

Characteristic Features of Terrorism at the State Border of Ukraine

Abstract: The article deals with characteristic features and peculiarities of terrorism at the state border of Ukraine. The approaches to the definition of characteristic features of terrorism have been analysed. Having studied scientific works and legislation, the authors set out characteristic features of terrorism at the state border of Ukraine.

Keywords: terrorism, countering terrorism, State Border Guard Service of Ukraine, units of border protection, state border of Ukraine

The phenomenon of terrorism has no national borders, and its scale represents a real threat to society and the state. This question is especially acute when it concerns the state border of Ukraine because terrorism gets to Ukraine from countries where terrorist organizations are formed across the state border.

A number of scientists have studied characteristic features of terrorism, among them: R. Barkar, P. Bilenchuk, O. Burnos, S. Denysov, V. Yemelianov, D. Kaznaiev, V. Kantsir, V. Korshunov, V. Kravchuk, O. Kravchuk, V. Kulik, V. Lipkan, V. Maiorov, D. Nikiforchuk, N. Paziuk, M. Rudenko, O. Fedotov, H. Foros, B. Hoffman and others [1, p. 205]. However, characteristic features and peculiarities of terrorist actions at the state border of Ukraine and within the border areas have not been investigated yet.

The purpose of the article is to define characteristic features and peculiarities of terrorism at the state border of Ukraine.

According to the Law of Ukraine “On Combating Terrorism”, terrorism is a socially dangerous activity that means conscious, purposeful application of violence by hostage-taking, arson, murder, torture, intimidation of the population and authorities or committing other attacks on the life or health of innocent people or threats to commit criminal acts with the purpose to achieve criminal goals [2, p. 1].

Considering contemporary terrorism, its international, national and regional trends, P. Bilenchuk and V. Kulik identify the following characteristic features:

- Organized violence that is dangerous to the life and health of people [3, p. 15]. Terrorism at the state border may be directed against the persons crossing the border, representatives of control services, individuals living in controlled border areas and against border guards.

- Deliberate creation of a situation of fear [3, p. 15].

- A massive shock that disorganizes work of society [3, p. 15].

- The public nature of terrorist acts [3, p. 15]. Today at the state border there is a possibility of concealing the terrorist activity and presenting these facts in a different perspective, such as the kidnapping of the border guards in Sumy region, which the representatives of the Russian Federation filed as an illegal crossing of the state border [3, p. 15].

- Someone always takes responsibility for the act of terrorism [4, p. 16]. This characteristic feature is not required when the characteristics of terrorism associated with the activity of terrorists at the state border of Ukraine are taken into account. No one has taken responsibility, in particular, for bringing down Boeing 777 near Torez in the Donetsk region on July 17, 2014 yet.

- Direct harm is caused to third parties in order to achieve a goal [2, p. 16]. The violation of the state border by terrorist groups in the Luhansk and Donetsk regions of Ukraine first encroached on the territorial integrity and sovereignty of the Ukrainian state, and then on the life and health of its citizens, causing chaos and disorder.

- Increased danger to the public [3, p. 16].

V. V. Maiorov figuring out the nature of terrorism in Ukraine comes to the conclusion that terrorism, which at first glance may seem internal (in its form), actually has international roots, and therefore (in essence) is international [5, p. 17]. When finalizing the dissertation research in 2010, V. Maiorov considered the possibility of committing illegal actions on a part of citizens of Ukraine (terrorism-related), but they were still instigated from outside through the application of certain mechanisms of influence (information, political, economic, etc.) and by their content they would be planned and orchestrated from outside [5, p. 17]. What really happened in 2014 is that the terrorist groups which had been brought in were joined not only by the residents of the Crimea, Luhansk and Donetsk regions, but, unfortunately, also by some servicemen of the State Border Guard Service of Ukraine (hereinafter referred to as "SBGSU"), which is a reflection of prolonged exposure to the ideas about the so-called "Russian world" from the Russian Federation (hereinafter referred to as "RF") influencing the consciousness of the inhabitants of these regions.

Overall, at the present stage, we can trace the evolution of terrorism. V. Kantsir and I. Serkevych call it "a mutation" of terrorism, changing of its "genetic material" [6, p. 110]. This is manifested in the following:

1 Transformation of terrorism tactics. Nowadays, modern terrorism does not comprise just isolated individual actions, but a series of terrorist actions against a wide range of individuals and objects, carefully prepared and carried out by qualified personnel and well-organized groups. There is a sharp quantitative growth of terrorist acts with numerous victims and considerable material losses, as well as uniting the efforts of certain extremist groups and criminal organizations at the international level to achieve their political goals [7].

2 Improving the structure of terrorist groups and strengthening the secrecy of their activities. Terrorists operate undercover to pursue personal political interests of the legitimate state power in particular (RF).

3 Improvement of forms and methods of terror. The use of extremely violent forms and methods of fighting by terrorist organizations increases the risk of so-called technological terrorism acts. These include, first and foremost, the use or threat of using of nuclear, chemical and bacteriological weapons, radioactive or highly toxic chemicals, biological substances, and also the extremists' attempts to capture nuclear and other industrial facilities.

4 Modern terrorists embarked on the use of achievements of scientific-technical progress. Progress gives rise to new types of terrorism, the destructive power of which is continuously growing. The threat of a new kind of terrorism – informational or electronic – is taking on special significance today.

5 Terrorism based on religious and ethnic hatred is growing.

6 Particularly dangerous is a high level of illegal migration, especially from countries where terrorist organizations are acting [7]. The common state border with the RF is typical of direct danger and the threat of a terrorist nature at the state border of Ukraine, and that requires vigilance and especially high attention of the personnel of the SBGSU serving at the Eastern border.

Terrorism is changing in terms of its purpose (it becomes multi-purpose), forms and methods. It involves not only political exposure, but also encroaches, as mentioned, on ethnic, religious bases, etc. Today's terrorism cannot be considered only as a political phenomenon, it manifests wholly selfish, ambitious, narcissistic as well as usual lucrative motives. Such activity is characterized, in addition to conducting terrorist attacks, by acquisition of arms and ammunition, preparation and training of terrorists, setting up special terrorist groups or recruitment of individuals, financing terrorist activities and so forth [8, p. 95-100].

The unusually high degree of public danger of the terrorist threat is due to the magnitude of the consequences of terrorist crimes and a significant number of victims suffering as a result of the commission of the acts. There is a trend of creating large paramilitary terrorist groups, with a maximum level of organization (hierarchy), developed

infrastructure within the country and abroad, strengthening the links with organized crime, including transnational and undisguised “donation” at the management level of foreign countries [6, p. 110]. So, Russia provided the anti-aircraft missile complex “Buk” used by terrorists for shooting down the Boeing 777 aircraft [6, p. 110].

These events resulted from massive violations of the state border of Ukraine by the terrorists from the occupied part of the territory of the Donetsk and Luhansk regions of Ukraine and their organized activity in these areas. Such terrorist activity of organizations and individuals is one of the main contemporary threats to national security of Ukraine in the sphere of ensuring territorial integrity and security of the state border of Ukraine.

Alongside with national, international, ideological, criminal, religious terrorism, R. Barkar and G. Foros offer to distinguish such kind of terrorism as technological, and call it cyberterrorism. This is due to the fact that a rapid increase in the number of personal computers, free Internet access and the rapid development of the modern technology market have both positive and negative effects. Given the national security of Ukraine, there is a dangerous tendency of increasing the technical and technological vulnerability of the state from cyberterrorists’ cross-border manifestations [9, p. 99].

Today, a significant external threat for Ukraine is the spread of informational terrorism, which is a new kind of terrorist activity, focused on the use of various forms and methods of temporary or permanent incapacitating the information infrastructure of the state or of its elements, also through wrongful use of information structures to create conditions entailing severe consequences for various parts of life of an individual, society and the state [10, p. 13]. The cyberterrorism is one of its kind, using modern information technologies and especially the Internet, when such weapons are used to damage the important state infrastructure (such as energy, transport, government) [9, p. 100].

The SBGSU also aims at ensuring the preservation of confidential, service information and state secrets [11, p. 153] from cyberterrorist attacks, which have been repeatedly harmful to other public authorities.

The use of information by terrorist groups and their psychological influence with the aim of manipulating people’s minds is threatening to the duties of the SBGSU’s personnel, so the task of the personnel of the bodies of the state border protection is to provide clarification, conduct conversations with local residents, publicize the activities of the agency in the media, which should establish an appropriate authority of the border guards and not hinder their lawful activities.

As mentioned by theorist and practitioner O. Fedotov, in order to effectively combat such a dangerous phenomenon as terrorism it is not enough to assign criminal liability for committing terrorist acts, there should be established a reliable and powerful mechanism of dealing with it that will allow a comprehensive approach to solving this problem. The scientist says that the special role belongs to the administrative and legal mechanism because it is associated with the direct implementation of the state policy in all major spheres of social life in all major areas. Besides, most of law enforcement agencies operate within the administrative-legal mechanism and use its methods and tools [12, p. 192]. We agree with O. Fedotov’s fair opinion that combating terrorism is focused towards administrative enforcement, including administrative and legal support of the SBGSU.

The importance and urgency of countering the terrorist threat at the state border of Ukraine is understood not only by the leadership of our state and the border guard agency, but also by international partners. So, at the National Academy of the State Border Guard Service of Ukraine named after Bohdan Khmelnytskyi from 27 November to 1 December 2017, officers of information and analytical, operative-investigational units of regional directorates, bodies of the state border protection of the SBGSU and employees of the State Fiscal Service of Ukraine (hereinafter referred to as “SFSU”), in the framework of the implementation of the international technical assistance project “Assistance to the State Border Guard Service of

Ukraine in the fight against terrorist threats” jointly with the OSCE project co-ordinator underwent interdepartmental training on the “Detection of terrorist threats”. During this period, 5 representatives of the SFS of Ukraine and 10 employees of the SBGSU successfully completed the training.

Rapid changes in the field of state border security, the immigration crisis in EU member states and the growing threat of terrorism require a new approach to taking preventive measures for counter terrorist manifestations and to identifying attempts of moving across the state borders of extremist-minded persons and means of terror. Now there is a situation when Ukraine is experiencing an acute need for better mechanisms of processing analytical information for effective and targeted detection at the state border of terrorists, means of terror and sabotage. Therefore, the strategic goal of the project was the implementation of experience of the best international practices and enhancing the effectiveness of countering terrorist threats at the border. Improving the efficiency of the personnel who directly perform the tasks at the state border should be accomplished by the way of their training and goal-orienting for the search and identification of relevant threats.

Modern terrorism is characterized by D. Kaznaiev and O. Burnos as a large-scale provocation and transformation of terrorism into a tool of the global restructuring of the world. Such terrorism solves simultaneously several tasks, among which the key one is denying the possibility of objective analyses of the situation and state sovereignty in making decisions to other countries [13, p. 69].

The spread of terrorist acts on the territory of Ukraine and their growth in the global statistics have been destabilizing the society, state and political system of the country and violating the political and social stability and thereby reducing the efficiency of public authorities. Terrorist activity is among the most dangerous and unpredictable phenomena. It is distinguished by special dynamism and diversity and capacity for adaptation and modernization in terms of basic civilizational trends of our time – globalization [13, p. 71].

Terrorism has a specific goal, by means of violence (although not always, such as already mentioned cyberterrorism), to achieve desirable development of events for terrorists – destabilization of society, the outbreak of war with another state, gaining independence of a territory, the fall of the prestige of power, etc. [14, p. 100].

New terrorism of the 21st century is not the same as former ultra-left radical ideological concepts. Those ideologies were discussed in government institutions and classrooms, modified as a result of elections and other political actions. They had a notable role of “a street man”, which modern international terrorists lack. Everything they do depends on the figure of the leader (like Osama bin Laden). Nowadays in any country of the world modern terrorists no longer have former revolutionary hopes for a victory over the “old regime”. In addition, contrary to the popular belief, misery itself does not breed terrorism, and modern terrorists are not fighting for social equality. Moreover, their personal, including “blood and vengeful”, specific market interests are becoming clearer and clearer. The terrorist activity launched in the east of the country convincingly demonstrates the essence of the new terrorism. Political statements in the form of “taking responsibility” for their actions have almost disappeared [15, p. 96].

The main characteristics of modern terrorism are globalization, international orientation, political diversity and dynamism in the change of appearance. The global nature of terrorism is defined as the coverage of the countries in which terrorist organizations operate, and the consequences of its activities for mankind, which are manifested in all spheres of human existence: political, economic, social, and spiritual [16, p. 322].

V. Tsyganov’s statement seems quite relevant regarding the fact that terrorist acts increasingly acquire features and functions of sabotage aimed at causing maximum possible damage. Terrorism is increasingly becoming a total diversionary war, and a pending terrorist attack may turn out to be much more harmful and stronger than a prevented one [15, p. 97].

On the basis of an analysis of the scientific development in the field of terrorism, A. Bernatskyi characterizes modern terrorism in the following way: it has a political framework, is carried out by sub-national groups and by organizations with a managerial hierarchy and a secret structure of elements; it means using violence, causes wide resonance in the public opinion, is planned in a way that causes deep psychological effects; it is a protest against the economic-cultural domination of the Western civilization [17].

The question regarding the anti-terrorist operation (hereinafter referred to as “ATO”) in the East of the country remains controversial. What is going on there? Is it “terrorism”, “an armed conflict”, “a war”, or “a hybrid war”. These concepts are interrelated and interchangeable in the situation. As a result, V. Nastiuk and S. Trofimov note that international humanitarian law applies to situations of armed conflicts, but it prohibits “terrorism” or “terrorist acts” committed in an armed conflict. On the contrary, “terrorism” and “an act of terrorism” committed in peacetime” (i.e. in situations which cannot be qualified as armed conflicts) are considered (covered or prohibited) under other legal regimes typical of national anti-terrorism legislation, the legal status of refugees, internally displaced persons, etc. [18, p. 40]. But the current situation in the global sphere of law-enforcement and in Ukraine testifies to the mixing of states when terrorist acts are committed during an armed conflict or when a war begins with acts of terrorism, in particular, with seizing state institutions of power, blocking the work of checkpoints across the state border, which led to a partial loss of control on the Russian-Ukrainian border and further bringing in armed terrorists and militants to the territory of our state.

Among scientists there has been an ongoing debate about the nature of terrorism, in particular, V. Yemelianov says that terrorism has no political character, O. Mykhailov claims that terrorism, in a narrow sense, has only a political nature. B. Hoffman also insists on political characteristics of contemporary terrorism [19]. We agree with the position of O. Mykhailov and B. Hoffman and believe that terrorism at the state border has mainly a political nature as it is directed either against authorities – SBGSU (control services), or against the state border being a line on the political map of the world which defines the boundaries of the state sovereignty and independence of Ukraine.

In Ukraine there is a paradoxical situation: in the East of the state there has been an anti-terrorist operation going on for four years, on the occupied territory of the Donetsk and Luhansk regions there exist self-proclaimed so-called “Donetsk and Luhansk People’s Republics” (hereinafter referred to as “DPR” and “LPR” respectively). The Armed Forces of the DPR and the LPR are at war with Ukraine’s law enforcement agencies, and their activity is typical of the above-mentioned characteristics of modern terrorism at the state border of Ukraine. These entities have not yet been recognized by the laws of Ukraine as terrorist organizations although there have been several unsuccessful attempts to vote for such a bill in the Parliament of Ukraine.

This uncertainty already has implications in litigation. Today there are dozens of complaints from citizens of Ukraine who are in custody on charges concerning their involvement in the activities of terrorist organizations in the DPR and the LPR. They seek clarification what legislative act determines that such organizations are terrorist in order to use this in their defence in court. Another question concerns today’s opponents of crimes that involve the creation of terrorist organizations that according to law are not of a terrorist nature. Thus, there really is a certain legal collision – what aiding and abetting terrorists are prosecutors talking about?

The Security Service of Ukraine and the Military Prosecutor’s office qualify the activities of the organizers and active participants of the DPR and LPR under article 258-3 of the Criminal Code of Ukraine (creation of terrorist organizations, leadership and participation in terrorist organizations, facilitation of the establishment and activities of terrorist organizations). But some courts do not want to “mess” with a “terrorist” article and prefer to

the use of article 260 of the Criminal Code of Ukraine (participation in an illegal military formation), because detainees usually deny their participation in combat actions and claim they just “stood guard”, and it is very difficult to prove that they were accomplices of terrorists. Here is a representative quote from the decision of one of the courts of the Donetsk region: “In the national legislation of Ukraine, neither the Act of Ukraine “On Combating Terrorism”, nor any other legislative act defines the process of the recognition of a terrorist organization and competent authorities, which must apply for the recognition of a group as a terrorist organization. Currently there is no legislative act or judicial decision on the recognition of the self-proclaimed so-called Donetsk People’s Republic as a terrorist organization”.

Therefore, for solving the described problem in the judicial and legislative procedure it is necessary to recognize the self-proclaimed so-called DPR and LPR as terrorist organizations (a procedure of recognition by the United Nations of the DPR and LPR as terrorist entities in the future).

Summary

The article details characteristic features and peculiarities of terrorism at the state border of Ukraine analyses the approaches to the definition of characteristic features of terrorism. Taking into account the analysis of the essence and content of modern terrorism, after the authors studied scientific works and legislation, they defined characteristic features of terrorism at the state border of Ukraine:

- the nature of the terrorist activity is one of the main contemporary threats to national security of Ukraine in the sphere of ensuring the territorial integrity and security of the state border of Ukraine;
- it has a political character as regards the territorial claims of another state (now the RF) and undermines the activity of the state authorities of Ukraine: the SBGSU and other control bodies and services that deal with the admission of citizens, vehicles and cargoes across the state border;
- it can manifest itself in the form of violent actions, and with the application of information and telecommunication tools (e.g. information effects on the minds of the personnel of the SBGSU, the population of the border regions and cyberterrorism);
- it can cause significant human losses (harm to the life and health of citizens), taking hostages, and disabling operations of technical equipment;
- it can be directed against servicemen of the SBGSU who serve at the state border, against representatives of control departments and authorities, against citizens living in the controlled border areas and against persons who are temporarily at the border crossing points, with the purpose of crossing the state border of Ukraine;
- such terrorism has the objectives of: intimidating people, preventing the activity of the SBGSU or even terminating operations at the border crossing points across the state border of Ukraine, seizing a part of the territory of the state;
- constant transformation of forms and methods of conducting the terrorist activity;
- if we speak about terrorism in the eastern territories of our country, it is motivated by, and organized with the assistance of, the government of the RF and came to Ukraine at least by the inaction of the Border Guard Service of the Federal Security Service of the RF;
- the terrorist activity at the state border could escalate into an armed conflict in which terrorists neglect and therefore do not adhere to the norms of international humanitarian law (shell civilians, representatives of the Red Cross, etc.);
- while the responsibility after a terrorist act was taken by the terrorist organization that had committed it first, nowadays it is not typical of modern-day terrorism and in the sphere of the state border; on the contrary – terrorists blame the government for their actions;

- the terrorist activity results in criminal penalties although prevention and detection of the signs of its preparation involves performing operational and administrative measures by law enforcement bodies, including the personnel of the SBGSU;
- the terrorist threat requires constant vigilance and a quick correct response (taking a correct decision) by a serviceman or servicemen who discovered the possibility of a terrorist act (since there may not be time for coordination with higher authorities), so it all depends on the professionalism and competence of the personnel to act in such an emergency situation.

Prospects for the further scientific research include the study of forms and methods of countering terrorism at the state border of Ukraine.

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