

INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

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LEGAL ASSESSMENT OF THE RUSSIAN FEDERATION'S POLICY IN THE CONTEXT OF THE ESTABLISHMENT AND ACTIVITIES OF TERRORIST ORGANIZATIONS «DONETSK PEOPLE'S REPUBLIC» («DPR») AND «LUGANSK PEOPLE'S REPUBLIC» («LPR») IN EASTERN UKRAINE

The authors consider the legal qualification of the Russian Federation's activities on the organization and support of «DPR» and «LPR». The paper examines issues of the assessment of Russian Federation's activities as state terrorism, its inclusion in the list of state sponsors of terrorism as well as the initiation of legal proceedings in the international adjudicating bodies due to the violation of international treaties for the suppression of terrorism.

Key words: Ukraine, the Russian Federation, terrorism, state-sponsor of terrorism, International Convention for the Suppression of the Financing of Terrorism 1999.

It is known that the period of February - March 2014 was marked by a few rallies of opponents of the new Ukrainian governments in Eastern Ukraine. The situation radically changed in early April, when heavily armed "activists" have begun efforts to create their own governments, which have controlled the Donetsk and Luhansk region and decide on the division of the territory of Ukraine¹. On 7 April 2014, "Republican People's Council", consisting of unknown people, proclaimed the creation of "Donetsk People's Republic" and subsequently adopted the "Declaration of the Sovereignty of the People's Republic Donetsk", "The act of declaration of independence of the DNR" as well as the "Common Appeal to the People's Committee of Donbass V. Putin"².

On 13 April 2014 National Security and Defense Council of Ukraine adopted a decision to launch a large-scale anti-terrorist operation in the eastern Ukraine with the assistance of the Armed Forces³. On the 15th April 2014 acting President of Ukraine Mr. Turchynov announced the beginning of the antiterrorist operation in the north of Donetsk region⁴. The Ministry of Foreign Affairs of the Russian Federation, which supposedly had nothing to do with the militants, responded with lightning speed, issuing a statement on their support and strong criticism to the Ukrainian authorities⁵.

¹ Месяц оккупации. Славянск. *Lb.ua*. <http://lb.ua/news/2014/05/12/266103_dim_donbassa.html>.

² Декларация о независимости Донецкой народной республики. *Medialeaks*. <<http://medialeaks.ru/statements/deklaraciya-o-nezavisimosti-doneckoj-narodnoj-respubliki>>.

³ Указ про рішення Ради національної безпеки і оборони України від 13 квітня 2014 року «Про невідкладні заходи щодо подолання терористичної загрози і збереження територіальної цілісності України» 2014 (Президент України). *Офіційне інтернет-представництво Президента України*. <<http://www.president.gov.ua/documents/17317.html>>.

⁴ Рішення Ради національної безпеки і оборони України «Про невідкладні заходи щодо подолання терористичної загрози і збереження територіальної цілісності України» 2014 (Президент України). *Офіційний вісник Президента України*, 14, 3.

⁵ Заявление МИД России в связи с осложнением ситуации в юго-восточных районах Украины. *Официальный сайт Министерства иностранных дел Российской Федерации*. <http://www.mid.ru/brp_4.nsf/0/F1CC1913E7A5273D44257CBA0019F444>.

Then Russia systematically ignored the statements and demands of the Security Council, which accused Russia of direct support of "DNR" and "LNR", and fomenting civil war in Ukraine as well as demanded the cessation of interference in the internal affairs of neighboring countries and the withdrawal of the Russian troops from the border with Ukraine¹. Moreover, Russia ignored the agreement aimed at ending the violence in eastern Ukraine, which was reached on 17 April 2014 after a meeting in the format "Ukraine – the EU – the US - Russia", which was held in Geneva².

On the 11th of May 2014 with direct support of "observers" from Russia illegal armed groups arranged "referendums"³, during which in almost millionth Donetsk and 500,000th Luhansk only a few stations were opened where residents and "political tourists" voted with copied bulletins creating so needed for the Russian authorities illusion of "internal conflict in Ukraine".

On 12 May 2014 "LNR" announced "independence from Ukraine", on 14 May 2014 "Parliament of Donetsk People's Republic" adopted "Constitution of the People's Republic of Donetsk"^{4 5}. On May 18 2014 "Constitution of the People's Republic of Luhansk" was adopted⁶ (released on the 20th of May).

On 7 April 2014 militants seized the building of the SBU (*i.e.*, Security Services of Ukraine) in Lugansk with 9 people injured and 60 people taken hostage⁷. Later Slovyansk became the epicenter of terror in Donetsk region, control over which was set by the militants starting from the 12th of April. Since then and until the liberation of the city 40 people had been imprisoned, including foreign journalists. Prisoners were tortured^{8 9}.

In May militants captured a number of other cities of Donetsk and Lugansk regions in which they openly looted, captured, tortured and killed civilians, as confirmed by the Office of the United Nations High Commissioner on Human Rights¹⁰, UN Monitoring Mission for Human Rights in Ukraine¹¹, OSCE¹², Human Rights Watch¹³, Ministry of Internal Affairs of Ukraine^{14 15 16}, and by a number of domestic and

¹ Human Rights Watch Daily Brief (15 April 2014). *Human Rights Watch*.

² Женевська заява від 17 квітня 2014 року. *Офіційний сайт Міністерства закордонних справ України*. <<http://mfa.gov.ua/ua/page/open/id/3787>>.

³ Референдум 11 мая в Донецке и Луганске: все события. *Корреспондент.net*. <<http://korrespondent.net/ukraine/politics/3361134-referendum-11-maia-v-donetske-y-luhanske-vse-sobytyia>>.

⁴ Конституция Донецкой Народной Республики от 14 мая 2014 г. <<http://worldconstitutions.ru/?p=1094>>.

⁵ Хронология конфликта на юго-востоке Украины. *РИА Новости*. <<http://ria.com.ua/dossier/20140523/349517514.html>>.

⁶ Конституция Луганской Народной Республики от 18 мая 2014 г. <<http://worldconstitutions.ru/?p=1096>>.

⁷ СБУ: в Луганську замінували будівлю та утримують заручників. *BBC Україна*. <http://www.bbc.co.uk/ukrainian/politics/2014/04/140408_lugansk_sbu_explosives_dt>.

⁸ Shuster S. Exclusive: Meet the Pro-Russian Separatists of Eastern Ukraine. *Time*. <<http://time.com/74405/exclusive-pro-russian-separatists-eastern-ukraine/>>.

⁹ Simon Ostrovsky on His Kidnapping, Detainment, and Release. *VICE News*. <<https://news.vice.com/article/simon-ostrovsky-on-his-kidnapping-detainment-and-release>>.

¹⁰ Report on the human rights situation in Ukraine. Office of the United Nations High Commissioner for Human Rights. <http://www.un.org.ua/images/stories/ОНЧР_Report_15_July_Ukraine_FINAL.pdf>. – 65 p. – P. 9>.

¹¹ Доклад ООН: Террористы используют города Донбасса как «живые щиты». *ZN.UA*. <http://zn.ua/UKRAINE/doklad-oon-terroristy-ispolzuyut-goroda-donbassa-kak-zhivye-schity-150545_.html>.

¹² Терористи заявляють, що спостерігачі ОБСЄ знаходяться у Северодонецьку як заручники. *УНІАН*. <<http://www.unian.ua/politics/926576-terroristi-zayavlyayut-scho-sposterigachi-obse-znahodyatsya-u-severodonetsku-yak-zaruchniki.html>>.

¹³ Ukraine: Rebel Forces Detain, Torture Civilians. Dire Concern for Safety of Captives. *Human Rights Watch official site*. <<http://www.hrw.org/es/node/128537>>.

¹⁴ В Славянске нашли могильник мирных жителей: боевики их пытали, резали, сжигали заживо. *ТСН.ua*. <<http://ru.tsn.ua/politika/v-slavyanske-nashli-mogilnik-zamuchennyh-terroristami-mirnyh-zhiteley-377876.html>>.

¹⁵ Казимирський С. Допит терориста з ДНР – про вбивства і зґвалтування. *Преса України*. <<http://uapress.info/uk/news/show/32628>>.

¹⁶ В Днепропетровске опубликовали списки пленных солдат и мирных жителей из зоны АТО. *Сайт города Днепропетровск*. <<http://www.056.ua/article/604132>>.

foreign journalists¹²³. Furthermore, militants committed a number of crimes to destroy the infrastructure of Donetsk and Luhansk regions⁴⁵⁶.

On 16 May 2014 the Prosecutor General of Ukraine in cooperation with the Security Service of Ukraine initiated criminal proceedings under Art. 258-3 of the Criminal Code of Ukraine (the "creation of a terrorist organization")⁷. Deputy Prosecutor General of Ukraine Mr. M. Holomsha said that the two so-called "people's republic" in Donetsk and Luhansk regions are terrorist organizations that have a clear hierarchy, channels of funding and supply of arms. The goals of these organizations are direct violence, hostage-taking, committing sabotage, assassinations and intimidation of citizens⁸.

Features provided by the Prosecutor General of Ukraine match with the definition of terrorism contained in the Law of Ukraine "On Combating Terrorism" (2003) (according to Art. 1 of the Law terrorism is defined as socially dangerous activity that is conscious, deliberate use of violence by hostage-taking, arson, murder, torture, intimidation and public authorities or any other encroachment on the life or health of any innocent people or threat of committing criminal acts to achieve criminal purposes)⁹.

It is important that the actions of militants contain all recognized signs of terrorism, *i.e.*, the creation of the state of general danger (real life in unspecified persons or other protected goods); public nature of implementation actions; focus on creation of a state of fear on social level; influence of certain individuals to meet their requirements¹⁰.

Indisputably, Militants' actions are not only defined by the Ukrainian law, but also enshrined in international treaties and acts of international organizations. Thus, in the Report of the UN Secretary General (2004) formulated the concept of terrorism as "activities aimed at taking life or causing serious bodily harm to civilians or non-combatants with the purpose of intimidating the population or compel public bodies or international organizations to do a certain action or refrain from committing"¹¹.

Art. 1 of the Shanghai Convention on Combating Terrorism, Separatism and Extremism in 2001 stated that "terrorism is any act aimed at taking life of any civilian who is not taking part in hostilities in a situation of armed conflict, or application that person serious bodily injury or substantial damage to certain material objects, as well as organization, planning such an act of aiding its commitment, incitement to commit if the purpose of such act, according to its nature or context, is to intimidate the population violation public safety or enforcement authorities or international organization to do a certain action or refrain from committing it, and that under the criminal law of the Parties"¹².

¹ В Донецке боевики «ДНР» продолжают грабить и угонять авто. *Сегодня.ua*. <<http://www.segodnya.ua/regions/donetsk/v-donecke-boeviki-dnr-prodolzhayut-grabit-i-ugonyat-avto-533222.html>>.

² Заложник ДНР: боевики из Славянска расслаблялись, пытая пленных. *Обозреватель*. <<http://obozrevatel.com/interview/74362-zalozhnik-dnr-boeviki-iz-slavyanska-rasslablyalis-pytaya-plennyih.htm>>.

³ Шевченко В. Заручники угруповання «ЛНР» розповідають про тортури. *Радіо «Свобода»*. <<http://www.radiosvoboda.org/content/article/25409082.html>>.

⁴ Террористы ограбили супермаркет в Донецке на миллион евро. *Сегодня.ua*. <<http://www.segodnya.ua/regions/donetsk/terroristy-ograbili-tc-metro-v-donecke-na-million-evro-533428.html>>.

⁵ В центре Донецка ограбили отделение одного из крупных банков. *Сегодня.ua*. <<http://www.segodnya.ua/regions/donetsk/v-centre-donecka-grabyat-otdelenie-odnogo-iz-krupnyh-bankov-533362.html>>.

⁶ Кобиляцька В. Диверсії на Сході: підри́в газопроводів, вибухи на залізниці та пошкодження водогонів. *Тиждень.ua*. <<http://tyzhden.ua/News/113360>>.

⁷ *Кримінальний кодекс України 2001* (Верховна Рада України). *Офіційний вісник України*, 21.

⁸ Самопроголошені республіки у Донецькій та Луганській областях кваліфіковано як терористичні організації. *Офіційний веб-портал Генеральної прокуратури України*. <http://www.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=138582>.

⁹ *Закон про боротьбу з тероризмом 2003* (Верховна Рада України). *Відомості Верховної Ради України*, 25, 180.

¹⁰ Емельянов, В. (2002). *Терроризм и преступления с признаками терроризирования: уголовно-правовое исследование*. Санкт-Петербург: Юридический центр Пресс, 38.

¹¹ UN Report of the Secretary-General. *United Nations official site*. <<http://www.un.org/largerfreedom/chap3.htm>>.

¹² Shanghai Convention on Combating Terrorism, Separatism and Extremism. *UNHCR*. <<http://www.unhcr.org/refworld/publisher,ASIA,,,49f5d9f92,0.html>>.

Provisions of the Art. 1 of the Agreement on Cooperation of CIS countries in Combating Terrorism (1999) defines terrorism as "the unlawful punishable act committed to violate public safety, to influence the decision-making authority, intimidating the population, manifested in the form of violence or threats in its application to natural or legal persons; destruction (damage) or the threat of destruction (damage) of property and other material objects, which may entail fatalities; causing significant property damage or any other socially dangerous consequences; attempt on the life of a statesman or public figure, committed to stop its state or other political activity or out of revenge for such activity; attacks on foreign state or international organization employee being under international protection, as well as in offices or vehicles of persons enjoying international protection; other acts that fall under the concept of terrorism in accordance with domestic law and other generally accepted international legal instruments aimed at combating terrorism¹.

The same applies to international treaties devoted to specific types of terrorist offenses, i.e., the Convention on the Prevention and Punishment of Crimes against Persons Enjoying International Protection, including Diplomatic Agents (1973)², the European Convention on the Suppression of Terrorism (1977)³, the International Convention for the Suppression of Hostage-Taking (1979)⁴, the International Convention for the Suppression of Terrorist Bombings (1997)⁵. Actions of "DNR" and "LNR" are subject to the elements of the crimes under these acts.

In our opinion, in the context of this study we presume the presence of direct link between "DNR" and "FSC" with the Russian authorities, which, *inter alia*, is eloquently illustrated by the following facts:

- An appointment of leaders of these organizations among the staff officers of the Russian Secret Services (I.Hirkin, O.Boroday, V.Antyufyeyev and others);
- Supply of militants by the Russian Federation of a large number of weapons, including heavy weapons⁶;
- Financing by the Russian authorities of "armed forces" in "DNR" and "LNR"⁷;
- Training of militants in Russia, as stated one of the leaders of "DNR" O.Zaharchenko⁸;
- Providing militants with "green corridors" on the border of Ukraine;
- The Security Service of Ukraine intercepted telephone conversations of militants leaders with their "curators" in the FSB and GRU Russia (*i.e.*, the Russian Secret Services);
- The opening of a number of "DNR" and "LNR" "missions" in Russia, governed by the Russian authorities⁹;

¹ Договір о співробітництві держав-учасників Співдружства Незалежних Держав в боротьбі з тероризмом (Мінськ, 4 червня 1999 року). *Офіційний сайт Верховної Ради України*. <http://zakon1.rada.gov.ua/laws/show/997_519>.

² Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents (with resolution 3166 (XXVIII) of the General Assembly of the United Nations) (adopted by the General Assembly of the United Nations, at New York, on 14 December 1973, No. 15410). United Nations Treaty Series (1984). (Vol. 1035). New York, 167.

³ European Convention on the Suppression of Terrorism (Strasbourg, 27.01.1977). *Council of Europe official site*. <<http://conventions.coe.int/Treaty/en/Treaties/Html/090.htm>>.

⁴ International Convention against the taking of hostages (adopted by the General Assembly of the United Nations on 17 December 1979. No 21931). United Nations Treaty Series (1983). (Vol. 1316), 205-211.

⁵ International Convention for the Suppression of Terrorist Bombings (New York, 15 December 1997, No. 37517). United Nations Treaty Series (2003). (Vol. 2149), 256-336.

⁶ Ідеолог сепаратистів: Росія постачає «ДНР» сучасною бронетехнікою. <<http://www.hromadske.tv/society/boioviki---dnr---zhaliyutsya-shcho-rosiya-pogano/>>.

⁷ Луганські терористи подякували російським комуністам за підтримку. *Еспресо.тв*. <http://espresso.tv/news/2014/06/25/luhanski_terorysty_podyakuvaly_rosiyskym_komunistam_za_pidtrymku>.

⁸ Прем'єр ДНР заявив о пополнении в 1200 бойцов, проходивших обучение в России. *МК*. <<http://www.mk.ru/politics/2014/08/16/premer-dnr-zayavil-o-popolnenii-v-1200-boycov-prokhodivshikh-obuchenie-v-rossii.html>>.

⁹ СБ України публікує перехват «розговора диверсантів». *Русская служба ВВС*. <http://www.bbc.co.uk/russian/international/2014/04/140414_ukraine_intelligence_recording>; Александров Д. Милонова назначили представителем ДНР в Петербурге. *Слон*. <<http://slon.ru/fast/russia/milonova-naznachili-predstavitelem-dnr-v-peterburge-1107406.xhtml>>; Представительство ДНР начинает работу в Москве. *Коммерсант*. <<http://www.kommersant.ru/doc/2494460>>; Макаренко В. В Ростове-на-Дону создано представительство Донецкой Народной Республики. *Новая газета*. <<http://www.novayagazeta.ru/>>

- Meetings with representatives of the terrorist leaders with Putin's entourage¹;
- Recognition of the "DNR" as independent state by Russia (27 June 2014) as RF power controlled South Ossetia²;
- Direct and repeated cursory acknowledgment of Putin's impact on separatists in Ukraine^{3,4}.

However, it is not only about leadership, but also about long-term support by the Russian Federation of terrorist groups of "DNR" and "LNR" who had at some point (and this time it was after Yanukovich fleeing to Russia on 22 February 2014) to maintain active actions aimed at seizing power in Eastern Ukraine. This is evidenced by a number of facts:

1. Plans to split Ukraine were made public by the Russian Federal Security Service nationalist movements, from the time of Maidan 2004 in order to promote the spread of anti-Ukrainian literature (the plot of a number of books was the coming war in Ukraine), TV shows and feature films, maps showing the desired boundaries; moreover, even the symbology of new "units" was developed ("DNR" flag appeared in 2008)⁵; history of the south-eastern regions of Ukraine was falsified, e.g., the duration of the Donetsk-Krivorozhskaya republic (1917-1918)⁶; finally, the chairman of the Ukrainian branch was known for his anti-Ukrainian activities at the Institute of CIS;

2. Informal association "DNR" was founded in 2006 and proclaimed the aim of decay of Ukraine; it also took part in the meetings in the Russian Federation; pro-Kremlin youth congresses at Lake Seliger in 2012 - 2013⁷. Moreover, one of the leaders of the "DNR" A. Purhin back in 2005 registered an NGO and promoted the idea of granting special status to the eastern regions of Ukraine as well as the formation of the successor of the Donetsk-Krivoy Rog Soviet Republic in 1918 – which was to be the Donetsk People's Republic. In 2006 there was a public poll interviewing residents of Donetsk on this⁸.

3. In March 2014 in the "Internet" network there was a professionally filmed video of "activists" that threatened armed insurrection in the Donbas, this time in Donetsk and Luhansk there was a significant number of unknowns to the People that once were able to organize riots (such as "People's governor" of the Donetsk region P. Hubaryev), contributions to which took a significant amount of "political tourists" from Russia⁹; moreover, hundreds of previously unknown flags of "DNR" and "LNR" started to appear;

4. Simultaneous actions that began on 6 April 2014¹⁰ took place in several cities of Donetsk and Lugansk regions to seize government buildings and, according to the Security Service of Ukraine, were

news/1682739.html>.

¹ Пушилин остается в Москве для консультаций по развитию ДНР. *РИА Новости*. <<http://ria.ru/world/20140617/1012325296.html>>.

² Указ о признании Донецкой Народной Республики 2014 (Президент Республики Южная Осетия). *Официальный сайт*. <<http://presidentruo.org/?p=9295>>.

³ Глава МИД Франции: Олланд говорил с Путиным о перемирии на Украине. *Deutsche Welle*. <<http://dw.de/p/1CDj6>>.

⁴ Президент России Владимир Путин обратился к ополчению Новороссии. *Официальный сайт Президента России*. <<http://www.kremlin.ru/news/46506>>.

⁵ «Черно-красно-синий — самый сильный». Откуда взялся флаг Донецкой «республики» и кто его производит. *Дождь*. <http://tvrain.ru/articles/chno_krasno_siniy_samyj_silnyj_otkuda_vzjalsja_flag_donetskoj_respubliki_i_kto_ego_proizvodit-367670/>.

⁶ Корнилов, В. (2011). *Донецко-Криворожская Советская Республика: Расстрелянная мечта*. Харьков: Фолио.

⁷ Так кто готовил «ДНР» до Майдана?. *Интернет-газета Свободной России*. <<http://www.kasparov.ru/material.php?id=53E9B3DAA3AA5>>.

⁸ Сборщикова В. Кто есть кто в «Донецкой народной республике». *Комсомольская правда в Украине*. <<http://kp.ua/politics/453348-kto-est-kto-v-donetskoj-narodnoi-respublyke>>.

⁹ У нагнітанні ситуації на сході України винні «політичні туристи» з Росії – Кличко. *Сьогодні.ua*. <<http://ukr.segodayna.ua/politics/pnews/v-nagnetanii-situacii-na-vostoke-ukrainy-vinovaty-politicheskie-turisty-iz-rossii-klichko-514300.html>>; Драчук С. Україна суворіше береться за «політичних туристів» із Росії. *Радіо «Свобода»*. <<http://www.radiosvoboda.org/content/article/25353510.html>>; МЗС попередило «туристів Путіна» на сході України про сувору відповідь української влади. *Тиждень.ua*. <<http://tyzhden.ua/News/106951>>;

¹⁰ Новий виток сепаратизму на Сході: захоплені ОДА й СБУ, сутички й постраждали. *Тиждень.ua*. <<http://tyzhden.ua/News/106908>>.

coordinated by the Russian special services¹;

5. Mass accreditation of broadcasters of the Russian state media in Donetsk, Luhansk, Kharkiv, Odessa, starting from the end of February 2014²;

6. Using the same technology meetings for the "reunification with Russia," and the election of " Mayors of people ", "referendum", which were used during the annexation of Crimea by the Russian Federation. Recall that Putin acknowledged Russia's military participation in the force capture of the peninsula³.

Obviously, the activity of the Russian Federation as to the organization and management of "DNR" and "LNR" requires adequate international legal qualifications. Despite the presence of a number of international instruments in the fight against terrorism, the enforceable concept of state terrorism was only adopted at the Conference on Terrorism "Geneva Declaration on Terrorism" (1987). The Declaration defines as a state terrorism the following:

a) the practice of the police state against its citizens: tracking, acceleration assembly, control the news, beatings, torture, false arrests, mass arrests, false accusations, show trials, murder;

b) delivery of the state the nuclear weapons on the territory of other states, their territorial waters or in international waters;

c) military maneuvers and training held near the borders of another country and threaten its independence and territorial integrity;

d) attack with the armed forces of the state targets, which poses a threat to civilians living in another state;

e) the creation and support of armed groups of mercenaries to destroy the sovereignty of another state;

f) murder and attempted murder of statesmen of other states or national liberation movements directed by the state, regardless of whether they blow through military, special operations or recruitment agents;

g) secret intelligence operations or other governmental force to destabilize or submission of another State, the national liberation movement or international peace movement;

h) disinformation campaign aimed at destabilizing other states;

i) the sale of arms supporting the continuation of regional wars and conflicts holds a political decision;

j) the abolition of civil liberties, the constitution and laws under the pretext of combating terrorism;

k) development, testing and deployment of nuclear weapons and space, which increases the likelihood of genocide and ecocide that condemns the continuing poverty of the poor and humanity in constant fear⁴.

It is known that for many years the Russian Federation in its domestic policy has applied the power practice of a police state against its citizens, and limited civil rights and freedoms under the pretext of combating terrorism. In 2014 the Russian Federation commits these acts of state terrorism against our country as military maneuvers and training were held near the borders of Ukraine and threatened its independence and territorial integrity; moreover Russian actions entailed creation and support of armed groups of mercenaries to destroy the sovereignty of our country; secret intelligence operations or other governmental force aimed at destabilization or subordination Ukraine; disinformation campaign aimed at destabilizing the Ukrainian state. On 30 June 2014 Air Force Gen. Philip M. Breedlove, NATO's supreme allied commander for Europe and commander of U.S. European Command admitted that "Russia not only provides financial and material support to terrorists, but it also uses against Ukraine killers mercenaries at a

¹ ГРУ Славянск 14.04.14. *Канал Youtube Служби безпеки України*. <<https://www.youtube.com/watch?v=xVDx-TqeWj4>>.

² ДНР готовилась с 2006 г.: 11 выводов украинских экспертов. *Биржевой лидер*. <<http://www.profi-forex.org/novosti-mira/novosti-sng/ukraine/entry1008221520.html>>.

³ Путин: Наши военные «встали за спиной» самообороны Крыма. *Русская служба BBC*. <http://www.bbc.co.uk/russian/russia/2014/04/140417_putin_phone_line>.

⁴ UN Declaration (adopted by the International Conference on the Question of Terrorism, held at Geneva from 19 to 21 March 1987). *UN General Assembly official site*. <http://www.un.org/ga/search/view_doc.asp?symbol=A%2F42%2F307&Submit=Search&Lang=E>.

time when regular Russian forces facilitate the movement of militants equipment and finances across the border of Ukraine"¹.

World experience against states that sponsor terrorism demonstrates the key role of the United States, which has considerable experience of legal regulations and powerful mechanisms of action in this area. Under the US law, there is a list of states determined by the US Secretary of State the governments of which systematically support acts of international terrorism² as defined in the provisions of the three laws: the Law "On export control" (Article 6 (J)), the Law "Export control Arms "(Article 40)³ and the Law " On Foreign Aid "(section 620A)⁴.

Under section 2656f (d) of Title 22 of the Code of the United States: 1) "international terrorism" means terrorism, which involved citizens of more than one state or the relevant acts committed in more than one State; 2) "terrorism" means premeditated, politically motivated violence against non-military targets multinational groups or clandestine agents; and 3) "terrorist group" means any group engaged in international terrorism⁵.

The sanctions that the US imposed on state sponsors of terrorism include:

- a) prohibition of sales of goods of a military nature;
- b) the establishment of stricter export control of dual use, providing in particular notification Congress 30 days prior to surgery for goods or services that can enhance the military capabilities of the State or ability to support terrorism;
- c) prohibition of economic aid;
- d) imposing various financial and other constraints, including: reliance on the relevant authorities to act against the US commitment to provide state-sponsor of terrorism loans from the World Bank and other international financial institutions; restriction of diplomatic immunities to families of victims of terrorism could file a civil suit in US courts; refusal to companies and individuals of tax exemptions on income received in the state sponsor of terrorism; denial of duty-free regime for goods imported into the United States from such countries; giving authorities powers to ban any citizens of the United States to engage in financial transactions with the government of the state sponsors of terrorism without the license of the Ministry of Finance; prohibition to the Ministry of Defence to conclude agreements exceeding USD 100,000 with companies of such states⁶.

All signs of international terrorism actions are inherent to militants in Donetsk and Luhansk regions⁷. On 13 April 2014 the US Ambassador to Ukraine Mr.G. Pyatt showed understanding of the role of the United States Code of terrorists stating that "militants in eastern Ukraine are equipped with Russian weapons and are wearing the same uniforms as the Russian troops that had previously invaded Crimea"⁸. Later on other US officials made similar statements.

Currently in the US list of states - sponsors of terrorism are Cuba, Iran, Sudan and Syria⁹. However, if we compare the activity of these states in the reports of the US State Department in recent years, with the activities of the Russian Federation to support the "DNR" and "LNR", it appears that the efforts of the Russian Federation to promote terrorism, which led to a number of terrorist acts in Donetsk and Lugansk regions since April 2014, is more active than the actions taken by states sponsor of terrorism, recognized by

¹ Roulo C. Breedlove: Russian Actions Bring Europe to Decisive Point. *US Department of Defence official site*. <<http://www.defense.gov/news/newsarticle.aspx?id=122576>>.

² State Sponsors of Terrorism. *The U.S. Department of State*. <<http://www.state.gov/j/ct/list/c14151.htm>>.

³ Overview of U.S. Export Control System. *The U.S. Department of State*. <<http://www.state.gov/strategictrade/overview/>>.

⁴ The Foreign Assistance Act of 1961, as amended. *USAID*. <<http://www.usaid.gov/ads/policy/faa>>.

⁵ Chapter 7. Legislative Requirements and Key Terms. Country Reports on Terrorism 2013. *The U.S. Department of State official site*. <<http://www.state.gov/j/ct/rls/crt/2013/224830.htm>>.

⁶ Country Reports on Terrorism 2013. Executive Summary (2014). *The U.S. Department of State*, 19-23.

⁷ Motyl A. Putin's Russia as a State Sponsor of Terrorism. *World Affairs Blog*. <http://www.worldaffairsjournal.org/index.php?q=blog/alexander-j-motyl/putin%E2%80%99s-russia-state-sponsor-terrorism&utm_source=World+Affairs+Newsletter&utm_campaign=0a9f25b377-April_14_2014_WNN&utm_medium=email&utm_term=0_f83b38c5c7-0a9f25b377-294555953>.

⁸ Finley J.C. U.S. would react immediately if Russia invaded Ukraine, says American ambassador. *UPI*.

<http://www.upi.com/Top_News/World-News/2014/04/29/US-would-react-immediately-if-Russia-invaded-Ukraine-says-American-ambassador/5121398797463/>.

⁹ Country Reports on Terrorism 2013. Executive Summary (2014). *The U.S. Department of State*, 19-23.

the US, in recent years. Accordingly, there is every reason to include Russia in such list with all respective consequences.

The European Union also recognizes individuals as terrorists and organizations as terrorist. The EU qualifies terrorism as "internationally condemned act committed by an individual or a group against one or more countries, their institutions or citizens, to intimidate and fundamental change or destroy the political, economic or social structures of the state"¹. The EU Council Framework Decision on Combating Terrorism 2002² provides for the definition of terrorist offenses through the introduction of two elements: the objective, which involves committing serious criminal offenses (murder, bodily injuries, hostage-taking, making weapons, acts of terrorism or the threat of any which of the above actions, etc.) and subjective (acts considered to be terrorist offenses when committed with the aim of seriously intimidating the population, to force the government or an international organization to perform or abstain from performing any act, or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of States or international organizations)³.

Analysis of the actions of militants in the territory of Donbass suggests the compliance of their actions with specified characteristics. In accordance with the Council Decision 2009/1004/CFSP of 22 December 2009 concerning the update of the list of persons, groups and entities covered by the Common Position 2001/931/CFSP on the application of specific measures to combat terrorism of 27 December 2001^{4,5} as terrorists are charged 25 people, to terrorist organizations belong 29 organizations (among them - Al-Qaeda, Hamas, Kurdistan Workers' Party, the Liberation Tigers of Tamil Eelam, Revolutionary Armed forces of Colombia). So far the EU has not formally announced the possibility of recognition "DNR" and "LNR" as terrorist organizations, but occasionally there is information about the likelihood of such a move. Thus, we should realize that a great obstacle is the unwillingness to aggravate relations with Russia is typical for many leaders of the European countries.

One more possible way to influence the Russian Federation, which can be used by Ukraine, is the institution of proceedings in the International Court of Justice against the Russian Federation for the violation of the International Convention for the Suppression of the Financing of Terrorism. According to para. 1 of Art. 34 of this Convention, to which both Ukraine⁶ and Russia⁷ are parties, any dispute between two or more States Parties concerning the interpretation or application of this Convention, which can not be settled through negotiation within a reasonable period of time, at the request of one of the States Parties shall be resolved *via* arbitration. If within six months from the date of the request for arbitration the States Parties are unable to agree on the organization, anyone of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court⁸.

In para. 2 of Art. 34 provides that each State may upon signing, ratifying, accepting, approving or acceding to this Convention declare that it does not consider itself bound by para. 1. The other States Parties shall not be bound by para. 1 with respect to any State Party which has made such a reservation. Neither Ukraine nor Russia did such reservation. A similar case can be initiated with respect to Russian violations of the provisions of other conventions, disputes concerning the interpretation or application of

¹ Луппов, И.Ф. (2009). *Противодействие терроризму в условиях развитой демократии*: автореф. дисс. ... док. полит. наук: 23.00.04. Санкт-Петербург.

² Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism. *Official Journal of the European Communities*. L 164. (Vol. 45), 3-7.

³ Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism. *Summaries of EU legislation*. <http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_terrorism/133168_en.htm>.

⁴ Council Decision 2009/1004/CFSP of 22 December 2009 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism. *Official Journal of the European Union*. L 346/58.

⁵ Common Position 2001/931/CFSP on the application of specific measures to combat terrorism. *Official Journal of the European Communities*. L 344/93.

⁶ Закон про ратифікацію Міжнародної конвенції про боротьбу з фінансуванням тероризму 2002 (Верховна Рада України). *Відомості Верховної Ради України*, 43, 316.

⁷ Федеральный закон о ратификации Международной конвенции о борьбе с финансированием терроризма 2002 (ГД ФС РФ). Президент России. *Официальное интернет-представительство*. <<http://document.kremlin.ru/page.aspx?1036825>>.

⁸ International Convention for the Suppression of the Financing of Terrorism (with annex). New York, 9 December 1999, No. 38349. United Nations Treaty Series (2004). (Vol. 2178). New York, 197-292.

which in accordance with the relevant rules of treaty shall be submitted to the IPU Council. It is obvious that such actions cannot stop terrorist activities of Russia against our country. However, they are important to justify the legal position of our country, as well as a means of possible pressure.

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