Comparing the Concept of Terrorism in Islamic and International Laws

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Abstract: Today, despite condemning terrorism by all countries, the concept of terrorism and its constituent elements are not quite clear. It is for long time that terrorism has moved beyond national borders, like other crimes. Records show that international community has taken measures to define terrorism, but so far no agreement has been reached on this issue. 9/11 attacks provided a background that terrorism is again proposed at forefront of international discussions and religion of Islam was attacked by the Western media attention. Since then, Islam was attacked and its sublime teachings were changed. In general, it can be said that Islam cannot compromise killing other human beings falsely, so it can be confirmed that terrorism is condemned according general prohibition of terror in Islam.

Keywords: Terrorism, Islam, International Community.

Introduction

9/11 attacks amazed the world. UN Security Council issued Resolution 1368 within 24 hours and there were took place severe reactions to the attacks; the reactions were based on transient and unstable emotions of countries and international organizations rather than legal grounds. However, after a few months of the attacks and down the first impressions, jurists and experts emphasized on necessity of a legal perspective rather than a political approach to issue of terrorism. Initial intimidation against the attacks prevent legal analysis of the phenomenon; it was criticized -on pretext lawful defense- and unfortunately, its results lead to increase violence and proliferation of terrorist acts around the world, instead of reducing terrorism. Perhaps lack of explaining and framing terrorism can be considered as the most important reasons for failure of violence strategy and sabotage conflicts.

While the problem is dealt by political actions and it is seen from angle of political interests, increasing such incidents cannot be considered too surprising (Nojoomi, 2008). By a common and legal definition of terrorism, we can be hopeful to a legal and unified response against the matter internationally. Therefore, explaining the concept in international law is essential. On the other hand, today, Muslim countries have been heavily involved in terrorism with more than one billion people. According to many Western countries, Islamic fundamentalism and dominance of Islam as a model of governance in some countries play a major role in trend of increasing terrorist incidents.

The relation between many terrorist incidents worldwide with Islamic fundamentalist groups like Al-Qaida strength the belief that in fact, it is Islam teachings that encourage such activities and actions. Clarification of the concept using different Islamic sources can prove true or false the view against Islam.

Perspective of International Law on Terrorism

The terrorism term was firstly introduced in Conference of Equality of Criminal Laws (1930s) in the field of legal issues. Previously, a commission of judges and lawyers studied issue of terrorism by examining responsibility of perpetrators of war crimes after World War I that was held in 1919 at Versailles. They considered the organized terrorism as one of the greatest war crimes, after murder and placed it in the second position. Totally, the classification contained 32 criminal actions. However, the theory of systematic definition of terrorism was begun from 30s of 20th century.

The first conference on equality of criminal laws implicitly mentioned international terrorism, and international criminal jurisdiction to investigate and prosecute the crime was recognized. The word terrorism introduced for the first time in the third conference on equality of criminal laws in Brussels as an independent international crime (terrorism was mentioned as one of the most important war crimes on the peace conference in 1919): "Using devices deliberately with the ability to create a public danger against life, liberty or physical integrity of individuals, or directly against public or private properties, with political or social ideas is a terrorist action and associated with penalties". Here, political or social motives were beyond specific acts of violence, as well as general damages were components of terrorism. In the adopted text of the fourth conference on equality of criminal laws in Paris, terrorism was defined as follows: "anyone who fear and panic using explosives, incendiary devices, landmines, firearms, or other destructive and deadly means acts against persons or properties, or incidence epidemics to human, animal or other diseases, or wants to create and spread them, as well as any violation in state or public utilities, or attempts to disrupt the services is known as terrorist".

In 1934, there was issued a resolution in the fifth conference on equality of criminal laws in Madrid, which for the first time, mentioned obligations of states to extradite those accused of terrorist crimes, in addition emphasis on universal jurisdiction for terrorist offenses. The conference did not mention motivation or objectives. In sixth and the last conference (held from August 31 to September 3, 1935 in Copenhagen), community of equality of criminal laws adopted a 8-article text that Article 2 defined terrorism as follows: "any deliberate act that causes tragedy through deliberate firing, explosion, flooding, choke, using deadly materials, destruction or damage to equipment of fire extinguishing ..." or "any deliberate act that endangers human life or community, factories, properties". For the first time, the conference discussed issue of terrorism as detailed, but there was advised no document or binding treaty in this area until the United Nations took actions on the matter. During 1934-1937, the United Nations took the most important actions before efforts in the recent decades to define terrorism as an international crime. In October 1934, Alexander I, King of Yugoslavia, was killed by a Croat secessionist at official visit from France. Louis Barreto, French Foreign Minister was killed with his two bodyguards. The defendants fled to Italy, and according to treaty of 1870, France requested extraditing them, but the treaty excluded extraditing political defendants. By argument that the crime was politically motivated and therefore, they are non-extraditable, Court of Appeals of Turin in Italy rejected France's extradition request. By the action by Italian court, the UN was pressured in political reactions.

Memory of international community still remembered cases such as killing president of Australia parliament and Prime Minister of Romania in July 1934, and knew that terrorism really threats international peace and security. Following the mentioned events, governments of Yugoslavia and France has asked the UN to adopt measures to investigate the matter in accordance with Article 2 of the Statute. In December 1934, in a resolution, Security Council stated that rules of international laws relating to issue of terrorism are not sufficient to deal with it. The Council also formed an expert committee, and asked them to prepare the primary plan of International Convention for suppression of terrorism. Text of the convention was prepared in 1935-1937. In November 1937, an international conference was held in Geneva to adopt the final text.

The final conference accepted two international conventions finally: "Convention on Prevention and Punishment of Terrorism" and "Convention of Establishing International Criminal Court". The first defines terrorism crimes, and the latter predicted International Criminal Court that dealt with crimes subjected in the first treaty. Paragraph 2 of Article I of the Convention on Prevention and Punishment of Terrorism defines terrorism as follows: "criminal actions against a government and conducted to create a state of terror in minds of individuals, group of individuals or general public. The Convention also emphasizes that its scope includes terrorist acts with international nature. The definition of terrorism in the conference is based on three factors: target, aim and using the restricted tools, but no mention of motivation or objectives. Given to challenging nature of terrorism word and to prevent conflicts in adoption phase, there was used a clear definition that it was not explained means a state of fear and terror in this Convention or its plan, but according to the definition text, we can say that even creating a state of fear in minds of only a small number of people can lead to terrorism. In addition, this definition only includes actions against governments, and not contains actions against private groups or individuals. According to this

definition, any attack on private properties is terrorism. However, the mentioned convention attempts to consider acceptable norms in the definition (Daihim, 2001). The Convention was signed by 24 countries and only India approved it, but it was never enforced because of not reaching a quorum. The World War II ignored auspices of the convention, and it was forgotten by dissolution of the Nations Community. Despite the fact that the Convention was not binding, however, reflected views of governments on terrorism. Achieving the League of Nations to define terrorism, while the UN has not been achieved, can be a great success.

Although this may be justified due to smaller number of countries at the time and homogeneity to their political views, but the global atmosphere on eve of the World War II, wide and broad definition of terrorism, as well as unreasonable and disproportionate ambitions on time conditions, which they are revealed in various provisions of the Convention, are reasons for failure of international efforts to combat terrorism. The arose disputes and conflicts during adoption of both conventions caused to form the idea that in fact, practical cooperation to fight against terrorism is more important than endless debates about the definition of terrorism. The failed experience of the League of Nations caused that United Nations adopt approach of meaning or case attitude to terrorism in the next decades.

The Islam View on Terrorism

According to Islamic law, peace and security in community is essential, and by considering several recommendations and emphatics of Islam on peace, tolerance, love and wisdom, violence, violinist and war have no originality in Islam, but it is a cross matter and it is necessary and permissible including defending the honor, hasten to aid of oppressed and liberating from oppression. In comparing concept of war with terrorism in violence, threats and threats of violence, it should be said that by considering the definition of war, it is clear that the behavior of enemy must be a positive material act (work). Therefore, leaving act and spiritual positive act (speech), as well as opinions and ideas have no effect in actuality of war. It is clear in definition of jurists and the mentioned meanings in traditions. Characteristics of an enemy behavior is that must be open and the hidden actions can not realize war. The openness of enemy action is well understood from titles of "weapons abstraction", "weapon publishing" and "weapon carrying". In war, an enemy act is mentioned as "Mojahereh", so if someone secretly carries weapons and steals other property or kill else and escape secretly, he will be an enemy. "Openness" is obvious means characteristic of war or robbery that properties are stolen as hidden. The Shiite jurists are consensus on this matter that war is not conjoined with another crime such as theft.

According to explanation of Mohaghegh Helli, "in practice, discussion on punishing an enemy is useless because if enemy even does not steal a property, we can cut off his hand". Enemy behavior includes weapon abstraction, while on terrorism, one of points with practical consensus is that violence behavior or threat to use violence is considered as a material pillar of terrorism (Al Habib, 2001). Thus, the scope of criminal behavior of terrorism is much broader than war. There is not conditioned discussion of deploying and using weapons (threat or merely violence is not conducted through weapons), but threat of violence (examined in the previous section) can also be a sign of considering an action as terrorism. It seems clear that in some cases, material behavior of terrorism may be consistent with war because it is obvious that shooting gun toward people is a violent behavior, and if there are met other requirements, it may be considered as terrorism. Jurists have difference of opinion on necessity of fulfilling criminal result in war crime i. e. people fear or their freedom and security deprive. Majority of jurists believe that if a person takes weapons on people but not fear no one because of disability, he will not an enemy. About element of motivation in the conventions and political topics of terrorism, which allocates high share in scientific and academic definitions, it must be stated that the Islamic conventions and other conventions not refer to political motivations because firstly, referring the matter lead to many conflicts and disputes on its concept, and thus has a lot of effects on interest this issue; and secondly, it caused ignoring some acts of terrorism stay out of the included circle of the definition.

Despite the promise of well-known jurists that a specific bad intention is requirement of fulfilling war, some jurists believe that intent of fear is not requirement of fulfilling war. In Alrowzah Albahyah, Shahid Thani does not consider intent of fear as requirement of fulfilling war. In Alnahayah, Sheikh Tusi does not also mention intent of fear in the definition of war, but he believes that enemy must be from doubt followers. Many jurists have explained knowing intent of fear as requirement of fulfilling war, including Sheikh Horr Ameli, Mohaghegh Helli, Saheb Jawaher and Imam Khomeini, so that we can speak on consensus about this issue. Of course, the considered fear in war is fear by intent to corruption on the Earth. However, if it is for hatred or a specific intent –repelling enemies or bothering and insult- though not legitimate, apparently not realizing war title. In a tradition by Imam Musa Kazim (AS) in Wasael Alshiah, is quoted about a person who attacked with a spear to another person, he said: if he wanted to joke, it will be okay. By considering to the story, it can be found that using weapons for purposes other than fear

prevented realization of war. In general, to compare the mental element of the crimes, we should consider separation: while bad intention in war means intent to use weapons, general bad intentions in terrorism refer to use or threaten to use and violence. The crimes are common in specific intents, which is to create terror and fear (Ziaei Bigdeli, 2006).

Conclusion

The study aimed was to compare perspective of international and Islam law on the concept of terrorism. We should admit that it will be deception to provide a complete unilateral definition on a phenomenon that has become the most important security challenge in many countries. In this way, we need to follow a specific order and accompanying political leaders, lawyers, government experts, sociologists, economists and psychologists. Undoubtedly, to focus on terrorism, we should define it to clear its nature properly, but for various reasons, not different countries and scientists have been unable to reach a common definition, but even the United Nations has been faced with this problem. The United Nations has tried to provide a common definition of terrorism, which is accepted by all countries, to achieve the desired result. However, the efforts are not in place because interests of the major powers to demand concepts such as liberation movements are considered as terrorism, but some countries support and want to strengthen them. Although it is ideal and necessary to determine the matter, but it must be admitted that dealing with the issues will cause no results, like previous actions, and there will no progress in achieving the concept of terrorism. Now, in numerous resolutions and declarations of the Security Council and the General Assembly, as well as international conventions on terrorism, terrorism is considered as a threat to international peace and security and it is inconsistent with the purposes and principles of the Charter. In the International Criminal Court, although there is not considered terrorism on the Statute of the Court, but according to the Resolution (E of the Conference of Rome and Article 123 of the Statute that has predicted revising the constitution, and on the other hand, changes resulting by 9/11 attacks, it is likely that in the near future, we will see terrorism in crimes under the Court's jurisdiction.

In general it can be said that despite more than 70 years of introducing terrorism in the international arena and holding dozens of conventions, protocols, resolutions, declarations and statements on various aspects of the phenomenon, there is still no strong definition on the concept of terrorism in context of the United Nations system, but anti-terrorism conventions (both global and regional) have provided a strong legal basis for actions against terrorism (Tayeb, 2003). By considering to the mentioned matters, it can be said that international law has not achieved an acceptable global definition on terrorism because of different reasons including differences in national and political interests as well as ideological differences. In studying the position of Islam in category of terrorism, it must be mentioned three points: firstly, to recognize and understand true position of Islam towards violence known as terrorism, we should consider the accepted Islamic principles and fundamentals that every Muslim is obliged to observe them, and we should use Quran, hadith and Islamic jurists' word effectively to explain Islam positions. Secondly, to examine the real face of terrorist acts attributed to Muslims, we should distinguish Islam and Muslims. Generalizing any diversion in the field to Islam and all Muslims is departure from scientific and ethical rules.

Thirdly, no incentive -even religious motives- can justify terrorist acts and teachings of Islam condemn terrorism, even if they occur as martyrdom operations. Although the word of terrorism is not available in Islamic law, but there are terms in Islamic resources that associate the concept of terrorism in mind. There are two titles in Islamic law and jurisprudence that they are crime and prohibited in Islam and can be considered as evidence of terrorism: war and attacking unexpectedly. In Islamic sources and traditions, murdering a non-murder and non-corrupt human as well as bleed of a respectful human are prohibited strongly.

In Islamic jurisprudence, the respected life –human life- is respected and a person who deprives a life will be considered as murder. Life right has been recognized not for Muslims but for all people, regardless their religion. Life of a person cannot be deprived, unless in cases that Islam allows it (Sign 31, Sura Maedah). Of course, Islam has ordered killing in retaliation and war with the God, but they are not conducted without permission of Imam or his special deputy. The actions will return peace and security to the society.

The Prophet (P.B.U.H) has ordered killing persons in some cases (it can be seen in Imams traditions too) persons who dispraised the Muslims, help to enemies of Islam and neglected public security, but the actions cannot be considered as terror based on Islam fundamentals. As Islamic governors, the Prophet (P.B.U.H) and Imams who have judgment position, have issued order to kill the persons and have returned peace to the Islamic society by the action. Of course, it is necessary to mention that such cases are rarely occurred and they are not general and certain order and they cannot be generalized to other matters. In general, it can be said that Islam is based on empathy and forgiveness, it opposes with non-right killing human beings, of course, right cases are limited such as killing enemy. The rare ordering murder of special people by the Prophet and Imams are not fit with any criteria and principles of

terror, and Islamic principles and rules exit such cases from the concept of terror, in addition dignity of issuer of the orders.

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