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## Preventing Terrorism with Precaution: An Examination of the Precautionary Principle to Counter-Terrorism Measures

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### Abstract

*Since the core elements of precautionary principle in the field of environment protection and of preventive counter-terrorism are highly corresponded, it is of necessity and possibility to apply the precautionary principle to preventive counter-terrorism in theory and practice. Due to the imperfection of the precautionary principle and the complexity of the risk of terrorist attack, the application of the precautionary principle to preventive counter-terrorism is not mature in theory and is quite difficult in practice. However, it is of great significance and has enough research space to explore. The determination of risk threshold is the most critical part and the biggest difficulty in applying the precautionary principle to preventive anti-terrorism. It should adhere to the guidance of "problem-oriented", "dynamic thinking" and "multi-dimensional exploration". This paper proposes that the specific methods of applying the precautionary principle to the field of preventive counter-terrorism, can be specifically designed in combination with the main methods in the three stages of preventive counter-terrorism. The first stage is to set the risk threshold for the "preemptive military attack"; in the second stage is to avoid the distortion and abuse of preventive legislation and law enforcement; while in the third stage is to effectively strengthen the "assessment" function of government's functional departments and scientifically accurately assess the possibility and danger of "extremism" becoming terrorism in order to implement effective interventions. China's preventive anti-terrorism efforts are in processing. They have three key tasks: to explore the establishment of a system to regularly announce the identification of terrorist organizations and terrorists; to further promote and guide social units to participate in preventive counter-terrorism governance; to encourage internet companies to actively fulfill their obligation to participate in preventive anti-terrorism.*

**Key Words:** Precautionary Principle, Preventive Counter-Terrorism, Preemptive Military Attack, Extremism, Death of Soleimani

## Introduction

After September 11, 2001, Western countries represented by the United States established the largest international united front against terrorism in history and launched a decades-long war against terrorism. By May 2014, US President Barack Obama declared "victory" in the "war on terrorism" and the large-scale military operations ended. America and the world have paid a heavy price. In spite of this, the military victory on the anti-terrorism battlefield did not translate into the victory in the governance of terrorism in the end. Not only did the security situation of relevant countries and regions not improve, but terrorism was still rampant. This means that the governance of terrorism is a long-term process, and there is a long way to go to prevent terrorism, and the regulation of preventive counter-terrorism is urgent and arduous. An important way and means to carry out this arduous task is to extend the application of risk prevention principle to preventive anti-terrorism.

Precautionary principle is also named as Risk-prevention Principle, Prudential Principle or principle of prudence. Precautionary Principle is originated in the field of the environment. Due to that human society has become a risk society, currently precautionary Principle has become a customary rule of international law to some extent and has been expanding to more areas, such as the field of disaster risk reduction. The concept and content of disaster includes both natural hazard and the man-made one. Terrorist attacks are undoubtedly the top priority of man-made disasters. Therefore, there is a reasonable predict that the value, function and effect of precautionary principle is going to spill over into the field of preventive counter-terrorism. And the research on the application of precautionary principle in preventive counter-terrorism is of considerable significance and has a wide space as well as explicit value.

## The Core Elements of Precautionary Principle and of Preventive Counter-Terrorism

Examining the core elements of both of Precautionary Principle and of Preventive Counter-terrorism, we may find that two sets of them are highly corresponded, which is of great interesting, and would inspire us to analysis the relationship between them and further explore the application of precautionary principle to the field of preventive counter-terrorism.

### Precautionary Principle and its Core Elements

So far the concept of precautionary principle has not been clearly defined. Precaution is defined as "taking action to avoid possible danger or damage" which, when reflected in various legal documents, means a request for precautionary measures in the absence of scientific certainty that damage will be caused (i.e. when there is a "risk" of causing damage). "Risk" is the premise to start the principle, the trigger and core elements of the principle.

Since the word "risk" can cover multiple fields and could extend to infinite denotation, the understanding of "risk" involves various aspects of science, economy and ethics, thus precautionary principle is inherently undefinable to some extent. This paper argues that in order to get rid of the ambiguity of precautionary principle in definition, there is no need to try to establish a global unified definition, but should adopt the "scenario-based" definition, so that it can be more specific and practical guidance in the specific situation. Based on various international conventions and their practices that contain precautionary principle, this paper extracts the following core elements of the principle of risk prevention in order to grasp this principle:

The first core element is scientific uncertainty. If the causal relationship between a certain risk and the damage result can be fully proved by scientific evidence, the risk is scientifically deterministic;

otherwise, it is called scientifically uncertain risk. However, such scientific uncertainty needs to set evaluation criteria, otherwise it will weaken the operability of precautionary principle and may lead to its abuse.

The second core element is the risk threshold which is also known as risk threshold ( $\gamma$ ), it refers to the threshold or critical point at which the risk prevention principle is applied. This requires the support of various technical data in different fields.

The third core element is the cost-benefit analysis. An assessment of the cost of risk mitigation or elimination versus the benefit of the damage avoided. The balance between cost and benefit from economic perspective is the most realistic element in the application of the risk prevention principle, and it is also the main reason why the risk prevention principle is rarely used in practice in a strict sense. Cost-benefit analysis first requires decision makers to understand the risks in a scientific and reasonable range. Secondly, we should have the time and conditions for cost-benefit analysis. If a certain risk will cause difficult losses to recover within a very short time after being discovered, it is difficult to achieve the best cost-benefit. In addition, if a risk will bring about more than economic losses, but also human rights issues, cost-benefit analysis is not only economics can measure and solve.

The fourth core element is taking preventive measures. The final element in the application of the precautionary principle of risk is to take preventive measures specific to the risk situation when the preconditions for applying the precautionary principle of risk are met, the decision is proportionate and the best cost-effectiveness scheme is available.

The precautionary principle is different from the principle of "risk prevention", because it does not prevent the risk from arising from nothing, but after the risk is generated, preventive measures should be taken to avoid or reduce the risk even if there is no definite scientific basis to prove that the risk will definitely cause damage. The precautionary principle is also different from the preventive principle, which refers to a state responsibility: "The state should take measures before environmental damage occurs to stop, limit or control activities or behaviors that may cause environmental damage" (Shao, 2015). Although the two principles are aimed at the emergence and expansion of damage, the precautionary principle focuses on the potential danger with scientific uncertainty and aims at the hysteresis and irreversibility of damage results. It requires that measures should be taken before the risk is serious enough to be irreversible, so as not to lose the opportunity to prevent and reverse the trend of damage due to waiting for enough evidence.

### **Preventive Counter-Terrorism and its Core Elements**

Preventive counter-terrorism aims at "prevention" rather than the direct elimination of terrorism. Different countries have different understandings of preventive counter-terrorism. In a report, the Joint Terrorism Assessment Team (JCAT), which was set up by the National Counterterrorism Center (NCTC), the Department of Homeland Security (DHS) and the Federal Bureau of Investigation (FBI), argued that terrorism prevention is a way to reduce violence. Preventive counterterrorism stems from countering violent extremism, is multi-agency and interdisciplinary, an active strategy to deal with the complex and changing terrorist ideology by means of prevention, intervention and disengagement. Although China has not directly defined preventive anti-terrorism, it has summarized preventive anti-terrorism measures taken in Xinjiang as "protecting citizens' basic human rights from terrorism and extremism to the maximum extent through various means such as improving people's livelihood, strengthening legal publicity and education, and setting up vocational education and training centers in accordance with the law to provide assistance and education." Simply interpreting preventive terrorism as prevention of violent extremism, as the Joint Terrorism Assessment Group did, undoubtedly narrows the application scope of preventive terrorism. At the same time, just as

radicalism should not be confused with extremism, it is inappropriate to equate extremism with terrorism. Therefore, the feasible method is to define preventive counter-terrorism from the perspective of function, that is, preventive counter-terrorism is a governance process that acts on every node of the development of terrorism by preventive means, gradually eliminates the root causes of terrorism, restrains and slows down the development of terrorism, and thus reduces the harm of terrorism to human beings.

The proposal of preventive counter-terrorism is not a simple copy of the application of preventive approaches in other fields. The establishment of its concept conforms to the internal logic of "terrorism can be prevented" and "prevention is necessary for the governance of terrorism". Although preventing the harm brought by terrorist attacks is one of the governance objectives of preventive counter-terrorism, preventive counter-terrorism should not be simply equated with the prevention of terrorist activities, because preventive counter-terrorism has a broader theoretical connotation.

Preventive counter-terrorism plays a role by preventing individual "radicalization" and promoting "de-radicalization", preventing terrorist organizations from obtaining necessary resources and elements for development, and cutting off the connection between individuals and terrorist organizations in ideology and behavior mode. The openness of preventive counter-terrorism makes social units, state actors and non-state international actors constitute the participants of preventive counter-terrorism.

### **Necessity and Feasibility of Applying the Precautionary Principle to Preventive Counter-Terrorism**

The four core elements of the precautionary principle are highly consistent with the main features of terrorist disasters and of preventive counter-terrorism.

Firstly, "scientific uncertainty" is the first core element of the precautionary principle. Based on the following main characteristics of terrorist crimes, we can find it is the same that the risk of terrorist disaster is also difficult to be determined and judged scientifically.

Feature one includes the denationalization of the subject of terrorist crimes, the diversity in forms and difference in scales of terrorist organizations. Especially the phenomenon of "lone wolf" terrorists occurred in recent years. Feature two is that terrorists usually engage in legal activities in lawful capacity.

Feature two: The means of creating terrorist disasters are random taken. For example, the terrorist attack at the end of the Boston Marathon on April 15, 2013 used pressure cookers as the tools of the attack.

Feature three: Terrorist attacks are different from other man-made disasters, because they are often carried out in dense personnel or key time and place, their lethality and baneful influence are extremely strong due to that victims are usually under nothing expectation or precaution, which will result in great loss of human life and property. Further the consequences and impact of disasters will be greatly amplified by the psychological blow to the public and the spread of terror atmosphere, so the disaster is often disastrous. Therefore, it is difficult for the causal relationship between the risk of terrorist attack and the result of causing damage to have scientific certainty, which conforms to the "scientific uncertainty risk" element of the precautionary principle.

For the second core element of precautionary principle of setting risk thresholds, it is of great necessity to set risk thresholds for preventive counter-terrorism. Up to now, people's evaluation of preventive counter-terrorism taking by various countries (especially the United States) is mixed with affirmation and criticism, and the important reasons of this lies in the timing, degree and pertinence

of preventive counter-terrorism. If a scientific risk threshold can be set for preventive counter-terrorism, then the scientific legitimacy and legitimacy of preventive counter-terrorism can be greatly improved. And the preventive counter-terrorism can also prevent from being abused and misrepresented. This is a key element of the need to apply the precautionary principle to preventive counter-terrorism.

For the third core element of precautionary principle of cost-benefit analysis, it is an important consideration to make pre-analysis and evaluation of the cost comparing with effect of preventive anti-terrorism for the judgment and decision of whether, how and what preventive anti-terrorism measures should be taken, which is of great importance for the science and rationality of preventive anti-terrorism.

For the fourth core element of precautionary principle of taking preventive measures, it is not difficult to understand that, when the above three factors are satisfied, the corresponding preventive anti-terrorism measures can be and should be taken decisively to achieve the purpose of prevention.

### **To Apply the Precautionary Principle to Preventive Counter-terrorism Can Solve some Problems of Counter-terrorism in Theory and Practice**

Research to date has shown that the motivations generated by terrorism can be changed or even partially eliminated through policy means. Even a specific terrorist attack can be avoided or reduced by good preventive measures. Therefore, logically, it is possible to prevent terrorism effectively. However, in order to make preventive anti-terrorism standardized and sustainable, the application of the principle of risk prevention can make it famous, legal, scientific and reasonable, and reduce the harm and increase the benefit (Shao, 2015).

In the preventive military strikes against terrorism, there are not only theoretical misunderstandings, but also serious problems in practice. Take for example the dangerous "pre-emptive" strike against terrorism. The most typical case is the strike against Iran's Soleimani in Iraq on January 3, 2020. This action brought three bad results: First, the use of force to eliminate a leader of a country seriously violates international law, shocks the international order based on contemporary international law and arouses strong reactions and condemnation from the international community. Second, it exacerbated the deterioration of US-Iran relations and led to Iran's strong retaliation. Third, one consequence of the above two points is that the "pre-emptive" action against terrorism has backfired and given more opportunities to terrorists. Why is that? The reason is that the theory of "preemptive strike" against terrorism is not perfect enough. The most critical point is that it fails to set a scientific risk threshold for "preemptive strike" through theoretical analysis of the risk prevention principle.

### **The Feasibility of Applying the Precautionary Principle to Preventive Counter-Terrorism**

There already existing international norms provide the necessary international law basis for the application of the precautionary principle to preventive counter-terrorism.

The idea of counter terrorism through a preventive approach has long been reflected in various anti-terrorism policy documents. The UN Global Counter-Terrorism Strategy is an international action plan adopted by all UN member states in 2006 to strengthen international counter-terrorism cooperation. The instrument identifies four pillars of the global counter-terrorism strategy, three of which embody a preventive approach (Office of Counter-Terrorism, 2006). In December 2015, the United Nations Counter-Terrorism Center (UNCCT) drafted an Action Plan to Prevent Violent Extremism. "There is a need for a more comprehensive approach that combines not only existing basic counterterrorism measures to ensure security, but also preventive measures that systematically and directly address the factors that contribute to violent extremism," the report said (Office of Counter-Terrorism, 2006).



## Regulations Reflecting the Spirit of Precautionary Principle in Domestic Laws of Many States

Since 9/11, more than 140 countries have enacted anti-terrorism laws (Mccarthy, 2020). In recent years, several countries have strengthened their preventive legislation on terrorism, that is, they not only rely on the preventive effect of laws on criminal activities to deal with terrorism, but also incorporate preventive measures into anti-terrorism laws. In 2015, the UK passed *the Counter-Terrorism and Security Act* based on *the Terrorism Act*, which aims to prevent British citizens from travelling to war zones to engage in terrorist activities and to combat potential extremist ideologies that could foster terrorism (Home Office, 2015). The Act clarifies the legal status of the terrorism prevention program, making it necessary for the British legislature and law enforcement agencies to fully consider how to better play the role of preventive measures when performing their functions.

In the same year, the Canadian government introduced a series of measures to improve the government's ability to deal with the threat of terrorism. One of the important reform measures was the adoption of the new *Anti-Terrorism Act* (Department of Justice, 2021). The new law gives law enforcement agencies greater powers to make "preventative arrests" when police suspect someone may be planning a terrorist act. The law also improves Canada's "no-fly list", which allows flight crews and ground staff to prevent passengers from boarding flights if they identify a possible "direct threat" to aviation safety; Require federal agencies to notify each other of potential terrorist threats and coordinate responses.

In July 2020, President Rodrigo Duterte of the Philippines repealed *the Human Security Act* passed in 2007 and signed *the Anti-Terrorism Act* into law (Jason, 2020). The new Anti-terrorism Act allows Philippine prosecutors to seek a stay of departure order from a district court during the investigation phase of a suspected terrorist attack to prevent the suspect from fleeing the situation. The law also provides for the Supreme Court to establish a special anti-terrorism court to handle violations of the law (Congress of the Philippines, 2020).

In 2018, China amended the Anti-Terrorism Law of the People's Republic of China, which was adopted in 2015. Article 17 of the Law clearly states that relevant departments and institutions should raise citizens' awareness of anti-terrorism by strengthening preventive education on terrorist activities (NPC Standing Committee, 2018). In the same year, Chapter III of the Regulations on De-radicalization of the Xinjiang Uygur Autonomous Region, adopted by the Xinjiang Uygur Autonomous Region, separately explained the content on preventing, containing and eliminating radicalization. In recent years, the concept of preventive counter-terrorism has appeared frequently in Chinese counter-terrorism reports and official statements. In March 2019, The State Council Information Office of China issued a white paper entitled "Anti-terrorism, De-Radicalization and Human Rights Protection in Xinjiang", which called for giving top priority to preventive counter-terrorism. On September 25, 2019, Chinese Foreign Minister Wang Yi delivered a speech entitled "Preventive counter-terrorism and De-radicalization Measures in Xinjiang are China's contribution to the international counter-terrorism Cause" at the United Nations and Regional Organizations' Meeting on Counter-Terrorism Cooperation, introducing China's preventive counter-terrorism measures in Xinjiang. China's practice of sending people with signs of extremism to vocational education and training centers in Xinjiang can be explained by the application of the precautionary risk principle.

- Extensive practice and cases provide rich experience and lessons.
- High and new technologies (big data, cloud computing, face recognition, biometrics, artificial intelligence, etc.) have provided technical possibilities for the application of the risk prevention principle in preventive counter-terrorism, especially enriched the means and methods for determining the risk threshold.

Through the modeling of artificial intelligence simulation system, the model used to calculate (predict) the risk of terrorist activities can be obtained; Sifting through the text of counter-terrorism content through machine learning could help identify the social networks behind terrorists or terrorist groups; The application of artificial intelligence can increase the intelligent intervention of terrorist propaganda information, strengthen the anti-terrorism intelligent push, and improve the ability to predict Cyber terrorist events.

### **Main Problems of the Application of Precautionary Principle to Preventive Counter-Terrorism**

First of all, as for the principle of risk prevention itself, the application of the principle is still lacking in standards and norms to guide its implementation, such as when to use the principle, what standards should be followed in the direction of decision-making in the application, and when to terminate the preventive measures. Bodansty, a professor at the University of Washington, believes that the precautionary principle of risk has never specified what degree of caution should be taken in some specific situations. For example, it does not guide what is an acceptable error, or the scope of risk applicable to this principle. In addition, the precautionary principle cannot determine when to use preventive measures or whether the costs of preventive measures are not socially or environmentally cost-effective. IMO officials Birine and Boyle argued that while the precautionary risk principle is attractive, there is no unified interpretation of the principle, and the question of its applicable starting point in a given situation has not been resolved. This severely weakens the character of the principle as a norm and its operability and applicability in practice.

Secondly, how to set the threshold scientifically involves many aspects of science and technology, ethics, human rights and other issues. Therefore, it is not easy to set one or a set or a series of risk thresholds, and it is difficult to satisfy all aspects.

However, the above dilemmas and problems should not be the reason to deny the application of the precautionary principle of risk in related fields. First of all, the main obstacle to applying the principle is the difficulty. The fact that it is difficult is a sign that it has a lot of value. Secondly, the determination of risk threshold should not be perfect, as long as it can be relatively scientific and reasonable, it can fully demonstrate its role and value. Thirdly, the formation and improvement of the practice path of the risk threshold is as important as the theoretical derivation, the model design in the laboratory and the multi-party demonstration, or even more important. Through the practice, the summary of the living essence and lessons is very valuable and important for the formation of the risk threshold, although not perfect yet.

### **Main Paths and Measures of the Application of Precautionary Principle to the Preventive Counter-Terrorism**

#### **General Guidelines of the Application**

**Problem oriented:** The research on the application of the risk prevention principle to preventive anti-terrorism should first be problem-oriented, rather than relying on the steady research in the laboratory but should have a full sense of urgency and risk awareness and have the courage to practice the problems.

**Dynamic thinking:** The application of the risk prevention principle in preventive anti-terrorism should be regarded as a process, rather than a result. Night patrol will never achieve a perfect ultimate result, but always in the process of continuous improvement. Do not underestimate the role and value of phased results, which are the real results in the corresponding stage, and should be applied while exploring.

**Multi-dimensional exploration:** Multi-angle and multi-disciplinary exploration, taking full account of various risks, including but not limited to legal risks, military risks, political risks, Human rights risks, etc.

### Paths of the Application

Preventive counter-terrorism can be divided into three stages: root cause prevention, pre-prevention and post-prevention. The precautionary principle can also be specifically applied to the three stages of preventive counter-terrorism.

At the stage of root cause prevention, preventive counter-terrorism is mainly the implementation of preventive military strikes. For example, seven countries, including the United States, the United Kingdom, France, Germany, Turkey, Canada and Jordan, have simultaneously carried out military operations in Iraq and Syria, which are effectively controlled by the Islamic State, while Russia, Saudi Arabia and Australia have only carried out military strikes against the Islamic State in Syria. At this stage, the application of precautionary principle should mainly focus on setting risk threshold.

Preventive counter-terrorism at the stage of pre-prevention is mainly preventive criminal justice measures, which including two parts of and preventive law enforcement.

The application of precautionary principle to preventive legislation should fully and overall consider the direct results and potential influence of every relevant regulations in order to reach a balance of countering terrorism and protecting human rights.

Here is a typical negative case of abusing preventive justice measures: US revokes designation of ETIM terrorist organization.

On October 20, 2020, then-Secretary of State Mike Pompeo rescinded the designation of the East Turkestan Islamic Movement (ETIM) as a terrorist organization in accordance with the relevant authority under Section 212 of the Immigration and Nationality Act. The US move to revoke the designation was not based on a finding of fact but was politically motivated. With the increase of confrontational factors in bilateral relations, the friction between China and the United States has spread to the field of anti-terrorism, which has a good foundation and history of cooperation. The United States even took advantage of the anti-terrorism issue to attack the Chinese government on the Xinjiang issue at the expense of the two countries' anti-terrorism consensus.

Preventive counter-terrorism measures at the stage of post-prevention are mainly "de-radicalization" and prevent "re-radicalization". The preventive measures include intervention to stop the diversion from extremist groups, even legitimate ones, to terrorism (Home Office, 2015). Accordingly, the application of precautionary principle to the preventive counter-terrorism at the stage of post-prevention should give full play to the role of functional government departments in evaluating the extent of the risks and dangers of radicalization and try to work out relevant scientific, reasonable, effective and practical norms and standards.

The relevant work of government functional departments includes but is not limited to: assessing the risk of public institutions being invaded by extremist ideology; Develop an action plan to reduce this risk; raising awareness of extremism and radicalism among staff through training; provide assistance to vulnerable groups that may be affected by terrorism (Charity Commission for England and Wales, 2022).



## Conclusion

At present, China has made some achievements in applying the principle of risk prevention to preventive anti-terrorism governance, but it also faces arduous tasks. First, at the level of national governance, explore the establishment of a system to regularly announce the identification of terrorist organizations and terrorists. Second, we should further promote and guide social units to participate in preventive counter-terrorism governance. Third, Internet companies are required to actively fulfill their obligation to participate in preventive anti-terrorism.

The two negative cases (killed Soleimani and revoked the designation of ETIM terrorist organization) of the United States illustrate that improper use of preventive counter-terrorism can have serious consequences. Not only the threat of terrorism has not been reduced, but real terrorists and terrorist organizations have benefited from it. The "political instrumentalization" of preventive counter-terrorism by the United States will lead to the weakening of the legitimacy and legitimacy of international counter-terrorism, and the cost will be borne by the international community.

Terrorism is not necessarily the end of the evolution of extremism. The next evolution of terrorism is also worthy of attention and research. In domestic society, the more and more stringent preventive measures are not necessarily more effective. "Overreaction" is a welcome situation for terrorist organizations, and the scale and boundaries of preventive counter-terrorism remain to be explored. The scientific application of the risk prevention principle to preventive counter-terrorism will not only improve the precision and efficiency of counter-terrorism, but also effectively protect human rights, thus greatly benefiting mankind.

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