social economic and cultural exchanges, it seems that the physical sense of national boundaries no longer exists<sup>222</sup>. While globalization brings development opportunities to developed countries, it also promotes the rapid circulation of economy, culture, science and technology, information, etc. of developing countries, and accelerates the maximization of global overall interests.

Under the guidance of economic globalization, cultural globalization spreads rapidly to all parts of the world. The negative effects are also obvious. One of its manifestations is the indivisibility between the accelerated expansion of terrorist crimes and the global economic flow and cultural transmission. Generally speaking, globalization should

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<sup>221</sup> Institute for Economics & Peace: *Global Terrorism Index Report 2014*: [http://www.visionofhumanity.org/sites/default/files/Global%20Terrorism%20Index%20Report%202014\\_0.pdf](http://www.visionofhumanity.org/sites/default/files/Global%20Terrorism%20Index%20Report%202014_0.pdf), last accessed June 7, 2019.

<sup>222</sup> See Lionel F. Stapley, *Globalization and Terrorism, Death of A Way of Life*, London, KARNAC, pp.109-137.

promote the integration and exchange of global economy, culture, science and technology, information, nationality, religion and belief, but this is not the case. In the process of globalization, the fierce confrontation between different economies and the fierce collision of multi cultures lead to the aggravation of the crisis of insecurity conflict between countries and nations, especially between Islamic countries and non Islamic countries, Eastern countries and Western countries, religious moderates, non extremists and extremists. However, the fierce collision between Christian culture, Islamic culture, Judaism culture, Hinduism culture, Buddhism culture and Confucianism and modern civilization not only can't make the culture tend to be the same, but also can accelerate the multi-cultural exchange and present a multi-dimensional trend. Moreover, the terrorism caused by historical reasons, especially the terrorist organizations in the name of Islamic sects, is the most, and Islamic terrorist crimes are the most in Central Asia and the Middle East. In terms of the distribution of global Muslims, Asia is the most concentrated region, with nearly 60% of the countries with Islam as their religion or belief<sup>223</sup>. Compared with Europe, Asian countries have a large number of ethnic groups, which are mixed and live in different places, and have different beliefs. They present cultural conflicts among diverse ethnic groups, religions and beliefs<sup>224</sup>. It is easy to form a "violent culture", but it is difficult to form a "cultural identity". From the religious doctrines believed in by all countries, no matter what sect, its religious ideas almost exhort believers to abandon evil and turn to good, while religious extremism, national separatism and terrorism constantly distort these good doctrines, call on believers to launch "Jihad" against infidels, actively expand terrorist organizations and carry out terrorist criminal activities.

Since the outbreak of the conflict between Pakistan and Israel, the Middle East has always been in a state of frequent wars, especially the national feelings of Arab countries, which hate Israel and Jews. Facing the fact that the Israeli army supported by the western countries invaded Palestine, the Arabs felt very angry. They thought that the once brilliant Islamic civilization would be cut down because of the invasion of

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<sup>223</sup> See Zhang Jiadong: *History, Theory and Practice of Terrorism and Counter-Terrorism*, Shanghai People's Publishing House, 2012 edition, page 18-19.

<sup>224</sup> There are 48 countries in Asia and more than 1,000 ethnic groups; there are 45 countries in Europe and only 170 ethnic groups. It can be said that Asian countries are full of more complex national potential conflicts than western countries. Therefore, religious extremism and national separatism are easy to form terrorist criminal organizations.

Western civilization, especially the Western civilization dominated by the United States, which seriously weakened the Islamic civilization. They were deeply ashamed of the immoral civilization of western countries. The deep-rooted hatred of the rabbis for the western countries stems from "an Islamic world full of self-confidence at the beginning, which was formed after five generations experienced endless pain and humiliation in the contact with the western modern society in the past century"<sup>225</sup>. Therefore, Islamic civilization firmly believes in the superiority of its own culture and maintains that it will not be at a disadvantage, while western civilization believes that its own culture is universal and should be spread and popularized all over the world, which is the root cause of the conflict. In the past few decades, because of the rich oil reserves and oil prices in the Middle East, Saudi Arabia has accumulated rich wealth. It funded a large number of missionaries to build Islamic schools and mosques around the world, publicized Islamic doctrines and behaviors, and promoted "Islamic civilization" in the world. There was a global Islamic craze. The success of Iran's Islamic revolution in 1979 strengthened Muslims' faith in Islam. Therefore, when the U.S. military and its allies invaded Afghanistan and Iraq, a large number of Muslims in the Middle East, Central Asia and South Asia participated in the "Jihad" and were eventually absorbed by extremist organizations (such as Al Qaeda) and became "fighters" of Muslim terrorism. Many Muslims began to go on the road of extremism after they were brainwashed by the declaration of extremist organizations that "good Muslims should fight for the rights of oppressed Muslims, fight for their liberation, and even sacrifice their lives"<sup>226</sup>.

The Islamic extremist organization "Iraq and the Islamic State of Levant (ISIL)" in the Middle East has become the most violent terrorist organization. They think it's time to revive Islamic civilization, and no civilization can compete with Muslim culture. It's the responsibility and obligation of every Muslim to rebuild the past glory of Islamic states, especially to oppose the European and American culture as the main body of western culture. Therefore, the extreme Muslims hope that the missionaries can bring the teachings and behavior of Wahhabi sect, which Islam claims, to every country, so

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<sup>225</sup> Samuel Huntington, *Clash of Civilizations and Reconstruction of World Order*, translated by Zhou Qi, et al., Xinhua Press, 1999 edition, p.238.

<sup>226</sup> Wu Yungui: *Analysis of the Three Forms of Islamic Extremism*, World Religious Culture, 2018(02), pp.1-11.

that Muslims in every country can believe that the Prophet Muhammad is the highest ruler in the world and should lead the whole human society; the Muslim culture is the orthodox culture, and the Muslim belief should be extended to every individual, Islamic civilization is the orthodox human civilization, they do not allow modern civilization to lead Islamic civilization<sup>227</sup>. Although moderate Muslims believe that world civilization is pluralistic and should respect each other, radical Muslims believe that there is only Islamic civilization in the world. Islamic civilization should assimilate other cultures and let other cultures submit to the Islamic world. They publicized Islamic culture and civilization in all countries of the world, spread Islamic extreme ideas through the Internet, recruited personnel, preached Jihad, incited Muslims scattered around the world to participate in the "Jihad" against other countries in order to rebuild the Islamic world and rebuild Islamic civilization. They believed that globalization made western culture suppress and destroy Islamic civilization and should be prevented. For this reason, all the Muslim brothers who suffer from globalization should actively participate in Jihad, resist the invasion of western culture and civilization, and strive to build a great Islamic world.<sup>228</sup> Terrorist organizations and their members refuse to accept the complex and diversified social, political, economic and cultural globalization as a real world. They hope to rebuild the Islamic countries of the old Muslim faith in the Koran, which have no boundary and geographical restrictions at all. From Saudi Arabia, Egypt and other countries to Southeast Asian countries, all belong to the Islamic king and the scope of power and territory should be dominated by Islamic culture, which leads to arrogant ambition to achieve its political purpose.

Extreme religious belief is always the booster of war. As mentioned before, the Koran is about charity. However, religious extremists don't think so<sup>229</sup>. They spread the misinterpreted idea of "Jihad" through two ways. One is to establish religious schools to help those children who can't pay their tuition due to poverty. In these schools, narrow nationalism and violent cultural concepts are used to educate the young generation, but they rarely teach young people the skills and means to make a living; on the contrary, most religious schools are used to select fighters for "Jihad" in the future

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<sup>227</sup> Ibid.

<sup>228</sup> See Lee Kuan Yew, Graham Allison, Robert D. Blackwell, Ali Winnie, *Lee Kuan Yew on China and the World*, translated by Jiang Zongqiang, CITIC press, 2013, p.45.

<sup>229</sup> Wu Yungui: *Analysis of the Three Forms of Islamic Extremism*, World Religious Culture, 2018(02), pp.1-11.

and cultivate their extreme religious beliefs. Second, a large number of missionaries were sent to "mosques" around the world to preach and carry out charity donation activities. Through donating civil public facilities that the government could not complete, charity hospitals and free schools were built, and necessary medical treatment and education were provided to the people, so as to establish their own prestige, and then win the hearts and support of the people, such as the terrorist organizations in early Somalia "The Youth Party" and "the Yemen Branch of Al Qaeda" provide the people with necessary daily necessities in the chaos, thus gaining the support of the people and striving for the people in the future to carry out terrorist activities. Therefore, the vast majority of modern terrorist organizations are religious extremist terrorist organizations<sup>230</sup>. In the name of religion, in order to achieve political goals or meet personal ambitions, they kill innocent people and launch unjust terrorist criminal activities. No matter how justifiable the reasons are, they should be resolutely combated and eliminated.

### *1.3 The result of the unfair distribution of global resources*

Empirical research still fails to clearly conclude that terrorism is related to poverty or any other social, economic, political or psychological factors. However, the occurrence of terrorism may not be directly related to the diverse and heterogeneous social, political and economic factors. With this possibility and the risk of terrorism, it may be able to get some useful conclusions to examine the intersection of these factors. These intersections include: poverty, weak government (especially failed countries), population problems, political alliance, desperate religious extremism, conflicts among morality, culture and religion, economic depression, imbalance of state structure, border penetration of terrorism reproduction, psychological factors of terrorists, etc.<sup>231</sup>.

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<sup>230</sup> 2013 Top 10 terrorist organizations: Taliban (Religion), Al Qaeda Iraq branch (Religion), Boko Haram (Religion), Somali Youth Party (Religion), Pakistan Taliban branch (Religion), Al Qaeda Arabian Peninsula Branch (Religion), Morocco Islamic Freedom Movement (Religion), India Socialist Party, Philippines New People's Army and Colombia's Revolutionary Army are ideological terrorist organizations.(source: *Terrorism Country Report 2013*).

<sup>231</sup> See Joseph F. Pliot, *The Causes of Terrorism*, Journal of Organizational Transformation and Social Change, Volume 6 Number 2, 2009 Intellect Ltd., pp.173-174.

Can poverty directly lead to terrorism? Is poverty the root cause of terrorism? Generally speaking, there are those who steal because of suffering from hunger, those who commit crimes because they are unwilling to live in poverty, and those who burn and plunder because of too much material desire. These can show that poverty may lead to crime and unfair international political order can indeed give rise to primitive impulse to commit terrorist crimes. In the situation of poverty, people who live in a desperate situation are often urged to commit terrorist crimes and become "activists" of terrorist crimes<sup>232</sup>. However, whether poverty is really the root cause of terrorism cannot reach an absolute conclusion.

First of all, some existing terrorist organizations are not created because of poverty, such as the terrorist organization "Red Brigade" in Italy, whose leaders and members are mostly college students and some faculties from the Sociology Department of the University of Trento, Italy, most of them are productive, and they are not living in poverty; and Osama bin Laden, the founder of "Al Qaeda" was not only born in a wealthy family, with no worries about food and clothing, but also a "rich man" with personal assets of more than 500 million US dollars. He had a good education and did not suffer from poverty<sup>233</sup>. Muhammad Atta, one of the members of Al Qaeda who was responsible for the 9.11 terrorist attacks in the United States, was born into a wealthy family in Egypt and received high-quality higher education. He graduated from Cairo University in Egypt earlier, then studied in Hamburg University in Germany, and had an enviable good job in Germany<sup>234</sup>. What on earth made him join Al Qaeda and willing to sacrifice his life? Some scholars who study terrorist crimes think that the vast majority of members of terrorist organizations live above the poverty line or even live in the middle class; most of them have received secondary education or even higher

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<sup>232</sup> According to sina.com, Indonesia's top officials said 514 Indonesian citizens suspected of ISIS due to economic problems. China News Agency Jakarta Branch reported that Tezo, Minister of political, legal and security coordination of Indonesia, said recently that there were signs that 514 Indonesian citizens suspected of having ties with the "Islamic State" organization. They are suspected of joining ISIS due to economic problems and other factors.  
<http://finance.sina.com.cn/world/20150314/172321722240.shtml?cre=sinapc&mod=g&loc=26&r=u&rfunc=8>, last visited on March 15, 2019.

<sup>233</sup> See [http://baike.baidu.com/view/56235.htm?fromtitle=Osama bin Laden & fromid = 1817618 & type = syn#viewpagecontent](http://baike.baidu.com/view/56235.htm?fromtitle=Osama%20bin%20Laden%20&fromid=1817618&type=syn#viewpagecontent), last accessed March 15, 2019.

<sup>234</sup> Cao Xuefei: *Summary and Comparison of Research on the Root Causes of Terrorist Crimes*, Journal Of Xinjiang Police Officer College, 2013, 33(04), pp.9-14.

education<sup>235</sup>. Therefore, it should be understandable that poverty cannot directly promote terrorism. If not, then terrorist crimes should be the most rampant in the poorest areas, which may not be the truth.

Secondly, comparing the top 10 countries with the most terrorist attacks in 2013<sup>236</sup> with their GDP and Hunger Index Ranking (see table 2-1)<sup>237</sup>, it is found that six of the top 178 countries with the most terrorist attacks have GDP ranking in the middle, higher middle income countries and two low-income countries (Afghanistan and Syria), one is in low - middle-income countries (Yemen) and one is in high-income countries (India). Even in Iraq and Pakistan, where terrorism is the most rampant, their GDP is still in the upper middle of the world. Even compared with other countries in Central Asia, the poorest Afghanistan's GDP is in the lower middle of the world. Based on this, it seems to be clear that poverty is not a direct source of terrorism. Comparing the relationship between Hunger Index (generally, Hunger Index 5.0 is the acceptable range) and terrorist attacks in 2013, it is found that terrorist attacks and Hunger Index have an irregular positive relationship. In ten countries where terrorist crimes are rampant, the basic Hunger Index is more than 5.0, some even reach 2-3 times, which seems to show that poverty can directly lead to terrorism.

state	Terrorist attack ranking	Total terrorist attacks	GDP (billion)	GDP index rank	area	HGI
Iraq	1	2852	154.299	56	Asia	-
Afghanistan	2	1443	22.031	101	Asia	-
Pakistan	3	2212	236.625	44	Asia	19.3
Nigeria	4	341	293.107	36	Africa	15
Syria	5	272	0	178	Asia	-
India	6	690	2117.28	8	Asia	21.3
Somalia	7	331	-	-	Africa	-
Yemen	8	424	41.263	85	Asia	26.5
Philippines	9	652	258.517	42	Asia	13.2
Thailand	10	477	412.711	28	Asia	5.8

**Table2-1 Comparison of the top ten terrorist attacks countries/GDP/HGI in 2013**

<sup>235</sup> See Alan B. Krueger and Jitka Male & Ova, *Education, Power, Political Violence And Terrorism: Is There A Casual Connection?*, Working Papers, Research Program In Development Studies, Woodrow School, Princeton University, no.9074, 2002, p.16

<sup>236</sup> 2013 is a year with a high incidence of global terrorism, which has certain representativeness.

<sup>237</sup> Data from Global Hunger Index, <https://www.globalhungerindex.org/>; and Institute for Economics & Peace, Global Terrorism Index 2014, <http://visionofhumanity.org/reports>.

Thirdly, comparing the top ten countries of global GDP with the ranking of terrorist attacks and Hunger Index in 2013<sup>238</sup>, it is found that terrorist attacks still exist in different degrees in the top ten GDP countries. Among the 162 countries in the world, two countries (India and Russia) are in the relatively high-risk zone affected by terrorist attacks, ranking 6th (India) and 11th (Russia), respectively; three countries (China, the United States and the United Kingdom) are in the high-risk zone affected by terrorist attacks, ranking 25th (China), 27th (Britain) and 30th (United States); the other five countries are in the low-risk or lower-risk zone affected by terrorist attacks, which are France, Italy, Brazil, Germany and Japan respectively. Japan ranks 121, with a total number of terrorist attacks of 1. Therefore, the comparison shows that: even in countries with high GDP, the occurrence of terrorist attacks is not low, and the risk of terrorist attacks is still high, which further shows that poverty may not directly cause terrorist crimes. Comparing the top ten countries in GDP with the Hunger Index, we find that the Hunger Index and the terrorist attacks are in reverse fluctuation. In developed western countries such as Europe and the United States, although the Hunger Index is generally less than 5.0, terrorist attacks have not weakened, and even remain at a high level (such as Russia). However, in China and India, the Hunger Index and terrorist attacks showed positive non-equilibrium fluctuations. Looking at the results of these two contradictions, it seems that there is no direct connection between terrorist attacks and poverty, but an indirect connection. (See table 2-2)

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<sup>238</sup> Data from Global Hunger Index, <https://www.globalhungerindex.org/>; and Institute for Economics & Peace, Global Terrorism Index 2014, <http://visionofhumanity.org/reports>.

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state	GDP index rank	GDP (billion)	area	Terrorist attack ranking	Total terrorist attacks	HGI
the USA	1	16197.96	America	30	10	-
China	2	9038.66	Asia	25	12	5.5
Japan	3	5997.32	Asia	121	1	-
Germany	4	3373.33	Europe	83	2	-
France	5	2565.62	Europe	56	5	-
Britain	6	2532.05	Europe	27	11	-
Brazil	7	2503.87	America	72	3	-
India	8	2117.28	Asia	6	690	21.3
Russia	9	2109.02	Europe	11	111	-
Italy	10	1953.82	Europe	62	2	-

Table2-2 Comparison of the top ten GDP countries/ terrorist attacks /HGI in 2013

Of course, based on these data analysis alone, it can be concluded that poverty will not directly lead to terrorism, and it is difficult to reflect the root cause of terrorism. However, such a view may be too absolute. Although poverty cannot directly cause terrorism, it may work indirectly. A country's GDP does not reflect the overall real situation of the country, because in countries where the total GDP seems to be at a high level or higher level, there is no guarantee that wealth will be distributed fairly and reasonably in this country. Because of the wide gap between the rich and the poor, the reality that "the richer the rich, the poorer the poor" is more common; in countries with relatively low GDP, the gap between the rich and the poor will be more widen. In addition, among the ten countries compared, seven of the countries with the highest GDP ranking belong to the western developed countries of "Europe and America"; three belong to Asia, while many developing countries and backward countries in Africa and Latin America do not included. In the Islamic world, such as "suicide" terrorist attacks, those who carry out bomb attacks are called "martyrs". They will get money compensation from Islamic charities or terrorist organizations to comfort their contributions to Islamic "Jihad", which may explain why poor family members or poor people will choose to commit terrorist crimes<sup>239</sup>. According to Jessica Stern's research, in Pakistan, rich families are more willing to spend money to support terrorism than to support their children's participation in the Jihad, but poor families are more willing to

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<sup>239</sup> Cao Xuefei: *Summary and Comparison of Research on the Root Causes of Terrorist Crimes*, Journal Of Xinjiang Police Officer College, 2013, 33(04), pp.9-14.

send their children to see the Jihad, because it will not only win good reputation for them and their families, but also be respected by others. In addition, they can get rich financial compensation, which is enough to make their families live in abundance without being poor. Other families living at a lower level are often bullied and insulted by their own or other ethnic groups. When their family members join terrorist organizations, they can not only get income and promotion opportunities, but also protect other family members from being bullied<sup>240</sup>.

Maslow's "hierarchy of needs" reveals that human behavior depends on the satisfaction of human needs. In order to improve their living conditions, people living in poverty are eager to participate in terrorist organizations to reap rich rewards. People living at a lower or middle level are even more eager to live at a higher level, so they are willing to join terrorism to obtain enough wealth and prestige<sup>241</sup>. According to Dollard's "frustration-aggressive theory", when a person is going to achieve his or her goal, the greater the frustration is, the stronger the attack will take<sup>242</sup>. If we analyze the economic situation, the poor have more setbacks than the rich, so the crime rate of the poor is higher than the rich. In the criminal activities of terrorism, because of the excessive stimulation of terrorists, they are prone to generate excessive frustration and actively carry out terrorist attacks. According to Merton's "relative deprivation theory", when people's environment makes them think that they are in a inferior position, most people will not compare themselves with the past, but prefer to compare themselves with a certain group of reference, so the frustration is far stronger than the frustration caused by absolute frustration<sup>243</sup>. "If a person feels that he has received far less than his reference, he has a strong sense of deprivation, no matter how much he has received in the future."<sup>244</sup> Therefore, poverty does not necessarily produce terrorism, nor does the poor necessarily support terrorism. However, people living in poverty-stricken circumstances, underdeveloped areas and vulnerable surroundings, only when their

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<sup>240</sup> Jessica Stern, *Pakistan's Jihad Culture*, Foreign Affairs, No.1, 2000, p.21.

<sup>241</sup> Kenneth Brown & Chris Cullen, *Maslow's Hierarchy of Needs Used to Measure Motivation for Religious Behaviour*, Mental Health, Religion & Culture, (2006) 9:1, pp.99-108.

<sup>242</sup> See John Dollard, Neal E. Miller, Robert R. Sears, Leonard W. Doob, O. H. Mowrer, *Frustration and Aggression*, Yale University Press, 1968.

<sup>243</sup> See Robert K. Merton, *The Sociology of Science: Theoretical and Empirical Investigations*, University of Chicago Press, 1979.

<sup>244</sup> See Hu Lianhe: *Global Counter-Terrorism Theory: How Terrorism Occurs and How to Deal with It*, China Encyclopedia Press, 2011 edition, page 186.

reference changes, their psychology will produce great imbalances or obstacles, and they are more likely to solve them in extreme ways.

Finally, comparing the top five terrorist attack countries in 2013 with the top five failed countries in GDP index and HGI index (see table 2-3)<sup>245</sup>, it is found that in the top five "failed countries", the terrorist attack countries are not necessarily ranked top. The total number of terrorist attacks is not as high as expected, and so is the Hunger Index. Although the top five countries in terrorist attacks are also ranked as "failed countries", they are not necessarily in the front row. Moreover, these ten countries are all "developing countries and backward countries" in "Asia and Africa", but not "developed countries" in Europe, America and Australia. Based on this, it can be inferred that: the failed state does not necessarily produce terrorism, but the failed state is a good soil for the growth of terrorism. For example, Somalia, Congo, Sudan, South Sudan and Chad, the top five failed countries, are all located in Africa. They belong to countries with fragile and chaotic government organizations. The fragility leads to terrorist organizations entering a place of no one and becoming a "paradise" for terrorist organizations to run rampant. In these countries, the crime of smuggling goods (including weapons and ammunition), trafficking in human beings, drug trafficking and other crimes are rampant. The government is unable to supervise them, and they are governed by virtual borders, which contribute to the clamor of terrorist organizations. They will not worry about being attacked by government forces and interfered by the outside world. The weakness of the government organizations in Iraq, Afghanistan, Pakistan, Nigeria, Syria and other countries in the Middle East makes the region almost become a "home country" of terrorist organizations, such as "Al Qaeda", "Islamic State" and "Boko Haram"<sup>246</sup>.

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<sup>245</sup> Data from Global Hunger Index, <https://www.globalhungerindex.org/>; and Institute for Economics & Peace, Global Terrorism Index 2014, <http://visionofhumanity.org/reports>.

<sup>246</sup> Liu Zhongmin: *Review and Prospect of the Situation in the Middle East*, International Relations Research, 2016(01), pp.20-24.

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state	Failed country ranking	Terrorist attack ranking	Total terrorist attacks	GDP (billion)	GDP index rank	area	HGI
Iraq	11	1	2852	154.299	56	Asia	-
Afghanistan	7	2	1443	22.031	101	Asia	-
Pakistan	13	3	2212	236.625	44	Asia	19.3
Nigeria	16	4	341	293.107	36	Africa	15
Syria	21	5	272	0	178	Asia	-
Chad	5	118	-	9.603	129	Africa	26.9
South Sudan	4	20	13	-	-	Africa	-
Sudan	3	19	43	47.338	78	Africa	27
Congo	2	73	20	13.874	116	Africa	20.5
Somalia	1	7	331	-	-	Africa	-

**Table2-3 Comparison of the top 5 failed countries and top 5 terrorist attacks / GDP /HGI in 2013**

To sum up, the "headquarters" of terrorist organizations are almost all in developing and backward countries in Asia, Africa and Latin America, rather than developed countries in Europe and America. Developed countries such as Europe and the United States control more than two-thirds of global GDP output through unequal economic flow principles such as economic sanctions and setting trade barriers, which directly lead to economic weakness in other countries, aggravating poverty, increasing counter European and American sentiment, and endless terrorist criminal activities. Therefore, one of the fundamental reasons for the rampancy of terrorist crimes today is the predatory distribution of global resources and interests, the accelerated operation of global economic interests due to the emergence of globalization, the existence of unequal international political and economic order, resulting in a growing number of regional poor countries, resulting in a serious polarization between the rich and the poor<sup>247</sup>. The confrontation between the rich and the poor is becoming increasingly acute. The rich countries break through the constraints of international law, speed up the plunder of the resources of the poor countries, force the poor countries to accept their political ideology and cultural ideas, resulting in the loss of national dignity of the poor countries (developing countries and backward countries).Some western countries

<sup>247</sup> Lan Di: *Deconstruction of Social Factors of Contemporary International Terrorism Crime*, Journal of Beijing Police College, 2016(03), pp. 86-92.

do not respect the nation-state and Muslims from the bottom of their hearts<sup>248</sup>, which leads to the sudden increase of ethnic religious terrorist crimes. According to statistics, nearly 500 million people live in countries full of risks and conflicts, of which more than 200 million live below the poverty line.<sup>249</sup>

Global resources and wealth are in the hands of a few countries, most of which are developed countries. However, in order to obtain the rich political capital and available resources of developing or backward countries, developed countries use their discourse power in the international political sequence to promote hegemonism, power politics and cultural invasion. The frequent imposition of economic monopoly and sanctions on developing countries has resulted in "extreme poverty" in the economy of most developing or backward countries. People's lives are poor and the government is unable to control them, which provides a natural fertile ground for the growth of terrorism. It can be seen that poverty does not directly lead to terrorism; however, poverty can lead to the emergence and formation of a variety of social problems. The powerful combination of poverty and other factors is the original driving force to stimulate terrorist crimes, which will inevitably urge some poor people to actively join in terrorist organizations and act as pawns to commit crimes, seriously endangering the security of the international community and the local security of all countries, and becoming the "enemy" faced by all countries in the world.

#### *1.4 Consequences of failure of national governance*

One of the main forms of modern state governance failure is "failed state"<sup>250</sup>. Since the concept of "failed state" was put forward by Gerald Herman and Steven Ratner in 1992, the serious problems of "political recession, economic collapse and internal

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<sup>248</sup> "The Attack On Charlie Hebdo: A General Analysis And In-Depth Inquiry", published by China National Religion Network: <http://www.mzb.com.cn/html/report/1501224274-1.htm>, last visited March 1, 2019.

<sup>249</sup> See IEP, *2014 Global Peace Index Report*, <http://economics-andpeace.org>.

<sup>250</sup> During the Clinton administration, Secretary of State Albright divided modern countries into four types: countries within the international system (advanced industrial countries), transition countries (emerging democracies or transition countries), failed countries and rogue countries. (see Fan Liqiang, "Failed Countries" And Ethnic Conflicts, Heilongjiang Ethnic Series, 2014, issue 4).

conflict"<sup>251</sup> in some countries have led the international community to believe that these countries pose a threat to international security, so it is necessary to adopt the "trusteeship" system to deal with the crisis faced by these countries.

As mentioned earlier, "failed states" do not necessarily result in terrorist crimes. However, it provides a good environment for the birth of terrorist crimes. The judgment of "failed state" is based on the premise of sovereign state. Whether a country is included or not is usually measured by "Failed State Index". The factors related to this include: population pressure, the scale of refugee and homeless flows, historical forces of seeking revenge, population and brain drain, economic development level of various groups, poverty level, and economic recession speed. And state behavior is regarded as illegitimate or sinful, ineffective public service, lack of public goods, interruption of the rule of law, widespread violation of human rights, self described integration of security forces, serious division of factions within the elite ruling class, interference by foreign or foreign political forces, etc.<sup>252</sup>. Therefore, the "failed state" often has the following characteristics: (1) the state loses control over its territory. It is impossible to use legitimate forces to protect sovereignty and territorial integrity, and domestic counter-government forces are in a strong position; (2) there is excessive corruption in the country, and political party leaders seize benefits from the existing or sold state property, and the legitimate power of the country is eroded; (3) the ability to provide public services and public products is lost, and the survival needs of the people cannot be guaranteed; (4) the diplomatic ability of the country is paralyzed, unable to effectively start cooperation in international affairs, etc.<sup>253</sup>. Based on this, the state authority of "failed state" is lost, the ability to control social order is lack, the state power is weak, the ability to resolve conflicts is low, and ethnic conflicts occur frequently.

The non-traditional security emphasizes "human security" and takes "human" as the center, but "failed countries" cannot fundamentally guarantee their national security. The loss of state authority, the fragility of government function and the inability to

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<sup>251</sup> See Cheng Duowen: *Research on the Causes of "Failed Countries" From the Perspective of "Countries"*, International Relations Research, 2014, issue 5, pp.106-120.

<sup>252</sup> Cheng Duowen: *Research on the Causes of "Failed Countries" From the Perspective of "Countries"*, International Relations Research, 2014, issue 5, pp.106-120.

<sup>253</sup> Betz, F., *Political Theory of Societal Association: Case of the Failed State of Syria—Part 2*. Open Journal of Social Sciences, (2020) 8, pp.504-529.

undertake the responsibility of state integration cause the partial or total loss of state integration capacity. The state is unable to provide public services and public products to the people thus the people do not agree with the state as its political leader. The state is in a state of "anarchy" (such as Somalia, Yemen), but the state and government lack sufficient authority and cohesion to be recognized by the people. However, ethnic, racial and religious organizations can effectively obtain the support and recognition of the people. These organizations gradually become an active political force domestically and begin to challenge the authority of the legitimate state and government.

The loss of political authority leads to the predicament of stagnation of economic development, resulting in the shortage of materials and resources; the conflict among ethnic groups leads to the rise of civil conflicts, and the state is unable to control the ethnic massacres among ethnic groups (such as Rwanda ethnic massacres), which aggravates the state's rapid trend towards disorder and violence. In order to survive, a large number of people and refugees have to seek effective security protection, join ethnic groups or religious organizations, and carry out terrorist attacks<sup>254</sup>. If violent conflicts, wars and terrorist activities within a country cannot be controlled and eliminated for a long time, it will bring "spillover" effect and affect neighboring countries. Refugees and homeless people across national boundaries and gather into a large-scale refugee flow, which directly threatens the security of neighboring countries; terrorist crimes will also cross national boundaries and wander around the border of neighboring countries, forming an unstable threat and danger<sup>255</sup>.

Therefore, the reason why terrorist crimes are born and grow rapidly in failed countries: on the one hand, due to the failure of state governance, the state is unable to control its development lifeline, to form an effective national power cohesion center, to provide public services and public products. The citizens' lives and properties are in danger, so is their sense of security, which provides soil to the spread of terrorism; on the other hand, the improper intervention and interference of foreign forces aggravate the deterioration of the domestic conflict situation, resulting in the public's general resistance and counterpathy of external influence. Based on this, the failure of state

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<sup>254</sup> Lan Di: *Deconstruction of Social Factors of Contemporary International Terrorism Crime*, Journal of Beijing Police College, 2016(03), pp. 86-92.

<sup>255</sup> See Fan Liqiang: *"Failed Countries" And Ethnic Conflicts*, Heilongjiang Ethnic Series, 2014, issue 4, pp.43-49.

governance will accelerate the formation and rapid strength of terrorist criminal organizations.

## *2. Harm of terrorist crimes to the international community*

Terrorism, in the final analysis, is a kind of brutal criminal activities. Whatever its purpose (legitimate or illegitimacy), as long as it is committed against innocent civilians and public property, it should be severely condemned and completely eliminated. At the beginning of 2015, "Islamic State" (ISIL) terrorist organization announced through online video that it had kidnapped two Japanese citizens, and asked the Japanese government to pay \$200 million within 72 hours; soon after the ransom was not fulfilled its "beheading" process of killing one of the two hostages through online video broadcast made the international community outraged. After that, ISIL announced that only when the Jordanian government released the detained terrorist Saida Rishavi (female) as soon as possible could guarantee their safety. Otherwise, it would kill another hostage and Casas Bei, the captured Jordanian pilot. Before the Jordanian government responded to this, ISIL broadcast a video of beheading the Japanese hostage, which pushed the situation to an unknown direction<sup>256</sup>. In this way, terrorist organizations may commit acts of violence in any country, against any citizen, regardless of the country, nationality, race, gender, age, intellectual level, which will not prevent terrorist organizations from committing acts of violence. Only one thing can be affirmed: terrorist organizations are extremely destructive to human society, and it is the duty of all countries in the world to resolutely combat and eliminate terrorist crimes<sup>257</sup>.

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<sup>256</sup> "The Second Hostage Was Killed Shocked The World Is Threatened To Kill More Japanese", <http://mil.news.sina.com.cn/2015-02-02/1020820316.html?cre=sinapc&mod=g&loc=18&r=u&rfunc=0>, last visited 2 February 2019.

<sup>257</sup> According to incomplete statistics, in January 2015 alone, terrorist attacks and violent conflicts in Iraq have resulted in more than 3,600 deaths and injuries. Of these, 790 civilians were killed and 1,469 injured; 585 members of the Iraqi security forces were killed and 770 injured. On the official website of the United Nations: <http://www.un.org/chinese/News/story.asp?NewsID=23386>, last visited 2 February 2019.

### *2.1 Increased threat and local conflicts*

At present, in order to deal with the increasingly serious potential threats or dangers in politics, economy, culture, science and technology, military affairs and information, most countries adopt multilateral diplomatic strategies, diversified economic models, and multi-cultural input and output to prevent the subversion of national sovereignty, defense against the damage of national interests, and protect the security of the country and the people. However, the international community (the United Nations) is still in the "one super many strong" political pattern dominated by the United States, and with US dollar as the "world currency". The international community's voice on global political, economic and cultural development is still monopolized by western countries. In recent years, the western developed countries led by the United States claimed they are committed to improving their relations with developing countries in Asia, Africa, Europe and Latin America, aiming at strengthening economic cooperation and assistance, enhancing political mutual trust, and promoting peaceful development plans. But the equal dialogue mechanism between developed and developing countries should be established through the United Nations, so as to minimize interference in the internal affairs of sovereign countries, eliminate the invasion of hegemonism and power politics on the sovereignty of other countries, create an international social environment for peace and development, and restore the international economic crisis as soon as possible. The devaluation of the U.S. dollar and the debt crisis in Europe are the crises that human beings have to solve, so as climate warming, environmental pollution, food shortage and disease. However, the new international political and economic pattern that has deviated from the "justice track" has strong national feelings<sup>258</sup>. In fact, the western developed countries do not really give up the control over the eastern countries, nor really want to give the global developing countries equal status in the United Nations. Terrorist crime, which is widely concerned by the international community, brings certain obstacles and disadvantages to the construction of equal political, economic and cultural order of the international community, which seriously endangers the international security.

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<sup>258</sup> Li Jingzhi: *International Changes and the Construction of A New Type of Relationship between Major Powers*, New Horizon, 2015(01), pp.118-122.

Terrorism, known as the "political plague" of the 20th century, has become a "cancer" threatening the national security of all countries<sup>259</sup>. Modern countries are generally trapped in the dilemma of intertwined traditional and non-traditional security issues.<sup>260</sup> The inherent traditional security issues tend to ease temporarily due to the end of the cold war. The non-traditional security issues begin to rise to the focus of national security. Terrorism has become a violent crime with great destructive effect in the field of non-traditional security due to its particularity. Nowadays, terrorism, organized crime, national separatism and religious extremism are closely related to each other. They jointly commit terrorist crimes and threaten the security of the international community and the domestic security of all countries.

(1) To break the dynamic balance of the international political order, the desire of developed countries to convey their ideology to developing and backward countries is even stronger. After the 9.11 terrorist attacks on the United States, the Bush administration responded quickly and launched military operations in Iraq, Afghanistan, Palestine and other countries with unstable political situation. In addition to completely eliminate the existence of terrorism such as Al Qaeda, the United States expanded the sphere of influence and established its status as a global leader in Central Asia, South Asia, the Middle East and other regions. Since then, terrorism has not been eliminated but has grown stronger and stronger. Countries in the Middle East, Central Asia, Southeast Asia, Eastern Europe, Central Africa, North Africa and sub Saharan regions with weak strength and relatively backward economy have begun to feel the danger of terrorism and have asked for the assistance of international allies headed by the United States. In this situation, the United States and its allies play the role of "World Police",

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<sup>259</sup> Hu Lianhe: *Global Counter-Terrorism Theory: How Terrorism Occurs and How to Deal with It*, China Encyclopedia Press, 2011 edition, page 157.

<sup>260</sup> Since the outbreak of global earthquakes, tsunamis, SARS, Ebola and other disasters, the United Nations, led by the United States, has begun to shift its focus to non-traditional security governance around the world. However, the United States and its allies have not relaxed their military deterrence and defense against other countries, actively deployed "NMD", "TMD" and other strategic plans, expanded the establishment of overseas troops and military bases, and are ready to intervene in disputes over other domestic affairs at any time. According to the report on the structure of US military bases in fiscal year 2013 issued by the Pentagon, the United States has 871 military bases in its own civil engineering, 598 overseas bases, and more than 400,000 overseas troops, covering six continents and four oceans, and covering more than 40 countries around the world. Only in the Asia Pacific region and the Indian Ocean region, there are 7 base groups, accounting for 42.7% of the total number of overseas bases.  
[http://news.xinhuanet.com/mil/2014-06/13/c\\_126613027\\_4.htm](http://news.xinhuanet.com/mil/2014-06/13/c_126613027_4.htm), last visited: September 20, 2019.

actively expanding military bases and stationed troops overseas for the sake of maintaining regional security, so as to protect the region from terrorist activities. In this regard, it should be affirmed that the United States and its allies have contributed to maintaining local security, preventing mass genocide and resolving the possibility of World War III. However, the United States and its allies do not take this as the ultimate goal, but take the existing military bases as the extension of its own territory, build a global strategic deployment plan, take the "nibbling" approach, and gradually establish an effective military base network, so as to make positive preparations for the implementation of its overseas hegemony and power.

(2) The destruction of world peace and development has led to the intensification of regional conflicts among countries and the sharp rise in the number of international refugees. Today, many countries are threatened by terrorism to varying degrees. Afghanistan, Iraq, Pakistan, Nigeria, the Philippines, Libya, Syria and other countries have become the most serious areas of terrorism. The escalating civil wars in Syria, South Sudan, Somalia, Yemen, Ukraine and other countries provide a good opportunity for the rapid development of terrorism. Europe is still the most peaceful region in the world, while Asia is the most unstable region in the world, especially in Southeast Asia, West Asia, Central Asia and the Middle East. Syria has become the least peaceful country in the world, followed by Afghanistan, South Sudan, Iraq, Somalia, Sudan, Yemen and other countries. In 2020, the level of global peacefulness deteriorated, with the average country score falling by 0.34%. Peacefulness has declined 2.5% since 2008 with 81 GPI countries recording deterioration, and 79 improving. 15 of the 23 GPI indicators are less peaceful on average in 2020 when compared to 2008. 2/3 GPI domains deteriorated over the past decade, with Ongoing Conflict deteriorating by 6.8 % and Safety and Security deteriorating by 3.3%. Terrorism and internal conflict have been the biggest contributors to the global deterioration in peacefulness<sup>261</sup>. The excessive acts of government prevention lead to the people's sense of insecurity, especially in the countries with years of civil war and crime, in addition to the continuous terrorist attacks, through the Internet and other media, audio and video images to publicize their terrorist beliefs, causing people's psychological fear and uneasiness. Many times of propaganda can easily encourage those believers with

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<sup>261</sup> Institute for Economics & Peace, *Global Peace Index 2020: Measuring Peace in a Complex World*, Sydney, June 2020. Available from: <http://visionofhumanity.org/reports> (accessed 19 October, 2020).

extreme ideas to join terrorist organizations, actively commit terrorist crimes and undermine regional peace<sup>262</sup>.

(3) Hindering trust among states, creating border tensions and trying to undermine the establishment of a global counter terrorist coalition. The concept of "international society" itself only refers to a moral concept. It does not have a real organizational form and state, and it does not have a real binding force; the real organizational form is sovereign state. Sovereign states have different views on the issue of terrorism. Some countries think it's a terrorist organization, while others don't think it's a terrorist criminal activity. Some countries severely crack down on while others deal with it as a general crime. Some countries even secretly support organizations recognized as terrorism to curb the development of their neighbors. Different views will inevitably lead to different positions, which make the loose counter-terrorism alliance in the situation of "united outwardly but divided at heart"<sup>263</sup>. Although the alliance will also declare its commitment to fight terrorism, it may make some concessions to terrorist organizations in its own interests (such as the exchange of hostages between the Jordanian government and ISIL). If the sovereign states can't unite to fight against terrorism and act independently, the ultimate goal of joint counter-terrorism will be more difficult to achieve, and terrorist criminal activities will be crazier.

## *2.2 Increasing crime and frequent terrorist attacks*

In order to survive and develop, terrorist organizations need to recruit members, purchase weapons, and ensure the living supplies of their members. They will try their best to obtain funds and carry out terrorist criminal activities and will form an alliance with organized criminal groups (some transnational organized criminal groups belong to terrorist organizations or terrorist organization fund providers) to carry out transnational criminal activities for huge profits. Some transnational criminal groups will commit crimes in the name of terrorist organizations which will result in the

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<sup>262</sup> Ibid.

<sup>263</sup> Fan Juanrong: *The Grim Situation of International Terrorism and Its Causes*, Modern International Relations, 2019(09), pp.50-59.

interweaving of terrorist organizations and transnational organized criminal groups, and posing a huge threat to the security of the international community<sup>264</sup>.

At present, transnational organized crime mainly exists in the fields of human crime (smuggling and trafficking in human beings and labor force, trafficking in women and children, etc.), drug crime (manufacturing, trafficking, etc.), environmental crime (illegal trade in wild animals, illegal trade in wood products, illegal trade in electronic consumer goods, illegal trade in consumer goods, etc.), goods crime (smuggling fake and inferior goods, trafficking in fake drugs, smuggling of arms and weapons, etc.) Among them, the main profits of organized crime are still the illegal drug trade, including heroin and amphetamine drugs, accounting for one-third of the total profits, and there is a trend of further expansion; the other one-third of the profits are mainly from smuggling illicit goods and counterfeit drugs, resulting in more and more rampant drug trafficking. The remaining third of the profits are obtained by smuggling wooden products<sup>265</sup>. This illegal market is characterized by diversity, vitality, creation and innovation.

However, the economic backing of terrorist organizations is also mainly from drug trafficking. Afghanistan is still the world's largest drug producer, and terrorist organizations control almost half of Afghanistan's drug sources<sup>266</sup>. In addition, terrorist organizations also obtain funds by smuggling oil goods, trafficking in arms, trafficking in human beings, extortion, illegal trade, robbery of goods, financial fraud (often using the Internet to commit crimes). From a global perspective, although the proportion of population crime is small, the harm caused to victims is very huge, which is still a high-income and low-risk form of crime. Owing to huge profits, it has gradually become one of the main means for terrorist organizations to obtain funds.

The crime of illegal trade in goods is often called the "soft form" of crime, and the violent forced trade is generally considered fair. Although this kind of crime has

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<sup>264</sup> John T. Picarelli, *Osama bin Corleone? Vito the Jackal? Framing Threat Convergence through an Examination of Transnational Organized Crime and International Terrorism*, *Terrorism and Political Violence*, (2012) 24:2, pp. 180-198.

<sup>265</sup> Sule Toktas & Hande Selimoglu, *Smuggling and Trafficking in Turkey: An Analysis of EU-Turkey Cooperation in Combating Transnational Organized Crime*, *Journal of Balkan and Near Eastern Studies*, (2012) 14:1, pp.135-150.

<sup>266</sup> See Guliazati Turson, *Research on Transnational Issues in Central Asia*, Central University for Nationalities Press, 2013 edition, page 50.

potential negative results, such as selling dangerous goods and evading government taxes, however, compared with other forms of crime, the risk of goods smuggling is relatively low and the profit is relatively high, which has become one of the ways for organized crime and terrorism to obtain funds.

Environmental crime has become one of the ways for organized crime to obtain profits. There are abundant natural resources in some countries in Asia Pacific region, Africa and Latin America. It has also become a way for terrorism to obtain funds.<sup>267</sup> Therefore, from the perspective of the whole field of terrorist organization crime in the world, the most direct way for terrorist organizations to obtain profits is to sell drugs, smuggle human beings (such as trafficking women and children to become sex slaves), smuggle goods, etc., and create some new crimes, such as Somali pirates. Terrorism brings not only fear and panic, but also disorder and security collapse of the global good governance.

### *2.3 Economic slowdown and financial disorder*

The consumption of economic cost caused by terrorism is much higher than the loss of property and personal injury caused by terrorism. It goes without saying that national security, military spending and insurance costs are more serious than the cost of the original war. Moreover, terrorist activities increase market uncertainty, reduce foreign investment, change trade rules, change consumption habits and savings behavior<sup>268</sup>. In the long run, sustained terrorist activities will have a greater impact on the economic development of the region<sup>269</sup>.

The losses caused by terrorism are usually divided into two parts: primary, direct loss and secondary, indirect loss. The main loss refers to the direct and immediate damage caused by terrorist actions, such as loss of life, injury and property destruction, which

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<sup>267</sup> See Institute for Economics & Peace, *Global Peace Index 2020: Measuring Peace in a Complex World*, Sydney, June 2020. Available from: <http://visionofhumanity.org/reports> (accessed 19 October, 2020).

<sup>268</sup> See Frey, B. et al., *Calculating Tragedy: Assessing the Costs of Terrorism*, Journal of Economic Surveys, Vol.21, No.1, 2007.

<sup>269</sup> According to the International Monetary Fund, the economic loss of the United States accounted for 0.75% of its GDP in 2001, equivalent to US \$7.5 billion. In 2010, foreign direct investment decreased by 30% in Nigeria, where the terrorist activities of Boko Haram increased. (See International Monetary Fund, *World Economic Outlook: The Global Economy after September 11*, Washington DC, 2001.)

can be seen after the terrorist attacks; the indirect loss is more complex than the direct loss, which mainly refers to the "sequelae" caused by terrorist attacks. Sequelae can only appear after a period of time, such as economic recession and the state security spending has increased, consumption patterns have changed, foreign direct investment has plummeted, trade has declined, and tourism has declined. In fact, it is very difficult to assess the damage caused by terrorist crimes on a global scale, but the damage caused by an attack can be estimated. For example, the research found that the losses caused by the "9.11" incident in the United States were about \$3.5 billion to \$10.9 billion<sup>270</sup>. However, if terrorists use biological and chemical weapons (such as gas, virus or bacteria) to make terrorist attacks, such damage is basically difficult to assess. However, studies have shown that the impact of increased terrorist criminal activities on overseas direct investment is different in developing and developed countries. In developing countries, such direct investment will be greatly reduced, while in developed countries, its investment will not be greatly affected. For example, the United States and Nigeria show differences in overseas direct investment. After the 9.11 terrorist attacks in the United States, their overseas investment has been largely unaffected, while Nigeria has declined by 30%<sup>271</sup>.

In any case, the terrorist crime is a kind of destructive behavior in the final analysis. Its emergence and occurrence is not to increase the total wealth value of the society, but to reduce the reserves of the total wealth of the society, destroy the inherent law of the economic cycle, so that the total GDP of the world is reduced, the insurance premium is increased, the government consumption is increased, the consumption mode of consumers is changed, etc., directly or indirectly impacts the speed of economic operation. With the decrease of foreign investment and the sharp decrease of consumer spending, people's enthusiasm to actively participate in economic activities was

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<sup>270</sup> See Rose, A. Z. & B. S. Bloomberg, *Total Economic Consequences of Terrorist Attacks: Insights from 9/11*, Create Homeland and Security Center, Paper 190, 2010, [http://research.create.usc.edu/published\\_papers/190](http://research.create.usc.edu/published_papers/190), (accessed 7 October 2019).

<sup>271</sup> See Enders, W. et al., *The Impact of Transnational Terrorism on U.S. Foreign Direct Investment*, Create Homeland and Security Center, Paper 55, 2006, <http://research.create.usc.edu/published-papers/55>, (accessed 7 October 2019); Adebayo A.A., *Implications of Boko Haram Terrorism on National Development in Nigeria*, Mediterranean Journal of Social Sciences, Vol.5, No.16, 2014.

replaced by the damage caused by terrorist attacks<sup>272</sup>. They began to reduce their daily expenses as much as possible, the amount of savings increased; the normal financial operation order was broken, resulting in the slow speed of global economic cycle. The decrease of social wealth and social stock funds, and the occurrence of inflation memory will affect the stability and development of the international and domestic society, and more likely to lead to new terrorist criminal activities, threatening the national security of all countries.

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<sup>272</sup> Institute for Economics & Peace, *Global Peace Index 2020: Measuring Peace in a Complex World*, Sydney, June 2020. Available from: <http://visionofhumanity.org/reports> (accessed 19 October, 2020).

## Chapter III

### THE VALUE ORIENTATION AND PATH OF COUNTER-TERRORISM

The greatest harm of terrorist crimes lies in the destruction of global security. Therefore, the value of counter-terrorism includes the theory of human existence, the theory of international relations, and the theory of security priority and so on. From the perspective of non-traditional security the counter-terrorism value should be to protect national interests and international security interests under the framework of the United Nations, and ensuring national security and human security is the premise of counter-terrorism; at the same time, to defend the bottom line of human rights and fair justice. Human rights, including those of terrorists, should not be arbitrarily violated in the name of counter-terrorism. There are three counter-terrorism modes in the world today: "war mode" (military strike), "criminal justice mode" (judicial governance) and "global governance mode" (social governance). However, the war mode basically failed when the United States withdrew its troops from Iraq and other countries, while judicial governance was in the stage of continuous trial and improvement due to the poor connection between domestic laws of various countries. Global governance was influenced by various factors among countries, and became a counter-terrorism mode that was constantly trying to break through and improve. At present, most countries adopt intelligence early warning, quick disposal, elimination afterwards and other ways to effectively control terrorist crimes, thus continuously weakening the global viability of terrorism. Counter-terrorism needs comprehensive measures to address both the symptoms and root causes.

#### *1. Value orientation of counter-terrorism*

In essence, terrorist crimes should be violations of national security and global security interests. The new concept of national security holds that national security

should cover not only traditional security, but also non-traditional security<sup>273</sup>. According to the modern concept of national security, political security, military security, economic security, social security, scientific and technological security, information security, ecological security, cultural security, environmental security, human security and other security factors should be included in the field of national security strategy. Terrorist crimes seriously threaten the living space of human society, violate national security, penetrate into the marrow of traditional and non-traditional security fields, and threaten the security and stability of international and domestic society. National security is the premise of safeguarding the sovereignty, status, territory and other national elements of a country<sup>274</sup>. Without national security, there will be no access to global security interests, which will not guarantee the basic human rights of a country. Therefore, the theoretical foundation of counter-terrorism is mainly based on the consideration of the security of sovereign states, the need of sovereign states to protect human rights and the dynamic balance of state power.

### *1.1 The theory of giving priority to protecting national security and global security interests*

According to the new concept of modern national security, national security and international security need to consider a large number of non military and military factors, including economic organizations, political organizations and other factors. To some extent, compared with the past, modern national security is more affected by a country's diplomacy, economy, intelligence, information and other factors. The level of a country's national security strategy will not only depend on its military strength, but also on the comprehensive evaluation of various complex factors, involving the close relationship among the political, economic, military, social, intelligence, information and industrial structure systems<sup>275</sup>. The signing of the Peace Treaty of Westphalia in 1648 established the status of sovereign state as the subject of international relations

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<sup>273</sup> Satish Chandra & Rahul Bhonsle, *National Security: Concept, Measurement and Management*, Strategic Analysis, (2015) 39:4, pp.337-359.

<sup>274</sup> Ibid.

<sup>275</sup> Rasim M. Alguliyev, Yadigar N. Imamverdiyev, Rasim Sh. Mahmudov, Ramiz M. Aliguliyev, *Information Security as a National Security Component*, Information Security Journal: A Global Perspective, Published online: 20 Jul 2020.

and international law. Since then the world political arena has always been dominated by mutual threats between countries. National interests, capabilities and goals have become potential and hidden forces of world politics, leading international political affairs. However, since the 21st century, the national sovereignty of sovereign countries is still facing severe challenges. International affairs are increasingly affected by big countries. Global intergovernmental cooperation organizations have broken the national border restrictions, jointly cope with the risks of the international community, and maintain international security, such as the United Nations, the European Union and the African Union<sup>276</sup>. Contemporary national security faces the challenge of interweaving traditional security and non-traditional security.

*1.1.1 Protect national security and international security interests within the framework of the United Nations*

Under the concept of traditional security, the key factors affecting national security are politics and military. A country's security depends on its extraordinary political activity ability and strong military reserves. In the perspective of non-traditional security, the ultimate goal of national security is "human security". Human security should be the core of national security, only to ensure the people of a country, the national security of the country can be guaranteed. People's security includes not only individual security, but also group security and the security of the whole mankind. The essence of individual security lies in the protection of individual rights, the respect and recognition of individual identity and status in social life, the guarantee of full rights and freedom, and the enjoyment of the well-being shared by a country to the people. Group security represented by various non-state organizations plays an important role in the field of non-traditional security. When non-traditional security is becoming the focus of security issues, various non-state organizations are gradually active and play an important role in the national political field. They tend to strengthen gradually, and their political influence is further expanded.<sup>277</sup> Therefore, seriously considering the interests of non-state organizations will be one of the reasons for ensuring national security. The whole mankind security mainly looks at the environmental problems of

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<sup>276</sup> See Charles Kegley Jr., *World Politics: Trends and Transformation*, 12<sup>th</sup>ed. (Belmont, CA, 2009), p.12.

<sup>277</sup> See Wang Yizhou: *NGOs in International Politics*, Oriental, 1995, issue 5. pp.22-30.

human existence from the perspective of the whole human existence. This kind of security involves many fields, such as natural disasters, human made disasters, inevitable disasters under the joint action of nature and human beings. Therefore, the threat of human security may come from home or abroad; it may come from natural disaster or man-made disaster; it may come from foreign invasion or daily life. Some scholars believe that the factors that threaten human security mainly come from war or civil strife or internal conflict, poverty or the unsustainable minimum living security, natural disaster or natural disaster<sup>278</sup>; the United Nations Millennium Declaration on human beings believes that human security threats come from threats of one's own country, threats of other countries, threats of race, threats of crime (organizations, groups, individuals), natural disasters threats, etc.<sup>279</sup> In this regard, human security is not only the protection of individual life and rights, but also a broader topic about the overall peace and development of human beings. It goes beyond the protection of human rights in the traditional sense and the limitation of national boundaries. The threat of damage to human security has been beyond the control of a country. For example, terrorism and criminal activities in Central Asia, North Africa and sub Saharan region, wars and disputes within the country, resulting in a large number of civilian displacement into refugees, hunger, disease, plague, natural disasters, all of which threaten the safety of people living in the region at all times. Manmade disasters are also rampant, such as wars, crimes and transnational crimes, uncertain environmental degradation, food, water, ecology, information, science and technology, and the Internet, which will constitute potential unsafe factors for human survival.

As an international organization for global peace, stability and development, the United Nations has constantly reaffirmed in its resolutions the importance of maintaining regional and global peace and development, paying attention to human security, jointly combating global criminal activities, and committed to solving the common problems of human survival and development, such as global climate change, desertification, ozone hole, hunger and poverty and disease (AIDS / SARS / Ebola). The UN calls upon all Member States of the world to be patient and restrained in the use

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<sup>278</sup> See Astrid Suhrke, *Human Security and the Interests of States*, Security Dialogue, Vol. 30, No. 3 ( 1999 ), pp.265-276.

<sup>279</sup> See United Nations Millennium Declaration, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Millennium.aspx>, last visit at 19 October, 2020.

of nuclear, chemical, biological and auxiliary means of delivery, crack down on the smuggling and trafficking of such weapons, prevent such weapons of mass destruction from falling into the hands of terrorist organizations or extremists which will certainly pose a threat to the security of the international community, endanger the domestic security of sovereign states and cause the destruction of human society. The conflict situation in the Middle East, Central Asia, North Africa, Iraq, Afghanistan, Libya, Syria, Somalia, Cyprus, Democratic Republic of Congo and other regions has posed a potential serious threat to the security of the international community. The national security of all countries has always been on the alert due to the wars and conflicts in some regions. It is difficult to form a strategic partnership alliance with mutual trust while the alliance is on guard at the same time<sup>280</sup>. The United Nations should be committed to resolving misunderstandings, promoting cooperation and win-win results among global sovereign states, and jointly responding to the social risks and disasters faced by the international community.

*1.1.2 Under the non-traditional security concept, the premise of counter-terrorism is to ensure national and human security*

After the end of the cold war, the world has formed a super-dominant international political pattern led by the United States. Military confrontation and arms race were temporarily placed in a secondary position. The influence of traditional security on world peace, development and security was no longer dominant, and non-traditional security became the main concern. Russia, the United States, the United Kingdom, France, Germany, Japan and other countries have established their own new security concept. They agree that traditional security is still an important part of national security, although it is in a secondary position. The threat of non-traditional security is increasing, and the proportion of non-traditional security in the national security strategic prevention system is higher and higher<sup>281</sup>. The social risks faced by the international community infiltrate and endanger the domestic security. Terrorist crimes are different from traditional types of crimes. In order to achieve the established goals,

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<sup>280</sup> Chandra V., *Rising Powers and International Organizations: the Case of China's Counter-terrorism Strategy at the United Nations*, China Report. 2019,55 (2), pp.125-144.

<sup>281</sup> Zhang Yi: *Deconstruction And Reconstruction Of Traditional Security Concept: When NATO Faces China*, Wei Shi, 2020(07), pp. 93-96.

terrorist organizations may use lethal weapons of mass destruction, such as biological technology, genetic engineering technology, biochemical technology, computer technology, cyber technology, in addition to traditional terrorist attacks such as assassination, explosion, hijacking, hostage taking, suicide bomb, etc. Moreover, the crime of terrorism is not limited to personal injury and death, damage to public property, etc. Its crime space has been expanded to non-traditional security field without hesitation, which is closely related to human life, such as food, water, resources, energy, environment, ecology. Terrorist crimes have become the primary problem that seriously endangers the national security of all countries, and we must deal with it through cooperation.

Under the concept of non-traditional security, counter-terrorism first requires to ensure national security, and then to pursue personal freedom. Without national security, there is no personal freedom. Generally speaking, any violation of "legal interests" is bound to be harmful to society, and the serious one will endanger the interests of national security. However, different criminal acts have different harmful consequences to the national security interests. The terrorist crime is different from the general crime, it involves the universality of the field, the uncertainty of the attacking target, the randomness of the interests and so on, which determines that the threat of the terrorist crime to the security interests is multifaceted and multiple<sup>282</sup>. "Modern terrorism is represented by religious extremism, national separatism or political fanatics, and terrorists regard themselves as outsiders of the current system".<sup>283</sup> First of all, in the view of terrorist criminal organizations, anyone who goes against their religious beliefs is a heretic, and any heretic is a guilty person, and must be punished by Allah. Based on such a belief, terrorism believes that their terrorist attacks against innocent civilians are following the will of the prophets to punish those who are guilty, regardless of whether or not they have actually committed crimes. Such random attacks make every public possible to be the victims of terrorist attacks, so that the safety of individuals' lives cannot be effectively protected at first timing<sup>284</sup>; secondly, terrorist

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<sup>282</sup> Zhang Zongliang: *Value Orientation of Counter-Terrorism Legislation-From the Perspective of Human Rights Protection*, Dongyue Tribune, 2006(04), pp.168-173.

<sup>283</sup> Gao Yongyong, Li Dan: *A Study on the "Ideological System" of the Terrorist Forces of "East Turkistan"*, Journal of Northwest Normal University, No. 4, 2006.

<sup>284</sup> Zhang Zongliang: *Value Orientation of Counter-Terrorism Legislation-From the Perspective of Human Rights Protection*, Dongyue Tribune, 2006(04), pp.168-173.

crimes cause groups panic, which is easy to form a fear atmosphere, seriously disturb social stability and order, and generate social instability factors, induce various kinds of crimes to occur frequently, threaten the group security of human beings; thirdly, terrorist crime demands political interests, and it is not necessary to choose developed countries or developing countries or backward countries to carry out terrorist attacks<sup>285</sup>. For political interests' purpose, terrorists do not necessarily "rob the rich to help the poor", but choose and make terrorist attacks according to the degree of self-interest realization. Therefore, any country may be attacked by terrorist crimes. No matter rich or poor, developed or undeveloped, they will become victims of terrorism which is endangering the overall security of mankind and the interests of global international security. The ultimate purpose of such interest appeal may lead to the collapse of a regime, the disappearance of a culture and the extinction of a religion. In any case, terrorist crimes always pose a huge threat to national security and international security interests, endangering national security and international peace and development."A general criminal offence (including what is usually called an organized crime) infringes one security or two, rather than three at the same time."<sup>286</sup>Therefore, the protection of national security and international security interests is the inevitable value choice of counter-terrorism.

Under the guidance of the value concept of priority protection of national security and global security interests, the criminal law regulation of terrorist crime cannot be the same to that of ordinary crimes. Terrorist crime is a kind of crime with great harmfulness, extremely inhumane criminal psychology and means. The perpetrators of terrorist crimes should not be punished with the same penalty as ordinary crimes. Instead, the crime should be set forward and special criminal procedure should be set up to investigate their criminal liability, rather than wait for irreparable damage. Only then can we prevent and strike terrorism. Some scholars believe that the fight against terrorist crimes "is to make a faster criminal judicial response than ordinary crimes."<sup>287</sup>

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<sup>285</sup> Peng Ruxiang, Zhang Aobo, Yang Tao, Kong Huafeng: *Research on the Current Situation and Development Trend of Global Terrorism Based on GTD*, Computer Applications And Software, 2019,36(01), pp.1-5.

<sup>286</sup> Chu Huaizhi: *Enlightenment of Criminal Law Reform In Common Law Countries on China*, Contemporary Law, 2006, issue 2, pp,124-128.

<sup>287</sup> Kang Haijun: *On Criminal Special Procedures against Terrorism*, Journal of the People's Public Security University of China, 2008, issue 6, pp.46-51.

Therefore, in the perspective of the criminal law controlling of terrorist crimes, it is important to protect human rights, and the protection of human rights must be based on human security. Without human security, talking about human rights protection is just like talking about war on paper<sup>288</sup>. Human security should be based on national security. Without national security, there is no human security. Therefore, in the case of conflict between personal rights and national security, it does not violate the purpose of human rights declaration to sacrifice proper personal rights to protect national security. It should be reasonable to choose to deprive part of personal rights to ensure national security<sup>289</sup>. To be more specific, members of terrorist organizations do not have obvious characteristics to identify. Any law-abiding person with normal spirit and good intellectual development may be brainwashed by terrorist religious beliefs and become a hidden extremist, endangering national security and international security interests. Therefore, even in the process of screening terrorists, moderate violations of some people's existing human rights also have its rationality.

In the year of 2014, President Xi Jinping put forward the "Overall National Security Outlook" security theory, which includes 11 elements, specifically stated as follows: "to implement the overall national security concept, we must attach importance to external security, and also attach importance to internal security, seek development, change, seek stability, build safe China; seek peace, cooperation, win-win and build a harmonious world with foreign countries. We should not only attach importance to the traditional security, but also to the non-traditional security, and build a comprehensive system of political security, homeland security, military security, economic security, cultural security, social security, scientific and technological security, information security, ecological security, resource security and nuclear security integrating as a whole. Attach importance to both development and security issues. Development is the foundation of security. Security is the condition of development. Only a rich country can strengthen its military and a strong military can defend its country. Attach importance to both its own security and common security, building a community of common destiny, and promoting all parties to the goal of mutual benefit and common

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<sup>288</sup> Zhang Xiaotao. *Security and Freedom: The Choice of Value Orientation of Counter-Terrorism Legal System*, Journal of Suihua University, 2019,39(12), pp.30-32.

<sup>289</sup> Ibid.

security.”<sup>290</sup> It is further clarified that in today's world, traditional security and non-traditional security are interwoven and parallel, traditional security issues are continuously strengthened through the non-traditional security field, and non-traditional security issues become more prominent and obvious in the development of human society today. Although terrorism problem belongs to the field of non-traditional security regulation, however, the war and turbulence in the field of traditional security give birth to the spread and penetration of terrorist crimes, which makes "human security" become the primary security concern in the field of security. In order to fight against the expansion of terrorism into the global field, we should take national security and global security interests as the purpose, increase the prevention and punishment of terrorist crimes threatening the non-traditional security field, and create a safe community of shared future for mankind.

### *1.2 The theory of safeguarding human rights and bottom line justice*

In international law and judicial practice, human rights are regarded as the highest moral rights. Libertarians believe that human rights are the fundamental rights of human beings, and everyone enjoys them equally. Human rights are including the right to life, freedom, property rights and freedom of speech. Human rights are unconditional and are enjoyed by everyone. However, in practice, not all people can enjoy human rights equally, but it does not mean that they have no right to enjoy human rights<sup>291</sup>. In modern society, human rights appear as a legal political standard. Therefore, only when citizens are no longer regularly forced to defend their human rights against the government can the government consider the legitimacy of this right. Liberals believe that the main function of government is to protect human rights, while political organizations undertake the realization of human rights<sup>292</sup>. The contract between the government and the citizens makes the government have the responsibility to protect

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<sup>290</sup> Xi Jinping: "Adhere To the Overall National Security Concept and Take the Road of China's National Security". [http://news.xinhuanet.com/politics/2014-04/15/c\\_1110253910.htm](http://news.xinhuanet.com/politics/2014-04/15/c_1110253910.htm), last visited on May 6, 2019.

<sup>291</sup> See Forsythe David P., *Human Rights in International Relations*, London: Cambridge University Press, 2000, pp.28-33.

<sup>292</sup> *Ibid*, p.35.

the freedom of the citizens, and this kind of protection only extends to the human rights protection of its own citizens.

The concept of human rights originated from the construction of political system and the summary of judicial practice by western liberalists. In modern international relations, human rights are manifested in three modes: centralized, cosmopolitan and internationalist<sup>293</sup>. The centralized model holds that human rights are submitted to the highest power of the state, and in the field of international relations, human rights should be a secondary issue. Cosmopolitanism believes that world politics is dominated by the state and its interests, and that human rights should be a central issue in international relations. Internationalism believes that a "multi-national social body" can be built in the "international community". International human rights should be concerned and coordinated with the current human rights standards of the international community, which means that human rights are a developing concept<sup>294</sup>. No matter how to define human rights, protecting human rights from violation is the most fundamental requirement of international criminal justice norms, and also the result of the United Nations requiring member states to abide by the humanitarian principle and refrain from abusing torture. As an international organization for maintaining the global political order and peaceful development, the United Nations has adopted the resolution of "Human Rights and Terrorism" every year since 1993 to elaborate the threat of terrorism to world peace and security, and to reaffirm the importance of protecting human rights.

As a highly abstract concept, it is difficult to generalize the whole meaning of human rights. It is generally believed that human rights are moral, universal and special. Human rights are regarded as the rights with the highest morality, involving the basic right to survive and the right to development. Human rights have the minimum moral requirements, and unethical behaviors do not belong to the category of human rights. Human rights are the rights that everyone enjoys. As long as they are human beings, they are born with basic human rights. No one can deprive others of their basic human rights. Unless they break through the minimum level of human rights protection, they can no longer be protected, such as intentional killing.

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<sup>293</sup> Li Erping: *Human Rights and Chinese Human Rights Model*, Academia, 2011(02), pp.35-43.

<sup>294</sup> See Donnelly J., *International Human Rights*, 3<sup>rd</sup> ed. Boulder: Westview Press, 2007, p.30.

Human rights are also special. Although human rights are naturally enjoyed by all people, the protection of human rights is also different because of the different settings in different countries<sup>295</sup>. Human rights should be respected, unless such rights recklessly violate the rights of others, others can exercise their human rights to fight. Human rights are composed of the rights of life, equality, freedom, property, peace and development.

(1) The right to life is the main content of human rights. All human activities are based on the existence of life. Once life is destroyed, everything will be eliminated. As a bottom line, no one (individual or organization) has the right to arbitrarily deprive others of their lives, even if there are historical conflicts among ethnic groups (such as the 1991 genocide of the Tutsi massacre in Rwanda).The consensus of right to life includes a person's right of birth, death, freed from hunger, counter genocide and collective slaughter, etc.<sup>296</sup>.

(2) Equal right refers to the right of everyone to participate in social activities equally and not to be discriminated against. State organs shall equally protect everyone's rights and perform their obligations in the use of power, without prejudice or discrimination.

(3) The right of freedom covers a wide range. The constitutions of all countries clearly stipulate that citizens have the right of relative freedom, such as communication, assembly, association, demonstration, etc. In the context of counter-terrorism, the discussion of the right to freedom is mainly based on the fact that the right to personal freedom is violated by terrorist crimes, that is, no one's body will be illegally infringed and harmed.

(4) Property right is the right that property owners can possess, use and dispose of their own property. The property right refers to both the private property of citizens and the public property of the state.

(5) The right to peace and the right to development. Peace and development are the themes of today's world, as well as the due meaning of human rights. Peaceful environment is the goal of human society, and development is the driving force of human society's continuous innovation. Peace and development are of vital importance to developing countries. Developing countries and backward countries urgently need to

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<sup>295</sup> Zhu Xiaoyun: *Debate on the Relationship between Universality and Particularity of Human Rights and Its Roots*, Journal of Social Sciences of Shanxi University, 2004(05), pp.66-68.

<sup>296</sup> See Sun Zhe: *On New Human Rights*, Henan People's Publishing House, 1995 edition, p.353.

seek their own economic development in a peaceful environment to meet the needs of social production and people's living standards. In this regard, the right to peace and the right to development should be the primary human rights of all countries in the world.

From the perspective of non-traditional security, to examine human rights protection with the topic of terrorist crime will involve three aspects:

### *1.2.1 Terrorist crime and human rights protection*

There is no doubt that terrorist crimes are acts of serious destruction to human rights. The UN Security Council Resolutions have repeatedly affirmed that "terrorism in all its forms and manifestations is one of the most serious threats to international peace and security. Any terrorist activities, regardless of its motivation, wherever, whenever and by whomsoever committed, is an unjustifiable criminal act."<sup>297</sup> According to GTD statistics, in 2013, the number of terrorist attacks on innocent people and property in 162 countries worldwide reached 12,121. In Iraq, Afghanistan, Pakistan, Nigeria and Syria, the five countries with the most rampant terrorist crimes, more than 80% of the people died of terrorist attacks, and other countries have suffered one or two terrorist attacks<sup>298</sup>.

As far as the protection of human rights is concerned, the first thing is to protect innocent people's lives from illegal deprivation, freedom from illegal restriction and property from illegal destruction. However, terrorist crimes threaten sovereign states to make political concessions at the cost of innocent people's lives, to meet their own interests, to damage or destroy national public facilities, networks (equipment), landmark buildings, private property and other conditions, and require sovereign states to make political compromises or territorial submission, in order to achieve their own political demands. From this point of view, terrorist crimes have a clear political purpose. Without exception, all of them take the sacrifice of innocent people's lives and property as a means. Its harmfulness is far more than ordinary crimes can achieve, and the damage has already exceeded the harm standard of human rights established by the United Nations<sup>299</sup>. Therefore, the terrorist crime is a serious damage to international

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<sup>297</sup> United Nations: UN Global Counter-Terrorism Strategy, <https://www.un.org/counterterrorism/>, last visited date: October 20, 2020.

<sup>298</sup> See Global Terrorism Index Report (GTI) in 2014.

<sup>299</sup> Zhang Zongliang: *Value Orientation of Counter-Terrorism Legislation-From the Perspective Of Human Rights Protection*, Dongyue Tribune, 2006(04), pp.168-173.

and domestic human rights. The randomness and the arbitrariness of its target cause a huge uncertainty crisis to the security, peace and development of the international community, and endanger the peace and development rights of international human rights. It is necessary to crack down on the global spread and expansion of terrorist crimes, and protect domestic and international human rights.

### *1.2.2 State power and human rights protection in the name of counter-terrorism*

Today, with the increasing of terrorist crimes, in order to effectively protect national and international security, various countries have introduced counter-terrorism laws in succession, aiming to stop the expansion and spread of terrorist crimes. However, this kind of emergency legislation may lead to the rapid expansion of state power, especially for the extremely cruel, atrocious and tyrannical crime of terrorism. For the sake of protecting its own security and safeguard regional interests, the state has to expand the scope and depth of the control and punishment power over terrorist crimes, which is bound to easily violate human rights of citizens. According to the investigation report on the situation of human rights in various countries in the "counter-terrorism" activities released by the United Nations Human Rights Watch in 2013, there are violations of human rights in all countries in the name of counter-terrorism<sup>300</sup>. In *Basic Human Rights Reference Guide: Conformity of National Counter-Terrorism Legislation with International Human Rights Law*, the UN stated its position that it is a short-sighted and contradictory approach to obtain security at the expense of human rights, which is bound to be a failure in the long run; in the fight against terrorist crimes, the principle of "derogation" in international human rights law should not be followed<sup>301</sup>. In fact, in the process of fighting against terrorist crimes, there is a tense dynamic balance between state power and human rights protection, which is also a manifestation of the extensive expansion of state public power for a long time. Over protection of civil rights will weaken the overall state power over social order, leading to the possibility of state management out of control and endangering the security of the

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<sup>300</sup> See Human Rights Watch, *In the Name of Counter-Terrorism: Human Rights Abuse Worldwide*, p.3.

<sup>301</sup> See the United Nations, *Basic Human Rights Reference Guide: Conformity of National Counter-Terrorism Legislation with International Human Rights Law*, <https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/counterterrorismlegislation.pdf>, last visited date: October 20, 2020.

whole country; over expansion of state power will seriously compress the space for the exercise of civil rights, infringe on civil rights, cause people's dissatisfaction and resentment against state management, easily produce contradictions and conflicts, and affect the peace and security of the country. Therefore, we should try our best to achieve a balance between the two, neither infringing civil rights nor weakening state power. From the perspective of power balance, the expansion of state power needs to set up corresponding procedures to limit, and the protection of citizens' human rights also needs to set up relevant procedural rules. In this way, it may effectively solve the problem of insufficient power restriction and form a state of power balance.

### *1.2.3 Protection of the rights of terrorists*

In the study of terrorist crimes, when it comes to the protection of human rights, most experts and scholars think that the human rights of terrorists should be protected according to law, and cannot break the bottom line of human rights protection set in the United Nations Declaration of Human Rights. Few scholars disagree with this. As we have said, terrorists are also human beings. As human beings, they naturally enjoy basic human rights. They should be fully protected from improper prosecution and trial. However, such an analytical cognition seems to be inappropriate. As we all know, terrorist crimes do great harm and have various means of execution. At present, the most worrying thing is the use of weapons of mass destruction (including biological and chemical weapons, nuclear weapons, infectious disease pathogens, etc.), cyber terrorism, nuclear terrorism, and suicide terrorism (such as "black widow"). Such terrorist crimes have gone deep into the non-traditional security field. If we focus on the humanitarian assistance to terrorists, wake up their lost conscience, and protect their human rights from being infringed, it will undoubtedly leave a wide space for terrorist organizations to carry out terrorist attacks, and promote terrorist organizations to "rescue" their Jihadist "heroes", and do everything possible to create terrorist attacks (such as hostage taking for exchange) threaten the commitment of stakeholder countries to release them. This will be a very negative factor for the global counter terrorism strategic alliance. The release of terrorists is no different from a compromise attitude, which directly affects the determination of the global counter-terrorism

alliance<sup>302</sup>. In addition, the released terrorists are undoubtedly "releasing the tiger back to the mountain", becoming more brave "Jihad Warriors", and actively carrying out terrorist attacks and criminal activities.

Based on this consideration, the human rights protection of terrorists is a kind of limited protection, and the criminal behavior of terrorists cannot be indulged in the name that they have the "amulet" of human rights protection<sup>303</sup>. As Jacobs holds the view of "criminal law of the enemy"<sup>304</sup>, terrorists are the enemies of the state and the people, and also the enemies of the international community<sup>305</sup>. We cannot treat the enemy as gentle as the people. The enemy is the enemy. The protection of the enemy's rights follows the relevant provisions of the war law, the conflict law and other relevant laws in the international conventions. Leniency to the enemy is a crime against the people. Similarly, kindness to terrorists is cruelty to the people. Some people think that the "enemy criminal law" is a kind of far more advanced criminal law theory, which cannot be used in the current terrorist crime, because the word "enemy" has obvious political color. Who is the enemy? What is the enemy like? These problems will bring cognitive difficulties, so it is not suitable to apply the view of "enemy criminal law" to deal with terrorist criminals with particularly serious crimes.

We often overlook that the principle of safeguarding human rights, which is regarded as a standard today, also needs conditions. The reason why we forget this easily is that this condition is no longer a condition in western countries with mature legal system, but has become a living reality. After the World War II, Germany and even Europe rebuilt the democratic and free legal system. Human rights thought not only became the cornerstone of the legal system, but also became a part of culture and an indication of European identity. The "9.11" terrorist attack and the Madrid train station bombing in Spain, although disturbing the pastoral songs of the country ruled by law, are at best only an episode<sup>306</sup>. The protection of human rights is an unshakable constitutional

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<sup>302</sup> Zhang Xiaotao: *Security and Freedom: The Choice of Value Orientation of Counter-Terrorism Legal System*, Journal of Suihua University, 2019,39(12), pp.30-32.

<sup>303</sup> Ibid.

<sup>304</sup> Jakobs, *Kriminalisierung im Vorfeld einer Rechtsgrütsverletzung*, ZStW 97(1985),751 ff.

<sup>305</sup> Han Jin, Liu Jiye: *Interpretation Of The Norms Of International Criminal Law Of "Enemy Criminal Law"-Based On The Thinking Of Defending Against International Terrorism Crimes*, International Law Review of Wuhan University, 2018,2(05), pp.41-61.

<sup>306</sup> Melio, *Feind "strafrecht"?* ZStW 117(2005), S. 286, Anm. 47.

principle, and it actually plays its role in legal life. It is impossible for terrorists to turn these real rights into assumed rights. As some Western scholars have pointed out: "If Al Qaeda and others attack other countries, they will be 'militarily reacted', which is the legitimate self-defense under the UN Charter. At this time, it is necessary to follow the international law related to war and humanitarian."<sup>307</sup> That is to say, to wage war against terrorists, we only need to follow the rules of war, such as the provisions of the Geneva Conventions on the protection of civilians in wartime<sup>308</sup>.

After terrorists are arrested by war, criminal law and criminal procedure law should be applied to investigate their criminal liability, and the principle of rule of law should be followed at this time. It is worth noting that with the establishment of the International Criminal Court, a permanent international criminal prosecution institution, the international community has taken a new step in punishing and preventing serious international crimes, namely trying individuals for genocide, war crimes, crimes against humanity, and aggression. Although ICC has no army and no police, it needs to rely on the UN peacekeeping forces and other military forces to arrest criminal suspects, and sometimes it does not even rule out the use of war to arrest criminal suspects. However, its criminal concept is not labeled as "enemy criminal law" at all. On the contrary, it is at the forefront of the times in terms of "legally prescribed punishment for a crime", "presumption of innocence", "protection of the rights and interests of the defendant", "protection and relief of victims and witnesses" and so on. In its decisions, the International Criminal Court often emphasizes the inviolability of people's basic human rights. The provisions on human rights in the Charter of the United Nations give rise to binding obligations under international law: to promote universal respect for all human rights and fundamental freedoms regardless of race, sex, language or religion. Moreover, the Rome Statute, which created the ICC, does not leave room for the application of the death penalty, which reflects the rational attitude of the international community.

The international community has generally accepted the concept of universal jurisdiction over crimes seriously endangering international peace and security. At

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<sup>307</sup> Francisco Munoz Conde, *An International Criminal Law for Enemies?* International Conference on Sino—Canadian Criminal Theories, November 2006.

<sup>308</sup> Although terrorists will not abide by such regulations when launching wars, they must abide by them as countries that fight back.

present, the jurisdiction of the International Criminal Court is limited to genocide, war crimes, crimes against humanity, and aggression<sup>309</sup>. Due to the unclear definition of terrorism, it has not become an independent crime in international judicial practice. Most of the terrorist crimes are scattered or included in crimes such as piracy, hijacking aircraft and illegal acts against international air transport security, hijacking civilian hostages, organized crimes and crimes of attacking with explosives. This makes it impossible for the ICC to give full play to its effectiveness in combating terrorist crimes.

Terrorism is a serious challenge to today's society. Whether a sovereign state must abide by the international criminal justice norms, or exempt some of its treaty obligations under certain circumstances, and crack down on terrorist crimes by means of violence, modern countries are faced with a dilemma. However, if we put aside the normal criminal procedure and do not apply the principles of protecting human dignity, equality and excluding illegal evidence, we will return to the old way of retaliation with a tooth for a tooth and an eye for an eye, thus leaving behind the fruits of civilization that human beings are not easy to accumulate. Therefore, there is a considerable contradiction between counter-terrorism and abiding by international criminal justice norms. To solve this contradiction is a test of human wisdom.

## *2. Counter terrorism model*

Terrorist crime has become a "random bomb" threatening national and international security. Since the "Gulf War" broke out in 1991, the global strategic thinking of the western countries led by the United States to continue to promote their political ideology, cultural development concept and economic development model to the developing countries and backward countries has never changed. However, the "9.11" terrorist attacks prompted the United States to readjust its global strategic planning model. President Bush of the United States signed the Patriot Act, vowing to completely eliminate terrorism in the global scope, disregarding the resolutions,

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<sup>309</sup> It is worth noting that crimes against humanity and terrorist crimes overlap but are more different. Generally speaking, crimes against humanity are wider than terrorist crimes, and they are more of the nature of genocide and enslavement. However, terrorist crimes also have the nature of harming humanity, and murder, torture and other acts against ordinary civilians are common in both of them.

conventions and declarations of the United Nations on counter-terrorism, resolutely and continuously launch a war of aggression against other countries, actively expand the scale of overseas bases and the number of troops stationed by the U.S. military<sup>310</sup>, hoping to eliminate terrorism and its organizations at one stroke.

Up to now, the United States and its allies have failed to eliminate terrorism and its organizations in the global scope through military strikes, which has brought about the increasing rampancy of terrorist crimes in the global scope, together with wars, poverty, hunger, refugees, diseases and other major problems. Central Asia, North Africa, South Asia, the Middle East, sub Saharan and other regions have become active hot spots of terrorist organizations. The "war on terrorism" adopted by the United States and its allies has not been fully effective in essence, but has aroused strong "counter American sentiment" in Islamic countries around the world, resulting in difficulties in promoting "counter-terrorist military action"<sup>311</sup>. In the face of the growing terrorist crimes, the international community has launched a positive dialogue to seek effective strategies to combat terrorist crimes in addition to war, so as to curb the strong momentum of terrorist crimes in a more effective way.

Therefore, strengthening international criminal justice cooperation, combating terrorism, organized crime and cross-border crime have become the main contents of international criminal justice cooperation. The concept of global governance provides a way to eliminate terrorist crimes. It may be the fundamental approach to find the root of terrorist crimes, completely eradicate terrorism from the source, eliminate the environment that generates terrorism, and prevent the breeding of terrorism.

### *2.1 Analysis and evaluation of war model -- taking the United States as a sample*

The model of war is called "military strike method", which aims to wipe out terrorism effective forces through military action, eliminate the survival base of terrorism, destroy the terrorist camp, and make it lose the ability of regeneration.

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<sup>310</sup> Liu Zhiyong: *American Cross-Border Counter-Terrorism Review and Enlightenment*, Journal Of Chinese People's Public Security University (Social Science Edition), 2019,35(04), pp.18-27.

<sup>311</sup> Wang Zhen: *Six Lost in American Global War on Terrorism*, Journal of Social Sciences, 2016-02-25(003).

The "9.11" terrorist attacks not only challenge the global status of the United States as a superpower, but also alert other countries. The terrorist crimes dare to challenge the most powerful countries in the world. Other countries were sure of the "fourth wave" of terrorist crimes' arrival. Faced with the terrorist crimes, the United States led alliance countries resolutely choose the "war model" of military attack, with a view to eliminating terrorism in a limited time. This dangerous practice is like a "double-edged sword" for curbing terrorist crimes<sup>312</sup>. It kills terrorism and at the same time cuts itself unfortunately. It is true that the "9.11" terrorist attack is the most serious external force attack in the history of the United States since the end of the "World War II", which completely subverted the inherent security thinking and psychological security expectations of American society and people, and broke the myth of "absolute security" in the United States.

As early as in the cold war, the Reagan administration had thought about the Afghan regime supported by the Soviet Union, secretly cultivated and supported the Afghan counter-government armed "Taliban" organization to fight back against the Soviet Union, and believed that "Taliban" was a "government organization" fighting for freedom and independence. During the Clinton period, the "Taliban" was denied as a government, but only a "controversial political and military entity"<sup>313</sup>. It is not really defined as a terrorist organization. Until the terrorist attacks on the US embassies in Kenya and Tanzania in 1998, the Clinton administration demanded that the "Taliban" hand over Bin Laden, but failed to do so, and began to take a tougher attitude towards him.<sup>314</sup> What really makes the United States angry is Bin Laden's "9.11" terrorist attacks. The Bush administration believes that this is "an external war of aggression suffered by democratic countries, which must be given to military action to fight back, rather than the problems that can be solved by the international judicial system". It declares the "Taliban" in Afghanistan a terrorist organization and searches for terrorists on a global

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<sup>312</sup> Wang Zhen: *Six Lost in American Global War on Terrorism*, Journal of Social Sciences, 2016-02-25(003).

<sup>313</sup> See William J. Clinton, "Executive order 13129, July 4th, 1999", <http://www.wjopc.com/site/constitutional/execorders/Clinton.pdf>, last visited on Apr. 19th, 2018. Quoted from Wang Lei: *An Analysis of Bush's Counter-Terrorist Discourse*, Doctoral Dissertation of Foreign Affairs College in 2004.

<sup>314</sup> See Yang Zijuan: *An Analysis of the Essence of the US Policy towards the Taliban*, Journal of Guizhou Normal University (Social Science Edition), No. 6, 2007, pp. 43-50.

scale, emphasizing "preemption". The Department of Homeland Security was set up emergently, and President Bush was granted the supreme command of homeland security. In case of emergency, the national power could be used to fight against terrorist crimes, and the jurisdiction of terrorist crimes should be clear to the Military Commission and military court. At this point, the United States began to control non-U.S. persons nationwide, and those identified as terrorist suspects would be subject to criminal measures, or custody, or detention, or torture<sup>315</sup>.

According to the Washington Post, the CIA has secretly set up prison networks in eight countries around the world in four years, including Guantanamo prison and Abu Ghraib prison. These "secret facilities" provide an important place for the U.S. "counter-terrorism operations". About 82,400 non-U.S. persons have been arrested, including 14,500 in long-term detention<sup>316</sup>. Moreover, in total disregard of the United Nations Declaration of Human Rights and relevant laws and regulations, the United States has put suspected terrorists into secret prisons without trial by the International Criminal Court and tried them for torture, which is against international law and relevant conventions. However, the decision of the United States and its allies to fight against terrorism by means of war did not make terrorism completely be eliminated. Instead, it encouraged the flames of terrorist crimes and made it grow stronger with the help of the media. Practice has proved that this kind of suppression of "another terror" by "one terror" cannot eliminate the threat of terrorism, but make terrorist activities "more terrorist". "Violence against violence" has never been an effective means to solve conflicts in a rational society ruled by law. The U.S. "counter-terrorism" military strike mode is not in line with humanitarianism and cannot achieve the expected goal in the short term.

According to Dworkin, an American scholar, "the internal hierarchical structure of terrorist groups is unknown, and officers and soldiers cannot identify themselves without military uniforms. Such a loose organization cannot be a belligerent state in a conventional war. We can capture Kabul and Baghdad, but where is a country called

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<sup>315</sup> Zhang Peng: *The Application of Law in The American War on Terrorism and Its Enlightenment*, Journal of Xi' An Institute of Political Science, 2016, 29(06), pp.91-95.

<sup>316</sup> See Lu Jianping: *The Global Fight against Terrorism Must Be Organized Reasonably*, in Zhao Bingzhi's Monograph *On China's Counter-Terrorism Legislation*, China People's Public Security University Press, 2007 edition, p.472.

'terror' where terrorists live? "<sup>317</sup> It can be said that terrorist attacks are not the same as the outbreak of war. The terrorist attacks carried out by terrorism do not comply with the conflict of war stipulated in the war law. It is not appropriate for the United States and its allies to take military strikes to terrorism forces. Generally speaking, war is "an armed battle carried out by the hostile parties for the purpose of achieving certain political, economic and territorial integrity."<sup>318</sup> It is an armed conflict between countries, regulated by the war law generally observed by the international community. However, the terrorist organization is neither a state body nor a government body. It has no legal status to exercise the power stipulated in the war law. The targets of terrorist attacks are chosen randomly because of different political interests. They often threaten other countries to make compromises by attacking innocent civilians and destroying property. This "network" loose terrorist attack structure cannot be adjusted by the rules of war. Moreover, both belligerents in the war abide by the provisions of the law of war. Although the war also follows the terrorist fight setting of "violence against violence", it is also full of blood and violence, full of terror and fear, which makes people suffer a lot. All in all, the war is still an armed conflict under the regulation of law, and there are no rules for terrorist crimes to comply to<sup>319</sup>.

The "war model" of US military action against terrorism does not meet its expectation. The strategy of "unilateral action" and "preemptive action" adopted by the Bush administration is, in a certain way, a manifestation of the Bush administration's desire to maintain the dominant position of the United States and to show its eagerness for revenge. The repeated efforts of the United States in history have resulted in the Bush administration's belief that counter-terrorism is a war, which can be fought in a limited period of time to the total elimination of terrorism. Moreover, war is the fastest and most effective means to wipe out terrorist organizations. However, it is precisely this optimistic estimate of the Bush administration that causes the United States to be quite passive in the "war on terror". Terrorist criminal activities did not disappear in the strong military strike activities of the United States, but made the United States completely insecure at home. The "lone wolf" terrorist attacks began to worry the

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<sup>317</sup> Ronald Dworkin, *Terrorism And Attacks On Civil Liberties*, translated by Li Jianyi, World Philosophy, 2004, issue 2, pp.12-21.

<sup>318</sup> [www.baidu.com/baike/](http://www.baidu.com/baike/), Last visit date: February 17, 2019.

<sup>319</sup> Wang Zhen: *The Global War on Terrorism Is Undergoing Transformation*, World Knowledge, 2015(06), pp.18-20.

American society (such as the Boston Marathon bombing terrorist attacks). The constantly renovated terrorist attacks made the United States, a superpower, begin to "headache". And even more troubling for the United States, "the war on terrorism" made it exhausted in a dilemma "deeper and deeper"<sup>320</sup>. This was also the unexpected result of the Bush administration, which makes the United States and its allies begin to think about the practical effect of "war mode" counter-terrorism. While actively promoting the global strategic plan against terrorism, the Obama administration began to stop using the expression "war on terrorism" and seek global cooperation to work together to eliminate terrorism<sup>321</sup>. History shows that almost all wars of human beings have obvious political inclination. Terrorist crimes need to be adjusted by an objective evaluation mechanism. Relying solely on military means of attack cannot eliminate the subjective political inclination of wars. Super countries and their alliances are easy to interfere in the internal affairs of any sovereign state in the name of counter-terrorism, resulting in hegemonism and reinforcement of power politics. Moreover, due to the different understanding of terrorist crime in different countries, war counter-terrorism mode is prone to conflict within and outside the country, so it is difficult to make an objective evaluation of terrorist crime. Regulating terrorist crime through criminal law should be a supplement to avoid adverse factors of war counter-terrorism.

The Gallup public opinion survey in 2002 after the 9.11 terrorist attacks in the United States showed that 58% of the public supported the invasion and more than 70% supported the overthrow of Saddam Hussein<sup>322</sup>. A year later, CBS Cable News survey showed that 69% of the people believed that the United States should stay in Iraq, and 25% responded that the United States should withdraw from the war in Iraq. By 2005, 55% of the population believed that the United States should withdraw from the war in Iraq, and only 41% believed that it should remain in Iraq<sup>323</sup>. To this day, the United States has completely withdrawn from the Iraqi battlefield, and only a few people

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<sup>320</sup> Wang Zhen: *Six Lost in American Global War on Terrorism*, Journal of Social Sciences, 2016-02-25(003).

<sup>321</sup> Sun Xun: *Analysis of the Obama Administration's National Counter-Terrorism Strategy*, Foreign Affairs Review (Journal of Foreign Affairs College), 2013,30(04), pp.96-107.

<sup>322</sup> See Sina News: *Polls show that more Americans support the use of force against Iraq*, <https://news.sina.com.cn/w/2002-11-13/1038806258.html>, last visit date: 20 October, 2020.

<sup>323</sup> See Sina News: *Polls show that nearly 60% of Americans believe that the Iraq war is not worth it*, <https://news.sina.com.cn/w/2005-05-05/09155814080s.shtml>, last visit date: 20 October, 2020.

remain in Iraq to help the transitional government rebuild their homes<sup>324</sup>. By comparison, we can see that, in fact, as far as the address issued by the Bush administration in 2004, the positive support of public opinion for the war in Iraq launched by the United States has been shaken, although this public opinion is only shown in the next year's polls. So why does the public opinion have such a big contrast? At the beginning of the "war on terrorism" launched by the Bush administration, it has been clearly declared that "terrorism is an aggression against civilized and democratic countries, and it must be fought with teeth for teeth and eyes for eyes through bloody and sacrificing wars"<sup>325</sup>. Since a war against terrorism is launched under the domination of such a democratic civilization ideology, it is natural that the "war on terrorism" is a war of justice. Terrorism is not an enemy of the United States, but of the whole world. The United States just declares war on terrorism on behalf of global security interests. Based on such a assumption of safeguarding the global security interests, the United States will not take the status of the United Nations into account, so it is natural for the United States to launch military operations. Now it seems that the fight against terrorist crimes is justice, but the excessive use of the reasons "for the suppression of terrorist organizations" to invade other countries is contrary to the concept of democracy, civilization and humanity as advertised by western society. Therefore, in such a situation, the war initiator will lost its legitimacy of war against terrorist crimes; on the contrary, the United States may advance its global strategic plan in such a way. It is necessary to use the improvement of legal rules to curb terrorist crimes.

It is not difficult to see that today's terrorist criminal organizations are more inclined to "militarize" operation, purchase weapons, form an army, recruit members, strengthen training, cultivate skills, and actively launch military attacks against countries that hinder the realization of their political goals. From this point of view, war against terrorism has its rationality of existence. However, if military forces are used to invade sovereign countries and overthrow their existing regimes in order to search for terrorist organizations and terrorists on a global scale, it is against humanitarian

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<sup>324</sup> See Janette Galvan, *9/11 and The War on Terror: Iraq War Narratives and The Sacrifice Model* Thesis of Master of Arts, Department of Political Science of The University of Texas AT El Paso. August, 2013, p.1.

<sup>325</sup> Lei Shaohua: *American National Counter-Terrorism Strategy: Evolution and Current Situation*, Briefing on International Strategic Studies (2014), Peking University, 2014, p.4.

principles and an occupation invasion without legitimacy and justice. Therefore, at the moment when the modern terrorist force is gradually strong, the war against terrorism launched in a limited scope is reasonable and legitimate. It cannot be considered that the use of war means to combat terrorism in the process of counter-terrorism should be completely prohibited. However, this kind of use must be realized within the framework of the existing legal system, the intervention of military action must have certain limits, and the punishment of terrorist crimes should be put through criminal justice procedures. Rational use of "war model" to combat terrorist crimes at present is the last choice to eliminate terrorist crimes.

In today's world, the serious consequences caused by terrorist crimes are incalculable. Terrorism uses extreme violence against innocent people, causing social unrest and fundamentally subverting human civilization and the peace of human society. This leads to the concept of "enemy criminal law" put forward by German criminal law scholar Jacobs, which is in sharp contrast with "citizen criminal law"<sup>326</sup>. According to Jacobs, the purpose of criminal law is to protect the application of norms. If citizens exceed the scope regulated by norms, they are no longer "citizens" protected by criminal law, but "enemies" pursued by criminal law<sup>327</sup>. Therefore, terrorists belong to the "fundamental deviators, who does not guarantee the behavior of the person with personality. He cannot be treated as a citizen. He is an enemy that must be punished. This war is for the legitimate rights of citizens, that is, the right to security. Unlike punishment, the person being punished has no right, but is excluded as an enemy." However, the viewpoint of "enemy criminal law" does not point out how to distinguish "citizen" from "enemy". Labeling terrorists as "enemies" will not only damage their human dignity as a human being, but also tear their rights as social people and separate them from the whole social structure, which may cause greater instability and destroy the legal order advocated by the rule of law<sup>328</sup>.

"War model" counter-terrorism is the logical extension of "enemy criminal law". The violence caused by military attack is far more serious than other harms. Simply

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<sup>326</sup> Günther Jakobs: *Kriminalisierung im Vorfeld einer Rechtsgutsverletzung*, ZStW 97(1985), 751 ff.

<sup>327</sup> Günther Jakobs: *Kriminalisierung im Vorfeld einer Rechtsgutsverletzung*, ZStW 97(1985), 751 ff.

<sup>328</sup> Günther Jakobs: *Citizens Criminal Law and Enemy Criminal Law*, translated by Xu Yu'an, *In The Foundation And Boundary Of Criminal Law - Commemorative Album of Professor Hong Fu Zeng*, edited by Xu Yuxiu, Taipei, Xuelin Cultural Enterprise Company, 2003 edition, p. 39.

adopting irrational military sanctions of violence against violence will undoubtedly increase the proliferation of terrorist crimes. Human history shows that "war is a collision between two living forces.....Its primary attribute is that violence itself has its own logic, that is, the tendency of escalation of force.....The fundamental driving force lies in the hatred, passion, fear, excitement and gambling mentality generated by the collision of the two living forces, so that no one can completely control their actions." "There may not be any limit to war in theory.....No matter in the application of weapons, the choice of tactics, the target of striking personnel and any other aspects, it will go on without limitation.....The more extreme the fighting is, the more widespread and intensive the use of violence on both sides will be, and the closer it will be to the absolute state of war. Therefore, any conceivable violence will not be excluded from the means of war; otherwise it will not be war, because the logic of war is to go to the moral line step by step. "<sup>329</sup>

War is the most extreme way to solve the problem by violence, and it is also a weapon that can easily split the country. Terrorist crime is a global public hazard and a cancer that seriously threatens the human society and the international and domestic order. It will bring a rebound of violent behavior if it is punished by simple and boundless means of violence. Modern social governance mostly relies on the compulsory promotion of legislation, administration and judicature to achieve the expectation of maintaining social order and stability. Violence beyond the reasonable limit will undoubtedly damage the fairness and justice promised by the law, destroy the foundation of a country ruled by law, and rely on violence to resolve social conflicts, which will often cause social instability. The wider the scope of violence is, the more groups are injured, and the more people are distorted in personality. The harm of violence to people is bidirectional, and the perpetrators and victims will also suffer mental damage. If law enforcement agencies often rely on violence to maintain social stability, the result is often social instability. Because the greater the coverage of violent law enforcement, the more people who are distorted by violence, the smaller the rational space of a society. Therefore, a truly stable society can never be maintained by

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<sup>329</sup> Carl Von Clausewitz, *On War*, edited and translated by Michael Howard and Peter Paret, New Jersey: Princeton University Press, 1989, pp.75-77; Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, New York: Basic Books, 1997, pp.23-25.

violence, but it needs people's inner recognition of the state's authority of rule of law, which is the real solid foundation of social stability<sup>330</sup>.

Terrorism expresses its dissatisfaction and hatred to the society by opposing the existing rational social order through extreme violence. Obviously, this hate crime cannot be eliminated in a short period of time. As a rational state, it should try the best to avoid violence and maintain the authority of the state and social stability. It is true that military strike can solve many conflicts and estrangements among countries and nations at present. However, terrorism does not belong to state behavior, and its organizational structure is loose, and its members are uncertain. Even if it is wiped out through war, it cannot be like a state being "spot cleared". It is easy to escape and grow in other regions, and continues to endanger social security. Moreover, although the national legislation clearly stipulates the legality of the use of military means to fight against terrorist crimes, it does not mean that there is no bottom line for the military fight against terrorist crimes. Relying too much on military to fight against terrorism will not help completely eliminate terrorism, but will increase the sense of national insecurity. The China Counter-Terrorism Law has established the counter-terrorism strategy of "prevention first, strikes second", and made clear the legitimacy of military means to combat terrorism. However, it is also limited to the explicit provisions of laws and regulations as well as the implementation of orders under the state of emergency, which does not exceed the legal limits, so as to lock the means of military attack in the framework of criminal justice response mode.

## 2.2 Criminal justice model and evaluation

As a basic assumption, the criminal justice model (CJM) takes precedence over the principle of democratic reservation in the process of counter-terrorism, which can effectively reduce the operation cost of counter-terrorism measures<sup>331</sup>. The criminal justice model is different from the war model, which refers to the model that the Criminal Justice Department punishes the perpetrators of terrorist crimes through

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<sup>330</sup> See Ye Kuangzheng: *Cultural Meditation behind Vicious Violence*, <http://yekuangzheng.blog.sohu.com/149790183.html>, last visited on December 8, 2019.

<sup>331</sup> See Graeme C.S. Steven and Rohan Gunaratna, *Counterterrorism a Reference Handbook*, ABC-CLIO, 2004, pp.97-102.

judicial procedures. The criminal legal response means that the suspects of terrorist crimes are finally brought to justice through investigation, prosecution, trial and other criminal proceedings. The criminal justice model refers that the terrorist suspects still enjoy the basic human rights, and should guarantee their basic human rights, and finally achieve the effective elimination of terrorist crimes through the operation of criminal due process.

From the very beginning, terrorism has a bloody and cruel nature. In the era of national independence movement, terrorist crime was once defined as "a powerful weapon for the weak to fight against the strong". However, with the independence of the nation-state, terrorism has gradually evolved into an "evil murderer" who indiscriminately kills innocent people. To this day, terrorism has completely abandoned its original beliefs and regulations, and has become a threat to the national security of all countries in the world<sup>332</sup>. Nowadays, most countries use criminal laws to regulate terrorist crimes, and set up chapters in the criminal code to stipulate the charges of terrorist crimes. Some countries make special counter-terrorism laws to combat terrorist crimes, and criminal laws are positive and beneficial supplements. However, in any case, terrorism is a violation of the legal interests protected by criminal law. This kind of infringement is far higher than the "legal interest" infringement of ordinary crime, which is a special kind of criminal act. In the way of modern terrorist crime, it should be a long-term strategy to control terrorist crime effectively by adopting criminal justice model.

First of all, terrorist crime is a kind of criminal act in terms of its essence. Since it is a crime, it will inevitably violate the criminal legal norms, need to accept criminal legal sanctions and bear the corresponding criminal responsibility. To determine whether a person is guilty or not, we need to go through strict legal procedures to determine, rather than fabricating or imagining. However, terrorist crime is different from ordinary crime, not only infringing one legal interest, but also infringing plural legal interests. If the crime is treated according to the provisions of the general criminal code, it is bound to be too light or too heavy in sentencing, which is difficult to play a fundamental role

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<sup>332</sup> He Zhipeng: *Counter-Terrorism Mechanism Embedded In Human Rights*, Human Rights, 2019(05), pp.26-35.

in punishment, either ignoring or neglecting<sup>333</sup>. Therefore, it must be done through special procedures of criminal justice. Moreover, terrorist crimes often have a strong political purpose. At present, the definition of the concept of terrorism in various countries has not been unified. If other forms are adopted, it will inevitably be stranded due to political differences. However, criminal justice model can effectively alleviate the disadvantages of ineffective cooperation due to political reasons, which is conducive to the formation and function of international judicial cooperation mechanism.

Secondly, terrorist crime is a social phenomenon, which cannot be eliminated in a short time. Moreover, terrorist crimes have always existed and can only be controlled by effective legal means. In this regard, the criminal justice model can not only effectively combat crime, but also protect human rights from arbitrary violations. Before the "9.11" terrorist attacks, countries basically used the judicial model to control terrorist crimes. The United Nations also actively advocated the establishment of an international judicial cooperation mechanism to deal with terrorist crimes. However, the "9.11" terrorist attacks broke through the "soft rib" of international criminal judicial cooperation, and countries began to realize that they must eliminate the prejudice in the field of ideology; they realized that for sovereign countries ruled by law, it would be a good choice to strengthen various cooperation among countries and control terrorist crimes within a limited range by using criminal law<sup>334</sup>. At the level of international law, terrorism has long been defined as a criminal act in the United Nations Declaration. In addition to the principle of non extradition of political prisoners, terrorist criminals are required to be prosecuted or tried, so that terrorists can no longer easily evade punishment as "political prisoners", which is conducive to the unity of the international community's counter-terrorism position and easy to achieve a coalition of counter terrorism-criminals. It can be said that this will inevitably become a good basis for the use of criminal justice to combat terrorist crimes.

Finally, the crime of terrorism has gone far beyond the field of criminal justice, and the crisis and threat caused by it are expanding and increasing. Especially in the field of

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<sup>333</sup> Wang Huipeng: *The Thinking Dimension of the Rule of Law against Terrorism in China and Its Normalization*, Administration and Law, 2017(09), pp.31-38.

<sup>334</sup> Zhao Bingzhi: *The International Perspective of The Rule of Law Against Terrorism: Difficulties and Countermeasures*, Journal of Southeast University (Philosophy and Social Sciences Edition), 2020,22(02), pp.80-91.

non-traditional security, the terrorist crimes are changing from armed terrorist attacks to non armed terrorist attacks. But the use of weapons of mass destruction will always endanger national security.

The criminal justice model may not be able to deal with crimes beyond its jurisdiction. Generally speaking, the criminal justice regulation requires a high demand on the use of evidence. However, some terrorist crimes investigators cannot obtain the evidence to prove terrorist attacks, which cannot make terrorists bear the due responsibility through criminal justice process. It is certain that criminal justice model is still more acceptable than "war mode". War can't objectively evaluate guilty and non guilty, and often takes morality as the commanding height. Once triggered, it can drag innocent countries into the mire of counter-terrorism by waving its morality flag. However, criminal justice can effectively avoid such unfair treatment of sovereign countries and protect the basic human rights of terrorists, rather than let the international declaration of human rights lose its due legal effect<sup>335</sup>. It can be expected that the criminal justice model will eventually become the trend of international counter terrorism-criminal justice cooperation.

At present, the biggest obstacle of international criminal justice cooperation lies in the differences in the legal regulation of terrorist crimes between countries. The reason lies in the different standards of defining terrorism. The recognition of "double standards" leads to the fact that some countries deal with violent terrorist attacks as ordinary crimes, some as terrorist activities. Therefore, when criminal judicial cooperation is carried out at the international level, there are some constraints, such as jurisdiction objection and enforcement objection, which make criminal judicial cooperation substantively difficult. Under the principle of globalization of the rule of law, the following issues need to be addressed:

First, in today's world, no one will stubbornly deny that terrorist crimes are a global public hazard and a great threat to human society. However, for a long time, terrorism has not been clearly defined in the legal provisions of various countries, resulting in the generalization of terrorist crimes and extreme ideological cognition in judicial practice, and the failure of international judicial cooperation. "It's very important for us that the law is clear. The clear content of the law means that the restriction of the government's

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<sup>335</sup> Yang Yize, Zhao Hongrui, Liu Tianhui: *China's Counter-Terrorism Rule of Law and International Comparative Study*, Knowledge and Behavior, 2016(02), pp.40-45.

coercive force launched by the law is clear, and it is also clear to what extent the interests of our citizens are guaranteed to each other. "<sup>336</sup> The indefinite definition of terrorist crime by legal provisions not only hinders the possibility of prediction and vague cognition of terrorist crime to a large extent, but also may become a powerful excuse for some countries to abuse judicial power and interfere in other countries' internal affairs; or even provides legal basis for the abuse of national punishment power. Even under the premise of national legal provisions, the differences in the scope of terrorist crimes defined by national laws will also lead to the legitimacy problems. Therefore, it is necessary to make a consistent identification of terrorist crimes and extremism thoughts at the international level, unify the definition of scope, classification and characteristics, eliminate the gap between different definitions, and find a unified legal basis for eliminating terrorist crimes and realizing criminal judicial cooperation between countries.

Second, we should promote the convergence of international counter-terrorism conventions, regional counter-terrorism conventions and domestic counter-terrorism laws. All countries should actively participate in international legislation, justice, law enforcement and legal assistance, and be the makers, adherents and enforcers of international counter-terrorism rules. So far, there are 13 relevant conventions formulated by the United Nations to deal with terrorist crimes, of which 12 have entered into force<sup>337</sup>. In these conventions, the principle of "terrorists have no right of

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<sup>336</sup>Takeshima Kawashima, *Modernization And Law*, translated by Wang Zhi'an, et al., China University of Political Science And Law Press, 1994 edition, p.152.

<sup>337</sup> These international conventions mainly include: 1963 Convention On Crimes And Certain Other Acts Committed On Board Aircraft (hereinafter referred to as "Tokyo Convention"), 1970 "Convention for the Suppression Of Unlawful Seizure Of Aircraft" (hereinafter referred to as "Hague Convention"), 1971 "Convention for the Suppression Of Unlawful Acts Against The Safety Of Civil Aviation" (hereinafter referred to as "Montreal Convention")Convention), 1973 Convention on the Prevention And Punishment Of Crimes against Internationally Protected Persons, including diplomatic agents, 1979 International Convention against the Taking Of Hostages, 1980 Convention on the Physical Protection Of Nuclear Material, 1988 Convention for the Suppression Of Unlawful Acts Of Violence At Airports Used For International Civil Aviation To Supplement The Convention For The Suppression Of Unlawful Acts Of Violence at Montreal, 23 September 1971Protocol to the Convention for the Suppression Of Unlawful Acts Against The Safety of Civil Aviation (hereinafter referred to as the Montreal Protocol), 1988 Convention for the Suppression Of Unlawful Acts Against The Safety Of Maritime Navigation, 1988 Protocol For The Suppression Of Unlawful Acts Against The Safety Of Fixed Platforms On The Continental Shelf, 1991 Convention on the Marking Of Plastic Explosives For The Purpose Of Detection, 1994 Convention on the Elimination Of Such Acts. Declaration on Measures Of International Terrorism,

asylum" is emphasized, the principle of criminal jurisdiction of terrorist activities is clarified, and it is reiterated that all countries should set up a wide range of criminal judicial cooperation mechanisms to prevent and punish the spread and expansion of terrorism and extremism. In the international community, the scope of criminal judicial cooperation mainly includes extradition, service of criminal litigation documents, investigation and evidence collection, release of detainees to testify in court, transfer of material evidence and documentary evidence, freezing or seizure of property, provision of legal information, mutual recognition and enforcement of criminal judgments, and transfer of criminal proceedings<sup>338</sup>. The Organization of American States (OAS) Convention on the Prevention and Punishment of Terrorist Acts and the Pan American Convention against Terrorist Activities signed by OAS countries has also added a series of legal system means such as "financial system, border immigration system, etc. in addition to criminal law measures"<sup>339</sup>. The boundary scope of criminal judicial assistance will be further expanded, the obligations of 34 members in punishing and preventing terrorist crimes will be specified, and the terrorist crimes will be listed in the criminal law of various countries to be regulated. The Council of Europe Convention on the Prevention of Terrorism and the European Convention for the Suppression of Terrorism, signed by 35 European countries, reaffirm that the basic principle of "aut dedere aut judicare" in international law is applicable to terrorist crimes, and try to exclude any form of terrorist crimes from political crimes<sup>340</sup>.

While actively promoting the reshaping of international relation order, China has taken the Shanghai Cooperation Organization as its focus to establish a regional

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1998 International Convention for the Suppression Of Terrorist Bombings, 1999 International Convention for the Suppression Of The Financing Of Terrorism, 1999 Measures To Eliminate International Terrorism, 2001 Condemnation Of Terrorist Attacks In The United States Of America, 2005 International Convention for the Suppression Of Acts Of Nuclear Terrorism. Regional conventions mainly include: the Convention of the Organization of American States on the Prevention and Punishment of Terrorist Acts (hereinafter referred to as "the American Convention") in 1971, the European Convention on the Punishment of Terrorism (hereinafter referred to as "the European Convention") in 1977, and the Shanghai Convention on Combating Terrorism, Separatism and Extremism in 2001.

<sup>338</sup> See Huang Feng, et al: *International Criminal Law*, Renmin University Press, 2007, p.156.

<sup>339</sup> Luo Kaijuan: *Review of the Counter-Terrorism Laws of the Organization of American States*, Political and Legal Treatises, 2007, issue 2, pp.51-58.

<sup>340</sup> United Nations Document No. 37 (A / 57 / 37), annex IV, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/248/16/PDF/N0224816.PDF?OpenElement>. Last visited date: December 24, 2019.

multilateral cooperation mechanism against terrorism. In 2001, SCO member states jointly signed the Shanghai Convention on Combating Terrorism, Separatism and Extremism. In 2009, the Shanghai Cooperation Organization Convention on Counter Terrorism, clearly defined terrorism, terrorist actions and terrorist organizations, and built a joint action mechanism and intelligence cooperation mechanism among Member States. In 2013, "One Belt, One Road" initiative was proposed by President Xi Jinping. He proposed the "Silk Road Economic Belt and the energy cooperation vision and action for the maritime Silk Road in the 21st Century"<sup>341</sup>, which will build the economic security defense system, and deterrent terrorist activities in neighboring countries and regions. At the same time, in order to meet the needs of international conventions for internalizing terrorist crimes into domestic laws, and in response to international and domestic terrorist crimes, the Counter-Terrorism Law and the Ninth Amendment to Criminal Law have been issued at the right time to clearly unify the terrorism definition, accusation design and crime quantity standard, establish the terrorism prevention strategy of "prevention first", and increase the content of "preventive criminal law", so as to achieve the convergence of international conventions with domestic law.

Third, we should coordinate domestic and international rule of law. Starting from the current situation of domestic terrorist crimes and combining with the development trend of international terrorism, we should constantly adjust the connection between domestic and international rule of law environment, so as to achieve international cooperation in preventing and punishing terrorist crimes. President Xi Jinping pointed out: "China has entered a crucial stage to realize the great rejuvenation of the Chinese nation. The relationship between China and the world is undergoing profound changes, and the interaction between China and the international community has become unprecedented close. China's dependence on the world and participation in international affairs are deepening, so are the dependence and influence of the world on China. When we observe and plan for reform and development, we must take into account and comprehensively apply the two types of rules, namely, the international and domestic markets, the international and domestic resources and the international

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<sup>341</sup> Information about the SCO found at <http://eng.sectsc.org/>, last visit date: October 10, 2020.

and domestic rules. "<sup>342</sup>From this point of view, in the field of rule of law, we should coordinate the two overall situations of domestic and international rule of law, and be good at using "rule of law discourse power" to express China's position. The alliance between the old powers of international order will often become the reality of hegemony in the name of counter-terrorism, destroy the existing international rule of law pattern, and create regional war and turmoil. Therefore, in the process of fighting against terrorist crimes<sup>343</sup>, the positive interaction between the international rule of law and the domestic rule of law is undoubtedly the basis for a country to participate in the construction of international cooperation. "If good laws are established in the world, then the world will be governed; if good laws are established in one country, then one country will be governed."<sup>344</sup> Domestic rule of law and international rule of law should be consistent in the common value and goal of global governance. The perfection of domestic law needs the guidance of international law, and the deficiency of international law needs the fulfilling of domestic law. Similarly, the defects and loopholes in the field of international criminal justice cooperation undoubtedly need to be filled by the highly developed level of the domestic rule of law. In the face of the global rampage of terrorist crimes, the activeness of the interaction between domestic rule of law and international rule of law determines the depth and breadth of international criminal justice cooperation, and also determines the strength of punishment for terrorist crimes.

### *2.3 Global governance model and evaluation*

The concept of "global governance" originated from the word "governance crisis" first proposed by the World Bank. Since then, "governance" has been widely used in various contexts as an international popular vocabulary. Especially in recent years, with the increase of international problems, the emergence of global problems such as

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<sup>342</sup>See *The Central Conference on Foreign Affairs Held in Beijing*, People's Daily, November 30, 2014, 1<sup>st</sup> edition.

<sup>343</sup>See Zhao Jun: *International and Domestic Rule Of Law in the Perspective of Global Governance*, China Social Sciences, No. 10, 2014, pp. 87-98.

<sup>344</sup>See the People's Daily Commentary Department: *Xi Jinping Allusions*, People's Daily Press, 2015 edition, page 269~270. The original text is from the book *Zhou Gong* written by Wang Anshi in the Northern Song Dynasty.

international security, non-traditional security, regional conflicts, terrorism, etc., promotes global governance to gradually extend to all levels. The global governance of terrorist crimes refers to "the coordination and cooperation of measures and means in political, economic, social, cultural, judicial, military and other fields by various or multi-level actors to gradually eliminate the threat of terrorism and create a kind of security model that is not conducive to the existence and operation of terrorism."<sup>345</sup> "Global governance consists of national governance and non-national governance. It is an organizational system and network composed of multiple complex and multi-level."<sup>346</sup>

First of all, terrorist crime is not only a criminal act; the harm brought by terrorism may be enough to endanger the survival and development of the whole human society<sup>347</sup>. Therefore, global governance must be carried out on a global scale, relying on military, scientific and technological, information, political, economic, cultural, legal, policy and other means to launch defense. As mentioned before, the tentacles of modern terrorism are no longer limited to the political and military fields of traditional security, but have spread to the fields of non-traditional security, including the lifestyle and mode of production on which human beings depend for survival. Such infiltration is likely to break through all kinds of defense measures set by existing countries. Relying on the power of one country alone, we can't stop the invasion of international terrorism and domestic terrorist crimes. It's the only way for global governance to make full use of global resources, form an organic and strict terrorist crime prevention and control network, and jointly deal with the threat of terrorist crimes. The vision of global governance focuses on creating a safe environment for the international and domestic society. There is always a lag of criminal justice behind the prevention and strike of terrorist crimes, which cannot make up for the damage that has been caused<sup>348</sup>. But the

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<sup>345</sup>Zang Jianguo: *Research on the Coping Mode of Terrorist Crimes*, Crime Research, No. 2, 2014, pp.9-16.

<sup>346</sup>See Liu Zhongmin: *Global Governance of Non-Traditional Security Issues and Transformation of International System*, International Observation, No. 4, 2014, pp.21-33.

<sup>347</sup>Here, assuming that terrorist organizations acquire a large number of weapons of mass destruction and use them, the earth may be destroyed thousands of times; or the terrorist organizations take the way of "a little fire can start a prairie fire", and carry out terrorist attacks in various countries and industries around the world at the same time, the consequences will be unimaginable.

<sup>348</sup>Wang Huipeng: *The Thinking Dimension of the Rule of Law against Terrorism in China and Its Normalization*, Administration and Law, 2017(09), pp. 31-38.

in advance prevention and strike of war model will violate the sovereignty of other countries or other human rights. Therefore, we should combine global governance to criminal justice and limited military attack, improve the ability to respond quickly to terrorist crimes, improve the cooperation mechanism in advance, and encourage individuals, organizations and unions to actively participate in the system of defense against terrorist crimes, so that we may resolve contradictions, clarify the root causes of terrorist crimes, and improve the counter-terrorism capacity of the state, society and individuals.

Secondly, terrorist crime is manifested as international terrorist crime and domestic terrorist crime. The fundamental purpose of global governance of terrorist crimes is to eliminate terrorist crimes, minimize such losses, or reduce the impact of terrorist crimes to zero. As we all know, the damage caused by terrorist crimes is both short-term and long-term<sup>349</sup>. The goal of global governance is to immediately concentrate limited resources to quickly repair the trauma and eliminate the negative impact of terrorist crimes once terrorist attacks occur. For example, in view of the current situation of terrorist crimes to the non-traditional security field, the global governance requires strengthening the supervision of the areas involved in the non-traditional security, so as to avoid the destruction of terrorism by using the non-traditional means.

Finally, the means of global governance are diversified for the particular reason that terrorist crime cannot be simply defined as "black and white". The causes of terrorist crime are various, and it is an organic part of complex social phenomenon. The governance of terrorist crimes needs to be realized by combining multifarious forces. "Simple countermeasures cannot constitute an effective counter-terrorism policy. There must be many elements to counter-terrorism policy."<sup>350</sup> All agencies and departments of the United Nations and its member states are the organic forces to participate in counter-terrorism. Although the criminal justice model and war model have their shortcomings and defects, they also have their irreplaceable advantages. Global governance cannot completely deny the positive part of these two counter-terrorism modes, but should actively absorb their reasonable components, as a

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<sup>349</sup>Zang Jianguo: *Research on the Coping Mode of Terrorist Crimes*, Crime Research, No. 2, 2014, pp.9-16.

<sup>350</sup>Paul R. Pilar, *Terrorism and American Foreign Policy*, translated by Wang Huaihai, China Friendship Publishing Company, 2003 edition, p.31.

useful supplement, and finally form a "tripartite structure" to jointly maintain global peace and development.

"Global governance is the sum total of public organizations, private institutions and individuals that manage their affairs together."<sup>351</sup> "Global governance is a mechanism to solve global problems through international cooperation. In order to cope with common problems and challenges and seek common interests, it carries out institutionalized cooperation to overcome difficulties, share rights and interests, and jointly manage and regulate the world we live in."<sup>352</sup> The global governance system is jointly built and shared by the whole world, which cannot be controlled by any country alone. China is a participant, builder and contributor of the current international system, and has always maintained the international order and system with the United Nations as the core and based on the purposes and principles of the Charter of the United Nations<sup>353</sup>. Global governance advocates that all countries should abandon their political bias, reach consensus, build trust and cooperate in depth, and fully affirm that other countries are an indispensable part of international affairs. All countries should form a community of common destiny to fight against international crimes and maintain global peace, security and development. At present, different countries have different understandings of terrorism, which leads to ineffective fight against terrorist crimes in essence, and makes terrorist crimes spread and upgrade all over the world.

"Effective governance must be based on countries and markets."<sup>354</sup> Nowadays, the state and government are still the leading forces of global governance, and non-governmental organizations and individuals do not occupy the leading position, so they cannot promote the establishment of a new international order of global governance. In the 21st century, the rise of group power between emerging market countries and developing countries is the most revolutionary change in the international

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<sup>351</sup>See Liu Xiaochen, et al: *On the Legal Mechanism of Combating Maritime Terrorism from the Perspective of Global Governance*, China Maritime Law Research, No. 4, 2016, pp.98-107.

<sup>352</sup>See He Yafei: *Choice: China And Global Governance*, Renmin University Press, 2015, p.1.

<sup>353</sup>Referring to "Xi Jinping's interview with the Wall Street Journal: Adhering To The Right Direction Of Building A New Sino US Major Power Relationship And Promoting The Peaceful And Stable Development Of The Asia Pacific Region And The World", the 1<sup>st</sup> edition of the People's Daily, September 23, 2015.

<sup>354</sup>See Yu Keping: *Governance and Good Governance*, Social Science Literature Press, 2000 edition, P. 86.

power contrast since modern times<sup>355</sup>. It is necessary to change the old international order and promote the establishment of a system to coordinate the interests of all countries and the distribution of power. In the face of the deep adjustment period of the world economy, the long-term sensitive period of geopolitical factors, the turbulent period of local wars and conflicts, the increasing non-traditional security and global challenges such as terrorism, network security and energy security<sup>356</sup>, all countries in the world have formed a community of shared interests, ups and downs, security and danger, and a community of shared destiny<sup>357</sup>. "It is the general trend to strengthen global governance and promote the reform of global governance system."<sup>358</sup> Terrorism is the public enemy of mankind. The biggest opponent of terrorism is to reach a global consensus on counter-terrorism, form a community of shared future for mankind, and jointly fight against the spread and expansion of terrorist crimes in the global scope.

First, we should build democratic, legal, rational and fair international relations, eliminate regional conflicts and wars, and dismantle terrorist organizations. At present, realism, liberalism and constructionism among western scholars have successively put forward "hegemonic stability theory", "global governance theory" and "universal value theory" aiming at the basic positioning of new international relations and new world order, so as to promote the influence of Western values and social systems in the world and realize the dominant thinking of discourse right in the world<sup>359</sup>. As a developing country, China is committed to solving global problems and maintaining the normal international political and economic order, taking binding international regulations and effective international cooperation as the path, and taking the global profits of

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<sup>355</sup>See Zhang Wenxian: *Global Thinking to Promote Global Governance Reform and Build a New World Order - Xi Jinping's Governing the Country*. Global Law Review, 2017, issue 4, pp.5-20.

<sup>356</sup>See Xi Jinping: *"Towards the Community of Destiny and Create A New Future for Asia"* - keynote speech at the 2015 annual meeting of the Boao Forum for Asia, 2<sup>nd</sup> edition of "People's Daily" March 29, 2015.

<sup>357</sup>See Xi Jinping's speech at the 60th anniversary China International Friendship Conference and the Commemoration of the Founding of the Chinese People's Association for Friendship with Foreign Countries, which is published in the 2<sup>nd</sup> edition of the People's Daily in May 16, 2014.

<sup>358</sup>Xi Jinping emphasized in the 27th collective learning of the Politburo of the CPC Central Committee: *To Promote A More Just And More Rational Global Governance System And Create Favorable Conditions For China's Development And World Peace*, People's Daily, October 14, 2015, 1<sup>st</sup> edition.

<sup>359</sup>Zhang Wenxian: *Global Thinking to Promote Global Governance Reform and Build a New World Order - Xi Jinping's Governing the Country*, Global Law Review, 2017, issue 4, pp.5-20.

consensus. "The destiny of the world must be shared by all peoples. Things in the world should be handled by governments and people of all countries through consultation. The idea of monopolizing international affairs lags behind the times, and the action of monopolizing international affairs is certainly not successful."<sup>360</sup>

On December 4th, 2015, President Xi Jinping proposed the "five pillars" of the cornerstone of international relations during the summit of Johannesburg China-Africa Cooperation Forum. In the keynote speech of the 2017 annual meeting of the World Economic Forum, it was reiterated that "all countries, regardless of size, strength and wealth, are equal members of the international community and should participate in decision-making, enjoy rights and fulfill obligations equally. We need to give emerging market countries and developing countries more representation and voice. We should adhere to multilateralism and safeguard the authority and effectiveness of the multilateral system. We must live up to our promises and abide by the rules. We cannot choose whatever we want."<sup>361</sup> The fate of the world should be shared by all countries, international rules should be written by all countries, global affairs should be governed by all countries, and development achievements should be shared by all countries. We will continue to emphasize and expound China's position, views and propositions on the democratization of international relations, so as to promote the construction of a new type of international relations and a new world order.

Respecting the rule of law is the main theme of solving disputes in the current international social affairs. "The consensus of most countries is to establish international mechanisms, abide by international rules and pursue international justice."<sup>362</sup> Since 2005, the United Nations has constantly called on all countries to fully realize the rule of law at the national and international levels. At the same time, the General Assembly, the Sixth Committee, the International Law Commission, the Security Council and other organs of the General Assembly are committed to

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<sup>360</sup>Xi Jinping: *"Sharing the Responsibility of the Times to Promote Global Development - Keynote Speech at the Opening Ceremony of the 2017 Annual Session of the World Economic Forum"*, the 3<sup>rd</sup> edition of People's Daily, in January 18, 2017.

<sup>361</sup>Xi Jinping: *"The Common Building of The Community of Human Destiny - Speech at The Headquarters of The United Nations"*, 2<sup>nd</sup> Edition, People's Daily, January 20, 2017.

<sup>362</sup>Xi Jinping: *"Promoting A More Just And More Rational Global Governance System To Create Favorable Conditions For China's Development And World Peace"*, the People's Daily, October 14, 2015, 1<sup>st</sup> edition.

promoting the rule of law in international affairs and reshaping the rule of law in international relations and order through the formulation of international treaties, the codification of international law and the establishment of ad hoc criminal tribunals<sup>363</sup>. It is not only the inevitable choice in the era of rule of law, but also the right choice to conform to the historical trend. President Xi Jinping pointed out acutely and wisely: "we should jointly promote the rule of law in international relations. We will promote all parties to abide by international law and recognized basic principles of international relations, and use uniformed and applicable rules to clarify right and wrong, promote peace and seek development. In the international community, law should be the common criterion. There can be no double standards in the application of law. We should jointly safeguard the authority and seriousness of international law and order. All countries should exercise their rights in accordance with the law, oppose distorting international law, and oppose violating the legitimate rights and interests of other countries and undermining peace and stability in the name of rule of law".<sup>364</sup> "We should create a future of rule of law, fairness and justice. We need to improve the status and role of international law in global governance, ensure that international rules are effectively observed and implemented, uphold democracy, equality and justice, and build the international rule of law."<sup>365</sup>

Second, we should build a community of shared future for humanity, which can lead the world economic globalization, and confront the threat of violent terrorist criminal activities. In today's world, the wave of globalization has eliminated the barriers between countries, resulting in the rise of global social risks. Human beings are in a period of great development, great change and great adjustment, and also in an era of endless challenges and increasing risks. The world's economic growth is weak, the financial crisis is lingering, and the development gap is becoming increasingly prominent. Wars and confrontations happen from time to time. Cold war thinking and

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<sup>363</sup> Zhao Bingzhi: *The International Perspective of the Rule of Law Against Terrorism: Difficulties and Countermeasures*, Journal of Southeast University (Philosophy and Social Sciences Edition), 2020, 22(02), pp.80-91.

<sup>364</sup> Xi Jinping: "Carry Forward The Five Principles Of Peaceful Coexistence And Build A Win-Win And Better World -- Speech Delivered At The 60th Anniversary Commemorative Meeting On The Five Principles Of Peaceful Coexistence", published in the 2<sup>nd</sup> edition of the People's Daily in June 29, 2014.

<sup>365</sup> Xi Jinping: "To Build A Win-Win Cooperation Mechanism, A Fair and Reasonable Mechanism for Climate Change Governance" - "Speech at the Opening Ceremony of the Paris Conference on Climate Change", December 1, 2015, second edition of the People's Daily.

power politics are lingering. Terrorism, refugee crisis, major infectious diseases, climate change and other non-traditional security threats continue to spread. However, with the deepening development of multi polarization and economic globalization in the world, all countries are interconnected and interdependent, and the global destiny is closely related to each other. The rise of peace power far exceeds the growth of war factors. The trend of peace, development, cooperation and win-win is stronger<sup>366</sup>.

To build a community of shared future for humanity, the ultimate goal is to abandon the thinking of "zero sum game", concern each other, respect each other's core interests, shelve conflicts and differences, cooperate for win-win results, and form a harmonious, inclusive, open, transparent, equal and just new relationship<sup>367</sup>. "Action is the key to building a community with a shared future for mankind. The international community should make efforts in partnership, security pattern, economic development, civilized exchanges, ecological construction, etc., adhere to dialogue and consultation, and build a world of lasting peace. If the country is peaceful, the world will be safe; if the country fights, the world will be chaotic; if we insist on co construction and sharing, we will build a world of universal security. Counter terrorism is a common obligation of all countries. We should not only treat the symptoms, but also the root causes. We need to strengthen coordination, establish a global counter-terrorism united front, and provide security for people of all countries. We need to adhere to exchanges and mutual learning to build an open and inclusive world. Differences in civilizations should not be the root cause of world conflicts, but the driving force of human civilization progress; we should adhere to green and low-carbon, and build a clean and beautiful world."<sup>368</sup>

China's "One Belt, One Road" initiative and President Xi Jinping's vision of the world today is not only a useful attempt to change the world political and economic order, but also a responsibility for China to build a new global governance model and to put forward a "China plan" for global governance. The "One Belt, One Road" initiative advocates the Silk Road spirit of "peaceful cooperation, openness, tolerance, mutual

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<sup>366</sup>Xi Jinping: *"The Common Building Of The Community Of Human Destiny"* speech at the headquarters of the United Nations in Geneva.

<http://politics.people.com.cn/n1/2017/0119/c1001-29033860.html>, last visited on: December 24, 2019.

<sup>367</sup>Zhang Wenxian: *Promoting Global Governance Reform and Building a New World Order-Xi Jinping's Global Thinking of Governing the Country*, *Global Law Review*, 2017,39(04), pp.5-20.

<sup>368</sup>Xi Jinping: *"The Common Building of the Community of Human Destiny - Speech at the Headquarters of the United Nations"*, *People's Daily*, January 20, 2017, 2<sup>nd</sup> Edition.

learning, mutual benefit and win-win". The "Silk Road" concept of "mutual trust, economic integration and cultural inclusion" forms a responsibility community, a community of interests and a common destiny. It is firmly committed to good relations with neighbors, to the neighbors as partners, and to maintain good neighborliness, which is a close manifestation of close, sincere and favorable. With the concept of inclusiveness, we will actively promote peace and security in the surrounding areas. China is just within the radius of terrorist activities. With the strengthening of terrorist attacks in surrounding areas and countries, it will inevitably threaten the overall national security of China<sup>369</sup>. Therefore, "One Belt, One Road" initiative will promote the rapid movement of goods and capital, and revive the rapid recovery of world economy, help the "failed state" to get out of the haze as soon as possible, and consciously resist the transfer and transformation of terrorist crimes in the region.

Third, we should build a new global governance model under the rule of law to jointly deal with terrorist criminal activities. The rule of law is an inevitable requirement for the construction of a new type of global international relations and order. It is the only way to promote the reform of global governance system, cope with global security risks, build an international rule of law order, and realize the modernization of global rule of law. The deep cooperation and joint efforts of the international community are necessary to form an effective network to prevent and combat terrorist crime.

(1) We should take the purposes and principles of the Charter of the United Nations as the core and safeguard the international order and system, rather than the entire contents stipulated in the Charter<sup>370</sup>. The United Nations Charter is the cornerstone for the international community to establish an international order and the basic principle for the establishment of contemporary international relations. President Xi Jinping said in the general debate of the 70th Session of the General Assembly: "China is a founding member of the United Nations and is the first country to sign the UN Charter. China will firmly uphold the international system with the United Nations at its core, the basic

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<sup>369</sup> Xu Junhua: *China's International Law Strategy of International Cooperation Against Terrorism Under the Background of "The Belt and Road Initiative"*, *Law Review*, 2019, 37(01), pp.136-147.

<sup>370</sup> Zhao Bingzhi: *The International Perspective of the Rule of Law against Terrorism: Difficulties and Countermeasures*, *Journal of Southeast University (Philosophy and Social Sciences Edition)*, 2020, 22(02), pp.80-91.

norms of international relations based on the purposes and principles of the United Nations Charter, the authority and status of the United Nations, and the core role of the United Nations in international affairs.<sup>371</sup> Therefore, the purposes and principles of the United Nations Charter are the core norms for building a global counter-terrorism community. In the joint fight against global terrorist crimes, the United Nations has an unshakable position in dealing with the threat and challenge of global terrorist crimes. No country can ignore the international order and international system established by the purposes and principles of the United Nations Charter and invade other countries to fight against terrorism at will, for which will definitely undermine the basic norms of international relations and disturb the authority and seriousness of international law and order. Therefore, the principles of the UN Charter are the first principle to build a new global governance model to deal with terrorist crimes.

(2) We should promote international legislative, judicial and law enforcement activities. Under the leadership of the United Nations and in the face of the current situation of "decentralization" of terrorist crimes, the UN Security Council Resolutions repeatedly reiterated that all countries in the world should establish a wide range of criminal justice cooperation mechanisms to combat all forms of terrorism and prevent the spread of terrorist crimes to the world. Based on this, the United Nations has repeatedly called for the establishment of the United Nations Comprehensive Counter Terrorism Convention, but it has not yet been implemented. In the decisions of the Fourth Plenary Session of the 18th CPC Central Committee, China proposed that "actively participate in the formulation of international rules, promote the handling of foreign trade affairs in accordance with the law, enhance China's voice and influence in international legal affairs, and use legal means to safeguard China's sovereignty, security and development interests"<sup>372</sup>. "Deepen international cooperation in the judicial field, improve China's judicial assistance system, and expand the coverage of international judicial assistance. We will strengthen international cooperation against corruption, and intensify efforts to recover stolen goods from overseas and to return

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<sup>371</sup> Xi Jinping: "Work Together to Build a Win-Win Cooperation for New Partners to Build a Common Destiny of Mankind" speech at the general debate of the seventieth United Nations General Assembly, People's Daily September 29, 2015, 2<sup>nd</sup> Edition.

<sup>372</sup> Ceng Lingliang, Gu Zuxue, He Zhipeng: *Rule of Law: China and The World*, Chinese Social Sciences, 2015(10), pp.134-206.

them for extradition."<sup>373</sup> "Actively participate in international cooperation in law enforcement and security, and jointly fight against violent terrorist forces, ethnic separatist forces, religious extremist forces, drug trafficking and smuggling, and transnational organized crime."<sup>374</sup> In 2015, China reiterated in the 13th Five Year Plan Outline that it should strive for institutional voice and influence in global governance, and stressed that "China will actively participate in international rulemaking in new areas such as the Internet, the deep sea, the polar region and the sky"<sup>375</sup>. It has a place in the formulation of international rules to create a better international environment for China's development. In the international judicial activities, many laws in China adopt the principle of "recognition and restriction of reservation", and will never tolerate the abuse of judicial power on issues involving the core interests of the state.

(3) We should build a discourse system that embodies the global common values. As the embodiment of a country's soft power, the right of speech is the fundamental representation of a country's hard power to participate in international affairs. For hundreds of years, the monopoly of dialogue in the international affairs of the western countries has destroyed the normal international order and international relations. For a time, the authority of the United Nations has been questioned. The phenomenon of "buying and selling by force" and hegemonism has appeared in the distribution of global interests, which has left a lot of resentment for various confrontations and injustices in the world today<sup>376</sup>. However, the fate of human society is always closely related and has a common value choice, and we cannot deny the common value orientation of human society in the world. President Xi Jinping made a clear-cut proposal at the 70th Session of the UN General Assembly: "Peace, development, fairness, justice, democracy and freedom are the common values of all mankind and the lofty goal of the United Nations."<sup>377</sup> Therefore, in response to the global public hazard of terrorist crime, human society should reach a broad consensus, rather than

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<sup>373</sup> Ibid.

<sup>374</sup> Ibid.

<sup>375</sup> "The Thirteenth Five-Year Plan", Website of State Council Information Office, <http://www.scio.gov.cn/37236/37262/Document/1602385/1602385.htm>, last visit date: October 21, 2020.

<sup>376</sup> He Zhipeng, Wang Wen'e: *Chinese Expression of International Rule of Law*, Social Sciences in China, 2017, 38 (03), pp. 175-188.

<sup>377</sup> "Xi Jinping attended the 70th UN General Assembly", Central government portal website, [http://www.gov.cn/xinwen/2015-09/29/content\\_2940084.htm](http://www.gov.cn/xinwen/2015-09/29/content_2940084.htm), last visit date: October 21, 2020.

implement the "double standards" and deliberately indulge the harm of terrorist crime to the world.

In a word, in the face of the unprecedented growth of the power of terrorist crimes, whether it is the US led war against terrorism, the international community's current criminal justice against terrorism, or the current global governance against terrorism, without exception, all show the world has a negative evaluation of terrorist crimes. As far as the "three counter-terrorism modes" are concerned, although the means of war have been criticized a lot, from the perspective of global security interests and national security defense, today's unequal international political relations still exist in the international community, hegemonism and power politics may trample the sovereignty of other countries at any time, and countries that secretly support and help the development of terrorist organizations still exist. Based on this consideration, "war against terrorism" needs to be kept in a relatively reasonable range. However, in the long run, criminal justice model should be the most effective way to curb terrorist crimes. The occurrence of terrorist crimes is often limited to one country. In the territory of a country, the use of judicial procedures to sanction terrorist crimes can not only protect the basic human rights of criminal suspects, but also fully realize the state's right to punish crimes. While safeguarding national security, it will also enhance the confidence and dignity of sovereign states in combating terrorism. International criminal justice cooperation and assistance, on the other hand, guarantees that terrorist crimes should be punished at the level of international law. Global governance is a comprehensive means of governance. It can be considered that in the field of non-traditional security, global governance can enhance mutual trust among countries, effectively eliminate barriers to cooperation due to different political opinions, avoid political overheated friction, and achieve effective cooperation between sovereign countries. Therefore, in terms of counter-terrorism, it is an ideal model to create a "Trinity" counter-terrorism mode, which is also worth practicing in the prevention and control of terrorist crimes.

## Chapter IV

### THE CURRENT SITUATION AND IMPROVEMENT OF INTERNATIONAL RESPONSE TO TERRORIST CRIMES

Due to the differences of political ideology and the restriction of interest pattern in different countries, the international legal system against terrorism is not perfect, and it is difficult to form a systematic and effective "International Unified Criminal Code" and "international unified criminal policy" to regulate international terrorist crimes. In this regard, the regulation of terrorist crimes at the international level should mainly adopt international criminal cooperation, criminal judicial assistance, regional alliance, and regional cooperation and so on. Therefore, it is particularly important to conclude international conventions. Only with legal basis, can we realize the effective transnational cooperation, which can not only ensure respect for national sovereignty, but also help to carry out practical cooperation, so as to effectively deal with the harm brought by terrorism.

#### *1. Reality and measures of counter-terrorism*

The "9.11" terrorist attacks and the successive terrorist attacks in other countries have aroused the strong concern of the international community, which has begun to strengthen cooperation in various aspects of counter-terrorism. Many countries have suffered from terrorist attacks before 9.11, and the combat terrorist crimes has become one of the main tasks of their government, regional organizations and international cooperation. The making of "counter-terrorism law" and "counter-terrorism policy" means that we should not only strive to expand government power to respond to terrorist crimes, but also restrict the abuse of state power correspondingly. Global attention to terrorist crimes needs to be matched by designing an appropriate and integrated response mechanism. The multi-layer design of "counter-terrorism law and policy" brings criticism and comparison to academic research, which is a very challenging task, because "counter-terrorism law" has crossed the border between countries and traditional departments, as well as the borders of domestic law, regional

law and international law."Counter Terrorism Law" and "counter-terrorism policy" also cross the border of traditional disciplines such as administrative law, constitution, criminal law, financial law, immigration law, international law, military law and war law. In addition, "counter-terrorism law" and "counter-terrorism policy" involve a wide range of disciplines, including history, international affairs, military research, philosophy, psychology, religion, sociology and political science. Therefore, one of the challenges in the study of global "counter-terrorism law" and "counter-terrorism policy" is how to integrate domestic, regional and international legal resources and clarify their important interactions. However, there is no unified definition of terrorist crime in the world, which makes such integration difficult. Resolution 1373, adopted by the UN Security Council on September 28, 2001, calls on all Member States to crack down on terrorist crimes, financial money laundering, preparation and support of terrorism. However, there is still no clear definition of terrorism, which makes it difficult to establish a global counter-terrorism mechanism. Nevertheless, the successive terrorist attacks enable all countries in the world to keep the restraint of political dissent and actively seek international cooperation at the level of "counter-terrorism law" and "counter-terrorism policy", so as to effectively eliminate the threat to international, regional and domestic security brought by terrorist crimes<sup>378</sup>.

### *1.1 Legal system and deficiency of counter-terrorism*

Since the appearance of terrorism, to establish an effective legal system and policies to control and eliminate the threat of terrorist crimes, and to maintain the national security are the ideal goal of all countries in the world which actively pursue the prevention of terrorist crimes. However, due to different definitions of terrorism in different countries, there are quite a lot of difficulties in the construction of unified legal system to fight against terrorist crimes. Looking at the existing legal system of counter-terrorism, it mainly refers to the relevant provisions of international law and the relevant international conventions, declarations and resolutions of the United Nations to adjust. Most countries in the world have formulated the counter-terrorism law and actively constructed the legal system of prevention and punishment of

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<sup>378</sup>See Victor V. Ramraj, Michael Hor, Kent Roach and George Williams, *Global Counter-Terrorism Law and Policy*, 2<sup>nd</sup> Edition, Cambridge University Press 2012, pp.1-2.

counter-terrorism. However, due to the different opinions of seeking political interests among countries, the current legal system of counter-terrorism in the whole international community is defective.

At present, the legal system formed by the international community to regulate terrorist crimes is mainly composed of the relevant conventions, declarations and resolutions formed by the United Nations, as well as the Counter-Terrorism Law and Criminal Law formulated by countries all over the world. This kind of system is relatively loose, and it takes the maintenance of international security and regional security as its responsibility. In particular, taking the Charter of the United Nations as the principle and purpose, it affirms the use of all means to combat all forms of terrorist crimes that threaten international peace and security. As long as the new terrorist crime adopts more radical means to invade the non-traditional security field in 1963, 1970 and 1971, the United Nations successively adopted the Convention on Offences and Certain Other Acts Committed on Board Aircraft, the Convention for the Suppression of Unlawful Seizure of Aircraft, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation<sup>379</sup>, aiming at combating and punishing terrorists who use aircraft to commit terrorist acts. However, the field of terrorist crime is not limited to the harm and threat to aircraft safety. Terrorism will also threaten the government to make political compromises and concessions out of the need of political interests. Attacks innocent people, diplomatic officials and public property are becoming more frequent, which forces the international community (the United Nations) to make more detailed legal provisions: the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, formulated in 1973; the International Convention against the Taking of

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<sup>379</sup>From two aspects of legislative jurisdiction and judicial jurisdiction, the Tokyo Convention clearly stipulates the criminal jurisdiction of crimes committed on international civil aircraft to avoid its gaps and loopholes. Its main contents include "endangering the aircraft", "endangering the people or property on board", "endangering the good order and discipline of the aircraft", the aircraft is in "flight" or "on the high seas" or "not belonging to any national territory"; the Hague Convention is mainly formulated for the lack of provisions in the Tokyo Convention, aiming at "illegal hijacking of aircraft in flight" or "illegal control"; Montreal Convention is a supplement to the first two conventions, aiming at the criminal acts of illegally interfering with international civil aircraft other than hijacking. After that, in order to prevent the acts of terrorism endangering the airport security, the international community signed the Montreal Convention Supplementary Protocol, which defined the acts endangering the civil aviation airport security as a crime.

Hostages in 1979, International Convention for the Suppression of Terrorist Bombing in 1993<sup>380</sup>, International Convention for the Suppression of the Financing of Terrorism<sup>381</sup> and Measures for the Elimination of International Terrorism<sup>382</sup> in 1999, 2000 United Nations Convention against Transnational Organized Crime, 2005 International Convention for the Suppression of Acts of Nuclear Terrorism<sup>383</sup>, Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation<sup>384</sup>, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms on the Continental Shelf<sup>385</sup> and the United Nations Convention on the Law of the Sea. At the same time, before or after the formation of these conventions, the main Resolutions of the General Assembly of the United Nations are: the Global Counter Terrorism Strategy of the 60th Session of the General Assembly of the United Nations in 2006<sup>386</sup>, the Measures to Prevent Terrorists from Acquiring Weapons of Mass Destruction of the 68th Session of the General Assembly in 2013<sup>387</sup>, and the Resolution 1368 (2001) of the Security Committee: Combating Terrorism: Condemning "9.11" Terrorist Attacks, Resolution 1373 (2001) - Preventing and Suppressing the Financing of Terrorism, Resolution 1377 (2001) - Declaration on Global Efforts to Combat Terrorism, Resolution 1452 (2002) - Combating Terrorism: Financial Measures, Resolution 1455(2003) - Sanctions against the Taliban and Al Qaeda, Resolution 1456 (2003) - Declaration on Combating Terrorism, Resolution 1624 (2005) - Threats to International Peace and Security, Resolution 1735 (2006) - Threats to Terrorism: Measures to Sanction Terrorists, Resolution 1816 (2008) - The Situation in Somalia: Authorizing the Fight Against Piracy and Armed Robbery against Ships, Resolution 2099 (2015) - Eliminating Terrorism Threats to International Peace and Security, etc.<sup>388</sup>.

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<sup>380</sup>United Nations, Treaty Series, Vol. 2149, No. 37517.

<sup>381</sup>United Nations, Treaty Series, Vol. 2178, No. 38349.

<sup>382</sup>United Nations, General Assembly, A/RES/68/119.

<sup>383</sup>United Nations, Treaty Series, Vol. 2445, No. 44004.

<sup>384</sup>Adopted by the Diplomatic Conference on the Amendment of Treaties for the Suppression of Unlawful Acts on 14 October 2005 (International Maritime Organization, document leg / conf.15 / 21).

<sup>385</sup>Adopted by the Diplomatic Conference on the Amendment of Treaties for the Suppression of Unlawful Acts on 14 October 2005 (International Maritime Organization, document leg / conf.15 / 22).

<sup>386</sup>United Nations Resolution 60 / 288.

<sup>387</sup>United Nations, General Assembly, A/RES/71/38.

<sup>388</sup>United Nations, Security Council, S/RES/2199(2015).

The counter-terrorism conventions, strategies, declarations and resolutions formulated and promulgated by the United Nations through the General Assembly are not only effective control of global terrorist crimes at the international level, but also effective supplement of international law to global terrorist crimes. They further lay the legal basis for the international community to combat and prevent terrorist crimes, and are also the legal basis for the international community cooperation to carry out counter-terrorism. It should be said that the regulation of terrorist crimes not only depends on the strong guiding role of the United Nations, but also depends on the binding role of the United Nations in making conventions, and requires close cooperation between countries around the world<sup>389</sup>. However, the construction of the international legal system of terrorism prevention is inevitably inseparable from the domestic counter-terrorism laws formulated by various countries. Due to the different political opinions of different countries, of course, the strength and intensity of the fight against terrorist crimes will be slightly different. But on the whole, it is still consistent with the position of the United Nations to eliminate and fight against international terrorist crimes, so as to form a relatively complete legal system of counter-terrorism.

By now the regions with serious threat of terrorist crimes include Europe, Asia (Middle East, Central Asia, West Asia, South Asia, and Southeast Asia) and Africa (North Africa). From the perspective of countries, they are mainly concentrated in Arab countries, Islamic countries and Christian countries<sup>390</sup>. In terms of the construction of the legal system for combating, eliminating and preventing terrorist crimes, European countries represented by Russia, Britain, France, Germany, Canada, Belgium and other countries; Asian countries represented by China, Indonesia, the Philippines, India, Japan, the Arab Emirates and other countries; African countries represented by the East African Republic and the Republic of South Africa, all of them have formed a relatively intensive legal network system. Both developed and developing countries have established their own counter-terrorism legal system, which is closely linked with the legal system of the international community, so as to respond to the international and

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<sup>389</sup> Wang Xuelian: *The Current Situation and Countermeasures Facing the International Anti-Terrorism Struggle*, Northern Essays, 2019(06), pp.59-66.

<sup>390</sup> See *Country Reports on Terrorism 2013*, United States Department of State Publication, Bureau of Counterterrorism Released April 2014.

domestic terrorist crimes and form a more detailed international and domestic counter-terrorism legal system<sup>391</sup>.

The "9.11" terrorist attacks shocked the United States and changed everything in the country. The United States is no longer an innocent person to be spared.<sup>392</sup> Later, the Congress of the United States immediately responded to the large-scale revision of the law, and finally promulgated the PATRIOT Act to supplement and modify the Criminal Law, Immigration Law, Banking Law and Intelligence Law; although some members of Congress admit they don't have time to read the bill at all<sup>393</sup>. However, on page 348 of the Act, many supplementary provisions are made to the existing laws, which together with the existing laws can produce corresponding legal regulation effects. Of course, some provisions of the Act have also been deleted<sup>394</sup>. The fourth part of the Act provides permanent and effective provisions, which cover immigration treatment, terrorist organizations, terrorist crimes and the causes. The fourth part of the Act also provides that the attorney general may detain any person who is not a U.S. national, as long as he has sufficient reasonable evidence to prove that a person is a member or agent of a foreign terrorist organization, or that the person is actively engaged in terrorist crimes. The "agent" here includes any person who provides advice and assistance to terrorism or actively engages in terrorist activities<sup>395</sup>. Moreover, terrorist activities include financing terrorist organizations or other items of equal value. A group can be made of two or more individuals, organized or unorganized. The use of a weapon or dangerous equipment, directly or indirectly intended to put the safety of most people at risk<sup>396</sup>, are identified as terrorist activities. In this regard, the PATRIOT Act expanded the scope of terrorist activities, including legitimate activities of non-U.S.

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<sup>391</sup> Wang Xuelian: *The Current Situation and Countermeasures Facing the International Anti-Terrorism Struggle*, Northern Essays, 2019(06), pp.59-66.

<sup>392</sup> See R. Lichtman, "The End of Innovation: Reflections on American Pathology", <http://counterpunch.org/licht-man07102004.html>, last visited: February 1, 2019; See "Remarks of the Vice President to the Heritage Foundations," Washington DC, October 10, 2003, <http://georgewbush-whitehouse.archives.gov/news/releases/2003/10/20031010-1.html>, last visited on: February 1, 2019.

<sup>393</sup> Liu Zhenye, Chen Qiufeng: *The Turn of American Counter-Terrorism Strategy*, Modern International Relations, 2020(02), pp.8-15.

<sup>394</sup> Ibid.

<sup>395</sup> See PATRIOT Act 8 USC 1182 (a) (3) (b) (V).

<sup>396</sup> See PATRIOT Act 8 USC 1182 (a) (3) (b) (IV) (IV).

nationals<sup>397</sup>. Those who are suspected of carrying out terrorist activities do not need facts to prove that they encourage terrorist activities, as long as they are suspected of doing so. If the attorney general has sufficient evidence to prove that the suspect has committed an act against the national security of the United States or put the national security of the United States in danger, the suspect must be detained.<sup>398</sup> As a result, when a suspect has been detained for more than six months and is still not transferred for prosecution or trial, and the release will threaten the United States, the community or anyone, the length of detention will become uncertain. If the attorney general believes that the suspect will threaten the safety of anyone, the suspect may be permanently detained, neither released on parole, nor prosecuted or tried, and will not return to the judicial process again.

The PATRIOT Act of the United States is a product of the Bush administration's emergency response to the threat of terrorist crimes for the security of the United States, focusing on non-U.S. nationals. From this point of view, the counter-terrorism Act of the United States has obvious political tendency. The first is the violation and disrespect of human rights, and the arbitrary expansion of the scope of terrorist criminal activities, as long as someone has the possibility of being suspected, he may be detained; secondly, most of such detention will not go through normal judicial procedures, but beyond the limits of judicial procedures, directly beyond the legal setting<sup>399</sup>, detention of criminal suspects and difficult relief. Such a provision creates a "double standard" for terrorism and its personnel, makes it difficult to combat and defend international terrorist crimes in essence, and cannot form an organic link with the existing international conventions of the United Nations to eliminate, combat and prevent terrorist crimes.

Three months after the "9.11" terrorist attacks, Britain adopted a new 129 Counter-Terrorism Act, known as the UK Counter-Terrorism, Crime and Security Act

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<sup>397</sup> Jia Chunyang: *The Trend of American Global Strategy and Its Influence on the World Order In the Post-Terrorism Era*, Peace and Development, 2019(03), pp.24-39.

<sup>398</sup> See PATRIOT Act 8 USC 1182 (a) (3) (b) (IV) (III).

<sup>399</sup> For example, Guantanamo prison and Abu Ghraib prison in the United States (notorious for the abuse of prisoners), most of the suspects of terrorist crimes will not be held in strict accordance with the provisions of the procedural law.

2001<sup>400</sup>, or ATCSA for short. Compared with the USA PATRIOT Act, Britain's ATCSA was passed unanimously by affirmative votes. This law covers the definition of property rights, human rights, democracy, police power and terrorism, and becomes the legislative basis for the formulation of Counter-Terrorism Law in the UK in the next two years. The provisions of the UK ATCSA are mainly related to property, finance, immigration, asylum, weapons of mass destruction, biological and chemical security, nuclear industry, aviation security and police power<sup>401</sup>. Like the PATRIOT Act of the United States, it provides for the irregular detention of persons suspected of being terrorists or related to terrorist organizations.

In this Act, the concept of "international terrorism" is not clearly defined, so it is called "fatal flaw"<sup>402</sup>. According to the act, if a foreigner is considered to be a threat to the national security of the UK or is associated with a terrorist organization due to his / her co director, the Act allows the state secret service to provide proof to prove the existence of such a relationship. Terrorist organizations are often defined as those involved in international terrorist organizations. If they are not involved in international terrorist crimes, they are rarely identified as terrorist organizations. Therefore, the detention of a person identified as a terrorist is the result of complete suspicion. The Act also provides that a person can be detained if the secret service reasonably suspects that the foreigner is a member of the organization they suspect. Unlike the PATRIOT Act of the United States, which stipulates that suspects lose the right to relief completely, it allows suspects to apply for relief to the existing Special Immigration Claims Committee. If the committee finds that the suspicion of the state secret service is not reasonably and adequately based, the state secret service must cancel the detention certificate. In this Act, the provisions on terrorist crimes are more rigorous, without expanding the scope of terrorist activities, and are tightly limited within the boundaries of the legal provisions.<sup>403</sup>

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<sup>400</sup>After the promulgation of this act, the UK successively promulgated the terrorism prevention act of 2005, the Terrorism Act of 2006, the Counter-Terrorism Act of 2008, and the Terrorist Property Freezing (Temporary Regulation) Act of 2010.

<sup>401</sup> Sheng Chenchao: *British Anti-Terrorism System Research (2000-2015)*, East China Normal University, 2017 Doctoral Dissertation, pp12-13.

<sup>402</sup> Wang Liu: *The British "Terrorist Attack" Highlights the Urgent Need for Anti-Terrorism Governance Refinement*, Study Times News, 2017-06-05(002 edition).

<sup>403</sup>See Robert H. Wagstaff, *Terror Detentions and the Rule of Law, US and UK Perspectives*, Oxford University Press, 2013, pp.53-55.

Among Asian countries, China formulated the Counter-Terrorism Law in the end of 2015, which came into force on January 1st, 2016. It can be seen that the Counter-Terrorism Law formulated by the Chinese government has the obvious nature of Administrative Law and Administrative Procedure Law. It integrates the substantive law and procedural law, and specifies in detail China's definition of terrorism, extremism, terrorist activities, as well as the investigation mechanism, sentencing range, international cooperation, etc.<sup>404</sup>

In contrast, the Counter-Terrorism Acts of other Asian countries are relatively complete and have been promulgated and implemented. For example, Singapore began to pay attention to terrorist crimes after the "9.11" attack. At that time, Singapore cited some contents of the "International Security Act" during the "World War II" period to regulate terrorist crimes, and directly detained suspects without trial.<sup>405</sup> However, in the past decade, Singapore has begun to pay attention to the issue of evidence in detention of criminal suspects without trial, and has launched discussions around two issues: should such power exist? If so, under what circumstances can this power be used? Some people support and some oppose, and the successive terrorist attacks make Singapore government gradually realize that terrorist crimes must be regulated by strong criminal law. Therefore, in the criminal law and criminal procedure law, the article is revised to clearly stipulate the relevant legal treatment of counter-terrorism<sup>406</sup>. So far, Singapore has no special counter-terrorism legislation.

After the Bali bombings in 2002<sup>407</sup>, the Indonesian government began to enact laws to eliminate terrorist crimes. It enacted counter-terrorism laws, and divided terrorism into a special category of crimes. Despite the efforts of the Indonesian government to eliminate terrorism, it has not effectively reduced terrorist attacks in essence<sup>408</sup>. To this

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<sup>404</sup> Chen Gong: *China's Current Major Issues Of Counter-Terrorism Research*, Zhongnan University Of Economics And Law, 2018 Doctoral Dissertation, pp.21-22.

<sup>405</sup> In December 2001, a group of 13 people was suspected of being associated with Jemaah Islamiyah (Ji), an extremist Muslim organization, and sentenced to detention without trial. (See Victor V. Ramraj, *Global Counter-Terrorism Law and Policy*, Cambridge University Press, 2005, Chapter 13. The Legislation itself, and all other current legislation, are available at <http://statutes.agc.gov.sg>).

<sup>406</sup> Lan Di: *"Flexible" Counter-terrorism: Research on Singapore's Crime Prevention and Correction System*, *Jingyue Journal*, 2017(04), pp.58-69.

<sup>407</sup> Happened on October 12, 2002, 202 Indonesian citizens and foreigners died.

<sup>408</sup> In 2003, the Marriott Hotel in Jakarta was attacked; in 2004, the Indonesian Embassy in Australia was attacked; in 2005, Malang police station was attacked; in 2009, solo police station was attacked.

end, Indonesia's counter-terrorism law stipulates that: This law is applicable to any person (including legal person) who violates or intends to violate this law to commit terrorist acts<sup>409</sup>. These criminal acts include: against Indonesian citizens or territory; against Indonesia's overseas assets and foreign affairs facilities; using violence or threat of violence to force the Indonesian government to take or not to take action. In this law, the definition of terrorism is clearly defined, and all kinds of aviation security crimes, explosions, weapons and arms related to special crimes are specified. Anyone who provides command, planning and assistance for terrorism shall be guilty of the same crime as the perpetrator of terrorism<sup>410</sup>. In addition, the counter-terrorism law adopts a special criminal procedure different from ordinary cases to deal with terrorist crimes, which is, prosecutors can use any information as basic evidence for investigation, and any suspected terrorist suspect can be detained first, and then search for strong evidence within a week to prove, and finally convict the criminal suspect. Sentencing needs to be solved through criminal judicial procedures<sup>411</sup>.

The Philippine government adopts two main laws, one is the Human Security Act (HSA) issued in 2007 and the other is the International Humanitarian law (IHL) issued in 2009<sup>412</sup>. HSA is mainly used to deal with terrorist crimes that threaten national security in an emergency. In this law, terrorism is clearly defined. It authorizes the supervision of criminal suspects and communication, provides procedures to declare an organization as a terrorist organization, stipulates the procedures for detaining criminal suspects without an arrest warrant, and authorizes the inspection of bank accounts and assets<sup>413</sup>. IHL mainly aims at the armed conflict caused by terrorist acts, which are not the same as other terrorist crimes in non-traditional security fields such as drugs, finance, network, environment and ecology.

Generally speaking, the laws of international level and in various countries have formed a relatively complete legal system to prevent and combat terrorist crimes. To a certain extent, these legal documents contain the expansion of terrorist crimes and

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<sup>409</sup>See article 17 of the Indonesian Counter-Terrorism Law.

<sup>410</sup>See article 17 of the Indonesian Counter-Terrorism Law.

<sup>411</sup>Article 16, 24 and 28 of Indonesia Counter-Terrorism Law.

<sup>412</sup>Jin Xiaozhe, Li Jie: *Southeast Asian Countries' De-Radicalization Strategy and Reflection in the Context of Anti-Terrorism-Taking Singapore, Indonesia and the Philippines as Examples*, Southeast Asian Studies, 2018(03), pp.1-23.

<sup>413</sup>See HSA, S.3; S.7; S.17; S.18; S.28.

provide a more powerful legal basis for the international community and the world to fight against terrorist crimes. However, it is regrettable that despite such a relatively complete legal network system, there are still some deficiencies to be improved:

(1) In response to the increasing anxiety of the international community about the criminal acts of international terrorism, the United Nations has repeatedly affirmed and advocated the strengthening of the international "counter-terrorism" cooperation mechanism, and effectively solved and eliminated the threat brought by terrorism from the legal level. However, the conventions, resolutions and declarations reached by the international community are difficult to play an effective role in the actual regulation of terrorist crimes. Although all countries have basically acceded to the Convention and sworn to fight against terrorism, different countries in the world maintain different political interests. There are still "double standards" in the judgment of terrorism, and fundamental differences in political positions, which make it difficult to form substantive and effective cooperation.

(2) The United Nations Convention, Resolutions and Declarations cannot be closely linked with the existing counter-terrorism laws of various countries, and there is a certain gap in the connection. Moreover, these normative documents formed at the level of the United Nations have no substantive mandatory effect. All Member States, in accordance with their own geopolitical location, safeguard their existing interests and future political interests, and fight against terrorist crimes in accordance with the provisions of their own national laws. The lack of cohesion leads to the ineffective fight against terrorist crimes. In essence, the cause of this situation is the integration of the legal system. The legal normative documents cannot really play the less role of regulating terrorist crimes.

3. The existing agencies of the United Nations cannot integrate the existing laws regulating terrorist crimes in various countries, that is, they cannot form a unified code, which can be applied to the reality of counter-terrorisms in various countries. It is also difficult to combat and eliminate terrorist crimes because of the different cognition of terrorist crimes in the laws of various countries.

## *1.2 Cooperation mechanism of counter-terrorism and its defect*

The 21st century is an era of "globalization". With the rapid exchange of politics, economy and culture between countries, crime has become the focus of the international community. Especially in the current situation of weakening traditional politics and military intervention to deter a country's sovereignty, non-traditional security issues have gradually become the primary issues that restrict and threaten global development, such as economy, culture, education, ecology, environment, health, disease, resources, illegal immigration, drug smuggling, weapons of mass destruction, terrorism, etc. These problems are beyond the scope of a country, and need to be faced and solved by the international community. Terrorist crime has become the most serious threat and harm among all non-traditional security problems. In addition to formulating relevant laws and policies, the international community with the United Nations as the center has also launched more in-depth international cooperation to try to build a mechanism to effectively combat the threat of terrorist crimes.

At present, the establishment of international cooperation mechanism against terrorist crime needs to solve the problem of "leader", that is, who should lead, coordinate and organize the international community to fight and eliminate terrorist crime<sup>414</sup>. In the face of the more and more serious situation, the "war on terrorism" led by the United States failed to fundamentally eliminate and control terrorism, but made the global terrorist criminal activities present "more and more" trends. Although the "criminal justice mode" can effectively control the growth of domestic terrorist crimes in various countries, it still cannot constrain the domesticization of international terrorist crimes and the internationalization of domestic terrorist crimes. Therefore, advocating the "global governance mode" to combat, prevent and eliminate terrorist crimes has become a consensus reached by the international community<sup>415</sup>. The effective combination of the three modes is undoubtedly a trend to fight against terrorist crimes. The purpose of world counter-terrorism is to safeguard national security and the security interests of the international community. No country can go beyond the

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<sup>414</sup> Wang Xuelian: *The Current Situation and Countermeasures Facing the International Anti-Terrorism Struggle*, Northern Essays, 2019(06), pp.59-66.

<sup>415</sup> Zeng Xianghong, Kang Xiaoni: *Global Governance of Terrorism: Mechanism and Evaluation*, Social Sciences in China, 2019, 40 (01), pp. 100-126.

framework of the United Nations Charter and the multi-polar world political system led by the United Nations.

However, since the beginning of counter-terrorism in the world, there have been two different voices on the issue of "leadership" in counter-terrorism: one is that the western countries regard the United States as the "leader" of the counter-terrorism Alliance, ignores the Charter, convention, declaration and resolution formulated by the United Nations. In the name of counter-terrorism, the alliance launched an aggressive campaign against sovereignty countries. The alliance's military strike, resolutely implementing the United States' own "unilateralism" action strategy, openly challenging the status of the United Nations, led to today's U.S. counter-terrorist alliance devastated and declared the failure of military action to combat and eliminate terrorist criminal organizations<sup>416</sup>. The other is the multilateralism followers led by China, Russia and other countries. They strongly advocate that the United Nations should be the leading center to form an international counter-terrorism alliance. They emphasize that the fight against terrorist crimes should be led by the United Nations, play the leading, organizing and coordinating functions of the United Nations and its institutions, and limit to the political, cultural and legal framework advocated by the United Nations. Within the framework, all the states should abide by the United Nations Charter, thus forming a unified "international counter-terrorism alliance led by the United Nations."<sup>417</sup> Therefore, it is the inevitable choice to adhere to the status of the "leader" of the United Nations in counter-terrorism to avoid terrorism falling into a dangerous situation<sup>418</sup>. Despite such differences, the security interests of the international community and the necessity of safeguarding the national security of all countries make the United Nations become the legal and political coordination center of global counter-terrorism, leading the global fight against terrorist crime. At present, the objective of the international community's counter-terrorism is to eliminate

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<sup>416</sup> Ibid.

<sup>417</sup> Qian Wenrong: *A Just International Order Is Needed in the International Fight against Terrorism*, China's Party and Government Cadres Forum, No. 5, 2002, pp.57-62.

<sup>418</sup> The author believes that the dangerous situation here includes two tendencies: one is to lose the leadership of the United Nations. Some superpowers pursue hegemonism and power politics in the name of counter-terrorism, violate the sovereignty of other countries, and eliminate the inherent political dissidents; the other is to lose the leadership of the United Nations. It is difficult for all countries in the world to form a unified counter-terrorism alliance for their own existing interests. As a result, terrorism crimes become more and more rampant, endangering global security.

terrorism (including state terrorism), combat, prevent and control terrorist crimes (nuclear, biological and chemical weapons, viruses, diseases, pestilence, environment, food, medicine, network, drugs, science and technology, information, etc.) in the non-traditional security field, and eliminate state supported terrorists. We should establish a unified standard to identify terrorist crimes, an international cooperation mechanism to combat terrorist crimes, and a global unified counter-terrorism criminal policy system<sup>419</sup>.

(1) The United Nations

Since the "9.11" terrorist attacks, the United Nations has listed the elimination of the threat of terrorist crimes to international security as an important topic in various conferences, such as the General Assembly, the Security Council, the Human Rights Committee and the Congress on the Prevention of Crime and the Treatment of Offenders. The United Nations Security Council then set up a Counter-Terrorism Committee, which is specifically responsible for the organization and coordination of counter-terrorism affairs, and oversees the implementation of the relevant legal documents and resolutions of the United Nations on counter-terrorism. Moreover, "the United Nations Economic and Social Council, the United Nations Human Rights Committee, Interpol, the International Atomic Energy Agency"<sup>420</sup>, the World Bank, the International Monetary Fund and other organizations have joined the ranks of counter-terrorism, which to some extent makes the international counter-terrorism alliance more powerful. In addition to the formation of the counter-terrorism alliance at the international level, countries have also strengthened the cooperation of regional and sub Regional Counter-Terrorism alliance<sup>421</sup>, aiming to ensure that the region is not

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<sup>419</sup>See Zheng Yuanmin and Huang Xiaoxi: *On the International Legal Cooperation Mechanism of International Counter-Terrorism*, Time Law, 2011, issue 6, pp.80-89.

<sup>420</sup>See Zheng Yuanmin and Huang Xiaoxi: *On the International Legal Cooperation Mechanism of International Counter-Terrorism*, Time Law, 2011, issue 6, pp.80-89.

<sup>421</sup>These regional and sub regional alliance institutions include the African Union, the Asia Pacific Economic Cooperation Organization, the Association of Southeast Asian Nations, the Bali Counter-Terrorism Process, the Central American Integration System, the Collective Security Treaty Organization, the Common Market for Eastern and Southern Africa, the Conference on Interaction and Confidence Building Measures in Asia, the Cooperation Council of the Gulf Arab States, the Council of Europe, East African Community, Economic Community of West African States, Euro Mediterranean Partnership, European Free Trade Union, European Union, Global Counter Terrorism Forum, G8, Intergovernmental Authority on Development, International Civil Aviation Organization, International Maritime Organization, League of Arab States, Movement Of Non-Aligned Countries, North Atlantic

disturbed or reduced by terrorist crimes. These regional cooperative alliance organizations mainly include EU, AU, ASEAN, OAS and SCO, etc. Of course, in addition to these formal cooperation alliances, there are also national alliances in the form of conferences or forums, such as the Asia Pacific Economic Cooperation (APEC), the G20 Summit, and the G8 Summit, etc.

## (2) The European Union

The EU is a highly integrated interstate alliance. As early as 1978, the European Parliament formulated the European Convention against terrorism and strengthened close cooperation among European countries in response to the escalating terrorist crimes. First of all, while abiding by the principle of "no extradition of political prisoners" in international law, the convention makes exceptions, that is, the terrorist acts against aviation safety listed in the Tokyo Convention, the Hague Convention and the Montreal convention do not apply to the principle; especially violent crimes, crimes against the safety and health of diplomatic personnel and even life. This principle is also not applicable to the criminal acts of weapons and ammunition or weapons of mass destruction, terrorist attacks on individuals or property, etc. Moreover, the Convention stipulates the "principle of extradition reservation"<sup>422</sup>. Secondly, the Convention also abides by the provisions of international law on the extradition or prosecution of criminal suspects. It holds that "if a state party does not extradite a criminal, it must bring a lawsuit to the court with jurisdiction without delay, and the country with jurisdiction must make a final decision according to the crime setup of its own crime"<sup>423</sup>.

One of the first EU measures on terrorism was of an administrative nature. In order to implement UN Resolution 1267(1999) – which set up the sanctions regime targeted at

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Treaty Organization, Organization for Economic Cooperation and development, Continental Security. Organization for Security and Cooperation in Europe, Organization of American States, Organization of Islamic Cooperation, Pacific Islands Forum, Association of Southeast Asian Nations Regional Forum Shanghai Cooperation Organization, South Asian Association for Regional Cooperation, Southern African Development Community and World Customs Organization. (See United Nations General Assembly resolution A/RES/68/119 of December 16, 2013, *Measures to Eliminate International Terrorism*).

<sup>422</sup> Zhou QiuJun: *The Development of EU Anti-Terrorism Policy under the Background of Globalization and Its Enlightenment*, Journal of Information, 2020, 39(01), pp.38-44.

<sup>423</sup> Liu Yi, Ren Fangyuan: *European Terrorism and Counter-Terrorism Governance Dilemma Analysis*, International Relations Research, 2019(01), pp.97-112.

al-Qaeda and associated individuals – the EU adopted Regulation 337/2000<sup>424</sup>. The purpose of the Regulation was to provide a legal basis for the freezing of all assets of those individuals mentioned in the UN sanctions list. One of the persons included in the UN sanctions list was Yassin Abdullah Kadi. He appealed the decision to be included in the EU sanctions regulation because the Regulation infringed several of his fundamental rights which included the right to respect for property, the right to be heard before a court of law and the right to effective judicial review. After two separate cases, the CJEU held that the Regulation breached due process rights and required the removal of Mr. Kadi from the sanction list<sup>425</sup>.

Apart from the asset freezing, there are several other EU legislative measures on terrorism that cut across many different policy areas including, among other, transport, finance, weapons, criminal justice and border control. In the box below, legislation is presented that is relevant for the rights to suspects of terrorism and terrorism-related crimes. It has to be noted that this list includes legislation that exclusively and directly refers to terrorism and legislation that is not exclusively addressing terrorism but which is relevant for combating terrorism.

Categories	Legislations
Core legislation criminalizing terrorism	Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA

<sup>424</sup> Council Regulation (EC) No 337/2000 of February 14, 2000, OJ 200 L 43, p.1, which was repealed by Council Regulation (EC) No 467/2000 of March 6, 2001, OJ 2001 L67, p.1. On May 27, 2002, the Council adopted Council Regulation No 881/2002, which repealed Council Regulation (EC) No 467/2001, OJ 2002 L 139, p. 9.

<sup>425</sup> *Kadi I*, C-402/05 and C-415/05, op. cit. *Kadi II*, joined cases C-584/10, C-593/10, op. cit.

Data processing regimes where data is collected or misappropriated to combat terrorism	<ul style="list-style-type: none"> <li>➤ Schengen Information System II (SIS II)<sup>426</sup></li> <li>➤ Passenger Name Records (PNR) (including both the EU PNR Directive and international PNR regimes with the US and Australia)<sup>427</sup></li> <li>➤ Eurodac<sup>428</sup></li> <li>➤ Visa Information System (VIS)<sup>429</sup></li> <li>➤ Advanced Passenger Information Directive (API)<sup>430</sup></li> <li>➤ The annulled Directive 2006/24/EC (Data Retention Directive)<sup>431</sup></li> </ul>
Criminalizing terrorist financing	<ul style="list-style-type: none"> <li>➤ EU-US Terrorist Financing Tracking Programme (TFTP)<sup>432</sup></li> <li>➤ Anti-Money Laundering Directive<sup>433</sup></li> <li>➤ Asset Freezing (Council Regulation No 881/2002)</li> </ul>

Table 4-1: EU legislation relevant for combating terrorism

### (3) The African Union

At the beginning of its establishment, the African Union (AU) was known as the Organization of African Unity (OAU). In 1999, the African Union adopted the counter-terrorism convention, namely the Algiers Convention, followed by the Algiers Declaration, hoping to prevent, combat and eliminate terrorist crimes through the

<sup>426</sup> As laid down in Regulation (EC) N. 1987/2006; Council Decision 2007/533/JHA and Regulation (EC) No 1986/2006.

<sup>427</sup> Directive (EU) 2016/681 of the European Parliament and of the Council of April 27, 2016, *OJ L 119*, 4.5.2016, pp.132-149.

<sup>428</sup> Regulation (EU) No 603/2013 of the European Parliament and of the Council of June 26, 2013, *OJ L 180*, 29.6.2013, pp.1-30.

<sup>429</sup> Council Decision 2004/512/EC of June 8, 2004 establishing the Visa Information System (VIS), *OJ L 213*, 15.6.2004, pp. 5-7.

<sup>430</sup> Council Directive 2004/82/EC of April 29, 2004 on the obligation of carriers to communicate passenger data, *OJ L 261*, 6.8.2004, pp. 24-27.

<sup>431</sup> The Data Retention Directive was annulled by the CJEU in 2014. However, several Member States still have data retention regimes in place. In addition, the Estonian government announced its intention to restart discussions on data retention on a technical and political level during its Presidency (See: Estonian Presidency, The Estonian Presidency Programme for the Justice and Home Affairs Council (JHA), 2017). Available at: <https://www.eu2017.ee/sites/default/files/2017-07/EU2017EE%20JHA%20Programme%200.pdf>.

<sup>432</sup> Council Decision of June 28, 2010 on the signing, on behalf of the Union, of the Agreement between the European Union and the United States of America on the processing and transfer of financial messaging data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program, *OJ L 195*, 27.7.2010, pp.1-2.

<sup>433</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of May 20, 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, *OJ L 141*, 5.6.2015, pp. 73-117.

Convention; the Dakar Declaration adopted later is an important achievement of the "OAU" to achieve counter-terrorism. In the declaration, African countries are called upon to strengthen cooperation, ratify and accede to the relevant United Nations Counter-Terrorism Conventions and Algiers Conventions as soon as possible, and adopt an attitude of eliminating all terrorist crimes, regardless of the type of terrorism (mainly referring to whether there is support from sovereign states or not)<sup>434</sup>. And African countries are called upon to strengthen international cooperation and abandon national, racial and political support, ideology, etc., form a strong cooperative alliance to jointly fight against terrorism.

#### (4) The American countries

In response to the escalating terrorist crimes in the American continent, especially the sense of insecurity brought by the rising counter American sentiment, the American countries adopted the Organization of American States Counter-Terrorism Convention in 1971, which stipulates international cooperation in counter-terrorism, extradition of terrorist offenders, non diversion of political prisoners, and extradition or prosecution under the principle of legal reservation, etc. The disadvantage of the Convention is that there are many countries that have signed it, but few countries have ratified it<sup>435</sup>.

#### (5) The Shanghai Cooperation Organization

The Shanghai Cooperation Organization is a regional counter-terrorism alliance formed in 2001 by the five Central Asian countries and China. It has formulated the Shanghai Convention on Combating Terrorism, Separatism and Extremism. There are 21 articles in the Convention. The international cooperation on terrorist crimes is specified in detail: firstly, the concept of "terrorism" is clearly defined; secondly, terrorist crimes are punished. No matter what state the perpetrators are in, they are prosecuted as terrorist crimes; finally, the close cooperation mechanism of intelligence, military, law enforcement and other agencies is established<sup>436</sup>.

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<sup>434</sup> Chen Xiaohong, Zhao Wenjie: *Mechanism and Enlightenment of Combating Extremism in African Countries*, Journal of Huaiyin College (Philosophy and Social Sciences Edition), 2019, 41(03), pp.267-271.

<sup>435</sup> Luo Kaijuan: *A Review of the Anti-Terrorism Laws of the Organization of American States*, Essays on Politics and Law, 2007(02), pp.91-96.

<sup>436</sup> "Shanghai Convention on Combating Terrorism, Separatism and Extremism", China National People's Congress website, [http://www.npc.gov.cn/wxzl/wxzl/2001-12/12/content\\_281315.htm](http://www.npc.gov.cn/wxzl/wxzl/2001-12/12/content_281315.htm), last visit date: October 21, 2020.

In a word, the cooperation mechanism of counter-terrorism in the contemporary international community is basically established, which should be centered on the United Nations. The establishment of the United Nations Counter Terrorism Committee has fundamentally solved the problem of leadership, organization and coordination of the voice of other departments in the process of counter-terrorism, but there are still some defects: the cooperation mechanism of international counter-terrorism is easy to form a "vacuum zone", the effective connection between international counter-terrorism and regional counter-terrorism alliance is difficult. It is easy for the alliance of regional countries to have different views on the concept of cooperation, but sometimes it is difficult for sovereign countries to reach an agreement. This has brought negative effects to the counter-terrorism alliance, easily disintegrated due to the conflict of political interests, and brought difficulties to the fight, prevention and elimination of global terrorist crimes.

### *1.3 Difficulties in the practice of counter-terrorism*

Terrorist crime is a kind of global crime. In terms of the frequency of terrorist attacks in the world today, the outbreak of terrorist crimes is uncertain, unstable and irregular. Although the international community and all countries in the world try their best to improve the measures to prevent and combat terrorist crimes, there are still many difficulties in the practice of fighting against terrorist crimes.

First of all, under the counter-terrorism framework led by the United Nations, the binding force of the United Nations is limited, and there are still obstacles in the global coordination of the interests of all countries. Western countries and pro-American countries, led by the United States, still adhere to the tough international political and economic development order advocated by the United States, and actively pursue the "American style" political diplomacy strategy and military planning strategy<sup>437</sup>. As the only superpower in the world, America's power politics and hegemonic ideology covering the whole world are still pushing forward. In his national security speech delivered in May 2013, former U.S. President Barack Obama stressed that the US war against Iraq must be ended just like all wars, and announced that Bush's war on terror

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<sup>437</sup> Wang Xuelian: *The Current Situation and Countermeasures Facing the International Anti-Terrorism Struggle*, Northern Essays, 2019(06), pp.59-66.

will become a history, but he did not specify when and how the war will end<sup>438</sup>. Moreover, as a strong promoter of the counter-terrorism war mode, the United States brings the risk of war destabilizing factors to the world. Besides, the cultural values that the United States claims to be "spiritual leaders" also go deep into other countries. The conflicts among civilizations cause the deepening of national contradictions, religious contradictions, racial contradictions, social contradictions, etc. In addition, the United States arbitrarily exercises its power to search for terrorist suspects around the world. Once the target is locked, it will ignore the binding legal norms such as the UN Charter, invade other countries at will, violate the sovereignty of other countries, destroy the principle of national sovereignty, and arouse strong opposition and protest from more nations. However, the UN can only condemn this kind of behavior and cannot sanction it. There are many difficulties in the cooperation mechanism of the international coalition against terrorism<sup>439</sup>. Moreover, the United States still carries out "double standards" for the identification of terrorism, always taking the interests of the United States as the first, and those who are beneficial to the interests of the United States, even if they are essentially terrorist organizations, will not be recognized as terrorism; those who are against American interests, even if they lack the elements to become terrorism, can also be recognized as terrorism. There is no doubt that the double identification standards lead to the "different actions" of the international community in the joint "counter-terrorism action", which cannot effectively achieve the goal of counter-terrorism.

Secondly, under the framework of the United Nations, the United Nations still cannot clearly define the identification of international terrorism. This fuzziness has a direct impact on the definition of terrorism. Without the same standard, it is difficult for countries to form a unified cognitive standard. In particular, at present, terrorist crimes are changing from violence to non violence, from simplification to diversification, and from integration to decentralization. The intelligence, technology and information of terrorist crimes are all increasing. It is impossible to simply judge whether an organization belongs to a terrorist organization from its surface, so as to judge a person

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<sup>438</sup>See Robert H. Wagstaff, *Terror Detentions and the Rule of Law, US and UK Perspectives*, Oxford University Press, 2013, pp.305-306.

<sup>439</sup>Lutz James M, Ulmschneider Georgia Wralstad, *Civil Liberties, National Security and U.S. Courts in Times of Terrorism*, *Perspectives on Terrorism*, 2019, 13(6), pp.43-57.

to a terrorist from his appearance is difficult. Therefore, in the process of establishing the international counter-terrorism alliance, it is particularly important for the United Nations to define the standards for the identification of terrorist crimes<sup>440</sup>. Moreover, in regions where terrorist crimes are rampant, social unrest is often the most serious. Most of the countries in these regions (such as Syria, Iraq, Pakistan, Nigeria, the Philippines, and Indonesia) are Islamic countries. There are great differences in ethnic and religious beliefs from other countries. Years of civil war have hobbled the local economy. A large number of civilians have been displaced and become homeless refugees. These people lack the minimum living guarantee, join and become a key member of terrorist organizations. If the international community indiscriminately punishes all members of terrorist organizations with "violence against violence", it will undoubtedly restrain another kind of terror with terror. If the refugee problem cannot be solved effectively, it will undoubtedly become another terrorist threat.

Finally, the terrorist crime is an international crime, which is "an act that is harmful to the international community and should be punished by criminal law"<sup>441</sup>. Terrorist crimes have harmed the interests of many countries and the peace and development of the international community. They not only cause incalculable casualties, but also cause a lot of property losses. Terrorist crime has its particularity with political purpose but should not be recognized as political crime instead of international criminal. The universal jurisdiction of international criminal law is applicable to terrorist crimes. Because of the transnational and trans-regional nature of terrorist crimes, it is basically impossible for a country alone to fight against terrorist crimes successfully. Especially in the field of criminal justice, it is the realistic choice to actively carry out international criminal judicial assistance activities to combat and control terrorist crimes. "International criminal judicial assistance is an activity in which states support, facilitate and assist each other in criminal affairs by certain judicial acts."<sup>442</sup> In today's world, globalization makes all things in the world in constant development and change, so do criminal acts. Terrorist crimes go beyond national restrictions and enter all

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<sup>440</sup> Zeng Xianghong, Kang Xiaoni: *Global Governance of Terrorism: Mechanism and Evaluation*, Social Sciences in China, 2019, 40 (01), pp.100-126.

<sup>441</sup> Pang Shiping, Cui Bin: *Research on International Terrorist Crimes*, Law Journal, 2002, issue 3, pp.12-21.

<sup>442</sup> Zhao Bingzhi: *International Criminal Judicial Assistance*, The Exploration of Contemporary Criminal Law Theory (Volume 4), Law Press, 2003 edition, page 45.

aspects of people's lives. In order to protect their own security and protect their own interests, all countries actively carry out international judicial cooperation to combat the harm of transnational crimes to their own countries. International criminal judicial cooperation is to use international criminal law to prevent and control international crimes such as drug crimes, money laundering crimes, ecological environment crimes, terrorist crimes and so on. On the issue of international criminal judicial assistance in terrorist crimes, countries adhere to the concept of taking the United Nations as the leader, abide by the counter-terrorism conventions formulated by the United Nations, especially the principle of extradition, and seek mutual cooperation to combat international terrorist crimes.

In addition, in recent years, with the increasingly serious situation of international crimes, the United Nations continues to strengthen the status and role of the International Criminal Court, such as the establishment of the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for Yugoslavia, etc., which makes the trial of transnational crimes be settled. The Preamble of the Rome Statute of the International Criminal Court and article 1 refer to the International Criminal Court (ICC) as an international institution that “shall be complementary to national criminal jurisdictions”<sup>443</sup>. This complementary relationship between the ICC and national criminal jurisdictions means that, as opposed to the two *ad hoc* Tribunals<sup>444</sup>, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) the ICC does not have primary jurisdiction over national authorities<sup>445</sup>, but plays a subsidiary role and supplements the domestic investigation and prosecution of the most serious crimes of international concern<sup>446</sup>. The Court is only meant to act when domestic authorities fail to take the necessary steps in the investigation and prosecution of crimes enumerated under article 5 of the Statute. Moreover, the International Criminal Court, established in 2002, only

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<sup>443</sup> As to the negotiation history of the relevant norms, see S.A. Williams, “Article 17”, in: O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observer’s Notes, Article by Article*, 1999, MN 1 et seq.

<sup>444</sup> Arts 9(1) ICTY Statute and 8(2) ICTR Statute.

<sup>445</sup> Including courts, investigating authorities, prosecution and international cooperation in criminal matters, cf. I. Tallgren, *Completing the international Legal Order*, Nord, J, Int’l L. 67(1998), 107 et seq. (120).

<sup>446</sup> M.A. Newton, *Comparative Complementarity: Domestic Jurisdiction Consistent with the Rome Statute of the International Criminal Court*, Mil, L. REv. 167(2001), 20 et seq. (26).

stipulates the jurisdiction of individuals for genocide, war crimes, crimes against humanity, and aggression. Terrorist crimes go beyond the jurisdiction of the ICC. This kind of enumerated jurisdiction makes many crimes seriously endangering the security of the international community and national security impossible to be tried; especially in the field of non-traditional security.

*2. Comprehensive Counter-Terrorism Convention and the improvement of international unified counter-terrorism criminal policy*

Terrorist crimes occur every day. The elimination of the terrorism threat to the security of the international community, which is strongly advocated by the United Nations, does not play a role in containing terrorist attacks in essence. At present, there are 13 international conventions on terrorist crimes, which regulate the crimes of aviation, ocean, high seas and oil drilling platforms terrorism, etc. However, the inherent political interest disputes and ideological differences in the international community make it difficult for these conventions, resolutions and declarations to truly and effectively play their ability to restrain terrorist crimes. In the face of the escalating situation of terrorist crimes, the anxiety of the international community is growing. To this end, since 2000, the United Nations Ad-hoc Counter Terrorism Committee has begun to comprehensively prepare and draft the United Nations Comprehensive Counter Terrorism Convention, aiming to form a globally unified counter-terrorism convention to regulate terrorist crimes. Up to now, this Convention is still in the discussion stage of the draft, some of the main controversial issues in the convention cannot reach a consensus. As far as the current content of the draft Convention is concerned, some key issues still need to be improved. As the famous jurist Liszt said, "The best social policy is the best criminal policy". Terrorist crimes can also be adjusted by criminal policy. It is also an effective way for the whole international community to explore and deepen the criminal justice model to eliminate terrorist crimes so as to formulate a unified international counter-terrorism criminal policy.

### 2.1 *The perfection of the United Nations “The Comprehensive Convention on International Terrorism (Draft)”*

Since 1996, in the face of the increasingly rampant global terrorist crimes, the United Nations has begun to formulate an international unified counter-terrorism convention to combat international terrorist crimes. By the end of 1999, the General Assembly adopted a Resolution (No. 54 / 110) to begin the preparation of the Comprehensive Convention against International Terrorism (hereinafter referred to as the Comprehensive Convention). So far, the draft has been revised four times and has not been finalized and adopted. As far as the draft itself is concerned, in the process of draft deliberation, there are three major issues in fierce debate: first, the definition of terrorism; second, the application scope of the comprehensive convention; third, how to coordinate and deal with the relationship between the comprehensive convention and the existing conventions<sup>447</sup>. In this thesis, comparing the current situation and future trend of terrorist crime, it is inevitable to find that the United Nations level comprehensive counter-terrorism convention depends on the restraint of interests among Member States. And the mutual tolerance and understanding of political ideology is the premise to solve the harm and threat of terrorist crime problem together. In any case, the formulation, final adoption and implementation of the comprehensive counter-terrorism convention will effectively curb global terrorist crimes. The comprehensive counter-terrorism convention of the international community will open up a new mileage to fight against the proliferation of global terrorist crimes. There is no doubt that the three issues debated in the draft comprehensive convention against international terrorism are, in essence, a manifestation of safeguarding the fundamental interests of Member States, a fundamental conflict of interest expression between the east and the west, or the efforts of national states to strive for their rights not to be unduly violated by other countries<sup>448</sup>. To perfect the basic points of the draft comprehensive convention against international terrorism, we should start from these

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<sup>447</sup>See Huang Yao: *The Armed Forces in the United Nations Comprehensive Convention against Terrorism*, Law Research, 2009, issue 2, pp.166-182.

<sup>448</sup>Chen Shiwu, Xia Yong: *Evaluation of United Nations Anti-terrorism Work*, China Information Security, 2017(09), pp.80-82.

fiercely controversial issues, so that the convention can become an effective legal basis for the international community to prevent, combat and eliminate terrorist crimes.

From 2000 to 2010, the United Nations authorized the "Counter-Terrorism Committee" and "a working group of the Legal Committee" to complete the drafting of the Convention. During this period, the two institutions held meetings for coordination on many controversial issues in the draft, but failed to achieve consensus for various reasons, and the adoption of the draft stalled again and again. Among them, the definition of terrorist crime has always been the main problem that the draft has not been adopted. Up to now, the concept of terrorism has not been clearly defined in all the UN conventions and documents. The definition of the concept of terrorism in the four versions of the draft comprehensive convention<sup>449</sup>: (1) as stipulated in Article 2, paragraph 1, of the 2000 version, "anyone" illegally or intentionally causes damage by "any means", and the terrorist crime is an "act committed" with the purpose of causing casualties and loss of public property, intimidating someone or forcing a government (or an international organization) "to engage in or not to engage in an act"; (2) as stipulated in Article 2, paragraph 1, of the 2002 version, no further reference is made to the terrorist offence as an "act of commission" for the purpose of adding "private property" and "serious damage to the environment"; (3) The provisions of Article 2, paragraph 1, of the 2005 version modify the purpose - intimidating "a population" or forcing a government (or an international organization) "to commit or not to commit an act"; and (4) the provisions of Article 2, paragraph 1, of the 2010 version also modify the purpose - intimidating "a resident" or forcing a government (or an international organization) "to commit or not to commit an act. ". We can find that there is not much difference in the definition of terrorist crime in the four versions, and this fine adjustment does not affect the substantive content of the definition of terrorist crime. However, the focus of the problem is that there are serious differences in the understanding of the saying "anyone by any means". Therefore, the understanding of Article 2 of the convention must be combined with other articles, such as the definition of application scope of the Convention in Article 3.

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<sup>449</sup> The following related clauses are from the United Nations Library website, "Draft comprehensive convention on international terrorism", <https://digitalibrary.un.org/record/422477>, last visit date: October 21, 2020.

This divergence in the Convention is mainly based on the national state. In the case of endangering the sovereignty of a nation-state, the incident of counterattack against such aggression by a nation-state should not be regarded as a terrorist crime. Especially for the military forces of a country stipulated in Article 3 of the Convention, when they are carrying out international official activities, they are not bound by the Convention, but regulated by international law. This provision focuses on the statement that "state terrorism is not bound by the Convention, but by International War Law, International Humanitarian Law and other laws and regulations."<sup>450</sup> However, it is clear that from the point of view of the United States' blatant launching of the war in Afghanistan, Iraq and other acts beyond the authority granted by the Charter of the United Nations, international law and other relevant laws cannot effectively restrain "acts of state terrorism"<sup>451</sup>. Therefore, in this regard, state terrorism should be included in the Convention, rather than excluded from the Convention according to some scholars<sup>452</sup>.

Of course, the national self-determination war launched by Islamic and other national countries for national independence and national liberation is a just cause in international law and should be supported by international legal documents. However, in the national liberation movement, unjust acts against other countries will inevitably lead to unjust reprisals, which will affect the lives and property of innocent civilians. The harm and loss caused by such acts are different from those caused by terrorist crimes. First of all, this kind of behavior is inevitable in the process of maintaining justice; secondly, this kind of behavior does not intentionally create traces, which can be said to be a kind of negligent behavior that has to be done; finally, this kind of behavior does not intimidate or threaten other countries to give up some political interests by taking the loss of innocent people's life and property as chips<sup>453</sup>. Therefore, when defining the concept of terrorist crime, it is not correct to exclude the state terrorist crime, which should be included in the adjustment scope of the comprehensive

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<sup>450</sup> Ibid.

<sup>451</sup> Sun Jianfeng: *Definition of Terrorism from the Perspective of Comprehensive Anti-Terrorism Convention*, Foreign Affairs College, 2014 Doctoral Dissertation.

<sup>452</sup> See Wang Jianbo: *The Concept and Development of "Terrorism" In the Perspective of the Comprehensive Counter Terrorism Convention*, China Journal of Criminal Law, 2011, issue 11, pp.107-111.

<sup>453</sup> Sun Lu: *Coordinated Development of International Anti-Terrorism and Human Rights*, Contemporary Law, 2020, 34(02), pp.152-160.

counter-terrorism convention, so as to avoid greater injustice and disorder in the international community. In the final analysis, the reason of difficulty to define the concept of terrorist crime accurately lies in the different positions of political interests of different countries and the big ideological differences among different countries, which cause the draft of the United Nations Comprehensive Counter Terrorism Convention to be delayed in finalizing.

Article 3 of the Comprehensive Convention stipulates the scope of international terrorist crimes, which has also become a focus of the dispute between the league of Islamic national states and the league of western countries. This debate mainly focuses on whether the armed forces should be excluded from the provisions of the Convention in Article 18<sup>454</sup>. There are two views on this issue: (1) the views represented by the member states of the Organization of Islamic Cooperation, the League of Arab States and the Non Aligned Movement are described as: in International conflicts, the state armed forces and the non state armed forces (participating in the national liberation movement) enjoy the same right of exclusion<sup>455</sup>. That is, if the state armed forces are excluded, the non state armed forces should also be excluded. And the right of exclusion must be included in the case of foreign occupation, because the occupation is a state of conflict, which should also be regarded as "in the international conflict"<sup>456</sup>; (2) The view represented by the Union of Western Countries holds that only the actions of armed forces from conflicts should be excluded, not including the other party to the conflict, and the right of exclusion under foreign occupation is not specified<sup>457</sup>. Such a debate is not only a continuation of the debate on the definition of international terrorist crimes, but also a debate on the delimitation the scope of the international terrorist crimes. Moreover, a related question is "whether it is necessary to repeat the argument that the armed forces of a country should be regulated by International Law, International Humanitarian Law and other relevant legal documents in the performance

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<sup>454</sup>See Huang Yao: *The Armed Forces in the United Nations Comprehensive Convention against Terrorism*, Law Research, 2009, issue 2, pp.166-182.

<sup>455</sup>Huang Yao: *National Liberation Movement in International Anti-Terrorism Law-From the Perspective of the Draft Comprehensive Convention on International Terrorism*, Journal of Zhongshan University (Social Science Edition), 2008(05), pp.172-181.

<sup>456</sup>Sun Jianfeng: *Definition of Terrorism from the Perspective of Comprehensive Anti-Terrorism Convention*, Foreign Affairs College, 2014 Doctoral Dissertation.

<sup>457</sup>Ibid.

of their official activities"<sup>458</sup>. For this issue of relevance, both sides have given their own reasons. The League of National States believes that although it is reasonable that this issue should be regulated by International Law, International Humanitarian Law and other laws, due to the vulnerability of these legal documents, sometimes it is difficult to really play a role, and the provisions can be further strengthened and supplement in the Convention; the Western Union believes that there is no need to repeat the provisions on this issue. Other international laws and international legal documents can deal with this problem well. In the face of such an interpretation, in fact, both parties agree that it is reasonable and necessary to exclude these official activities, but there are differences on whether it should be further strengthened in the Convention.

In essence, these two kinds of disputes are the political discourse power disputes between the national states alliance and the western states alliance. There is still a serious trust crisis between the two sides; the most fundamental reason is that there is still a strong hegemonic and power political ideology in the western countries' alliance, which makes the national alliance have to consider its own interests. Therefore, the Comprehensive Convention's solution to this problem will also be its own improvement. In view of the complexity and variability of international political relations, there are two ways to solve this problem: one is to make compromises and concessions by the alliance of western countries. In the Comprehensive Convention, the "parties" of the armed forces and the non armed forces have the equal exclusion right, which is clearly stipulated in the Comprehensive Convention to supplement the regulations of International Law and International Humanitarian Law; and the other is that the execution of official activities by a country's armed forces should be excluded from the provisions of the Convention and regulated by International Law and International Humanitarian Law. But it must be clearly stipulated in the Comprehensive Convention, so as to avoid impunity for criminal acts in the execution of official activities by a country's armed forces due to unclear provisions.

The last concern of the Comprehensive Convention is the relationship between it and the special Counter-Terrorism Convention, that is, how to divide and define the status

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<sup>458</sup> Huang Yao: *National Liberation Movement in International Anti-Terrorism Law-From the Perspective of the Draft Comprehensive Convention on International Terrorism*, Journal of Zhongshan University (Social Science Edition), 2008(05), pp.172-181.

of the two. There are also two views on this issue: (1) the Comprehensive Convention takes precedence over the Special Counter-Terrorism Convention. The Comprehensive Convention should become an "outline" general rule. The Special Counter-Terrorism Convention should be fully subject to the provisions of the Comprehensive Convention. In case of conflicting provisions, the Comprehensive Convention should prevail; (2) the Special Counter-Terrorism Convention should take precedence over the Comprehensive Convention. The Comprehensive Convention is the supplement and correction of the existing Special Counter-Terrorism Conventions. The Special Counter-Terrorism Conventions should be in the leading position and belong to the "general program". Only when the Special Counter-Terrorism Conventions cannot be dealt with, can the Comprehensive Conventions be supplemented and dealt with. In case of conflicting provisions, the Special Counter-Terrorism Conventions shall prevail<sup>459</sup>. In fact, both of them have their own reasons. We can't judge which statement is right or wrong. Although there are "the latter law is superior to the former law" and "the special law is superior to the general law" stipulated in the treaty law as the basis, it is not appropriate to explain the relationship between the Comprehensive Convention and the Special Counter-Terrorism Convention simply on the basis of terrorist crime<sup>460</sup>. We should examine the current situation of terrorist crimes and judge the relationship between them from practice. In terms of the current form of terrorist crimes, they have already surpassed the crimes defined in the traditional security field and entered into a large number of issues of concern in the non-traditional security field. If only the Comprehensive Convention is taken as the general outline, it is difficult to regulate these criminal acts, unless an international unified criminal code is formulated, which will be an ideal "Utopia". The former branch Counter-Terrorism Convention is a powerful regulation for a certain type of terrorist crime. If it is replaced by a Comprehensive Convention, it will be difficult to prevent and punish specific terrorist crimes. Therefore, the hypothetical solution to this problem lies in that the Comprehensive Convention, on the premise of retaining the independence of the

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<sup>459</sup>See Huang Yao: *On the Relationship between the United Nations Comprehensive Counter Terrorism Convention and the Special Counter-Terrorism Convention*, Journal of Zhongshan University (Social Sciences Edition), 2009, issue 6, pp.158-164.

<sup>460</sup>Zhong Jiayue: *Research on Legal Issues in International Counter-Terrorism*, Northwestern University, 2017 Doctoral Dissertation, p23.

Counter-Terrorism Conventions of other departments, is used as a supplementary norm to fill the gaps in its legal provisions.

In the Comprehensive Convention, in addition to these controversial issues, it should make clear provisions on the types of terrorist crimes. For the reason that the new-type terrorist crime has not only harmed the traditional security field, but also the tendency of rapidly deepening to the non-traditional security field is more and more obvious. In view of this, we should clearly define the concept of terrorist crime, and make detailed provisions on terrorist crime in non-traditional security field, so as to make efforts to finally form an international unified criminal code.

## *2.2 The improvement of the international unifying criminal policy of counter-terrorism*

Nowadays, human society has entered the "risk society" described by sociologists<sup>461</sup>. The picture drawn by the risk society is to inform that the development of human society, the progress of science and technology, and the creation of civilization all depend on the over exploitation of natural resources. The strength of industrial society will inevitably consume a lot of natural resources, and the degree of human civilization is pushing human beings to destruction. Environmental deterioration, resource depletion, population expansion, and ecological imbalance are all the results of scientific and technological calculation, and the progress of science and technology depends on the consumption of a large number of resources. If such a situation is allowed to continue, human society will inevitably unsustainable. We are experiencing unpredictable risks, such as the outbreak and spread of wars, diseases and pestilence, the decline and exhaustion of land, fresh water and food, the increase of refugees, immigrants and exiles, and the aggravation of hunger, poverty and natural disasters (such as volcanic eruption and flood), which are enough to make human groups face a dangerous situation<sup>462</sup>. A good social policy construction can help human society to avoid the risks to the greatest extent. As Liszt said, "The best social policy is the best

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<sup>461</sup> Jia Yuan: *Research On The Change Of Criminal Policy And The Development Of Criminal Law Function Under The Background Of Risk Society*, Social Sciences In Ningxia, 2016(06), pp.75-80.

<sup>462</sup> See Ulrich Beck, *Risk Society*, translated by He Wenbo, Yilin Publishing House, 2004 edition, page 23.

criminal policy"<sup>463</sup>. The prevention and elimination of terrorist crimes depends on good social policy and the best criminal policy.

Criminal policy refers to all policies and measures that the state takes to dispel and alleviate social conflicts in order to effectively prevent crime from disrupting or threatening the national social order, thereby achieving an orderly state management, including "legislative, judicial, and administrative countermeasures"<sup>464</sup>. The purpose of criminal policy in a country is to prevent crimes, that is, to impose criminal punishment on behaviors endangering society and counter social behaviors, so as to maintain social order, ensure national security and people's living stability and orderly, and promote social development. State organs constitute the main body of the implementation of criminal policy, and the punishment of crime becomes the center of criminal policy. As far as the international community is concerned, the formulation and unification of criminal policy is related to the expression of the overall interests of the international community, and also the expression of the unified will of all countries represented by the United Nations, which is often closely related to the current public and political needs of the international community. International Criminal Law is a combination of the provisions of the United Nations Convention on Combating, Preventing and Punishing Crimes, which does not form a fixed and complete international criminal code<sup>465</sup>. If international criminal law wants to better serve the fight against and prevention of international crime, it is necessary to consider the issue of international criminal policy in its formulation. From this point of view, the criminal policy is not only to prescribe measures to punish crimes, but also includes the social policies, political strategies, economic and cultural policies of the whole international community. Therefore, in the practice of international counter-terrorism, the value of criminal policy should be fully reflected in the provisions of International Criminal Law on terrorist crime, so that the corresponding purpose of provisions of international criminal law can be fully realized.

At present, the international community has not formed a unified understanding of the concept of international counter-terrorism criminal policy. The prevention and

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<sup>463</sup>Lu Jianping et al: *Criminal Policy and Criminal Law Improvement*, Beijing Normal University Press, 2014 edition, page 31.

<sup>464</sup>Otani: *Criminal Policy*, translated by Li Hong, Law Press, 2000 edition, page 3.

<sup>465</sup>Chen Shiwu, Xia Yong: *Evaluation of United Nations Anti-terrorism Work*, China Information Security, 2017(09), pp.80-82.

elimination of terrorist crimes are mainly restricted by 13 existing international conventions, such as the United Nations International Convention on the Prevention and Punishment of Terrorism. As a criminal policy of a country, it can affect the recognition of "legal interest" infringed by criminal law, provide important instructions for the interpretation of criminal law, affect the judgment of the subject on criminal behavior, provide the justification for obtaining immunity, and affect the establishment of the cause of criminal obstruction. However, as the value guidance of the application of counter-terrorism criminal law in the international community, the unification of criminal policy plays a decisive role in guiding the international coalition against terrorism<sup>466</sup>. Therefore, the construction and improvement of the unified criminal policy of the international counter-terrorism should focus on the subject of the criminal policy, the object of the criminal policy, the content of the criminal policy, the origin of the criminal policy, the value carrier of the criminal policy and the purpose of the criminal policy, so as to guide the international criminal law to regulate the current terrorist crime. At present, there is no consensus on the concept of international criminal policy, and some scholars have also made some tentative definitions, such as "international criminal policy is the internationalization of criminal policy"<sup>467</sup>, "the sum of all social policies of the international community to prevent and punish international crime"<sup>468</sup>, but few scholars have defined the concept of international counter-terrorism criminal policy. In any case, the international unified counter-terrorism criminal policy is an integral part of the international criminal policy. Therefore, the improvement of the international counter-terrorism criminal policy should be from the following aspects:

(1) The subject of international criminal policy. Generally speaking, the criminal policy is formulated by the sovereign state according to the criminal situation in a certain stage of the domestic society. It aims to guide the criminal law to regulate the crime, basically reflects the will of the political state and the civil society. From a global perspective, international criminal policy is a guiding policy for international criminal

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<sup>466</sup> Findlay, M., *Governing through Globalised Crime: Futures for International Criminal*, Willan Publishing, 2013, p.27.

<sup>467</sup> Guo Jing: *International Criminal Policy: Definition of Concepts and Analysis of Basic Categories*, *Essays on Criminal Law*, 2013, 33(01), pp.435-455.

<sup>468</sup> Yan Li: *Scientific Principles and International Principles from the Perspective of Broad Criminal Policy*, *Southern Academic Circles*, 2010, 30(04), pp.83-89.

acts. As the leading body for maintaining global peace and development, the United Nations should become the main body of international counter-terrorism criminal policy. Because of the differences in politics, economy and culture, the occurrence of crimes in each member state is also different. As a special kind of crime, the root of terrorist crime is very complex. The more prominent reason may be the conflict of political ideology, national religious belief, economic and cultural development and other factors. In the process of making their own criminal policies, countries all over the world do not measure the frequency of terrorist crimes, but integrate their own overall crime situation, resulting in different priorities of crime prevention. In view of this, Member States should face up to the situation that terrorist crimes are increasingly rampant; adjust their criminal policies to control terrorist crimes in time, and respond to the international criminal policies of the United Nations to combat the threat of terrorism<sup>469</sup>. In this regard, member states are also the main body of international counter-terrorism criminal policy.

Facing the situation of regional terrorist crime, regional and sub regional government alliance organizations began to strengthen contact, develop alliance conventions, establish close relations, and respond to regional terrorist attacks. Therefore, the declaration in the conventions of the cooperation alliance to combat and eliminate terrorist crimes should also be the support of international criminal policy. Regional and sub regional alliances should also become the main body of criminal policy.

In summary, the main body of international counter-terrorism criminal policy should include: United Nations agencies, Member States and regional and sub regional cooperation alliances under the United Nations unified leadership framework. Because the main body of criminal policy mainly includes the decision-making body and the implementation body<sup>470</sup>, the United Nations and its agencies, Member States and regional and sub regional cooperation alliances are bound to become the makers and executors of the international unified counter-terrorism criminal policy, it can also prove the rationality of the definition of the main body.

(2) The object of international criminal policy. It refers to all criminal acts that cause harm to the international community. These crimes mainly refer to international crimes

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<sup>469</sup> Guo Jing: *International Criminal Policy: Definition of Concepts and Analysis of Basic Categories*, Essays on Criminal Law, 2013, 33(01), pp.435-455.

<sup>470</sup> Ibid.

and transnational crimes. International crimes, such as crimes against humanity, war crimes and genocide, are crimes that jeopardize the peace and development of the international community, endanger the security interests of the international community and threaten the national security of all countries<sup>471</sup>. Part of transnational crimes threaten the security and stability of the international community, and should also be the object of international criminal policy adjustment. As an organic part of the international criminal policy, the international counter-terrorism criminal policy aims to reduce the harm of terrorist crime to the security interests of the international community, the peace and development of the international community and the international social order. This kind of harmful behavior includes both macro level and micro level. At the macro level, it mainly evaluates the integrity of criminal acts, while at the micro level it mainly focuses on the perpetrators and specific cases of terrorist crimes.

(3) Content of international criminal policy. International criminal policy includes not only the prevention, attack, punishment and control of crime, but also the attitude towards the perpetrator (criminal, suspect and victim). This kind of cognition is slightly different from the view of classical criminal policy<sup>472</sup>. Classical criminal policy lacks such an understanding of the attitude of the perpetrator, while modern criminal policy adds some characteristics of the person, especially the attitude of the victim. Based on this investigation, the content of international counter-terrorism criminal policy is nothing more than to prevent and punish terrorist crimes, strengthen the protection of national security and international social security interests, deal with the perpetrators of terrorist crimes and the attitude towards the victims of terrorist crimes.

(4) The purpose of international criminal policy. As we all know, the purpose of criminal policy is the goal of making and implementing criminal policy. Modern criminal policy theory holds that the purpose of criminal policy is to prevent and punish crimes<sup>473</sup>. Generally speaking, the goal of criminal policy is embodied in value goal. For criminal policy is a kind of public policy, its value goal is mainly reflected in the dialectical relationship between justice and efficiency, that is, in the process of criminal

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<sup>471</sup> Cheuk Cheung, Chen Kewei: *Criminal Policy Analysis of Current International Terrorism Activities*, Postgraduate Law, 2003(01), pp.93-99.

<sup>472</sup> See Liu Renwen: *Preliminary Criminal Policy*, China People's Public Security University Press, 2004 edition, p. 39.

<sup>473</sup> See Lu Jianping: *Criminal Policy*, Renmin University of China Press, 2007 edition, p.23.

policy adjustment, we should adhere to the priority of justice or efficiency, or both. To solve this problem, Liang Genlin, a Chinese scholar, believes that criminal policy is always an efficiency oriented strategy. In the process of crime prevention and punishment, criminal policy always adheres to the pursuit of the largest crime prevention and control with the smallest cost<sup>474</sup>. Professor Liu Zhongwei also believes that: utility and efficiency are the primary value objectives of criminal policy, but social justice should be taken as its limit<sup>475</sup>. Therefore, as a public policy in the criminal field, the priority of efficiency and justice should be determined in combination with the special attributes and functions of criminal policy as a public policy.

As an international criminal policy, its goal is also to prevent and punish international crimes, which seems to be similar to the purpose of criminal policy. However, as a kind of public policy to regulate international criminal behavior, the value goal of international criminal policy cannot be measured by justice and efficiency. The complexity of the international community in dealing with criminal acts determines that justice and order should be the primary value objectives of international criminal policy, while efficiency and utility should be the second. In the international community, what is advocated first is a just international political and economic order, rather than the priority of efficiency and utility. Therefore, as the international counter-terrorism criminal policy, its purpose is to prevent, combat and punish terrorist crime, maintain global peace and development, international social security and national security of all countries, its value goal should be to maintain the justice and order of the international community as the first, followed by efficiency and interests. We should not reduce justice and order to a secondary position because of the excessive consumption of resources in counter-terrorism operations. It would be a very wrong choice to sacrifice justice and order, and to preserve efficiency and interests.

(5) The doctrine and structure of international criminal policy. The two aspects are necessary for the improvement of international criminal policy. The doctrine of international criminal policy includes two aspects: one is the legal normative documents formed by international law and the international community; the other is the provisions concerning the prevention and punishment of international crimes in the

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<sup>474</sup>See Liang Genlin: *Criminal Policy: Position and Category*, Law Press, 2005 edition, p.21.

<sup>475</sup> Liu Zhongwei: *Theoretical Interpretation of "Criminal Policy of Criminal Law"*, Essays on Political Science and Law, 2015(04), pp.3-11.

criminal policies of various countries. Its structure can be divided into micro level structure and macro level structure. Macro level structure can be divided into horizontal structure and vertical structure. Specifically, the micro level structure of international criminal policy is composed of the principles, ideas and programs of criminal policy; the macro level horizontal structure is mainly composed of the international criminal combination of legislation, justice and prevention in the international community; the composition of the vertical structure is mainly divided by the concept of the subject of criminal policy, including the international level of criminal policy and the regional level of criminal policy, bilateral and multilateral criminal policy. Therefore, the doctrine of international counter-terrorism criminal policy also includes two aspects: one is the normative legal document of common counter-terrorism reached by international law and the international community; the other is the clause of preventing, combating and punishing terrorist crime involved in the criminal policies and criminal provisions of various countries. Its structure is the same as that of international criminal policy.

## Chapter V

### **THE MODE AND SYSTEM CONSTRUCTION OF DOMESTIC RESPONSE TO TERRORIST CRIMES**

China's counter-terrorism legislation is in the primary stage. Systematic and complete counter-terrorism legal system is the institutional cornerstone to deal with the complexity of counter-terrorism work, the severity of social defense and the trend of multi-point and multi-faceted international globalization. Facing the reality that terrorist incidents are frequent and will exist for a long time, there are three kinds of anti-terrorism paths: "war path", "criminal justice path" and "global governance path". The war path should be restricted because of its inherent defects. The criminal justice path and the global governance path are the legitimate ways to fundamentally prevent terrorism.

Over the years, China has preliminarily constructed the main frame of combating terrorist crime, and formed a three-dimensional prevention system in the aspects of counter-terrorism stance, counter-terrorism organization setting, counter-terrorism finance control and counter-terrorism network supervision. In terms of specific disposal, China has established counter-terrorism organization and platforms, such as information exchange platform, early warning and prevention platform and public division platform. But fighting terrorism legitimately is always one of the goals pursued by the rule of law. Although China has established a relatively complete counter-terrorism legal system, the counter-terrorism legislation has certain defects and deficiencies in three aspects: basic concepts, counter-terrorism substantive law and counter-terrorism procedural law. It is found that there are some specific problems in China's counter-terrorism legislation, such as unclear definition of basic concepts, poor convergence of laws in the field of counter-terrorism substantive law, confusion of identification subject and procedure in the field of counter-terrorism procedural law, confusion of administrative power and criminal investigation power, and poor procedural independence. The definition of the basic concept should strictly abide by the behavior theory of objectivism criminal law, and should be expanded in combination with international practice to cover specific cases from the literal and

theoretical extension of the doctrines. In the field of counter-terrorism substantive law, the power boundary between administrative law and criminal substantive law should be clarified, and legislative conflict of jurisdiction should be solved, strictly implement the concept of modesty of criminal law, and correctly define the specific boundaries between administrative illegal activities and criminal activities, as well as between incriminating and discharging crimes. The choice of procedural legislation of mixed model in the field of counter-terrorism procedural law should conform to the trend of the world, clarify the compartmentalization of subjects, ensure the smooth internal connection of the whole procedure, and establish a special prosecution procedure. At the same time, we insist on using criminal policy of combining punishment with leniency to guide our counter-terrorism practice, and finally realize the balance between counter-terrorism and human rights protection.

*1. The current situation of counter-terrorism in China and the choice of countermeasures*

At present, terrorist crime has become a global violent crime that endangers the security of the international community and national security, threatens the traditional and non-traditional security fields, and poses great harm and instability to human society. As Baker said: “Human society has entered an unprecedented risk society, which including both natural risks and risks created by human beings”<sup>476</sup>, terrorist crime is the terrorist risk created by human society. Due to geopolitical relations, China has always been in the hot radiation zone of frequent terrorist crimes. The complex ethnic and religious relations and geographical relations in Central Asia, South Asia, East Asia, northern Europe and the Middle East have resulted in the increasing rampancy of domestic terrorist crimes in China, harmed the national security, the safety of people's lives and property, the stability of production and life order, and brought great damage to the social stability and peaceful development of China. Although China's Criminal Law, Criminal Law Amendment (3), Criminal Law Amendment (6), Criminal Law Amendment (8) prescribe quite a number of charges to punish such harmful acts, and in the Counter-Terrorism Law officially promulgated and

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<sup>476</sup> See Ulrich Beck, *Risk Society*, translated by He Wenbo, Yilin Publishing House, 2004 edition, p. 2.

implemented on January 1, 2016, and in the Criminal Amendment (9), which came into force on November 1, 2015, the identification of terrorism, extremism, terrorist activities, etc. is specified in detail. So as the increase of the crime of terrorism charges, sentencing range, property punishment, etc., further strengthen the provisions of preventing and combating terrorist crimes, and strengthen the prevention and punishment of terrorist crimes in administrative law and criminal law.

Terrorist crime has become a crime phenomenon that cannot be eliminated in a short period of time. No country can completely eliminate terrorist crime in a limited period of time. It can only take the maximum means of defense and control, so can China. Therefore, it is necessary to explore effective ways to deal with terrorist crimes. In view of the above-mentioned reality and development trend of terrorist crime in China, and considering the future road of international terrorist crime, it is necessary to establish a "three in one" model of terrorist crime prevention and control, which is a moderate model of war defense and counterattack, a model of criminal justice and a model of global governance, to prevent, combat and eliminate the harm and threat brought by terrorism.

### *1.1 Model of war defense and counterattack*

The failure of the United States to take military action against terrorism does not prove that it is wrong to eliminate terrorist crimes by means of war, but only that "war against terrorism" is not the best way to effectively solve terrorist crimes. It is extremely dangerous for some people to take a totally negative view. Some even argue that "violence against violence" is another kind of violent terrorist crime. However, if we carefully consider this statement, we will find that this argument is full of extremely dangerous right-wing conservatism. Needless to say, in the war of national liberation, the terrorist attacks carried out by the nation-state in order to strive for national independence and national liberation cannot be called a real terrorist crime, which is just a war of national independence. Looking back today, there is basically no problem of national independence, but terrorist organizations have undergone fundamental changes. Terrorism is no longer a contest between the two sides in a symmetrical war, but a contest between the "asymmetric" forces between the two sides. Terrorist organizations have well-trained members, well-equipped weapons, and are like modern

armed forces. If the armed forces of terrorist organizations carry sophisticated weapons and equipment to launch terrorist attacks against sovereign countries, but we teach them to lay down their weapons and become Buddhas on their own, which may be the biggest impossibility for terrorist criminal organizations. Therefore, "model of war" to defend and fight against terrorism is still the most effective means within a moderate range.

### *1.2 Criminal justice model*

The domestic terrorist crimes in China are caused by the influence of domestic and foreign factors. The infiltration of domestic terrorist organizations by foreign terrorist organizations in ideology, the support of goods and money, the teaching of terrorist attack tactics, as well as the covert assistance of foreign counter-China forces, consciously or unconsciously, will lead to the tough stance of domestic terrorist organizations and the destruction of the normal management order of Chinese society. Domestic terrorist organizations are difficult to identify because of their identity, and their latent methods are more secretive, and are generally difficult to discover and detect. If the biggest defect of counter-terrorism of war mode lies in the unintentional violation of the sovereignty and human rights of other countries, the control of terrorist crimes through the establishment of criminal legal procedures may avoid this problem to the greatest extent.

Terrorist crime is not only a simple crime, but also a kind of criminal behavior that integrates political form, religious doctrine, personality psychology and social crime. To curb terrorist crime, we must find out the mechanism that leads to terrorist crime. In China, if the reason of terrorist crime is internal and external collusion, breaking this collusion and association through the establishment of criminal law will curb the momentum of terrorist crime. At present, Article 120 of the Criminal Law of China has clearly defined the charges and sentencing of terrorist crimes. The Amendment (3) of Criminal Law, Amendment (8) of Criminal Law, Amendment (9) of Criminal Law and Counter-Terrorism Law that have been promulgated and implemented have made clear provisions on terrorist crimes. It can be said that the obvious signal brought by these provisions is that the criminal justice mode will be the guaranteed path for China to control domestic terrorist crimes in the future.

First of all, the terrorist crime in China is the product of the political, economic and cultural conflicts under the guidance of the spiritual concepts such as nation, religion and belief, or it is completely caused by the ethnic minorities at the spiritual level. The national issue has always been a domestic political issue of great concern to the Chinese government, an "excuse" used by the international community to restrain China's development, and an "Counter China tool" that the United States, its allies and counter china forces have been thinking about. In order to avoid falling into more "international traps", the use of criminal law is to solve all unfair phenomena, to impose legal punishment on terrorists, to convict and mete out punishment through judicial procedures, to achieve a reasonable basis, to prevent some counter-China countries from taking the opportunity to create problems in the international community, and to safeguard China's national interests in international affairs.

Secondly, criminal justice brings about a precision strike on terrorist crimes. Criminal law plays the role of general prevention and special prevention on crimes. The implementation of terrorist activity will be severely punished by criminal law as a predictable deterrent effect, warning those who intend to do it, so that they dare not do it again.

Therefore, the mode of criminal justice is necessary for China to build a country under the rule of law to punish crimes. It is also a way for the current international community to punish international crimes that seriously threaten human beings. From both domestic and international perspectives, criminal justice not only effectively deters ordinary citizens from committing terrorist crimes, but also embodies positive general prevention, and can also achieve individual treatment under special circumstances. It can not only protect human rights, but also achieve the purpose of punishing crimes, and play an effective role in preventing, combating and eliminating terrorist crimes.

Finally, it should be noted that the criminal justice mode plays an important role in the field of international cooperation in the prevention and elimination of terrorist crimes. From the perspective of the current ways of preventing and combating international terrorist crimes in the world, we should effectively carry out criminal judicial cooperation in the international field based on the formulation of counter-terrorism law, such as the provision of the criminal jurisdiction of the International Criminal Court, the principle of "extradition" under the criminal judicial

cooperation, and the international law provisions on non extradition of political prisoners. The promulgation and enforcement of these legal texts, as well as their compliance, promote the prevention and control of terrorist crimes in China.

### *1.3 Global governance model*

The concept of "global governance" does provide important theoretical guidance and practical experience for the international community and other countries in the governance of society. As mentioned before, global governance is a kind of governance that can repair trauma quickly and effectively play a global governance role. Considering the current situation of terrorist crimes in China, global governance should be applied to the prevention and combat of terrorist crimes.

Today's world is a globalized world, in which matter flows around the world, and the law of conservation of energy spreads all over the world. Terrorism, as a crime, also follows the law of conservation of energy and circulates around the world. Terrorist crime is understood as international terrorist crime and domestic terrorist crime. The international community is guided by the principles under the framework of the United Nations to eliminate the crime of international terrorism. Although the counter-terrorism war led by the United States failed to eradicate the terrorist crime fundamentally, it restrained the rapid expansion of terrorist crime to a certain extent, and played a certain buffer role for the international community to cope with the increasingly powerful terrorism.

In recent years, new changes have taken place in the way of international terrorist crimes. Instead of large-scale terrorist attacks, they are characterized by decentralization, miniaturization and concealment. The Internet has become the main battlefield of terrorist activities. Recruiting members, training members, raising funds and committing crimes through the network are no longer problems that can be solved through war.

The domestic terrorist organizations in China try their best to imitate the practice of international terrorism, distort religious doctrines, confuse and mislead believers, preach and lecture by various illegal means, recruit members from the world through the network, release violent and terrorism audio-video, seek financial support, closely

link with international terrorist crimes, impact state organs, destroy public facilities, and harm innocents. It is a threat to national security and people's stable life.

In China, the theory of global governance is fully embodied in the theory of comprehensive social governance. As early as in the period of "severe crackdowns" on criminal activities, China has put forward some practical guiding concepts, such as "mass prevention and mass governance" and "combination of specialists and masses", aiming to control the increasingly rampant crimes. Nowadays, a more rigorous prevention and control system has been put forward to fight against terrorist crimes, giving full play to the role of the people in counter-terrorism, and encouraging the people to report and respond to the discovery of violent terrorism in a timely manner. Moreover, global governance can make all countries in the world put aside the influence of political interests temporarily and carry out active international counter-terrorism cooperation without considering political interests. As far as China is concerned, effective international cooperation against terrorism is of vital importance. For the particular reason of the geopolitical relationship, China is under the double threat of international terrorism and domestic terrorism. There are many large and small terrorist organizations active in Central Asia and Western Asia, whose threat and harm are self-evident.

Therefore, global governance means giving full play to the power of every people to prevent terrorist attacks. Especially in the field of non-traditional security, network, finance, science and technology, information, biochemistry and so on, have become the important fields of terrorist crimes. It is impossible for us to set up "counter terrorist personnel" to control in every field. And even if it is set up, it is impossible to defend against unknown terrorist attacks with limited resources. Therefore, China's "counter-terrorism" is to give full play to everyone's power to discover crimes in time and report crimes bravely, and forms an effective "governance network" by connecting the most basic individuals, families, streets and communities. By doing so, we can truly play the role of global governance in preventing and combating terrorist crimes.

## *2. Position and institution building of counter-terrorism in China*

"9.11" terrorist attacks opened the prelude of worldwide counter-terrorism, which shocked the whole world. "Terrorist crimes are not far away from us" has become a

general consensus. The international community led by the United States immediately launched military action to end the habitat of terrorist organizations, but it did not work, but made terrorism stronger. Today, with the United Nations as the center, the international community is constantly strengthening the prevention and combating mechanism of terrorist crimes and eliminating the threat of terrorism. Various measures and methods have been mentioned to curb the violent momentum of terrorist crimes. However, in 2015, terrorist criminal activities have not converged on this point. Instead, they have a strong momentum. They continue to create terrorist events and challenge the existing "counter-terrorism mechanisms" and measures around the world. It seems that these existing methods and means cannot make the terrorist crime subdued, let alone completely eliminate it. In the face of the deteriorating situation in the Middle East, the increasingly rampant terrorist crimes in Central and Western Asia, and the unfair political and economic order promoted by western countries, China has begun to strengthen and actively build a national security defense system. From the national level to all the people, China has high hopes and unites to fight against the invasion of terrorist crimes. It can be seen from the official high-level position of China and the attitude towards terrorist crimes. China takes a "zero tolerance" attitude towards terrorist crimes and resolutely combats and eliminates the threats to China's national security brought by terrorism. It is necessary and inevitable to establish a strong enough counter-terrorism network system. If not, China will be in a dangerous situation, facing the internal and external challenges of terrorist crimes.

### *2.1 The position of counter-terrorism in China*

Since the terrorist attacks on the US mainland, the threat of terrorism to the countries around the world has been increasing year by year. China is a permanent member of the United Nations and a party to 12 International Counter-Terrorism Conventions. It is China's consistent attitude to resolutely and severely crack down on "three forces" and all forms of terrorist crimes. In the Millennium Development Plan of the United Nations, the Five Principles of Peaceful Coexistence advocated by China have become the consensus of all countries. Peace and development have become the theme of safeguarding national interests of all countries in the world. The new security concept of "mutual trust, mutual benefit, equality and cooperation" has won China a good

reputation of the international community. Terrorist crimes are shown by "9.11" terrorist attacks, which not only set a precedent for them to enter into the international political field of vision, but also alert the world to a new understanding of security.

In China's view, maintaining a safe and stable domestic development environment is as important as ensuring a stable and safe international surrounding environment. Although China has become a powerful developing country that cannot be underestimated, maintaining the necessary security and stability is China's first choice. Therefore, China is clearly aware that it should choose to maintain the security and stability of the international community, promote the dialogue and cooperation of the international community, maintain the peace and stability between regional and sub regional countries, and enhance the cooperation of regional alliance of countries. Meanwhile, China should strengthen the stable and peaceful development domestic circumstances, which should be achieved by China as a responsible major country in international relations. However, the end of cold war thinking has given birth to the relative weakening of traditional security concepts in the international community. Non-traditional security concepts have become the focus of security issues. Non-traditional security (such as terrorism, network, ecology, culture, science and technology, information, environment) is threatening the existence of human society itself. As the largest non-traditional security field, terrorist crimes are the biggest threat to human society. As soon as possible, it should be completely eliminated. To this end, China takes a tough attitude against terrorist crimes, resolutely attacks them, and safeguards the security interests of the international community and China's national security and national interests.<sup>477</sup>

The causes of terrorist crimes are not only the profound political factors of the current international community, but also the historical legacy factors. The most important one is the result of strong conflicts among nations, religions, beliefs, etc. in the political, economic and cultural fields. Therefore, China's position on terrorist crimes lies in the establishment of a fair, just and open international political order first, and then in the initiative of Member States to actively conclude international counter-terrorism conventions, strengthen international cooperation among member states of the international community, constantly promote the counter-terrorism alliance mechanism

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<sup>477</sup>See Liu Tao, *Research On Security Strategy In East Asia Of The United States After The Cold War*, Doctoral Dissertation of Jilin University in 2010, pp. 160-170.

among regional and sub regional countries, and enhance cooperation and dialogue mechanism.<sup>478</sup>

The inequality of international political and economic order is the fundamental reason for the growth of hegemonism and power politics. In the era of terrorist crimes, the Chinese government takes a clear stand against all forms of terrorist crimes. No matter how just and reasonable the reasons are, it is inexcusable. The Chinese government is against the "double standard" principle of identifying terrorism. Tang Jiaxuan, a former Foreign Minister of China, has repeatedly stated in the UN General Assembly that China is opposed to terrorism in all its forms. The prevention and combating of terrorism should rely on international cooperation to eliminate the harm and threats caused by terrorist crimes, and oppose any country supporting terrorist activities for any reason. Counter terrorist crimes cannot be carried out "Double standards", neither can link terrorism with certain countries, certain ethnic groups and religions.

In his speech on terrorism, President Xi Jinping repeatedly emphasized the principle of "zero tolerance" for terrorism. It can be seen at least that this principled position has a clear guiding role in counter-terrorism practice:

Counter-terrorism cannot be carried out on the premise of ignoring the international just order, and any attempt by any country to interfere in the sovereignty of other countries on the pretext of counter-terrorism is not allowed. In dealing with terrorist crimes, we should not engage in ideology or other discriminatory actions, but deal with terrorism at home and abroad equally.

Under the current situation of rampant terrorist crimes, no matter how the terrorist crimes are realized or how they invade people's fields, they are harmful to the security of the international community, and the harm to people's lives and property must be eliminated and condemned.

As a developing country, China is not allowed to use counter-terrorism as an excuse to interfere in China's sovereignty and damage China's dignity. Under the situation of the rapid spread of terrorist crimes to the world, strengthening the establishment of international, regional and sub regional counter-terrorism cooperation mechanism is a necessary means to curb the spread of terrorism and an effective counter-terrorism way.

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<sup>478</sup>See Li Zeren: *China's Position and Policy on the International Fight against Terrorism*, Asian African Vertical and Horizontal, No. 4, 2003.

China should spare no effort to strengthen and support the establishment of such cooperation mechanism, so as to achieve the comprehensive governance of terrorist crimes.

(1) China should actively respond to the call of the United Nations and implement its responsibilities and obligations in the international counter-terrorism conventions. It should take the purposes and principles of the Charter of the United Nations as the core and maintain international order and relations. President Xi Jinping said in the general debate of the 70th Session of the General Assembly: "China is a founding member of the United Nations and is the first country to sign the UN Charter. China will firmly uphold the international system with the United Nations at its core, the basic norms of international relations based on the purposes and principles of the Charter of the United Nations, the authority and status of the United Nations, and the core role of the United Nations in international affairs."<sup>479</sup>Therefore, the purposes and principles of the Charter of the United Nations are the core norms for the construction of a global counter-terrorism community. In the joint fight against global terrorist crimes, the position of the United Nations in responding to the threats and challenges of global terrorist crimes is unshakable. No country can disregard the international order and the international system established by the purposes and principles of the UN Charter, invade other countries to fight terrorism at will, undermine the basic norms of collusion, and disrupt the authority and seriousness of international law and international order.

(2) China will strengthen cooperation between China and its neighboring countries, and strengthen the establishment of regional counter-terrorism cooperation mechanisms, such as the Shanghai Cooperation Organization, the Asia Pacific Economic Cooperation Organization, the CICA summit and the G8 summit. One Belt, One Road Initiative should be fully utilized to establish close cooperation relations, develop economic and trade contacts among countries, and enhance mutually beneficial cooperation and interconnection between countries. China should help "One Belt, One Road" alongside countries to establish a good economic support system so as to establish a secure economic strategic alliance with China and maintain the core interests of the country without aggression from outside, and ensure the formation of

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<sup>479</sup>Xi Jinping: "Work Together to Build a Win-Win Cooperation for New Partners to Build a Common Destiny of Mankind" speech at the general debate of the seventieth United Nations General Assembly, People's Daily, September 29, 2015, 2<sup>nd</sup> Edition.

the overall national security system. The "One Belt, One Road" Initiative advocates the Silk Road spirit of "peaceful cooperation, openness, tolerance, mutual learning, mutual benefit and win-win". The "Silk Road" concept of "mutual trust, economic integration and cultural inclusion" forms a responsibility community, a community of interests and a common destiny. It is firmly committed to maintain good neighborliness, which is a manifestation of close, sincere and favorable. With the concept of inclusiveness, we will actively promote peace and security in the surrounding areas. With the strengthening of terrorist attacks in surrounding areas and countries, it will inevitably threaten the overall national security of China. Therefore, One Belt, One Road, should be promoted to the rapid recovery of world economic capital and help the "failed state" to get out of the haze as soon as possible, and consciously resist the transfer and transformation of terrorist crimes in the region.

(3) China actively supports the counter-terrorism cause of other countries, assists other countries in the fight against and prevention of terrorist crimes, and provides moral assistance.<sup>480</sup> Terrorist crimes also arise from the unbalanced development of politics, economy and culture in a country. A small number of poor people or people with hostile attitudes towards society may join terrorist organizations and commit terrorist crimes under certain conditions. Therefore, efforts should be made to improve China's comprehensive governance capacity, improve economic level and cultural knowledge dissemination, eliminate poverty and discrimination, narrow the gap between the rich and the poor, and create a harmonious, stable and developing well-off society, which is also an effective means to eliminate terrorist crimes.

## *2.2 The establishment of counter-terrorism organization and platform in China*

"Dementalization of international terrorist crimes" and "internationalization of domestic terrorist crimes" are increasingly threatening China's national security and territorial integrity. It has become a clear attitude towards terrorist activities that terrorism must be eliminated. China's strict stance on terrorist crimes also shows that it is urgent to build a defense system against terrorist crimes with Chinese characteristics. Before the promulgation of the Counter-Terrorism Law of China, there were no clear

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<sup>480</sup>See Lei Kang and others: *China's Policies and Measures to Deal with Terrorism*, published in Journal of Political Engineering, No. 5, 2011.

and detailed provisions on the institutional setting of counter-terrorism in the legal normative documents of China, and there was no support from other relevant normative documents, just a simple provision of international criminal judicial assistance provisions, and no detailed provisions on the institutional setting. Therefore, the counter-terrorism institutions mentioned in the Counter-Terrorism Law should be the clearest result.

### *2.2.1 Institutional provisions of the Counter-Terrorism Act*

It is self-evident that the formal establishment of China's counter-terrorism criminal institutions has improved the whole national counter-terrorism criminal system to a certain extent. However, from the content of the existing counter-terrorism law, the establishment of institutions is still too principle and generalization, lack of certain operability in practice, so more detailed and specific provisions should be made. Terrorist crimes are more special. Once terrorist attacks occur, they will form a huge psychological fear of the surrounding people, which will directly affect the social order in the region and cause local panic. At this time, the leading body of counter-terrorism work should play the most comprehensive role, quickly stabilize the social order and dredge the pressure from all sides.

Before the promulgation of the Counter-Terrorism Law, China's counter-terrorism agencies set up a "Coordination Group of Counter-Terrorism Work" at the central level, whose "office" is responsible for specific daily affairs. At the same time, a "Counter Terrorism Bureau" is set up in the Ministry of Public Security, and corresponding institutions are set up in various localities to prevent and control terrorist crimes, supported by other state organs such as national security organs, public security organs, judicial organs, and the armed police. After the promulgation of the Counter-Terrorism Law, the national level established the prevention and combating terrorist crime institution as the "Leading Organization of Counter-Terrorism Work", and also set up "Offices" to take charge of daily specific affairs. Provinces, autonomous regions, municipalities directly under the central government, cities divided into districts, autonomous prefectures and regions correspondingly set up "Local Leading Organizations of Counter-Terrorism Work" and "Offices", which are subject to the central level leadership and command of counter-terrorism agencies. The state security organs, public security organs, judicial organs and other state organs "determine their

duties according to law" to fight against terrorism; the military, armed police and militia organizations, in accordance with the "Counter-Terrorism Law" and other laws and regulations, under the order of the State Council and the Central Military Commission, fight against terrorism under the National Counter-Terrorism Leading body. There are two obvious problems in the institutional setting of China's counter-terrorism law: first, it is not clear which department the national counter-terrorism leading body is set up in, which department is the main body, and what relationship it has with the "National Security Committee". From the perspective of regulations, the state level counter-terrorism institutions should be placed under the State Council, the Central Military Commission and other state organs, but the relationship between them and the "National Security Committee" has not been clarified. Second, the relationship between national counter-terrorism institutions and local counter-terrorism institutions is unclear, and there is no corresponding procedural explanation for many practical issues such as the coordination of the relationship among the main counter-terrorism participants.

Modern terrorist crime is different from the traditional form of crime. The popularity and the diversification of network information mobile terminals (computers, videophones, mobile phones, tablet computers, etc.) and various social chat software (QQ, WeChat, twitter), etc., to a certain extent, increase the difficulty of counter terrorist organizations in controlling terrorist information sources and the controllability of network terrorist crime. In view of this, China's Counter-Terrorism Law stipulates the control of security precautions and intelligence information. In terms of the controllability of intelligence information of counter-terrorism, it mainly lies in "import" and "export", and accurately grasps the information source and flow. To this end, a National Counter-Terrorism Intelligence Center has been set up at the national level, and local intelligence and information departments have been set up accordingly to cooperate with the Leading Group of Counter-Terrorism Work. However, this alone cannot fully meet the needs of counter-terrorism work, which is a process of collective cooperation in focusing on the relationship coordination and information exchange of all departments. Therefore, it is necessary to build corresponding platforms to share information, accurately grasp the dynamic information and specific action strategies of terrorist crimes, so as to better prevent and combat terrorist crimes.

### 2.2.2 *Counter terrorist crime information exchange platform*

Intelligence information plays a key role in any war. In essence, the counter-terrorism is a "national counter-terrorism" battle without smoke of gunpowder. "Intelligence information" determines whether the "counter-terrorism war" can achieve fundamental victory. The exchange of counter-terrorism information is not only the exchange of criminal information, nor the provision of criminal clues, but also a special type of information sharing involving national security interests and state secrets. Therefore, when the Counter-Terrorism Law of China proposes to set up a national information center and strengthen the mechanism of information exchange and sharing across departments, industries and fields, the difficulties faced by the construction of counter-terrorism information platform are highlighted. Terrorist crime is a kind of criminal behavior without boundary restrictions. It can launch terrorist attacks against anyone and anything at any time and place. Therefore, the intelligence of terrorist crimes can not only be collected, screened, studied, judged and analyzed by the state power, but also need to be transmitted to the National Counter-Terrorism Intelligence Center "with the participation of the whole people and timely report" to form the information sharing mechanism of "mass participation and joint prevention and control". The existing counter-terrorism law does not provide for these key issues.

(1) It is necessary to perfect the legislation of counter-terrorism information law. Foreign legislation shows that the main forms of counter-terrorism information legislation are comprehensive, specialized and decentralized. The comprehensive type is the legal text that regulates the intelligence information of the whole counter-terrorism. Unlike the specialized type, the intelligence information law (such as cyber terrorism and nuclear terrorism) which only aims at a certain type of terrorism, is also different from the decentralized type scattered in other legal texts. In view of the fact that terrorist crimes are spreading to non-traditional security fields, both specialized and decentralized types are difficult to play their roles, and the comprehensive type may be more suitable for China. The sharing of counter-terrorism intelligence information by the whole people cannot be an unlimited open source of information, but should be classified and conditionally shared. It is necessary to establish a platform for the whole people to share counter-terrorism information, but it should be distinguished between public sharing and state sharing, filter the intelligence

information that is very easy to threaten our national security in advance, and quickly transmit it to national security organs and other state organs for timely processing.

(2) Improve the efficiency of counter-terrorism intelligence information sharing. Terrorist crimes are actions that can be completed in a moment, even some crimes can be completed in a few seconds, resulting in harmful results. Therefore, in order to establish the counter-terrorism intelligence information platform, it is necessary to establish a well-trained and highly effective counter-terrorism intelligence information collection, screening, transmission, analysis and decision-making team, which should not only focus on obtaining intelligence information, but also on the processing and decision-making of intelligence information.

(3) We should cultivate the consciousness of counter-terrorism of the whole people, enhance the concept of counter-terrorism, and strengthen the cultivation of "soft power" of counter-terrorism at the national level. The counter-terrorism needs a change of concept. The arbitrariness of terrorist crime determines that it may happen at any time. Therefore, it is necessary to cultivate the awareness of counter-terrorism prevention, self-protection and timely discovery and reporting, rather than waiting for the awareness of counter-terrorism. It is also one of the key points to construct the counter-terrorism platform to give full play to the national consciousness of preventing and controlling terrorist crime.

The situation of modern terrorist crime determines that counter-terrorism is not an internal obligation of a country, but an obligation and responsibility that every country in the world must undertake. The exchange of counter-terrorism intelligence information is also borderless. We must work together with the international community to share intelligence and information and carry out the sharing and interaction of international intelligence information. At present, the most common intelligence information sharing is Interpol's "special information sharing system, facial information sharing system, meteorological information sharing system, and so on"<sup>481</sup> and the countries that have signed the criminal judicial assistance treaty with China. Information sharing at the international level should also carry out "classification", standing at the height of national security strategy to analyze and screen terrorist crime intelligence information, and finally upload the sharing platform.

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<sup>481</sup>Wang Sacheng: *Research on Terrorism and Information Counter-Terrorism in China*, China Soft Science, 2014, issue 2.

### *2.2.3 Early warning and prevention platform of terrorist crimes*

Once the terrorist crime occurs, its harmful consequences will be a huge disaster. Whether it is a small-scale terrorist attack or a large-scale terrorist criminal activity, it will bring a nerve breaking effect. Therefore, the prevention before the crime is better than the prevention and punishment after the crime. In this regard, the construction of the early warning and prevention mechanism of terrorist crimes is a powerful means and approach to effectively eliminate them. In the chapter of "Emergency Response", the Counter-Terrorism Law of China stipulates the specific organization, leadership, coordination and response mechanism of terrorist crimes, but does not involve the prevention in advance. It is difficult to find terrorist crimes and take preventive measures in advance, but it is also possible to achieve the prevention in advance under the condition of accurate information acquisition of terrorist crimes. Therefore, strengthening the construction of early warning and prevention platform is an organic part for reducing terrorist crimes.

The construction of early warning and prevention platform of terrorist crimes depends on the intelligence reliability and efficiency of the information department. The targets of traditional terrorist crimes are often important state organs, diplomatic embassies and consulates, diplomats, state leaders, military facilities, public facilities (docks, ports, stations, airports, airports, and drilling platforms), etc.,. While the new generation of terrorist aims at non-traditional security fields, water conservancy facilities, means of transportation, biochemical genetic engineering, food, water and energy, and the means of terrorist crimes have also changed from violent to intelligent. Therefore, the harm area of terrorist crime has been expanded unprecedentedly. The terrorist criminal activities in these areas, on the one hand, are not easy to observe, and on the other hand, are highly destructive. Once such damage is generated, the national confidence of the whole country will be seriously frustrated, and the perception of national security will be directly reduced. In view of this, it is necessary to build a leading filtering mechanism of terrorist crime intelligence information to prevent and control terrorist organizations in advance.

First of all, an intelligence information early warning and prevention and control department shall be set up in the National Counter-Terrorist Intelligence Center. Through the analysis of the intelligence information of terrorist crimes, it shall be timely reported to the specific departments of the national counter-terrorism leading

agencies, who shall uniformly and rapidly deploy the prevention and control measures. In case of emergency, they shall inform the public security organs and the national security organs to take emergency measures in accordance with the plan.

Secondly, the early warning information should also be shared at different levels, so that the whole people can see the information, give full play to the ability of the whole grass-roots organizations (communities, streets, village committees, neighborhood committees, etc.) to prevent terrorist crimes, and enhance the construction of the early warning platform. Of course, at the same time of launching the national counter-terrorism campaign, it is necessary to cultivate the people's self-defense ability and discourage the people from actively and spontaneously carrying out the "hard hitting" type of positive conflict against terrorist crimes. Members of terrorism have received professional military training, and most of them are armed. If we encourage people to fight with them, innocent people will be hurt in vain. In summary, to build the early warning and prevention system of terrorist crime is not to encourage the people to actively fight against terrorist crime, but to encourage the people to improve their counter-terrorism awareness, find out the terrorist crime intelligence, inform the national counter-terrorism department in time, and improve the counter-terrorism emergency response capacity.<sup>482</sup>

#### *2.2.4 Counter-terrorism public opinion division platform*

Public opinion control is not only a way of national governance, but also a kind of governance ability. The establishment of public opinion system in China is relatively perfect and has formed institutionalized and systematic mechanism. No matter the public opinion control of natural disasters, disease, plague, ecology, environment, people's living conditions, social development, crime and other information, a relatively complete public opinion notification mechanism has been formed. Especially for the contradictions among the people that are easy to cause crimes, a relatively complete public opinion monitoring system for crime prevention has been established. A relatively complete public opinion record and reporting system has been established for all kinds of behaviors that are easy to cause group events, occasional events and

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<sup>482</sup>See Yu Ying: *China Has Entered the Era of "Counter-Terrorism for All" or Introduced the Counter-Terrorism Law Within This Year*, published on [http://www.huaxia.com/d/xw/2014/06/3922739\\_z.html](http://www.huaxia.com/d/xw/2014/06/3922739_z.html), last accessed February 15, 2019.

unexpected events, so as to prevent and control the occurrence of major malignant criminal events.

As mentioned before, the root causes of terrorist crimes in China are rather complex, including the support and help of international terrorist organizations, the covert support of International Counter-China forces and Western alliance, and the accumulation and outbreak of various social contradictions in the process of domestic social development. Social public opinion monitoring system needs to play an important role in counter-terrorism. Whether the public opinion division is timely or not affects people's views and ideas on the problem, it will directly cause the escalation or elimination of social contradictions. In this regard, in the process of terrorist crime prevention, combat and elimination of threats and hazards, the accurate grasp of public opinion can provide timely and effective information for counter-terrorism. Moreover, when non-traditional security issues are increasingly becoming high-risk areas of crime, the timely discovery, collection, analysis, disposition and decision-making of public opinion can provide a reference for social management, facilitate the rapid discovery of which areas currently have high-risk public opinion guidance, which areas have relatively small risks, and facilitate the timely adjustment of national policy guidance to eliminate the accumulation of various contradictions and prevent the occurrence of mass incidents. In China, group incidents are often caused by social conflicts that cannot be digested and dealt with in time (such as illegal demolition). Domestic terrorism is to use the fierce conflicts in these mass incidents to start creating incidents, and then to carry out terrorist criminal activities, to take the opportunity to expand the terrorist atmosphere, to form a terrorist atmosphere of tension, to create a certain political pressure and threat to the country, so as to achieve the real purpose of terrorist crime.

Public opinion monitoring should be an important information source of national defense terrorism information. Although public opinion cannot directly cause terrorist crime, the existing problems reflected by public opinion can cause the occurrence and development of terrorist crime; especially in the aspects of environment, ecology, food, medicine, water source, economic development level, etc., public opinion can best reflect the severity of the problem. In northwest parts of China, the level of economic development is low, which leads to a wide gap between the rich and the poor. In order to get rid of poverty as soon as possible, some economically disadvantaged households

may join in terrorist organizations and carry out terrorist criminal activities under certain circumstances. The rampant trend of drug trafficking in a region is closely related to organized crime, international crime and transnational crime in that region. According to the 2014 World Drug Report, the volume of drug trafficking in Afghanistan reached 10 times that of European and American countries in 2013, becoming the largest source of drug export. While the criminal activities in Afghanistan, Iraq and Pakistan were the most rampant, and terrorist crimes ranked the top five in the world. Therefore, the grasp, judgment and analysis of such public opinion information can help us to provide useful reference in the judgment of terrorist crimes, which is not only conducive to the construction of early warning and prevention platform, but also conducive to the construction of counter-terrorism intelligence information platform. However, when the public opinion department becomes the information source of terrorist crime, it is necessary to deal with the relationship between the public opinion collection and reporting department and the national counter-terrorism department. The coordination of this relationship needs to be realized by formulating normative legal texts, so as to avoid the false break of counter-terrorism intelligence information analysis and decision-making due to the failure to report public opinion situation in time, thus resulting in the terrorist attacks that should be avoided and the unnecessary losses and damages.

Generally speaking, the establishment of counter-terrorism institutions plays a leading role in the process of institutional construction and platform construction of counter-terrorism. Only a complete and clear institutional setting can effectively build a platform for counter-terrorism, such as the above-mentioned information exchange platform, early warning and prevention platform, and public opinion provision platform. On the contrary, if there is no perfect counter-terrorism organization, it is impossible to set up the basis of counter-terrorism, thus it is impossible to carry out the comprehensive social governance of terrorist crimes, and establish a legal prevention system. Therefore, in the construction of counter-terrorism criminal institutions, the most urgent problem lies in the clear definition of the counter-terrorism leading bodies, and the Counter-Terrorism Law should be clear as soon as possible which specific department of the state is responsible.

*3. The construction of the criminal law system of counter terrorism-crime in China*

Terrorist crime is different from ordinary crime. It has the characteristics of strong political goal, strong destructiveness, extreme violence (including cold violence), and is difficult to eliminate, which poses a huge uncertainty threat to all countries in the world. From the United Nations to its Member States, they have tried their best to prevent and eliminate the harm of terrorist crimes to their national security and international security interests through various means. At the United Nations level, these measures include eliminating global poverty, improving the lives of refugees, curbing the spread of diseases, assisting backward countries, maintaining local security, combating international crimes, promoting peaceful development plans, concluding international counter-terrorism conventions and declarations, enacting laws, improving the International Criminal Court, and maintaining the international political order. From the perspective of all countries, international counter-terrorism is mainly achieved through the conclusion of International Counter-Terrorism Convention, strengthen international cooperation, strengthen the management of national social order, revise national laws, formulate and improve special counter-terrorism laws, and strengthen regional and sub regional counter-terrorism cooperation.

Although the Criminal Law of China stipulates the conviction and sentencing of terrorist crimes, and the Administrative Law, Civil Law and other laws also indirectly stipulate the prevention, combat and punishment of terrorist crimes, it still cannot effectively prevent the rampant crimes of terrorist organizations in China. In 2011, the Decision of the National People's Congress on Strengthening the Counter-Terrorism Work strengthened the legal control of terrorist crimes in China, but it is still weak. In 2015, the "Counter-Terrorism Law" and "Criminal Amendment 9" issued by China clearly stipulate the legal regulation of terrorist crimes, and the introduction of special laws can be said to be a heavy blow to terrorist crimes. At this point, the legal doctrines regulating terrorist crimes in China involve many laws, such as civil law (economic category), criminal law, administrative law, etc., and basically realize a three-dimensional legal counter-terrorism framework system. By borrowing Prof. Chu Huaizhi's thought of "criminal integration", we can say that there is such "integration". However, from the perspective of the legal framework system, there are still some areas worth pondering and improving.

3.1 A systematic analysis of the legal texts of counter terrorism

In the process of preventing and combating terrorist crimes, on the one hand, China has actively joined the international counter-terrorism conventions, concluded regional and sub regional counter-terrorism treaties, and launched cooperation between international counter-terrorism member states and joint counter-terrorism cooperation between regional national alliances. On the other hand, it has gradually improved the legislation and revision of domestic counter-terrorism laws. At present, China has ratified 12 international counter-terrorism conventions, formulated and improved Civil Law, Criminal Law, Administrative Law and related laws and regulations to eliminate the threat of terrorist crimes.

(1) International counter-terrorism conventions and counter-terrorism cooperation

At present, the international counter-terrorism conventions that China has joined refer to: a. Terrorist organizations carry out violent terrorist attacks on Civil Aviation aircrafts, civil aviation airports and civil aviation facilities; b. Violent terrorist crimes that threaten the safety of hostages, such as foreign diplomats, etc.; c. Terrorist activities that endanger the safety of Maritime flight and fixed platforms on the continental shelf; d. The prohibition of the financing and assistance to terrorism; e. The suppression and combating of terrorist bombings, etc. (See table 5-1) At the same time, in order to effectively prevent the harm brought by the international terrorist crimes, China has also joined some relevant international conventions, such as the Universal Postal Convention of the International Postal Union. In addition, China has also actively concluded regional counter-Terrorism conventions with neighboring countries, such as the Shanghai Convention on Combating Terrorism, Separatism and Extremism concluded by the Shanghai Cooperation Organization.

International conventions and protocols	Regulatory content	Ratify date (DD/MM/YY)	Enter into force date (DD/MM/YY)
Convention on Offences and Certain Other Acts Committed on Board Aircraft (the Tokyo Convention)	Criminal acts threatening civil aircraft in flight or about to be in flight	14/11/1978	12/02/1979

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the Convention Concerning the Checking of the Illegal Hijacking of Aircraft (the Hague Convention)	Criminal acts threatening civil aircraft in flight or about to be in flight	10/09/1980	10/10/1980
Convention Concerning the Checking of Illegal Acts that Jeopardize Civil Aviation Safety (the Montreal Convention)	Any action that endangers the safety of civil air traffic	10/09/1980	10/10/1980
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation	Complement the harmful acts carried out at civil airports	24/02/1988	06/08/1988
Convention on the Prevention and Punishment of Crimes against International Protected Persons, including Diplomatic Agents	Crimes against International Protected Persons, including Diplomatic Agents	23/06/1987	04/09/1987
International Convention Against Taking Hostages	Any hijacking, seizure, injury, forced third party to do or undo something	28/12/1992	26/01/1993
Convention on the Physical Protection of Nuclear Material	Protection of Radioactive material, Nuclear material, Nuclear facility, Nuclear device	02/12/1988	02/01/1989
Protocol for The Suppression of Unlawful Acts against the Safety of fixed Platforms Located on the Continental Shelf	unlawful acts endangering the safety of fixed platforms on the continental shelf	20/08/1991	01/03/1992
Convention for The Suppression of Unlawful Acts against the Safety of Maritime Navigation	Piracy and other acts endangering the safety of maritime navigation	20/08/1991	01/03/1992
Convention on the Marking of Plastic Explosives for the Purpose of Identification	Anyone who uses plastic bombs to threaten aviation safety	01/03/1991	not yet
International Convention on Stopping Terrorist Explosions	Anyone illegally and deliberately throws, places, launches or detonates explosive or other objects in or against public places, national or government facilities, public transportation systems or infrastructure, or against public places, national or government facilities, public transportation systems or infrastructure Lethal device.	13/11/2001	13/12/2001

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International Convention on Severing Financial Aid to Terrorism	Any person who directly or indirectly finance or assist terrorist activities	19/04/2001	19/05/2006
United Nations Convention against Transnational Organized Crime	Transnational organized crime	23/09/2003	23/12/2003
International Convention for the Suppression of Acts of Nuclear Terrorism	any terrorist crime by Radioactive material, Nuclear material, Nuclear facility, Nuclear device	28/08/2010	-

Table 5-1: China-joined UN International conventions and protocols on Counter-terrorism

The increasingly rampant terrorist crimes in Central Asia, West Asia and South Asia, the tense situation in the Middle East, the worrying situation in Libya and Cyprus, as well as the spillover effect brought by international terrorist crimes, not only increase the pressure of domestic counter-terrorism, but also urge China to start thinking about formulating further counter-terrorism measures, including strengthening the military and national defense construction, equipment and treatment of the police (including the armed police force), and comprehensively improve the ability of state organs to deal with emergencies. In particular, terrorism, transnational crime, international organized crime and other radiation effects greatly threaten China's national security and domestic order. Therefore, Chinese government has actively reached a consensus with neighboring countries to form regional alliances and jointly prevent the spillover of terrorist crimes.

"Shanghai Cooperation Organization Convention", namely the Shanghai Convention on Combating Terrorism, Separatism and Extremism, as the most powerful regional counter-terrorism convention in China, is the cooperation convention against "three forces" signed with five Central Asian countries. In the Convention, the concepts of terrorism, separatism and extremism are clearly defined, and the principles, methods, means and directions of cooperation in counter-terrorism are clearly defined. However, when defining terrorism, the purpose attribute of political nature is avoided, and the listed forms are adopted, resulting in the lack of clarity in the definition of terrorism. In 2014, the Counter-Terrorism Convention of the Shanghai Cooperation Organization, which was approved by China, strengthened the regional legislative activities of China in combating terrorist crimes, and in essence contributed to the effectiveness of joint

counter-terrorism between China and Central Asian countries.<sup>483</sup> However, international law and conventions cannot play the role of regulating terrorist crimes directly. It needs to be transformed into domestic law to truly regulate crimes. The domestic counter-terrorism laws play a substantive role. The effective connection between domestic laws and international laws and conventions, as well as the role of domestic law in combating terrorist crime, are the key to counter-terrorism. At present, although China has enacted counter-terrorism law, it does not mean that China has eliminated terrorist crimes.

(2) Domestic counter-terrorism legal text

So far, China has basically formed a relatively complete legal system of counter-terrorism, which constitutes a legal group structure of preventing and combating terrorist crime based on Civil and Commercial Laws, Criminal Laws, Administrative Laws and other relevant laws. (See table 5-2)

Legal Section	Law	Items relates to terrorist crime
Administrative Law	Law on Counter-Money Laundering (2007)	money laundering activities on the purpose of concealing or disguising the sources and nature of terrorist crimes
	Measures for the Administration of Financial Institutions' Reporting of High-Value Transactions and Suspicious Transactions (2016 Revision)	Financial institutions believe that customers, funds and transactions (including attempted transactions) are related to terrorist activities, and should submit suspicious transaction reports regardless of the size of the funds involved
	Counter-Terrorism Law (2016 Revision)	China's first special counter-terrorism law, a total of 10 chapters, 106 articles. This Law stipulates the system and mechanism of counter-terrorism work, defines the responsibilities and tasks of the leading bodies and relevant departments of the counter-terrorism work, the necessary means and measures for counter-terrorism, and pays attention to balancing counter-terrorism and protecting human rights.

<sup>483</sup>See Pu Lixia: *Research on Terrorism Crime in Central Asia under the Framework of Shanghai Cooperation Organization*, Xinjiang University, doctoral dissertation, 2007.

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	Administrative Measures for Issuance of Ordinary Passport and Entry Exit Pass	Article 31, When terrorist activities occur in the border areas of neighboring countries, the Ministry of public security may suspend or terminate the entry-exit administration agencies of public security organs in border areas to issue exit and entry permits for citizens in non border areas.
	Law on the People's Armed Police Force	Article 7, People's Armed police Force participate in the handling of riots, serious violent crimes, terrorist attacks and other social security incidents.
Criminal Law	Criminal Law (1997)	Article 120, Crime of organizing, leading and participating in terrorist organizations
	Amendment 3 to the Criminal Law (2001)	Article 120, increase penalties to fixed term imprisonment of more than 10 years; Article 120-1, Crime of financing terrorist activities; Article 291-1, Crime of spreading false dangerous substances; Article 191, adding terrorist crime to the upstream crime of money laundering.
	Amendment 8 to the Criminal Law (2011)	Article 66, adding terrorism to "If a criminal of endangering national security commits the same crime again at any time after serving his sentence or receiving a pardon shall be dealt with as a recidivist."
	Amendment 9 to the Criminal Law (2015)	Article 120, increase "Pecuniary penalty"; Article 120-2, Preparation for carrying out terrorist activities; Article 120-3, Crime of promoting terrorism, extremism and inciting to commit terrorist activities; Article 120-4, Crime of using Extremism to undermine law enforcement; Article 120-5, Crime of compulsory wearing clothes advocating terrorism and extremism and symbols; Article 120-6, Crime of illegally holding goods promoting terrorism and extremism; Article 311, adding "Crime of refusing to provide evidence of espionage, terrorism and extremism".

Criminal Procedure Law	Criminal Procedure Law (2013)	<p>Article 20, The Intermediate People's Courts shall have jurisdiction as courts of first instance over terrorist crimes;</p> <p>Article 37, Lawyers need to apply for permission to meet terrorism suspects;</p> <p>article 62, Protection of witnesses, appraisers, victims and close relatives;</p> <p>Article 73, supervision of residence of terrorism suspects;</p> <p>Article 83, Exceptions to notify family members within 24 hours;</p> <p>Article 150, Use of technical investigation measures and means;</p> <p>Article 291, Terrorist crimes are applicable to trial by default;</p> <p>Article 298, Terrorist crimes are applicable to the procedure of confiscating the illegal income in the case of the suspect or defendant escaping, hiding or dying.</p>
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Table 5-2: Counter terrorism legal texts in China

### 3.2 The deficiencies of counter-terrorism legislation in China

China's laws regulating terrorist crimes involve Civil Law, Economic Law, Criminal Law, Administrative Law and many other laws, basically formed the legal counter-terrorism framework system. However, from the perspective of counter-terrorism legislation, there are still many deficiencies. The Counter-Terrorism Law is a special law, and the criminal substantive law and the criminal procedure law guarantee the realization of its legal effect. But "the era is evolutionary, and the law is conservative"<sup>484</sup>. The stability value pursued by the department law order makes it lag behind the development of social practice. The harmonious and organic relationship within the legal system pursued by the legal system of each era has been submerged by the tide of social development. In the counter-terrorism legal system, the definition of the core concepts is vague, and the standard of criminalization in the counter-terrorism substantive law is different. There is the intersection of jurisdiction and adjustment scope between the Counter-Terrorism Law and the criminal substantive law. The

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<sup>484</sup> Zhu Caizhen: *General Theory of Modern Law*, Shanghai: World Publishing House, 1935, p.81.

unclear compartmentalization and the blocked cooperation between the starting subject and the connecting procedure of the counter-terrorism procedural law, which hinder China from giving full play to the advantages of counter-terrorism according to law and pursuing the counter-terrorism rule of law. In the following, the legal system of counter-terrorism in China is divided into three parts: the basic concept definition, the counter-terrorism substantive law and the counter-terrorism procedural law, respectively to explore the existing problems, and to explore the obstacles in the process of the construction of China's counter-terrorism legal system.

### *3.2.1 On the definition of basic concepts*

#### (1) The definition of terrorism needs to be improved

Article 3 of the Counter Terrorism Law of China defines the concept of terrorism in detail: For the purpose of this Law, "terrorism" means any proposition or activity that, by means of violence, sabotage or threat, generates social panic, undermines public security, infringes upon personal and property rights, or menaces state authorities and international organizations, with the aim to realize political, ideological and other purposes. The function of the definition is to clarify the various elements in the connotation and extension of the legal concept, and the users need to use the normative evaluation rules to distinguish the legal concept from the meaning of these elements in daily life. It is obvious that the definition of terrorism stipulated in the Counter-terrorism Law does not produce a reasonable extension space, nor can it fully play the role of legal norms in describing natural prior facts and evaluating legal value. There are specific problems in the following aspects:

First, the definition of the nature of terrorism in the Counter Terrorism Law is vague. The natural attribute of terrorism is defined as a kind of "proposition" and "activity" in the counter-terrorism law. At the same time, it is stated in the law that "terrorist activities mentioned in this Law refer to the following activities of terrorist nature"<sup>485</sup>.

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<sup>485</sup> Article 3, The Counter-terrorism Law: For the purpose of this Law, "terrorist activities" means the following activities of the terrorist nature: (1) Organizing, planning, preparing for, or conducting the activities which cause or attempt to cause casualties, grave property loss, damage to public facilities, disruption of social order and other serious social harm. (2) Advocating terrorism, instigating terrorist activities, or illegally holding articles advocating terrorism, or forcing other persons to wear costume or symbols advocating terrorism in public places. (3) Organizing, leading or participating in terrorist organizations. (4) Providing information, funds, materials, labor services, technologies, places and other

This is clearly a contradictory provision, and terrorism cannot be both an assertion and an activity. In other words, it is argued that only when the degree of behavior is reached can the regulation be carried out by means of general prevention.

Secondly, China's counter-terrorism legislation has made it clear that individuals and organizations can be the subject of terrorism, but it has not made a clear definition of whether the state can be the subject of terrorism. In the world development trend of terrorism nationalization, the fuzziness of legislation on the subject makes it impossible for China to deal with the countries implementing differentiated counter-terrorism in the world. Therefore, it is an important step to improve the counter-terrorism legislation to clarify the concept of terrorism according to whether the state can become the main body of terrorism.

Third, the direct purpose of terrorism is to create social panic, endanger public security, and infringe on personal property. The ultimate purpose of terrorism is mostly political and ideological<sup>486</sup>. It is open to question whether the illegality of purpose is the proper meaning of terrorism. Many countries outside the region believe that terrorist acts with legitimate purposes should also be regulated, but there are also many developing countries believed that the illegality of the purpose is a necessary feature of terrorism. The relevant resolutions of the United Nations and other international treaties hold that the national liberation movement and the people's self-determination movement in the countries and regions under colonial and foreign domination and occupation are legal and legitimate, which are essentially different from terrorism.

Fourth, China's "Counter Terrorism Law" believes that the use of terrorist acts is "violence, destruction, intimidation and other means." Some scholars believe that "violence is the most important and fundamental element of terrorism. Without violence, there will be no terrorism."<sup>487</sup> However, with the progress of social science, high-tech means have begun to enter the vision of terrorist organizations and personnel. The 2016 "GTI" report shows that from 2000 to 2015, terrorist organizations and

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support, assistance and convenience to terrorist organizations, terrorists, the implementation of terrorist activities or training on terrorist activities. (5) Other terrorist activities.

<sup>486</sup> Wang Zhengxun, Xu Dandan: *Conceptual Analysis of Terrorism*, Legal Science (Journal of northwest university of politics and law), 2016, 34(05), pp.59-68.

<sup>487</sup> Liu Shaoying: *On Terrorist Crime and Its Prevention and Control Countermeasures*, Proceedings of the 14th Symposium of Chinese Society of Criminology (Volume II). Chinese Society of Criminology 2005, pp.368-375.

terrorists all over the world increasingly prefer non violent means such as Internet and financial means to carry out terrorist activities<sup>488</sup>. These acts cannot be classified into any of the categories of "violence", "destruction" and "intimidation". The implementation form of this new type of terrorism should also be reflected in the definition of terrorism in the Counter-Terrorism Law. In addition, the word "sabotage" overlaps with "violence". Violence does not necessarily result in the "sabotage" of certain legal interests, people and facilities, but "sabotage" must be included in violent acts or nonviolent acts with the same degree of harm as violent acts. Therefore, the use of "sabotage" may narrow the scope of means of terrorism. The "threat" used by terrorists is actually a kind of "violent threat". However, in other legal provisions of China, it is rare to use "threat" as an illegal act or criminal means, and "intimidation" is more common.

(2) The definition of extremism needs to be clarified

From the perspective of the whole counter-terrorism legal system, "terrorism" and "extremism" are always inseparable, such as Article 30<sup>489</sup> of Counter-Terrorism Law and Article 120(3)<sup>490</sup> of Criminal Law. However, although "extremism" is defined as the ideological basis of terrorism in Article 4<sup>491</sup> of the Counter-Terrorism Law of China,

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<sup>488</sup> Jia Yu, Li Heng: *Research on the Identification Standard of Terrorist Organizations and Personnel —from the Redefinition of Terrorism*, Journal of Northwestern University (Philosophy and Social Sciences Edition), 2017,47(03), pp.46-57.

<sup>489</sup> Article 30, The Counter-terrorism Law: Where a terrorist convict or extremist convict is sentenced to imprisonment or is given a severe penalty, the prison or jail shall, before the convict is released after serving his or her sentence, assess his or her social danger according to the crime nature, circumstances, and degree of social danger, the convict's performance during the period of serving sentence, and the impact on the community where the convict resides after his or her release, among others.

<sup>490</sup> Article 120 (III),The Criminal Law: Whoever advocates terrorism or extremism or instigates terrorist activities by way of preparing or distributing any book, audio or video materials or any other article advocating terrorism or extremism or by instructing or issuing information shall be sentenced to imprisonment of not more than five years, criminal detention, surveillance or deprivation of political rights in addition to a fine; or if the circumstances are serious, be sentenced to imprisonment of not less than five years in addition to a fine or forfeiture of property.

<sup>491</sup> Article 4, The Counter-terrorism Law: The state shall combat all forms of extremism, such as the incitement to hatred and discrimination and agitation for violence by distorting religious doctrine or other methods, so as to eliminate the ideological basis of terrorism.

and ten listed provisions are made in Article 81<sup>492</sup> of the Counter-Terrorism Law, it does not give an accurate definition of "extremism" as for "terrorism", which may make it difficult to identify the illegal and criminal acts of extremism, and even cause justice confusion in practice. When discussing the definition of extremism, there are several problems

First, the relationship between terrorism and extremism remains to be explored. "Extremism" and "terrorism" sometimes appear at the same time, and sometimes appear alone. "Terrorism" and "extremism" appear side by side in Article 80<sup>493</sup> of the Counter Terrorism Law. However, Article 79<sup>494</sup> only mentions the suspected "terrorist" crime in the guiding provisions, and does not mention "extremism". It can be seen that the two are not simply parallel relationship. In addition, the Counter-Terrorism Law holds that "extremism" is the ideological basis of "terrorism", but in fact, not all "terrorism" evolved from "extremism", nor did all "extremism" aim at developing into "terrorism". Neither is the causal relationship between them. Therefore, clarifying the relationship and difference between "terrorism" and "extremism" is an important basis for accurately defining "extremism" and standardizing, rationalizing and systematizing the position of "extremism" and "terrorism" in the articles of law.

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<sup>492</sup> Article 81, The Counter-terrorism Law: Where anyone commits any of the following conduct by using extremism, and the circumstances are not serious enough to constitute a crime, he or she shall be detained by the public security authority for not less than five days but not more than 15 days, and may be concurrently fined not more than 10,000 Yuan.

<sup>493</sup> Article 80, The Counter-terrorism Law: Where anyone participates in any of the following activities, and the circumstances are not serious enough to constitute a crime, he or she shall be detained by the public security authority for not less than ten days but not more than 15 days, and may be concurrently fined not more than 10,000 Yuan. (1) Advocating terrorism or extremism, or instigating any terrorist or extremist activity. (2) Producing, spreading or illegally holding any articles advocating terrorism or extremism. (3) Forcing any other person to wear costume or symbols advocating terrorism or extremism in a public place. (4) Providing information, funds, materials, labor services, technologies, places and other support, assistance and convenience for advocating terrorism or extremism or the implementation of any terrorist or extremist activity.

<sup>494</sup> Article 79, The Counter-terrorism Law: Whoever organizes, plans, prepares for, or conducts any terrorist activity, advocates terrorism, instigates any terrorist activity, illegally holds articles advocating terrorism, forces any other person to wear costume or symbols advocating terrorism in a public place, organizes, leads or participates in any terrorist organization, or provides assistance to any terrorist organization, terrorist, the implementation of any terrorist activity or training on any terrorist activity shall be subject to criminal liability in accordance with the law.

Second, like terrorism, the nature of extremism is controversial. In June 2001, the Shanghai Convention on Combating Terrorism, Separatism and Extremism (hereinafter referred to as the "Shanghai Convention") signed by China and the other six SCO member states in Shanghai defines extremism as an act of violence<sup>495</sup>, while the Counter-terrorism Law defines extremism as an idea. Whether extremism is an act or an idea is not clear.

Third, there is no uniform standard for the specific elements of extremism in the academic circle. Many scholars at home and abroad have given a definition of extremism. Robert Nozick believes that extremism should be a kind of "do not support me or oppose my thoughts"<sup>496</sup>. He regards his own goals and principles as truth, and regards other views as the embodiment of evil, and never compromise. Wang Bo believes that extremism is a general term for all political and social thoughts with international radicalism<sup>497</sup>. Lu Youxue, Wu Yonghui and other scholars believe that extremism with value concept and behavior means can be called extremism. Their definition of extremism is "the behavior that individuals or organizations take violent or non violent means against themselves or third parties in order to realize certain values that are seriously isolated from society and reject all different ideas, which will cause serious social consequences"<sup>498</sup>. Yin Junjie defined extremism as "distorting religious doctrines and advocating religious extremism in order to achieve political, religious and economic purposes under the banner of religion, as well as other extreme thoughts, speeches and behaviors advocating violence, hating society and opposing human beings"<sup>499</sup>. Some of them only pay attention to religious extremism and ignore other

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<sup>495</sup> Article 2, paragraph 3, of the Shanghai Convention on Combating Terrorism, Separatism and Extremism: Extremism refers to any act aimed at seizing political power by violence, taking power or changing the constitutional system of the country, and violating public security by violent means, including organizing or participating in illegal armed groups for the above purpose, and criminal responsibility shall be investigated according to the domestic laws of all parties.

<sup>496</sup> Robert Nozick, Guo Jianling: *The Characteristics of Extremism*, Soochow Academic, 2012(01), pp.137-138.

<sup>497</sup> Wang Bo: *Study on the Nature and Internal Structure of Islamic Extremism in Europe*, International Observation, 2015(04), pp.101-115.

<sup>498</sup> Lu Youxue, Wu Yonghui: *Analysis of Extremist Crimes-Analysis of Basic Theory and Legislation*, Journal of Southwest University of Political Science and Law, 2015, 17(02), pp.34-46.

<sup>499</sup> Yin Junjie: *Defects and Perfection of Criminal Legislation on Terrorist Crimes*, Legal Expo, 2015(13), pp.22-23.

types of extremism, while others only define the scope of extremism purpose elements and ignore its behavioral elements, without giving a complete concept of extremism suitable for China's national conditions. It is necessary to define extremism accurately for the purpose of delimiting the boundaries of illegal and criminal acts, protecting legal interests and protecting human rights.

### *3.2.2 Specific deficiencies in the field of counter-terrorism substantive law*

(1) The provisions of jurisdiction and adjustment object in Counter Terrorism Law and Criminal Law are inconsistent

First of all, China's criminal substantive law provides for the principle of protective jurisdiction against foreigners who commit crimes against the state or citizens of the People's Republic of China outside the territory, and makes exceptions to the principle of the crime place<sup>500</sup>. Article 11<sup>501</sup> of the Counter-Terrorism Law stipulates the absolute principle of protectionist jurisdiction. According to the cross provisions of the two, if there is a crime of terrorism committed by foreigners against their own legal interests, and it is a misdemeanor with a statutory penalty of less than three years stipulated in the criminal substantive law, and does not conform to the principle of dual crime, should we absolutely adhere to the provisions of the criminal substantive law that do not exercise jurisdiction, or according to the absolute protectionist principle of the special Counter-Terrorism Law, this kind of behavior should be dealt with in the context of the country? Adhering to the absolute protectionist jurisdiction principle of Counter-Terrorism Law is conducive to the stability of social order and the realization of reasonable declaration of state sovereignty on terrorist crimes, which has a positive impact both at home and abroad. However, it lacks the substantive law basis or the processing method that is contrary to the criminal substantive law, and does not

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<sup>500</sup> Article 8, The Criminal Law: This law may be applicable to foreigners, who outside PRC territory, commit crimes against the PRC state or against its citizens, provided that this law stipulates a minimum sentence of not less than a three-year fixed term of imprisonment for such crimes; but an exception is to be made if a crime is not punishable according the law of the place where it was committed.

<sup>501</sup> Article 11, The Counter-terrorism Law: The People's Republic of China shall exercise criminal jurisdiction over terrorist crimes committed against the nation, citizens or institutions of the People's Republic of China outside the territory of the People's Republic of China, or terrorist crimes constituted under international treaties that the People's Republic of China has concluded or acceded to, and investigate criminal liabilities in accordance with the law.

conform to the basic principle of legally prescribed punishment for a specified crime. Therefore, more definite laws are needed to clarify the legal implications of criminal jurisdiction of terrorism.

Secondly, terrorism is defined as a kind of "proposition and activity" in China's Counter-Terrorism Law. If we strictly follow the legal hermeneutics method of literal interpretation, the Counter-Terrorism Law will adjust the terrorism activities and the "proposition" as the symbol of the activities. Of course, China's criminal law theory is influenced by the former Soviet Union's criminal law theory, and tends to the subjective angle in the principle of determining a crime. However, the determination of a criminal act should be objective first. Whether the activity is illegal or not is the result of objective identification. Only when the consciousness dominates and expects the perpetrator to make a legal activity, can condemning the behavior have the practical significance of law. As an expression of criminal intent, "proposition" has a strong ideological color before it reaches the objective field. However, in the current context of counter-terrorism legislation in China, the use of state power to punish the "proposition" field is recognized by administrative regulations. Of course, the legal consequences of criminal substantive law are considered to be the most severe, but in the environment of national protection of civil liberties, the scope of private subject's rights and freedom restricted by administrative punishment, as well as the qualitative nature of specific legal concepts between the protection law and the guaranteed law, are still necessary. Based on the position of similar interpretation, the selective elements of behavior must have certain similarity to a certain extent. This similarity is reflected in the law of regulating behavior, which specifically shows that the two behaviors do not have considerable social harmfulness, regardless of their natural attributes from the point of view of ethical society and legal norms evaluation, "proposition" and "activity" cannot draw a conclusion that their social harm is quite consistent.

(2) The threshold of criminalization of terrorist acts is vague

In theory, both the narrow criminal law and the subsidiary criminal law belong to the category of the broad criminal law, while the legal provisions similar to the subsidiary criminal law do not belong to the scope of the broad criminal law if there are no specific criminal legal consequences such as the scope of penalty. However, this situation presents a more complex overlapping situation in China. From the perspective of departmental law, legislators amend the relevant provisions of Criminal Law while

formulating the Counter-Terrorism Law in order to realize the convergence of the regulation of terrorism from the administrative law to the criminal law, and jointly establish the cornerstone of the domestic counter-terrorism substantive law system. However, Article 3<sup>502</sup> of the Counter-Terrorism Law stipulates that the harmful consequences of terrorist activities are "serious" social hazards, such as casualties, heavy property losses, etc., which are the same as the provision in Criminal Law. The legislative overlap leads to almost no terrorist cases punished as administrative illegal cases in practice. The author searched the key words of "terrorism" in the "ITSLAW Database"(China's largest case database), and found that there were 19 cases of administrative punishment for violating the Counter Terrorism Law in 2019<sup>503</sup>, including 18 cases of logistics companies, telecom business operation companies and other units responsible for counter-terrorism inspection and registration who failed to fulfill their obligations. It can be seen that there are no cases of administrative responsibility due to the illegal acts of terrorism. The lack of standards of behavior identification in administrative cases, or the fuzzy boundary between the protection law and the guaranteed law, leads to the existence of terrorism in practice only in criminal cases, the general prevention and special prevention effects that can be achieved by the advance intervention of the guaranteed law lose their original significance. And there are problems in the connection between the administrative and criminal procedures, which makes the whole counter-terrorism practice appear the legal tendency of criminal treatment, which is easy to be overcorrected and produce wrong cases.

### (3) Lack of legislation on core acts of terrorism

From the perspective of system and form of law, the establishment of corresponding terrorist charges in criminal substantive law has made progress from scratch. However, from the perspective of substantive criminal policy consideration and legal value realization, the matching provisions for criminal illegality and social harmful behaviors have not yet realized substantive systematization, and most of them should be regarded as terrorists from the perspective of social harmfulness while they can only be punished

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<sup>502</sup> Article 3, The Counter-terrorism Law: For the purpose of this Law, "terrorist activities" means the following conduct of the terrorist nature: (1) Organizing, planning, preparing for, or conducting the activities which cause or attempt to cause casualties, grave property loss, damage to public facilities, disruption of social order and other serious social harm;.....

<sup>503</sup> See <https://www.itslaw.com/home>, search keyword "terrorism", last visit date: December 23, 2019.

as the traditional common crime of infringing national security and public security, which leads to the lag of the deterrent effect of the Criminal Law and which needs to be adjusted timely according to the general social defense situation. For example, Article 79<sup>504</sup> of the Counter-Terrorism Law stipulates that if an unorganized individual terrorist act constitutes a crime, it shall be convicted and punished according to the Criminal Law. However, according to the current Criminal Law, the perpetrator of terrorist act can only be convicted and punished according to the specific legal interests he has violated. Legislation on the act of helping or preparing to commit terrorist crimes can certainly expand the scope of criminal punishment, but some criminals are not only accomplices who infringe other legal interests, but also the perpetrator of helping terrorist crimes. "Principal offender is the central or core person in the process of realizing the act in accordance with the constitutive requirements."<sup>505</sup> The concept of accomplice centered on principal offender is the basic guarantee to correctly deal with the problem of determining the nature and sentencing of a joint crime. The accomplice is subordinate to the principal offender, since the legislator thinks that the help should be improved the legal punishment of terrorist crime is based on the special criminal prevention consideration of terrorist aiding crime, but it does not make separate provisions compared with the more harmful terrorist act principal offender. Theoretically, this legislative mode is inconsistent with the punishment basis of terrorist aiding crime, and from the social reality level, it has not realized the punishment as its crime. Another example is that the perpetrator has joined a terrorist organization, but he has just joined the terrorist organization and has not carried out any terrorist activities, or the perpetrator is forced to participate in terrorist activities but has little effect. The act does not conform to the "active participation" situation in Article 120<sup>506</sup> of the criminal law, nor does it conform to the "other participation" situation,

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<sup>504</sup> Article 79, The Counter-terrorism Law: Whoever organizes, plans, prepares for, or conducts any terrorist activity, advocates terrorism, instigates any terrorist activity, illegally holds articles advocating terrorism, forces any other person to wear costume or symbols advocating terrorism in a public place, organizes, leads or participates in any terrorist organization, or provides assistance to any terrorist organization, terrorist, the implementation of any terrorist activity or training on any terrorist activity shall be subject to criminal liability in accordance with the law.

<sup>505</sup> C. Roxin, *Strafrecht Allgemeiner Teil*, Band II, 2003, S.9.

<sup>506</sup> Article 120, The Criminal Law: Whoever organizes or leads a terrorist organization shall be sentenced to imprisonment of not less than ten years or life imprisonment and a forfeiture of property;

which can be said that it does not meet the crime of participating in terrorist organizations and it is farfetched to regard it as a criminal act. The five types of circumstances stipulated in Article 80<sup>507</sup> of the Counter-Terrorism Law are minor and do not constitute such a crime. Therefore, if such acts appear in judicial practice, it seems that there is no legal basis for punishing such administrative illegal acts or criminal acts.

### *3.2.3 Specific procedural deficiencies in the field of Counter-Terrorism Law*

(1) The compartmentalization among the subjects of the identification of terrorist acts is unclear

The current counter-terrorism procedural law framework with administrative identification as the main body and judicial identification as the supplement clarifies the leading position of the administrative subject in the national counter-terrorism work. The judicial organ is the subject of judicial identification. As the main body of investigation procedure, the public security organ and the national security organ must recognize the terrorist act according to the application. However, the Chinese public security organ and the national security department not only have jurisdiction over the administrative cases, public security organs also have jurisdiction over cases involving terrorism tried by people's courts at or above the intermediate level. In practice, even if the public security organ thinks that an act has reached the standard of suspected terrorist crime, it should apply to the national counter-terrorism leading organization before starting the criminal procedure, that is to say, the administrative examination and approval should be carried out before the judicial determination of the terrorism

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whoever actively participates in a terrorist organization shall be sentenced to imprisonment of not less than three years but not more than ten years in addition to a fine; and other participants shall be sentenced to imprisonment of not more than three years, criminal detention, surveillance or deprivation of political rights and may be fined in addition.

<sup>507</sup> Article 80, The Counter-terrorism Law: Where anyone participates in any of the following activities, and the circumstances are not serious enough to constitute a crime, he or she shall be detained by the public security authority for not less than ten days but not more than 15 days, and may be concurrently fined not more than 10,000 Yuan. (1) Advocating terrorism or extremism, or instigating any terrorist or extremist activity. (2) Producing, spreading or illegally holding any articles advocating terrorism or extremism. (3) Forcing any other person to wear costume or symbols advocating terrorism or extremism in a public place. (4) Providing information, funds, materials, labor services, technologies, places and other support, assistance and convenience for advocating terrorism or extremism or the implementation of any terrorist or extremist activity.

case. However, China's legislation does not clarify whether the national anti-terrorism leading organization is an institution with both administrative and criminal powers. When a case involves the middle zone of administrative and criminal cases, or the case experiences the transformation of administrative case and criminal case, the public security organ often makes a choice between the two procedures. Although there may be some doubts in some cases, but in practice, most cases choose criminal procedure. According to the *Anti-terrorism and Effective Death Penalty Act of 1996* of the United States, the Secretary of State has the right to identify foreign terrorist organizations<sup>508</sup>, but domestic terrorist organizations and personnel must be independently confirmed by their courts in accordance with the criminal procedure<sup>509</sup>. In other words, the administrative authority to identify the nature of the act has already been put before the start of judicial proceedings.

(2) The procedure of identifying terrorist acts is not smooth

China's counter-terrorism leading body is a kind of the deliberative and coordinating body of the State Council. It has the power of administrative identification of domestic terrorist organizations and terrorist personnel, as well as the emergency command power of commanding all counter-terrorism units in case of emergency terrorist incidents. The function setting of the agency integrates the compartmentalization of the joint effort of execution and the difference between the insiders and outsiders. Different from the western countries, China has not explained clearly the identification mechanism of terrorist organizations, personnel and behaviors, especially the connection between administrative identification and judicial identification.

First of all, in the face of very urgent and serious violent terrorist incidents, the state's counter-terrorism leading organization should undoubtedly assume the responsibility of commanding and dispatching all counter-terrorism units immediately, and strike the violent terrorist events with efficient administrative emergency measures, and then the counter-terrorism units will manage the cases and perpetrators according to the legal

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<sup>508</sup> Zheng Yuanmin, Huang Xiaoxi, et al: *International Anti-Terrorism Law*, Beijing: Law Press, 2005, p.34.

<sup>509</sup> Du Ming: *Research on the "Dual System" of Identifying Terrorist Organizations and Personnel in China*, Journal of Chinese People's Public Security University (Social Science Edition), 2016,32(01), pp.67-73.

procedures. However, the phased administrative control in the handling procedure of emergency terrorist incidents does not mean that the terrorism cases should be degraded to administrative illegal cases. If a case reaches the criminal standard, the specific behavior should be examined in strict accordance with the counter-terrorism substantive law. However, at present, there is a lack of corresponding legislation in China.

Secondly, in the judicial practice, there are also many crimes such as the crime of illegally publicizing and holding terrorist goods, which can be completely regulated by the criminal procedure. It is undoubtedly that adding administrative processing and identification preposition links in the process of dealing with such cases is likely to blur the compartmentalization of various counter-terrorism organs and waste judicial resources.

(3) The conflict between administrative investigation power and criminal investigation power of public security organs

Counter-Terrorism Law gives administrative organs a series of administrative investigation measures. It can be divided into formal administrative investigation measures and substantive criminal type investigation measures. The general formal investigation measures include summoning, collecting human biometric information and other preliminary investigation measures, and inquiring personal property information, sealing up, detaining, freezing and other measures to restrict the property of the counterpart. In the process of administrative investigation, the authority of the administrative investigation department also involves some investigation means similar to the compulsory measures in criminal procedure, such as the measures to restrict the personal freedom of the suspects involved in terrorism and the corresponding electronic monitoring measures. In essence, it overlaps with the legal and discretionary obligations of obtaining bail pending trial and residential surveillance. Although the Criminal Procedure Law stipulates that the evidence of administrative case can be transferred with the case when it meets the proof standard of criminal procedure. From the perspective of the legal value rank of the whole substantive law, the Criminal Procedure Law should be a mini-constitution to guarantee the realization of Criminal Law, and the compulsory measures and corresponding investigation means to restrict personal freedom should be limited to the criminal litigation activities. However, the

legislation takes the necessity of punishment as the main support. In essence, the investigation measures with the same restrictive capacity as the criminal compulsory measures are transferred to the administrative legislation level as the social management law, which blurs the boundary between the administrative investigation power and the criminal investigation power. According to Article 54<sup>510</sup> of the Counter Terrorism Law, the purpose of the administrative investigation measures taken by the public security organs may be alienated to discover the reality of the criminal cases. The administrative management is an important intermediate area to realize the criminal attack. The modernization of the state and social governance is closely related to the development of the administrative management. The use of criminal procedures to punish criminals actually recognizes the ineffectiveness of the legal system of governance to the perpetrator, which also reflects the omission of administrative management. The legislative value concept of pursuing the effect of cracking down on crime by means of substantive cohesion of administrative means ignores the value attribute of administrative management itself, which leads to the conflict between criminal investigation power and administrative investigation power.

(4) There is no procedure system for handling terrorism cases

At present, Articles 55 to 66 of China's Counter-Terrorism Law stipulate the compartmentalization and specific procedures of various organs after the occurrence of terrorist incidents, and stipulate that if a terrorist crime is constituted, it should be prosecuted according to law. The law to be followed here should be the Criminal Procedure Law of the People's Republic of China (hereinafter referred to as "Criminal Procedure Law") and its relevant supporting interpretations. From a macro point of view, the system of handling terrorism related cases in China consists of three aspects, namely, the handling procedure stipulated in the Counter-Terrorism Law, the procedure and judicial interpretation stipulated in the Criminal Procedure Law, and the further interpretation of the specific operation and implementation provisions. The Criminal Procedure Law stipulates the trial jurisdiction system, lawyer interview system and

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<sup>510</sup> Article 54, Counter-terrorism Law: Where the public security authority finds upon investigation any criminal fact or criminal suspect, it shall place the case on file for investigation in accordance with the provisions of the Criminal Procedure Law. If the public security authority fails to place the case on file for investigation before the expiry of the relevant time period prescribed in this Chapter, it shall remove the relevant measures.

special witness protection system for terrorism cases, the system of protection, residential surveillance and execution of detention, application of technical investigation, etc. *The Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China* stipulates that the people's court shall provide protection of witnesses in court, protection of participants' testimony in litigation and the procedure of property recovery in which the accused cannot appear in terrorist cases. *The Provisions on the Procedure of Handling Criminal Cases by Public Security Organs* involve the jurisdiction of the public security organs in terrorist cases, the interview of defense lawyers in the investigation stage, the protection of witnesses during the investigation, the application of residential surveillance in designated residence, and the exception of notifying family members after custody, other specific measures such as the application of technical investigation measures, and the procedures for recovering suspect's property that cannot be brought to the case.

On the whole, the legislative methods of the basic law and judicial interpretation can effectively solve the various cases in practice and the operational needs of the prosecution system to a certain extent. However, the above-mentioned legal provisions show two problems: first, the provisions are relatively scattered, unsystematic, too principled and lack of specific operation details. Second, it did not make a systematic and matching arrangement. Specifically, there are still loopholes in the jurisdiction of terrorism cases in legislation, the provisions on special counter-terrorism investigation measures are not specific enough, the convergence process of evidence application is troublesome, and there is a gap in the protection of witnesses by public security organs and procuratorial organs.

Punishment of illegal and criminal acts and protection of human rights are two important values of modern procedural law. Especially since the 20th century, the emphasis on human rights protection has gradually become the existence of mutual opposition and unity with the coexisting value. In the process of dealing with terrorism cases, if the investigation measures are not systematically detailed, more administrative procedures and pre-trial procedures will exist. There is a huge risk of violating the legitimate rights of the terrorist perpetrator. The administrative procedure and criminal procedure adjust the social and economic system by protecting the matters related to personal major legal interests. The protection of major rights needs to be realized

through the systematic and perfect administrative processing procedure and pre-trial procedure. The non-systematization of procedure cannot find a certain balance between the investigation behavior and private fundamental rights, nor can it achieve the legal effect of using judicial review power to reasonably supervise the power of investigation organs. The exploration of procedural efficiency in modern countries under the rule of law is reflected in the subdivision of the applicable procedures of different cases according to different types. From the proposal of the concept of case diversion to the trial implementation of the simple system of guilty plea within the judicial organs, the exploration of procedural efficiency in modern countries under the rule of law is reflected in the subdivision of applicable procedures for different cases. It can be seen that high-quality pre-trial procedures can also improve the efficiency of the procedure, and the non systematization of counter-terrorism procedures also brings problems of connection with the system, cutting off the specific path of realizing the legalization of counter-terrorism procedures.

### *3.3 Improve the laws and regulations in the field of counter-terrorism in China*

#### *3.3.1 Defining the basic concepts of counter-terrorism legislation in China*

##### (1) Refine the definition of terrorism

###### a. Defining the nature of terrorism

There is certain superiority in the interpretation of the statute law in literal terms. Xinhua Dictionary interprets "terror" as "fear caused by threats"<sup>511</sup>. Li Dazhao, Hu Shi, Lu Xun and others all identify it as an idea when they use the word "ism". The word "ism" was not first created in China. At first, it was used in the occasion of political debate. Some dictionaries hold that the word "ism" has three meanings, namely, "the ideological and theoretical system of society and nature; a certain social system or political and economic system; and an outstanding ideological style."<sup>512</sup> It can be seen that all kinds of definitions and uses of "ism" regard it as an idea and a proposition, rather than an act.

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<sup>511</sup> Xinhua Dictionary Editorial Department: *Xinhua Dictionary*, Shanghai: Commercial Press, 2001, p.1643

<sup>512</sup> Modern Chinese Dictionary (Revised Edition), Shanghai: Commercial Press, 2001, p.1750.

The definition of "terrorism" as "thought and opinion" is more consistent with the legal language. In the Criminal Law, there are seven "ism" articles, three of which are "socialism", and the other four are related to "terrorism". "Socialism" is a kind of social science thought, while "terrorism" includes both thought and behavior, which is obviously against the systematicness of criminal substantive law.

Therefore, based on the basic understanding of the word "ism", if we want to improve the counter-terrorism legislation, we should first of all have a unified understanding of the attribute of "terrorism" in the whole counter-terrorism legal system, that is, "terrorism" is only a kind of "thought and proposition", and acts with terrorist thoughts and claims should be called "terrorist activities". Specifically, the word "activities" can be deleted from the definition of "terrorism" in Article 3 of the Counter Terrorism Law, and only "proposition" can be retained.

b. To be clear that the state can be the subject of terrorism

"Scholars who adhere to Marxist theory and Weber's view of the state believe that the state is an organization constructed by political authority and independent of society. Therefore, the state should have the power and obligation to use violence to maintain the political structure established by political authority."<sup>513</sup> According to this point of view, it can be considered that the state's legal use of violence is beneficial to human survival and social development at the present stage, but the violence used by the state should be cautious. When the violence used by the state is illegal and feasible, its violence may also become a terrorist act. If the state becomes the exception of the elements of terrorist subject, and the subject of terrorist act is only limited to individuals or organizations, then it is possible for the national liberation movement to be regarded as a terrorist activity, but the state is excluded from the subject of terrorist acts, which may give some countries the reason to strike down the national liberation movement in the name of counter-terrorism<sup>514</sup>. We cannot ignore the assistance of some countries to terrorist organizations, let alone ignore the fact that countries directly commit terrorist acts. "During the anti-Soviet war in Afghanistan, the United States provided about 250

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<sup>513</sup> Alexander Wendt, *Social Theory of International Politics*, translated by Qin Yaqing, Shanghai Century Publishing Group, 2000, p.103

<sup>514</sup> Huang Yao: *Study on the United Nations Comprehensive Anti-Terrorism Convention: From the Perspective of International Law*, Beijing: Law Press, 2010, p.21.

million dollars of military assistance to Bin Laden organization."<sup>515</sup> Some researchers believe that only when the state employs terrorist organizations or personnel to commit terrorist acts, can the state become the subject of terrorism. However, the crime of financing terrorist activities is included in the types of terrorist crimes stipulated in the criminal law of many foreign countries. It is obvious that the state can become the perpetrator of terrorist financing. Although based on the principle of sovereign equality and sovereign immunity, when a country becomes a victim of terrorist acts of another state, the injured state cannot claim jurisdiction over the perpetrator, let alone hold the perpetrator responsible in accordance with its own law. Professor M. Cherif Bassiouni, former president of the International Criminal Law Association, believes that "What is done by anyone who can represent an important person or act in the name of a state, whether the act is legal or not in its domestic law, if the act infringes on the legal interests of other countries, the State shall bear criminal responsibility for this."<sup>516</sup> Many domestic scholars also believe that criminal acts committed by individuals or organizations in the name of the state should be borne by the state<sup>517</sup>.

To sum up, based on the nature of state violence, the restriction of attacking national liberation movement in the name of the state, and the attribution of individual and group behavior to the state, it is necessary for China's legislation to stipulate that the state can become the subject of terrorism. Specifically, we can add the reprehensible clause of the state's financing and assistance to terrorist activities in the technical provisions on the interpretation of terrorist activities in the Counter Terrorism Law.

c. Define the target of terrorism

The "principle of distinction" in the rules of war in International Humanitarian Law distinguishes the civilians in war and armed conflict and the fighters and non combatants in the armed forces and treats them differently. It is legal to attack fighters in war, but it is illegal to attack civilians and non military targets<sup>518</sup>. In war, it is

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<sup>515</sup> Hu Lianhe: *Contemporary World Terrorism and Countermeasures*, Beijing: Oriental Publishing House, 2001, p. 496.

<sup>516</sup>Bassiouni (M.C.): *Introduction to International Criminal Law*, translated by Zhao Bingzhi et al., Law Press, November 2006, pp.65-66.

<sup>517</sup> Jian Jisong: *On the State as the Subject of Terrorism Crime*, *Global Law Review*, 2007(04), pp.33-37.

<sup>518</sup> Zhu Wenqi: *Contemporary International Law*, Beijing: Commercial Press, 2013, p.163.

relatively easy to distinguish between military and non military personnel, but it is not realistic to distinguish between fighters and innocent people in peacetime. At present, a large part of the violent terrorist attacks in China are aimed at the military and police. For example, in the case of the armed police of the frontier detachment in Kashgar in 2008 and the attack on the police station in Hetian city in 2011, the terrorists killed several police officers by extremely cruel means. Military police have different citizenship and human rights from civilians. It is obviously against the spirit of the Constitution if we do not include violent terrorist acts against military and police personnel into the scope of terrorism. Therefore, Article 3 of the Counter-Terrorism Law can be replaced by "infringing upon the person and property of all personnel, including military personnel, police or armed personnel involved in counter-terrorism work".

d. Defining the criteria for judging the legitimacy of terrorist purposes

In recent years, many terrorist organizations that have made terrorist attacks in China have claimed that their acts are "Jihadist" acts representing the whole religion and nation, and have repeatedly emphasized the legitimacy of their purposes<sup>519</sup>. For example, Al Qaeda claimed that its pursuit of establishing a pure Muslim state with the unity of religion and politics was in line with Islamic doctrine when carrying out the "Jihad" operation. When the Liberation Tigers of Tamil Eelam carried out violent terrorist attacks against the government of Sri Lanka and other ethnic groups, it claimed that the goal of establishing an independent Tamil state was legitimate. And the "ETA" organization claimed that its purpose was to carry out terrorist activities, and their aim is to separate País Vasco region from Spain and establish an independent "País Vasco Democratic Socialist Republic". These terrorists all claim that their actions are "for the sake of freedom, national liberation and national security"<sup>520</sup>. If we believe their statements, we may think that their purpose has certain legitimacy. However, in fact, they represent not the interests of the whole nation, let alone the interests of all mankind. They are just lies with ulterior motives.

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<sup>519</sup> Zhang Jiadong: *Conceptual Analysis of Terrorism*, World Economics and Politics, 2003(03), pp.38-43.

<sup>520</sup> Zhu Wenqi: *Contemporary International Law*, Beijing: Commercial Press, 2013, p.165.

Even if the act has a certain legitimate purpose, it is possible to be identified as a terrorist act. The United Nations has mentioned in relevant reports that "the legitimacy of a cause does not mean that the use of certain forms of violence is also justified, especially the use of violence against innocent people."<sup>521</sup> Therefore, no matter what kind of motives they have, even if their purposes are justified, their acts can constitute terrorist acts as long as they have alternative acts that cause less damage, as long as unconventional violence is not carried out under unavoidable circumstances<sup>522</sup>. When it is impossible to identify terrorism according to the legitimacy of the purpose, the reference of behavior elements (i.e. means) in determining terrorist acts is extremely important.

In order to maintain the conciseness and accuracy of the articles, we can consider adding the criteria of judging the legitimacy of the purpose based on the behavior elements at the end of Article 3 of the Counter Terrorism Law or the supplementary provisions of the Counter Terrorism Law, specifically as follows: (a) the principle of representing the interests of the majority: the ratio of the interest groups represented by the behavior to the interest groups damaged by the behavior is used to judge whether the behavior conforms to the requirements of most people. (b) The principle of minimum injury: the exercise of the means of behavior must be based on the forced situation, and must adhere to the principle of withdrawal, that is, once there is a more moderate damage and smaller alternative means, the original behavior means with greater harm should be given up immediately. (c) Judgment of direct purpose: it is necessary to judge whether the direct purpose of the act coincides with the direct purpose of terrorism mentioned in this law. If there is overlap, the legitimacy of the ultimate purpose of the act will be dispelled. (d) Minimizing the loss of interests: it is necessary to judge whether the actor is trying to avoid the expansion of damage, that is, whether the behavior always adheres to the principle of minimizing the loss of interest. If an act complies with the above four principles, it is not appropriate to regard it as a terrorist act.

e. Modify the element of terrorist means and adds non violent means

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<sup>521</sup> Tian Hongjie: *Definition of Terrorist Crime*, Legal Science, 2003(06), pp.31-39.

<sup>522</sup> Zhao Bingzhi: *Theory and Legislation of Punishing Terrorist Crimes*, Beijing: China People's Public Security University Press, 2005, p.133.

Since the level of modernization of human society has been gradually improved, human dependence on the Internet has also been increasing. Meanwhile, terrorist acts in the network, finance and nuclear fields, which rely on the Internet and high-tech means, are rampant. From 1987 to 2002, there were about 42 nuclear radiation terrorist incidents in the world<sup>523</sup>. "Terrorists can use much easier methods which can cause more destructive disasters in network, finance and military affairs. The social panic and destruction caused by Internet or other fields are no less than the traditional violent terrorist acts. Therefore, the international community is increasingly inclined to classify these non violent attacks into the category of terrorism. Since the definition of terrorism does not require its acts to cause material damage, and it only needs to create a climate of social terror, there is no reason why non violent acts that can cause material damage and cause public panic cannot be included in the form of terrorist acts.

Second, the meaning of "destruction" can be completely summed up by the word "violence". The word "destruction" can be deleted and "threat" can be replaced by "coercion". The provisions on the means and behavior in the objective elements of robbery in the Criminal Law are very similar to those of terrorism. They are all for the purpose of making the victims fear and dare not resist in order achieving the purpose of the perpetrator. Article 69<sup>524</sup> of the opinions of the *Opinions of the Supreme People's Court on Several Issues Concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China* also emphasizes the definition of "coercion". Based on the unity of legal terms in the overall legal system, "coercion" is more appropriate than "threat".

To sum up, Article 3 of the Counter Terrorism Law can be changed from "through violence, destruction, intimidation and other means" to "through violence, coercion, or non violent means" to adapt to the rapid development of terrorism and maintain the terminology consistency of China's legal system.

## (2) Define extremism clearly

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<sup>523</sup> Hu Wenxiang: *Anti-terrorism Technical Strategy*, Beijing: Chemical Industry Press, 2013, p.353.

<sup>524</sup> Article 69 of the *Opinions of the Supreme People's Court on Several Issues Concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China*: If damage is caused to the life, health, honor, reputation and property of citizens, their relatives and friends, or if damage is caused to the honor, reputation and property of legal persons, forcing the other party to express its intention contrary to the truth, it can be deemed as coercion.

a. Clearly distinguish "extremism" and "terrorism" in legislation

China's "Counter-Terrorism Law" proposes to eliminate extremism as the ideological basis of terrorism. But the concept of extremism and terrorism cannot be confused. Extremism can be the ideological basis of terrorism, but the relationship between them is not sufficient and necessary. Extremism may be expressed in violent ways to form terrorism, but it can also be expressed through other non violent means. The relationship between them should be overlapping. Some terrorism takes extremism as its ideological basis, but in the part where extremism and terrorism do not coincide, extremism may not use violent means like terrorism, such as using extremism to undermine the implementation of the law, forcing others to wear extremist clothing and so on. Over the years, although there has been controversy over the characteristics of extremism, the view that extremism is broader than terrorism has been widely accepted by scholars.

In fact, referring to the legislative process of counter-terrorism and counter extremism in other countries, such as the United States, Germany and the United Kingdom, have mixed up regulations on extremism and terrorism, so as China. However, it is obvious that not all countries have adopted this legislative model. Russia has recognized the differences between extremism and terrorism and has adopted targeted legislation for them respectively. The "Counter Extremism Law" promulgated by them is relatively complete and clear, which not only defines the connotation and types of extremism fundamentally, but also makes detailed provisions on specific measures to combat and prevent extremism. It is a comprehensive law with both substantive law and procedural law, with both criminal and administrative nature. It has laid a solid foundation for Russia to realize the comprehensive governance system of extremist society<sup>525</sup>. Therefore, in the later stage of China's counter-terrorism legislation, we can refer to Russia's legislative model to combat extremism and terrorism separately.

Based on the fact that China's current counter-terrorism legislation is still in the initial stage of development, the way we can take at present is to make a clear distinction between "terrorism" and "extremism" in the legislation. For example, the

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<sup>525</sup> Lei Wang: *Reference And Enlightenment: The Rule of Law Practice in Other Countries to Curb Religious Extremism*, Xinjiang Social Sciences, 2018(04), pp.106-113.

Article 80 of the Counter-Terrorism Law could be disassembled, and the minor terrorist acts and extremist acts are stipulated separately, and the sentencing is differentiated according to their respective characteristics.

b. Defining the nature of extremism

As an international treaty signed and ratified by China, the Shanghai Convention still needs to be transformed into domestic law in judicial practice before it can be directly applied. Among them, the definition of extremism is an international treaty negotiated on the basis of different countries' legal soil and the development situation of terrorism. It embodies the goal of jointly attacking the "three forces" and emphasizes the political attribute<sup>526</sup>. It is not advisable to directly apply the definition of extremism in the Shanghai Convention to China's judicial practice, which also means that China does not have to define extremism as some kind of behavior in domestic legislation in accordance with the Shanghai Convention.

The meaning of the word "ism" has been described in the previous section. As a kind of "ism", "extremism" should be consistent with "terrorism", that is to say, it is a kind of thought but not an act. After all, the Counter-Terrorism Law also provides for extremism. In order to avoid the contradiction between the two meanings and to maintain the coordination of terms within the legal system, it is more appropriate to define "extremism" as a "proposition".

c. Defining the standards of value, conduct and purpose of extremism

As for the definition of extremism, Oxford Advanced English-Chinese Dictionary explains "Extreme political and religious views or behaviors which are abnormal, unreasonable and unacceptable to most people"<sup>527</sup>. Longman Dictionary of Contemporary Advanced English is used to define extremism "The overwhelming majority of people think that the views, thoughts and behaviors are unreasonable and unacceptable, especially in the religious and political fields"<sup>528</sup>. In the Modern Chinese Dictionary, "extreme" can be expressed to a very deep degree, such as extreme distress,

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<sup>526</sup> Lu Youxue, Wu Yonghui: *Analysis of Extremist Crimes-Analysis of Basic Theory and Legislation*, Journal of Southwest University of Political Science and Law, 2015, 17(02), pp.34-46.

<sup>527</sup> Oxford Advanced English-Chinese Dictionary, Beijing: Commercial Press, Oxford University Press, 2014, p.755.

<sup>528</sup> Longman Dictionary of Contemporary Advanced English, Beijing: Foreign Language Teaching and Research Press, 2009, p.675.

can also be interpreted as absolute and extreme, such as extreme thinking. From the literal meaning, the values of extremism are not connected with the mainstream social values and are against the world<sup>529</sup>. Moreover, the word "extreme" is not limited to a specific field, so its purpose can be very wide. In reality, in addition to the common political extremism and religious extremism, there are also ecological extremism, counter human extremism and other extremism.

According to the classification of various kinds of extremism, the first category is the simplest violent extremism, which will eventually evolve into terrorist activities. The second category is non violent acts such as advocating and spreading extremism, which usually propagate extremism through the dissemination of content with extreme ideology, which can be classified as an ideology. The third kind of behavior is more moderate than the propaganda and dissemination behavior, that is, on the surface, it conforms to the mainstream values of modern society, but secretly propagates extremist ideas and develops extremist alliances by various covert means. The most typical example is that when talking with Muslim Brotherhood thinker Yusuf Qaradawi, British foreign affairs officials expressed incomprehension of his public support for suicide bombings in Iraq, but praised his contribution to "promoting the mainstream of Islam" and openly declared that "it is our success to let people like Qaradawi stand with us"<sup>530</sup>. Some people once thought that extremism should be limited to "violent extremism"<sup>531</sup>. Through the classification and analysis of extremism above, it can be found that the second type of propaganda extremism and the third type of covert development of extremism are not any violence, but are much more harmful than the first type of violent extremism. Therefore, the behavior standard of extremism should be defined as: in order to achieve its extreme ends, all means should be used, including obvious violence and mild and covert non violence.

To sum up, extremism should have three major elements: exclusivity and disobedience of values, diversity of means and universality of purpose. The definition of extremism can be added after Article 3 in the Counter-Terrorism Law: the term

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<sup>529</sup> Modern Chinese Dictionary, Beijing: Commercial Press, 2012, p.466.

<sup>530</sup> Wang Bo: *Study on the Nature and Internal Structure of Islamic Extremism in Europe*, International Observation, 2015, (4), p.105.

<sup>531</sup> Shi Juhang: *Comment on the Academic Theory of the Ninth Amendment of Criminal Law on the Provisions of Terrorism-Related Crimes*, Journal Of Jiangxi Police Institute, 2016, (1), p.17.

"extremism" in this Law refers to the realization of political, religious and other illegal extremism idea and proposition through violence, coercion or non violence. "

*3.3.2 Legislative perfection in the field of counter-terrorism substantive law*

(1) Exceptions to jurisdiction in terrorism cases

There are two ways to deal with the conflict between the principle of absolute jurisdiction and the provisions of criminal substantive law: one is to consider the principle of the place of crime according to the provisions of the criminal substantive law; the other is to conduct jurisdiction according to the provisions of the guaranteed law, which involves the classification of broad criminal law in China's criminal law theory. As mentioned above, the Counter-Terrorism Law is based on the position of punishment policy, and its breakthrough in the absolute exercise of the jurisdiction of the People's Republic of China is lack of specific penalty circumstances, so it cannot be called subsidiary criminal law in criminal law theory. However, in view of the difference in nature between terrorist crimes and ordinary crimes, and in the field of counter-terrorism, the Counter-Terrorism Law should be regarded as a special law of the criminal law. Based on the principle of "special law takes precedence" and the "uncompromising" attitude to terrorism, we should no longer set restrictions on the personal jurisdiction and protective jurisdiction of terrorist activities. In the same case, we can refer to the UK's counter-terrorism law, the Prevention of Terrorism Act 2005, which explicitly excludes the jurisdiction exception of terrorist crimes, that is, as long as terrorism is suspected to be committed in the UK, people who commit terrorist crimes, whether they have their own citizenship or not, must be dealt with in accordance with the law<sup>532</sup>. China can follow its example by adding "the acts constituting terrorist crimes stipulated in this Law and other laws shall not be adjusted by the exception of Article 13 of the Criminal Law of the people's Republic of China" after Article 11 of the Counter Terrorism Law

(2) Clarify the adjustment objects of Criminal Law and Counter Terrorism Law

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<sup>532</sup> Lei Wang: *Reference and Enlightenment: Comparison of the Legal Practice of Curbing Religious Extremism in Other Countries*, Xinjiang Social Sciences, 2018(04), pp.106-113.

"Terrorism is a kind of world outlook or ideology which is worshipped by thought and based on it"<sup>533</sup>. It belongs to the theoretical category rather than the object of legal regulation. It becomes the object of legal regulation only when it is externalized as an illegal and criminal act. Therefore, it is the proper meaning of the counter-terrorism law to adjust terrorist acts rather than terrorism thoughts. Terrorist acts can be divided into terrorist illegal acts and terrorist criminal acts. The two acts which should be adjusted in counter-terrorism laws are related to the internal unification of counter-terrorism substantive law. According to the theory of criminal law that "serious violation of law is a crime", the different roles, division of labor, and even the degree of participation of the participants in terrorist acts will make their behavior different in nature. Different stages of counter-terrorism organs' intervention in terrorist acts will lead to different judgments on the nature of the acts. Therefore, the counter-terrorism substantive law should regard the illegal acts of terrorism as the inferior concept of terrorist crimes, and adjust the illegal acts and criminal acts of terrorism from the overall perspective.

### (3) Defining the boundaries between illegal and criminal acts of terrorism

The preventive legislation strategy has its positive significance, but it has the potential danger of eroding the function of free criminal law in governing the country by law<sup>534</sup>. The change of social situation will affect the intensity of criminal policy to punish specific crimes. At present, the policy of cracking down on terrorism needs to be prevented and corrected with the concept of modesty of criminal law. The boundary between the special law and the criminal substantive law involves the specific issues of incriminating and committing a crime. In order to realize the specific requirements of protecting human rights at the substantive level of legality, it is necessary to comb the administrative power and criminal judicial authority reasonably. According to the theory of Tatbestandt tripartite scheme, whether a criminal act is criminalized or not is determined by two aspects, namely objectivism and accountability. In other words, the basis for determining whether the act is illegal or the boundary between the illegal act and the criminal act should lie in the size of the social harmfulness caused by the perpetrator and whether the perpetrator is subjectively blameworthy.

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<sup>533</sup> Zhang Lixia: *Research on the Execution Cohesion Mechanism of Terrorist Act Identification*, Legal Science (Journal of northwest university of politics and law), 2019(5), pp.191-200.

<sup>534</sup> Liang Genlin: *Criminal Law Amendment: Dimension, Strategy, Evaluation and Reflection*, Law Research, 2017, 39(01), pp.42-65.

In the identification of specific terrorism charges, we should strictly distinguish the specific nature of social harmfulness and subjective blameworthiness in the specific provisions of criminal law. If the perpetrator has initiated the establishment of terrorist organizations, actively participated in terrorist organizations, committed terrorist acts after receiving punishment for terrorist related acts, and illegally held a large number of matters promoting terrorism, it can be considered that the perpetrator has strong subjective blameworthiness. The main criteria for judging are the expression degree of "enthusiasm", the quantity of terrorist related matters held and the spread range. On the contrary, those who are passively or instigated to commit terrorist acts and take part in it for the first time can be regarded as less subjective blameworthiness. The number of death and injury caused by behavior, the degree of damage to public and private property and other objective damage should be taken as the index to quantify the social harmfulness. At the same time, it needs to be clear that there is a certain order in the basic path of crime identification. Criminal act identification should follow the specific path from objective judgment to subjective judgment. It is inevitable to trace back from the result of the case. However, we should not change from objective reasonable suspicion to strong subjective incrimination tendency. Some articles have the dual nature of objective harm and subjective malignant. What must be made clear is that the subjective blameworthiness also needs to be shown by certain objective facts, and take the principle of evidence adjudication as the benchmark, clarify the boundary standard, and adhere to the principle of objectivism priority. Some actors who are seriously harmful to society but show subjective maliciousness in passive form should be punished as terrorist crime. On the contrary, even if the actor's speech and participation behavior show strong counter social nature, but they are not perform the specific terrorism activities, they should be prevented from falling into the abyss of criminal law and strictly abide by objectivism. According to the requirements of the criminal law, it is not punished as a crime. There are also a series of illegal elements and responsibility elements in the social illegality. While adhering to the basic principles, the judicial staff should examine the objective and subjective conditions of crime in an in-depth and detailed way with an essential and professional perspective, so as to clarify the "illegal acts" and "criminal acts" boundaries with specific cases, and ensure the interpretation of criminal justice.

(4) Improve the system of terrorist charges; regulate terrorist acts in an all-round way

Some scholars believe that "terrorist crimes should be listed separately as a chapter parallel to crimes against national security and public security."<sup>535</sup> Terrorist crimes infringe on public security, people's personal and property safety and other multiple compound legal interests. If placed in any chapter of the Criminal Law, it may be crossed with the legal interests infringed by the acts stipulated in other chapters. Therefore, we can consider making a special chapter on terrorist crimes. In addition to put the original terrorism charges into this chapter, we should consider making a special chapter on terrorist crimes. At the same time, it is necessary to set up a special crime of terrorist activities to clarify the core of all terrorism related crimes. Referring to the relevant provisions on underworld crimes of the Criminal Law, we can add the charges of "overseas person or organization entering the country to recruit the members of terrorist organizations", "harbor and connive at terrorist organizations or personnel"; we can also transform the international counter-terrorism treaties signed by China into domestic laws, regulate acts such as "using force or threat, violence to destroy fixed platforms or causing damage to fixed platforms and endangering their safety ". In addition, careful comparison between the Counter-Terrorism Law and the Criminal Law is an important part of improving the counter-terrorism substantive law, which makes the punishment of terrorist illegal and criminal acts based on seamless connection of the Counter-Terrorism Law and the Criminal Law.

### *3.3.3 Legislative perfection in the field of counter-terrorism procedural law*

(1) Establishing the classification standard to clarify the compartmentalization of the identification of terrorism cases

The direct purpose of the state's counter-terrorism work leading body is to identify terrorist organizations, personnel and activities, and the deeper purpose is to coordinate the counter-terrorism forces, conduct unified command on all counter-terrorism units and make comprehensive coordination for different administrative means. In the face of emergency and uncontrollable violent terrorist cases, the counter-terrorism work leading organization can take safety value and efficiency value as the priority to carry out effective administrative control on the spot and improve counter-terrorism

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<sup>535</sup> Mei Chuanqiang: *The Review and Improvement of China's Anti-Terrorism Criminal Legislation — Comments on the Relevant Terrorism-Related Clauses in Criminal Law Amendment (IX)*, *Modern Law*, 2016,38(01), pp.37-48.

efficiency. But it is not appropriate to make the final administrative identification and disposal of the act and the perpetrator at the same time. The reason is that administrative identification should be biased towards identity confirmation, to confirm the identity of the organizations and personnel who commit terrorist acts. We should only issue identification suggestions but not conclusion on the nature of acts; otherwise there is a risk of replacing penalty with punishment. Judicial identification focuses on solving the matching problem of criminal responsibility and punishment, which is biased towards the identification of criminal acts. The identification of terrorist acts and perpetrators requires the compartmentalization and coordination between administrative identification and judicial identification. At present, the compartmentalization between administrative identification and judicial identification in the field of counter-terrorism in China can be solved by using the typical division method, that is, establishing classification standards from the following two levels: first, taking the contents of the Counter-Terrorism Law and the Criminal Law as the standards, it is divided into terrorist illegal acts and terrorist crimes, and the public security organs classify and deal with the cases according to the standards. Secondly, according to the principle of giving priority to the control of violent terrorist incidents, we should decompose all kinds of cases in the follow-up: the national counter-terrorism leading organization is responsible for the on-site control of emergency violent terrorist events, and the subsequent administrative identification of terrorist illegal act. The public security organs are responsible for the investigation after finding clues of terrorist cases or after the violent terrorist incidents have subsided, the relevant evidence of criminal acts shall be submitted for administrative confirmation or the initiation of criminal proceedings according to the specific circumstances. The judicial organs shall be responsible for the diversion of non urgent terrorism cases or emergency terrorist incidents after the settlement of cases, and the confirmation of terrorist crimes.

(2) Constructing the linking up procedure between administrative and judicial identification of terrorist acts

The compartmentalization discussed above points out two ways to link up the administrative and judicial identification of terrorist acts:

a. The identification and linking up procedures of terrorist administrative illegal acts and criminal acts.

After discovering the clues of terrorist cases, the public security organs first exercise the power of administrative investigation. If they find that there may be suspicion of constituting a crime, they should initial the criminal proceeding in time and start to investigate. In the process of criminal investigation, if insufficient evidence and unclear facts are found, which does not constitute a crime and only constitutes an administrative illegal act, the criminal procedure can be used immediately switched back to administrative investigation and apply for administrative recognition to the counter-terrorism work leading organization. The above conversion process also needs to be combined with the counter-terrorism work practice. After detailed investigation and research, the specific and smooth convergence procedure specification should be established.

b. During the emergency violent terrorist events, the administrative control should be superior to the identification procedure of illegal and criminal acts.

There will be not only one terrorist act in an emergency terrorism incident, and it is impossible for each participant to have the same subjective malignancy and social harmfulness. Therefore, it is impossible to make administrative or judicial identification on the perpetrator and behavior immediately. "The administrative power is flexible in the development and changing social situation, while the judicial power is stable. The administrative power must adapt to the social changes in various periods. The administrative subjects of a government or a department always adjust the administrative policies and increase or decrease the government agencies in order to meet the social needs and enhance the management effectiveness."<sup>536</sup> In the face of such sudden and destructive violent terrorist incidents, we should take safety and efficiency as the first priority to control the situation with administrative means. After the emergency disposal is completed and the state of emergency is eliminated, we can sort out and separate the actors and behaviors in the incident according to the clues and evidences, and hand over the minor ones that do not constitute crimes to the relevant administrative organs. If it is harmful and likely to constitute a crime, it shall be handled by the criminal judicial organ with jurisdiction.

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<sup>536</sup> Sun Xiaoxia: *The Essence of Judicial Power Is Judgment Power-Ten Differences between Judicial Power and Administrative Power*, Law, 1998(8), pp.35-37.

The special counter-terrorism law has the nature of administrative law, which is inclined to punish terrorist illegal acts. However, according to the principle of legally prescribed punishment for a specified crime, the prosecution of terrorist crimes must be strictly in accordance with the provisions of criminal judicial procedures. The counter-terrorism procedural law composed of Counter-Terrorism Law and Criminal Procedure Law must have a clear compartmentalization and smooth connection, which requires legislation grasps and concretizes the boundary (mentioned above) between crime and non crime in terrorism related cases, perfects the intelligence mechanism, establishes the information sharing platform between the administrative organ and the criminal judicial organ, and establishes the standard connecting procedure.

(3) Establishing a preliminary investigation system for terrorism cases

Generally speaking, the initiation of criminal proceedings is marked by filing a case. The independence of filing a case leads to the confusion of administrative and criminal investigation powers of public security organs, which is not conducive to the detection of terrorism cases. By observing the legislation on the initiation procedure of criminal procedure in other continental law systems abroad, it is found that France and Germany pay more attention to the randomness of the starting procedure of criminal procedure. After a terrorist act is discovered, the public security organ can investigate it without any special procedure, and the filing of a case is regarded as a part of the investigation procedure without any separate provisions. China can also adopt such a way to introduce the preliminary investigation system. The public security organs can start the preliminary investigation after receiving the report of terrorist activities or discovering the suspicion of terrorist activities, and formally file a case for investigation if it is found to meet the crime standard of terrorism related crimes. The above steps can be summarized as follows: "detection of suspected terrorist activities - preliminary investigation – file a case - formal investigation".

Legislators may hope to break through the limitation of the traditional case filing procedure by stipulating the administrative investigation power that the public security organs can exercise in the Counter-Terrorism Law, so as to enhance the flexibility and timeliness in the handling of counter-terrorism cases. Since the power of preliminary investigation has the nature of investigation power, we can remove part of the counter-terrorism administrative investigation measures with highly restriction to the personal and property rights from the preliminary investigation measures, leaving only

the measures equal to the general administrative power, which can not only give more judicial regulation to the administrative investigation power, but also make the power more clear. To a certain extent, the power of preliminary investigation lowers the initiation standard of criminal procedure of counter-terrorism. While meeting the requirements of judicial timeliness for terrorist acts, it also provides legal basis for the preliminary investigation taken by public security organs before filing a case.

(4) Construction of special legislation system for prosecution of terrorism cases

From a global perspective, the counter-terrorism procedural legislation of various countries can be divided into three modes: the counter-terrorism code model, the combination model of criminal procedure law and counter-terrorism law, and the subsidiary legislation model<sup>537</sup>.

At present, most countries regulate the procedure of counter-terrorism cases in the counter-terrorism code model. With PATRIOT Act and subsequent amendments and supplements, the United States has regulated the counter-terrorism proceedings, and then promulgated a number of terrorism related laws represented by the *Intelligence Reform and Prevention of Terrorism Act* and *the Military Commission Act*, thus establishing its unique legal system of "counter-terrorism war model"<sup>538</sup>. Influenced by the increasingly severe counter-terrorism situation in the world, Britain has promulgated four counter-terrorism laws, which systematically and comprehensively stipulate the standards and procedures for the identification of terrorist organizations and personnel, as well as the detailed norms on the authority of counter-terrorism organs in dealing with terrorism related cases<sup>539</sup>. As a big counter-terrorism country, Russia has always been in the forefront of the world in terms of counter-terrorism legislation. In 2006, Russia promulgated the Counter-Terrorism Law of the Russian Federation, which provides comprehensive and detailed provisions on the subject of investigation, the power of investigation and the supervision of litigation procedures of

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<sup>537</sup> Xie Bo: *Discussion on the Legalization of the Procedure of Terrorism Crime in China*, Journal of Chinese People's Public Security University (Social Science Edition), 2016, 032(001), pp.74-78.

<sup>538</sup> Xia Fei: *American Anti-Terrorism Law Practice and Its Reference*, Law, 2017(07), pp.153-163.

<sup>539</sup> Chen Gang, Zhou Wei: *Research on Anti-terrorism Mechanism in Anglo-American Countries*, Jingyue Journal, 2017(02), pp.5-10.

cases involving terrorism<sup>540</sup>. Canada, Spain, Saudi Arabia, Nigeria and other countries have also chosen this model. France is the most representative country that adopts the legislative model of combining criminal procedure law with separate counter-terrorism law<sup>541</sup>. It has made special provisions on counter-terrorism special procedure in its criminal procedure law, and has further explained the handling procedure of counter-terrorism cases in the counter-terrorism law promulgated in 1986 and several subsequent amendments. Germany adopts subsidiary legislation model on counter-terrorism procedure. It neither formulates special counter-terrorism code nor makes special provisions on counter-terrorism procedure in criminal procedure law. Instead, Germany adjusts its counter-terrorism legislation to meet the needs of special counter-terrorism procedures by adjusting its Basic Law, Criminal Procedure Law, Association Law and Immigration Law<sup>542</sup>.

Considering the counter-terrorism practice and counter-terrorism legislation tradition in China, this thesis thinks that the legislative model of combining criminal procedure law and counter-terrorism law adopted by France is more suitable for China's counter-terrorism procedural law. There are three reasons: first, China's current "Criminal Procedure Law" has set up a chapter of "special procedures". Although the counter-terrorism procedure is not included in it, it has provided a useful reference for China to set up a special chapter in the Criminal Procedure Law to stipulate the counter-terrorism procedure. In the later period, no matter whether the prosecution procedure of terrorism cases is included in the chapter of "Special Procedures" or another special chapter is set up, the regulations have traces to follow and are not abrupt. Second, terrorist crime is also a kind of criminal behavior, which is different from ordinary criminal behavior, but also has more generality. In the current criminal procedure law of China, the exercise of investigation power and defense right in ordinary crime are still quite universal, and should not be abandoned when dealing with terrorist crimes. So that the counter-terrorism legal procedures can maintain a certain

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<sup>540</sup> Dai Yanmei: *Analysis of Russia's Anti-Terrorism Legal System*, Russian Studies in Eastern Europe and Central Asia, 2016(06), pp.34-50+156.

<sup>541</sup> Min Fang: *Inventory of Anti-Terrorism Laws in the World*, Life and Disaster, 2016(01), pp.14-17.

<sup>542</sup> Zhao Lei: *Between Security and Freedom: Analysis of German Anti-Terrorism Legislation-System Construction Based on Value Balance and Constitutional Rule of Law*, Hebei Law, 2017, 35(04), pp.141-153.

degree of independence and at the same time maintain the maximum degree of coordination with the current criminal procedure law; third, the current Counter-Terrorism Law of China is more inclined to administrative law in nature and content, and has less provisions on the handling procedures of terrorism cases. For the criminal procedure provisions not directly related to terrorism cases, it is necessary to specify the pre-processing procedures of terrorism cases in the Counter-Terrorism Law, and make it seamless with the special counter-terrorism procedures in the criminal procedure law. It can not only resolve the conflict of laws within the counter-terrorism procedural law, but also fill the legislative gap, which is conducive to the formation of a complete counter-terrorism procedural law system. In addition to grasping the construction of handling procedures of terrorism cases from the above macro issues, it is also necessary to make clear the jurisdiction of terrorism cases and further improve the witness protection system in terrorism related cases.

To sum up, for the prosecution procedure of terrorism cases, China should choose the legislative model of combining Criminal Procedure Law with Counter-Terrorism Law, and pay attention to the specific problems of convergence between the two. Furthermore, we should try to clarify the compartmentalization in the identification of terrorism cases and the connection between administrative violations and criminal offenses, establish a preliminary investigation system to clearly distinguish administrative investigation power and criminal investigation power, and further discuss the details of the procedure.

#### *3.4 The prevention, control and complement of criminal policy to terrorist crime*

The Combination of Leniency and Strictness is a basic criminal policy in China, which plays a fundamental guiding role and a value judgment role in criminal legislation, criminal justice and criminal law enforcement. In essence, criminal policy plays an important role in criminal justice. In fact, the criminal policy of Combining Leniency and Strictness is a kind of strategy to deal with various crimes in China, and terrorist crime as a crime form is no exception.

In China, there are many reasons for the occurrence of terrorist crimes. Some of them are forced to join in terrorism by circumstances, some of them are deceived or coerced to join in terrorism passively, some of them are confused to join in terrorism due to

carelessness, and some of them are extremist thinkers. China's criminal policy of Combining Leniency and Strictness can deal with terrorist crimes caused by different reasons. On the one hand, the terrorist crime has a strong national color and political ideology, and the criminals are different from other crimes in ideology, which supports the violence, cruelty and destructiveness when they commit the crime. As a terrorist criminal organization, they all have their "spiritual leaders". The existence of this spirit often makes terrorist organizations easily form an "iron plate block", which is not conducive to the implementation of "counter-terrorism" and "block disintegration", and brings difficulties and obstacles to China's counter-terrorism. On the other hand, terrorists have religious extremist beliefs, have been "brainwashed" training, basically have extreme terrorist thoughts in their hearts, and believe in the fallacy of "Jihadists go to heaven". Therefore, once sentenced to prison for ideological remolding, whether they will spread terrorist speech and extreme thoughts in prison, infect other people, or what effect they will receive from the ideological remolding, are all problems worthy of criminal policy adjustment.

The author believes that the use of the criminal policy of Combining Leniency and Strictness to prevent and control terrorist crimes requires the decomposition and integration of leniency and strictness. On the one hand, according to the different situations (active or passive) of the perpetrators of terrorist crimes, we should soften and disintegrate the ideological defense line of the perpetrators of terrorist crimes, break through the bottom line of psychological defense, and urge them to provide important intelligence information in order to deal with the coming or unknown terrorist criminal activities. On the other hand, we should adopt the "strict" policy to the perpetrators of terrorist crimes who do not account for the crimes or refuse to accept the transformation can take more severe penalties to destroy their psychological bottom line of fluke defense. Specifically, it is mainly reflected in:

(1) In the stages of crime filing, investigation and prosecution, some incentive measures can be created (of course within the scope of China's Criminal Law, it does not include oral commitment. For example, in some cases the police officer will tell the suspect that "as long as you confessing, you can go home" which violates the procedural provisions) to encourage terrorists to confess the details of the accomplice or other known cases, such as surrender, confession, or reach some "transaction" or "preferential terms" with the suspect (such as acting as informant), which causes

internal differences among terrorists, so as to disintegrate the whole organization and achieve the purpose of combating terrorist crimes. China's Counter-Terrorism Law provides that judges can directly identify terrorist crimes in the trial, which gives judges greater discretion. In order to dig deep into terrorist crimes, the judge can also reach some kind of "transaction" with terrorists at the trial level to realize a wider range of prosecution for terrorist crimes.

(2) In the process of carrying out criminal punishment for terrorists, the ideological remolding promotes them to return to normal social life, instead of carrying out terrorist activities again. It is necessary to analyze the criminal reasons of terrorists, whether to join actively or to be forced to join, so as to take different countermeasures. For those who passively join terrorist criminal organizations, they should be given enough humanistic care, such as starting from their families, parents, brothers, relatives and friends, helping them to lift the shackles of religious thought. And from the perspective of human nature, they can feel the positive energy of the society and encourage them to reorganize their life path. Or the government can hire special psychological experts for some psychological counseling and treatment. Or the government can hire religious leaders to solve their confusion about religious belief. More humane measures can be taken, such as parole, or implement "open" ideological remolding management.

(3) For those criminal suspects whose thoughts are far extremism, it is difficult to achieve the ideological remolding effect through humane treatment or flexible ways. We should take strict measures to force their psychological defense line to collapse. Of course, for those who have been released after serving their sentences and who have already returned to the society, the tracking investigation and recording system should be established in time.

## Ending Words

Nowadays, terrorist crimes are still threatening global security. Since the 21st century, with the rapid development of modern science and technology, such as "Internet +", "big data" and "artificial intelligence", along with the changing political situation of international society, the global distribution of economic benefits, and the global flow of civilization and culture, it has brought about information sharing and a better life in human society. At the same time, it has spawned the form innovation of terrorist crimes. Terrorism is increasingly threatening non-traditional security areas.

The non-traditional security theory transcends the concept of national boundaries and the limitations of national sovereignty, and examines the security construction of various countries from the perspective of global security. It focuses on a wider range of fields, a wider vision and a deeper depth, and is a kind of "shared security". Terrorist crimes challenge international authority, national sovereignty and tolerance for crimes, and affect the development of many fields in the world, which belongs to the non-traditional security field. Because of its inherent destructive, violent, dual-purpose, international and decentralized characteristics, for many years, the global defense against terrorist crimes has formed three paths: "war path", "criminal justice path" and "global governance path". From the reality, the path of war is a last resort in the current global counter-terrorism, but it is not worth vigorously promoting. Criminal justice path can effectively reduce the operation cost of counter-terrorism measures, is conducive to the realization of human rights protection, and is the main counter-terrorism means, but it is still insufficient to deal with terrorist crimes, and must be further improved and strengthened. The global governance path is put forward on the basis of effectively eliminating the threats and security problems brought by terrorism on a global scale. It relies on the global countries to form a community of common destiny for all mankind to effectively fight terrorism. Although this goal is far away, it is the fundamental way to completely eliminate terrorism.

In the value choice of counter-terrorism, the theory of priority protection of national security and global security has become the main theory from the perspective of non-traditional security. Under the non-traditional security concept, counter-terrorism must first ensure national security, and then pursue individual freedom. Without

national security, there is no individual freedom. But at the same time, we should give full consideration to the theory of safeguarding human rights and bottom line justice. The protection of human rights against terrorism from the perspective of non-traditional security must start from three levels: terrorist crimes and human rights protection; the protection of state power and human rights, as well as the protection of terrorists' rights. In a civilized society, even if terrorists are as evil as enemies, they cannot be treated like enemies, but must adhere to the rule of law and guarantee their basic rights.

When dealing with terrorist crimes at the international level, we should see that international counter-terrorism faces practical problems such as inadequate legal system, imperfect cooperation mechanism and practical difficulties. By adhering to the main position of the United Nations in counter-terrorism, we should formulate the United Nations Comprehensive Counter-Terrorism Convention and improve the international unified counter-terrorism criminal policy, and finally achieve effective governance of terrorism. At the domestic level, it mainly focuses on the establishment of a comprehensive and effective counter-terrorism mechanism, starting from the counter-terrorism institution building, counter-terrorism platform building and counter-terrorism legal system. The most important thing is to build and perfect the counter-terrorism legal system. By combing our counter-terrorism legal system, we should further polish it from the aspects of defining the basic concepts of terrorism, improving the counter-terrorism substantive law and perfecting the counter-terrorism procedural law. In this process, we must carry out the criminal policy of combining punishment with leniency, and finally realize the balance between security and human rights protection.

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