

Countermeasures against Terrorism through Criminal Justice in China

Zhao Bing-zhi * & Wang Xiu-mei**

1. Introduction

For a long time, terrorism has been seriously endangering state security, social stability and safety of people's life and property of every country in the world and destroying the global stability and flourish. After "9.11" terrorism attack, terrorism prevention and punishment has become the concerned issues by international community. Facing the current anti-terrorism situation, every state in the world pays highly attention to the function of criminal justice. The worldwide effect caused by terrorism makes the criminal justice face new challenges in many countries and territories.¹

China is currently facing realistic threat of terrorism either. The threats are coming from, such as: terrorism activities being carried out by East Turkistan terrorism groups, Independence of Tibet directly impair the social stability and safety in Northwest China. Chinese national interests are suffering threat from terrorism abroad. Chinese nationals and their properties in foreign countries are attacked. International terrorism activities inflict potential threat to the safety of Chinese energy transportation as well. International terrorism groups act frequently in Central Asia, South Asia and Southeast Asia, which presents a tendency that terrorism acts penetrate into Chinese territory.² For these reasons, China has developed a series of judicial methods to punish terrorism. However, since terrorism has the character of transnational, organizational, multiform and severe harmfulness, Chinese criminal justice practice is still facing new challenges.

2. Chinese Criminal Justice on Punishing Terrorism Crimes and Existed Problems in Practice

2.1. Chinese Criminal Justice Practice on Punishing Terrorism

2.1.1. Chinese policy on punishing terrorism: Terrorist is the public enemy for human being. International community has reached consensus on fighting against terrorism. However, states do not reach a common sense on issues, such as what is the concept of terrorism, what is the origin of terrorism and what kind of measures should we take to prevent and punish it effectively. Establishing anti-terrorism policy which is to meet the situations of the concerned country will be a fundamental work for operating criminal justice.

In recent years, facing the growing threat of terrorism on national security and social stability,

* Dean & Professor of College for Criminal Law Science and Law School of Beijing Normal University, Tutor for Doctorial Candidates; President of Criminal Law Research Committee of China Law Society, Executive Vice President of Chinese Group of International Association of Penal Law.

** Professor & Assistant to Dean of College for Criminal Law Science, Vice-Director of Institute for International Criminal Law at College for Criminal Law Science, Tutor for Doctorial Candidates; Vice-General Secretary of Criminal Law Research Committee of China Law Society, Vice-General Attorney of Beijing Fangshan District People's Prosecurotary. Thanks Dr. Du Miao and Qiu Ling for their contribution to the paper.

¹ See Ai jing, *New Variations of the Foreign Criminal Justice*, People's Court Daily, at A4 May 13, 2005.

² See Zhang jie, *Anti-terrorist Policy for China: Principle, Content and Measures*, Modern Asia and Pacific, Vol. 11, 2005.

Chinese government issued declaration on anti-terrorism standpoint and principle, signed a series of implements and international conventions, and gradually formed an anti-terrorism policy with Chinese characteristics. New perspective of security with the key concept of “mutual trust, mutual benefit, equality and cooperation” is the leading principle for China to formulate anti-terrorism policy and develop international anti-terrorism cooperation.

Basing on new perspective of security, China establishes fundamental policy of anti-terrorism, that is, to condemn and oppose all forms of terrorism; to address both its symptoms and root cause in fighting against terrorism; to take comprehensive measures; to fully exert the leading role of UN in combating terrorism.³ By anti-terrorism policy, China has expressed its clear stand in dealing with terrorism rationally, which becomes a guideline for criminal justice.

2.1.2. Enhancing prevention and punishment on terrorism in accordance with law: Facing the increasing threat from terrorism, Chinese Criminal Law of 1997 added new article involving punishment of terrorism. Article 120 provides that the crime of forming, leading and participating in terrorism organization.

In 2001, right after “9.11” terrorism attack, UN Security Council adopted Resolution of 1373 immediately, It required the state parties to implement the Resolution both in criminal legislation and in criminal justice, which urged China to enhance preventing and fighting against terrorism. On November 2nd, 2001, Supreme People's Court, Supreme People's Procuratorate and Ministry of Public Security jointly issued the *Notice on Strictly Combating Terrorism Activity In Accordance With Law*. On December 29th, 2001, Standing Committee of Chinese National Congress adopted the Third Amendment of *Criminal Law of People's Republic of China*, which was an important legislation for China to implement international obligation required by anti-terrorism conventions. What Chinese government did in legislation shows the standpoint that Chinese government holds to combat terrorisms.

On January 25th, 2002, Supreme People's Procuratorate issued the *Notice on Seriously Carrying Out and Executing the Third Amendment of Criminal law of People's Republic of China*. This Notice made clear requirements on the role played by Procuratorate organizations of each level in the criminal justice which mainly included: clearly realized social harmfulness of terrorism and the importance of developing anti-terrorism campaign; comprehensively understood and accurately applied relevant regulations of the *Third Amendment of Criminal Law*, fully exerted the function of Procuratorate Organ in the course of fighting against terrorism; strictly followed Chinese legal provisions and correctly applied the legal policy; enhanced the communication of information and strictly carry out relevant working system.

In order to maintain the unity of China, to keep social stability and the smooth operation of modernization construction, China firmly fights against all forms of terrorism crimes. For example, The Eastern Turkistan Islamic Movement, which was announced as a terrorism organization by UN on Sep 11th, 2002, had sent their cadre into Chinese territory, recruited some terrorists and set up training camps in Pamirs mountain areas to conduct terrorism training activities.

On Jan 5th, 2007, while being searched by Chinese Public Security organ, these gangsters resisted arrest with arms and caused one policeman dead and another injured. Chinese

³ See Rong Chang-hai, “Explanation of Chinese Anti-terrorism Policy”, at People's Daily, A2, Feb 10, 2003.

policemen shot down 18 of these terrorists and seized another 17 members, captured 22 self-made hand grenades and 1500 semi-manufactured ones.⁴

2.1.3. Identifying terrorism organization and terrorists by law: “East Turkistan Islamic Movement” is the main threat faced by China now. Since 1990s, in order to achieve their goal of destroying the unity of China, members of “East Turkistan Islamic Movement” in Chinese territory and their overseas members have planned, organized and conducted a series of terrorism activities, such as explosion, assassination, arson, spreading poison and terrorism attack in Xin-jiang province and in relevant countries.

In the mean time, “East Turkistan Islamic Movement” is also in collusion with some international terrorism organizations like Al Qaeda and Taliban, this not only seriously endangers security of life and property of Chinese people, but also threatens the security and stability of related countries and territories.

On December 15th, 2003, Ministry of Public Security of PRC formally identified the four organizations as terrorisms organizations i.e. “East Turkistan Islamic Movement”, “The Eastern Turkistan Liberation Organization”, “The World Uygur Youth Congress” and “The East Turkistan Information Center” and announced Hasan·Mahsum and other 10 persons as terrorists. Meanwhile, China called for foreign governments especially their executive departments to clamp down above-mentioned four terrorism organizations, not allow them to act in relevant countries, prohibit providing support, sponsorship and protection to terrorists and freeze their assets; to conduct criminal investigation to those 11 wanted terrorists, identify their location, arrest them and transfer the seized terrorists to China for pursuing their criminal responsibility.⁵

In the course of identifying these terrorism organizations and terrorists, China has followed related UN anti-terrorism conventions and complied with relevant legal regulations, such as *Criminal Law of People’s Republic of China* and *National Security Law* etc., and conducted the identification through strict discrimination and prudent examination. After the announcement of the list, China received a good evaluation from international community and deterred the activities of domestic and overseas members of “East Turkistan Islamic Movement” and brought a great help for prevention and punishment on terrorism.

2.1.4. Actively participating in international criminal judicial cooperation: Today, terrorism has become a global “plague”. International terrorism organizations are active in every corner of the world. These organizations have obvious characters of transnational and trans-regional. Therefore, depending on some states and some regions to control and fight against these groups solely can not eradicate their root, role and development. Thus, along with Chinese persistent standpoint on anti-terrorism, China actively participates in many forms of international criminal judicial cooperation.

On the global level, China actively supports the international anti-terrorism campaigns led by UN and seriously carries out a series of anti-terrorism resolutions adopted by UN Security Council, such as Resolution of No.1373, No.1333 and No. 1390 etc. In addition, in order to improve

⁴ See Wang Hui-min, Dai Lan, Destroying a training camp of East Turkistan Islamic Movement, at People’s Daily 4, Jan 9th, 2007.

⁵ See Zhai Hui-min, “Ministry of Public Security Announced the First Batch of Terrorist Organizations, at Legal System Daily 1, December 16th, 2003.

anti-terrorism cooperation in accordance with international law, China has signed or entered into 12 anti-terrorism conventions such as *International Convention for the Suppression of Terrorist Bombings*.⁶

On the regional level, in June 2001, state parties of Shanghai Cooperation Organization jointly concluded the instrument of *Shanghai Convention on Combating Terrorism, Separatism and Extremism*, which provided important legal bases for China to deal with trans-border terrorism.

On December 28th, 2002, Standing Committee of the National People's Congress approved the *Decision of approving Agreement of the States Parties of Shanghai Cooperation Organization on Regional Anti-Terrorism Agency* and the criminal judicial cooperation between state parties of Shanghai Cooperation Organization was further enhanced. Besides, in order to facilitate exchange of information and enhance the cooperation in financial field such as freezing assets of terrorism organizations, China also concluded several treaties on extradition and criminal judicial assistance with surrounding regions and relevant states.

2.2. Problems Existed in Judicial Practice to Punish Terrorism in China

Taking one with another, the judicial practice to prevent and control terrorism in China has made an obvious achievement, has effectively deterred terrorism groups inside and outside Chinese territory and guaranteed the security of state, maintained social stability and ensured the safety of people's life and property. However there are still the weaknesses and problems existed in criminal judicial practice, especially in anti-terrorism matters, then improve and adjust it with pertinence, so as to meet the need of developing situation of anti-terrorism.

Firstly, there are some problems in crime identification. In *Criminal Law 1997* and *the Third Amendment of Criminal Law 2001*, crime of forming, leading and participating in terrorism organization, crime of financing terrorism activity and crime of money laundry are stipulated; in *Decision On Several Issues In Implementation Of Criminal Procedure Law* which was jointly issued by Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, National Security Bureau, Ministry of Justice and the Legislative Affairs Commission of Standing Committee of National People' Congress in 1998 regulated that among offenses like crime of forming, leading and participating in terrorism organization which is complicated and jointly committed by several persons, if defense lawyer apply for interviewing suspect, the interview must be arranged within 5 days.

⁶ The international anti-terrorist conventions signed or entered by China are: Convention on Offences and Certain Other Acts Committed on Board Aircraft of 14 September 1963(Tokyo); Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970(Hague);Convention for the Suppression of Unlawful Acts against the Safety of Civilian Aviation of 23 September 1971(Montreal);Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 14 December 1973(New York);International Convention against the Taking of Hostages of 17 December 1979(New York);Convention on the Physical Protection of Nuclear Material of 3 March 1980(Vienna);Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 24 February 1988(Montreal);Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 10 March 1988(Rome);Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf of 10 March 1988(Rome);International Convention for the Suppression of Terrorist Bombings of 15 December 1997(New York);International Convention for the Suppression of the Financing of Terrorism of 9 December 1999(New York); International Convention for the Suppression of Acts of Nuclear Terrorism of 13 April 2005 (New York);

Above-mentioned legislative and judicial documents had used the special terms of “terrorism crime”, “terrorism organization” and “terrorism activity” in terrorism crime. However, the regulations concerning terrorism was too general and lack of identical, specific interpretation for these concepts, which influenced the identification of such crimes as forming, leading and participating in terrorism organization, caused the difficulty for judicial organ to determine the nature of the cases and further influenced the effect of judicial application. Meanwhile, the understanding of legal regulations by administration organ, judicial organ or different judicial organs is usually not identical. Since they have divergence on identification of specific crime, different forces can not combine together, and objectively weaken the strength for striking terrorism. Therefore, how to clarify the vagueness between legal understanding and legal application has become the difficulty for judicial organ in the course of dealing with cases concerning terrorism crime.

Secondly, there are problems in discretion of punishment. Since current Chinese criminal law does not explicitly regulate the concept of “terrorism crime”, the terrorism crime must be presented in form of ordinary crime.⁷ Chinese criminal law does not independently regulate terrorism crime. In judicial practice, acts like intentional killing, explosion, arson and etc. committed by offenders with terrorism intent will be convicted and sentenced as relevant ordinary crimes. According to regulations of Chinese criminal law, the only articles directly related to terrorism crime are article 120 (crime of forming, leading and participating in terrorism organization) and article 120-1 (crime of financing terrorism activity), even there are some other articles related to criminal conducts of terrorism crime, they will be following the elements and punishments of relevant ordinary crimes and being treated exactly the same as these ordinary crimes due to the inexplicit regulations.⁸

Since there is no special regulation on criminal responsibility for terrorists in Chinese criminal law, even some offenders leave away from terrorism organization or actively provide help to national authority; their performance can only be regarded as discretionary circumstances and need to be considered flexibly and applied conditionally in sentencing phase. Due to lacking of concrete form, application of discretionary circumstances presents a great arbitrariness: some should not have been included elements, for example, turbulence of the public might be considered as discretionary circumstance; some should have been included elements, for example, the offender has intent of terrorism is usually ignored due to lacking of legal provisions. Just like what pointed by some scholars, due to lacking of concrete form, the influences caused by discretionary circumstances on sentencing not only has time difference but also has territory difference which are greatly effecting the impartiality, balance and rationality of sentence.⁹

Thirdly, there are problems on identification of terrorism organization. Ministry of Public Security announced the first batch of four terrorism organizations on December 15th, 2003, and China had sentenced some cases of crime of forming, leading and participating in terrorism organizations. Thus it can be seen that both People’s Court and Ministry of Public Security has the authority to

⁷ See Chen Zhong-lin, “Identification of terrorist crime in Chinese Criminal Law” at *Modern Jurisprudence*, Vol 5, 2002.

⁸ See Zhang Xu, “Punishment and Prevention on Terrorist Crime: Actuality, Problem and Countermeasure”, at *Journal of National Prosecutors College* Vol. 4, 2002.

⁹ See Ma Ke-chang, *Treatise on Punishment*, Publishing House of Wuhan University, P361, 2002 Ed.

identify terrorism organizations, that is, China has actually taken a double-track system of coexistence of judicial identification and administrative identification.

In this double-track system, both judicial organ and administrative organ has authority of identifying terrorism organization. The judicial identification means, depending on facts and legal regulations, People's Court identifies whether an organization belongs to terrorism organization during the phase of criminal trial and the final object is to convict and sentence the defendant; administrative identification means, according to legal regulations, administrative organ identify whether an organization belongs to terrorism organization with the aim of facilitating development of international cooperation and taking public security, diplomatic and financing measures in campaign of fighting against terrorism organization.¹⁰

However, China does not legislatively clarify the scope, consequence and link between these two kinds of identification, thus the confusion in criminal justice is aroused: whether crime of forming, leading and participating in terrorism organization and crime of financing terrorism action can be identified according to conclusion drawn by Ministry of Public Security or must identify it by Court? From this point, we can see Chinese system of identification of terrorism organization is still not perfect, which unavoidably brings some contradictions and puzzles for anti-terrorism tasks and effects the development of criminal justice.

Fourthly, there are problems in criminal judicial cooperation. In the framework of Shanghai Cooperation Organization, China has developed effective anti-terrorism cooperation in criminal justice. *Shanghai Convention on Combating Terrorism, Separatism and Extremism* has also provided a good legal base for it. Now, state parties of Shanghai Cooperation Organization have reached a common sense on terrorism organization and successfully carried out extradition and other varieties of cooperation.¹¹

However, the efficiency of cooperation in field of anti-terrorism between China and other countries, especially countries in Europe and America are limited in some way. On the one hand, the right and duty of developing international criminal legal assistance are based on international conventions or multilateral, bilateral treaties. While the legislation level for each state on anti-terrorism is not equal. Some states' domestic legislation has not followed international conventions or multilateral, bilateral treaties in some extent, which restrict efficient development of criminal legal assistance. On the other hand, terrorism has obvious political and ideological elements, which brings great trouble to anti-terrorism cooperation.

Under the condition of having no bilateral treaty with other country, even we can carry out legal assistance through diplomatic approaches and following mutual benefits principle, the cooperation is still affected by attitude of other countries and political will. With the development of international criminal law, the exception of extradition for non-applicability of the political offence and right of asylum are abused to some extent, which is obstacle for cooperation of international community on punishing terrorism crime.¹² For example, on May 5th, 2006, US Navy sent 5

¹⁰ See Zhao Bing-zhi, Du Miao, and "The Mode of Identifying a Terrorist Organization" at *Modern Law Science*, Vol. 3, 2006.

¹¹ For example, China has signed Agreement on Combating Terrorism, Separatism and Extremism with Uzbekistan, Kyrgyzstan, Tajikistan and Pakistan, which regulated mutual assistance in information exchange, techniques and material assistance, investigation and trial.

¹² See Suo Wei-dong, "The Four Major Issue Disturbing International Legal Assistance", at People's Procuratorate

suspects of “East Turkistan Islamic Organization” who were jailed in US naval base of Guantanamo to Albania as “refugees”, and did not repatriate them to China instead.¹³

3. Countermeasures on Punishing Terrorism Crimes in Chinese Criminal Judicial Practice

3.1. Improving the Criminal Legislation on Punishing Terrorism Crime

Since terrorism has the characters of specialty and complicity, we can not effectively fight against terrorism crimes only depending on ordinary criminal rules and preventive, punishing measures. Therefore, China should improve its criminal legislation under the framework of relevant UN Resolutions and international conventions and in conjunction with Chinese own situation so as to reach coherence with foreign anti-terrorism legislation, to establish a firm foundation for bilateral or multilateral cooperation and reduce the resistance on anti-terrorism criminal practice. Generally, following main aspects should be considered for perfecting Chinese criminal legislation on punishing terrorism crimes:

Firstly, the basic concepts should be clarified. Until now, we still have no concepts like “terrorism crime” in Chinese legislation. This is surely a great deficiency in anti-terrorism legislation in China. Based on serious domestic and international situation of fighting against terrorism crimes, it is in great necessity for criminal law to make clarification on concepts like “terrorism crime”. We argue that, based on domestic situation and with full reference of advanced experiences of foreign countries, China should identify concepts like “terrorism crime” scientifically and precisely. Since there is no well accepted concept of “terrorism crime” in the world today, we have to create this concept according to Chinese own situation and could not simply transplant foreign regulations so as to avoid the passivity in anti-terrorism cooperation. However, terrorisms in modern society have obvious international characteristics, each country has an imminent desire for anti-terrorism cooperation and this kind of cooperation also has a brilliant future. Thus, Chinese criminal legislation can not deviate from international trend. We may take experience of well legislations from developed countries as reference and practice them under Chinese situation.

Secondly, the crimes provided by criminal law should be improved. Perfection of crimes in Chinese criminal law also can improve the efficient development of criminal judicial practice. In Chinese criminal law, the crimes are considered as terrorism crimes are with character of anti-terrorism such as forming, leading and participating in terrorism organization and crime of financing terrorism activity. According to the principle that crimes and punishments should be provided by law, we can not convict and sentence the terrorists whose acts have not been definitely regulated by criminal law. This can neither meet the need with anti-terrorism practice nor fulfill related responsibility required by international conventions. In practice, destructive and violent activities are not the only choice for terrorists, simply delivering threat is also a kind of potential weapon.¹⁴ Chinese criminal law does not consider the action of threatening government

Daily 6, Oct 25th, 2006.

¹³ See, Li Hong-wei & Jiang Xue-qing, “China Asked For Extraditing Suspects of East Turkistan Organization”, at Global Times 1, May 10th, 2006.

¹⁴ For example, in September 2005, “East Turkistan Liberation Organization” alleged publicly through BBC: “will take any means to launch an armed war towards Chinese Government”, it is enough to make a terror atmosphere and has

with violence as terrorism crime. Thus, we can not punish this kind of conduct with great harmfulness according to specific crimes provided by criminal law. In addition, China has entered into *International Convention for the Suppression of Terrorist Bombings* and should bear corresponding obligations.

However, in Chinese criminal law, crime of explosion is regulated in Chapter Two (crimes of endangering public security) of specific provisions. It might be an ordinary crime and also might be an international terrorism crime which can easily arouse divergence in the course of deciding criminal jurisprudence and in phase of sentencing. For this reason, China should further improve provisions of terrorism crime, should add some specific crimes like “terrorism activity” etc., make it different from ordinary crimes. With regard to international conventions ratified by China, China should add crime of unlawful obtaining and using nuclear materials, crime of endangering the safety of fixed platforms located on the continental shelf etc..

Finally, Chinese punishment system should be improved. In Chinese criminal law, the regulation of crime of financing terrorism activities provided pecuniary punishment for not only individuals but also for legal persons, while crime of forming, leading and participating in terrorism crime only bear responsibility of depriving freedom and political rights, has nothing concerned with pecuniary punishment. In practice, terrorism organizations usually rely on certain financial support, activities of these terrorism organizations including recruitment, training, equipment, collecting information and carrying out terrorism attack, which are all depending on material supports. Terrorism organizations can not only receive financial support through donation, business with superficial legal way but also through illegal activities. In order to efficiently fight against terrorism organizations and thoroughly destroy their abilities of expansion and revival, it is necessary to provide pecuniary punishment to crash down their revival ability. We suggest that we should add pecuniary punishment in article 120(crime of forming, leading and participating in terrorism organization) of Chinese Criminal Law and set corresponding punishment for organizer, leader, active participator and participator according to their own social harmfulness.

Besides, terrorism crimes have extreme social harmfulness. If offenders voluntarily carry out any act of diminishing or eliminating social harmfulness, it indicates that their personal dangerousness was degraded. Thus, it is necessary for China to provide special commutation reasons so as to alienate and disorganize terrorists and encourage them to repent. Particularly, we may consider breaking through current regulations of discontinuation, voluntarily surrender and meritorious performance and providing a bigger commutation degree for terrorists whose conducts are satisfying certain conditions.

3.2. Implementing Criminal Policy with Mercy in Criminal Practice

In recent years, China has pronounced the criminal policy with mercy and made it a basic criminal policy for maintaining social security and punishing crimes. Under the background of new age of anti-terrorism, criminal policy with mercy has the guiding role on criminal practices such as investigation, prosecution, trial and execution. With regard to the problems existed in anti-terrorism practice, we should take some measures pertinently and ensure the implementation of mercy policy in anti-terrorism practice.

severe social harmfulness, while there is no specific crime regulated in Chinese Criminal Law. See Li Zhan-jun, *Terrorism and International Prevention*, Chinese Economic Publishing House, P182, 2006 Ed.

Firstly, terrorism crime should be punished heavily and timely according to the law. Compared with ordinary crimes, terrorism crime not only directly injury person and destroy poverty but also creates a long, durable horror atmosphere in society. Compared with ordinary criminals, dominated by frenetic idea and thought, terrorists obviously have much greater harmfulness. Fighting terrorism heavily according to the regulations of criminal law is not only the requirement of principle of suiting responsibility and punishment to crime but also an efficient way to eliminate public's panic and restore social order. Punishing terrorists heavily means to give heavier sentence to terrorists complying with relevant regulations of criminal law under statutory conditions and within statutory limits. Punishing terrorists timely means, under the precondition of thorough identification of the fact, to prosecute and punish the terrorists as soon as possible according to the procedure and limitation regulated by criminal procedure law. Just as what was pointed by Beccaria that the smaller the interval of time between the punishment and the crime, the stronger and more lasting will be the association of the two ideas of crime and punishment; so that they may be considered, one as the cause, and the other as the unavoidable and necessary effect.¹⁵

Secondly, punishing terrorism with severe nature should be enhanced. Criminal policy always has its target mission and can identify its target group according to the category of crimes and criminals. With regard to terrorism crimes, we should emphasize on fighting organized crimes. Among these crimes, even the criminals are punished, terrorism attacks will occur if the criminal organizations still exist and the horror of the public can not be disappeared. We should also emphasize on fighting violent crimes, for example, killing others with an extreme cruel fashion, killing vulnerable persons like women and children, explosion, hijack hostages and so on. We should emphasize on fighting transnational crimes. For terrorism crimes combining with international terrorism, organizing and planning outside the territory and committing the crime in domestic, we should devote much more efforts without any mercy.

With regard to terrorists, we should emphasize on fighting ringleader of terrorism organization. It has the decisive meaning for identifying the fact of crime and destroying terrorism organization. We should emphasize on punishing recidivism. These criminals usually regard their service duration in jail as glorified qualification and will carry out terrorism activities even more crazily than before. We should emphasize on punishing extremely radical terrorists. These terrorists fanatically believe in extreme idea, use any means to realize their objective and have great dangerousness.

Thirdly, occurrence of terrorism attack from origin should be prevented. In practice, terrorism attack can not be carried out without human resource, financing and equipment. Under the condition of being punished by states in the world, terrorism has new trends to combine with drug crime and smuggling.¹⁶ Therefore, we should pay more attention to crimes such as crime of illegal manufacturing, trading, transporting and storage of dangerous materials, crime of stealing

¹⁵ See Beccaria, *Comprehension of the Crime and Penalty*, Translated By Huang Feng, Encyclopedia of China Publishing House, P57, 1993 Ed.

¹⁶ On April 6th, 1998, Chinese Custom intercept and capture 6 military pistols, 1 micro submachine gun, 19000 bullets, and 90 hand grenade. According to confession by suspects, they were assigned by "International Commission of East Turkistan" and "East Turkistan Liberation Organization". See Information Office of the State Council, "East Turkistan terrorism power can not get away with their responsibility", at Jiangnan Times, A5 January 21st, 2002.

or forcible seizing gun, ammunition, explosive and dangerous materials, money laundry, crime of illegal crossing national border, crime of teaching another person how to commit a crime and crime of smuggling arms and ammunitions and so on. We should degrade the possibility of occurrence of terrorism attack as much as possible through establishing three-dimensional defense structure over terrorists, doubtful financing and dangerous materials.

Fourthly, individual treatment to terrorists should be provided. The essential content of criminal policy with mercy principle of justice is individual treatment or differential treatment. Individual treatment is the foundation of any criminal policy, without differences there will be no criminal policy.¹⁷ In practice, terrorists can be divided into stubborn terrorists and moderate terrorists. We should treat them differently in the course of sentencing and execution.

At the phase of sentencing, we should emphasize particularly on heavy punishment for stubborn terrorists but not exclude reasonably mercy. We should emphasize on reasonable mercy to moderate terrorists which do not mean indulging them.

At the phase of execution, we should pay much attention to particularity of terrorists. Education and correction must be changed from traditional forms and measures into scientific forms and measures so as to satisfy the norm of individual execution required by modern society. For example, attaching importance to psychological examination and personality investigation for offenders; separating terrorists from ordinary criminals and detaining terrorists of different types separately to avoid cross infection; designing correction plan according to offender's own character.

Fifthly, human rights should be respected and protected during the course of criminal justice. While designing the procedure for fighting terrorism, it will surely encounter the conflict between freedom and security. The value orientation should be ensured first and then enough consideration to freedom should be provided. However, fighting terrorism should also have the procedural limitation. This limitation should be embodied in dualistic values represented in anti-terrorism procedure. Minimum requirement for freedom should be respected as well. In detail, in any condition, fighting against terrorism can not violate minimum standard established by international conventions entered by China. These norms are intensively embodied in rights of suspects for attaining humanitarian treatment and fair trial and also the right of life.¹⁸ In fact, we can see that from the case of abuse of prisoners by the Forces of the United States, simply countering violence by the way of violence not only violates international norm of human rights, but also can not reach the objective of eliminating both terrorism activities and terrorism roots.¹⁹ In order to meet the requirements of justice with principle of mercy, it is not permitted to abuse punishment or introduce unfair treatment even to terrorists with extreme subjective viciousness or committed extremely serious crimes. As to minority terrorists and terrorists with religious belief,

¹⁷ See Chen Xing-liang, "Research on Criminal Policy of Tempering Justice with Mercy", at *Juridical Science Journal* Vol 1., 2006.

¹⁸ See Li You-biao, "Consideration on Procedure for Striking Terrorism", at *Police Research*, Vol. 10, 2003.

¹⁹ For example, investigator of US take the measures of insulting the prisoner, shocking them by electricity, biting them by dogs and obscenity to abuse them rouse a great furors in international community and incur unprecedented challenges and criticism on American domestic moral education, political democracy, value of human rights and foreign policy. See *Reports on the abuse of prisoners by the forces of the united states*, Translated by Zhao Bing-zhi etc., Publishing House of Chinese People's Public Security University, P4, 2005 Ed.

we should also respect their customs and religion.

3.3. Improving Identification System for Terrorism Organization

China has carried out identifying terrorism organization in practice. But relevant system is still not perfect enough and this is also an important issue need to be solved immediately. We argue that, according to Chinese legislations and reality of anti-terrorism task, it is more suitable for Chinese situation and with greater advantage to identify terrorism organization by administrative organ.

First, we should analyze essential character of terrorism organization. Since terrorism organization always has certain political aim, it seems not suitable to identify its political nature by judicial organ and judicial organ is not fit for assuming too much administrative affairs.

Second, there is advantage of timely, flexible and with comprehensive influence for analyzing the identification consequence, administrative identification, which can not be replaced by judicial identification.

Third, administrative identification is much fit for Chinese situation for analyzing working content and human resources. Anti-terrorism is a long and complicated project, identification organ should trace the movement of terrorism organization and timely adjust the list of terrorism organization in accordance with the development of international situation and the need of Chinese anti-terrorism task.

Finally, administrative identification does not violate the rule of law of modern society. Relationship between administrative identification and judicial identification is not mutual contradicted, for example, "espionage organization" regulated in article 110 of Chinese Criminal Code also takes the fashion of administrative identification.²⁰

In detail, China may point the supreme administrative organ as the sole organ for identifying terrorism organization through legislation so as to get connection with criminal justice. In practice, it can be identified either by State Council or by specific department authorized by State Council, such as Ministry of Public Security. It is only necessary for judicial organ to make sure the suspects who had committed crimes of forming, leading, participating or financing terrorism organization and through which we can identify that the objective aspects of relevant crime were found. There is not any necessity for judicial organ to recognize whether the organization belongs to terrorism organization.²¹

3.4. Enhancing the International Criminal Cooperation on Anti-terrorism

Modern terrorism has an obvious international character. China has an urgent desire and a brilliant future to cooperate with other countries due to geographical reason. However, some countries always take double standard. It makes not only the extradition and legal assistance hard to be operated, but also has negative effect of terrorism spread. We suggest that China should enhance international criminal cooperation on anti-terrorism and facilitate international prevention on terrorism as soon as possible. On the one hand, we should insist on respecting the leading position of UN on anti-terrorism cooperation. United Nations is the biggest and the most

²⁰ Article 4(2) of Implementing Rules of the State Security Law of the People's Republic of China provides, "The identification of espionage organizations and their agents shall be conducted by the Ministry of State Security of the People's Republic of China (hereinafter referred to as "the Ministry of State Security")."

²¹ See Zhao Bing-zhi, Du Miao, and "The Mode of Identifying a Terrorist Organization" at *Modern Law Science*, Vol. 3, 2006.

universal international organization with vast range of functions.

Since 1970s, UN has adopted more than 10 anti-terrorism conventions. *Comprehensive Convention on International Terrorism* is being drafted now. Can we achieve the goal of this tough task of preventing and punishing terrorism under leded, coordinated and designed by UN, which developing varieties of criminal cooperation with states and international organizations. On the other hand, we should try Chinese best to extend cooperation field and actively search for new cooperation forms. Except for cooperating with state parties of Shanghai Organization, we should think highly of the cooperation with western countries especially European countries and US, and leave no space for terrorists in the world on the other hand.

Meanwhile, with regard to characters of terrorism, for example, vast range of distribution, great flexibility, advanced technical instrument and tendency of internationalization, we should take more cooperative approaches and create new cooperation ways such as training anti-terrorism task forces for other country, carrying out united anti-terrorism activities and discussing about new approaches for preventing terrorism etc.²²

4. Conclusion

In September 2006, the assembly meeting of UN adopted *Global counter-terrorism strategy*, which said "To make every effort to develop and maintain an efficiency and rule of law-based national criminal justice system that can ensure, in accordance with Chinese obligations under international law, that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in support of terrorist acts is brought to justice, on the basis of the principle to extradite or prosecute, with due respect for human rights and fundamental freedoms, and that such terrorist acts are established as serious criminal offences in domestic laws and regulations. "²³

With the situation getting worse for anti-terrorism every day, it can be considered as a reasonable fashion to prevent and fight terrorism by criminal measures. However, in practice of criminal justice, simply relying on strict application and heavy punishment can not eradicate the origination of terrorism. On the contrary, it will intensify social conflicts by doing so and inflict many negative effects on campaign of fighting against terrorism.

Terrorism is a complicated social phenomenon, which is created by the mixed function of social elements like politics, economy, culture and religion and etc.. Only by taking the comprehensive measures can we achieve Chinese final goal of preventing terrorism. Criminal law is the most serious legal statutes for adjusting social relations and protecting human rights, getting more rational and scientific is the developing tendency for criminal law. Therefore, even under the situation of terrorism's running rampant, we should not simply counter violence by the way of violence. We should maintain sufficient sense and caution in criminal justice.

²² See Zhang Xu, "Punishment and Prevention on Terrorist Crime: Actuality, Problem and Countermeasure ", at *Journal of National Prosecutors College* Vol. 4, 2002.

□ 《Global counter-terrorism strategy》 (September 20th, 2006).