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Preventive expansion of counter-terrorism criminal law: a risk governance perspective and institutional limits

Abstract

Preventive criminal law has demonstrated a level of effectiveness in enhancing the early-warning capacity of national security systems and disrupting the financial and personnel networks of terrorism that traditional criminal law has struggled to achieve. However, its expanding scope has simultaneously exerted sustained and profound pressure on the foundational principles of criminal law, including restraint, legal certainty, the principle of culpability, and proportionality. More critically, when criminal law becomes deeply embedded in a national security logic characterized by "states of exception" and "urgent threats", it risks undergoing a fundamental transformation. Instead of functioning as a normative system designed to constrain power, it may evolve into a flexible instrument for policy implementation and social risk management. Such a transformation ultimately leads to a systemic erosion of the rule of law.

Drawing on risk society theory and securitization theory as analytical frameworks, this article systematically elucidates the internal drivers and institutional logic underlying the preventive expansion of counter-terrorism criminal law. The fundamental problem of preventive counter-terrorism criminal law does not lie in its preventive purpose itself. Rather, it stems from the absence of effective counterbalancing and boundary-setting mechanisms embedded within institutional design. Against this backdrop, the central challenge of modern counter-terrorism criminal law lies in constructing a form of "resilient equilibrium": one that is capable of accommodating the practical demands of risk governance while, through refined institutional arrangements, confining security-oriented logic within the trajectory of the rule of law and preventing irreversible erosion of the core principles of criminal law.

Situated within China's counter-terrorism legal practice under the guidance of China's officially articulated "Holistic National Security" concept and in light of the strategic objective of advancing the modernization of the national security governance system and governance capacity during the Fifteenth Five-Year Plan period, this article argues that the future development of China's counter-terrorism criminal law should transcend the simplistic dichotomy between "severity" and "leniency" and instead focus on preventing structural institutional risks. Specifically, it advocates a series of institutional self-corrective mechanisms, including tightening offense elements centered on "concrete dangerousness" and "explicit terrorist intent", improving substantive judicial review standards for abstract endangerment offenses, and establishing internal filtering procedures at the investigation and prosecution stages. Through these measures, the article seeks to construct a model of counter-terrorism criminal law risk governance that combines security effectiveness with rule-of-law robustness, thereby achieving a dialectical integration of security and freedom at a higher institutional level.

Keywords: risk governance, counter-terrorism criminal law, preventive criminal law, national security, institutional limits, rule-of-law equilibrium

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Introduction

Terrorism in the twenty-first century has evolved into a highly complex, fluid, and attribution-resistant global risk. Its organizational structures have shifted forms hierarchical systems to networked configurations; its operational patterns have moved from large-scale coordinated attacks to "lone-wolf" or small-cell actions; and its ideological mobilization increasingly relies on the anonymity and rapid dissemination enabled by digital platforms. The defining feature of this form of "liquid terrorism" lies in the absence of a linear and direct causal relationship. As traditionally required by criminal law, the preparatory stages preceding acts of violence—such as radicalization, fundraising, skills acquisition, and online networking—often lack the linear and direct causal connection required by traditional criminal law. Nevertheless, their cumulative capacity to generate social panic and political destabilization has become unprecedented.

Against this backdrop, governments across jurisdictions confront a profound governance paradox. If they adhere strictly to the traditional criminal law principles of actual harm or concrete danger, law enforcement authorities can intervene only when a terrorist attack has already occurred or is imminent. Such restraint risks rendering prevention ineffective and may result in intolerable human and social costs. Conversely, if criminal law is permitted to advance its point of intervention without meaningful constraint, a broad range of ambiguous pre-incident behaviors—including certain

forms of speech, online activities, minor financial contributions, and social interactions—may be criminalized. Scholars have warned that excessive criminalization threatens to erode the normative boundaries of criminal law, generate widespread social distrust, and ultimately fail to achieve precise targeting of genuine threats.[1,2]

It was precisely in response to this paradox that states such as the United States and the United Kingdom initiated a "preventive turn" in counter-terrorism criminal law in the aftermath of the 9/11 attacks. A central hallmark of this transformation has been the legislative creation of numerous abstract endangerment offenses and preparatory offenses, coupled with the attribution of criminal liability on the basis of highly politicized and discretionary labels such as "terrorist purpose" or "support for terrorist organisations". The United States offense of providing material support to terrorism[3] is widely regarded as a paradigmatic manifestation of preventive counter-terrorism criminal law, the constitutionality of which has been affirmed by the Supreme Court. This offense encompasses an extraordinarily broad range of conduct, including the provision of "training", "personnel", "expert advice or assistance", and "services" without requiring proof of any connection to specific violent terrorist acts. In effect, it constructs a framework of attribution centered on "associational proximity" rather than demonstrable harmfulness of conduct.

However, while this preventive expansion has generated tangible security benefits, it has also provoked fundamental rule-of-law concerns. Where the boundaries of criminal law should be drawn? When "support" may include peaceful legal training, as in Holder v. Humanitarian Law Project;[4] when "personnel" may refer to individuals who attempted to join an organization but never engaged in violence; and when subjective intent can be inferred from concrete behavioral purposes and transformed into an abstract "terrorist inclination", has criminal law shifted from a last resort to a primary instrument of governance? Do such indeterminate boundaries confer excessive discretionary power upon law enforcement agencies, thereby enabling selective enforcement? This transformation marks a broader shift in contemporary criminal law.It has been described as the emergence of a "preventive justice" paradigm.[5]

This article seeks to penetrate the core of this tension. First, it draws on risk governance theory to elucidate the deeper logic underlying the rise of preventive criminal law. Second, focusing on the offense of material support to terrorism in the United States, it analyzes a series of landmark cases to demonstrate how its normative structure operates in practice and how it produces effects such as the pre-emptive criminalization and the contraction of individual rights. Third, it systematically evaluates the rule-of-law risks generated by this preventive model. Finally, from a comparative perspective, it examines alternative pathways adopted in jurisdictions such as Germany, where proportionality and constitutional review function as mechanisms of institutional balancing. On this basis, the article proposes concrete recommendations for China's counter-terrorism criminal law reform during the Fifteenth Five-Year Plan period, with a focus on preventing structural institutional risks and constructing a model of a dynamic equilibrium.

The article argues that the maturity of China's counter-terrorism rule of law ultimately depends on whether it can develop a system of criminal law doctrine and procedural safeguards characterized by a high degree of institutional reflexivity—one that is capable of resolutely safeguarding national security while simultaneously upholding the fundamental boundaries of the rule of law and the protection of civil liberties.

The rise of preventive criminal law from a risk governance perspective and its inherent tensions

The increasing complexity of modern society and the proliferation of systemic risks have triggered a profound transformation in governance paradigms. Ulrich Beck's theory of the "risk society" captures a defining feature of late modernity: societies are increasingly compelled to confront "manufactured risks" that they themselves have produced—risks that are difficult to predict, calculate, and control. Terrorism, particularly in its globalized forms, represents a paradigmatic manifestation of such manufactured risks. It is both a product of globalization and conflicts of modernity, and a phenomenon characterized by incalculably, potentially catastrophic consequences, and a high degree of knowledge-dependence. In this context, traditional governance models centered on ex post reaction and damage remediation appear increasingly inadequate. Consequently, a risk governance paradigm oriented towards prevention, early warning, and anticipatory intervention has emerged as a dominant mode of state response.

From retributive justice to risk management: the reconfiguration of the functions of criminal law

Traditional criminal law has been grounded in the principles of retributive justice and corrective justice. Its primary focus lies in past personal wrongful acts, and it seeks to restore the disrupted legal order through attribution of responsibility and punishment. Risk governance, by contrast, requires the state to manage future-oriented and uncertain dangers proactively, aiming not at retrospective accountability but at the prevention of harm. This shift in objectives has fundamentally reconfigured the function of criminal law: from a system primarily oriented towards sanctioning wrongdoing to one increasingly oriented towards security and order. Criminal law is no longer confined to punishing crimes; it is increasingly tasked with managing social risks, particularly those constructed as "existential threats", such as terrorism.

The Copenhagen School's theory of securitization provides a powerful analytical lens for understanding this transformation. According to securitization theory, when an issue—such as migration, disease, or terrorism—is successfully constructed by political actors, through specific speech acts, as a security issue constituting an existential threat to a referent object (typically the state or the nation), it becomes possible to justify exceptional measures that transcend ordinary political procedures.[6] The expansion of counter-terrorism criminal law thus represents the legal-institutional crystallization of the successful securitization of terrorism.

Technical pathways: the forward displacement of criminalization, abstract endangerment offenses, and the generalization of conduct

To operationalize risk prevention, counter-terrorism criminal law has primarily adopted three technical pathways. First, the forward displacement of criminalization. The point of criminal liability has been significantly advanced from the stage of execution to the stage of preparation, and even to pre-preparatory phases. For instance, the UK Terrorism Act 2006 criminalizes engaging in training related to the commission or preparation of terrorist acts, without requiring any connection to a specific attack plan.[7]

Second, the creation of abstract endangerment offenses. The elements of such offenses no longer require proof that the conduct

has created a concrete danger to legally protected interests; rather, the conduct is legislatively presumed to possess typical dangerousness. The US offense of material support to terrorism is emblematic in this regard: its legislative logic assumes that any form of support to a designated terrorist organization, regardless of its content, inherently contributes to the organization's terrorist capacity.

Third, the radical expansion of regulated conduct. Activities traditionally lying outside the scope of criminal law—particularly speech, association, and online activities—have increasingly been brought within the ambit of criminal regulation. Interpreting "training" to include the teaching of international humanitarian law in conflict zones (as in Holder v. Humanitarian Law Project), or construing "personnel" to encompass individuals who merely attempt to join an organization, exemplifies this process of broad.

Inherent tensions: the conflict between security efficiency and rule-of-law principles

The rise of preventive criminal law is embedded with tensions that are structurally irreducible. First, the problem of uncertainty. Risk assessment is inherently probabilistic; preventive interventions based on intelligence and predictive reasoning are inevitably prone to both false positives—wrongly classifying harmless conduct as dangerous—and false negatives—failing to identify genuine threats. The criminal law's reliance on speculative assumptions about danger sits uneasily with the presumption of innocence.

Second, the crisis of legal certainty. The highly politicized and indeterminate nature of concepts such as "terrorism", "extremism", and "support" severely undermines the clarity required by the principle of legality, rendering it difficult for individuals to foresee the legal consequences of their actions.[8]

Third, the risk of disproportionality. The preventive logic's aspiration to eliminate risk altogether tends to produce punitive responses that are disproportionate to the actual or potential harmfulness of the conduct in question, thereby fostering a trend towards penal severity. Collectively, these tensions converge on a fundamental question: under the grand narrative of risk governance, how can criminal law, as a normative subsystem of the legal order, preserve its autonomy and resist the persistent instrumental pressures emanating from the political system?

A diagnostic case study: the preventive logic and judicial practice of the us offense of material support to terrorism

To understand how the theoretical tensions outlined above are translated into concrete rule-of-law dilemmas, it is essential to conduct a close-grained examination of the US offense of material support to terrorism through a cluster of representative cases. This offense is not only a paradigmatic embodiment of preventive counter-terrorism criminal law but also, in its judicial evolution, a micro-history of the ongoing struggle between security imperatives and individual rights.

Legislative evolution: from disrupting financial flows to regulating all forms of "coordinated" activity

The offense was initially introduced in the Anti-Terrorism and Effective Death Penalty Act of 1996,[9] with the primary aim of severing the financial lifelines of terrorist organizations. Its scope, however, expanded rapidly. The USA Patriot Act of 2001 significantly broadened the definition of "material support" and relaxed certain subjective requirements.[10] In 2004, Congress further extended the offense through the Intelligence Reform and Terrorism Prevention Act by explicitly incorporating "expert advice or assistance", irrespective of whether such assistance involved violence.[11]

The legislative trajectory clearly demonstrates a significant shift in objectives.The focus has moved from targeting concrete terrorist financing to comprehensively regulating all forms of "coordinated" interaction between individuals and designated organizations, with the ultimate aim of isolating and weakening such organizations at a structural level. The offense thus reflects a transformation in counter-terrorism strategy—from interrupting specific harmful acts to managing relational proximity itself as a source of risk.[12]

Landmark cases: judicial endorsement of preventive logic and the contraction of rights boundaries

Holder v. Humanitarian law project (2010)[13]: the transformation of speech into terrorist support

Holder v. Humanitarian Law Project constitutes a watershed moment in understanding the preventive logic of the material support offense. The plaintiffs sought to provide designated organizations—the Kurdistan Workers' Party (PKK) and the Liberation Tigers of Tamil Eelam (LTTE)—with training on peaceful advocacy through international law and United Nations mechanisms. By a 6–3 majority, the Supreme Court held that such purely peaceful and political training nonetheless constituted material support.

Chief Justice Roberts articulated an expansive rationale: the government need not demonstrate that specific support directly facilitates violence, because any coordinated assistance enhances an organization's legitimacy and operational capacity, thereby indirectly contributing to terrorist activity. Although the Court formally distinguished coordinated support from independent advocacy, the boundary between the two remains highly indeterminate in practice.

The legal risks of this judgment manifest in three dimensions. First, it blurs the boundaries of criminal responsibility by decoupling liability from concrete harm to legally protected interests and reorienting it towards relational association with a designated organization—a logic that echoes earlier constitutional debates on organizational liability in Scales v. United States (1961)[14]. Second, it exposes a wide range of legitimate human rights advocacy activities to unpredictable criminal liability, thereby undermining the principle of legal certainty. Third, it exemplifies an extreme degree of judicial deference to executive risk assessments, signaling a retreat from robust constitutional scrutiny. In this sense, preventive criminal law, when left unchecked by judicial constraint, tends towards self-empowerment of state authority.

United States v. Mehanna (2013): translation as ideological support for Jihad

In United States v. Mehanna,[15] the defendant's primary conduct consisted of translating jihadist propaganda materials from Arabic and disseminating them online. The prosecution did not allege his involvement in any violent plot. Nevertheless, the First Circuit upheld his conviction, reasoning that his translations constituted substantial support aimed at advancing the ideological objectives of al-Qaeda.

The court adopted a holistic effects approach, situating the defendant's speech within the broader context of his online activities and social interactions to infer an intent to support terrorism. The warning sign of this case lies in its erosion of the boundary between ideological expression and criminal conduct. By treating translation and dissemination of extremist materials as material support, the judgment generates a profound chilling effect on academic, journalistic, and religious activities.

United States v. Alhaggagi (2020): marginal constraints at the sentencing stage

Parallel to the expansion of substantive criminal liability, the US Federal Sentencing Guidelines incorporate a terrorism enhancement that can multiply sentences dramatically. In Alhaggagi,[16] the defendant had merely created social media accounts expressing support for ISIS, without engaging in substantive planning or coordination. In a rare move, the Ninth Circuit overturned the district court's application of the enhancement, holding that the most severe sentencing regime cannot be automatically triggered solely by the "terrorist nature" of the conduct; rather, the actual harm and the defendant's concrete role must be assessed.

The significance—and limitation—of this case lies in its demonstration of sporadic judicial resistance to excessive preventive punishment. Yet such instances remain exceptional and insufficient to reverse the broader trend towards punitive severity.

United States v. Kourani (2021): systemic support and the dilution of subjective Mens Rea

In United States v. Kourani,[17] the defendant was charged with conducting long-term intelligence gathering and recruitment activities on behalf of Hezbollah within the United States. In affirming his conviction, the court emphasized the systemic and continuous nature of his conduct and its close integration with Hezbollah's command structure. By contrast, it did not rigorously differentiate or substantiate the subjective intent associated with each discrete act of intelligence transmission or personnel contact.

This case exposes a latent risk inherent in preventive criminal law: once an individual is identified as being associated with a terrorist organization, a series of behaviors may be "packaged" as a unified criminal enterprise.

As a result, the evidentiary threshold for proving the subjective elements of individual acts is effectively lowered. The traditional correspondence between individual conduct and individual intent is thus significantly weakened.

Operational logic: a self-reinforcing risk governance circuit

Taken together, these cases reveal a self-reinforcing operational circuit underpinning the offense of material support to terrorism.

First, administrative designation: the Secretary of State designates an organization as a Foreign Terrorist Organization (FTO) based on broad criteria of national security threat, with minimal judicial scrutiny.

Second, risk labeling: any form of contact between individuals or entities and the designated organization—regardless of substantive content—is labeled as a terrorism-related risk.

Third, criminalization of conduct: under the logic of abstract endangerment, any activity construed as "coordinated" with the FTO, ranging from financial contributions to speech, can be interpreted as material support.

Fourth, judicial deference: courts, in interpreting the law and adjudicating cases, exhibit high levels of deference to legislative and executive risk assessments, thereby lowering the intensity of constitutional rights review.

Fifth, severe punishment: convictions are followed by harsh penalties and sentencing enhancements designed to achieve deterrence and incapacitation.

The defining feature of this circuit is the concentration of authority to define risk and interpret criminalization in administrative and law enforcement agencies, while judicial counterbalancing remains relatively weak. As a result, criminal law functions as an efficient but coarse-grained filter of risk: while intercepting potential threats, it simultaneously captures a substantial number of legally permissible activities that bear only tenuous associations with terrorism.

Beyond the American model: comparative pathways and institutional constraints on preventive counter-terrorism criminal law

The US offense of material support to terrorism represents a highly administrative and expansionist model of preventive criminalization. Comparative legal analysis, however, demonstrates that this is by no means the only possible trajectory. The experiences of Germany, the United Kingdom, and the European Court of Human Rights reveal alternative approaches in which preventive criminal law is subjected to systematic institutional constraints through constitutional principles, procedural safeguards, and judicial review.

The german model: constitutional constraints anchored in the rechtsstaat principle and proportionality review

Although preventive expansion is also evident in German counter-terrorism criminal law, it has consistently been embedded within the framework of the Rechtsstaat principle established by the Basic Law and subjected to rigorous scrutiny by the Federal Constitutional Court.[18] This has produced a constrained preventive model structured around constitutional supremacy and proportionality as the core evaluative standard.

The threshold of concrete danger and the absolute protection of human dignity

In a series of landmark judgments, the Federal Constitutional Court has firmly upheld the principle of concrete danger. In its seminal Aviation Security Act decision (BVerfGE 115, 118),[19] the Court declared unconstitutional a statutory provision authorizing the shooting down of hijacked aircraft intended to be used as weapons. The Court's central reasoning was that the state may not instrumentalize innocent passengers as a means to save others, as doing so would violate the inviolable human dignity protected under Article 1 of the Basic Law.

The epoch-making significance of this judgment lies in its articulation of an absolute constitutional boundary on state power in counter-terrorism: even under a utilitarian preventive logic that seeks to save a greater number of lives, the core dignity of innocent individuals may not be sacrificed. This ruling thus fundamentally limits the extent to which preventive measures may be justified.

The standard of "proximity to real danger" in data retention and surveillance legislation

In its 2010 decision on data retention legislation (BVerfGE 125, 260),[20] the Constitutional Court acknowledged that data retention for the prevention of serious crimes, including terrorism, could in principle be constitutionally permissible. However, it imposed exceptionally stringent conditions: legislation must clearly delimit the scope, purpose, and duration of data retention; strict access and procedural safeguards must be established; and, crucially, the legislative objective must not be framed as vague "general prevention", but must instead be directed at serious threats to fundamental legal interests demonstrated by concrete factual circumstances.

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This standard of "proximity to real danger" requires the state to demonstrate a sufficiently close connection between preventive intervention and an identifiable, concrete risk, thereby preventing the generalization and abuse of preventive powers.

Internal constraints of criminal law doctrine: judicial determination of "terrorist organizations"

The application of Section 129a of the German Criminal Code[21] (forming a terrorist organization) is strictly governed by general principles of criminal law doctrine. In determining whether an organization qualifies as a "terrorist organization", courts must establish, on the basis of sufficient evidence, that the organization aims to commit specifically enumerated serious crimes, such as murder or bombings. Ideological or political positions alone are insufficient.

This determination forms part of the judicial process and is subject to stringent evidentiary standards, in sharp contrast to the US model of unilateral administrative designation. The German approach reflects a commitment to conduct-based criminal law and the principle of harm to legally protected interests, thereby focusing preventive intervention on conduct with substantive harmful potential rather than identity-based labeling.

The UK model: strengthening parliamentary oversight and procedural safeguards

While the UK counter-terrorism legal framework is also characterized by strong preventive features, it seeks to strike a balance between power and rights through enhanced parliamentary oversight and procedural protections.

Procedural safeguards in TPIMs

The Terrorism Prevention and Investigation Measures Act 2011 introduced TPIMs,[22] which allow the imposition of restrictive measures—such as electronic monitoring, travel bans, and residence restrictions—on individuals who cannot be prosecuted but are deemed to pose serious threats. Compared with the US practice of indefinite detention without trial (as exemplified by Guantánamo), TPIMs remain preventive in nature but incorporate clearer temporal limits (typically two years), regular judicial review, and relatively stronger rights to information and defense.

This demonstrates that even within the domain of preventive measures, UK law attempts to embed elements of procedural justice.

Parliamentary and independent oversight mechanisms

Major UK counter-terrorism legislation often contains sunset clauses requiring periodic parliamentary renewal, thereby compelling the government to publicly justify the necessity of its counter-terrorism powers. Moreover, the Independent Reviewer of Terrorism Legislation regularly evaluates the operation and impact of counter-terrorism laws and submits public reports to Parliament and the government.

Although these mechanisms cannot fully prevent the expansion of state power, they enhance transparency and accountability, providing institutional entry points for public and civil society scrutiny.

The European court of human rights: rights-based constraints under the European convention on human rights

As the ultimate regional judicial body for human rights protection, the European Court of Human Rights has developed a set of review standards grounded in the European Convention on Human Rights when adjudicating complaints arising from counter-terrorism measures, thereby imposing external constraints on preventive criminal law.

Strict scrutiny of the definition of terrorism

In cases such as Gillan and Quinton v. the United Kingdom (2010),[23] the Court emphasized that the classification of conduct as "terrorism-related" must be based on reasonable suspicion and verifiable facts, rather than vague associations with prohibited organizations or ideological tendencies. The Court has insisted that states must continue to respect the fair trial guarantees under Article 6 of the Convention, including the right to be informed of the charges and to have adequate time and facilities for defence.[24]

Balancing tests for preventive detention and surveillance

In cases involving counter-terrorism detention and mass surveillance, the Court has applied a tripartite test of legality, necessity, and proportionality[25] (e.g. Roman Zakharov v. Russia).[26] In Big Brother Watch and Others v. the United Kingdom,[27] the Court held that although large-scale communications surveillance pursued legitimate aims such as counter-terrorism, deficiencies in oversight mechanisms rendered the system incompatible with Article 8 of the Convention on the right to privacy. This jurisprudence underscores that even in the face of terrorism, states must design institutional frameworks with robust independent oversight and effective remedies.

Comparative implications: the diversity of institutional choices

The comparative analysis above demonstrates that the concrete form of preventive counter-terrorism criminal law is not determined solely by the variable of "security necessity". Rather, it is shaped by a constellation of institutional factors, including constitutional structures, judicial traditions, and rights cultures. The US model reflects a strong tradition of administrative dominance and the extension of a "war paradigm" into counter-terrorism law; the German model embodies the deep-rooted Rechtsstaat ethos and the authority of constitutional adjudication; the UK model reflects parliamentary sovereignty and incremental reform; and the European Court of Human Rights represents the constraining force of supranational human rights law on state power.

The core insight of this comparison is that prevention itself is not inherently dangerous. What ultimately matters is the robustness of the institutional container that encloses preventive power. A sound container requires at least three foundational pillars: constitutional or human rights principles as substantive boundaries, active and independent judicial review as institutional gates, and transparent and accountable political and administrative procedures as filtering mechanisms. In the absence of such safeguards, preventive criminal law is prone to losing control, transforming from a protective net against social risk into a source of threat to rights and freedoms.

Toward a "resilient balance": institutional pathways for refining china's anti-terrorism criminal law

While China's anti-terrorism legal framework has achieved notable results, it is currently entering a critical phase of development.[28]

China's 15th Five-Year Plan underscores the imperative of coordinating development and security and advancing the modernization of national security systems and capacities. Against

this backdrop, the refinement of China's anti-terrorism criminal law should move beyond a simplistic emulation or rejection of the U.S. model. It must also avoid the pitfalls exposed by that model, including selective enforcement and the erosion of the rule of law. Instead, China should pursue a more resilient, normatively precise, and rights-sensitive institutional approach.

The core of this approach lies in constructing an internally embedded and systematic system of checks and balances that integrates the necessity of prevention with the normative requirements of the rule of law. In this article, "institutional resilience" refers to the capacity of the anti-terrorism criminal law system, under conditions of risk pressure, to adapt through interpretive refinement and procedural safeguards while preserving the foundational integrity of the rule of law. Such resilience enables the normative system to absorb complex risks and maintain its capacity for self-correction.

Conceptual reorientation: from "risk suppression" to "risk governance"

At the conceptual level, a fundamental shift is required—from treating criminal law as a comprehensive instrument for suppressing all terrorism-related risks to employing an integrated legal framework for risk governance. This shift necessitates a clearer articulation of criminal law as a measure of last resort. Counter-terrorism is a systemic undertaking in which criminal law should primarily function to punish and deter conduct that has already reached a threshold of concrete and substantial danger.

Early-stage risk factors—such as ideological radicalization, non-violent propaganda, or atypical social associations—should instead be addressed through non-penal mechanisms, including community-based interventions, educational and rehabilitative measures, administrative regulation, and financial monitoring. Criminal law should intervene only in a subsidiary capacity.

Moreover, China should emphasize "targeted prevention" rather than generalized deterrence. Preventive criminal provisions should be designed to address specific categories of conduct that exhibit a high likelihood of escalating into violent terrorist activity, such as specialized training for terrorist purposes or the procurement of dedicated weapons. This approach helps avoid the over-criminalization of generalized behaviors with weak connections to violence, including the possession of certain materials or academic discussions on sensitive topics.

Normative reconstruction: precision and substantive limits in the definition of offenses

In response to potential vagueness and expansionism in certain provisions of China's anti-terrorism criminal law, legislative and judicial interpretations should undertake a process of normative refinement.

Narrowing the scope of the offence of "preparation for terrorist activities"

Judicial interpretation should clarify that "preparatory conduct" must demonstrate a direct and substantive functional link to a specific and identifiable terrorist plan or category of terrorist activity. Mere expressions of extremist ideology, general skill acquisition (e.g., driving or chemical knowledge), or social interactions with individuals linked to terrorism—absent substantive planning—should not automatically constitute criminal preparation.

Refining the criteria for the offence of "advocating terrorism or extremism"

A clear distinction should be drawn between "advocacy" and legitimate forms of discussion, research, or criticism. Criminal liability should require demonstrable intent to incite, encourage, or reinforce terrorist or extremist activities, coupled with a realistic risk of harm. Where relevant content is presented for academic, journalistic, artistic, or religious research purposes, exemptions from liability or heightened thresholds for criminalization should be established.

Strengthening the subjective element of the offence of "financing terrorism"

The requirement of knowledge (mens rea) should be strictly upheld, with a clear distinction between intentional financing of terrorist activities and donations that may be indirectly misused. In cases involving humanitarian assistance to organizations with complex backgrounds—such as groups that combine political, social, and armed functions—liability should hinge on proof that the donor clearly knew the funds would be used for specific terrorist acts. Criminal responsibility should not be inferred solely from the generalized designation of an organization as terrorist.

Procedural reconfiguration: establishing layered filters and rights safeguards

Procedure constitutes the institutional guarantee of substantive legality. Preventive criminal law, in particular, requires enhanced procedural constraints to prevent distortion in its practical operation.

Internal compliance review in the initiation and investigation of terrorism-related cases

For preventive terrorism-related cases primarily based on speech, online activity, or social relationships, Chinese law enforcement agencies could explore the establishment of an internal mechanism for pre-filing risk assessment and compliance review, conducted by legal affairs departments or interdepartmental panels. The review should focus on whether the conduct meets the statutory threshold of dangerousness and whether the evidentiary basis is sufficiently robust, thereby filtering out cases grounded in vague associations or low-level risks and concentrating judicial resources on genuinely high-risk leads.

"Double-layered review" at the prosecution stage

When deciding whether to initiate prosecution in preventive terrorism-related cases, Chinese procuratorial organs should apply a more stringent standard of review than in ordinary criminal cases. Beyond assessing the formal elements of the offense, prosecutors should evaluate the concrete level of danger, the sufficiency of evidence, and the proportionality of initiating criminal proceedings. In cases involving significant classificatory disputes, submission to the procuratorial committee for collective deliberation could be considered.

Strengthening judicial review and the right to defence at the trial stage

Courts should exercise independent judgment in determining the "terrorist" nature of alleged conduct and rigorously scrutinize the evidentiary chain and the substantive link between the conduct and terrorist harm. Robust protection of the right to defense is essential, including access to specialized legal counsel, the right to challenge

expert assessments (e.g., determinations of "extremist" content), and the ability to request expert testimony in court. Judges should remain vigilant against presumptions of guilt, particularly in cases relying heavily on indirect evidence such as electronic data or informant testimony.

Supporting institutional frameworks: enhancing listing regimes and remedies

Legalization and transparency in terrorism listing mechanisms

Drawing on international experience, China should enhance the procedural transparency and predictability of mechanisms for designating terrorist organizations and individuals. Without compromising national security, the criteria for listing and the main categories of factual grounds (excluding classified information) should be disclosed to the extent possible. Periodic review and delisting mechanisms should be established, and listed individuals or entities should be allowed to seek remedies through legally prescribed channels, such as appeals to specialized review bodies.

Establishing remedies for preventive measures

With respect to preventive administrative measures under the Anti-Terrorism Law of the People's Republic of China,[29] including asset freezing and restrictions on exit and entry, legal remedies should be further institutionalized. Affected individuals should have the right to be informed of the reasons for such measures—subject to investigative constraints—and to seek administrative reconsideration before the decision-making authority or its superior organs, as well as judicial review through administrative litigation.

Conclusion: building "institutional resilience" between security and liberty

A critical examination of the expansionary trajectory of preventive counter-terrorism criminal law, exemplified by the U.S. offense of material support for terrorism, together with a comparative analysis of alternative models in Germany, the United Kingdom, and beyond, ultimately converges on a central proposition: in a risk society, the success of modern counter-terrorism criminal law depends not on whether it becomes more powerful, but on whether it becomes more intelligent and more resilient.

By "more intelligent," this article refers to a criminal law that functions as a refined system of risk identification and response, rather than as a blunt instrument of suspicion and exclusion. This requires offense definitions calibrated with surgical precision, capable of distinguishing genuinely dangerous preparatory conduct from ordinary activities deserving of legal protection. It also requires judicial application that operates with the prudence of a balanced scale, continuously weighing crime control against the protection of fundamental rights.

By "more resilient," this article refers to a criminal law regime endowed with strong internal capacities for self-restraint and self-correction. Such resilience derives from three interrelated sources. First, a firm constitutional and jurisprudential foundation, in which respect for human rights and adherence to the rule of law constitute non-negotiable starting points. Second, a dynamic system of checks and balances, ensuring cautious legislative authorization, disciplined executive enforcement, and independent judicial review, each operating within its institutional mandate while constraining the others. Third, an open sphere of social participation and oversight, in which effective legal defense, independent academic inquiry, media scrutiny, and rational public deliberation collectively provide sustained external energy and corrective momentum for counter-terrorism governance.

China's counter-terrorism legal order is currently undergoing a transition from foundational construction to institutional refinement. The modernization of national security governance envisioned in the 15th Five-Year Plan presents a historic opportunity for the further development of counter-terrorism criminal law. This opportunity should not be seized through the simple expansion of offenses or the escalation of penalties, but through the deliberate cultivation of institutional resilience. Through coordinated reforms in conceptual orientation, normative design, procedural safeguards, and supporting mechanisms, China is positioned to develop a modern counter-terrorism criminal law system that combines decisive responses to violent extremism with meticulous protection of citizens' lawful rights.

Only by pursuing such a path can China not merely achieve tactical victories in counter-terrorism, but also strategically consolidate the foundations of the rule of law, secure enduring public trust, and ultimately realize the long-term objective of sustainable stability. In this sense, the Chinese experience may offer a contribution of lasting significance to the global discourse on counter-terrorism and the rule of law.

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