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The Legislative Criminal Policy of the Islamic Republic of Iran towards the Criminal Phenomenon of Terrorism

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Abstract

Terrorism has been derived from the Latin root "terror" meaning fear or panic. It means an action performed by an individual or a group of people who seek to achieve their political goals through the creation of fears and the use of force. The violent and illegal acts of governments to suppress their opponents and horrifying them is an instance of terrorism, referred to as "state terrorism". The root of the term "terror", in this sense, dates back to the French Revolution; i.e., between 1792 and 1794, known as the era of terrorism. Thus, the term "terrorism" can be defined as "creating fear among a mass or group of people in order to break up their resistance and establish a political system or process based on this fear through the use of violent acts". Jurists have two different views about whether terrorism is an independent criminal act, or a criminal offense under criminal law. The first view is that terrorist acts fall into one of the criminal offenses, and the judge dealing with the case must find the accusation title in the criminal rules depending on the act performed by a terrorist. In fact, terrorism is not a new crime in its concept, and terrorist acts are considered among crimes against persons, such as murder and assault, or crimes against property such as destruction and firing, or crimes against security and general welfare, such as waging war against God and corruption on earth, and the German and Iranian legislators support the first view. The second view holds that terrorist acts are relatively new criminal offenses, which should be independently criminalized in the legal systems of countries. France supports the second view, as the French legislator made reforms in 1996 in the penal code adopted in 1992 and dedicated a specific article to terrorism.

Keywords: criminal policy, terrorism, waging war against God, corruption on earth, criminalization

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1- Introduction

Jurists have two different views about whether terrorism is an independent criminal act, or it is a criminal offense under criminal law. The first view is that terrorist acts are among the criminal offenses, and the judge dealing with the case must find the accusation title in the criminal rules depending on the act performed by a terrorist. In fact, terrorism is not a new crime in its concept, and terrorist acts are considered among crimes against persons, such as murder and assault, or crimes against property such as destruction and firing, or crimes against security and general welfare, such as waging war against God and corruption on earth, and the German and Iranian legislators support the first view. The second view holds that terrorist acts are relatively new criminal offenses, which should be independently criminalized in the legal systems of countries. France supports the second view, as the French legislator made reforms in 1996 in the penal code adopted in 1992 and dedicated a specific article to terrorism. We seek in this paper to discuss the criminal offense of terrorism and the criminal offenses of hijacking and hostage-taking as examples of terrorist acts.

2- Terrorism

In recent years and especially after the September 11 terrorist attacks in 2011, many international terrorism documents have been adopted by the international community to prevent and combat terrorism both at the regional level among the countries of a particular geographical area and at the International level.

2-1. The legal element of terrorism and international conventions

1. Convention on Offences and Certain Other Acts Committed on Board Aircraft (December 14, 1963, "Tokyo Convention")
2. Convention for the suppression of unlawful seizure of aircraft (Approved on December 16, 1970, The Hague Convention)
3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aircraft (Hague, 23 September 1971)
4. Convention on the Prevention and Punishment of Crimes against Internationally Protected. Persons, including Diplomatic Agents (adopted on December 14, 1973, United Nations General Assembly, "New York Convention")
5. The Anti-hostage Convention, adopted on December 17, 1979, by the United Nations General Assembly
6. Convention on the Physical Protection of Nuclear Material (adopted by the International Atomic Energy Agency, Vienna, October 26, 1979)
7. Convention for the suppression of unlawful acts against the safety of maritime navigation. Concluded at Rome on. 10 March 1988, and its Additional Protocol on the Safety of Standing Platforms in the Continental Shelf
8. Convention on the Marking of Plastic Explosives for the Purpose of Detection (adopted on March 1, 1991 by the International Civil Aviation Organization)
9. International Convention for the Suppression of Terrorist Bombings
10. International Convention for the Suppression of the Financing of Terrorism. Adopted by the General

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Assembly of the United Nations in resolution 54/109 of 9 December 1999
11. International Convention for the Suppression of Acts of. Nuclear Terrorism
12. Convention for the suppression of unlawful acts against the safety of maritime navigation
13. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (adopted on February 24, 1988, "Montreal Protocol")
14. Convention against Transnational Organized Crime (Palermo - 2000)
15. International Convention against the Taking of Hostages (adopted on November 20, 2006)
16. International Convention for the Suppression of the Financing of Terrorism (adopted in 1994 by the United Nations General Assembly)
17. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Additional Protocol

2-1-1. Regional conventions
1- Convention of the Organization of the Islamic Conference on Combating International Terrorism (1999)
2- Regional Convention on the Suppression of Terrorism, South Asian Association for Regional Cooperation (SAARC) (1987, Kathmandu)
3. Inter-American Convention against Terrorism (1971)
4. European Convention on the Suppression of Terrorism. Strasbourg (1977)
5- The Arab Convention for the Suppression of Terrorism (1998, Cairo)
6. Treaty on Cooperation among the States. Members of the Commonwealth of Independent. States in Combating Terrorism (1999)
7. The OAU Convention on the. Prevention and Combating of Terrorism adopted by the 35th OAU. Summit in Algiers, Algeria, in July 1999

2-2. The actus reus of terrorism
Violence is the main actus reus of terrorism. However, the concept of violence is a bit ambiguous and the use of "violent acts" in defining terrorism implies the use of a form of invasion in the perpetrator's behavior, which is manifested in the form of crimes such as murder, destruction, and firing. Although terror has various and unlimited instances and is manifested in different forms depending on time and place, a review of the international conventions about its common instances indicate that doing any of the following acts makes up the actus reus of the crime of terrorism.

2-2-1. Making the roads insecure, doing action against certain means of communication, hijacking, armed attack on international airports, seizure and looting of civilian ships
The acts listed in Section (a) are the most common international terrorist acts. Internationally, more than four multilateral conventions have been adopted so far to deal with these terrorist acts, and in terms of jurisprudence, such terrorist acts are instances of waging war against God. Titles such as "brigandage" and "robbery" can be said to be among such terrorist acts.

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2-2-2. Taking the public comfort and endangering the lives, property and honor of the innocent people

Most blamed terrorist acts take public comfort and social security and endanger the lives, property and honor of innocent people. Several international conventions have been adopted to combat such terrorist acts.

2-2-3. Terrorism of the heads of states, diplomatic agents, prominent international political figures

So far, several international conventions have been adopted to combat such terrorist acts.

2-2-4. destruction of public places, contamination of food or water, stimulation of contagious diseases, use of chemical weapons

This is a terrorist act about which the international community is very concerned and several international conventions have focused on combating the use of chemical and pathogenic weapons so far.

2-2-5- Aiding and abetting terrorism

The financing of terrorists is part of the terrorist crimes that are considered as aid and abet in this crime. Forging documents, money laundering, and making tricky money are among the things that terrorists do to meet their financial needs. So far, several international conventions have been adopted to combat the financing of terrorism.

2-3. The mens rea of Terrorism

If we want to know about the mens rea of a terrorist crime, we must determine the perpetrator's intention which is manifested by creation of fear and panic among the public and at least part of the society.

By creating fear among the public terror, terrorists pursue an illicit goal which is considered illegitimate at least by the society and government, although it may be considered legitimate by some other societies or governments. Some may perform terrorist acts in order to achieve political or religious or even personal goals. However, as much as terrorist acts are intended to intimidate or create fear among part of the community, it is enough to establish the mens rea of terrorism (Yazdani et al., 2010, p. 204)

2-4. Terrorism in the Iranian laws

Although terrorism has been mentioned in some of the Iranian laws, the Islamic Penal Code has always preferred to avoid using the word "terrorism", and has used some indigenous terms such as "Waging war against God" and "corruption on earth" instead, which imply fear and threat. Several articles of the Islamic Penal Code have implied combating terrorism.

In addition to numerous articles of the Islamic Penal Code, which have directly or indirectly dealt with terrorism and the financing of terrorism, there are other enforceable laws in Iran that state or imply such a combat with terrorism on a wider level, such as the Penal Code of the Railway Crimes of 1941, the Law on the Punishment of the Disrupters in the Iranian Oil Industry adopted in 1957, the Law on the Exacerbation of the Punishment for Robbery adopted in 1959, the Law of Punishment of Disrupters in Aircraft Flight Security and Sabotage of the Aviation Facilities approved in 1970, the Law on the

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Exacerbation of the Punishment of the Smuggling of Weapons and Ammunition and Artillery Traffickers adopted in 1971, the Penal Code for Disruptors in Water, Electricity, Gas and Telecommunications Installations adopted in 1972, the Penal Code for Disruptors in the Industry adopted in 1974, the Enactment of Article 19 about the entry and residence of foreign nationals in Iran approved in 1977, the Penal Code of Smugglers of Persons Illegally across Borders approved in 1988, the Law on Amendments to the Counter-Narcotics Law adopted in 1988, and the Penal Code of Armed Forces Crimes adopted in 2003.

In addition, accepting the international obligations on terrorism and combating the financing of terrorism by the Government of the Islamic Republic of Iran and its reflection in the laws and regulations can also be found in the international conventions that have been approved and enforced so far. From a legal point of view, the contents of the conventions that the Iranian government has submitted to the Islamic Consultative Assembly as a bill for approval are equivalent to the domestic law and thus enforceable according to Article 9 of the Civil Code.

3. Hijacking

Hijacking which is done on land or air, with any intention and action, in order to divert the aircraft from its normal route or to destroy it, should be considered a new crime which has appeared after the Second World War. This new phenomenon, if developed and expanded, will be a huge threat to the security of global air communications (Foyoozi, 2007, p. 327)

Hijacking is among the crimes considered against aircraft safety in legal instruments such as the Tokyo Convention of 1963, the Montreal Convention of 1971 and the 1970 Hague Convention, as well as in domestic laws such as the Single Article for the Punishment of Disrupters of Aircraft Security, as well as the Civil Aviation Act.

The definition of hijacking in domestic laws has been presented only in Section 1 of the single article. Although some lawyers believe that Article 23 of the Civil Aviation Law also deals with it, this article states that "if a person is convicted of using a false mark intending to put an aircraft or its occupants in danger, they will be sentenced to prison for a period ranging from six months to three years. It can be said that the legislator has only meant the act of sabotage, which can be justified by the fact that the hijacking crime was not so common and the airline industry was a newly developed industry in the year this law had been approved (1949).

In the preliminary draft of the International Law Commission on international crimes, Article 1 deals with hijacking or any crime against aerial communications. According to Article 1, the following acts are considered crimes when done with previous intent:

A) Capturing or controlling an aircraft by force or threat or intimidation;

(B) Any violent act against persons in a flying aircraft which may disturb the safety of the aircraft on the fly;

C. Destruction of an aircraft that is in service or destruction in it in such a way that it can no longer fly and its safety for flight is disrupted;

(D) The placement of any object or explosive and dangerous objects with any intent and motive in a flying aircraft in order to destroy or damage it, in such a way as to endanger its health and safety during the flight;

(E) Destruction or damage to the aircraft guidance and navigation facilities or irrelevant interference in

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their performance and work, or any other action leading to a disruption or danger to the safety and health of a flying aircraft;
(C) Inaccurate and false information that endangers the safety and health of a plane during the flight.
Terrorists often act as a group of people equipped with weapons and explosives. The first group forces the cabin staff to surrender, and the second group forces the pilot to direct the plane to their intended destination. A flying airplane, if attacked, becomes very vulnerable and easy to be seized illegally. The pilot and staff of a plane, whose main objective is to preserve the safety and lives of passengers, are often not entitled to resist against the criminal acts committed against the aircraft (Foyoozi, 2007, p. 328)

3-1. Legal element of Hijacking
The legal element of this crime has been mentioned in the following international conventions.

3-1-1. Tokyo Convention on Offences and Certain other Acts. Committed on Board Aircraft, adopted in September 14, 1963;
This convention, adopted to provide aircraft security, addresses offenses that are in conflict with domestic criminal laws and acts that disturb the aircraft's security, whether or not it is a crime. The main purpose of the convention is to establish the flag State's jurisdiction over the crimes occurring inside the aircraft. The convention allows flight officials to take reasonable actions in relation to flight safety. These measures include preventing the arrival of people who have reasons to take action against the security of the aircraft. Under this Convention, the contracting states are required to seize the perpetrators and return the control of the aircraft to the pilot (Yazdani and Sheikhoun, 2010)

3-1-2. Chicago Convention on International Civil Aviation, Dec. 7, 1996;
3-1-3. The Hague Agreement for the Suppression of Unlawful Acts, December 16, 1970;
This convention, which aims to increase cooperation among the member states with regard to hijacking, has defined the hijacking crime and forced the member states to impose severe penalties against perpetrators of such acts in their penal laws.

3-1-4. Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, adopted on 23 September 1971
This convention complements the 1970 Hague Convention concerning combat against hijacking and defines other civilian anti-aircraft violent acts.

3-1-5. Beijing Convention on the Safety of Aviation, adopted on 10 September 2010
On September 10, 2010, the Beijing Diplomatic Conference approved two anti-terrorism instruments with the aim of improving aviation security. The Beijing Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation adopted in 2010 and the Beijing Protocol supplementary to the Hague Convention on the Prevention of Unlawful Arms are aimed at strengthening the existing legal framework on combating terrorism and facilitating the prosecution and extradition of perpetrators of terrorist acts.

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3-2. Actus Reus of Hijacking

The actus reus of this international crime is the commission of one of the following material acts;

1- The destruction of the plane

2- The placement of any object or explosive and dangerous objects with any intent and motive in a flying aircraft in order to destroy or damage it, in such a way as to endanger its health and safety during the flight;

3- Destruction or damage to the aircraft guidance and navigation facilities or irrelevant interference in their performance and work, or any other action leading to a disruption or danger to the safety and health of a flying aircraft;

4- Providing inaccurate and false information that endangers the safety and health of a plane during the flight.

3-3. Hijacking in the Iranian laws

Hijacking is one of the terrorist crimes. The first hijacking in Iran occurred on June 21, 1970, and three armed Iranians kidnapped a national airline jet and took it to Iraq, and the Iraqi government provided them with political asylum1. Hijacking was criminalized in Iran by the enactment of the Law for Punishment of Disrupters in Aircraft flight safety and Sabotage in Aircraft Facilities on February 23, 1971.

4. Hostage-taking

The hostage-taking crime means arresting, detention, threatening to murder or hurting another person (hostage) in order to force a third party, i.e., a government, an intergovernmental international organization, a real person or a group of individuals who are explicitly or implicitly bound for the freedom of such a person or persons (hostages), to do or refrain from doing a certain action2.

4-1. Legal element of hostage taking

Hostage-taking has been mentioned in the following conventions;

4-1-1 Convention on the Prevention and Punishment of Crimes against Internationally Protected. Persons, including Diplomatic Agents, Annexed to General Assembly resolution 3166 (XVIII) of 14 December 1973 (New York Convention)

This convention was adopted in response to terrorist attacks against internationally protected persons, defined in Article 1 of the convention as follows:

- The head of state or any member of the group who, in accordance with the constitution of the country concerned, performs the functions of the head of state, and the president or the minister of foreign affairs, when they reside in the territory of a foreign country, and their family members who accompany him.
- Any government representative or employee, or any employee or agent of an international public organization, has the right, in accordance with international law, to receive special protection in the event of an offense against his or her official place or place of residence or his or her personal place of

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1 . http://khabaronline.ir/detail/248810/society/2458

2 . Section 1 of Article 1 of the International *Convention* Against the *Taking* of *Hostages*, 1979

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residence or vehicle. Therefore, persons protected by this convention are those who have immunity under customary international law or international treaties such as the 1961 Vienna Convention on Diplomatic Relations and the Vienna Convention of 1963 on Consular Relations, as well as Conventions on the Benefits and Immunities United Nations and specialized agencies.

4-1-2. International Convention against the taking of hostages (United Nations, 1979)

The large number of attacks and acts of violence against diplomats and violations of their immunity resulted in the adoption and ratification of the 1971 United States Government Organization Convention. Following the increased number of hostage-taking and especially the hostage taking of the US Embassy in Tehran, the General Assembly approved a convention on hostage-taking. The convention had already been proposed by Germany in 1976.

4-1-3. The Convention on the Safety of United Nations and Associated Personnel

This convention, adopted on December 9, 1994 at the United Nations General Assembly, has two goals: a) to determine the rights and obligations of the member states and the United Nations and its associated personnel, and b) to create criminal responsibility for perpetrators of attacks against those individuals. With these two purposes, this convention has a wider scope than the other documents.

"United Nations personnel" in Article 1 of this Convention are persons appointed and employed by the Secretary-General of the United Nations in military and police units or as civilians of the United Nations Operation, as well as other officers and experts in the United Nations currently serving the UN and its specialized agencies or the International Atomic Energy Agency (IAEA), who are present in a region where UN operations are carried out.

The "associated personnel" include the following persons:

- Those being on mission by agreement between the government or an international public organization and the United Nations.
- Those employed by the Secretary-General of the United Nations or a specialized agency or the International Atomic Energy Agency.
- Those employed by a non-governmental organization or NG based on an agreement with the Secretary-General of the United Nations, or with a Specialized Agency or with the International Atomic Energy Agency, to carry out activities to support the implementation of the United Nations operation.

According to Article 1, "United Nations Operation" refers to an operation performed by the competent body of the United Nations in accordance with the Charter and under the authority and control of the United Nations. Hence, these persons have been excluded from the scope of the Convention in operations licensed by the Security Council but controlled by one or more governments. However, persons participating in such national or multilateral operations may, in certain cases, be classified as "associated personnel" in accordance with Section (a) above.

The provisions of this Convention regarding individual criminal liability, such as the definition of crimes and the mechanism of prosecution of the alleged defendant have been extracted from the provisions of the New York Convention and other anti-terrorism documents.

Anyone who takes hostage or aids and abets someone who has committed or begun to commit a hostage-taking crime has actually committed a crime in accordance with this Convention. (Article 1)

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The provisions of the convention on the mechanism for prosecuting an alleged offender, such as the New York Convention and other anti-terrorism instruments have been used here.

2-4. Actus reus of hostage-taking

In accordance with article 2 of the present convention, any member state undertakes to criminalize the intentional commission of the following attacks in accordance with its domestic law:

1- Murders, kidnappings, or any type of attack against a person or the freedom of an internationally protected person

2. Violent attacks on the official place and place of residence or vehicle belonging to an internationally protected person in such a way that it endangers his or her life or liberty.

3. The threat of committing such an attack or starting it and aiding and abetting such an attack is also considered a crime.

4-3. Mens rea of hostage-taking

Hostage-taking is a deliberate crime, conducted with a general bad intention such as illegal robbery, abduction or detention, and also with a specific bad intention, namely the intention to get a criminal result, which is the transfer of a victim from one place to another or his or her detention it in one place.

4-4. Hostage-taking in the Iranian laws

We can find no crime called hostage-taking in the set of rules of Islamic Penal Code, but kidnapping is very similar to this crime, although there is a complete overlap between hostage-taking and hijacking, and it is thus necessary to criminalize hostage-taking alongside hijacking in domestic laws.

The legislator clarified the general provisions relating to the crime of kidnapping in 1996 in Article 621 of the Islamic Penal Code (Ta'zirat), , and criminalized the abduction of a newly born child in Article 631 of the same law. According to Article 621: "anyone who abducts or hides somebody or have somebody else do so, with the intention of claiming money or property, or for the purpose of retaliation or for any other purpose, in by threat or deceit, or in any other manner, he or she will be sentenced to five to fifteen years' imprisonment. If the offender is less than fifteen years old or if the abduction is carried out by a vehicle or if the victim receives a physical or moral injury, the perpetrator will be sentenced to the maximum punishment determined for the crime and if he/she commits another offense, he will be sentenced to the punishment of that crime as well.

5- Conclusion

Jurists have two different views about whether terrorism is an independent criminal act, or it is a criminal offense under criminal law. The first view is that terrorist acts are among the criminal offenses, and the judge dealing with the case must find the accusation title in the criminal rules depending on the act performed by a terrorist. In fact, terrorism is not a new crime in its concept, and terrorist acts are considered among crimes against persons, such as murder and assault, or crimes against property such as destruction and firing, or crimes against security and general welfare, such as waging war against God and corruption on earth, and the German and Iranian legislators support the first view. The second view holds that terrorist acts are relatively new criminal offenses, which should be independently criminalized in the legal systems of countries.

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The legislator in our country has used jurisprudential terms such as "Waging war against God", "Corruption on earth" and "revolt" in defining terrorism. Nowadays, the increasing incidence of the criminal phenomenon of terrorism, especially the growing trend of terrorism and fundamentalism, the best instance of which is the creation of the Islamic State of Iraq and Syria (ISIS) terrorist government, it is imperative for our country legislator to criminalize all instances of terrorism in a special criminal law and determine their criminal procedure. manner in which it is conducted in terms of criminal procedure. It is important to provide a precise definition of terrorism in domestic law along with the native similar terms such as moharebeh (Waging war against God) and baghi (revolt), separate the crimes against the internal and external security of the country from political crimes, while precisely defining the political crime, and closing the roads from which financial resources are made available to terrorists by developing a transparent financial system, because the international obligations on terrorism and the fight against terrorism financing, which have been accepted by the Iranian government, emphasize the establishment of appropriate executive mechanisms in this regard.

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