

UNIwersytet w Białymstoku
Wydział Prawa

BIAŁOSTOCKIE STUDIA
PRAWNICZE

LEGAL AND CRIMINOLOGICAL
ASPECTS OF TERRORISM.
LOCAL AND GLOBAL PERSPECTIVE

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Białystok 2011

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Niniejsza wersja jest wersją pierwotną Białostockich Studiów Prawniczych.

ISSN 1689–7404

Redaktor językowy:

Richard Tykocki-Crow

Opracowanie graficzne i typograficzne:

Jerzy Banasiuk

Projekt okładki:

Bauhaus

Redakcja techniczna:

Jerzy Banasiuk

Korekta tekstów polskich: *Jolanta Wanda Rysińska*

Wydawca: Wydział Prawa Uniwersytetu w Białymstoku, Temida 2

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INTRODUCTION

This issue of the “Białystok Legal Studies” focuses on selected aspects of terrorism, one of the greatest challenges of modern times. For many years, the Department of Criminal Law of the University of Białystok, has conducted research in this area. In particular, a number of bespoke research projects have been undertaken with the involvement of representatives of other academic centers and officers of law enforcement and administration of justice agencies¹. The projects have resulted in numerous publications, including papers covering the problem of terrorism². Terrorism was also the topic of national and international seminars, discussions, and lectures organized by the Polish Platform for Homeland Security, initiated by the Department of Criminal Law and Criminology of the University of Białystok. Of note is the international seminar titled “Terrorism, globalization, and measures to respond to terrorist attacks in the present era of globalization processes,” whose participants included representatives of academic circles from the USA and Japan³.

This publication consists of selected articles discussing the problems of terrorism, from the point of view of not only broadly-defined criminal law, but also criminology and international law, in both its domestic and international aspects, on the background of the contemporary processes of globalization. Terrorism cannot be discussed as an isolated phenomenon. This is demonstrated in “Terrorism” by Professor Brunon Hołyst, who not only presents a comprehensive criminological and legal analysis of terrorism, but also draws a number of very pertinent conclusions of practical importance⁴. The author takes the right, albeit difficult, assumption that the problem of terrorism should be looked at from as many angles as possible.

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- 1 The projects in question are two bespoke projects ordered by the Ministry of Science and Higher Education: project no. PBZ-MNiSW-DBO-01//2007 titled “Legal and organizational-technical solutions in the fight against organized crime and terrorism, with particular focus on process evidence and the institution of immunity witness” and project no. PBZ-MNiSW-DBO-01//2007 titled “Monitoring, identification and countering of threats to the security of citizens” performed as a part of a consortium formed by the University of Białystok and the Military Academy of Technology. Recently, the consortium of the University of Białystok and the PPBW Sp. z o.o. finalized the project ordered by the Ministry of Science and Higher Education titled “Legal and criminological aspects of implementation and use of modern technologies intended for protection of internal security” (project no. OR 00003707).
 - 2 See: in particular: E.W. Pływaczewski, ed., *Przestępczość zorganizowana, świadek koronny, terroryzm – w ujęciu praktycznym* [Organized crime, immunity witness, terrorism – a practical approach], Kraków 2005; K. Indecki, ed., *Przestępczość terrorystyczna. Ujęcie praktyczno-dogmatyczne* [The crime of terrorism. A practical-dogmatic approach], Poznań-Białystok-Łódź 2006.
 - 3 Faculty of Law of the University of Białystok, 15-16 March 2009.
 - 4 B. Hołyst, *Terroryzm* [Terrorism], vol. 1 and 2, Warsaw 2009. The second, supplemented issue of this work was published in 2011 by the same publisher.

Thus, terrorism cannot be discussed as an isolated phenomenon. One should also note that another dangerous phenomenon, organized crime, has been escalating for a number of years⁵. Organized crime has evolved and grown to become a serious issue in the contemporary world. This has been caused by a number of factors, to include the financial and social globalization of economies, the fall of the so-called “Eastern Bloc” and the development of a market for financial products. Consequently, this publication must include discussion on the links between terrorism and organized crime and maritime piracy, as well as the political, financial, and social aspects of terrorism⁶.

One of the priorities of agencies and institutions charged with the reconnaissance, countering, and combating of terrorist threats, is to create an effective platform for communication with the public regarding assurances of public security and order⁷. Development of a model of comprehensive anti-terrorist information polity, which takes into account the prevention of and response to terrorist events, is one of Poland’s priorities as a part of the works of the G-6 group.

It should be mentioned that the National Program of Prevention of Terrorist threats in the Republic of Poland includes the prevention of recruitment of prospective new members by terrorist organizations. Thus, it is very important that Poland take advantage of the experiences of other countries related to prevention of radicalization. This topic is discussed broadly in the paper prepared for the research task titled “Reconnaissance, countering, and prevention of radicalization of religious views among members of the Islamic faith living in the Republic of Poland – as an element of the national system of early detection of terrorist threats” constituting part of the development project of the Police Academy in Szczytno titled “Countering and combating organized crime and terrorism in the conditions of safe, accelerated, and sustainable socioeconomic development”⁸.

It appears that it is necessary to expand the studies on the methods of countering and combating terrorism to include the issue of the use of new technologies. Currently, law enforcement agencies and secret services commonly use new technologies to

5 See: E.W. Pływaczewski, ed., *Przestępczość zorganizowana* [Organized crime], Warsaw 2011.

6 See: P. Grabosky, M. Stohl, *Crime and terrorism*, Sage Publications, Los Angeles–London–New Delhi–Singapore–Washington D.C. 2010.

7 See: E. Pływaczewski, K. Laskowska, G. Szczygieł, E. Guzik-Makaruk, W. Filipkowski, E. Zatyka, “Polskie kierunki badań kryminologicznych nad bezpieczeństwem obywateli” [The directions of Polish criminological studies of citizens’ security], „Prokuratura i Prawo” 2010, no. 1-2, p. 176ff; *Terroryzm w poglądach społeczeństwa polskiego* [Opinions of the Polish society on terrorism], B. Hołyst, M. Goca, eds., Warsaw 2011; A. Furgala, A. Tulej, D. Szlachter, P. Chomentowski, eds., *Spójna antyterrorystyczna strategia informacyjna* [A coherent anti-terrorist information strategy], vol. I, II, III, Szczytno 2011.

8 Project no. O R00 0040 07, titled *Radykalizacja poglądów religijnych w społecznościach muzułmańskich wybranych państw Unii Europejskiej. Polska–Holandia–Wielka Brytania* [Radicalization of religious beliefs in Muslim communities of selected countries of the European Union. Poland–Netherlands–United Kingdom], (D. Szlachter, W. Kaczorowski, Z. Muszyński, P. Potejko, P. Chomentowski, T. Borzoł, eds.).

obtain and analyze information in order to support the decision-making process in the course of their operational activities and in subsequent criminal proceedings.

This comprises, among other issues, crime analysis⁹ and the use of open-source intelligence¹⁰. These topics translate into a number of interesting legal and ethical issues. As it turns out, we are now facing the difficult and dynamically changing problem of a conflict between the right to privacy (to include protection of personal data) and the need to ensure the security of both the state and its citizens.

Emil W. Pływaczewski

9 See: W. Filipkowski, P. Chlebowicz, eds., *Analiza kryminalna. Aspekty kryminalistyczne i prawnodowodowe* [Criminal analysis. Criminalistic and legal-evidence aspects], Warsaw 2011.

10 See: W. Filipkowski, W. Modrzejewski, eds., *Biały wywiad. Otwarte źródła informacji – wokół teorii i praktyki* [Open source intelligence – theory and practice], Warsaw 2011.

TERRORISM, GLOBALIZATION, AND THE FORCES OF (DIS) ORDER IN THE ISLAMIC WORLD*

Introduction

We live in a troubled and tumultuous era. September 11 and its aftermath, the financial meltdown of 2008 and its aftermath, have littered the landscape with new obstacles that must be identified and surmounted. As of this writing, the events in Central Asia and the Middle East are cause for the devil himself to dance. The catastrophic impacts of global warming and of general environmental degradation seem to be on our doorstep, and it does appear as if the world may be heading into a depression, measured both in spirit and in hard currency. Achieving success and security, peace and justice in life remains a great challenge, and the bar has been raised of late due to recent events that are seemingly careening out of control. While the basic principles of progress and success remain the same, their operational application now needs to be adjusted so as to properly respond to the unique dynamics of the new and ever changing social, political, and economic environments in which we function. The valiant among us remain undaunted by the new challenges and move forward relentlessly, implacably, perseveringly and unyielding in heart and in mind. This trek of discipline carries a hefty tuition but offers much to those who pay the price.

This paper seeks to outline a series of inter-related socio-political, economic factors and forces, catalysts and causes if you will, that are impacting the state of order and disorder in our world, and suggests a course of action that we must undertake to mitigate the turmoil that is swirling around us all.

* This article is a wider version of paper presented during seminar entitled "Terrorism, globalization and the means of reaction on terrorism in the era of globalization" at the Faculty of Law University of Bialystok on 15-16 March 2009.

Terrorism and Islam

There is a significant measure of animosity held toward the West in general, and the United States in particular on the part of many in the Muslim faith; a feeling reflected not just by the Islamic fringe, but also by a large proportion of those who are in the Islamic mainstream. There is also a significant militant Islamic presence in Europe, Euro-jihadists as they have become known, that are both a by-product of and contributor to communal, national and global disorder. This troublesome situation continues to fester, and while there are some signs of decompression, the conflict appears as if it will boil for many decades to come.

It is not so much established terrorist organizations that loom on the horizon, but rather flexible, fluid cells, diverse and obscure entities that are inspired by, not directed by Al Qaeda. They are motivated more by an ideal rather than a leader. The United States and Europe are not up against a unified enemy, but rather a mutating virus of anti-American/anti-Western hatred; self-taught terrorists, organized in groups with no central structure per se, united only by their obsession with a jihad against America, against the West. This is the new face of terrorism – dozens of groups around the world connected by a global ideology, and a common enemy; the United States in particular, and the West in general.

Contemporary Flash Points

Historically, there are obvious and deep sentiments of cultural suspicion and mistrust between East and West that can be traced back to the inane policies and perspectives of Pope Urban II (1042-1099) and the Crusades. In a more recent context, however, there have been a number of contemporary flash-points that have contributed to the present crisis:

1. U.S. support of Israel – The United States is perceived by Muslims to have unfairly provided years of unwavering support for Israel, and for good reason. The over-the-top willingness of the U.S. to supply Israel with military hardware for example, coupled with our collateral willingness to turn a blind eye when that equipment is misused by the Israeli military, is particularly troublesome and strikes a sensitive cord throughout the Muslim world, even in countries far from the Middle East.
2. U.S. troops on Muslim soil – Salafists consider it a sacrilege for infidel military forces to occupy Muslim soil. The case of Saudi Arabia is of particular concern. Placed there just before the 1st Gulf War with Saudi Arabia's blessing to protect that nation and to serve as a staging point for taking back Kuwait, the U.S. stayed for ten years. The presence of these

infidels inflamed extremists and troubled even moderate Muslims. The continued presence of our troops in the region, on sacred soil, is an ongoing concern to the faithful.

3. Uneven U.S. economic sanctions – American economic sanctions, aimed at countries the United States says have sponsored or harbored terrorists, have centered almost entirely on Muslim countries. To the average Muslim in the street, it appears that the U.S. is targeting them.
4. U.S. support of repressive Middle East regimes – for fear of alienating strategic allies and disrupting the flow of oil, the United States (the alleged champion of justice and liberty) generally ignores serious abuses of civil rights by Arabic rulers friendly to it. The reality is that the United States supports corrupt regimes in the Middle East so that the oil will continue to flow. Interestingly, in many ways, the United States is contributing to the perpetuation of the socio-economic squalor in the Islamic world upon which terrorism thrives.
5. George W. Bush –The egregiously inept policy decisions of George W. Bush and his administration served only to inflame matters. His unilateral and ill-planned invasions of Iraq and Afghanistan, his belligerent intolerance, his dogmatic orientations and condescending air, his pursuit of policies that ran counter to the rule of law, have all served to alienated even Islamic moderates. There was already an image among many in the Islamic world that the United States was an evil empire. That perspective was aggravated by the Bush administration. The world was a dangerous place when he came into office, and he made it more so.

Globalization: The Cultural Cyclotron

In addition, there are a handful of related and more unremitting factors that are fueling the conflict. One of the more enduring and far reaching is the cultural imprint of globalization. Globalization is the quintessential cultural cyclotron, slamming and melding East and West, Latino and Asian, Hindu and Buddhist. Its impacts are infiltrating virtually every society, clime, and culture worldwide. On the positive side of the ledger, transnational markets have allowed consumers worldwide to enjoy access to a broader array of goods and services than ever before, scholarly exchanges are increasing, infrastructure is improving, and cross national exchanges and interactions are increasing in every sector and at all levels. Today, for the first time in human history, there is truly a global economy and an emerging global community.

All of this, however, does come with a cost, a cultural melding cost, and that inevitable collateral consequence is totally unacceptable, particularly to many in the Islamic community. In this sense, globalization serves as an aggravating factor. One of the core factors propelling the current Islamic jihad is the deep resentment regarding the cultural impacts of globalization in general, and more particularly, the impacts of globalizations' Western cultural orientation on Islam. There is a cultural osmosis, a cross-cultural melding, a cross-pollination, a cross-fertilization as an inevitable artifact of globalization, and many in the Islamic world (as well as the fundamentalists in the Christian world) are horrified with this prospect. The impact of this multi-lateral assimilation is a creeping erosion of the traditional Islamic culture, a pollution of the pure, and an eventual marginalization of that way of life.

Even moderate Muslims view America and the West as a cultural hyperpower that dominates the world, crushing Eastern religious and cultural institutions that have existed for more than a thousand years. American influence in particular has been culturally extended in six ways:

1. Finance (commerce, trade, foreign aid)
2. Entertainment industry (television, music, movies)
3. Pervading and pervasive military presence
4. Political and business orientations (contracts, rule of law, freedom of speech)
5. News media
6. Magazines of every ilk (news, fashion, sports, entertainment)

This influence, thanks to globalization, has become rather firmly embedded into the global culture and will likely stay there for centuries to come, both the good and the bad. The Muslim Fundamentalists, reel at the latter. There are aspects of American/Western culture that are definitively and categorically at odds with Islam, that utterly dilute and pollute Islamic culture and conscience – abortions, blasphemous books, secular materialism, sexual perversion and hellish music. The concern is that Western culture tends to capture and corrupt young Arabic minds. The Islamic clerics certainly preach against it, but Western culture is most intoxicating. The clerics are losing the culture war, they are mad, and wish to send the devil back to hell. Even the moderate Islamic community is in general agreement with the pax Americana theme, and that broad theme plays well across the Islamic world.

Western culture does steamroller alternative cultures, sometimes with an iron fist, sometimes with the velvet glove of seduction. And this is what bin Laden and many in the Islamic community are really fighting, the erosion of Islamic culture as a result of its exposure to America and to the West in general, arising from the insidious creep of the globalization market culture. Yet, at the same time, many in the Islamic world seek to participate in that global economy, wish to have access to

the world's markets and goods, wish to gain access to the rest of the world and all it has to offer. The situation has left the Muslim world in disarray and has kindled a measure of cultural dissonance within the Islamic community, a matter which will be addressed in more detail later in this paper.

In this context, Mr. bin Laden is not the enemy per se. Rather he is an emissary with a message that resonates well in the Muslim community. The real enemy is a fluid, illusive, and yet very real anti-Western/anti-American or in other words, anti-globalization sentiment, that has been built up to effervescent proportions. The problem is compounded due to the fact that negotiation is just not a part of the formula at present for many in the Islamic world, particularly the fundamentalists who do not want the West to change, but rather they want Western culture in general and globalization in particular to die. There is no dialogue, no demand list, no suggestions of how the West should change, what the West should do. They simply want the West to go away, possessing somewhat of a neo-nihilistic perspective. They want to destroy all that there is in the West, for God, for Allah, who is standing by even at the gates, to start a new world with the scraps of the old, very much like the classical phoenix of Greek mythology. Mohammed Atta, the mastermind of the 9/11 attacks, wrote in letters back home that he, burned with desire to restore the old glories of Islam.

An Alternative Explanation

There is another source of contemporary Islamic terrorism that is not based in religion, nor cultural conflict, nor in the flash-points of concern outlined previously. The root source of the bulk of Islamic terrorism is anomie; a reaction to the hopelessness bred within the backward nature of contemporary Islamic societies, where endemic poverty reigns, where there is insufficient infrastructure, ineffectual civic and corporate institutions, inferior educational systems, and where there are limited opportunities for economic, scholarly, scientific and artistic pursuits. The source of this anomie is the lack of modernization, political and economic, in much of the Islamic world – the offspring of the debauched relationship between centuries of poor governance and insignificant economic development.

As the rest of the world moved forward in the last 50 years, the bulk of the Islamic world failed to keep pace, with a few exceptions (Turkey, Indonesia, Malaysia, Qatar, Bahrain, the United Arab Emirates). The primary reason is rooted deep in Islamic religious dogma. Many in the Islamic world cling to the vision of a cherubic Islamic nation-state. Little importance or social value is given within Islamic culture to the temporal matters of good governance and its offspring –

infrastructure improvement, economic growth, education enhancement, multi-sector civic development, etc.

This prevailing view of Islamic law as hallowed and unalterable has resulted in a confiscation of the political. As a result of centuries of blunted socio-political progress and development, and parallel inept civic governance, the Islamic world now finds itself decidedly behind the rest of the world in virtually every arena. The problem is that a new socio-economic order has been thrust upon them, and they are not ready to participate.

Unfortunately, rather than embarking on fast-track modernization and joining the globalized world, many Arabic political leaders are aggravating the situation by retreating into fundamentalism themselves. Many are abandoning their civic duties, and thus condemning their communities and their people to fall even further behind. Faced with a situation where there are few viable opportunity structures, the Islamic body-politic suffers from a significant level of aggregate anomie, and many have chosen religious extremism as the alternative.

Samuel Huntington first wrote of this phenomenon in the context of Islam some 40 years ago. When the Islamic rank and file feel the crush of disorder, when they struggle with the dynamics of the multi-sector change that globalization in particular is yielding, they tend to default to a more enduring sources of stability and protection – fundamentalism, which, with its simplistic dogma, yields the craved inner psychic comfort missing from the tumultuous world. That psychic retrenchment is also often accompanied by a social and physical retreat into extended family/ethnic/ tribal enclaves, to meet tangible/physical security needs. This phenomenon is all the more pronounced among the transitional and developing Islamic nations, where there is weak government and insufficient economic opportunity structures. This is the core principle behind his “Clash of Civilizations” perspective – a xenophobic response to the cultural melding brought on by globalization. Globalization by nature disrupts, and when there is weak government providing little physical safety and insufficient economic opportunity structures, people will resort to fundamentalism.

Huntington presses the idea that the countries that are struggling the most in this globalized world, are those with weak and ineffective governmental structures. They cannot exercise viable control over their people or their lands, they have limited viable economic opportunity structures, and the result is an infestation of fundamentalism. In other words, it is the pressure of globalization in the presence of weak governments with their ineffective security delivery capabilities and insufficient economic opportunity structures, that is causing the growth of fundamentalism. Fundamentalism will not flourish in the presence of globalization if strong governments who can deliver security and sufficient economic opportunity structures are in place.

The empirical evidence supports this 2nd thesis. While globalization is thriving in the West, with its strong government and civic entities and broad opportunity structures, the body-politic in the Islamic weak states, where government and civic based institutions are ineffectual and economic opportunities are collaterally stunted, have in point of fact looked to religious-based extended family/tribal/ethnic entities for emotional and physical protection. These entities have taken the form of militias and insurgency groups in the Middle East, and tribes in Central Asia. They will not go away until these governments can provide real security and tangible, long-term economic opportunity. Even then, since the tribes and militias have so firmly embedded themselves within the socio-political culture, it will likely take decades, perhaps generations to dismantle them, and the dismantling will come via the velvet glove of evolution rather than the external iron fist of authority. If the government can provide real security and tangible opportunity, they will fade away, but only after their continued presence becomes a meaningless redundancy and the cultural value of their residual presence likewise fades into the dust-heap of history. The West has experienced this same phenomenon, with its tribes and militias headed by squabbling dukes and barons and kings and popes. At the outset of the 21st century, we in the West are still dealing with the residual impacts of our ancient regional and tribal animosities. Consider for example the negative attitudes of most in the West regarding immigration. Consider the ever-present national and regional animosities that are very much alive in modern Europe. Why would we expect anything different from Islam?

Returning to the theme of governance, economic opportunity structures, and fundamentalism, the underlying question that emerges is one of causality. Has it been poor governance that has yielded insignificant economic development in the Islamic Ummah, or has it been insignificant economic development that failed to motivate the growth of good governance. Huntington suggests the former. In fact, his proposition is that if the citizenry become economically, politically and socially active (ie., if they embrace the tenets of globalization), but the basic institutions of governance are not in place (no established political parties, no viable justice systems, regulatory agencies with no efficacy, insufficient educational systems, fragile civic and business infrastructure), the result will be instability and a resultant retreat into religious fundamentalism/extremism within the extended family/ethnic/tribal enclaves. Economic development, he argues, requires pre-existing conditions – established institutions of public order and a government that is able to exercise viable power and exert its authority over its lands and its people. Pressing for enhanced economic growth and participatory government in the absence of a wide array of established institutions of public order, he proposes, merely aggravates the security and stability problem. The type of government, he posits by the way, is not important. Civic stability and communal security is based on the extent and

degree of governance that is present; the ability of government entities to exercise viable power and authority within their borders. If that power is there and security is present, economic growth and development will be forthcoming. The antecedents of economic development, he argues, is good governance. This does not appear, however, to have been the case in either the United States at the outset of the 19th century, nor in India at the close of the 20th century. Both of these rather diverse nations suffered from a significant degree of poor governance, but both managed to develop economically, with good governance arising thereafter in the case of the United States as a result of pressure from the economic sector. It is my proposition, from a myopic American viewpoint, that economic development is the key. There are certainly other forces and factors driving the matter (ie, the cultural collision of globalized commerce and exchange, and the subtle Islamic religious aversion to the value of civic governance perhaps being the most powerful), and things do need to change in a variety of arenas, but my proposition is that economic development is the cornerstone to peace stability in the Islamic world. As business and finance begins to emerge, it will push for the greater levels of stability and security that is found in good governance. The populous does not have the political efficacy to achieve this end. They may cry out for it, but good governance will emerge from the efforts of the business elite, but only when they see it would be to their benefit. Once headed down this road, development of the business and public sectors will be a compounding relationship, each benefiting from the growth and development of the other.

Imprinting Democracy

Many in the United States view democracy as the antidote to the Militant Islamic virus. This is based in part on a truism; historically, liberal democracies foster peace and security, and they have generally not gone to war against one another. The Bush administration also operated under a second hypothesis; that self-governance and liberal democracy are universally coveted entities, and in the context of the current environment, if given the chance, the Arabic nations would promptly adopt them, peace and tranquility would readily emerge thereafter, and the current Jihad against the West will become passe. What Bush failed to grasp, is that hatred of despotism and autocracy does not necessarily translate into a love of democracy and all its various organs. Bush also failed to grasp the fundamental concept that “democracy” is a fluid entity and not some static phenomenon. What exactly is American-style/Western democracy, and, more importantly, who is to say that this is the ultimate standard? At some point in time, it will become obsolete and outmoded as societies and the collective body politic evolve to new and different forms of governance.

Furthermore, and of greater concern, there are cultural prerequisites for democratic self-governance and those antecedents are lacking in the Arabic Ummah. The notion of transplanting Western-style democracy into the Islamic world is simply naive. Contemporary Western democratic republics did not spring fully grown from the womb of Western culture. Western democracy has evolved and morphed into many different strains over the centuries, in a millennial shuffle, with occasional revolutionary and civil wars, stops and starts, ebbs and flows. The result of this multi-century caustic dialogue in the West has been democracy, true, but a very different mode of democracy depending upon the very diverse social, economic, political and historical dynamics unique to each region and nation-state. Each strain of Western democratic governance reflects the necessities of the times and the settings in which it was planted and nourished, and Western democracy continues to evolve in unique ways in unique locales. To press the present form of American liberal democracy on Iraq, on Afghanistan, on traditional Arabic society in general, to press a model of governance that has taken centuries to evolve, that has definitive socio-cultural pre-requisites, that takes on different forms in different environments, is utterly absurd, and obviously doomed to failure.

Western-style democracy is not the antidote to Islamic fundamentalism. Western efforts to impress and imprint it in the Moslem world will ironically result in an increase in fundamentalistic fervor. In much of the Islamic world, the very thought of liberal, social democracy, with its emphasis on communal input and popular sovereignty, is a repulsive notion, running counter to a millennia of Muslim socio-political culture. The social, political culture of the Middle East is patriarchal, tribal, and ethnic. It is not psychologically geared to popular democracy and central governance any more than was Western Europe 500 years ago. The wish of even the contemporary Islamic moderates is not for a Western style social democracy, but rather some functional theocracy that will maintain some elements of traditional Islamic culture and also improve the socio-economic opportunity structures. China, for example, has certainly not adopted democracy. There is little interest in Constitutional liberalism, but great interest in the freedom to make money. They have rather successfully melded neo-communism with global capitalism, maintained a strong sense of identity, and have become dominant players in the market. At this juncture, a Chinese eclipse of American dominance seems to be on the near horizon, and many progressives within Islam are looking to China as an example in this regard.

A counter-point needs to be raised at this juncture. The argument that democracy and Islam do not mix, at least in the present sense, does not seem to be confirmed when reviewing the results of recent polls. Some surveys suggest that as many as 80 to 85 percent of the Arabic community want democracy. However, a more careful analysis of the data reveals that the Arabic body politic defines democracy

in a very narrow construct; self-determinism. Democracy in the Arabic world is not a desire for Constitutional liberalisms, freedom of the press, freedom of speech, checks and balances, etc. Democracy in the Arabic East is a singular dimensioned entity – the opportunity to decide for themselves how to be governed. Interestingly, current polls suggest that if given the choice, most in the Arabic world would choose a restrictive theocracy; somewhat of a paradox, that the democratic apparatus of self-determinism would be used to establish what in the West would be viewed as a non-democratic form of governance.

The bottom line is that democracy in the Arabic context is a very different entity than democracy from a Western orientation, and surveys that suggest a strong support for democracy in the Arabic East need to be viewed within a cultural context to obtain a proper understanding. Again I stress, democracy in the Arabic community is a univariate notion; self-determinism – a chance to choose the type of government that they want, and in an ancillary sense, to be free from America and its imperial influences.

Americans as a whole suffer from a significant degree of monomania when it comes to democracy, feeling that history (and even the gods) favors its inevitable triumph. The fact that there are problems with democracy is universally overlooked by them. There are, for example, very real and pronounced despotic propensities inherent in electoral democracy (ie., Chavez in Venezuela, Marcos in the Philippines, Hamas in Lebanon) that may become, and given the history of the Arabic region, likely would become manifest were democracy to be force-fed in Islam. One person, one vote, one time is the battle cry of many would-be autocratic rulers who see popular elections as a way to obtain power legitimately, but once seated, to never let go.

There are also pragmatic limitations with respect to the notion of implanting democracy. Only nine countries have successfully made the transition from poor dictatorships to modern democracies in the post-War era, and five of those (Cyprus, Hungary, Spain, Portugal, and Greece) did so due to powerful incentives put in place by the European Union (the others are South Korea, Taiwan, Chile, and Argentina). Furthermore, recent history has shown that the more infamous totalitarian governments of the 20th century arose, not from authoritarian regimes, but from weak and fledgling democracies that were in the early stages of development (ie., Russia in 1917, German in 1933, Italy in 1922). The same course of events could and likely would transpire in Islam were there any ill-advised attempt to graft Western democracy onto the current Arabic body-politic. Despite these concerns (or perhaps due to an ignorance factor), the previous American presidential administration, with blinders securely fashioned, ran about the globe, full of religious certitude, chanting democracies omnipotent virtues in a mindless mantra. There is something

quite arrogant, condescending, and woefully naïve with such demonstrative efforts to imprint America's particular brand of social democracy on the world.

Interestingly, and somewhat ironically, the same Americans who so champion the notion of liberal democracy, have a difficult time even defining what it is, and generally resort to definitional jinder. Western social democracy is an amalgamation of representative governance and various constitutionalisms involving the rule of law and the protection of human rights, guardianship of private property, freedom of speech and transparent due process, as well as socially valued and professionally managed institutions of public order. But to assume that these various independent aspects and elements of Western democratic governance can be grafted into the Islamic body-politic overnight is utter fantasy. They certainly were not adopted en masse in the West with a singular swing of the revolutionary axe. Why would the East, with little or no cultural propensity for such notions, take them on? It will take decades, centuries, and even then, many of these components will never be incorporated into the Islamic socio-political world. Even if they are, they will be adjusted, adapted and coopted in such a way that they may not even be recognizable to the West.

The Bush thesis that democracy destroys terrorism is utterly sophomoric. In fact, most terrorist attacks take place within democracies.

Terrorist attacks are easier to "pull off" in open societies. Based on the premise that the purpose of terrorist attacks is to create mass panic and thus influence government policy, terrorist attacks are more effective in open democratic societies that have responsive government officials. Where better to strike than a highly responsive political system.

There was no democracy but also no terrorism in Communist China or Soviet Russia, but democratically-based India and Ireland have suffered from terrorist attacks for years. The latter are both open, diverse countries with many different groups feeling very strongly about their identity and autonomy. The origins of terrorism are unique to the customs, cultures and histories of each region, and are far more complex than a simple presence or absence of democracy. Contemporary Pakistani terrorism bred due to the fact that it was the conduit and recruiting ground for the jihad against the Soviet occupation of Afghanistan. Of late, Pakistani terrorism has been exacerbated by the collapse of the state, its inability to provide basic infrastructure resources and education, a neglect of the tribal regions, and the unwanted and dominating presence of the U.S. in the region. It has nothing to do with the presence or absence of democracy. Having said that, in the end, the presence of a mature democracy may have some mitigating influence on terrorism due to the greater access to power structures, willingness to compromise, an open

press policy, etc. But democracy is surely no vaccine, especially in the early stages of its development.

The Role of Economics

Recent surveys undertaken in Russia reveal a latent interest in democracy, but a far greater interest among the Russian citizens in seeing the government improve conditions that will let them lead peaceful and economically secure lives. Armed with this information, former President Putin, when awakening the Russian bear from its recent economic slumber, found himself able to move away from Western democratic ideals with a significant measure of political impunity. The same can be said of China, as previously suggested, where, with local elections as the exception, there is little interest among the body-politic in implementing democratic liberalisms, but there is great interest in seeing the government promote policies that will enhance economic growth and development. Rather than Western democracy and all its constitutiona liberalisms, the body politic of this world wants its collective governments to support conditions that will allow them to maintain their sense of identity, lead to increased social peace, and enhance macro socio-economic opportunity structures – let me be me (with my religion and my identity in place), let me make money, and let me live in a safe and secure environment. The form of governance that should be put in place to achieve these ends is irrelevant. Contrary to American orientation, democracy is not omnipotent, nor does it need be omnipresent.

Rather than force feeding the East on Western democracy and its various components, it is a broad-based, multi-sector economic progress that needs to be championed and supported in the Islamic East. In this sense, I echo the sentiments of Adam Smith who suggested that more than the export of democracy, it is commerce, trade and multi-sector economic progress that will produce civil peace. The war against Militant Islam will not be won with bombs and bullets. Kinetic military action will only accentuate rather than mitigate the problem. Rather, as the Islamic nations become increasingly integrated economically, and as tangible economic progress is realized in every sector, as the boats are raised in every social class, as anomie is replaced with opportunity, fundamentalist/militant orientations will vanish. In this context, there are two competing forces in this world – economic integration, globalization and all which that entails (including cultural osmosis verse retreat, fundamentalist orientations. Economic interests will trump belligerence, but, it is going to take some time for this to play out as measured in generations, if not centuries, and the Muslim world will not experience a seamless transition in the interim. Fundamentalism of all kinds needs to be overcome, for it is the antithesis of civilization. Civilization requires consensus, compromise, cooperation, dialogue,

understanding, and humility – not pious monologue and dogmatic, unilateral certitude.

There will be social strife and disruptions to tradition and culture, false starts and steep learning curves. The end, though, is inevitable – connectivity and commerce will mitigate religious and cultural differences. The Islamic world will join the global economy in time. Some in the Arabic states are pressing to join the rest of the socio-economic world sooner rather than later. But how to do it, and how much of the Islamic core is to be maintained in the transition, remains to be seen.

A Brief History of Secular Islam

This somewhat pedantic cause or consequence debate aside, there is no disputing the fact that for centuries now, the Islamic political leadership has let its people down. By the same token, the people also bare some of the responsibility for they have stood by and allowed the leadership to default. The classical age of Islam peaked during the reign of Suleiman the Magnificent (1490-1566). He pressed for all manner of social and economic reforms, modified the institution of slavery, organized schools for the young and universities for the old, developed libraries, encouraged and supported scientific inquiry, encouraged intellectual exchange. It was a glorious era. Islamic literature was fully developed, their medical advances far surpassed the West, and they advanced architecture to the point that the Western world did not catch up until the era of Michelangelo. The great western library in St. Gall, Switzerland had 600 books, while the contemporary Islamic library in Cordoba, Spain had 400,000 volumes.

Science, math, engineering, medicine, literature – there was no match. The West was, in point of fact, populated by large numbers of barbarians during this time. The Muslim world's error was that when the West began to progress, the Islamic predisposition of viewing with contempt anything West, kept them from recognizing the fundamental shifts. The Islamic community continued to limit their interactions, stayed isolated, fell behind, and eventually imploded.

At the death of Suleiman in 1566, the surviving generals fought for control of the empire, and divided the kingdom. The Islamic world has largely been in a socio-economic/geo-political free-fall ever since. It now finds itself decidedly behind the rest of the world in virtually every arena, unable to participate in the global economy with little progress being made, and a continually shrinking aggregate opportunity structure coefficient. The region is falling further and further behind.

It is this sense of defeatism and hopelessness that drives the current Islamic jihad; 50 percent plus unemployment, non-existent and/or ineffectual civic and

corporate institutions, insufficient medical delivery systems, second-rate schools propagating multi-generational illiteracy/multi-generational resignation, inadequate and in many locales non-existent infrastructure, limited access to external media outlets, subsistence living in barren housing projects. This is not the good life, and jihadists will be continually conceived within this womb. These conditions have yielded a large pool of poor, deprived young people who are susceptible to the argument that they can best spend their lives by serving Allah, literally donating their lives to the cause. Jihads appeal to those who have been left behind, who have been economically and culturally uprooted by the whirlwinds of globalization. Fundamentalist Islam gives hope to the hopeless. Until someone can offer these people something better than a martyr's death, then the bin Ladens' of this world will always find a home. In the end, economic development is the key. There are certainly other variables driving matters, and things need to change in a variety of arenas, but I believe that economic development is the cornerstone.

In sum, Militant Islam tends to attract two types of individuals:

1. Young Islam (ie., typical Palestinian terrorists) – They are unmarried, under-educated, unemployed and unemployable, disenfranchised, locked out of the global economy (particularly in Europe). They are anomie driven, with concerns of cultural corrosion emerging as a secondary issue, if at all. With no stake in society, they are ready to give their lives for the cause. If they were socio-economically engaged, they would not be as concerned about the imperial U.S. presence in the world, and the tainting influences of globalization. These are the “accidental terrorists,” and this is the demographic profile of the bulk of the Islamic militants.
2. Older Islam (ie., the 9/11 bombers) – These are the Fundamentalists, the Salafists. They are concerned of the cultural osmosis of globalization (sexual perversion and secular materialism), the pollution of the pure. They wish to restore the dominance of/realize the global ascendance of, the theological state of Islam. Economic success is an independent and unrelated factor. They are concerned with the United States as the infidel occupiers of the land and seek freedom from America and its imperial presence, but that is a secondary factor, for these are the religious zealots who wish to destroy all there is in the West for Allah, who is standing by, even at the gates, to start a new world, an Islamic world, with the scraps of the old.

The Religious Co-Variate, Again

There is, of course, a definitive marriage between politics, economics and religion in the Muslim mind and heart. Religion dominates culture in the Islamic

world, and to eke out a subsistence living with a keen awareness of bounties of the Western world is galling and strikes at the very heart of their being. It is a pride issue, combined with a dogmatic religious fervor, and American/Western prosperity is indirectly but openly confronting them. Mainstream Islam is totally convinced of the superiority of their religion and culture, and are now obsessed with the inferiority of their power and influence in the global context. The Islamic community still remembers their time of dominance. Again, Mohammed Atta burned with desire to restore the old glories of Islam.

Along the way, as the Islamic secular world fell behind intellectually, economically, and socially, the Muslim faith suffered as well, being diluted and altered as the Arabic people came in contact with different tastes and traditions and cultures. It must be stressed that the Islamic Ummah, or the Islamic “world” if you would, stretches from Africa to Southeast Asia and is a proverbial polyglot of history, customs, culture, and religion. There have been periodic reactionary responses to the religious diversity that has emerged within the Muslim faith over the centuries – desires to purify Islam. The pedigree of contemporary Militant/Fundamentalist Islam can be traced back to the 13th century Syrian cleric Ibn Taymiyya. He was a member of the relatively strict Hanbali school of Islam. After the destruction of the Abassid caliphate by Mongol invaders in 1258, he took a more dogmatic view of the Sharia and combined it with vigorous enforcement. Although the movement died out, Abd al-Wahhab resurrected the Taymiyya idea in the 1700s. Today, most Jihadists are Wahhabists, but, not all. Neither the Taliban nor the Egyptian-based Muslim Brotherhood are Wahhabists for example, and then there are secular terrorists, such as the PKK, Hamas, and Hizbullah. They possess a religious flavor of course, but have more of a national liberation focus, ala the IRA and the Tamil Tigers. The future of terrorism in this region however, will likely come primarily from the fundamentalist driven Islamic-based entities (Taliban, Lashkar-e-Taiba, al-Qaeda), and the militant Salafists.

To the militant Salafists, the only way to now turn the world Islamic green, is to engage in a campaign of mutually assured destruction; an apocalyptic, nihilistic obliteration campaign, with the Islamic state emerging from the ashes. Islam does carry within its religious roots, a moral justification for violence (Jihads), particularly against an infidel army of occupation. As an aside, it must be noted that the Islamic faith is obviously not the sole owner of the doctrine of righteous war. Review, for example, the history of Ireland and Europe in general, as well as the Spanish conquests of Latin America as demonstrative examples of the horrific consequence of sanctimonious Christian certitude. Certitude within any context decimates and destroys.

Salafists (which can be translated roughly as “righteous predecessors”) seek a pure, uncorrupted Islam. They believe that Islam had been perfected in the days of Muhammad and the three generations thereafter. Salafists are not Wahhabists per se, though both tend to be Sunni, both seek an Islamic reformation or revival, and both look to Muhammad ibn Abd–al–Wahhab for inspiration. Salafists tend to cling quite closely to the writings of Ibn Taymiya and his two students (Ing al-Qayyim and Ibn Kathir) and would be considered a broader movement than Wahhabism. The Salafists tend to reject science and have great emphasis on ritual, including how to eat and drink. They believe that jihad is permissible against foreign, non-Muslim occupiers, and they adhere to a strict constructionist view of Sharia law. The Sharia is the body of Islamic law based on the Qur’an, the Hadith (teachings of Mohammad and his companions), community consensus, reasoning by analogy, and centuries of discussion and interpretation. In Arabic, it means way or path. It is the legal framework in which life is regulated for those living in an Islamic legal system. It is not a codified law per se but rather a series of common laws, cultural precedents, and historic interpretations that vary from sect to sect, from region to region, from family to family. One of the great contemporary debates in Islam focuses on the nature of Sharia. Some view it as a changeable body while others view it in a more fundamental, un–alterable context (the true Sharia, the true body of law being established by the 18th century). Even then, there are differing interpretations of Sharia, with Sunni’s embracing a number of orientations including the Hanbali, Hanafi, Maliki, and Shafi perspectives, while most Shiites cling to the Jaafari view. While it is difficult to make generalizations (there are 72 recognized Islamic sects), in short, the Sunni’s permit individual reading and interpretation, while the Shia tend to limit personal interpretation and rather look to clerics and Imams for clarification and explanation. There is an obviously interesting parallel in this context between the Catholics and the Shia on one hand, and the Protestants and Sunni on the other.

The influence of Muhammad ibn Abd–al–Wahhab and ibn Taymiyya has certainly waxed and waned over the years. In a more contemporary sense, the current concerns regarding the disintegration of pure Islam motivated intellectuals at al-Azhar University in Cairo in the mid–1850s to call for a revival, and to make fundamentalist Islam more attractive as a political, social and legal force. That cry was taken up in the 20th century by Sayyid Qutb (pronounced Koteb), an author and an intellectual who is considered the godfather of contemporary jihadist terrorism. He was a member of the Egyptian Muslim Brotherhood who wrote of social justice and righteous jihads. His work basically shaped Al-Qaeda philosophy. He was executed by the Egyptian government in 1966 and is consequently viewed as a martyr by the Militant Islamic community.

It appears that much of the contemporary Fundamentalist Islamic anger is based in an anomie–type frustration over the fact that it appears that Allah has let

them down; that since they are not enjoying the bounties of life as is the West, that Allah has reneged, or even worse, is wrong. The religious element aside, the Islamic perception of Western culture winning/dominating is correct, when cast in terms of scientific and intellectual contributions, economic growth, social stability, etc, etc. The end result of this current confrontation, is inevitable. There will be more body bags, and more property damaged, but in the end, Islamic extremism is going to loose to the global economy.

Qatar, Malaysia, Bahrain, the United Arab Emirates, for example, are moving forward toward economic openness and efficiency. Egypt seems to be coming out of it slumber as are Morocco and Lebanon. A decade ago, Algeria, Turkey, and Egypt all were poised to move toward a Fundamentalist Islamic state, but no longer. Many Islamic fundamentalists in Turkey, for example, have proven to be even more pragmatic at times than many of their secular cousins. Once in power, they have compromised with Kurds, softened their stance on Cyprus, and have aggressively pushed for social and economic reforms designed to gain Turkish membership into the European Union. Many in the Arabic world have stopped looking to Islam perfor their temporal salvation. The greatest potency Islamic fundamentalism holds is that it is an alternative to the wretched reality that most people live under in the Middle East. But, whenever Muslim fundamentalists have been forced to leave their philosophic rhetoric and become involved in the grind of actual governance, in day to day politics, in the mundane delivery of government goods and services, their luster has worn off and the people quickly weary of their charms.

The Middle Eastern body politic have realized that streets and sewers have to be built and maintained, government finances have to be managed, education and public health matters attended to. The clerics can preach and excite, but they cannot govern. The Taliban in the end held no allure, and the people are beginning to realize that fundamentalism has no real answers to the problems of the modern world – it has only fantasies and is the antithesis of civilization. A future of contact, culture, commerce, trade and tourism looks more likely than one of war, rhetoric and politics, but there is much to be done, for there will be conflict between globalization and fundamentalism in all of their various forms and format, for centuries to come.

Islamic Reformation

Contrary to mythology, history rarely if ever repeats itself. It does, however, have a tendency to replay very similar chords and in that context there is a profound parallel between contemporary Islam and medieval Europe. Europe spent the midmillennial centuries spilling much blood addressing the issues of sovereignty, religion, ethnicity, and governance. Initially the battles focused on breaking power

and sovereignty from the church. That achieved, Europe spent the rest of the millennium warring, as it experimented with various kinds of governance – left and right wing dictatorships, communist regimes, republics, social democracies. The Western states that emerged from that conflict generally possess a much diminished role for religion, are ethnically tolerant, are post-war in their orientation, and have adopted diverse and assorted models of governance, that now, at the beginning of the 21st century, generally lean in the direction of social democracies. The evolutions of governance continue in the West of course, but now seem to be taking on more of a peaceful format.

The Middle East and Central Asian Islamic states appear to be in the midst of this same kind of dynamic, possibly shifting power away from the clerics and examining alternative forms of governance. Islam, in this context, is at an early state of evolution, in the beginning stages of a growing and inevitable conflict between fundamentalists and the more secular oriented populists, very much akin to the effervescent, tumultuous and evolving Europe of 500 years ago. They are in the midst of a reformation. There is, however, one major religious difference that needs to be articulated. The Pope was a singular, titular head, and consequently could be and was the target of relatively unified and focused, and in the end, successful attacks. For many years, the Moslem faith had such a leader, a Caliph, though the position possessed decreasing de-facto relevance once the Ottomans conquered Egypt and appropriated the title in 1517. The Turks formally abolished the Caliphate in 1924. As a result, Islam currently lacks a singular human leader nor a central command structure.

Power is spread among a cacophony of imams and clerics and is based on the ephemeral notions of personal aura and charisma. Such a decentralized and diverse power base will be hard to supplant. Yet, there are many Muslim voices ready to take on that challenge, and who wish to integrate Islam into the global economy and to deal with/accept the collateral religious costs and the cultural osmosis/ erosion impacts. Indeed, many in the Moslem community have now begun to reject the fundamentalist vision of jihad. The growing Islamic middle classes for example, are no longer willing to accept Bin Laden's celestial nihilistic vision, for it has led to destruction and chaos. They have a growing stake in the society of now, and seek instead for peace and stability and opportunity in this life. Even many Saudi leaders, who have historically tolerated radicalism, have come to realize that their own stability depends on moderation. A group of Islamic scholars based in Ankara will soon be publishing a new edition of the Hadith, bringing a more contemporary perspective to the 170,000 teachings and sayings of Muhammad. Progressive Muslim thinkers have pressed for similar action in the past, but have been viewed as outsiders, operating on the fringe. That is no longer the case, and momentum is building within the Muslim world to review and re-interpret their faith in the

context of the modern world. This is nowhere more evident than in the case of Amr Khaled, the conciliatory and growingly popular Egyptian Muslim televangelist, now working out of the UK. Time Magazine recently ranked him as the 13th most influential person on the planet.

Others, of course, are not so enamored with these “progressive” movements, and wish to instead retreat into the pure form of Islam. Many Sunni fundamentalists, for example, wish to re-establish the Caliphate and to see Sharia law reign supreme. Moderate Muslims cringe at such a prospect – the battle-lines have been drawn.

The Islamic world has experienced centuries of bloody, internal conflict, and in reaction to the contemporary influence of globalization and the concomitant crush of Western culture, have now moved into a new period of social and political upheaval. The great question is whether the West can absorb the same level of chaos and destruction from Islam that it (the West) wrought upon the world this past 500 years as it tumultuously evolved to its present socio-political state. It is an unsettling prospect.

The End of the 20th Century

The 20th century was ushered in, I would suggest, on June 28, 1914 when Gavrilo Princip assassinated Arch Duke Francis Ferdinand. That act set in motion a series of events that led to World War I, and the end of Western aristocracies. The 21st century was ushered in on September 11, 2001. That act has set in motion a series of events that has and will continue to change our world. World War I was inevitable. The Ferdinand assassination simply sparked the unavoidable. A September 11 type episode was equally unavoidable, an inescapable, an inevitable artifact of the crush of globalization acting in concert with the other factors that have been outlined in this paper (poor governance, insufficient economic opportunity structures, rise of fundamentalism, etc.).

Globalization, and its twin, social and economic convergence theory, has worked very well from a Western-world context. It is a simple plan; open up markets, encourage consumption, promote trade and scholarly exchange, build highways and byways, promote interaction at all levels, allow a middle class to develop, their interests will converge with ours, war will be averted and civic peace will reign. It worked well with respect to the Soviet Union and helped bring it down. It has worked well in China and has transformed that nation, as it has India, Korea, Japan, Taiwan, Thailand, and many countries in South America.

The Islamic nations are another story. The 20th century message of peace through social and economic convergence, with a few previously noted exceptions, did not

infiltrate the Arabic world. They have not been equal partners in the globalization movement due to a combination of inability and reluctance, particularly a reluctance on the part of the fundamentalists. They cling to a vision of an Islamic nation–state that rules the world. The problem is that Western civilization, through the vehicles of technology and socio–economic globalization, is clearly dominating, and will continue to do so for the foreseeable future. Like the Phoenix of Greek mythology, many Islamic fundamentalists actively seek this destruction, with the Islamic state emerging from the ashes. It is an ethos of enmity that has the potential of unimaginable destructive capacity.

Rudyard Kipling coined the axiom many years ago; East is East and West is West and never the two shall meet. The challenge of our time is to prove otherwise; to convey the message of social and economic convergence within the Islamic East. It can be conveyed and will be embraced in time, but it is going to take some significant effort, and there will be a cost. The Muslim world will not experience a seamless transition. There will be social strife and disruptions to tradition and culture, false starts and steep learning curves. The end, though, is inevitable and the Islamic world, simply by osmosis, will join the global economy. But for now, both East and West face a most difficult future of uncertainty and anxiety, particularly due to another factor that now enters into this mix – the fact that global concentric power may be on the wane.

Communist Challenge Comparison

A generation or two ago, the great monolithic threat to the West was Soviet–style communism, just as the West was the great monolithic threat to the Soviets. It was a bi–lateral intimidation; each challenging the other. Capitalism and communism competed around the globe for the hearts and minds of humanity. The communists promoted a political, social and economic model to the world, and it was most enticing. A number of countries bought into it. The West realized early on that one of its chief missions was to discredit communism, lessen its appeal around the world, and promote the message of Western style freedom, social democracy and economic affluence instead. The Soviets, of course, engaged in the same tactics – discrediting the message of the West, and promoting theirs.

Both at times used a certain measure of belligerence (ie., military action) to get the message across. It also can historically be said that both also used a number of what might be called softer methods in this Cold War era. Militarily, the Cold War was a standoff, but because of the cost of maintaining military equilibrium, and the effective soft efforts to discredit the Soviet message and promote Western ideals, the Soviet Union and its message failed.

In this current Islam vs. the West scenario, the political/philosophic threat is unilateral and unidirectional. The fundamentalist Islamic message is not a threat to the Western World. The West is not going to adopt the quasi-feudal model of fundamentalist Islamic theocracy. Rather it is Western influence, its agenda, its political, social, economic model that is a threat to Islam. There is, however, an attempt being made to export the radical Islamic message to the mainstream Islamic world. So unlike the days of the Communist threat, the issue is not so much to make sure that radical Islam is not exported to the West, but to make sure that radical Islam is not expanded in the East. The role of the West in this, however, needs to be passive and indirect. In the final analysis, the religious portion of this war is an internal matter, within Islam. Moderate Islam needs to take the lead in shutting down its fundamentalists cousins, and this will take some time.

With respect to the other dimensions, the West needs to assure the Islamic world that it respects the Muslim religion and culture, wishes to see them develop and prosper, and will help economically without expecting them to abandon core beliefs and traditions. That is the party line anyway. There are many in the West who do not respect the Islamic religion and culture, and in fact wish to see immediate and sweeping changes in the Islamic social fabric. But even among those whose heart-felt intentions are not to yield change but to simply engage in trade and commerce and exchange, the very impact of that interaction will be cultural osmosis, a creeping erosion of the traditional Islamic culture, and an eventual marginalization of that way of life, which, as noted previously, is a core concern of the Islamic faithful.

Other Potent Forces

There are a host of other inter-related forces and factors on the present and/or near horizon that will also drive crime and security matters in this context for decades to come. My laundry list includes the following.

Youth Bulges and Bare Branches

Youth is an aggravating factor in this mix. Countries with youth bulges (where youth make up 40 percent or more of the population) were roughly two and a half times more likely than those countries without this demographic anomaly to experience a civil war in the 1990s. There is also a markedly increased violent crime propensity for such nations. The matter is accentuated when there is also a low female-to-male ratio among the young (the bare branches syndrome). Virtually every Islamic nation in the world is currently in the midst of or will soon be in

a demographic youth bulge, and, all are currently experiencing a collateral bare branch quandary as well.

The strain Arabic youth are currently experiencing compounds the problems even further. Up-rooted, under-educated, under-employed, disenfranchised, broken families, no fathers, looking for an identity, raised on anger and fear, ripe for revenge.

The traumatized youth of the Middle East will speak the language they know, the language of force and violence, for years to come. They are ready targets for recruiters from militias and insurgent groups who, among other things, can provide a substitute for family cohesion and even more importantly, give a purpose to life. But instead of preparing the youth to rebuild their countries, the militias feed on the rancor, on the Armageddon-like orientation innate in fundamentalist Islam, and are training youth to use the weapons and means necessary to destroy their nation and all that is in it.

It should be noted that the bare branch/youth bulge problem is not limited to just the Arabic region, nor to the 57 nations with Islamic majorities. Indeed, there is a generation of Muslim youth around the world who both feel and see the injustices being wrought on Islam by the West. These youth are angry and all too readily recruited into the ranks of the jihad. The jihad culture has become a fad among the youth in the Islamic communities worldwide. It is full of adventure, intrigue, excitement, and perhaps more importantly, purpose. Osama bin Laden has become the Che Guevara of the rising Muslim generation all across the globe, and the Islamic community is now increasingly all across the globe. One hundred years ago, the frontier between East and West ran through Istanbul, but today it runs through most European cities.

The Arabic world is not alone when it comes to these demographic peculiarities. India and China for example are also experiencing youth bulges and bare branches, though the sense of enmity and anomie there is nowhere near as acute as it is in Arabic Islam. How to best deal with this matter, in both Asia and Islam, is obviously of great importance, and obviously surfaces as the subject of another paper. Suffice it to say that these two demographic forces which are now coming to play within the Arabic nations, if left unaddressed, will not only serve to prolong the Jihad against the West, but will also accentuate the communal violence and instability coefficients at home, within the Arabic nations, for decades to come. Against this background, a September 11-type episode, and others like it, was, is, and will continue to be, inevitable, and the West must surely prepare itself for a protracted struggle.

American Decline

The American “brand–name” has indeed been tarnished, economically, diplomatically, morally, and militarily in the past decade. It has suffered from a disastrous foreign policy, poor government and private sector fiscal management which has resulted in a weakened dollar, colossal national and personal debt, and the frightening financial times we are now experiencing. Its international moral and political leadership has been in a freefall ever since 9/11. So, what is the state of the United States in the aftermath of Iraq, Guantanamo, George Bush, and the greed–based economic meltdown? In that light, I would like to highlight six points:

1. The United States is still the military superpower in the world and will be for decades to come. There is no military on earth that can match America’s military technology or firepower, and in light of the fact that armed American troops are currently stationed in some 150 countries, none can come even close to its reach, its “imperial” reach as critics would say. The scale and scope of this kind of military expenditure and deployment is out of the realm of possibility for all but a handful of countries, and those nations are choosing to spend their time, money and expertise on industrial growth and domestic development. Consider the fact that in 2007, the United States defense budget was nearly \$550 Billion. The second largest defense budget was the UK at \$60 Billion, nearly ten times less. China was third at \$58 Billion, the bulk of which covered not research and development but rather domestic maintenance of its army, which by manpower count, is the largest in the world. The United States spends more money on defense than the rest of the world combined, and will do so for years to come. Consequently, the United States will remain the world’s sole military superpower for at least another 50 years. However, the 21st century will see violence between sovereign states diminish and violence within states escalate in the form of regional and civil conflicts. The American military is prepared to fight a large–scale international war, a World War III if you would, and it is not oriented toward regional, asymmetric civil wars. Consequently, its massive military might in a 21st century context, may prove to be irrelevant. One of the many lessons of Iraq and Afghanistan, and Vietnam, is that there are limits to raw military might.

2. The United States is in debt, and needs a constant infusion of external funding to cover its obligations. The United States is, at present, fiscally irresponsible, gaining what amounts to a short–term economic free ride, expecting external entities to grant it virtually unlimited credit. This obviously cannot and will not go on indefinitely, and has catastrophic long–term implications. Were it not for external investment, the United States would currently be bankrupt and its economic system in even greater turmoil than it is at present. While officially stated as being \$10.6 trillion (as of March 2009), a more accurate accounting that examines future social

welfare responsibilities puts the U.S. national debt somewhere between \$50 to \$59 Trillion (roughly \$200,000 per U.S. citizen). An incommunicable, inconceivable debt that will burden generations of taxpayers, and one that is even now seriously compromising our geo-political power base. As of December 31, 2008, China held \$696 billion of American debt, Japan held \$578, OPEC nearly \$197 billion, and Russia held \$87 billion. The United States is going to have to be nice to these entities, and to our other international creditors, no matter what they do or say. The war on terrorism, in combination with other contemporary fiscal circumstances, is breaking the United States, and it cannot go on in the same fashion. It just does not have the resources. Former President Bush farcically threw down the gauntlet against the enemies of freedom in his 2nd Inaugural Address, but there was no fist in the glove. The United States is fighting the war in Iraq and Afghanistan on the installment plan, and clearly cannot afford another conflict of this nature. And the rhetoric that the U.S. will stand by those who stand for liberty... pure hyperbole. The United States is mired in debt, and consequently at the mercy of many of its future challengers. In addition to escalating military costs, domestic spending is out of control, with future medical and social security demands seemingly destined to bankrupt the country. Indeed, the welfare state, created in the aftermath of World War II, is now obsolete and on the brink of being unsustainable. In the financial context, the U.S. needs to export more, consume less, raise taxes, cut government spending, and increase interest rates, none of which are politically palatable in the foreseeable future. Without a significant turnabout in these and other areas, historians will note that the zenith of American power was realized at the beginning of the 21st century, perhaps anecdotally, on September 10, 2001.

3. The role of the United States as the moral leader of the world has eroded. The wanton disregard of the rule of law by its alleged patron saint at the Guantanamo, Bagram and Abu Ghraib prison facilities has been most unsettling, and has alienated much of the world. American actions in these contexts have not simply been strategically irrational, but have established a catastrophic international precedent. The woefully misdirected decisions of the Bush administration to side-step the rule of law has corroded American ability to influence, persuade and lead on the global stage. Criticism came not just from Damascus and Tehran, but also from Bonn and Dublin and the BBC. America's long-time friends and supporters asked hard questions, raised legitimate concerns, and shook their heads in disbelief. The dissonance between Bush's message of democracy and his cavalier attitude toward civil liberties discredited him as a moral messenger. While ironically pressing for divinely ordained liberty in the Middle East, he kept Guantanamo open, engaged in extralegal/extraordinary renditioning, allowed torture, eavesdropped on U.S. citizens without a warrant, started two wars...all under a might makes right, executive privilege, unilateral American deistic manifest destiny pretentious, narcissistic

pomposity. The audacity, the arrogance, and the hypocrisy of it all, was utterly nauseating. The Bush administration was a government of zealots and extremists who, filled with certitude, were not inclined to weigh alternative views nor consider the possibility of error. The spirit of civilization involves a shunning of monologue and certitude; its foremost threat, a surplus of both. The greatest asset the U.S. possessed in the post World War II era was its good example. That is now largely gone, replaced with the nauseating stench of hypocrisy, arrogance and condescending superiority. There was a cavernous disconnect between what we allegedly stood for and how we behaved in the last decade. We can scarcely lay claim to the rule of law when we break it ourselves at our own, unilateral convenience. We claim to hold justice and liberty as guiding principles, but scrapped them quickly when it suited our interests. The Bush administration imagined that it had a grand historic mandate, a deistic manifest destiny to rule. It reeked of arrogance and disdain, and was thoroughly contemptuous of the public. Bush felt that all people, all entities, all other nations, by some divine mandate, should subvert their interests to his, to those of the U.S., and was belligerently intolerant of those with even the slightest divergence of opinion. He pushed American creditability into the basement. It was a shameful decade indeed. Hopefully President Obama and those that follow him will be able to restore a sense of decency and propriety.

4. America is slipping in other spheres, particularly in the industrial and technological realms, two of the cornerstones of its 20th century ascendance. America's decline will not be the catastrophic collapse of the Soviet Union, but more like the British Empire's long ride into the sunset that began at the end of the previous century. Its collapse, like ours, was also precipitated by an unwarranted military conflict (the Second Boar War) in which the UK lost not merely the war, but also its moral authority due to its brutal treatment of both civilians and soldiers, and a subsequent financial collapse – a literal mirror image of the U.S. today. Though our influence is waning, American influence, like the Brits, will be felt for decades, if not centuries, somewhat akin to the Roman Empire. Historians of the future may refer to the last two centuries as the Anglo-American era, for in some ways, the U.S. merely extended the influence of the Brits. We pushed similar perceptions and orientations that have now been rather firmly embedded into virtually every aspect and arena of global culture and commerce, and will likely stay there for years to come.

5. One area where the United States excelled in the post-WWII era was in developing and strengthening and participating in international institutions of order. There is a literal alphabet soup of such institutions today (WTO, IMF, NATO, UN, WHO). Tragically, the Bush administration, with its unilateralist orientation, completely reversed that half-century trend. More than mere disengagement, Bush all but abandoned these international institutions this past decade, and has left

them largely fragmented and toothless. The arrogance must be replaced by a policy of mutual participation in and support for these international structures. Such an approach would enhance the international status of the United States, and more importantly boost the level of peace and stability in this world.

6. America's decline is best viewed not in an absolute sense, but rather in a relative one. The issue is not so much that the U.S. power has subsided, but rather that there are many other nations rising... other nations are catching up. I turn to my own anecdotal experience. I lived in the Philippines in the early 1970s. I returned 30 years later and was shocked by the progress. The 30 year time frame from 1940 to 1970 saw little or no socio-economic development, but the 30 year time period from 1970 to 2000 saw massive growth, and the Philippines are not even a good example for they are still a developing nations. Better examples of "the rise of the rest" (as Fareed Zakaria calls it), would be Turkey, Brazil, the United Arab Emirates, India, Thailand, Taiwan, China, Russia, Chile, Argentina, many of the former Soviet states that are now in the EU. There are a host of decidedly modern, peaceful, industrialized states who have risen into the developed, industrialized ranks, who are producing top scholars and involved in cutting edge research, who are culturally absorbing the notion of the rule of law, who have clearly moved to a post-war orientation, who now have a stake in and rightfully wish to influence world affairs, and who are ready and totally capable of taking their place at the table.

7. There is a changing geo-political environment out there, and it entails a diminished role for the United States¹. The world is growing without it, and it is certainly no longer possible for us to unilaterally control our own economic destiny. The fact that America has had it both ways for so long; the global maker and enforcer of law that does not play by the rules when it suits it, is going to be hard to give up. America merged haughtiness and impunity with hypocrisy for so long, and got away with it due to its might. How Americans will collectively deal with this now more attenuated position will be most interesting.

What is so ironic about America's current state of smug sanctimoniousness is that it is accompanied by a colossal ignorance of the world. Americans are at home watching re-runs of its past while the rest of the world is out there working and building, and Americans don't even know it. There are new rules and Americans don't even realize it. America is stuck in its own echo chamber and barely notices the ground shifting under its feet. The bulk of the American citizenry are smugly aloof from and totally indifferent to the ideas and trends shaping the world and suffer from an extreme and perhaps inoperable case of self-satisfied truculence. Self-admiring narcissists, Americans are genetically incapable of looking beyond their own naval. The United States still sees itself imbued with a deistic universal message and is totally convinced of its national and cultural superiority, yet its

citizens and the vast majority of its political leaders are absolutely clueless as to the events and circumstances of the world. America pushed the world to open upon their economies, to liberalize their politics, to embrace free trade, in short to globalize, but along the way it forgot to globalize itself. Humorous really, and a situation that obviously must change if America is to avoid an even steeper decline into an economic abyss and political irrelevance.

It should again be stressed that American has been the rule maker and the enforcer for the past 50 years, but has not always played by those rules. This must end. This will all be very hard to do for a nation with a proud sense of deistic manifest destiny, but America's time of unilateral dominance is over. The latest chapter of its manifest destiny has been realized, and the world is now entering a new phase of diffused/shared/collective global power and influence, a context where the U.S. will no longer be dominant... a major player, but no longer ascendant. It is the end of American post-war exceptionalism. It is increasingly marginalized around the world. Its military power is increasingly irrelevant. Its financial house is out of order. Its moral creditability is in the basement. It is slipping in the industrial and technological arenas. It has disengaged ourselves from the international community. It cannot keep preaching to the world while its own backyard is in such disarray, and particularly in light of the "rise of the rest." It is more than arrogance and sanctimony. It is literal comic delusion bordering on collective national senility. It needs to come to grips with these changes in the international landscape and move away from the model of insolent, clueless diplomatic buffoonery that was so prominent in the Bush years. Such an orientation was never called for, and is certainly now passé. The United States needs to now wake up and smell the roses, come out of its stupor and grasp what has happened around the world, and engage in a diplomacy of equals with an emphasis of cooperative dialogue, with its overriding egalitarian orientation.

The nations of the world tolerated American smug, sanctimonious certitude for the past 50 years in part because, yes, there was some measure of benevolence within America and Americans. Full of bluff and blunder, brazen and audacious, often uniformed, generally ill-informed, culturally blind, oblivious to local socio-ethnic reality, Americas woefully ignorant diplomats stood with hands on the bulldozer's throttle ready to carve the American way deep into the hearts and souls of the world's body politic whether they wanted it or not, but... America had some sense of right and wrong about us at times, which tempered the American onslaught to a significant degree. Unfortunately, that good example is now gone in the aftermath of the hypocrisies of Guantanamo, its extra-legal renditionings, its tortures, its domestic wiretapping, its pre-emptive invasions and occupations. America is now viewed, for good reason, as the international bully, the evil empire, particularly by the young who know only of our recent malfeasance and misconducts. The older body politic of the world, those who remember the more benevolent America, are

disheartened and disillusioned, but perhaps have not divorced us yet. I was recently given a personal tour of the Nuremberg Courthouse (the site of the WWII war crime trials) by the then Minister of Justice of the German state of Bavaria. As we talked about those trials and the principles of the rule of law, he turned to me at one point and he said, “America once stood for something. We wanted to emulate you. We do not wish to emulate you any more and we so hope that you change from your current disastrous course.”

That is the legacy that Americans, at the outset of the 21st century, must now live with and must now live down. The problem is that any discussion of foreign policy is so tainted by politics in America that it is virtually impossible to craft and carry it out in any kind of rational fashion. American must transcend this contemporary polemic discourse of dissonance and discontent that so dominates and pollutes discussions of foreign policy. If America fails to do so, it is at its most dire peril.

Global Power, and the Lack Thereof

The current status of the United States as the world’s sole superpower, the hyperpower, is clearly coming to an end, and may actually already be over. What is of concern regarding the present state of affairs is that once that power becomes diminished, the world currently seems poised to move, not towards a balance of power, but one where there is an absence of power...a power vacuum, for there is no other entity in place at present to take the lead.

A power vacuum would be truly calamitous; religious fanaticism, economic stagnation, waning social cohesion, the retreat of civilization as we know it into a few fortified enclaves, de-globalization, fear and xenophobia reigning supreme. These are the Dark Age experiences that such a world would experience, and it is sobering notion. The disconcerting element is that at present, no country or institution is in place to fill the void as the United States now retreats from its superpower status. The only possible exception would be China, though they are clearly not ready to take on this role for some years. China has a very small internal economic engine, its listless domestic market fueled by a paltry \$2,010 per year per capital income (96th in the world as of 2006). Its economy depends almost entirely on exports, which is an unsustainable long-term paragon. There is a huge conflict brewing between the needs of the free market (rule of law, private property, transparency) and communist idealism that will hinder its aspirations of international influence. China also has significant poverty and public health issues with which to deal, and has yet to bring its infrastructure up to par. China also has an aging population with a very skimpy social safety net. There is minimal health insurance and out-of-pocket spending covers about 50 percent of all medical costs. No universal social security, less than

20 percent of all workers have a pension program, and less than 15 percent are covered by unemployment insurance.

But put in historic context, China is literally on steroids. Over the past century, China has experienced the collapse of the monarchy, warring states, the Japanese invasion, civil war, the communist takeover, the Great Leap Forward, the Cultural Revolution, massive famine. Chaos, upheaval, and destruction have been the norm. But, in the last 30 years, China has enjoyed stability, and one of the fastest growing economies any country has ever experienced in the history of the world. The country has a sparkling international image, and is moving with a definitive forward leaning orientation economically, and of late, even in foreign affairs. But it is also internally motivated by its history. Chinese save at an astonishingly high level, in large part because they are scared of emergencies, and rightfully so. Their behavior is akin to our great-grandparents who experienced poverty and bank failures and hid money under their mattresses until the day they died.

It is a driven nation with a powerful sense of success springing and sprouting for every sector, and is making a rapid transition from the timid to the robust. Its leadership is clearly adopting a careful and calibrated, nuanced, long-term approach destined, they believe, to propel them to the position of superpower in the historically speaking, relatively near future. They seem poised to adopt what many observers call an asymmetric socio-economic convergence strategy, as follows:

1. Expand economic ties and become deeply integrated into the world economy through aggressive foreign investment and multi-lateral trade agreements;
2. Embrace the general principles of free trade;
3. Adopt responsible fiscal policies (ie., operate with a surplus, not a debt);
4. Enlarge political spheres of influence with a no question diplomacy model and a focus on world concerns such as public health, poverty, infrastructure development, and environmental issues by ramping up foreign aid, supporting professional exchanges in every sector, sponsoring grants and conferences;
5. Focus on the development of science and technology within its human capital.

Only time will tell if this strategy will prove successful, but it appears to be well founded. What is also clear is that China is not yet ready to take on the mantle of hyperpower, nor is anyone else. Consider the following:

1. Europe is inward oriented, is still expending massive amounts of time and money developing a suitable model of sovereignty, is aging, has no military of consequence, has a declining population, and has unsustainable social welfare obligations that will financially burden governments for generations to come.

Interestingly, one of the great debate in Europe at present is whether they should open their borders to immigration (the result being an inevitable cultural osmosis),

or transfers their new Union into a fortified retirement community. To a great extent, this is ironically much the same issue that is currently facing Islam with its concern regarding the creeping, insidious influence of Western culture.

There is no interest in Europe in achieving uni-polar status or even multi-polar status, and there is no sense of the world domination/manifest destiny that drives the United States and China. As one columnist recently noted, without the elixir of ambition, there will be an inevitable and inexorable decline. Add in high taxes and the cost of over-regulation, and we see an area of the world that will become what many observers are calling a sideshow in the future, its economic muscle and political influence increasingly irrelevant. At the beginning of the 21st century, the train came and went, and Europe choose not to get on board.

2. India, clearly another economic giant, but one that is still slumbering. Unlike China, with its centralized form of economic development, India is the quintessential model of decentralized, bottom up capitalism. It faces significant internal language and cultural barriers (akin to the Europeans), chronically weak infrastructure, and is saddled with endemic poverty and public health problems. Their focus, like Europe, will be internal, and will be for decades to come. Less than two percent of Indians have a bank account, fewer than 1 million have \$50,000 in liquid assets, and current estimates are that even with a sustained six percent annual growth rate over the next twenty years, 60 percent of Indians will still be living in extreme poverty. But perhaps most significantly is the fact that there is a growing sense of destiny emanating from the elite and from the growing middle class. This, more than anything else, may make India a player in time. India does have the potential to become a world player, but like China, has a significant number of barriers to overcome before achieving that status and is probably further behind than its neighbor to the northeast.

3. Japan and the rest of Asia also suffer from externally driven economic engines, and lack the internal consumption necessary to fuel movement toward superpower status. All of Asia, and particularly China, needs to curb its export dependence and ramp up its internal economic capabilities.

Islam is much too diverse, lacks resources, lacks infrastructure, has poor governance and educational systems, and is likely at least a century from even modernizing, let alone leading.

South America is a continent with vast and deeply rooted political, cultural and economic differences, preferences, and needs. They are almost theologically in opposition to the idea of international cooperation and lean more toward isolation. Many of the institutions and alliances that have helped manage peace and prosperity for the past half-century are coming apart, which will further inhibit any international leadership role.

In sum, Europe, China, Asia, India, Latin America and Islam all contain within them significant impediments to succession, with China perhaps rising as the long-term favorite to emerge from the pack as the next world regent. That is many years away, however, and the world as we know it, will not and cannot be sustained during a power vacuum. The mitigating factors in all of this could be the United Nations, the International Monetary Fund, the World Bank, the various World Courts, and the World Trade Organization, to name a few; supra-national bodies which in various ways represent the international communities whose global governance are fundamentally different from the splintered spirit of the Dark Ages. Might these bodies be enough to counter the coming power vacuum? As these entities inevitably expand their powers and influence in this globalized world, they will face significant challenges from the political right who will look to such bodies and bemoan the erosion of sovereignty. But in a world where labor, capital, goods and services move freely across what are becoming little more than virtual borders, such arguments are moot. At present, however, the harsh reality is that these entities are splintered and more representative of an adolescent in puberty than a mature statesman capable of mitigating international crises. The American decline and the coming power vacuum will clear center stage in this world. It will be most interesting to see who, if anyone, can step up and hold center ground.

Winds of changes are easier to feel than forecast, but at this point it would appear that unless significant political and economic changes are made within the United States and made rather quickly, a global power vacuum is in the offing. On the other hand, the American populous possesses more than a tincture of ambition, and as a nation, has proven to be remarkably resilient to challenge in the past. The great ones do adjust, yet, the obstacles at this point are quite formidable. Even more disconcerting is that even with an attitude shift, macro socio-political-economic engineering is quite difficult. Trade deficits and surpluses, spending and savings patterns, political attitudes and social norms... these are not just averages and statistics, but artifacts of regional tastes and temperaments, national and local politics, aggregate and individual perspectives, and wildly divergent psychologies. They are not easily molded. It must again be stressed that the United States needs to recognize these changes in the international landscape and move away from the arrogant, sanctimonious, monologue-based diplomacy model that became so prominent in the Bush years. Civilization requires a shunning of monologue and certitude; its foremost threat, a surplus of both. We need to now engage in a diplomacy of cooperative dialogue. This will be hard to do for a nation with a proud sense of deistic manifest destiny, but America's time is over. As has been repeatedly stressed, its manifest destiny has been realized, and the world is now entering a new phase of global power and influence, a phase where the U.S. will no longer be dominant... a major player, but no longer ascendant.

The Impact of Oil

The fact that the Arabic world controls the world's energy supplies is one of the great conundrums of our time. How does the West deal with countries that to a great extent it does not trust, and that does not trust them, but that can dictate the fate of its economy, its very lifeblood, through the control of oil. How ironic that American global preeminence depends on some of the world's most anti-American nations. For more than sixty years, the West has veered between confrontation and cajolery as it has sought a steady flow of oil at a stable price out of the Middle East. The United States in particular has jumped from country to country in search of reliable friends, only to find that with the single exception of Saudi Arabia, reliable friends have not been that reliable. In return, the United States has consistently given Saudi Arabia a bye when it comes to human rights violations, and have never publicly exposed their internal affairs as long as they met the basic requirement of providing the West with cheap energy. This, in retrospect, has been horrifically short-sided, and must now change. But even beyond the United States, the stability of the oil producing countries has become of global concern.

Arabic oil wealth is obviously a great blessing, but it has emerged as a great curse as well. With oil, the Arabic nations have no need to tax their citizens. With no taxation, the state both asks little of its people, and gives little in return. When taking from its people, the citizenry generally demand something in return, like more open, honest, transparent, accountable government. There has been little if any incentive within the Arabic ruling elite to create transparent governmental infrastructure, functional legal mechanisms, nor to establish policies that will lead to ubiquitous economic growth (and the eventual emergence of a middle class). In sum, there is little incentive to modernize socially, legally, politically, economically. Oil wealth has led to the development of a culture of irresponsible and civically unresponsive political leadership in the entire region (reinforced by the perceived absence for the support of such development with the pages of the Qur'an). It has yielded social and political stagnation in the Arabic world and will lead to increased frustration and animosity in the Middle Eastern body politic in the coming years. Particularly when coupled with the growing fundamentalist Islamic movement, this will result in increased intolerance for, and an escalation in, acts of terrorism perpetrated upon the West. This is not to say that the United States, and more particularly the inept policies of the Bush administration, did not contribute to the problem. The United States obviously needs to turn on its hearing aid and change its policies and practices, on many fronts, but oil wealth emerges as a core issue of concern with respect to the generally dysfunctional and civically unresponsive Arabic states at present.

Migration

There will be massive migration of individuals across nations and across continents in this next century, both legal and illegal, and the world will experience a significant measure of disruption because of it. This will come about due to a variety of reasons:

1. Globalization – Human capital markets will become increasingly fluid in a geographic context due to constantly shifting employment supply and demand needs. Better markets (and better hunting grounds) have always driven the human race to move, and the globalized economic system feeds directly into and off of that basic element of human nature. As an aside, I must mention that globalization and its closely related cousin, the internet, have and will continue to spawn new kinds of white collar and economic crimes in this next century.

2. Persistent poverty – One of the dark aspects of globalization, and of capitalism in general, is the problem of persistent poverty. The current economic downturn is a case in point. A March 2009 World Bank report indicated that 94 of the 116 developing nations are now in a recession, and that 46 million more people will move into poverty in the year 2009. Those at the lower end of the economic scale will, in this globalized world, seek job security and job enrichment in response to their present state of unemployment/underemployment, and will move accordingly. Migration of the poor and disenfranchised from transitional nations into developed ones is already a political hot button item the world over, and a most profitable market for organized crime. Human smuggling will become a huge concern for law enforcement in this next century.

3. Re-occurring business cycles/economic crises – Capitalism by nature experiences business cycles. But business cycles, as antiseptically described in the textbooks, means re-occurring recessions and depressions, real-life unemployment, and real-life instability and volatility. In the migration context, the newly unemployed and underemployed will move to seek out better jobs and enhanced living conditions, yielding continued cyclical patterns of socio-economic and geopolitical instability and volatility. Economic instability played a major role in the whirlwind of events leading up to World War II, and we are not immune to such a calamitous turn of events in this century. In myopic attempts to shield themselves during this present economic downtown/business cycle, a number of nations are currently edging toward the charlatan of economic nationalism/protectionism. This is a most disturbing turn of events for we know that if protectionism raises its ugly head, it will result in a deterioration of the world's economic system. Those who continue to move down this path will in the end ironically produce greater socio-

economic instability at home, and increase the socio-economic upheaval coefficient internationally.

4. Rising energy costs/decreased energy access – Individuals will gravitate to regions where energy costs are lower and access is greater out of a pure survival instinct.

5. Environmental degradation and the accompanying famine and overall health concerns – As agricultural productivity declines and food and water supplies diminish, masses will flock to regions where basic food, nutrition and health needs can be met. A 50 percent increase in food production is needed by 2030, and we are not likely going to see that in the increasingly erratic and volatile agricultural environment. Consider the strife and turmoil surrounding the African continent scenarios of the last 25 years; multiply that by several fold, and the magnitude of the problem becomes most overwhelming.

6. Population growth – As implied, population growth in the developing and transitional nation-states is rising at what now appears to be unsustainable rates. As food, water, and energy supplies become taxed, social peace and basic security will become undeliverable in those already tenuous settings, and those populations will stream into the developed world.

Human movement and migration, for whatever reason and with all of the accompanying trial and travail, has been the headline story of our species for the past 50,000 years. It will hardly stop now. The yin and yang to this story is that power in the 21st century will rest with those nations who can successfully train and retain its own indigenous work force (minimize emigration), and simultaneously attract capable, employable foreigners (maximize immigration). Human capital will be the most valuable of all commodities in the 21st century, and those nations who can retain their own best and brightest, and simultaneously steal the best and brightest from other nations, will be the most successful. The dynamics of migration and immigration will have, in the end, perhaps the greatest impact of all upon geopolitical events of this century².

Religious and Ethnic Tensions

Ethnic and religious divisions, rooted in fundamentalism, xenophobia and intolerance, are becoming increasingly pronounced in some quarters, and as a result, the notion of a cooperative and peaceful international community is increasingly threatened. The power and influence of fundamentalists of every ilk (Christian, Muslim, Buddhist, Sikh) must be surmounted. Fundamentalism by nature advances monologues and mantras, retreatism, de-globalization, tribal/local/regional

autonomy, the creation of social and cultural enclaves with an extreme focus on the preservation of identity, independence manifested in the form of isolation, an irrational demand for absolute sovereignty, culminating in outbreaks of xenophobia with all its destructive manifestations. By the same token there is a countervailing force in the world today, one that is seeking collective governance and cross-national commerce, trade and social/cultural intercourse. There is tension now, and there will be tension for centuries to come, between socio-economic integration and all which that entails (including cultural osmosis), and socio-economic retreatism/protectionism, between free trade and economic nationalism, between cross-cultural engagement and geo-political retraction, between collective governance and local sovereignty, between dialogue and monologue, between curiosity and certitude, between tolerance and intolerance, between acceptance and shunning, between globalization and fundamentalism. The struggle simply continues, with new verses and new faces.

The Rise in Nationalism

The world is beginning to see a rise in nationalism, which has been a sleeping phenomenon for the last half-century. Pride, an interest in attaining international recognition and respect, frustrated over having been forced to accept an American narrative of world events for so long, aggravated with having been cast as bit players for so long and accompanied by the concurrent drive to now have a viable seat at the table, a desire to right historic wrongs; these are all factors that will aggravate the issue in this new century. Newly arising nations are going to be strongly assertive of their ideals and interests.

How are we going to get so many actors to work together? As mentioned a moment ago, the traditional mechanisms of international cooperation are fraying, and are nearly all out of step with the times; the G8 does not include China, India or Brazil, the IMF is always headed by a European, the World Bank by an American. These country club ideals are passé, but finding a way, finding mechanisms that can include more countries and more NGOs as viable and empowered players with a seat at the table will be hard, but it does need to be done. If China, India, Brazil, Thailand, Indonesia, Malaysia, etc. all have a contributing stake in the world order, there will be less chance of war, depression, and general social unrest, and less chance of unbridled nationalism raising its ugly head. But, that is not the only answer, for some may have a seat at the table and still want more power. Then of course there are those nations that will feel left out, cheated, betrayed, and the negative aspects of nationalism will be easily fanned into flames by opportunistic politicians in such settings. Heaven forbid that another Hitler arrive on the scene, vomiting such rhetoric on the world, especially in this nuclear age.

We are seeing some of the negative elements of nationalism emerge in several countries. North Korea is certainly one example, where nationalism is being driven by an internal engine of propaganda, isolation, and hero worship. With nuclear warheads on the table, this nationalistically driven state cannot be taken lightly. Then there are several nations (Russia, Venezuela, Iran), all empowered and emboldened by oil wealth, that are rattling the saber of forward-leaning, self-serving nationalism, to the current and potential further detriment to communal peace and prosperity of their neighbors. Note that all of these nations are currently headed by a propaganda spouting sole ruler who is plucking at the nationalistic heartstrings of his body politic as a means of staying in power. Whatever the factors, and there will be unique justifications and motives based on contingencies of the moment, customs, and cultures, the 21st century will see the re-emergence of the negative side of nationalism, and the world community will need to contend with its potentially destructive ramifications.

The Rise of Organizational Crime

I must add to this list of forces of global disorder, the usual suspect of organized crime with all its offerings – drugs, arms, prostitution, money laundering, human trafficking, production and distribution of counterfeit goods, and organized crime’s Siamese twin, government corruption. There is strong evidence that organized crime entities around the globe are beginning to build partnerships in a classic division of labor context. Globalization’s impact on illegitimate trade and commerce is just as vibrant and dynamic as it is in the legitimate. The heroin trade and its presence in the very fabric of the Afghan society is certainly one example. Law enforcement’s fragmented, kinetic responses to organizational crime are now and will continue to be not only of no value, but counterproductive, which is the topic of another paper.

Globalization’s Ascendance

Taken in tandem, these are powerful and frightening forces, but longitudinally, I tend to put my faith in the eventual emergence of collective governance, in enhanced trade and cross-national social and culture intercourse, in economic integration. I put my trust in the decidedly positive, long-term, multi-sector impacts of globalization. In the end, economic interests will trump belligerence. Economic vibrancy will yield domestic tranquility. As evidence I offer the past ten years. Over the past decade, political turmoil has swept the world. There have been the 9/11 attacks, bombings in Bali, Casablanca, Istanbul, Madrid, Mumbai, and London. There have been two major American-lead wars in Afghanistan and Iraq which have been protracted and

horribly destabilizing. Add to this the war between Israel and Lebanon and Hamas, Iran's bid for regional supremacy, North Korea's nuclear saber-rattling, the Chinese-Tibet crisis, Russia's continuing clashes with its neighbors (Georgia, Chechnya), the continued destabilization in many African states (Nigeria, Somalia, the Congo, the Sudan). Yet, during this same period, the world economy has experienced unprecedented growth. We are experiencing today something that has not happened in recorded history – simultaneous growth worldwide. We are in the midst of an economic downturn, but in an historic sense, the United States, Europe and Japan are all doing well and that would be expected, but so is China, and India and Brazil and Argentina and Chile and Turkey and Thailand and Vietnam and Malaysia. It is the rise of these latter nations that is powering the new global order. There will be some bumps along the way, but the globalization genie is out of the bottle.

Globalization is more powerful, widespread and resilient than even the economists realized. It is amazingly elastic, but, we should probably not be so surprised, for globalization in micro appeals to the individual interests of the world's body politic who see it as a way out; a way for them, and a way for their families to move forward. There are currently massive numbers of persons, entire nations visualizing hope for the first time in human history. That power will trump fundamentalism, civic strife and social turmoil in the end. There will be more body bags, too many more, but the spirit of globalization has reached the four corners of the globe. It has been universally embraced, and as previously noted, that genie will not be put back into the bottle. While globalization has some decidedly negative impacts that have admittedly not been adequately explored in this paper, in sum total, it will serve in aggregate as a mitigating factor to the global crime problems of the 21st century.

I have an additional thought on this matter. One particular family of collateral demands of globalization is the entire notion of civic stability and order; the establishment of a genuine rule of law, creation, growth and development of equitable and efficient institutions of public order and dispute resolution, conformity to international trade norms, rational governance, and political transparency. These will simply be demanded by the body politic, as without them, a nation will be decidedly handicapped as it attempts to compete in the global economy. This is again the Eskridge thesis if you would. Economic opportunity will lead to good governance, both of which will then lead to the evaporation of fundamentalism in Islam, as well as evaporation of fundamentalism of any ilk. By giving the body politic a stake, giving them a seat at the table, they will have a vested interest in maintaining, not overthrowing, the established order.

What Should Be Done?

The Militant Islamic challenge requires a sustained, multi-generational, multi-sector response. On the religious front, the moderate Islamic clerics and scholars need to assert themselves and get out the message that the fundamentalist version of Islam is an aberration. Moderate Islam, with not even a taint of Western influence, must internally make militant Islam a fringe element. There has been some success in this sphere of late. Operationally, Al-Qaeda for example has been somewhat quiet, it is being ideologically challenged by numerous Imams, and polls show a diminished support for Al-Qaeda in particular and fundamentalism in general among the Arabic body politic. Whenever Muslim fundamentalists have been forced to leave their rhetoric and become involved in actual governance, their luster has worn off, and I speak to fundamentalism of every ilk, from bin Laden to Bush. Civilization requires consensus and dialogue, not pious certitude.

Secular, public educational systems need to be enhanced. Inadequate public-education systems not only encourage poor families to send their children to extremist Madrassas schools, but do not prepare the rising generation to function in the globalized world. The West needs to immediately open its universities to both the established and the aspiring Arabic scientists, artists and scholars of every kind. The establishment of an Arabic oriented Fulbright program would achieve wonders. Arabic political leadership must deliver economic progress in every sector by developing a broad-based, non-oil dependent economy. While the U.S. does need to withdraw its military (as will be discussed later), in the long run, poverty is more dangerous than occupation. In addition, institutions of public order need to be strengthened. Regulatory agencies and coherent, professional, transparent civil and criminal justice systems need to be shored up with particular emphasis on the further development of rational, lucid judicial systems. Trade pacts need to be developed and tariffs removed. Infrastructure and health care delivery systems must be modernized. Extensive, multi-sector cultural and educational exchanges need to be aggressively pursued. Transnational institutions of every kind between the West and Islam need to be established. Killing bin Laden and dismantling Al Qaeda is not the long-term answer. The conditions that produced Al Qaeda – endemic poverty, abysmal public health facilities, insufficient infrastructure, poor quality schools that leave young people unprepared and globally isolated. These problems must be addressed aggressively by Arabic leaders, and not by the West.

The expansion of economic liberty will have definitive spillover effects. Economic reform will mean re-building and enhancing infrastructure and the beginnings of a genuine rule of law, initially within the business sector. Capitalism needs contracts, openness to the world, conformity to international trade norms,

access to information, fair and transparent justice systems/civil courts. As day to day stability is realized, the region will see the development of a business class.

Business has a stake in openness, in rules, in order. Instead of the romance of ideology, they seek tangible reality and stability. A genuine entrepreneurial business class would be a most powerful force for change in the Middle East. As the Middle East moves further down such a path of prosperity, the tumultuous energies of that region will be diverted into peaceful venues. Economic vibrancy will yield domestic tranquility. In addition, as economic order and stability are realized and the rule of law begins to emerge in the business context, constitutional liberalism will also emerge – individual rights, freedom of the press, private property protections, independent courts, a free flow of information.

What is not needed is a pro-active, longitudinal military campaign. Destroying villages, capturing and incarcerating enemy combatants, killing even large numbers of individuals will have little impact upon the ability of terrorist organizations, upon populist social movements, to survive. Consider the American experience in Vietnam, the Soviet experience in Afghanistan, the British experience with the American colonies. How odd that we still tend to engage in head counts (counting the number of terrorists killed or captured) to measure success. This is not only utterly meaningless, but completely counterproductive. Killing more creates more martyrs, more heroes, and two will rise for every one that is killed, like the Hydra of Greek mythology. There are tens of thousands, perhaps hundreds of thousands willing to die for the Islam. Islam is the majority religion in 57 countries and currently counts some 1.3 billion adherents. The well will not run dry. Kinetic military campaigns will aggravate the body politic, and harden the resolve of the core players and must be shunned literally like the plague, for such actions are indeed a plague on social peace, justice, and global security.

What is not needed is a continuation of the failed policy of economic sanctions. They bring misery to the people and power to the dictators. Consider the cases of Cuba, Iraq, Iran and Pakistan. Pakistan, in the context of this paper, is of particular concern. We placed sanctions on Pakistan in the early 1990s. As a result, there are now two generations of Pakistani military leaders who have had no interaction with American/Western military personnel at a time now when the West desperately needs contacts and networks within the Pakistani military community. Economic sanctions are a nice, knee-jerk, feel good, easy sell, politically popular policy. One gains a great deal of political capital on the home-front for airing such proposals. In impact, however, economic sanctions are more than counterproductive; they are disastrous and need to be abandoned immediately.

What is not needed is an Islamic photocopy of Western style social democracy. The West should not try to implant democracy in the Middle East now or anytime in

the future. Democracy is not an antidote to Middle East terrorism, and besides, the antecedents to democracy are not in place in the Middle East. The socio-political culture of the Middle East is religious, tribal, and family. That area of the world is not psychologically geared to central governance and the Constitutional liberalisms of contemporary Western democracies. The wishes of the body politic of the Arabic world, of the people of the world in general are, let me be me, let me make money, and let me live in a safe environment. The form of governance that should be put in place to achieve these ends is totally irrelevant as long as it can exercise actual authority and bring some measure of equity and stability to the region.

Likewise, lack of Western-style political freedoms is also not a factor, and I would present the cases of Russia, China and Singapore to support this position. In the end, more than freedom of speech and the opportunity to vote, people in all countries and climes seek environments where they can be themselves, where they may enjoy daily communal peace, and have the opportunity to make money. The citizenry crave social and economic order and stability, not freedom of the press. Economic opportunity and stability are the key to stability and security. As economic opportunity is enhanced and communal peace and stability realized, the fundamentalist threat will wither away. Western style liberty and freedom and democracy can come later, if at all. This era of cultural conflict, this cultural war, will only be mitigated as aggregate economic opportunities at all levels and in every sector are forthcoming within the Arabic world. This present conflict will be won or lost on economic grounds. The best way to inoculate the Islamic youth against the jihads now and in the future, is to provide broad-based economic opportunities. The path to peace is paved with such bricks. Lasting peace is built upon aggregate socio-economic opportunity and the aggregate sense of justice and equity that will flow from that, and not just on quiet guns.

The Arabic world also needs a success story, a model to motivate. It needs to see a major country embrace modernity and yet maintain its identity to inspire the region, much as Japan did in Eastern Asia a generation ago. Having said that, I recognize full well that Japan, and Germany, were obviously able to rebuild so quickly after WWII due in large part to the influx of U.S. dollars emanating from the Marshal Plan, a model that clearly will not be adopted by the United States with respect to the Arabic Ummah at this time. But in addition to funding, there was (and still is) a very high level of social cohesion and communal trust embedded deep within the cultures of both Japan and Germany; trust in friends and family yes, but more importantly, trust in central government institutions. On the negative side, Hitler and the Emperor Hirohito, were able to abuse their powers in part because of that innate cultural communal trust in government institutions. On the positive side of this yin and yang matter, Germany and Japan were also able to rebuild quickly after the war because that centralized communal trust was still present in their social fabric, even at the

end of the war. Unfortunately, a communal trust in government institutions is most definitely not a part of contemporary Arabic culture. Allegiance is to the tribe and the extended patriarchal family. Developing communal trust in government institutions will take generations; time for the old ones to forget and for the young to institute for the first time in centuries, a track record of successes. Yet despite these odds and obstacles, to a great extent, Turkey, the United Arab Emirates, Indonesia, Qatar, Malaysia, and Bahrain are succeeding right now. Hopefully their collective models of success can be emulated across the region. The best deterrence to terrorism is multi-sector economic prosperity, good governance, and an embedded culture of success. As David Landes notes, the most significant distinguishing factor between the struggling/developing/transitional nations and the progressive industrialized ones, is a culture of success. A culture of success needs to be more deeply embedded into the Islamic social fabric.

While an embedded culture of success is a powerful antidote to terrorism, that is a long-term proposition, as are the other notions mentioned above. There is an obvious need for some immediate response. At times and in rare circumstances, direct law enforcement/military intervention is required. But in the shorter term context, perhaps the most effective way of dealing with terrorism is to break down their financial capabilities. It takes money to run a terrorist organization. It cost Al Qaeda roughly \$530,000 to carry out the September 11 attacks for example. Today's major terrorist entities have established substantial financial support networks to enable them to continue to conduct business. Aum Shinrikyo in fact amassed nearly \$2 billion in assets before it was finally shut down by the Japanese government. As of this writing, international law enforcement agencies have publicly announced the seizure of \$121 million in assets in 166 countries since the attacks of September 11. Impressive on the one hand, but little more than a drop in the bucket when compared to the amount of illicit funds that flow in the daily dishevel of global trade and commerce. Perhaps the most important short-term law enforcement undertaking in response to contemporary Islamic terrorism, is to follow the money. More vigorous law enforcement efforts should be undertaken in this arena.

I would like to add as a footnote, the strategic counterterrorism plan currently being utilized by the New York City Police Department. Their "Terrorism Czar," David Cohen, noted that in 2002, only 6 persons in the entire United States obtained undergraduate degrees in Arabic. He has begun to move NYPD in the opposite way. Some 40 percent of New York City residents were born outside the U.S., so finding large numbers of people with indigenous language skills was not that difficult, but he began to hire and train officers to speak foreign languages. At present, officers of the NYPD speak 45 different languages. This is extraordinarily beneficial in both a kinetic policing as well as a problem solving context. In addition, he has adopted a focused intolerance model, where the police look for reasons to corner suspects,

speak to them in their own language, and then let them go. It has hard to say if this has worked per se (there have been no more attacks on NYC), but anecdotal evidences shows diminished terrorist “chatter” and a lowered general antipathy coefficient in the Islamic community.

Lastly, the United States need to withdraw from the Middle East/Central Asian region, physically and politically. Its imperial presence is accentuating the crisis and fanning the flames of an already brewing internal conflict. Obviously it is neither practical nor reasonable to expect a complete economic and social withdrawal given our oil dependency and the ubiquitous state of the communication and media/entertainment industries. Culture osmosis is a reality that the Islamic East will need to come to terms with internally, but U.S. troops need to return home and U.S. meddling in Arabic internal affairs, with all its declarations and threats and certitudes, needs to cease immediately.

A word on each of these two notions – the withdrawal of the U.S. military and U.S. meddling. I recently sent some material to the head of the Research and Development Unit of the Peshawar Province, Pakistan police force. He thanked me kindly and subsequently indicated that he would now rewrite the material because it cannot be seen as coming from the U.S. We have no standing, no creditability in the Islamic world, and rightfully so. Growth in this region will have to ultimately percolate internally. There cannot be even a hint of American involvement. If we do wish to be involved, it must be of a soft and clandestine nature.

Secondly, while there does seem to be a timetable for our military withdrawal in Iraq, Afghanistan is emerging as a different story, and the war seems to be intensifying as of this writing, but, therein lies the crux of the matter – the “war” on terrorism. As Huntington pointed out years ago, that is the wrong metaphor. Wars are fought at full intensity and have beginnings and endings. The “Jihad” challenge, the militant Islamic challenge, is not a war. It a “long, twilight struggle,” it is a clash of civilizations. The core component of this conflict should not be, should never have been, a military campaign. Military interventions aggravate. They never, ever mitigate. Bush blundered in treating the 9/11 episode as if it were the first salvo in a war. It was not. It was a criminal episode, perpetrated by a small gang of men, and should have been treated as such. We should have worked within the international community and tracked down those responsible for that criminal act and punished them and them alone. Instead, he started a war that has escalated and morphed into something that is barely even related to the 9/11 attacks.

By escalating, Bush gave credence to this small, and up until then, rather insignificant group. By overreacting, Bush made Bin Laden a hero and collaterally brought visibility and creditability to his message of fundamentalism. It was not a war, and in historical contexts it is not a war, but Bush made it one, to the detriment

of the world. As an aside, we now know that he purposefully overestimated the militant Islamic threat for political purposes, making his over-reaction all the more egregious. Unfortunately no one taught Bush that a latent military force has a far more positive impact than a deployed one.

Though Bush is gone now, Obama seems to be tragically falling into the same trap. As many are pointing out, Afghanistan may well end up being Obama's Vietnam. It could supersede his grand domestic vision, just as Vietnam did to President Lyndon Johnson a generation ago, and leave the region and the world in a less secure context. President Johnson thought that he could bomb Vietnam into submission just as Obama apparently now feels about Afghanistan. We will never bomb Afghanistan into submission, just as Johnson was never able to bomb Vietnam into submission. It is a flawed perspective, coming initially from the World War I Italian military officer Julio Drue. It was an interesting idea developed at the dawn of aviation, but time has shown it to be wrong (Battle of London, allied bombing of Germany, American bombing of Vietnam), and if Obama goes down this route, he is doomed to failure and the sequences of events that will flow from it, will be catastrophic.

Returning again to the Afghan matter, there is an interesting, and obvious parallel here – several hundred years ago America, with its farmers and shopkeepers, took on the mightiest military on the earth, and won. It won by utilizing asymmetric military tactics and drawing upon the most core of human emotions – freedom, family, homeland, and independence. The same holds true in Afghanistan on every score (and that is particular true with respect to the “nation” of the Pashtun³ who are spread across Afghanistan and western Pakistan). There is no military solution here. It is a one of politics and culture and, at the core, economics. The sooner we recognize that and withdraw our troops and our tangible presence, the better off the world will be.

The Role of Criminology on the Global Stage

As I look over this list, I think of myself for a moment, not as a criminologist, but rather as a physician, and instead of addressing crime problems, addressing medical problems, and not of the 21st century, but rather of the 19th century. And the reason I draw this analogy is that I believe that the field of criminology today is very much like the field of medicine 200 years ago. There were seemingly insurmountable health issues then, as there are seemingly insurmountable crime problems today small pox, bubonic plague, malaria, infections, consumption, scurvy. There was a lot of guesswork in medicine in 1800, a very limited epistemological understanding, no body of knowledge of consequence, no consistently proven treatment modalities.

What did medicine do to move from where it was then, when life, as Thomas Hobbes wrote, was nasty, brutish and short (short indeed as life expectancy at the time was roughly 40 years of age) to the situation of today. Death has not been eliminated, and yes, there is still some guesswork in medicine, but there is a body of knowledge today, there is epistemological understanding, there are hundreds and hundreds of proven, successful treatment modalities, many of life's serious diseases have been eliminated and the severity of the nature of disease in the aggregate has been significantly mitigated. Life expectancy has been extended to nearly 80 years of age in the developed nations, and it is a markedly improved quality of life in the health context. What has happened?

What accounts for this progress? What can we in criminology learn? The field of medicine did four things:

1. It moved toward a ubiquitous, cross-national educational model. Schools of medicine have sprouted up in quality institutions of higher education the world over in the last 200 years and there is an extensive amount of professional cooperation, interaction and exchange.
2. It embraced an inter-disciplinary perspective and sought intellectual concilience, combining different types, levels, and areas of exploration in an attempt to etiologically explain and understand. It is not unusual today to see an article in a medical journal authored by half-a-dozen researchers from half-a-dozen different disciplines (and from half-a-dozen different institutions, per point #1).
3. It adopted the principle of experimental design and evidence-based evaluation.
4. It integrated scientific inquiry with the political. Medicine realized that it needed to get its message out to the masses to realize real preventative and curative progress.

I wish to return to the theme that there are great parallels between medicine and criminology. We in criminology cannot eliminate crime anymore than physicians can eliminate death, but we can, like medicine, reduce the severity of the nature of crime through preventative and curative mechanisms, just as medicine can reduce the severity of disease through preventative and curative means.

There was little understanding in 1800 that different diseases needed different treatments, and that different people with the same diseases sometimes needed different treatments. There was no understanding as to what today is basic medical knowledge – ie, the difference between a bacteria based and a viral based disease. But, once the four basic premises were implemented (cross national education, experimental design, interdisciplinary orientation, political medicine), and once Louis Pasteur came along, the field of medicine exploded. No, it cannot nor ever will

eliminate death, we cannot eliminate crime, but we both can reduce the severity of the nature of crime and disease, and we can do so by embracing the four principles – cross national education, experimental design, interdisciplinary orientation, political criminology. Improvements in crime and punishment matters and the reduction of corruption throughout the world in the 21st century, depend upon criminology moving in this same strategic direction. As the American writer Ralph Waldo Emerson once wrote, for every 100 people hacking at the leaves, there is only one digging at the root of the problem. We cannot address the crime problems by hacking at the leaves in a piecemeal fashion. We need to come at this from a fundamental, etiological, epistemological, systemic orientation and adopt the same procedural model as did medicine. I wish to briefly address all four procedural methodologies which medicine embraced, and apply them to criminology.

A Cross National Academic Model

We need to embrace a cross national academic model, and seek to enhance the level of growth and development of criminology in universities throughout the world. I see three major benefits to this, as follows:

1. Over time, graduates from university justice education programs will gradually begin to fill justice system positions within their respective countries, which will help to further professionalize justice operations within each country.
2. Most who take university classes in criminology will not seek employment in the justice system per se, but they become the body politic, and their exposure to the principles and concepts outlined in their criminology classes will have increased their understanding as to the proper role and function of the justice system and its personnel. Subsequently this more attuned and aware general populous will hold justice system personnel to a higher standard. The synergy of this proposal is that the justice system personnel who are going to be held more accountable by the more attuned public, will have had the academic background to draw upon which will give them more tools to be able to respond positively.
3. Justice officials will also be able to respond more positively to increased public demand due to perhaps the most important aspect of all – research. The faculty and students of the criminology programs will engage in research activities that will produce a more complete knowledge base and shed further light on ways and means of improving justice system practices, programs and policies.

In sum, criminology research helps develop and improve justice-based institutional structures, the classroom course content helps prepares the individuals

who work in them and ingrains the concept of the justice and the rule of law into the body politic. I defer to the thoughts of H.G. Wells in this matter – “human history is a race between education and catastrophe.” Under that premise, it is crucial that the educational model be adopted, and particularly in the area of criminology as nations seek to enhance the level of collective communal peace and equality, and overall social justice.

I would add that developing and transitional nations in particular need to establish justice education programs. These nations typically have weak rule of law traditions and publically disparaged legal infrastructures. Justice education programs will help overcome these deep-seated problems, and in addition, it will help these nations professionalize and stabilize their justice systems so that they will be more likely to attract investment dollars and participate more fully in the global economy.

An Interdisciplinary Academic Model

The hard sciences and medicine were two of the great success stories of the 20th Century. Conspicuously absent in this great leap, however, were the social and behavioral sciences. Some twenty years ago, Allan Bloom criticized the academic social and behavioral sciences for being scholastically stagnant. He argued that there have been no new ground-breaking perspectives, no new paradigms, no theories of value or impact proffered for decades. Compared with the hard sciences and medicine, the traditional disciplines of sociology, psychology, anthropology, economics, history, political science are comatose, if not altogether dead. The primary reason he argues, is intellectual incest; an unwillingness to engage in cross-disciplinary and cross-national fertilization and exchange.

Much of the reason behind the rather rapid rise of justice education as a field of study in the United States has been its cross-disciplinary diversity. A marginal field of study in the 1960s and 1970s, it exploded onto the academic scene in the 1980s and 1990s. This was due in part to the emergence of crime as a fundamental topic of interest to the American body politic, but also in large part due to its academic diversity and multi-disciplinary character. It is not unusual to see American university criminal justice program faculty members with degrees in history, psychology, sociology, public administration, law, political science, urban studies, as well as criminology and criminal justice.

There is a need to continue to cling to the multi-disciplinary model, and to extend the reach to include colleagues from all nations. We must emulate the progressive hard science research centers and reach out to all fields and disciplines, and to colleagues from all nations, and in this interdisciplinary, cross-national context, collectively seek to address crime and justice issues.

Evidence Based Criminology

What do we know about reducing the severity of crime? How do we go about systemically reducing the severity of crime? A comprehensive United States Congress sponsored study undertaken about ten years ago concluded that we simply do not know. What we do know and where we have made great strides, is in enhancing the efficiency and the professionalism of our justice agencies. American law enforcement in particular has seen a light year of improvement in the last 40 years. This has been due, in large part, to the presence of criminology/criminal justice programs in the U.S. higher educational system – there are now better prepared recruits, a heightened sense of awareness and demand for proper performance coming from the educated body politic, and a growing body of research-based knowledge that has examined police (and other) justice agency operations and procedures.

What we don't know is how to systemically reduce the severity of crime and deviance overall in society at large. Some programs and policies seem successful, others are clearly dismal failures, but we are not sure why, on either count. We have not been able to crack the cause and effect barrier with any degree of surety. The knowledge base in the field of criminology is somewhat thin as compared with the hard sciences.

As a consequence, justice policies and programs that are adopted are generally implemented due more to political consideration rather than scientific merit. In the final analysis, academic criminology is generally polluted by political criminology, for in the absence of sound knowledge, public policy tends to be a pinch of science (and often bad science at that), and a pound of ideology.

Scientific Versus Political Criminology

This then brings me to the 4th and final, and yes, somewhat cynical point, scientific versus political criminology. Let me address that idea and tie it in with the other notions presented today, with two stories. In 1799, the former president of the United States, George Washington, lay in bed with a bad case of strep throat. The finest physicians of the day concluded that he needed to be bled, a common treatment modality of the day that was used for virtually every ailment. Bleeding, among other impacts, contributes to dehydration. Ironically in the end, Washington died not due to the strep throat infection per se, but primarily due to the complications brought on by the bleeding induced dehydration. We know today that when a patient contracts a case of strep throat, they need to be hydrated, not de-hydrated. Yet ironically, the well-meaning physicians of the day, using the popular mode of treatment, did

exactly the opposite of what they needed to do and of course made the situation worse.

There is, in this story, a stunning analogy with respect to the use of prisons in an American context. Just as bleeding was used as the response to virtually all ailments of the early 19th century and just as it made things worse, prison is used as the response to virtually all crimes in the 21st century, and is making things worse; strep throat, consumption, the plague bleed them – drug user, burglar, robber imprison them. Just as medicine in that day had no concept of inter and intra disease specificity and the need for individualized treatment modalities, we in criminology also suffer today with an inability to deal with inter and intra crime variation. Had George Washington's health improved (and there was a chance it could have for he was a man of large stature), the physicians likely would have suggested it was due to the bleeding, and perhaps touted his case as yet another example of the value of that treatment modality. But of course, such treatment is de-habilitating, and any improvement in Washington's health subsequent to the bleeding would have been despite, not because of the treatment received. A systematic analysis would have revealed this to be the case of course, but, there were few systematic analyses undertaken within the field of medicine prior to the 1800s.

By and large, the crime prevention programs that we utilize in the United States have not been systematically evaluated, which is, of course, quite an interesting state of affairs. Imagine a pharmaceutical firm introducing a new drug into the market that has not been adequately tested and approved by the Food and Drug Administration. We need a criminological FDA. No crime response or prevention program should be implemented until it has been adequately tested, until it has been subjected to repeated, thorough, systematic quantitative evaluation. One way to begin to facilitate this is to develop justice education programs in universities all around the world.

We should also consider the fact that there are programs that have been shown via systematic evaluation to be viable, but are not politically palatable. This situation is not limited to criminology. Consider, for example, the case of Dr. Joseph Goldberger who was sent by the United States government to the southern American states in 1913 in an attempt to discover the cause and cure for pellagra, a disease that was ravaging that area of our nation. He discovered that the disease was due to a lack of niacin in the diet. Dr. Goldberger, a Jew from the northern United States, then began to relay his findings to the southern community populous and leadership. His work was summarily rejected, due in part to the fact that he was a Jew, in part due to the fact that he was from the North, and in part because of a general fear of change, a xenophobia amongst the populous. He was eventually recalled by the United States federal government due to the animosity spreading throughout the American South on this matter. He died, definitively knowing he had found the

cause and cure of pellagra, but infinitely frustrated in that he had been unable to reach the body politic with the findings.

This account highlights the need for scientific criminologists to recognize that there are actually two fields that need to be surmounted if impact is to be achieved scientific criminology and political criminology. As quantitatively sound as it is, removing handguns from the American public is just not going to happen, despite the fact that a successfully implemented policy of this nature would result in fewer murders. As quantitatively sounds as it is, the horribly unbalanced social inequality quotient is not going to be addressed in America, despite the fact that this is clearly a precipitating factor when it comes to crime issues. There is no political capital for seriously addressing either notion in the United States. They are not politically palatable themes. There are political truths and there are scientific truths, and political “leaders,” by their very nature, tend to cling to the political truths to survive, and consequently often (by default) operate in literal information free zones. Political leaders cling to political truths and tend to ignore the quantitative truths – that is the nature of the beast. They have to, to survive. That is just the way it is and always will be. They may order studies done, but if those studies don’t say what the political leaders want said, if the zeitgeist, the timing is not right, then forget it. Scientific criminology is polluted by politics and power, and thus often renders the quantitative studies, the carefully crafted studies that start to reveal the causal explanations of crime as utterly useless (ie., Andrew Lang’s famous comment, politicians use statistics (studies) as a drunken man uses a lamppost – for support (of what they want) rather than illumination).

But rather than criticize these political leaders, we need to recognize that that is simply the nature of job, and we need to adjust to that (the great ones adjust). Consequently, our role as criminologists and justice professionals is to not only uncover scientific truths, but to also be alert as to when the best time would be to bring results forward, to be attuned to the zeitgeist and seek to bring about change when the timing is right. We must also, I propose, do what we can to make that timing right and engage in activities that create an environment where truths can be aired and implemented.

Criminology today, like medicine 200 years ago, is faced with a literal plethora of concerns, and only if it adopts the same procedural model as medicine (cross national education, experimental design, interdisciplinary orientation, a focus on the political as well as the scientific), will we see progress. I do call upon you to markedly increase the presence of criminology in the colleges and universities in your country as a first step. If you are serious about enhancing justice, about heightening the sense of peace and improving socio–economic stability, about obtaining more external investment, about reducing corruption, you need to bring justice education programs

to your universities. It may take a generation to have the desired impact, but this will work.

Conclusions

As has been outlined, there is a wide array of powerful, interactive forces and factors at work, pushing and pulling at the boundaries and borders of peace and civility. The West, and the United States in particular, needs to get its own house in order (ethically and financially), and will also need to be patient as the East sorts itself out. As has been emphasized repeatedly, the religious, ethnic, and secular conflict in the Middle East today are virtually identical to the religious, ethnic, and secular conflict that plagued Europe in the Middle Ages. We are in the midst of an Islamic reformation, aggravated by globalization and imperial U.S. military presence. What took literally hundreds of years to emerge in the West (who had the advantage of no external meddling) will certainly not materialize overnight in the Islamic East. It took centuries of major upheavals and catastrophic conflicts for the West to evolve to its current state, and it is still evolving, as evidenced by the recent and on-going conflict within the European Union. That process has gone faster however, since that path has been pioneered. Eighty years ago for example, it was the Japanese who loomed as the great threat in the East. Their plans for high-speed modernization stalled with the onset of the Great Depression of the 1930s. What followed was very similar to the current Islamic reaction – authoritarian rule, an obsession with cultural purity, a hatred of the West. Many Japanese leaders at the time spoke of overcoming Western civilization, as does bin Laden today. It took a war, all such notions dissipated, and Japan now finds itself a world power, and yet also clearly retains its sense of cultural identity. Others in the region learned from the experience, and have subsequently chosen to peaceably follow the trail to prosperity and security that was so painfully hewn by Japan.

God forbid that it should take a cataclysmic event such as World War II to break the Middle Eastern societies out of their current state of resignation and hostility. Some in the Muslim world are making the move to modernization more or less successfully, as previously noted (ie., Turkey, Qatar, United Arab Emirates, Indonesia, Malaysia, Bahrain). It has not taken a world war to move them. Hopefully the same will be able to be said of all Islamic nations, of all nations, in time.

The great question again, is whether we, in the West, can afford to absorb from the Islamic East, the same level of chaos and destruction the West wrought upon the world the past 500 years as we evolved to our present socio-political state. Given the incalculable devastation precipitated by the West during our religious, ethnic and

political reformations, the prospects and outcomes of the emerging Islamic unrest, with its multi-sector and multi-causal origins, are quite unsettling.

Great challenges lay ahead for you and for me as we respond to the inequities and injustices in the world around us. There are people to be fed, reefs and forests to be protected, life in all forms to be preserved, and wrongs to be righted in many spheres. As we work, we must remember that a lasting peace in Islam, a lasting peace in this world, can only be built upon an aggregate sense of justice, equity, and opportunity; not just on quiet guns. In your contemporary quest of that which is great and good, as you pursue knowledge and truth, more will be asked of you than has perhaps ever been asked of you before. You must seek out and contribute, you must plant the seeds for a culture of long-term thinking within your neighborhoods and your nation, and you must do so with an eternal tenacity that is in defiance of the hopelessness. I wish you well in your endeavors as you extend the limits of your abilities through collective innovation and creativity, and will watch with excitement as you reach out and take a more active role in your region, and in the world.

Footnotes

1. America's siren song has been played before, but its vibrant citizens have always refused to listen. Some twenty years ago, it also appeared as if the U.S. was past its prime due to a combination of imperial over-reach, excessive debt, and a rather significant financial bust (see Kennedy, 1987). Instead, it emerged from that period as the world's sole superpower, operating at the hub of the globalized world. While there are real and pressing contemporary concerns, there are those who suggest that our best days are still ahead (see Friedman, 2009; Gross, 2009), and point out that the American model is not as tarnished as it would appear at first glance. Even our most vocal young critics point out, those who ostensibly hate us the most, wear American university T-shirts.

This is not to ignore the challenges before us. They must be confronted, or our best days will not be in front of us, and the current economic meltdown in particular should focus our collective attentions. Since the end of the Second World War, the United States functioned with an internally driven economic engine built on cheap and easy credit. But, when cheap and easy credit vanishes (like now), that engine slows. The current slowdown is the most listless in some 75+ years. If we can find the political will, we, as do all other nations in the industrialized world, need to:

Trim entitlements by adjusting the size of the payouts and raising the age of qualification. The looming incalculable pension debts/underfunded social welfare commitments have the potential to bring America down, truly down, within the next 15 years.

Aggressively promote tariff and subsidy-free trade. Bush's in your face, macho, belligerent, arrogant unilateralism may be gone, but it may be replaced by disastrous trade protectionism which in some sense could be a worse option for the U.S. and the world in the long run. The U.S. has a thin social safety net and a winner take all distribution of riches which means that the less educated lower-level workers have less to gain from free trade. President Obama is no "dummy". He recognizes the inherent, macro value of free trade, but much of his political power-base came from those who are more protectionist in their orientation. Trade protectionism definitively protects in the short-run, but is devastating in the long run and must be resisted at all costs. Time will tell if he has the courage to do the right thing for our nation, and concomitantly, for the world in this supremely important arena.

Become more immigrant friendly. The United States has a brain-dead immigration system, and as a result, it is losing momentum with respect to the development of science and technology. These fields have been dominated by foreign students for decades, many of whom found employment in the United States and subsequently helped fuel the American economic engine. The Bush administration closed the doors to many international students subsequent to 9/11 who wanted to live and work here. These students are now either not coming, or, graduating and being forced to go home. They will now fuel the engines of their own or other nations (ie Canada). Science, as well as global economic survival, is enhanced with exchange and is stunted with isolation. Without them, the U.S. will begin (as it is already) to experience a decline in the fundamental human resource components upon which a modern industrialized economy and the contemporary global market are based. We must not only increase the number of work visas and green cards issued, but also re-write our byzantine green card and study visa application process so as to encourage rather than discourage. We must maintain legal immigration standards, but also set out a clear pathway to citizenship. National power in the 21st century will rest with those nations who are able to adequately train and retain their indigenous workers, and simultaneously attract capable, employable immigrants.

Significantly increase our foreign exchange activities. We need to ramp up foreign exchange programs at the secondary and higher education levels, and particularly revitalize the Fulbright Program which was seriously undermined by the Bush Administration.

Boost research and development spending, particularly in the area of alternate fuels/energy. Our entire economy is dependent upon nations who do not like us very well, and yet, due to our oil addiction, we are transferring billions and billions of dollars to them every year; we must wean ourselves of foreign oil.

Boost infrastructure spending, especially in the area of mass transit. These are investments not consumptions and will have profoundly positive and dramatic far-reaching, multi-sector impacts.

Return to a rationally regulated society. Unbridled, unregulated capitalism is an invitation to disaster as evident in the recent financial meltdown.

Produce more than we consume, and save the difference; American households need to become net savers, not debtors. Since 1980, we have consumed more than we have produced and we have made up the difference by borrowing; that simply and obviously cannot go on indefinitely.

Start paying down the national debt, for a variety of reasons, perhaps the most glaring being that we are becoming subservient to a host of foreign powers. At this point, we simply cannot put much pressure on Russia or China or OPEC one day and expect them to keep buying our T-bills and service our debt, our gluttony, the next.

Become environmental conscious, in word and deed. The United States now stands virtually alone among the developed nations in its denials and inactions in this arena; this is a matter of great concern to the body politic of the world and is an area where the nations of the world are looking for a leader; we can certainly begin to restore our luster, our international reputation, if we abandon our irrational recalcitrance in this arena and begin showing some leadership here; interestingly, no one else has stepped up on this issue, so this does emerge as a leadership opportunity for the U.S.

2. From an American context, this bodes well for us. America is still the most open, most flexible society in the world. It absorbs other people, cultures, ideas, goods and services which gives it a remarkable ability to adapt and adjust to new technologies and new challenges. The country has historically thrived on the passion and raw energy of immigrants. This singular characteristic has set it apart from other superpower nations that have gone before, and may allow it, despite a host of rather potent contemporary socio-economic ailments, to yet retain some position of power and prominence into the future.

3. The Pashtun, more than perhaps any other group, hold the key to order and stability in the Golden Crescent at present, and perhaps in the world as a whole, for so much rides on the need to bring order and stability in that area of the world. The Pashtun are an ethno-linguistic group with its roots in the Eastern Iranian region. Current populations are now primarily in Afghanistan and Western Pakistan. The Pashtun are typically characterized by their use of the Pashto language and the practice of Pashtunwali (a traditional code of conduct and honor). Pashtun society consists of many tribes and clans which were rarely politically united, until the rise of the Durrani Empire in 1747. Pashtun played a vital role during "The Great Game"

of the 19th century as they were caught between the imperialist designs of the British Empire and Russian empires. For over 250 years, they reigned as the dominant ethnic group in Afghanistan. More recently, the Pashtun gained worldwide attention after the Soviet invasion of Afghanistan in 1979 and with the rise and fall of the Taliban (since they were/are the main ethnic contingent in the Taliban movement). Pashtun have a dominant presence in Pakistan, where they are prominently represented in the military. The total population of the group is estimated to be around 42 million, but an accurate count remains elusive due to the lack of an official census in Afghanistan since 1979. There are an estimated 60 major Pashtun tribes and more than 400 sub-clans. The Pashtun remain a predominantly tribal people, but globalization and urbanization has begun to alter Pashtun society. Another prominent Pashtun institution is the Jirga or 'Senate' of elected older men. Most decisions in tribal life are made by members of the Jirga, which is the main institution of authority that the largely egalitarian Pashtun willingly acknowledge as a viable governing body. Most Pashtuns follow Sunni Islam, generally the Hanafi school. A minority of Twelver Shi'a Pashtun exist in Afghanistan and Pakistan. Many Pashtun are prominent Ulema, or Islamic scholars, such as Muhammad Muhsin Khan, who translated the Qur'an and other sacred texts into English. Again, this group, this tribal nation, which by and large does not accept or recognize lines in the sand "national" borders, holds the keys to peace in this unsettled region, and concomitantly, peace in the world.

TERRORYZM, GLOBALIZACJA ORAZ SIŁY (DE)STABILIZUJĄCE W ŚWIECIE ISLAMU

Znacząca niechęć wobec Zachodu, a w szczególności wobec Stanów Zjednoczonych, jest zauważalna wśród wielu wyznawców wiary muzułmańskiej. Uczucie to uwidacznia nie tylko islamski ekstremizm, ale także spora grupa przedstawicieli islamskiego mainstream'u.

Ta problematyczna sytuacja się zaognia. Widoczne są co prawda oznaki dekompresji, ale konflikt będzie się rozwijał jeszcze przez lata z wielu powodów, z których najważniejsze to: kulturowa infiltracja globalizacji, brak struktur możliwości ekonomicznych, wchłanianie politycznego przywództwa islamskiego oraz współczesny ruch Islamskiej Reformacji.

Jednym z pomysłów na pokonanie przeszkód jest zaszczepienie demokracji zachodniej do islamskiego rdzenia. To nierozsądne przedsięwzięcie w kontekście historycznym i w kontekście koniecznych ruchów socjologiczno-kulturowych poprzedzających takie rozwiązanie. Istnieje jednak nadrzędna potrzeba natychmiastowego zapewnienia prawidłowych struktur ekonomicznych i promocji międzynarodowej wymiany.

Ten kulturowy konflikt zostanie załagodzony jedynie w sytuacji, w której połączone możliwości ekonomiczne zostaną wprowadzone na wszystkich poziomach i w każdym sektorze islamskiego świata.

Zachód musi być jednak cierpliwy, ponieważ islam jest obecnie w środku reformacji, okresu istotnych socjologiczno-politycznych przemian, podobnych do tych, z którymi mierzył się sam Zachód jakieś 500 lat temu.

Miejmy nadzieję, że spustoszenia, jakie przyniósł światu Zachód w ciągu ostatniego pół-tysiąclecia, nie powtórzy islamski Wschód i że będzie on potrafił przyjąć kulturę sukcesu i podążyć śladem pokoju i dobrobytu, które w bólu wykuli już inni.

Key words:

Terrorism, globalization, Islamic reformation, disorder, American decline

THE DEFINITION OF PIRACY UNDER ARTICLE 101 OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA – AN ATTEMPTED LEGAL ANALYSIS

The definition of piracy introduced in Article 101 of the United Nations Convention on the Law of the Sea signed on 10 December 1982 in Montego Bay (known as the Jamaica Convention) is an almost direct quotation of Article 15 of the 1958 Territorial Sea Convention (known as the Geneva Convention). In their work on piracy regulations for the Geneva Convention, the International Law Commission relied heavily on the results of a private project developed in 1932 under the supervision of Professor Joseph Bingham from the Harvard University, known as the Harvard Draft Convention on Piracy (hereinafter the Harvard Draft).¹ The current definition of piracy introduced in Article 101 of the Jamaica Convention is:

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

¹ Under the Harvard Draft the following activities constituted piracy: 1) Robbery committed by using a private ship to attack another ship. 2) Intentional, unjustifiable homicide, similarly committed for private ends. 3) Unjustifiable violent attack on persons similarly accomplished for private ends. 4) Any unjustifiable depredation or malicious destruction of property similarly committed for private ends. 5) Attempts to commit the foregoing offences. 6) Cruising with the purpose of committing any of the foregoing offenses. 7) Cruising as professional robbers in a ship devoted to the commission of such offenses as the foregoing. 8) Participation in sailing a ship (on the high sea) devoted to the purpose of making similar attacks in territorial waters or on land, by descent from the sea. See: Harvard Draft Convention, p. 773-775.

- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Under Article 101, only acts committed for private ends are considered acts of piracy. The term “private ends” is one of the most controversial parts of the definition. It is largely disputed whether this condition excludes politically motivated terrorist activity from the definition of piracy.²

The Geneva Convention was a “product of its time” – the Cold War era. The works of the International Law Commission were greatly influenced by the events of the 1950s when Taiwanese nationalists regularly attacked ships heading for Chinese ports. These activities posed a major threat to the freedom of navigation in the Far East. In October 1954, the Soviet government proposed an initiative to start international collaboration over combating piracy on Chinese waters by expanding the agenda of the 9th session of the United Nations General Assembly with the following item: The breach of free navigation in Chinese seas zone.³ By reference to the stipulations of the Nyon Agreement, the Soviet government postulated that the activity of the Taiwanese fleet should qualify as piratical operations. The communist states led by the Soviet Union (the People’s Republic of Poland⁴ included) had the position that politically motivated activities of both warships and independent vessels should qualify as acts of piracy. The Commission’s final decision was, however, to accept the position of democratic states and to restrict the definition of piracy to those acts of violence made at high sea which were committed for private/personal ends only.

Neither the 1982 Convention on the Law of the Sea nor the 1958 Convention on Territorial Sea and the Contiguous Zone contains any explanation of what private ends are. Hence, the travaux préparatoires of the Geneva Convention and the Montego Bay Convention may become useful.⁵ Authors of the definition in Article 101 clearly did not mean to restrict piracy solely to acts committed out of the desire for profit (*lucri causa*). In the comment to high sea articles developed by the 7th Maritime Law Commission in 1955, it is stipulated that while an act of piracy needs to be committed for private ends, the desire for profit (*animus furandi*) is not required and acts of piracy may be driven by hatred and vengeance rather than

2 The first attempts to develop international regulations on piracy were made in 1922 by the League of Nations. After three years of negotiations the works were abandoned as member states were unwilling to accept the proposed solutions. Even at that stage, however, it was postulated that the notion of piracy should include any acts of violence at sea irrespective of the violators’ ends and motives. In the end, this proposal was rejected and the issue of piracy was clearly separated from politically motivated acts.

3 J. Machowski, *Piractwo w świetle historii i prawa*, Warszawa 2000, p. 229.

4 See: position of the People’s Republic of Poland: UN Doc. A/CONF.13/37, p. 99.

5 Under Article 32 of the Vienna Convention on the Law of Treaties of 23 May 1969, reference to preparatory works related to treaties may form a complementary method of interpretation whenever the understanding of explicit regulations as defined in Article 32 is obscure.

merely the ⁶desire for profit. ⁶ Hatred and vengeance are, as a matter of fact, some of the most critical drives behind terrorism.

Based on preparatory works of the 1958 Geneva Convention and the 1982 Jamaica Convention, the notion of private ends has been used in Article 101 for the purpose of excluding from the definition of piracy activities undertaken by rebels who have not been recognised as a combating party by the state they are fighting against but who restrict their attacks solely to targets belonging to this country.⁷ The authors of this definition intended to avoid a situation where governments fighting against rebels could qualify their rebellious operations as piracy.⁸

In practice, however, it may be difficult to tell rebellious activities from terrorism. One critical criterion for such differentiation seems to be whether the organisation's attack is aimed at a single country or if it harms interests of several countries. We will compare two widely known cases of ship hijacks to test this criterion. The hijacked ships were Santa Maria in 1961 and Achille Lauro in 1985. Both of them were hijacked by members of organisations pursuing specifically defined political ends. In both attacks there was a single fatal victim. The Santa Maria hijackers were, however, never labelled terrorists for a number reasons. First and foremost, the hijackers of this Portuguese ship were themselves Portuguese citizens. They were acting in the authority of general Humberto Delgado, leader of anti-governmental opposition, and hijacking the ship was supposed to facilitate him to seize power in Portugal. As importantly, no citizen of another country suffered as a result of the hijackers' actions (the only fatal victim was the ship's third officer from Portugal). In the court trial, which was held in Brazil, not only did the court not qualify the hijack as a terrorist attack but it also refused to classify the hijackers as pirates, which was postulated by Portugal.⁹ This was justified by the political motives behind the act and the fact that it was addressed solely against the Portuguese government. The Achille Lauro hijack of 1985 was different. By hijacking the ship, Palestine Liberation Front members acted against the Israeli government demanding that it releases several dozen Palestinians from Israeli prisons in exchange for people taken to hostage on board the ship. The fatal victim selected from the group of passengers was not, however, an Israeli but an American citizen and the hijacked ship was under Italian flag. The hijackers' actions were politically motivated and they were against the interest of several countries. Under such circumstances, the Achille Lauro hijack was qualified as an act of terrorism rather than piracy or rebellion.¹⁰

6 United Nations General Assembly A/CN.4/494, p. 20. See report at : http://untreaty.un.org/ilc/documentation/english/a_cn4_94.pdf

7 M. Halberstram, *Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime safety*, American Journal of International Law 1988, vol. 82, p. 277.

8 D.R. Burgess, *The world for ransom. Piracy is terrorism, terrorism is piracy*, New York 2010, p. 136.

9 D. Heller-Roazen, *The Enemy of All. Piracy and the Law of Nations*, New York 2009, p. 174.

10 M. Münchau, *Terrorismus auf See aus völkerrechtlicher Sicht*, Frankfurt am Main 1994, p. 109.

As mentioned before, when developing their maritime law regulations, the United Nations Maritime Law Commission based their works on piracy regulations from the Harvard Draft. In the comment to Article 3 of the Harvard Draft (Draft Convention, *Supra* Note 23, 786), all politically motivated illegal attacks on persons and property were excluded from the definition of piracy, irrespective of whether they were committed in the authority of a state, a recognised rebellious organisation or an unrecognised rebellious organisation.¹¹ This might be indicative of the intention to exclude from the definition of piracy any politically motivated acts, terrorism included. Here the historical background may, however, be of significance. For authors of the Harvard Draft and for the International Law Commission, the notion of a “political end” was closely related to the area of state activities. Both entities assumed that political ends could be implemented either by a state (state piracy by warships) or an entity acting in the authority of a state (privateering) or of a rebellion government. They failed, however, to foresee the emergence of a completely new non–state danger, namely the current international terrorism.¹² The intention of authors of the Harvard Draft was to differentiate between piracy and any legal war activities conducted at sea.¹³ In 1932, wars were traditionally classified into classic international wars and civil wars. No one could predict that several dozen years later a new threat to international security would emerge: terrorism.

One could accuse the authors of the Montego Bay Convention that by merely copying the definition of piracy from the 1958 Convention on the Law of the Sea, they not only ignored over 20 years of developments in the phenomenon of piracy but also the emergence of international terrorism and the building up of correlations between terrorism and piracy.¹⁴ By strictly applying the requirement that pirates should aim for private ends (personal benefit) and excluding the political ends, we face the risk that many contemporary acts of piracy will not fulfil the conditions stipulated in Article 101 of the Convention and that offenders will not qualify as pirates thereunder. How do we, for example, treat Somali pirates who transfer a major part of the ransom they get for hijacked ships to an extremist Islam militia al-Shabaab, which has contacts with al-Qaeda and has been qualified by the US as a terrorist organisation fighting to seize control over Somalia from the internationally recognised Temporary Federal Government?¹⁵

In his reference to the works of the International Law Commission, Professor D.H.N. Johnson judged that it would be much more beneficial to assume that the factor

11 International human rights litigation in U.S. courts, B. Stephens, M. Ratner (ed.), 2nd ed. Boston; Leiden: Martinus Nijhoff Publishers, 2008, p. 137.

12 D.R. Burgess, *The world for ransom...*, *op. cit.*, p. 145.

13 *Ibidem...*, p. 137.

14 P.W. Birnie, *Piracy: Past, Presence and Future*, [in:] Editors: E. Ellen, *Piracy at Sea*, London 1989, p. 139.

15 Piracy ransoms funding Somalia insurgency, <http://www.reuters.com/article/2008/08/24/us-somalia-piracy-interview-idUSLO00572320080824>, of 3 March 2011.

defining piracy is no state's authorisation rather than the private ends condition.¹⁶ The no-state-authorisation condition is historically justified in the differentiation between piracy and privateering.¹⁷ The difference between privateers and pirates was that the prior acted officially on the authority of a state awarded to them as letters of marque while the latter acted out of their own initiative. The motivation behind operations of both groups was not, however, significantly different. Pirates acted for private ends, out of their desire for profit and the same was true of privateers. Although they acted in the political interest of a specific country, they did so to have a percentage share in the booty.

The assumption that no state authorisation forms a condition constituting piracy is not an innovation. For example Paragraph 162 of the Portuguese penal code of 1886 said: that "a sea bandit is a commander of an armed ship who sails at sea without authorisation of a ruler or of a sovereign state in order to commit robbery or any other acts of violence".¹⁸ The same solution was used in the Nyon Agreement on Combating Piracy signed on 14 September 1937 which classified attacks of submarine vessels not belonging to any state as acts of piracy.

This solution requires no amendments to treaties and may be successfully used in the existing legal order. Professor Gerald Fitzmaurice believes that political, or public, ends are those which have previously been authorised by relevant state authorities. This leads to the conclusion that activities conducted for private ends, as stipulated in Article 101 of the Jamaica Convention, are those which have not been authorised by any recognised government.¹⁹

In this context, in 1927 the Permanent Tribunal for International Justice ruled that: "the distinctive mark of piracy is independence or rejection of State or equivalent authority".²⁰ By accepting this line of reasoning we could qualify a large part of acts of terrorism as piracy. Professor Halberstram believes that despite no historical or teleological justification for applying regulations of the Geneva Convention and the Montego Bay Convention to acts of maritime terrorism, it would be beneficial to regulate this issue in an international agreement.²¹

Another highly disputable issue in the definition of piracy is its restriction to high sea and other territories outside of jurisdiction of any state (*terra nullius*). Consequently, under Article 101 of the Jamaica Convention, armed robbery attacks committed on the territorial waters of a given country do not constitute piracy

16 D.H.N. Johnson, *Piracy in Modern International Law*, Grotius Society Transactions. Problems of Public and Private International Law 1957, Vol. 63, p. 77.

17 M. Murphy, *Piracy and UNCLOS: Does International Law Help Regional States Combat Piracy?* [in:] *Violence at Sea. Piracy in the age of global terrorism*, ed. P. Lehr, New York 2007, p. 160.

18 L. Gelberg, *Piractwo na morzach chińskich. Próba analizy prawnej*, Warszawa 1956, p. 82.

19 M. Halberstram, *op. cit.*, p. 281.

20 M. Murphy, *op. cit.*, p. 161.

21 M. Halberstram, *op. cit.*, p. 291.

iuris gentium. Such acts are defined as maritime armed robbery and are subject to jurisdiction of the state where they were committed.

The condition that an act of piracy should be committed at high sea is not a novatory solution (it was present in the 1952 Convention on the Law of the Sea) and it would not give rise to controversy were it not for the new maritime law institutions which were introduced under the Convention, such as territorial sea reaching 12 miles off shore (Article 3), the contiguous zone (Article 33), the archipelago waters (Articles 46-54) and, most of all, the exclusive economic zone (Articles 55-75). As a result, a large part of sea areas which used to qualify as high sea was now excluded from the same and acts of piracy committed in those areas no longer qualified as piracy. It is estimated that only 7-15% of incidents which qualified as piracy *iure gentium* before the Geneva Convention came into force would be considered as such under the new regulations.²²

Before the 1982 Convention on the Law of the Sea became effective, the general assumption was that territorial sea was 3 miles wide. Now, under the Convention's Article 3, coastal countries were allowed to set territorial sea borders 12 sea miles (22 kms) away from the coast. Further, under Jamaica Convention's Article 7, baselines used to set the width of territorial waters might – in specific circumstances – be set using the so-called straight baselines method. In this method, territorial sea borders may be moved even further than with the use of conventional methods.²³

Part IV of the Convention on the Law of the Sea introduces a new category of territorial waters: archipelago waters. This way even more high sea areas were transferred under the exclusive jurisdiction of individual countries and any pirate acts committed in those waters ceased to constitute acts of piracy *iuris gentium*. In countries with relatively weak central authority, such as Indonesia and the Philippines, this development stimulated growth of piracy in their territorial waters.²⁴

Setting the territorial sea width to 12 sea miles resulted in the expansion of contiguous zones from 12 to 24 sea miles. The contiguous zone is a peculiar sea area which is, by definition, adjacent to but also external from the territorial sea area. Although the contiguous zone falls under the same legal regime as the high sea, coastal countries have certain rights in this area to protect their important interests and sea borders. This may lead to confusion in interpretation. On the one hand, coastal countries are allowed to operate in the contiguous zone to prevent violations of the tax, duty, sanitary and immigration regulations or to pursue and punish persons guilty of such violations but on the other hand, they are forbidden – under external

22 P.W. Birnie, Piracy: past, present and future, *Marine Policy*, 1987 Vol. 2, No. 3, p. 173.

23 M.N. Shaw, *Prawo międzynarodowe...*, op. cit., p. 321.

24 M.N. Murphy, *Small boats, weak states, dirty money. Piracy and Maritime Terrorisme in the Modern World*, London, 2010, p. 16.

regulations – to combat piratical acts committed in these waters. It is, therefore, likely that third-party countries may be unwilling to combat piracy in these waters under international maritime regulations.²⁵

Of particular significance for the combat with piracy is the Geneva Convention's provision that an economic zone of 200 miles (370.4 kms) may be established. The exclusive economic zone (EEZ) is a sui generis area, not belonging either to territorial waters or to the high sea. Some commentators claim that under Article 58 (2) of the Geneva Convention, and particularly the piracy combat regulations in Part VII, also apply in EEZ, which means that any country may capture pirates in this area to judge them according to their own penal regulations as is the case at high sea. Other authors present a different view and claim that while the traditional freedoms of the high sea do apply in EEZ, the zone's legal regime resembles one for territorial waters rather than for high sea. This view is supported with Article 58 (3) which stipulates that any country exercising its rights in EEZ should give consideration to the rights, obligations, acts of law and regulations issued by the coastal countries unless they are in breach of the Convention.²⁶

The unclear status of EEZ is further confirmed in Article 58 (1) of the Jamaica Convention. Under this article and without prejudice to other relevant stipulations of the Convention, any country, whether coastal or otherwise, may exercise traditional freedoms of the high sea in EEZ. It is not clear, however, to which of the Convention's stipulations those restrictions apply. This results in confusion whose root causes lie in the concept of EES and the unwillingness of the states which developed the Convention to accept a more accurate legal framework for EEZ which, in turn, resulted in the rejection of such proposals put forward by the commission preparing content of the Geneva Convention.²⁷

The concept of exclusive economic zone is a relatively new institution in international law and is subject to regular updates. Also, the rights and obligations of coastal and other countries in EEZ are constantly evolving.²⁸ The unwillingness to remove the confusion concerning the legal status of EEZ may lead to the conclusion that certain countries may seek to gradually expand their jurisdiction onto EEZ (creeping jurisdiction) so as to be able to respond more intensively to events

25 P.W. Birnie, *op. cit.*, p. 172.

26 M.N. Murphy, *Piracy and UNCLOS...* *ibidem*, p. 162.

27 M.N. Murphy, *Small boats...*, *op. cit.*, p. 16.

28 G.V. Galdorisi, A.G. Kaufman, *Military Activities in the Exclusive Economic Zone: Preventing Uncertainty and Defusing Conflict*, *California Western International Law Journal*, vol. 32, p. 254. Despite the fact that Article 57 of the Geneva Convention limits the width of EEZ to the maximum of 200 sea miles from the baseline, at the UN forum, several countries have already attempted to move it to 350 sea miles which is the maximum external border of the continental shelf. See: *Lisbon moves forward with EEZ extension bid at UN*, <http://www.theportugalnews.com/cgi-bin/google.pl?id=1057-34> oraz *Nigeria eyes extension of its Exclusive Economic Zone*, <http://www.afriqueavenir.org/en/2010/05/03/nigeria-eyes-extension-of-its-exclusive-economic-zone/> (31.03.2011).

occurring in those areas. There is also the threat that countries may want to expand their jurisdiction beyond the 200-mile zone, which in connection to the creation of the so-called “security zones” where international law will be either restricted or abandoned altogether, may lead to the transformation of EEZ to “quasi-territorial sea”.²⁹ Since EEZ’s cover 30-34% of the World Ocean’s area, it might lead to the unwelcome exclusion of a great number of piracy-related events from the definition of piracy introduced in Article 101 of the Montego Bay Convention.

The restriction of piracy to high sea and other territories beyond jurisdiction of a single country, as stipulated in Article 101 of the Jamaica Convention, gives rise to the question whether an act of piracy may also be committed on land. Historically, pirates robbed people at sea but also on land. More, there are stories about pirates plundering entire towns. An attack on coastal towns by descent from the sea was much more profitable than an attack at sea. Based on such historic evidence, authors of the Harvard Draft accounted for acts of piracy both at sea and on land by descent from the sea.

The occurrence of piracy on land has been accepted in the international law doctrine for a long time. For example, a Soviet manual of international law (1952) reads that: “Sea piracy or buccaneerism are violent acts committed either by ships and their crews upon other ships at sea or they are attacks committed by ships upon seashore locations, mostly for robbery or to hijack ships and kidnap people, and less frequently for other illegal purposes.”³⁰

Such a solution is also present in penal regulations of several countries. For example, Paragraph 1661 in Chapter VIII of the U.S. Code, devoted to piracy and privateering reads: whoever, being engaged in any piratical cruise or enterprise, or being of the crew of any piratical vessel, lands from such vessel and commits robbery on shore, is a pirate, and shall be imprisoned for life.

The Harvard Draft’s stipulation expanding the concept of piracy onto attacks on land by descent from the sea is not present either in Article 14 of the 1958 Geneva Convention or in Article 101 of the 1982 Jamaica Convention. Both articles assume that an act of piracy may be committed either on open waters or in places outside of jurisdiction of any country. It might be investigated whether, in the light of the aforementioned evidence and the fact that the conventions do not explicitly exclude such a possibility, the attack on a coastal town by descent from the sea is not an act of piracy under common law. This, however, is a purely academic issue. Nowadays, the danger of pirates’ attacking by descent from the sea seems rather unlikely, contrary to the threats of maritime terrorism. Contemporary piracy occurs only at sea. This

29 Martin N. Murphy, *Small boats...*, op. cit., p. 16.

30 Editors: W.N. Durdieniewski, B. Kryłow, *Podręcznik Prawa Międzynarodowego*, Warszawa 1950, p. 269.

was accurately described by Martin N. Murphy: “piracy is a crime of the land that is manifested at sea”.³¹

Another highly disputed issue from Article 101 of the Convention on the Law of the Sea is the concept of “two ships”. After the *Santa Maria* and *Achille Lauro* were hijacked, it was disputed whether the notion of piracy requires that the pirates attack a ship while aboard another ship or whether it is sufficient that the attackers are already on board the attacked ship as crew members or passengers, as is the case with plane hijacks. Such doubts stem from Article 101 (a) (i) which says that an act of piracy at high sea may be directed “at another ship” or at persons or property on board another ship. This definition is unclear when compared with Item (ii) which claims that an act of piracy committed on the territory outside of jurisdiction of any state may be “directed at a ship”, or at persons or property on board the ship. Hence, the conclusion may be drawn that under Article 101, the act of seizing control over a ship by its passengers or rebellious crew will be classified as piracy only if committed in the territory outside of jurisdiction of any country which is not, at the same time, the high sea.³² The reasons behind such a differentiation are unclear.³³ During the works on the 1958 Convention, the Chinese government submitted a draft amendment to Article 14, claiming that: “The article defines piracy in the restricted sense only and should be amended to include piracy in the broad sense of the term according to which any member of the crew or any passenger on board a vessel who, with intent to plunder or rob, commits violence or employs threats against any other member of the crew or passenger and navigates or takes command of the vessel, also commits piracy.”³⁴ This proposal was rejected without any specific explanation.

The two ships concept was also investigated during the Harvard Draft works. The project team came to the following conclusion regarding its limitations: “This limitation also is designed to exclude offences committed in a place subject to the ordinary jurisdiction of a State. The limitation follows traditional law. Some definitions of piracy are broad enough to include robberies and other acts of violence or depredation committed on board a merchant ship on the high sea by a passenger or a member of the crew who is not in control of the ship. Mutiny on the high seas has sometimes been included. The great weight of professional opinion, however, does not sanction an extension of the common jurisdiction of all States to cover

31 M.N. Murphy, *Future Scenarios and Future Threats: What Happens if Piracy is not Controlled, and How Might Manifestations Change?*, [in:] *Global Challenge, Regional Responses: Forging a Common Approach to Maritime Piracy*, Dubai 2011, p. 37.

32 S.P. Menefee, *The new Jamaica discipline: problems with piracy, maritime terrorism and the 1982 Convention on the law of the sea*, *Connecticut Journal of International Law* 1990, p. 144.

33 In the opinion of some, this inconsistency is a result of an editorial mistake. This claim may, however, be rejected on the grounds that there is an identical provision in Article 15 of the 1958 Convention. It is unlikely that such a major mistake would go unnoticed for over twenty years.

34 *Yearbook of the International Law Commission*, 1956, vol. II, p. 18, available at: http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes%28e%29/ILC_1956_v2_e.pdf

such offences committed entirely on board a ship which by international law is under the exclusive jurisdiction of a State whose flag it flies. Even though a mutiny succeeds, the common jurisdiction would not attach. It should attach, however, if the successful mutineers then set out to devote the ship to the accomplishment of further acts of violence or depredation (of the sort specified in Article 3, 1) on the high sea or in foreign territory.”³⁵

Article 101 (a) argues against completely excluding the possibility of qualifying the crew’s rebellion or a passengers’ attack as an act of piracy by claiming that an act of piracy may be committed both by the crew and the ship’s passengers. It is unlikely that passengers might attack another vessel as pirates without assuming control over the ship carrying them. Therefore, if the crime of piracy may be committed by passengers, it is only so provided that they initially assume control of their own ship. This line of reasoning is supported by Article 103 which specifies that a ship is considered to be a pirate ship if the persons who control it are intending to commit one of the acts listed in Article 101. As a consequence, when the crew or passengers assume control over a ship at high sea, they commit an act of piracy only if they intend to take over the ship’s cargo or use the hijacked ship for further piratical activities. L. Oppenheim believes that if crew members kill the captain for personal vengeance and continue the cruise, they do not commit an act of piracy but rather an act of murder subject to national law of the given country and not by international maritime law. Such an act might constitute a piratical act if the rebellious crew commit the crime with the intention of assuming control over the ship and further committing acts specified in the Convention’s Article 101.³⁶ Otherwise, the incident on board the ship maintains its national character and is subject to the exclusive jurisdiction of the flag state. This situation will remain as long as consequences of the crime are limited to the hijacked ship and the persons on board and while the ship is not used for piratical activities.³⁷ As long as the crew’s or the passengers’ criminal activity does not harm interest of countries other than the flag country, they do not fall under international maritime law regulations on piracy.

In spite of the afore-mentioned evidence supporting the position that under the Convention’s Article 101, acts of piracy may include activities performed on a single ship, this remains a controversial and largely disputed issue. Jose Luis Jesus

35 Research in International Law, Harvard Law School, p. 809-810, [in:] ILCYB 1955, vol. I, p. 42, available at: [http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes\(e\)/ILC_1955_v1_e.pdf](http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes(e)/ILC_1955_v1_e.pdf)

36 L. Oppenheim, *International Law: A Treatise*, Tom 1, p. 436-437.

37 It is also for this reason that the hijack of Achille Lauro liner by Palestinian terrorists in 1985 did not qualify as piracy. Hijacking the ship, taking passengers to hostage and killing an American tourist are criminal acts falling under exclusive jurisdiction of the flag state, i.e. Italy. The fact that the hijack was aimed to force Israeli authorities to perform certain operations was irrelevant. Although the motivation behind the hijack was to commit a specified crime, the act does not qualify as piracy because no operation specified in Article 101 was performed which would constitute a piratical act. The activities of the Palestine Liberation Front were not directed at the freedom of navigation and so they did not harm the interest of international community but only one of a specific country. See: M. Münchau, *Terrorismus auf See...* op. cit., p. 114.

claimed: “It is fair to say, especially having in mind the travaux préparatoires, that the piracy definition does not and was not supposed to contemplate the one–ship situation.”³⁸J.L. Jesus believes that Article 101 of the Jamaica Convention clearly requires two ships for a criminal act to constitute piracy. This author judges that if people who developed this regulation intended to qualify criminal activities performed by the crew or passengers on board a ship as piracy, they would clearly indicate this possibility in Article 101. The provision of Article 101 (a) (ii) refers to a completely different situation. In this case the piratical act is directed against a ship, persons or property in a territory outside of the jurisdiction of any state. Further, J.L. Jesus points out that this regulation lacks any practical application, as currently there are no areas not covered by the jurisdiction of any country except for the Antarctic.³⁹

The exclusion of piratical acts from territorial waters of any country under the Convention’s Article 101 is related to the issue of the so–called reverse hot pursuit. Under the Convention’s Article 111, any coastal country has the right to pursue any ship beyond its territorial waters if the ship’s crew committed a crime within the country’s territorial waters. The reverse pursuit means that a ship sailing under the flag of a given country may enter territorial waters of another country if it started pursuing pirates in open waters. Where a coastal country is incapable of effectively controlling its territorial waters, they become a perfect shelter for pirates. The reverse hot pursuit right was also included in Article 7 of the Harvard Draft ⁴⁰, which allowed the pursuit of a pirate ship on territorial waters of a third–party state if the pursuit was started in the territorial waters of the pursuing country or at high sea provided that the third–party state does not object to continuing the pursuit on its territorial waters. After assuming control of the pirate vessel on another country’s territorial waters, the pursuing country is obliged to yield the vessel, its cargo and crew to the country on whose territorial waters the seizure was made, unless this country is not interested in accepting them.⁴¹

38 J.L. Jesus, *Protection of Foreign Ships against Piracy and Terrorism at Sea: Legal Aspects*, p. 377, [in:] *The International Journal of Marine and Coastal Law* 2003, vol. 18, no. 3.

39 See: *ibidem*.

40 Article 7 (1) In a place within the territorial jurisdiction of another state, a state may not pursue or seize a pirate ship or a ship taken by piracy and possessed by pirates; except that if pursuit of such a ship is commenced by a state within its own territorial jurisdiction or in a place not within the territorial jurisdiction of any state, the pursuit may be continued into or over the territorial sea of another state and seizure may be made there, unless prohibited by the other state. (2) If a seizure is made within the territorial jurisdiction of another state in accordance with the provisions of paragraph 1 of this article, the state making the seizure shall give prompt notice to the other state, and shall tender possession of the ship and other things seized and the custody of persons seized. See: R. Geiss, A. Petrig, *Piracy and Armed Robbery at Sea, The Legal Framework for Counter – Piracy Operations in Somalia and the Gulf of Aden*, Oxford 2011, p. 230, [in:] *The Draft Convention on Piracy, Supplement: Research in International Law, Part IV – Piracy*, 26 *The American Journal of International Law*, p. 744. 3. If the tender provided for in paragraph 2 of this article is not accepted, the state making the seizure may proceed as if the seizure had been made on the high seas.

41 K. Johansson, *Changes in the Views on Jurisdiction over Piracy under International Law*, University of Lund 2006, p. 23. Text available at: <http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=1558803 &file-Id=1564776>.

Unfortunately, the Harvard Draft regulations on reverse pursuit were not included either in the 1958 Convention on the Territorial Sea and the Contiguous Zone or in the 1982 Convention on the Law of the Sea. Under such circumstances, reverse pursuit should be considered as a breach of the international maritime law and the pursuing country may face the consequences of violating the territorial sovereignty of another country. In this context, we might consider the legal status created for the territorial waters of Somalia under the resolution of the United Nations Security Council. Of paramount importance in this situation is Resolution no. 1816 (2008) issued on 2 July 2008 at the request of the Somali provisional government.⁴² Item 7 (a) of this Resolution countries collaborating with the Somali government were given permission to enter its territorial waters and to take any measures permissible under international law regulations to combat the acts of piracy and armed attacks at sea. The Security Council made an exception to the territorial sovereignty of Somalia by allowing third-party countries to undertake actions on the country's territorial waters to fight any piracy-related activities in compliance with the regulations applicable at the high sea. This way the Security Council legalised the right of reverse pursuit on Somalia's territorial waters. The resolution does not, however, introduce any new standard to the international common law which would make it possible to pursue pirates on territorial waters of other countries as is the case in Somalia. In the resolution's Paragraph 9, there is a clear restriction that the permission covers exclusively the territorial waters of Somalia, does not affect the rights and obligations of third-party countries and does not introduce a new standard to international common law. In spite of all this, the resolution does set the direction for the required changes in jurisdiction concerning piracy under the 1982 Convention on the Law of the Sea.⁴³

The conclusion is that the provisions of the 1982 Convention on the Law of the Sea do not reflect the threats posed by the phenomenon of contemporary piracy. Nowadays, pirates tend to operate in proximity to the coast so largely within the boundaries of territorial waters of individual countries. The Montego Bay Convention does not apply in those areas. Authors of the Convention clearly assumed that individual states are capable of responding to piratical acts in their respective territorial waters. As a matter of fact, this is actually the case. Unfortunately, no provision was made to account for countries lacking resources to guarantee security on their territorial waters (e.g. the Philippines, Indonesia, Nigeria). This refers even more to countries suffering from statehood crises. The territorial waters of such countries are a safehaven to pirates. On the one hand, their national law is enforced only to a limited degree on territorial waters or is not enforced at all, while on the other hand the international law does not apply. This situation stimulates the development of criminal activities at sea.

42 Text available at: <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N08/361/77/PDF/N0836177.pdf?OpenElement>.

43 T. Ostropolski, *Jurysdykcja uniwersalna wobec piractwa morskiego w prawie międzynarodowym*, „Państwo i Prawo” 2/2011, p. 52-55.

DEFINICJA PIRACTWA NA PODSTAWIE ART. 101 KONWENCJI NARODÓW ZJEDNOCZONYCH O PRAWIE MORZA – PRÓBA ANALIZY

Piractwo morskie to najstarsza forma morskiej działalności przestępczej. Mimo podejmowanych na przestrzeni wieków licznych prób wyeliminowania tego procederu, na początku XXI w. zjawisko to przeżywa swój kolejny rozkwit, stanowiąc poważne zagrożenie dla międzynarodowej żeglugi. Artykuł ten stanowi próbę analizy prawnej definicji piractwa zawartej w art. 101 Konwencji Narodów Zjednoczonych o prawie morza z 10 grudnia 1982 r. Celem tej analizy jest rozróżnienie piractwa od aktów terroryzmu morskiego oraz ocena przydatności jej zapisów w walce z fenomenem współczesnego piractwa morskiego.

Key words:

Piracy, maritime, terrorism, international, law

ANTI-TERRORIST FINANCING REGULATIONS IN POLAND – PAST AND PRESENT ISSUES

Introduction

Since September 11th, 2001, and the events which followed there have been numerous initiatives regarding fighting terrorism from a financial standpoint. There are standards regarding the creation of a coherent and solid system of targeting terrorists' funds. These include the United Nations Convention for the Suppression of the Financing of Terrorism of 1999, Financial Action Task Force on Money Laundering – 9 Special Recommendations, acts of the European Union¹ and the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism of 2005.

They all set some minimal requirements or guidelines for states in order to create a common approach against the phenomenon of terrorism. However, the way they are implemented varies from country to country which can be seen e.g. in the mutual evaluations, reports and opinions of experts. This is crucial for establishing an efficient system. Sometimes, however, putting all of the standards together also produces confusions and problems. In this respect Poland serves as an example. Since 2002, there were three major changes in the legal system regarding fighting and preventing terrorist financing, the last being in 2009, which brings Polish regulations closer to EU standards.

1 See: C. Sołta, The Crime of Terrorist Character in Polish Law, *Wojskowy Przegląd Prawniczy* 2005, No. 4, pp. 3-24.

Criminalization of terrorist financing

Definition of crime of terrorist character

In 2004, the Polish Criminal Code (PCC) was amended in order to fulfill international obligations², especially European Union efforts to address the problem of terrorism. For the first time in the Polish legal system, the definition of a crime of terrorist character – Art. 115 para. 20 PCC, was introduced³. It lists the offenses for which there is a penalty of imprisonment with an upper limit of not less than 5 years. However, application of that regulation is restricted to several serious crimes, and furthermore, there has to be some specific intention of that criminal activity, such as:

- to seriously intimidate a large number of people,
- to make the authorities of Poland, other country or international organization undertake or abstain from undertaking certain activities,
- to initiate serious disturbance in the political order and economy of Poland, other country or international organization, as well as the threat of conducting such offense.

According to the opinion of Polish academia, this definition is very unclear and may be worthless⁴. Equally, It does not include some existing points of view expressed in current criminal law doctrine⁵. However, it resembles the definition given in the ‘Council Common Position’ of December 27, 2001,⁶ on the application of specific measures to combat terrorism⁷. It is not a precise translation but comes close to being so. The definition omits from its scope some activities typical to terrorism, such as: Criminal Threat (Art. 190 para.1 PCC) and Coersion (Art. 191 para.1 PCC), since the upper penalty limit for both is less than 5 years imprisonment – 2 and 3 years respectively, and also, because such behaviour could be used to describe, as terrorist activity, an act of civil unrest or demonstration against the government or authorities⁸. Similarly, it does not differentiate the activities of say an

2 Polish Official Journal of 2004, No. 93, item 889.

3 See: W. Grzeszczyk, Changes in Criminal Law Introduced by the Act of April 16, 2004, „Prokuratura i Prawo” 2004, No. 9, pp. 77-88.

4 See: O. Górniok, The Crime of Terrorist Character, *Przegląd Sądowy* 2004, No. 10, pp. 3-11 and K. Indecki, In Pursuit of Legal Definition of Terrorism, [in:] E.W. Pływaczewski (Ed.), *Organised Crime, Immunity Witness, Terrorism in Practical Aspects*, Kraków 2005, pp. 261-295

5 See: K. Indecki, Criminal Law in Relation to Terrorism and Terrorist Act, Łódź 1998 and K. Indecki, Polish Substantive Criminal Law, Against Terrorism (Selected Issues), *American Behavioral Scientist* 2004, No. 48(6), pp. 710-742.

6 Official Journal L 344, 28.12.2001.

7 See: P. Goleń, New EU Regulations Regarding the Prevention of Money Laundering and Terrorist Financing. *Prawo Bankowe* 2004, No. 7-8, pp. 123-136 and J. Ryszka, International Sanctions within The European Union Regarding Combating Terrorism. *Katedra Prawa Europejskiego SGH w Warszawie, Studia z dziedziny prawa Unii Europejskiej* 2005, No. 5, pp. 59-87

8 See: N. Vennemann, Country Report on the European Union, [in:] C. Walter, S. Vöneky, V. Röben, F. and Schorkopf (Eds), *Terrorism as a Challenge for National and International Law: Security versus Liberty?*, Springer, Berlin 2004, pp. 217-266.

organized criminal group who, may for example, threaten to detonate an explosive device if one of their number is not immediately released from custody or detention.

There is also a new crime – being or becoming a member of an organized group or association which has the aim to commit crime of a terrorist character – Art. 258 para. 2 PCC. The group is less organized than the association which has a stronger hierarchical structure. However, the criminal code does not give any specific guidelines how to understand these words. It is left to academia, scientists and the courts to interpret their meaning. The same situation occurs with the term organized criminal group or association in Art. 258 para. 1 PCC⁹.

The problem is that Polish criminal law does not describe any differences between organized crime and terrorist groups (associations) as far as their structure is concerned. Art. 258 PCC, has been used to fight organized crime and its interpretation by courts clearly reveal the existence of the so-called ‘Mafia syndrom’ or paradigm¹⁰, this being, that an organized criminal group or association possesses an archetypical structure, much in the form of that depicted in the film ‘Godfather’ that we are familiar with. However, the same approach cannot be applied to the structure of terrorist organizations which tend to be decentralized and more loosely constructed¹¹.

Classification of terrorist financing

Poland signed the United Nations Convention on the suppression of terrorist financing in 2001. However, to-date it has not been ratified even though the Polish Parliament has granted permission for the proper authorities to do so (the Act was published in the Polish Official Journal of 2003, No 44, item 374).

Naturally, Art. 115 para. 20 PCC, is a starting point for other legal considerations concerned with the fight against terrorism using criminal law. For years there has been no separate offence concerning terrorist financing. The problem was that there were at least three possibilities of how to classify any one of a number of activities which may lead to the financial support of terrorist organizations. It depended mostly on whether an offender was gathering money in order to commit an act of terror by himself or within a group, or whether or not he or she was directly involved in such act. However, some of these points of view were regarded as controversial in criminal law doctrine.

9 See: K. Laskowska, Theoretical and Practical Aspects of Criminal Liability under Article 258 of Criminal Code, *Prokurator* 2004, No. 1, pp. 20-32.

10 See: D.F. Pace, J.C. Styles, *Organized Crime, Concepts and Controls*, Second Edition, Prentice-Hall Inc., Englewood Cliffs 1983.

11 See: C. Morselli, *The Efficiency/Security Trade-off in Criminal Networks* – paper presented at the 5th Annual Conference of the European Society of Criminology, in August-September, 2005, Cracow (Poland).

The first type of offence could be classified as preparation to commit a crime, either by an individual or by a group of people working together – Art. 16 para. 1 PCC. However, this was only valid in situations where the offender(s) was apprehended before carrying out the intended act, otherwise, he or they would stand accused of committing the crime, not its preparation. Furthermore preparation is punishable in Polish criminal law only in a limited number of offences. This may lead to a situation where, for the preparation of some acts of terrorism, nobody could be held responsible. For example: if a person made preparations to seize hostages with the ultimate intent to kill them (Art. 148 para. 2 point 2 PCC), this is not punishable under Polish law.

Such legal construction might not be widely accepted among lawyers or academia since preparation means a situation when somebody undertakes necessary actions to create situations with an aim to commit a crime and that situation subsequently makes possible to attempt to commit an offense (Art. 16 para. 1 PCC). According to Polish criminal law there are 3 stages of criminal act: preparation, attempt to commit a crime, and finally – committing a crime. Preparation is punishable only in selected cases of very serious crimes (Art. 16 para. 2 PCC). Attempt to commit a crime is punishable to the same degree as committing a crime (Art 13 and 14). Financing a crime is an activity which can occur earlier e.g. to buy arms or explosives or to make initial preparations. The second possibility was the institution of accessory. A person who assisted another (or others) to carry out a terrorist act, would stand accused of being an accessory Art. 18 para. 3 PCC. The condition is that the person has to be knowingly aware that he is helping to commit a crime of terrorist character (or that such crime is highly probable), personally wishes it to happen (or accepts that it may happen), and undertakes to provide such assistance without which committing the crime might be difficult to achieve.

These requirements may make it very difficult to prove a person's involvement in terrorist financing. The accused can always claim that he was misled by others about the intended use of the donations.

And the third possibility was connected with crime covered by Art. 258. para. 2 PCC. The terrorist group usually consists of two sets of members¹². There are members who are directly involved in committing acts of terror – the operative cell. The main goal of the second cell is to support the first one – the supporting cell. It is connected with the division of tasks. These two types of cells cannot exist without each other. In that situation somebody who gathers money 'for the cause' usually is a member of organized terrorist group or association because this is his task. In other words his actions fall under the Art. 258 para. 2 PCC – being a member of an organized group or association which has an aim to commit a crime

12 See: J.R. White, *Terrorism, An Introduction*, Third Edition, Wadsworth Thomson Learning, Toronto 2002.

of terrorist character. On the other hand, such a person could only be a sympathizer not a member. It made the legal classification of his act more difficult.

However, there has not been a single criminal investigation or court case in which a public prosecutor or judge has had the opportunity to test these concepts.

This short analysis shows that it was not easy to find a single article of Polish Criminal Code which criminalizes terrorist financing. In order to avoid such problems, the Polish legal system needed to have a separate offense which would describe it precisely¹³. Furthermore it needed to be compliant with Art. 2 of the United Convention on suppressing terrorist financing.

In 2009, the Polish legislature introduced changes to the Polish Criminal Code. Since that moment in time, there has been a separate type of crime described under Art. 165a PCC. One may say that the legislator understood the situation and wanted to create a coherent anti-terrorist financing regime – not necessary¹⁴.

This type of offence is described as gathering, in which a person provides or collects funds for the purpose of financing a crime of terrorist character; funds meaning assets of every kind whether tangible or intangible, movable or immovable, together with legal documents or instruments of any kind evidencing title to or interest in such assets. The penalty for this crime is imprisonment for a period of 3 to 15 years. There are no restrictions as far as the description of an offender is concerned. In other words, according to Polish criminal law, any adult can commit such a crime.

This provision is supposed to provide security against threats posed by terrorist attacks. However, it is incorporated in Chapter XX of the Polish Criminal Code – Crimes Against Public Security, which covers other crimes such as arson, causing explosions, bringing about a catastrophe, piracy, illegal possession of explosives materials, etc. These crimes relate to activities which pose a direct threat to human life and/or damage to property on a large scale. Financing terrorism addresses a different kind of threat to security. Its character is indirect and it is connected specifically with the activities of terrorist groups or associations. In my opinion, the new article should be placed in Chapter XXXII – Crimes Against Public Order, which encompasses crimes such as being a member of a terrorist group or association, otherwise it may lead to misinterpretation of its provisions. The two chapters represent different criminal objectives and likewise they protect different values of society. There is a list of activities which explain what ‘financing’ means. The first one is gathering. Gathering, as mentioned before, can be described as

13 See: W. Filipkowski, Polish Regulations Concerning the Prevention of Terrorist Financing, [in:] T. Dukiet-Nagórska (Ed.), *The Issues of Contemporary Criminal Justice*, Wydawnictwo STO, Bielsko-Biała 2006, pp. 189-202.

14 See: E.M. Guzik-Makaruk, W. Filipkowski, *Kryminalizacja finansowania terroryzmu na tle prawnoporównawczym*, *Studia Prawnoustrojowe* 2009, No. 10, pp. 43-65.

personally providing or collecting from others, assets of any kind as previously described. Legal dependency is on the use of such assets to finance future terrorist activity not their actual monetary value, which could be very little or conversely might amount to many millions of dollars. Two counterparts of such transaction commit a crime. One person can be punished for offering, the other for gathering.

Transfer, refers to the act of one person handing over possession of such assets to another. As before the two counterparts to such transaction commit a crime, one for transferring the assets the other for gathering them in order to finance a crime of terrorist character. This type of activity is described in Art. 165a PCC as ‘offering’. It illustrates a situation where one person puts forward the objects or rights to another in order to support terrorist crime. This may be done for payment, without payment, or under any legal title. This definition is simple and it brings us closer to international standards. However, there is a question of its efficiency. Placing the direct goal of a perpetrator into the description of an offense may lead to a situation where a law enforcement agency or court may not be able to provide evidence of this and subsequently no one will be prosecuted of that crime¹⁵. In fact the three previously mentioned concepts may become helpful after all.

The terrorist act according to anti-ML&TF act of 2000

General remarks

Two sets of regulations were incorporated in the Anti-ML&TF ACT of 2000¹⁶, one concerning money laundering and the other terrorist financing, with some regulations being applicable to both phenomena. On comparing these two sets, it became apparent that the second set was much more restricted in scope. The regulations were not as effective as they were supposed to have been and fell short of those related to money laundering. However that situation has changed in 2009.

The fight against both phenomena is being led by the Ministry of Finance and Polish financial intelligence unit called Generalny Inspektor Informacji Finansowej (the General Inspector of Financial Information – GIF) – Art. 3 section 1 Anti-ML&TF ACT. The latter is primarily responsible for preventing and fighting money

15 See: K. Wiak, *The Criminalization of Financing of Terrorism in Polish Criminal Law*, Palestra 2010, No. 7-8, pp. 57-65.

16 This act was titled Act on counteracting introduction into financial circulation of property values derived from illegal or undisclosed sources of 2000 (Official Journal of 2000, No 116, item 1216). In December of 2002 the title was amended by adding the phrase ‘and on counteracting the financing of terrorism’ (Official Journal of 2002, No 180, item 1500). However in 2009, the legislator has shortened the title: “on prevention of money laundering and terrorist financing”. While writing this paper the changes in law have not been published in the Polish government Official Journal, as yet. In this paper it is referred as The Anti-ML&TF Act or anti-ML&TF regime.

laundering¹⁷. That type of institution is a standard model in many countries. In 2002, there has been an important amendment to the Anti-ML&TF ACT of 2000. Several articles have been changed or added. Before this happened there were no special regulation dedicated to fighting terrorist financing.

The GIFI's main tasks are:

- acquiring, gathering, processing and analyzing relevant information and then
- taking all necessary actions against money laundering and terrorist financing (Art. 4 sec. 1 Anti-ML&TF ACT).

Such actions include among others:

- analyzing financial transactions,
- conducting procedures for holding back transactions and blocking accounts,
- making decisions connected with “frozen assets”,
- managing financial information and related documents,
- overseeing the execution of obligations placed on different institutions and entities,
- cooperating with foreign financial intelligence units and other institutions which prevent terrorist financing (Art. 4 sec. 1 point 8 Anti-ML&TF ACT).

Definition of terrorist act

Polish legislature has introduced the definition of terrorist act into the Anti-ML&TF ACT. This happened about eighteen months before the above mentioned changes in the Polish Criminal Code took place. In Art. 2 point 7 Anti-ML&TF ACT, it was described as crimes against:

- peace, humanity, and war crimes – Chapter XIV of PCC,
- public security – Chapter XX of PCC, as well as two individual offences:
- Art. 134 PCC – assault on the president of Poland with the intent to kill him and
- Art. 136 PCC – all forms of assault (physical and verbal) on the representatives of foreign authorities or international organizations (persons who enjoy special legal status quo according to international standards and agreements, e. g. ambassadors, consuls, diplomats, and their families).

All of the regulations of the Anti-ML&TF ACT were applicable only to those crimes, not others.

17 See: J. Sieńczyło-Chlabcz, W. Filipkowski, The Polish Financial Intelligence Unit: A New Institution in the Polish Legal System. *Journal of Money Laundering Control* 2001, No. 5(2), pp. 150-157.

That definition was inconsistent with the one of the Criminal Code¹⁸. They overlapped partially. There were some crimes of terrorist character which did not fall into the category of terrorist act given in Art. 2 point 7 Anti-ML&TF ACT. As a consequence, the proper legal in regard of tracing terrorist assets did not cover all such crimes. On the other hand there were some terrorist acts which were not recognized as crimes of terrorist character by the PCC. They were treated as common crimes. The main reason was being that the lower limit of penalty was below the “5 years of imprisonment” threshold.

That was an example of poor legislation technique. One could argue that the terrorist act covered the most important types of crimes and therefore the Anti-ML&TF ACT was preventing their financing. However, the definition of Art. 2 point 7 contained few minor crimes which did not support that view. On the other hand, the crime of terrorist character included some serious crimes about which financial information should be gathered by GIFI in order to prevent them. But they were not regarded as being a terrorist act.

In 2009, there was another novel Anti-Money Laundering Act. It has introduced a completely new definition of terrorist act. Right now it states that it is the same as the crime described in Art. 165a PCC. Well, it has taken 5 years for Polish legislature to realize that those previous regulations were inconsistent with each other.

Other institutions fighting terrorist financing

It has to be stressed that according to the Polish anti-money laundering regime there is a wide range of so called “obliged” institutions which have obligations to help fight these two phenomena (Art. 2 point 1 Anti-ML&TF ACT). That term encompasses among others:

- financial, credit and investment institutions such as banks (including the National Bank of Poland), institutions dealing with electronic money, brokerage houses, the National Deposit of Securities, insurance companies, investment funds and their associations, credit unions, post offices, exchange offices, leasing and factoring companies, and pawn shops,
- independent lawyers and advisers such as notaries, advocates, solicitors, accountants, and tax advisers,
- other institutions such as: casinos and other institutions dealing with gambling, auction houses, antique shops, jewelry shops, real estate agents, foundations, associations and other enterprises.

Firstly, They must have informed GIFI without delay about accounts and transactions connected to persons who are under suspicion of having something to

18 See: W. Filipkowski, Polish Regulations Concerning the Prevention of Terrorist Financing..., op. cit., pp. 189-202

do with terrorist acts (Art. 16a sec. 2 Anti-ML&TF ACT). It was almost impossible and completely useless to inform all of those institutions about suspicious persons or legal entities. And probably this was being done only with the ‘big’ financial institutions such as banks. That article was deleted in 2009.

Secondly, among non-government organizations only foundations and associations are subject to the anti-money laundering regime. There are no political parties, churches or other recognized religions. The obliged institution has to prepare and implement special internal regulations concerning preventing and fighting money laundering and terrorist financing (Art. 10a Anti-ML&TF ACT). The main goal of this is to make the whole effort within one institution more efficient and coordinated.

But that is not all. There is a second group of institutions involved in fighting both phenomena. They are called cooperating entities. According to Art. 2 point 8 Anti-ML&TF ACT, they include all central and local authorities, government agencies, public administration and the National Bank of Poland. The last one is both an obliged institution as well as a cooperating entity. It provides certain financial services to individual clients and it is an institution of public administration, too. The direct involvement of government or central administration entities into the fight against money laundering and terrorist financing is a unique Polish idea. Over the years it has proven to be a good enhancement to the whole anti-ML&TF regime.

The Anti-ML&TF ACT imposes on them an obligation to provide GIFI (on his direct notion) with any documents or information necessary to fulfill his aforementioned tasks (Art. 15 Anti-ML&TF ACT). These institutions are required to prepare and implement internal regulations for preventing and fighting terrorist financing. On the other hand, those institutions an obligation under the Polish Code of Criminal Procedure to inform law enforcement about any crime they have come across during their actions (which includes terrorist financing).

Preventing the financing of terrorism – the Polish regulations

Sources of information

Under Art. 4 point 3 Anti-ML&TF ACT, GIFI is to inform obliged institutions of persons (natural and legal) about whom there is a well founded suspicion that they had been involved in committing a terrorist act. At that time, the question was from what sources this information may derive?

There were no regulations which allowed police, public prosecutor, nor intelligence to share their knowledge with GIFI. But it was possible to verify some

suspicious or hints (e.g. intelligence) even before starting the investigation into terrorist financing – Art. 32 section 1 and 2 Anti-ML&TF ACT. In such situation, only the public prosecutor was allowed to demand financial information from GIFI or directly from obliged institutions. As a result of this situation, no other law enforcement agency could do it. The use of international “black lists” of terrorists, terrorist groups and organizations was also at that time a big question from a legal point of view.

Thus the only source left for GIFI was international cooperation. Under Art. 33 section 5 Anti-ML&TF ACT, GIFI can provide foreign financial intelligence units with information relevant to money laundering and terrorist financing on the basis of reciprocity according to previously signed mutual agreements. That regulation is still in force today as it was then.

The past regulations required obliged institutions only to react if a person about whom GIFI has informed them has opened an account or is involved in a transaction. They were not required to report transactions which they thought might have something in common with terrorist financing. The obligation concerned only money laundering activities (Art. 8 section 3 Anti-ML&TF ACT).

That past regulation might have constrained the efficiency of the anti-terrorist financing regime. For example, if an obliged institution reported a transaction as suspicious because it thought that money was being laundered but in fact it transpired to be a terrorist financing operation, the question of legality of the report might well have arisen.

All of those regulation changed in 2009. The law no longer differentiates between the regulations when considering the prevention of money laundering and terrorist financing. There are at least two reasons for that. Both terrorists and launderers apply very similar methods to move funds (if not the same). Secondly, terrorists also finance their activities from illegal sources¹⁹.

At the outset of an investigation with little information to hand, what initially appeared to be a terrorist financing operation might well turn out to be a money laundering exercise or vice versa. Since time is of essence in financial investigations the investigators should, in both cases, have the support of the financial intelligence unit from the very beginning. This would improve the efficiency of the whole system. The sooner the investigators can verify information from their sources, the sooner they can apply direct and precise actions and legal instruments.

19 See: W. Filipkowski, R. Lonca, *Criminological and Legal Aspects of Terrorist Financing*, *Wojskowy Przegląd Prawniczy* 2005, No. 4, pp. 26-46

It has taken a long time for the Polish legislator to understand that simple fact. And there was a great role of international standards to pressure national governments to change their legal systems.

Blocking an account and holding back transaction procedures

In 2004, along with the new set of regulations concerning terrorist financing, the legislator introduced into the Polish legal system the procedure of blocking an account. According to Art. 2 point 6 Anti-ML&TF ACT, blocking an account means that no person (natural or legal and including the obliged institution where the account is held) can, for a fixed period of time, make use in any way of any funds or other assets deposited there.

An account means an account at a bank, credit union, brokerage house, as well as the participants' register of investment funds (Art. 2 point 4 Anti-ML&TF ACT). In other words, only money, securities and participation units in investment funds can be the subject of blocking.

The blocking procedure was added to the existing procedure of holding back transactions (Art. 18 Anti-ML&TF ACT). Holding back a transaction means to temporarily restrict the use of funds and/or other assets connected with a specific transaction. The obliged institution cannot finalize the transaction (Art. 2 point 5 Anti-ML&TF ACT). The term transaction is also defined and means: cash and cashless deposits and withdrawals, including transfers between different accounts belonging to the same person (save transfers to a deposit or savings account), transfers from abroad, currency exchange, transfer of ownership or possession of assets, selling on behalf of others or pawning assets, transfer of assets between different accounts belonging to the same person (e.g. securities), exchanging debt for securities or shares, regardless of whether this is done by a person on his own behalf or on behalf of another person, on a person's own account or another person's account (Art. 2 point 2 Anti-ML&TF ACT). Both procedures are applicable to fighting terrorist financing.

The procedures can be initiated in one of three ways, by an obliged institution, by GIFI or by a public prosecutor. In the first case, the obliged institution informs GIFI about the person, his accounts and transactions. It concerns persons (natural or legal) where there is well founded suspicion of involvement in committing a terrorist act (Art. 16 sec. 1 Anti-ML&TF ACT). According to Art. 34 Anti-ML&TF ACT, the obliged institution cannot inform the person or persons concerned that the account(s) or transaction(s) have been reported to GIFI. Violation of this restriction is punishable by up to 3 years imprisonment (Art. 35 sec. 2 Anti-ML&TF ACT). In the second case, GIFI can initiate the procedures on receipt of information from other sources concerning a suspected person (Art. 18a section 1 Anti-ML&TF ACT).

A decision is then required whether to hold back a transaction or block the whole account. In the third case, a public prosecutor can directly initiate the procedures while conducting a criminal investigation based on information derived from other sources e.g. police, intelligence (Art. 20b Anti-ML&TF ACT).

The next steps are common regardless of whether the procedure relates to blocking an account or holding back a transaction. GIFI sends a written demand to the obliged institution to execute either of the procedures (Art. 18 Anti-ML&TF ACT). If GIFI received the information from an obliged institution, such notion can be issued within 24 hours commensurate from the time GIFI first acknowledged its receipt. The Financial Intelligence Unit can then order these procedures to be applied for a period of time not exceeding 72 hours, commensurate from the moment GIFI first accepted the information from the obliged institution. Concurrent with the order the Financial intelligence Unit informs the public prosecutor of the facts of the case and hands over all relevant documentation.

This should be sufficient for the public prosecutor to decide what to do next. If it is thought that a case of terrorist financing exists, the prosecutor can order the account to be blocked or the transaction to be held back for a period not exceeding 3 months (Art. 19 section 1 Anti-ML&TF ACT). If the information concerning a person or transaction suspected of being linked to terrorist activity originated from a source other than GIFI, the prosecutor may issue the order direct to the obliged institution. The prosecutor should also inform GIFI of such action.

If deemed necessary the public prosecutor may, in accordance with the Polish Code of Criminal Procedure, issue an order to freeze assets that were otherwise blocked or held back. If the statutory time periods mentioned above are exceeded and no decision has been made by GIFI or by the public prosecutor, the obliged institution unblocks the account or executes the transaction (Art. 19 section 4 Anti-ML&TF ACT)

If the obliged institution executes an order from GIFI or from the public prosecutor in accordance with the procedure described above, it is not liable for damages (Art. 18 section 4 Anti-ML&TF ACT). If a violation of law occurred while conducting procedures to block an account or hold back a transaction, responsibility for damages rests with the Polish authorities (specifically the State Treasury) in accordance with the Polish Civil Code (Art. 20 Anti-ML&TF ACT). The purpose of these two regulations is to encourage obliged institutions to cooperate closely with GIFI and public prosecutors in reporting suspicious activity and in acting expediently on their instructions.

Conclusions

Creating a sound Anti-ML&TF regime is not an easy task and this short history of the legislative work undertaken by the Polish authorities serves to demonstrate this to good effect. It represents the degree of effort being expended to organize the fight against terrorism.

After airing the mistakes and loopholes presented above a question arises: does Polish criminal law still have an ability to fight terrorism and its financing? The answer is: 'Yes, it does'.

Terrorists' acts are still crimes, although not all of them may fulfill the definitions set forth in the Criminal Code. In most cases they are committed by a group of people using guns and explosives. so their behavior falls under Art. 258 para. 2 PCC. This is the regulation which is used to fight organized crime. and, under its provisions, terrorists as well as members of organized criminal groups are treated equally by Polish criminal law (Art. 65 para. 1 PCC). In order to fight terrorist financing we can use the new Art. 165a PCC.

Some may ask another question: is the existing system efficient? The answer is: 'Well, it is getting better'. It has been inconsistent from the very beginning, starting with basic definitions. If we were considering them separately, they seemed to represent average standards of legislative work. But the two components of the whole system – prevention and combating – did not fit to each other. The situation is not that bad since the system has not collapsed or has not been tested yet. However, the introduction of a common definition of terrorist financing into the Polish Criminal Code and Anti-ML&TF ACT, is a good start.

Another point, is that for some reason the obligations placed on obliged institutions relating to money laundering and terrorist financing were disparate and understandably this led to confusion in their interpretation. The answer to that problem was simple and given by EU standards. The legislator unified the two sets of regulations in 2009.

There is one more thing we have to remember. Something more than just satisfying international standards and regulators²⁰ has to be done. It should be all about creating an effective system for combating terrorist financing which means combining criminal and administrative regulations at national level. In the Author's opinion, this takes priority over implementing international standards since the legal systems of each and every one of the countries involved is different.

20 MONEYVAL (2007, November 22). European Committee on Crime Problems, Committee of Experts on the Evaluation of Anti-Money Laundering Measures. Third Round Detailed Assessments Report on Poland, Anti-Money Laundering and Combating the Financing of Terrorism, Memorandum prepared by the Secretariat Directorate General of Human Rights and Legal Affairs. MONEYVAL (2006) 24. Retrieved February 6, 2007, from http://www.coe.int/t/e/legal_affairs/legal_co%2Doperation/combating_economic_crime/5_money_laundering/Evaluations/3rd%20Round/MONEYVAL_2006_24E_%20Poland_MEReport.pdf

POLSKIE REGULACJE ZWALCZAJĄCE FINANSOWANIE TERRORYZMU – PRZESZŁOŚĆ I TERAŹNIEJSZOŚĆ

Jednym z najważniejszych filarów strategii walki z terroryzmem jest odcinanie jego korzeni finansowych. Polski ustawodawca stara się być w zgodzie z wieloma istniejącymi standardami oraz regulacjami w zakresie przeciwdziałania finansowania terroryzmu. Ostatnie poważne zmiany zostały wprowadzone przed paroma laty. Odnosiły się one zarówno do prawa karnego, jak i Ustawy o przeciwdziałaniu prania pieniędzy oraz finansowania terroryzmu z 2000 r. Jednakże są one niespójne ze sobą. Taka sytuacja czyni niezwykle trudnym efektywne zwalczanie tego zjawiska. Opracowanie stara się przedstawić szereg uwag w tym zakresie.

Key words:

Terrorist financing, Poland, legal system, financial intelligence unit, terrorist act

TERRORISM AS A CURRENT THREAT TO CITIZENS' SECURITY

These days the word “terrorism” is in common use, not just by politicians, the media and those who practice the science of criminology and criminal law, but also by ordinary people. This modern supranational phenomenon is one of the occurrences that unite nations, organizations, and governments in the common idea of effective fight against its spread. After the events of 11 September 2001 in New York City and the bombings in Madrid and London, the mass media have popularized the notion that everyone must be afraid of a terrorist attack because it may take place at the least expected moment, as proven by several terrorist attacks. According to K. Liedel¹, “all analyses show that the terrorist threat in Europe will increase and reach its peak around the year 2012. Everyone must be prepared for this. Especially in Poland, where there is so much discussion about CIA prisons and the torture of apprehended fundamentalists”². The belief that Poland may become the target of terrorist attacks organized by Muslim fundamentalists is still nearly ubiquitous, as confirmed by 83% of respondents in a study conducted by the Public Opinion Research Center (CBOS) in 2005.³ Considering the social importance and gravity of the matter, it is worthwhile performing a true evaluation of the sense of threat posed by terrorism among Poles a few years after 2005.

Terrorism is the subject of a study conducted within the framework of a research project entitled “Monitoring, identification, and countering of threats to citizens’ security”.⁴ The study was conducted in accordance with the poll method, since polls are the best way to conduct research in very large populations. The poll method is based on the principles of statistics and does not encompass the whole population, but only its part, preferably selected randomly, called a study sample. Due to the random

1 Director of the Terrorism Studies Center established in 2005 in Collegium Civitas in Warsaw.

2 <http://polska.mil.pl/forum/viewtopic.php?t=4510&sid=7b6ca3fb246f9fe9b31bed878bd6f72b>.

3 “The sense of being threatened by terrorism and the accepted activities aimed at increasing the citizens’ sense of security”, report from research by CBOS, Warsaw, September 2005, http://www.cbos.pl/SPISKOM.POL/2005/K_144_05.PDF, p. 2.

4 The project was performed by the Department of Criminal Law of the Faculty of Criminal Law of the University of Białystok in cooperation with the Jarosław Dąbrowski Military Technical Academy in Warsaw.

nature of the sample, it reflects the characteristics of the population and allows for drawing statistical conclusions about the population, among others ascribing the results obtained in the study of the sample to the whole population. The research used the technique of a computer-supported direct questionnaire survey. The interviews were conducted on 24-30 September 2008 on a representative sample of adult Poles (over 18 years old). The study was conducted by the Pentor Research International research institute which for this purpose hired a group of about 150 trained pollsters. In total, 1042 surveys were held as a part of this research. This research sample can be considered as representative of the total population of Poland, with regards to gender, age, education, and place of inhabitation (size of towns and region).⁵

Table 1 below presents the structure of the sample with regards to the most important variables: gender, age, education, place of inhabitation, and family income.

Table 1. Structure of the research sample⁶
SAMPLE STRUCTURE N=1000 (Omnibus)

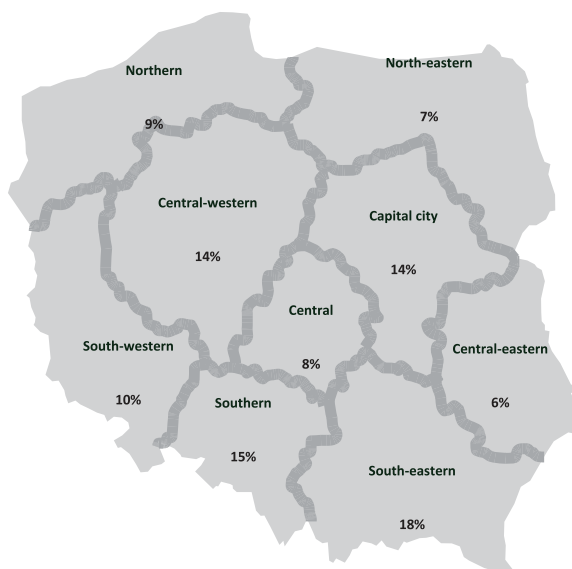
I.	Gender	Man 48%	Woman 52%			
II.	Age	29 y.o. and less 29%	30-39 y.o. 17%	40-49 y.o. 17%	50-59 y.o. 18%	60 y.o. and more 17%
III.	Education	Elementary 24%	Vocational 27%	Secondary 35%	Higher 14%	
IV.	Place of inhabitation	Village 38%	under 20 thousand inhabitants 11%	20-50 thousand 13%	50-200 thousand 21%	over 200 thousand 17%
V.	Family income	PLN 900 and less 7%	PLN 901-1,250 7%	PLN 1,251- 2,000 22%	PLN 2,001- 3,000 20%	over PLN 3,000 14%

Because further parts of this paper present a discussion on certain groups of respondents who live in specific regions of Poland, it is necessary to include the illustration below which shows the distribution of the research sample by region.

5 E. Glińska, A. Kowalewska, Report from study titled "Citizens' sense of security – social diagnosis of threats," conducted as a part of a research grant no. PBZ-MNiSW-DBO-01/1/2007, directed by prof. zw. dr hab (full professor) Emil W. Pływaczewski, titled "Monitoring, identification, and countering of threats to citizens' security, Białystok, January 2009, p. 6-8.

6 Table elaborated by: E. Glińska, A. Kowalewska, *ibid.*, 8.

Illustration 1. Sample structure by region⁷



The research tool used is a highly standardized questionnaire which allows for asking all the respondents the same questions in the same order. A majority of the questions were closed questions where the respondents were asked to select an answer from a list prepared by the research team.⁸The goal of the questionnaire consisted of translating the research objectives and problems into the individual survey questions.⁹

With regards to terrorism, the survey was divided into six groups of problems, which were aimed at gaining the following knowledge:

- answers to the question of whether terrorism is one of the threats that people are concerned about the most;
- opinion about the extent of the presence of the threat of terrorism;
- information on the level of fear of possible victimization in a terrorist crime;
- information on the actual victimization in terrorist crimes;
- social opinion on countering the threat of terrorism by the state and its organs;
- level of social acceptance of the state's intervention in citizens' privacy in order to eliminate the threat of terrorism.

The definition of terrorism was purposefully not defined in the questionnaire and the survey was based on the understanding of the term by the general population. Paradoxically, explaining what terrorism is could bring more harm than good to the

7 Drawing from: E. Glińska, A. Kowalewska, *ibid.*, 9.

8 Staff of the University of Białystok, Faculty of Law, Institute of Criminal Law and Criminology: G.B. Szczygieł, K. Laskowska, E.M. Guzik-Makaruk, W. Filipkowski, E. Zatyka.

9 E. Glińska, A. Kowalewska, *ibid.*, 9.

survey. For many years, there have been academic arguments about the definition of terrorism, there is no single definition that everyone approves, and the literature includes over one hundred possible definitions¹⁰. Moreover, terrorism as a term is not present in the current law, although the Polish legislator uses various terms, such as a crime of terrorist nature and a terrorist attack.

The Penal Code does include a definition of a crime of terrorist nature.¹¹ Art. 115 § 20 of the Penal Code provides that a crime of terrorist nature is an unlawful act that is subject to penalty of imprisonment with the upper limit of no less than 5 years. The act must be committed with the aim of gravely intimidating numerous persons; forcing an organ of public authorities of the Republic of Poland or another state, or an organ of an international organization, to take or desist from taking certain actions; or causing significant disruptions in the system of government or the economy of the Republic of Poland, another state, or an international organization. A threat to commit such an act also constitutes a terrorist crime.

A definition of a terrorist act, which does not necessarily correspond to the definition of a crime of terrorist nature, can be found in the act on countering introduction into the financial system of assets originating from illegal or unrevealed sources and on countering financing of terrorism.¹² According to art. 2 (7) of this act, a terrorist act is defined as a crime against peace and humanity, as well as a war crime, a crime against public security, and a crime defined in art. 134 and art. 136 of the Penal Code. Even at first glance the definitions show how complicated the matter is and that it is better to rely on the respondents' own knowledge and understanding of terrorism.

Re 1. Is terrorism one of the threats that people are concerned about the most?

The respondents were asked to spontaneously indicate threats that in their opinion are detrimental to the safety of people¹³; afterwards, they were asked what they were afraid of the most¹⁴. Terrorism was among the threats that the respondents would list spontaneously, although only 11% of them did so. Thus, it appears that the threat of terrorism is not very prominent in social awareness.

The responses of the respondents with regards to identification of terrorism as a problem that is of personal concern to them and that affects their own sense of

10 K. Indecki, *Prawo karne wobec terroryzmu i aktu terrorystycznego* [Criminal law's response to terrorism and terrorist acts], Łódź: 1998, 22.

11 Act of 6 June 1997, Penal Code, Dz.U. [Journal of laws], 88: 1997, item 553, as amended.

12 Act of 16 November 2000 on countering introduction into the financial system of assets originating from illegal or unrevealed sources and on countering financing of terrorism, Dz.U. [Journal of laws], 153 (2003), item 1505, as amended.

13 See: the Annex at the end of the paper, titled "Excerpts from the Survey Questionnaire" – question 1.

14 *Ibid.*, question 2.

security were slightly different. An analysis of the respondents' spontaneous answers to the question "What are you concerned about the most?" leads to the conclusion that the respondents much more rarely list the types of large-scale threats that may concern the overall population, such as terrorism. Interestingly, as many as 14% of all respondents stated that they did not perceive any threats in their daily lives and that they did not think at all about such threats. This proves that, perhaps due to rationalization, respondents are more prone to ascribe fears and concerns caused by various reasons to other people than to admit such fears and concerns themselves. It also shows a certain optimism of the respondents with regards to the level of their own security, which may be caused by the lack of earlier negative experiences in this respect.¹⁵

Diagram 1. Differences in respondents' answers to the following questions: "What in your opinion are people concerned about the most?" and "What are you personally concerned about the most?"

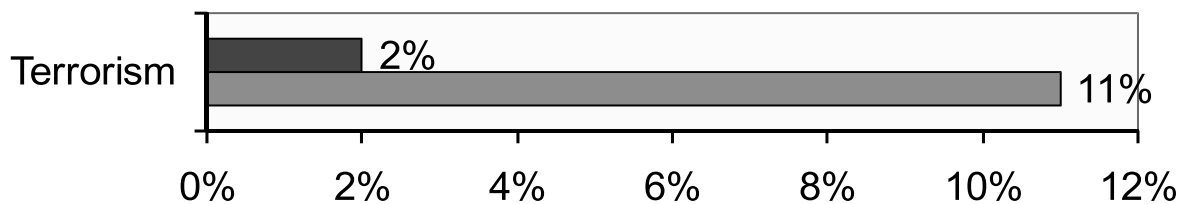


Diagram 1 above clearly demonstrates that one in ten respondents believe that people are concerned about terrorism, while only 2% of respondents list terrorism as their most important personal concern. It should be emphasized that respondents listed terrorism as the greatest threat to their security spontaneously, without any suggestions on the part of the pollster.¹⁶ Thus, only a small percentage of the population feels any significant concerns about terrorism.

In the next part of the survey, the respondents were asked about the extent to which they were concerned about threats to public security, including terrorist attacks, proposed in the survey.¹⁷ Table 2 below shows the distribution of the respondents' answers.

1 □ □. □li□s□a□□. □owalews□a□bid.□1□
 1 □ "□□cerpts...□" question □
 1 □ "□□cerpts...□" question □

Table 2. Supported identification of threats that the respondents are concerned about the most

Are you concerned about...?	Definitely concerned	Rather concerned	Rather not concerned	Definitely not concerned	It's hard to say
Terrorist attacks	13%	24%	44%	17%	1%*

* Situations where the totals of the percentages of all the answers are 99% or 101% are caused by the numbers being rounded up. The program that generates the statistics tables first calculates the percentages for the individual answers, with the precision of several digits past the decimal point, and then rounds them up to a full percentage. As a result, the sum of percentages for the individual answers can be 1% more or less than 100%. Variations of 1-2% can also result from weighing of data.

As the table shows, as many as 37% of the respondents were concerned about terrorist attacks, but their answers were counterbalanced by opposite opinions, because 61% of respondents were not concerned about terrorist attacks, and one in six definitely rejected terrorist attacks as their personal threat. Interestingly, there is a fairly large disproportion between the answers where terrorism was spontaneously identified as a source of the greatest concern of the respondents (2%) and the answers where the question identified terrorist attacks as a threat that the respondents were concerned about the most (37% of responses). This is probably due to the fact that terrorist attacks are not present in the social awareness of Poles and they only emerge as a threat once a third party (pollster) mentions such a possibility.

The opinions about the threat caused by terrorist attacks were also influenced by the socio-demographic characteristics of the respondents. An analysis of the statistical data obtained in the study indicates that the threat of terrorist attacks is of the highest importance to women who live in Warsaw.¹⁸ Perhaps such a distribution of answers is due to the fact that in general women were a little more likely to admit that they did not feel secure. In regular circumstances 15% of women, versus 10% of men, felt insecure.¹⁹ Already in the 2005 study a personal sense of threat caused by terrorism was declared much more often by women (64%) than men (48%)²⁰, but in the 2008 study these values were much lower (women – 44%, men – 30%), which indicates that in the period between these surveys the sense of personal security of respondents with regards to terrorist attacks increased. As a comment to the observed relationship between the gender and place of inhabitation (women living in Warsaw) and the level of personal concern about terrorism, it should be mentioned that female inhabitants of Warsaw are aware of the fact that they live in the largest city in Poland, an important European political and economic center, and a seat of the government, which may become a potential objective of a terrorist attack.

18 E. Glińska, A. Kowalewska, *ibid.*, 19, 20.

19 *ibid.*, 23.

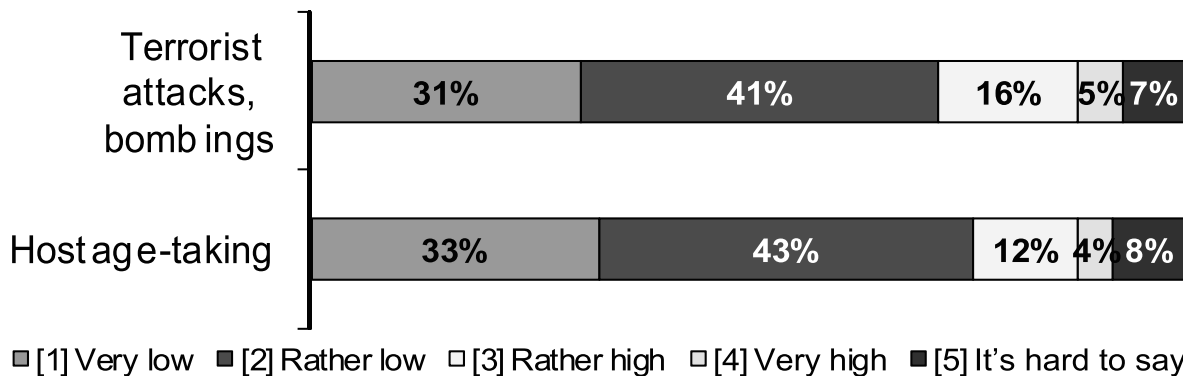
20 The sense of being threatened by terrorism and the accepted activities aimed at increasing the citizens' sense of security, Report from research by CBOS, Warsaw, September 2005, http://www.cbos.pl/SPISKOM.POL/2005/K_144_05.PDF, p. 3.

Re 2. Opinions about the extent of the presence of the threat of terrorism

Given the fact that recent years brought spectacular terrorist attacks in different parts of the world, which were reported in detail by the mass media, it was assumed that the phenomenon of terrorism is universally known and, thus, present in social awareness. The respondents were asked about the presence of the threat of terrorism in Poland. The problem was divided into two categories: the threat of hostage-taking and the threat of terrorist attacks and bombings.²¹ The distribution of the answers to this question is shown in Diagram 2 below.

The public believes that the threat of terrorism in Poland is small. A large majority of the respondents (approximately 3/4ths) declared that the likelihood of terrorist attacks, bombings, and hostage-taking in Poland is either very low or fairly low. Only one in five or six respondents considered the likelihood of these threats to be high. Opinions that the likelihood was very high were very rare. Despite the low level of threat, the inhabitants of the capital city region were more often concerned about them²², which most likely can be explained by the fact that Warsaw is the central point of the Polish state. The level of terrorist threat according to public opinion is shown in Diagram 2 below.

Diagram 2. Opinions on the level of terrorist threat



Nevertheless, it should be noted that the survey was conducted before the Polish geologist was kidnapped and killed by the Taliban in Pakistan in February 2009. Perhaps the public sense of threat caused by terrorism would have been different if the survey was conducted during that period.

It should be noted that the Polish society is very strongly convinced that terrorism is not a real threat. On average, 75% of the respondents declared that the likelihood of terrorist attacks, bombings, and hostage-taking in Poland is either very low or fairly low.

21. Reports... question
 22. Lis... sale...

Re 3. The level of fear of possible victimization in a terrorist crime

To gain knowledge of the level of concern and fear of possible victimization by terrorism, the respondents were asked the question of whether they were personally concerned about becoming victims of terrorism.²³ Unlike the question about the extent of the presence of terrorist threat in Poland, which focused on the presence of the threat and its potential social harm, this question focused on the psychological aspects of the problem. The aim was to study the sense of personal threat, as the awareness of the presence of the threat in Poland does not need to translate into personal sense of concern. Table 3 below demonstrates the results.

Table 3. Distribution of answers to the question of whether the respondent is concerned about becoming a victim of terrorism (%)

	Definitely concerned	Rather concerned	Rather not concerned	Definitely not concerned	It's hard to say
A terrorist attack, a bombing	2	11	44	38	5
Hostage-taking	1	5	41	50	3

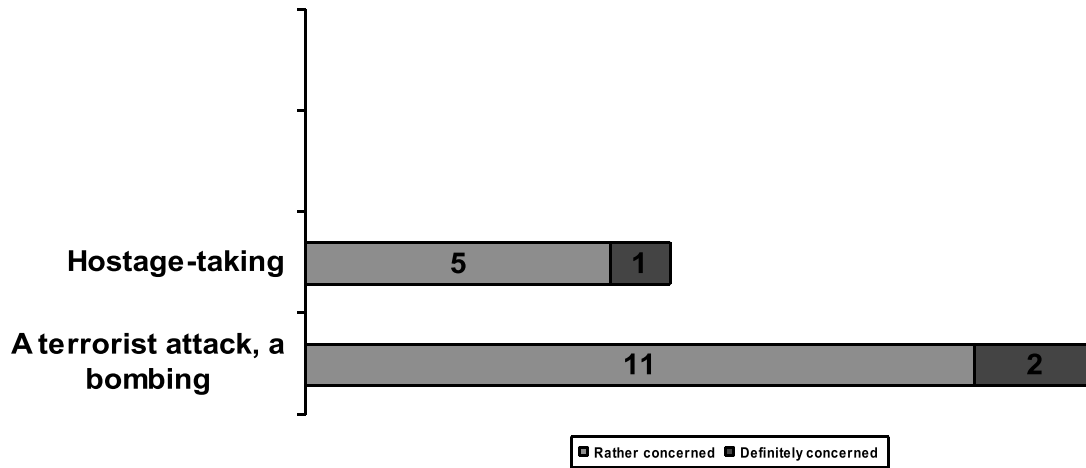
As the above data indicates, terrorism is hardly ever a source of personal sense of insecurity. Only one in eight respondents (13%) was concerned about terrorist attacks and bombings, to include 2% who had a high sense of insecurity. Hostage-taking, even though it was well-known to the respondents from films and media reports, was considered to be a rather distant threat: only 6% expressed their concern about it. There were no differences between the different socio-demographic groups of respondents with regards to their opinions about the above-mentioned threats.²⁴

This shows that the social attitudes in this area were rather firm and that there is a very large group of respondents who perceived no personal threat and a small group who did. The subjective scale of the sense of threat caused by terrorism is displayed in Diagram 3 below.

23 "Excerpts...", question 10.

24 E. Glińska, A. Kowalewska, *ibid.*, 63, 75, 76.

Diagram 3. Level of subjective sense of threat caused by terrorism



It should be noted that there is a certain disproportion in the study results. Even though 37% of respondents were concerned about terrorist attacks (Table 2), only 2% were personally concerned about becoming a victim of terrorism (Table 3, Diagram 3). The society does perceive a hypothetical danger of terrorism, but when more closely faced with the problem, only a few express their concerns about becoming victims of terrorist attacks or bombings.

Re 4. Actual victimization in terrorist crimes

The next question that the respondents were asked was a typical victimization survey aimed at finding out whether the respondents had been a victim of a crime and whether any of the people they knew had been a victim (the so-called indirect victimization experience). The respondents were asked whether they have ever been victims of hostage-taking and whether any members of their close family were such victims. For obvious reasons they were not asked whether they were victims of a terrorist attack or a bombing and instead they were asked whether members of their close family were such victims.²⁵ The distribution of the answers to this question is shown in Diagram 4 below.

25 "Excerpts..." question 11.

Table 4. Threats that the respondent or a member of his/her close family was a victim of (%)

	The respondent was a victim	A member of close family was a victim
A terrorist attack, a bombing	XXXXXXXXXXXXXX	1
Hostage-taking	0	1

As one could have assumed a priori, none in the group of over one thousand respondents had been victimized in a hostage-taking, and only 1% of the respondents stated that their close family members were victims of hostage-taking, a terrorist attack, or a bombing. This shows a marginal extent of victimization of the Polish society by such crimes. The situation is further improved by the fact that the statistical error margin for the survey is 3.2%. Thus, it can be conceded that actually no credible information has been obtained concerning actual victimization.

Re 5. The social opinion on countering the threat of terrorism by the state and its organs

The next question required the respondents to express their opinions regarding the countering of terrorism by the state and its organs.²⁶ As Table 5 below shows, most respondents conceded that the state adequately countered the threat of terrorism.

Table 5. Countering of terrorist attacks, bombings, and hostage-taking by the state (%)

	The state does not counter them adequately	The state counters them adequately
Terrorist attacks, bombings	36	64
Hostage-taking	32	68

In the whole study, which besides terrorism focused on about a dozen other categories of criminal activity (e.g. corruption, organized crime, common crime), the respondents considered the state to act the most effectively with regards to terrorism. The social opinion on the countering of the threat of terrorism by the state and its organs is that it is quite satisfactory. It is hard to tell for what reasons the respondents have such a good opinion of the state organs, since terrorist crimes are among the most difficult to prevent effectively. Certainly the fact that for decades

26 "Excerpts...", question 12.

there have been no terrorist attacks in Poland does influence the positive opinions about the preventive activities of the state. Moreover, recently ²⁷ the government established the Antiterrorist Center (ATC), operating continuously, which cooperates with anti-terrorist centers in other countries. This event was broadcast in the media, which did influence public perception.

Re 6. The level of social acceptance of the state's interference with citizens' privacy in order to eliminate the threat of terrorism

Since terrorism is a fairly real threat to Polish society, the authors of the research considered it reasonable to perform a diagnosis of the population's readiness to give up some of their rights and freedoms to improve the security of the state and of what operational methods of services responsible for eliminating the threat of terrorism the respondents would be willing to accept. The purpose of the survey was to identify the level of acceptance of interference by the state with the privacy of Poles in order to enhance the effectiveness of actions by various agencies responsible for countering different threats.

The respondents were asked if, in the case of danger to citizens' security, interference of the state with their privacy was, in their opinion, acceptable or unacceptable.²⁸ The respondents' opinions on this matter turned out to be very differentiated. Almost a half of all respondents (45%) would accept interference of the state with their privacy, but only in exceptional situations. Nearly one in three survey participants (28%) believed that interference of state agencies responsible for citizens' safety with their privacy should always be permitted. Only 12% of all respondents declared that interference of state agencies with their privacy should never be permitted.²⁹

Considering the fact that nearly a half of all respondents would allow for interference of the state with their privacy, albeit in exceptional situations, they were asked to spontaneously define such exceptional situations.³⁰ One in ten respondents declared that he or she would accept interference of the state with their privacy in the case of a terrorist threat.

This indicates that nearly 40% of respondents (28% always and 10% in the exceptional situation of a terrorist threat) would allow the state to interfere with their privacy in the case of a terrorist threat. This percentage should be considered to be high and to indicate a high level of social acceptance of operational activities of state agencies aimed at eliminating the terrorist threat.

27 The Center was established on 1 October 2008 in the Internal Security Agency.

28 "Excerpts...", question 14.

29 E. Glińska, A. Kowalewska, *ibid.*, 100.

30 "Excerpts...", question 14a.

Afterwards, the respondents were reminded that in the fight against crime the state can use various forms of interference with citizens' privacy. The respondents were asked to express their opinions concerning the acceptable forms of interference with civic rights and freedoms in a situation where the respondents or someone in their families were threatened by terrorist activities³¹. The respondents were shown a list of various forms and methods of operational work, which had been prepared earlier. The list included the following forms and methods: telephone tapping; mail control, to include electronic mail; checking the content of a computer through the Internet (remote search of a computer); control of property; and three forms of monitoring: placing cameras in public places, placing cameras at work, and placing cameras in homes. The distribution of the answers to this question is shown in Table 6 below.

Table 6. Acceptable forms of the state's interference in its fight against terrorism

Telephone tapping	Mail control, to include electronic mail	Checking the content of a computer drive through the Internet	Control of property	Placing cameras in public places, e.g. streets, stores, parks	Placing cameras at work	Placing cameras in homes	None
67	58	59	34	66	46	34	10

It should be noted that in the presence of terrorist threats a fairly large group of respondents would be willing to accept covert operations of state agencies that would limit their privacy. As many as 67% of respondents would accept tapping of their own phones. During the study conducted in 2005, telephone tapping and control of electronic mail were the most controversial – only 44% and 46% of respondents accepted such measures.³² The later research indicates that the percentage of Poles who approve of telephone taping in situations where terrorist threat is present has increased to 67% and the percentage who approve of mail control, to include electronic mail – to 58%. Thus, acceptance of such forms of the state's interference with citizens' privacy in the presence of terrorist threats has increased.

Numerous groups of respondents (which in total amounted to approximately 60% of all respondents) would also be willing to accept installation of cameras in public places (66%) and checking the content of computers through the Internet (59%). Nearly a half of them would also accept cameras at work if they were to help

31 "Excerpts...", question 16.

32 "The sense...", 6.

lower the threat of terrorism. Nevertheless, only one in three respondents would approve the methods that constitute the most serious interference in his or her liberty and privacy, i.e. control of property and placing cameras in homes in the presence of a terrorist threat.³³ What this means is that Poles are willing to give up or limit some of their civic rights, but they question the need to give up their privacy in their daily lives (monitoring at home) to support the fight against terrorism.

The research results show that one in ten respondents does not approve any forms of interference with their civic rights and freedoms, which may be a cause of concern. One of the roles of a state is to assure the security of its citizens' and part of one's freedom should be sacrificed on the altar of said security.

Conclusions

In public awareness, terrorism is a fairly remote threat. Only a negligible percentage of the population (2%) feels any significant concerns about terrorism. Terrorist attacks are not present in the social awareness of Poles and they only emerge as a threat once a third party mentions such a possibility. The threat of terrorist attacks is of the highest importance to women who live in Warsaw.

It should be noted that the Polish society is very strongly convinced that terrorism is not a real threat. On average, 75% of the respondents declared that the likelihood of terrorist attacks, bombings, and hostage-taking in Poland, is either very low or fairly low. Despite the small scale of threat, inhabitants of the Warsaw region are more likely to be concerned about it.

Terrorism is only rarely a source of a personal sense of insecurity. Only one in eight respondents (13%) is concerned about terrorist attacks and bombings, to include 2% who have a high sense of insecurity. The society does perceive a hypothetical danger of terrorism, but when more closely faced with the problem, only a few express their concerns about becoming victims of terrorist attacks or bombings.

None of the respondents in the represented population had been a victim of the crime of hostage-taking. Only 1% of respondents declared that a close family member was a victim of hostage-taking, a terrorist attack, or a bombing. This demonstrates a marginal extent of victimization of Polish society by such crimes.

Public opinion on countering the threat of terrorism by the state and its organs is that it is quite satisfactory. Most respondents conceded that the state adequately counters the threat of terrorism.

33 E. Glińska, A. Kowalewska, *ibid.*, 108-109.

There is a high level of social acceptance of operational activities of state agencies aimed at eliminating the terrorist threat. Nearly 40% of respondents (28% always and 10% in the exceptional situation of a terrorist threat) would allow the state to interfere with their privacy in the case of a terrorist threat. In situations of terrorist

threat, a fairly large group of respondents would be willing to accept covert operations of state agencies that would limit their privacy. As many as 67% of all respondents would accept tapping of their own phones. There is an increase in the acceptance level of telephone tapping and control of mail, to include electronic mail, in the presence of a terrorist threat.

Annex

Excerpt from the research tool – the Survey Questionnaire

1. Nowadays people encounter various threats that affect their sense of security. In your opinion, what threats are people most concerned about?
2. What threats are you, personally, most concerned about?
3. I will now read a list of various threats that one can encounter in daily life. Please tell me if you are concerned about them. Are you concerned about...?

	Definitely concerned	Rather concerned	Rather not concerned	Definitely not concerned	It's hard to say
Terrorist attacks					

9. Please tell me what is your opinion of the presence of these threats and social problems in Poland. Do you think that the threat... is very high, rather high, rather low, or very low in Poland?

	Very high	Rather high	Rather low	Very low	It's hard to say
Hostage-taking					
Terrorist attacks, bombings					

10. Are you concerned about becoming a victim of the following threats?

	Definitely concerned	Rather concerned	Rather not concerned	Definitely not concerned	It's hard to say
Hostage-taking					
A terrorist attack, a bombing					

11. Please indicate the threats of which at any time you or a member of your close family has ever been a victim.

	The respondent was a victim	A member of close family was a victim
Hostage-taking		
A terrorist attack, a bombing		

12. Please look at the list of threats and indicate those that, in your opinion, the state does not counter adequately.

	Indicated	Not indicated
Hostage-taking		
Terrorist attacks, bombings		

14. In your opinion, in the case of danger to citizens' security, is interference of the state with their privacy:

- always acceptable
- acceptable only in exceptional situations
- always acceptable
- it's hard to say

Respondents who pointed at the answer "acceptable only in exceptional situations" were asked question 14a.

14a. In what situations is interference acceptable? Please give examples of such situations.

16. In the fight against crime the state can use various forms of interference with citizens' privacy. Please tell me which of the following forms of interference you would be willing to accept if you or a member of your close family was threatened by a terrorist act, e.g. a bombing.

Telephone tapping	Mail control, to include electronic mail	Checking the content of a computer drive through the Internet	Control of property	Placing cameras in public places, e.g. streets, stores, parks	Placing cameras at work	Placing cameras in homes	None

TERRORYZM JAKO WSPÓŁCZESNE ZAGROŻENIE DLA BEZPIECZEŃSTWA OBYWATELI

Artykuł zawiera wyniki badań własnych dokonanych w 2008 r. w ramach realizowanego wówczas projektu badawczego noszącego tytuł: „Monitoring, identyfikacja i przeciwdziałanie zagrożeniom bezpieczeństwa obywateli”. Przebada-
dano reprezentatywną próbę ponad tysiąca dorosłych Polaków, sondując respon-
dentów w kilku obszarach bezpośrednio odnoszących się do zjawiska terroryzmu.
W toku badań uzyskano odpowiedzi na szereg postawionych pytań. Ustalono, że
terroryzm w zasadzie nie stanowi zagrożenia w świadomości społecznej i podob-
nie rzadko stanowi źródło zagrożenia osobistego poczucia bezpieczeństwa. Wynika
to zapewne z faktu, że żaden z ankietowanych nie był bezpośrednio wiktymizowa-
ny atakiem terrorystycznym. Społeczeństwo dobrze ocenia działania organów pań-
stwowych podejmowane w celu przeciwdziałania zagrożeniu terroryzmem. Warto
podkreślić, że Polacy reprezentują wysoki poziom akceptacji wobec czynności ope-
racyjnych państwa działającego na rzecz wyeliminowania zagrożenia terroryzmem.
W tym duchu gotowi są do rezygnacji z pewnych przysługujących im praw i wolno-
ści na rzecz przeciwdziałania zagrożeniom związanym z terroryzmem.

Key words:

Public opinion, citizens' security, threat, Poland

INTERNATIONAL TERRORISM AND ORGANIZED CRIME IN BALKANS – AN ATTEMPT TO DIAGNOSE THE PHENOMENON

... war, the disintegration of states, distribution systems, economic and financial crises, this is the element of the Mafia and its natural environment. It is a parasite that preys on the sick organism. And the world is the subject of globalization never to be healthy. The Mafia, just as terrorism, can be eliminated in only one way: with Stalinism. This would be the equivalent of treating influenza with cholera. And you can not cure cancer because.

K. Mroziejcz

Terrorism – introduction

The phenomenon of terrorism in the modern world clearly embodies the imperfections of the functioning of global systems of governance¹, both in terms of internal and international security. This can be demonstrated using the examples of crimes incited by hatred which according to the authorities are responsible for the breakdown of global law and order, which should never have occurred. Unfortunately, crimes appear frequently and do worry the most powerful people on the globe.

Terrorism is the phenomenon electrifying world's public opinion, conditioning and increasing the huge potential for heightened fear, anxiety and helplessness among the representatives of the global population, mainly due to the fact that individual acts of terrorism can happen anywhere and touch upon each citizen regardless of circumstances or where they reside.

¹ See more: R. Thakur, Security in the new millennium, (w:), Enhancing Global Governance; towards a new diplomacy?, (ed:), A.F. Cooper, j. English, R. Thakur, The United Nations University 2002, p. 270.

Numerous accounts appear in the literature of efforts to identify, diagnose, define and finally to discover, the causative mechanisms of modern terrorism². The consequence of those efforts was the development of effective ways to combat the hazardous phenomenon of terrorism. However, and despite the painstaking research conducted by centers dealing with criminal issues around the world, there is still no universal definition of terrorism. What is more, there are more than two hundred such centres³ and each gives its own, frequently modified approach to the subject matter.

Terrorism – the multiplicity of definitions

Attempts to develop an universally accepted definition of terrorism has been repeatedly presented to the UN, however, the discussions have not led to any meaningful and constructive conclusions. Some experts, penetrating the theme of terrorism deeper, argue that it is not possible to create a comprehensive definition of terrorism as it is a synthetic definition of various forms of politically motivated violence⁴.

Moreover, the situation becomes complicated by the fact that contrary to public expectations, it is difficult to enforce law even if it is based on the most perfect definition. The definition of terrorism should also identify the motives, goals and intentions of the perpetrators of crimes incited by hatred. In this connection, the Polish legislator decided not to isolate this new form of crime by defining its own essence⁵.

Provisions for acts of terrorism in Polish penal law (Penal Code) include various parts of the above and have a general profile⁶. Furthermore, they have to stay consistent with international law applicable in this field and have to emphasize their universal character. The considerations stated above clearly show that the phenomenon of terrorism is multidimensional, multifaceted and of multi-character. Therefore, it is the subject of scientific inquiry, appearing in various fields of study.

2 I. Bantekas, S. Nash, *International criminal law*, London 2003, p. 17-46.

3 K. Jałoszyński, *Zagrożenie terroryzmem w wybranych krajach Europy Zachodniej oraz w Stanach Zjednoczonych*, Warszawa 2001, p. 8.

4 W. Laquer, *The Age of Terrorism*, Boston Little, Brown 1987, K. Karolczak, *Encyklopedia terroryzmu*, Warszawa 1995, p. 9.

5 I. Pospiszyl, *Patologie społeczne*, Warszawa 2010, p. 92.

6 Chapters XVI. Crimes against peace, humanity and war crimes (Articles 118-121), XVII. Crimes against the Polish Republic (Art. 127, 128), XVIII. Offences against the defense (Article 140), XX. Offences against public safety (Articles 163-168), XXI. Offences against the security of the communication (Art. 173, 175), XXIII. Offences against liberty (Article 189), XXIX, Crimes Crimes against the activities of state institutions and local government (art. 223) (art. 223), XXX. (Article 232), xxxii. Offences against public order (Article 252), XXXIII, Crimes against protection of information, S. Pikulski, *Prawne środki zwalczania terroryzmu*, Olsztyn 2000, pp. 25-50.

The genesis of terrorism is trying to unravel by examining inter alia the motivation of terrorists. The most common motives are economic, political, moral and ideological.

On the level of theoretical considerations, terrorism is tested by the use of the following concepts: terrorism as a weapon of the weak⁷, terrorism as a response to economic and social inequalities⁸, terrorism as a mean of sharing power⁹, terrorism as a result of the clash of civilizations¹⁰, and terrorism as a result of infringement of the balance of ideals in the world.

Seeking a non-legal¹¹ explanation on the concept of terrorism, a lot of attention is given to the works of J. Baudrillard¹² who proves that terrorism has arise from the violation of equilibrium in the world of ideals. The author concludes that the coexistence of stability and social reality provides perfect harmony between good and evil. The dominance of any ideal will automatically launch opposite forces to depose it.

Baudrillard notes that the phenomenon of terrorism is a kind of riposte for the dominant civilization in the countries of Western philosophy, rationalism, pragmatism and utilitarianism. Furthermore, the author explains and cites that “when power is growing into strength, the destruction also increases”¹³. “For today’s terrorists, there is no concept of an individual persecutor or a person being persecuted, but it means the system should be rejected and removed from the society”¹⁴. And overall, “modern terrorism is a rebellion against the ideals of the Western dogmatic world”¹⁵.

Baudrillard quotes the following proofs to support the arguments presented above:

1. The Western World claims that the existence of superpowers provide peace and stability in the world. On the other hand, terrorists performing the attack on WTC indicated and emphasized the fact that at any time they can destroy the most symbolic place in the world.
2. The Western World creates and develops globalization and terrorists being confined in their locality highlight their traditional customs and values.

7 See more: T. Szlendak, *Terroryzm oczami socjologa* (w:) W. Kwiatkowska-Darul (red:), *Terroryzm*, Toruń 2002, pp. 53-63.

8 W. Grotowicz, *Terroryzm w Europie Zachodniej*, Warszawa 2000, p. 84.

9 See more: T. Szlendak, *Terroryzm oczami socjologa* (w:) W. Kwiatkowska-Darul (red:), *Terroryzm*, Toruń 2002, p. 59.

10 See more: S.P. Huntington, *Zderzenie cywilizacji*, Warszawa 2000, p. 90.

11 Development of non-legal concept of explaining the essence of terrorism is the deliberate treatment, which aims to expand the publication of a law, other intellectual currents described dealing with the subject.

12 J. Baudrillard, *Duch terroryzmu. Requiem dla Twin Towers*, Warszawa 2005, pp. 1-10.

13 J. Baudrillard, op. cit., p. 9.

14 P.A. Redpath, *Nieświęta Trójca współczesnego terroryzmu: utopijne marzenia, samoofirowanie i systemowe zło*, (w:) A. Maryniarczyk i inni, *Terroryzm – dawniej i dziś*, Lublin 2010, p. 33

15 I. Pospiszyl, op. cit., p. 82.

3. The Western World seeks to progress, both technologically and economically, the terrorists on the other hand, favour the traditions established in the past.
4. The Western World advocates stability and continuous development. Terrorists answer this with destructive attacks on public facilities.
5. The Western World glorifies temporal existence emphasizing an apotheosis of the cult of eternal youth, whereas terrorists are not afraid of death, they find it a part of life¹⁶.

The considerations referenced in the aforementioned study, support the thesis of N. Abbagnano – the Italian existentialist who more than thirty years ago said that “at the root of terrorism lies hopelessness for the further improvement of social life and in order to overcome evil from its nest, external sources have to be provided to the members of society”¹⁷.

According to Abbagnano, contemporary terrorists begin to identify “society with the evil equated. When we are in favour of direct confrontation with evil, our goal is not to reach an agreement but an attempt to destroy it by all possible means”¹⁸.

Therefore, the basic ideology of modern terrorism has become a direct confrontation between the System and the world of ideals where terrorists function. The ideal world – as terrorists perceive it – is an Utopian dream. However, Abbagnano clearly states: the terrorist’s Utopia is a myth of the moment which constantly returns in the history of a man – the myth of the miraculous Eden. Absolutization of the Utopia, in the conviction of terrorists, is an act of good faith, like that of an assistant surgeon force to intervene in an operation to rescue a sick organism. Neither do surgeons or terrorists have pity. They only have one aim in life: to sink the scapel into the flesh, to cut away and remove the organ causing the illness¹⁹.

Terrorists desire the destruction of the existing Euro-Atlantic order, so as to ruin it totally and build from scratch a perfect new world free of blemishes. In this way, terrorists wish to universalize and unify shared ideals and values. According to Boudillard, such assumptions are in contradiction to the fundamental building blocks of every social order which is based on the principle of continuous and unconditional exchange. Boudillard claims that if some values become monopolized then the exchange will cease to function and ultimately it will lead to destruction of the existing social order because there will always be groups which act oppositely, rejecting existing law and order.

16 I. Pospiszyl, op. cit., p. 82.

17 P.A. Redpath, *Nieświęta Trójca współczesnego terroryzmu: utopijne marzenia, samoofiarowanie i systemowe zło*, (w:) A. Maryniarczyk i inni, *Terroryzm – dawniej i dziś*, Lublin 2010, p. 34.

18 P.A. Redpath, op. cit., p. 34.

19 P.A. Redpath, op. cit., p. 34.

A one – dimensional world tends to dogmatize and challenge dogma which does not possess rational arguments and a pragmatic way of thinking. It will be sufficient to replace the existing dogma with another that is equally attractive. That is why, terrorist groups or individual perpetrators set the rules of the game, since a single act of terrorism destroys generally professed values in the civilized world.

Baudillard also refers his concept to global order, claiming that this order declines. The new taxonomic order in the author's opinion will burst out from within through negative social phenomena, such as minorities, ethnic groups, local criminal groups, etc. In the world's dominant ideology, terrorist try to preserve the existing order. The need it to ensure that the citizens are subjected to restrictions in civil rights, increased surveillance and progressive state intervention in their private lives. The need to dominate safety and security, and this opinion from Baudillard's view, is the beginning of the end of globalization²⁰.

The example of nationalist terrorism in Bosnia, Albania and Kosovo

The foregoing considerations support the thesis that terrorism is motivated by nationalist motives²¹ (especially in the Islamic dimension), which finds fertile ground among marginalized social groups such as ethnic minorities, discriminated ethnic groups or fundamentalist religious associations, ignored by the leading Western European ideology as a potential source of threat to international security.

Islamic terrorists clearly expose their centuries-old traditions, customs, religious practices and inflexible social structure. This applies not only to the groups originating from Arab or Islamic countries but also covers the Balkan region which for historical, geographical and political reasons, rests within two worlds – Christian and Muslim²²; between the Byzantine and the Islamic-Turkish tradition.

This issue refers to a particular areas of Bosnia and Herzegovina, the former Serbian province of Kosovo (now the Republic of Kosovo) and Albania where Muslim cultural stigma is clearly visible.

Ethnic conflicts between the Balkans and Kosovo caused the place to be an ideal for the development of nationalist terrorism, and the profession of Islam by the

20 I. Pospiszył, op. cit., p. 82.

21 Albanian terrorism can be categorized as ethno-nationalist terrorism, which generally plays an important role in European countries and the Middle East, the source of terrorist activity are complex conflicts on grounds of nationality.

22 S.P. Huntington, *Zderzenie cywilizacji*, Warszawa 2000, p. 90.

Kosovo Albanians also makes the region vulnerable to the development of Islamic terrorism²³.

The Balkans also provide an excellent social facility for recruiting activities which for decades has played host to training camps run by Al-Qaeda. Then the Islamic fundamentalists became indigenous inhabitants of the region, which the AFP agency defined as “terrorist heaven” (white European people with blue eyes)²⁴.

Bosnia

The Islamist society was promoted in the seventies of the twentieth century by Alija Izetbegović, a Bosnian political leader during the existence of Yugoslavia. In 1970 he wrote his prolific work: *Islamic Declaration – The Islamisation of Muslims and Muslim people*. One of the far-reaching objectives depicted in this declaration was the creation of Muslim state in Europe and the establishment of Islamic governance in these areas. Furthermore, U.S. intelligence sources made it clear that Izetbegović closely followed the philosophies of Iranian spiritual leaders.

“After the takeover of power by Khomeini in 1979, Izetbegović intensified his efforts to establish an Islamist government in Bosnia and therefore was arrested by the Communists in 1983”²⁵. In 1990 Izetbegović founded the Party of Democratic Action (SDA), and then won the election and became president of Bosnia and Herzegovina. During the ongoing war, his government continued to disseminate the principles of radical Islam, calling for a Holy War based on the principles of Jihad with the support of Al-Qaeda.

Moreover, since the early nineties Al-Qaeda began to infiltrate Islamic TAN (transnational networks of support) in Bosnia and Herzegovina, promoting the ideals of deepening Islamization of Bosnian society. Al-Qaeda sought to create a support base for Muslim terrorism. Bosnia has become a great marina and hatchery for Islamic terrorism in Europe. This information was confirmed by intelligence from Sarajevo which registered the presence of training camps for future Islamic terrorists (organized by the mujahideen), near Bihacia, Maglaja and Zenica²⁶.

Moreover, many Islamic militants appeared in Bosnia during the ongoing conflict, Bosnian Muslims, calling for Holy War on the principles of Jihad (wahabist

23 See more: about Islamic terrorism M. Nizioł-Celewicz, *Terroryzm*, M. Pietraś, *Międzynarodowe stosunki polityczne*, Lublin 2006, pp. 531-571.

24 S. Kalitowski, *Terroryzm na Bałkanach i w Kosowie*, <http://www.terroryzm.com/article/445/Terroryzm-na-Balkanach-i-w-Kosowie.html> visit on 2.03.2011.

25 A. Beinsen, *Muslimanstvo and „Bosiakdom: Islam in the discourse of Muslims in Bosnia-Hercegovina*, *SouthEast Review* 2002, nr 1, p. 20.

26 S. Kalitowski, *Terroryzm na Bałkanach i w Kosowie*, <http://www.terroryzm.com/article/445/Terroryzm-na-Balkanach-i-w-Kosowie.html>, visit on 2.03.2011.

views propagated simultaneously). To-date, the exact number of foreign mujahidden involved in Bosnia remains unknown, although it is stated that there were between 1,500 and 5,000. In one of the IGC reports, the number is given as 3,000.

Typically, they were religious fanatics of high morals, well-trained and experienced combatants. According to experts, many of them were war veterans from Afghanistan²⁷. Foreign mujahideen were overwhelmingly responsible for the war Crimes committed, and it was against this backdrop that the proposal to the International Criminal Court for crimes in former Yugoslavia was developed. Three former Commanders of the Army of Bosnia-Herzegovina, were indicted: Enver Hadžihasanović, Mehemed Alagić and Amir Kubura²⁸. The trial did not result in convictions.

The Islamic extremists mentioned above had obtained Bosnian citizenship. Amongst those later detained by U.S. authorities, were two of the leaders of Al-Qaeda – Khalid Sheik Mohammed, and the world's most notorious terrorist, Usama Ibn Laden²⁹. To this day it remains unclear just how, and how many people were granted Bosnian citizenship both during the war and after its cessation, as the relevant documents were destroyed by employees of the then Bosnian Foreign Ministry. Naturalized Bosnians still remain a potential source of terrorist attacks. In 2001, Special Services arrested several Bosnians associated with Al-Qaeda, and in 2004, they provided a list of 741 individuals who permanently or temporarily reside on the territory of Bosnia and who are suspected of terrorism³⁰. Moreover, among them were the perpetrators of attacks in Madrid and in London, who were also tied-in with radicals living in Serbian Kosovo and Sandžak.

27 R. Bachora, *Bośnia i Hercegowina państwem upadłym? Kwestia ekstremizmu muzułmańskiego*, (w:) M. Gniazdowski (red.), *Europejski Protektorat? (Bośnia i Hercegowina w perspektywie środkowoeuropejskiej)*, Warszawa 2008, pp. 123-140.

28 Hadzihasanovic and Kubura (IT-01-47) Case Information Sheet, 8 november 2005, www.un.org, visit on 8.06.2011.

29 Bin Laden and the Balkans – The Politics of Anti-Terrorism, *Balkan Report* (Internacional Crisis Groupe z 9 listopada 2001, nr 119, p. 10. Essential for the financing of arms and mujahideen in Bosnia was the organization of the Third World Relief Agency (TWRA), which was to regard as a fundamentalist Muslim, and had its headquarters in Vienn Essential for the financing of arms and mujahideen in Bosnia was the organization of the Third World Relief Agency (TWRA), which was to regard as a fundamentalist Muslim, and had its headquarters in ViennD. Farah, *The Role of Sudan in Islamist Terrorism:a Case study*, 13 April 2007, www.strategycenter.net/research/pub visit on 8.06.2011.

30 R. Bachora, *Bośnia i Hercegowina państwem upadłym? Kwestia ekstremizmu muzułmańskiego*, (w:) M. Gniazdowski (red.), *Europejski Protektorat? (Bośnia i Hercegowina w perspektywie środkowoeuropejskiej)*, Warszawa 2008, p. 123-140.

Albania and Kosovo

Nowadays the presence of Islamic fundamentalism is also seen in Kosovo³¹. They perform their activities with the help of Islamic NGO's, offering social and financial aid to local people. This is a particularly attractive form of support, since the people of Kosovo were struggling for many years with economic and political problems. Among the most attractive of NGOs, is the International Islamic Relief Organization which participates in funding the construction costs of new mosques, organizes the Islamic theology school and facilitates trips to Egypt, Pakistan and Syria in order to study the Koran and practice Wahabistic views. The supporters of Wahabistic's Views, created a group called "Wahabije"³², which was strongly associated with the "Red Rose" organization. "Wahabije" acted mainly in the region of Raska (Bosnia), trying to extend its influence into areas of Serbia.

Generally, at the beginning of the last decade, special services have registered mujahideen activities in the Balkan region. Many of them took part in the Balkan war on the side of Bosnian Muslims. They created the Seventh Brigade – Mujahedeen³³, whose members committed numerous murders against Serb and Croat citizens of former Yugoslavia.

After the war, the presence of Al-Qaeda and Wahabistic's organization in the movements in the Balkan area receded, although the country is still regarded as a recruitment base (this includes Albania, Bulgaria, Macedonia, Kosovo and Bosnia and Herzegovina, and Sanjak region). The most significant leader of the underground terrorist in the Balkans is Ajman Al Zavahiri, whose presence has also been noted in Turkey, Albania, Macedonia, Bulgaria and Kosovo.

Albanian's nationalism in connection with Islam is regarded as extremely dangerous, and has been observed for more than a decade in specific countries of the former Yugoslavia, especially in Kosovo. At the beginning of the century the largest organization of Albanian nationalists was the Albanian National Army (AKSh), which possesses troops in Kosovo, Southern Serbia and Northern Greece³⁴.

31 In early March 2011, Two soldiers en route to Afghanistan were shot dead at Frankfurt airport and another two injured. The perpetrator of the attack was a 21-year-old Astrid Uka– Abańczyk Kosowski. Preliminary investigation showed that this was a single perpetrator of an act motivated by Islamic radicalism. The case remains pending. See more. www.gazetaprawna.pl visit on 4.04.2011.

32 Patrz szerzej: <http://www.balkanistyka.org/macedonia/artykuly/> visit on 7.03.2011.

33 S. Kalitowski, Terroryzm na Bałkanach i w Kosowie, <http://www.terroryzm.com/article/445/Terroryzm-na-Balkanach-i-w-Kosowie.html> Kmdr ppor. Sebastian Kalitowski – a former commander of a specialist group of divers in the Navy's elite 'Formoza' unit. In 2003-2005 he was in charge of combat missions in Kosovo, and he now operates a private company – Maritime Safety & Security Ltd – which provides advice on maritime security; the protection of facilities and ships from terrorist attack and the training of crews on how to respond under acts of terrorism and piracy, (<http://www.maritime-security.eu/>).

34 S. Kalitowski, Terroryzm na Bałkanach i w Kosowie, <http://www.terroryzm.com/article/328/Albanska-Armia-Narodowa-AKSh.html> visit on 27.03.2011.

Albanian's terrorist organization AKSH (Armata Kombetare Shqiptare), is the result of the division of the National Liberation Army (NAW) in 2001, after signing the "Ohrida Framework Agreement". The leader of the Albanian insurgents – Ali Ahmeti, signed the agreement which obliged members of organization to cease terrorist operations. Nevertheless, many members rejected the contents of the agreement and continued to fight, transforming their group into the Albanian National Army (ANA)³⁵.

The most important aim of the organization is realization of the dream "Great Albania", covering within its scope all Balkan terrains inhabited by Albanians; Kosovo, the north-west region of Macedonia (Tetovo and Kumanovo district), the south-west region of Serbia (Presevo Valley), the south-eastern part of Montenegro and Northern Greece (the region known as Cameri). The organization was supported by the Albanian party – Front for Albanian National Unification (FBKSH), whose leader was Gafur Adili aka Valdet Vardari, with Idajet Beqiri aka Alban Vjosa (an Albanian lawyer), holding the position of Secretary³⁶.

Adili and Beqiri, propagated the idea of "Great Albania" and the compatible idea of "Ethnic Albania"³⁷. They intended to promote their requests either through diplomatic channels or by means of armed struggle, if the international community ignored their "right ideas". In addition, members of the organization were informed of the possibility of carrying out terrorist acts during the Olympics Games in Greece (2004). Ultimately, that threat was not fulfilled.

The organization had material and logistics facilities predominantly in Kosovo where they conducted numerous recruiting raids among the local Albanian population. Moreover, its members committed numerous acts of violence against the Serb minority.

AKSH cooperated with former members of the Liberation Army Preseva, Medveda and Bujanovca (UCPMB), in the Presevo Valley in southern Serbia. In 2003 this organization was proclaimed a terrorist group, under the direction of Michael Steiner – leader of the UN Mission In Kosovo (UNMIK). This was a direct consequence of the destruction of a railway bridge in Zvecan on 12th April 2003, using an explosive device. AKSH claimed responsibility for the attack.

The severity of terrorist activities performed by Albanian militants led to mobilization of the Macedonian Albanian special forces. As a result, Gafur Adili

35 S. Kalitowski, *Albańska Armia Narodowa (AKSH)*, <http://www.terrorizm.com/article/328/Albanska-Armia-Narodowa-AKSh.html> visit on 27.03.2011.

36 S. Kalitowski, *Albańska Armia Narodowa (AKSH)*, <http://www.terrorizm.com/article/328/Albanska-Armia-Narodowa-AKSh.html> visit on 27.03.2011.

37 M. Wandelberg, *Rozbicie Jugosławii (jugosłowiańskie lustro międzynarodowej polityki)*, Warszawa 2005, pp. 246-251.

(Valdet Vardari), leader of the popular Front for Albanian National Unification (FBKSH), the political wing of the Albanian National Army (ANA), was arrested. In the territory of Macedonia (FYROM),³⁸ Gafur Adili has been accused of “incitement to hatred between people of different races and faiths, counterfeiting currency and forging official documents”.

Moreover, Albanian police obtained evidence that he was also buying weapons for AKSH. Another combat success against the Albanian National Army was the arrest of Idajeta Bergiri, – leader and founder of the Party of National Unity, wanted by Interpol for inciting ethnic hatred in mass-media. Overall, Albanian terrorist groups function on the basis of specific principles of customary law, which in turn reflect tribal and clan structures of Albanian society.

These rules, based on traditional tribal customs, known as *kanunu*, when combined with fundamentalist Islam, result in an extremely volatile mixture. Of course, this mainly applies to residents of the mountain regions not to Albanian society as a whole, which resides in the larger cities and modernizes very quickly. The principle of the Albanian code of honor still finds its followers and continuators. Most of its rules are consistent with the rules of fundamentalist Islam (although their origin is different) and traditional tribal values, advocated by Islamic terrorists (see Baudillard’s discussion).

Albanian clans consist exclusively of family members and without blood ties a person cannot join a clan. The clans operate in accordance with the rules of the *Kanunu* code of honor, which, since the Middle Ages, minutely regulated every sphere of the Albanian highlanders’ life, ranging from family life to the functions of social life. The rhythm of their existence was subordinated by the seasons and directly related to sheep grazing. However, this cycle was often disturbed by the numerous wars which absorbed vast numbers of victims. Relatives of the victims were obliged to seek bloody revenge which activated successive acts of hatred. In its original form, *kanunu* survived until the end of nineteenth century³⁹.

During the Ottoman domination, young generations of Albanians assumed power from the elders, establishing their own clans. The Albanian communist authorities ruthlessly combated all manifestations of tribal culture by organizing a social structure based on the principles of the philosophy of Marxism and Stalinism. Today the most cruel *kanunu* rules survive; bloody revenge, ruthless command of obedience, loyalty and secrecy. Albanian criminals, on the basis of these rules, form a hermetically closed group, where infiltration is virtually impossible. The situation

38 M. Szkolak, *Wejście do NATO pod nazwą FYROM*, http://www.psz.pl/index.php?option=com_content&task=view&id=4794 visit on 20.03. 2011.

39 M. Waldenberg, *Rozbicie Jugosławii (jugosłowiańskie lustro międzynarodowej polityki)*, Warszawa 2005, s. 173-178, R. Holbrooke, *The End a War*, New York 1998, p.151.

is further complicated by the fact that Albanians do not require to use code as their native language does not belong to any language family and is one of a kind. This generates problems with the rapid translation of information gained from wiretaps.

A social group constructed in such a way, has become extremely attractive in terms of potential criminal activity. Taking place in the nineties of the twentieth century, the war in the Balkans provided many opportunities for the development of crime. Military actions resulted in Balkan smuggling routes being used for purposes that were quickly seized upon by members of the Albanian clans. In the communist period, the clan were involved in the organized smuggling of contraband between Albania, Yugoslavia and Greece. NATO aggression directed at Serbia in 1999, created even greater scope for the criminal activities of clan members by opening up broad opportunities outside of Albania and Kosovo (mainly in neighboring countries: Greece and Turkey).

Cross-border organized crime in the Balkans, with particular consideration to the Republic of Kosovo

The apogee of Albanian mafia activity occurred in the period between 1999 and 2000. The Albanians subjugated several independent criminal groups engaged in drug trafficking in the countries comprising the former Yugoslavia. There are important assumptions that members of Albanian organized criminal groups, supported and organized the Albanian resistance movement in Kosovo, which was later transformed into the Kosovo Liberation Army⁴⁰.

Many Army members were involved in criminal activity. The unilateral decision of Kosovo Albanians to declare independence in Kosovo in 2008, cemented the position of the Albanian mafia throughout the Balkan region. Albanian criminal groups effectively control the Balkan route, which begins in Central Asia, runs through Turkey, Greece and Kosovo, and thence into the Slavic countries – Poland included. The countries of final destination are in Western Europe; Germany, The Netherlands, Switzerland, etc. In Kosovo, where 95 percent of goods are imported, smuggling became a major source of income for both the local population as well as for organized criminal groups engaged in drug trafficking.

Kosova Albanians serve a crucial role in the long chain connecting the Afghan poppy farmers with the refiners and with the Western heroin market. Drugs from Afghanistan arrive first in Iran, where they are taken over by Turkish Albanians, who in turn pass on the ‘goods’ to Macedonian Albanians, who smuggle them into

40 M. Waldenberg, *Rozbicie Jugosławii (jugosłowiańskie lustro międzynarodowej polityki)*, Warszawa 2005, pp. 262-272.

Kosova. In Kosova, the bulk consignment is divided and repacked into smaller quantities for distribution. The target countries of course, are those of Western Europe and the U.S.⁴¹

The practice of drug trafficking has been described in a report concerning the activities of the United Nations Office on Drugs and Crime (UNODC), against the Albanian mafia, which indicates that the heroin trade is its main source of income. However, according to police statistics, there has been a decline in the demand for heroin in Europe which reflects the decreasing number of Albanians tracked and arrested during investigations of heroin trafficking.

The UNODC report estimates that in the early twenty-first century, due to the dominance of Albanians in the market, heroin was overpriced. Nowadays, Albanian criminal groups control 10–20 percent of the heroin market in Europe. From the Balkans region as a whole, 60 percent of heroin is destined for markets in Western Europe. Kosovo is a crucial stopover on this route⁴².

Albanian clans control the drug trafficking business. As previously mentioned, the organization possesses its own internal hierarchical structure, which is based on the patriarchal family model working on its own account, and which takes advantage of the fact that its members reside outside the country.

In Albania and Kosovo, particular families control key thoroughfares, and thereby the main smuggling routes. In this way, the whole of Kosovo and Northern Albania is divided up amongst the clans.

This thesis is confirmed by international reports made by the European division of the UN drug agency situated in Vienna. The police and special services from Switzerland, Germany and the U.S. have pointed to the fact that smuggling is especially developed in countries with a significant number of Albanian immigrants. The report confirms that since NATO's intervention in the Balkans, Albanian criminal groups have engaged in the trafficking of persons, drugs, arms, and cigarettes. The presence of such criminal groups in Western Europe is also acknowledged in Interpol statistics – in the EU, around 27 thousands Kosovo Albanians are detained in prisons⁴³.

Europol, the EU police agency, in its reports on the structure of the criminal world in the EU – published annually for over ten years now, estimates that local mafias have the strongest influx in EU countries, with the Albanian mafia ranking as a leader. This is confirmed by data contained in an UNODC report published in

41 Jędrzej Winnicki, *Kosowo Nostra*, Tygodnik Polityka nr 15 (2700) from 11 April 2009, p. 107-109.

42 A. Balcer, *Wszechpotężna mafia albańska to mit*, http://wyborcza.pl/1,76842,6937076,Wszechpoteczna_mafia_albanska_to_mit.html#ixzz1GCXCpsCy, odczyt z dnia 20.03.2011.

43 Jędrzej Winnicki, *Kosowo Nostra*, Tygodnik Polityka nr 15 (2700) from 11 April 2009, p. 107-109.

late May, 2008. According to this report, in recent years political stability in the Balkans led to a gradual weakening of local criminal structures. However, there are still state structures formed in Kosovo which are not conducive to the overall stability of the region.

The second source of income for Albanian criminal groups is human trafficking⁴⁴, mainly women who are forced into prostitution on premises belonging to members of the mafia. During the Balkan wars, the victims came from developed centers for refugees. Currently, women are recruited from the former Soviet Union and the CIS⁴⁵. Some of them are minors under sixteen years of age the number of women forced into prostitution remains unknown but allegedly continues to increase. Several years ago, the International Organization for Migration (IOM),⁴⁶ claimed that 120,000 women are trafficked annually across the Balkans, including those trafficked by the Albanian mafia, in order to work in brothels in the West. Conversely, the UNODC report⁴⁷ considers this number to be overstated and argues that the annual figure is around 25,000.⁴⁸ Albanian criminal groups are also involved in the trafficking of human organs. In February 2011, American and British media reported the arrest of Dr Yusuf Sonmez, a Turkish citizen, was the subject of a Red Notice issued by Interpol that called for his arrest with a view to extradition in connection with an investigation being conducted by the European Union into trafficking in Kosovo.

In that case, the allegations concerning illegal transplant procedures have already involved seven people, mostly local doctors from Pristina but also the health secretary of Kosovo and an Israeli doctor. Sonmez, was not charged but prosecutors said that he played a key role throughout the whole project. In 2008, Sonmez worked as a surgeon in a private clinic, Medicus, in the capital of Kosovo – Pristina. Officers discovered that he had performed illegal kidney transplant procedures, for which the beneficiaries had paid up to €90,000 per kidney. It was estimated that some 20 organs were transplanted in this way.

The case of Medicus clinic was merged with a much more sensational investigations, namely human organ trafficking during the Balkan war. A Parliamentary Assembly of the Council of Europe developed a report in which it states that some members of the Kosovo Liberation Army (KLA) – including current

44 Definitions of trafficking was included in the so-called. Palermo Protocol (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the UN Convention against Transnational Organized Crime, adopted by the United Nations General Assembly of 15 November 2000 (Dz.U.z dnia 2005 r. Nr 18, poz. 160). On trafficking, see more: Z. Lasocik, *Handel ludźmi*, Warszawa 2006, p. 1-10.

45 Leszek Szymanowski, *Ośmiornice europejskie*, internetowe czasopismo Stosunki międzynarodowe z dnia 07.02.2002, odczyt z dnia 10.03. 2011. <http://www.stosunki.pl/?q=node/479>

46 See: IOM, <http://www.iom.int/jahia/Jahia/activities/europe/south-eastern-europe/unsc-resolution-1244-administered-kosovo/cache/offonce/> visit on 28.04.2011.

47 See: <http://www.unodc.org/unodc/en/about-unodc/annual-report.html>, Raport 2009, 2010, odczyt z dnia 28.04.2011.

48 Adam Balcer, *Wszechpotężna mafia albańska to mit*, http://wyborcza.pl/1,76842,6937076,Wszechpotezna_mafia_albanska_to_mit.html#ixzz1GCXCpsCy visit on 28.04.2011.

Prime Minister Hasim Thaci Kosovo), detained Serb prisoners in secret camps in Albania. Prisoners were shot in the head and their bodies smuggled to Istanbul. The report was based on evidence gathered by intelligence services and witness's testimony. The report's findings clearly show links between criminal groups and Medicus clinic⁴⁹.

The special services in the Balkan states, despite their successes in the fight against organized crime, did not prevail in this phenomenon, primarily because a particularly difficult situation exists in Kosovo where the Albanian mafia linked to local policies, is in fact in control of the state structures. This state of affairs has been maintained since NATO's intervention in the Balkans, and despite operations in the region by the UN administration, and now by the European EULEX mission, the institutions concerned are unable to control the activities of criminal groups in Kosovo. It seems legitimate to claim, therefore, that the youngest European state has become the safest haven for the most efficient criminal organizations in Europe.

Albanian organized crime and the world of local politics

Kosovo is a specific case, primarily because of the numerous links of politics with the criminal world. These relationships reach to the highest level in this country, with both president and prime minister being involved in criminal activity. Furthermore, almost very prominent Albanian speaking politician in Kosovo, is linked either directly or indirectly with the war crimes committed during the war with Serbia. The current ruling class derives from the former members of the Kosovo Liberation Army (UCK), an organization having all the characteristics of a delinquent.⁵⁰

At the top are the Kosovar politicians who have in their resumes infamous and obscure threads. There is the Kosovo Prime Minister, Hashim Thaci, who is the alleged head of the so-called "drenicka's group which deals with illegal fuel sales, car theft, drug trafficking and human trafficking. Members of the Prime Minister's clan "take care of" the Drenica valley stretching from the south of Kosovo, and the territories west of Pristina, which belong to the former head of the Kosovo government, Remusha Haradinaj. In connection with the Prime Minister's alleged criminal activities, Haradinaj, was indicted by the International Criminal Tribunal for crimes in the former Yugoslavia. However, the matter remains unresolved since previously gathered evidence was not confirmed in court as the witnesses, prior to

49 Doreen Carvajal, The International Herald Tribune /fakty.interia.pl/news/potwor-czy-ratujacy-zycie-chirurg,1594225 visit on 8.06.2011.

50 See more: M. Wandelberg, Rozbicie Jugosławii (jugosłowiańskie lustro międzynarodowej polityki), Warszawa 2005, pp. 262-272.

testimony, died in unexplained circumstances. This phenomenon is widely described in the book of the former prosecutor of the Court – Carla Del Ponte⁵¹.

Another Kosovar politician implicated in illegal business⁵² is the current president of Kosovo, Behgjet Pacolli, who took office on 22 February 2011. Pacolli, a Kosovar immigrant who after many years spent in Western European countries (Germany, Austria, Switzerland) and who has a Swiss passport, returned to his native homeland. As the owner of a construction company, Pacolli received many lucrative contracts, including contracts in Russia and in the Asian republics of the former USSR. In the nineties, the President was associated with Pavel Borodin who is now a secretary of the Union of Belarus and Russia. Pacolli received numerous concession contracts in Russia, including those related to renovation of the Kremlin. According to the findings of Swiss prosecutors, this investment was acquired through gigantic bribes and the case involved both Pacolli, and Borodin, as well as other associates of former Russian President, Boris Yeltsin⁵³.

As a leader of the Alliance New Kosovo Party, Pacolli began his political career with the function of deputy to the Parliament of Kosovo (2007). Subsequently he joined in the coalition agreement with the Democratic Party of Kosovo. Having gained the support of its leader, Prime Minister Thaci – Pacolli became the most serious candidate for the presidency. However, Pacolli was only officially elected as president of Kosovo after a third poll. Previously, all of the candidates failed to gather the required majority of votes. Only sixty–seven MPs voted from the one-hundred and twenty eligible. The opposition boycotted the elections, mainly due to Pacolli's ties with Russia, which to-date does not want to recognize Kosovo as an independent country. Ultimately, the selection of Pacolli as president was questioned by the Kosovo Constitutional Court which stated that was invalid due to lack of a quorum, and rival, during the poll. Pacolli accepted the verdict to be valid and resigned⁵⁴.

The character of the former president of Kosovo has raised many doubts and controversies. The Serbian press, has regularly reported his activities, commencing with the incredible story of his attempt to corrupt Martti Ahtisaari. Pacolli also tried to persuade the government of the Maldives to recognize Kosovo by offering it a large sum of money. Pacolli himself claims that the friendly gesture from the Maldives government was the result of skilful diplomatic negotiations which, in the

51 Ł. Kobeszko, Poważne zarzuty pod adresem premiera Kosowa, <http://www.psz.pl/index.php?option=content&task=view&id=35628>, Carla del Ponte, Polowanie. Ja i zbrodniarze wojenni, Książka została objęta szwajcarską cenzurą, MSZ zakazał jej publikacji.

52 Also regarded as one of the godfathers of the Albanian mafia in Kosovo who washes dirty money through a chain of banks and insurance companies. Jędrzej Winnicki, Kosowo Nostra, Tygodnik Polityka nr 15 (2700) from 11 April 2009, pp. 107-109.

53 Jędrzej Winnicki, Kosowo Nostra, Tygodnik Polityka nr 15 (2700) from 11 April 2009, pp. 107-109.

54 Prezydent Kosowa podał się do dymisji (pol.). Gazeta Wyborcza, 2011-03-30. [dostęp 2011-03-30].

long-term, would result in the recognition of Kosovo by other Asian and African countries.

Albanian organized crime and the world of local politics

The above considerations present the passage of reality played out in areas covered for many years by a major national–ethnic conflict. The scale of the problems that have grown against this background is very “impressive”, starting with local organized groups engage in the trafficking of humans, drugs and weaponry, through to the Albanian drug cartels, and ending with the highest number of representatives involved in criminal activities. The modus operandi of Albanian criminal groups is mostly based on the principles of tribal loyalties (the *kanunu* code) which has existed for centuries and which requires absolute obedience to the code and the defense of honor, usually by numerous acts of aggression.

This pattern favors the development of a cultural crime, and creates a favorable field for terrorist activities, examples of which are included in this study. It is also to be hoped that the new structure of this the youngest European state, will ultimately prov stronger than the organized criminal groups and terrorist organizations.

MIĘDZYNARODOWY TERRORYZM I PRZESTĘPCZOŚĆ ZORGANIZOWANA NA BAŁKANACH – PRÓBA DIAGNOZY ZJAWISKA

Niniejszy artykuł dotyczy związków pomiędzy transgraniczną przestępczością zorganizowaną a terroryzmem na terenie półwyspu Bałkańskiego. W pierwszej części pracy znajdują się rozważania na temat teoretycznych koncepcji terroryzmu, ze szczególnym uwzględnieniem ujęcia tematu na podstawie koncepcji J. Baudillarda oraz N. Abbagnano. Druga część opracowania zawiera opis zjawiska terroryzmu nacjonalistycznego, na przykładzie wybranych krajów bałkańskich. W części trzeciej zaś znalazły się rozważania dotyczące reislamizacji bośniackiego społeczeństwa, którą to datuje się od połowy lat sześćdziesiątych ubiegłego wieku. Część czwarta artykułu natomiast została poświęcona problematyce Republiki Kosowa, na terenie którego obserwuje się działalność nie tylko mudżahedinów, czy wahabitów, ale także albańskich organizacji terrorystycznych (np. Albańskiej Armii Narodowej, Armii Wyzwolenia Presera, Medveda i Bujanovca). W opisywanej części (jako podrozdział) zamieszczono także informacje o albańskich zwyczajach plemiennych (albański kodeks honorowy: Kanun) recypowanych przez albańskie zorganizowane grupy przestępcze. Specyfikacja procedurów przestępczych owych grup ewaluowała od klasycznej kontrabandy, poprzez handel narkotykami, bronią, handel ludźmi skończywszy na handlu ludzkimi organami. Ponadto szczególną cechą charakterystyczną albańskiej przestępczości zorganizowanej działającej na terenie Kosowa jest ścisłe powiązanie świata przestępczego z politycznymi strukturami Republiki Kosowa. Tekst zamykają wnioski końcowe.

Key words:

Republic of Kosovo, Republic of B&H, Balkan's terrorism, Albanian criminal groups, Albanian corruption, cross border organized crime

NEW COUNTER-TERRORISM LEGAL INSTRUMENTS UNDER THE AUSPICES OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

ICAO – introductory remarks

Recently we witnessed the 10th anniversary of the September 11 attacks – the world most terrifying proofs of the existence of the unlimited powers of global terrorism. – In connection therewith, it is worth taking a look at the status of instruments developed by the International Civil Aviation Organization (ICAO) one year earlier, during the International Conference on Air Law held between August 30 and September 10, 2010, in Beijing. In order to do so, one must first realize the path of other legal actions taken in the field prior to 2010.

The International Civil Aviation Organization was established under the provisions of the Chicago Convention on International Civil Aviation signed in 1944 (the Organization started to function in 1947) with goals which among others listed: insurance of the safe and orderly growth of international civil aviation throughout the world, meeting the needs of the peoples of the world for safe, regular, efficient and economical air transport, promotion of safety of flight in international air navigation.¹ Although the word “terrorism” does not appear in the list of the ICAO’s goals (which would most definitely have been the case had the Organization been established 20 years later, after a series of aircraft hijackings occurred and shaped a real threat to civil aviation), the repeated use of “safe” and “safety” terms stand for the ideal description of civil aviation. Back then, the aim was to make and keep air flying and air travel safe, whereas today it would be to counter terrorism and make sure the preventive and protective measures are properly scaled and applied. Well arranged, carefully planned and properly managed cooperation of states interested in efficient development of civil aviation was required to make it actually happen for

¹ Article 44 of the Convention on International Civil Aviation signed in Chicago on December 10, 1944, ICAO Doc.7300/7.

the world interest. The effective and inspiring management was to come from the creation of the International Civil Aviation Organization, which was an “ambitious dream” of delegates gathered in Chicago in 1944.² Today, ICAO operates under the aegis of the United Nations and gathers together a total of 190 member states covering the entire global aviation community.

Accomplishments of ICAO in the treaties of the 1960s and 1970s

For almost the first 20 years of its operation, ICAO was not pressed to focus too much attention on aviation terrorism although the creation of safety and security standards was one of the major tasks the Organization worked on. Starting in the late 1950s in Cuba and early 1960s in the USA, the highjacking of commercial aircraft became an instrument used for political reasons and for making political statements.³ Member states of ICAO began to hold a series of meetings and conferences, drafting a multilateral convention that would provide necessary instruments to deal with such situations. The final version of the convention was introduced and opened for signature during a conference in Tokyo in September 1963, and the Convention on Offences and Certain Other Acts Committed on Board Aircraft came into force in 1969⁴. It was the first international treaty aiming to provide solutions to combat highjackings and since terrorist groups carried out a number of the incidents, it was also the first universally accepted treaty on counter-terrorism.⁵ It is now considered the first step toward the regulation of aviation counter-terrorism measures. As such it is far from being comprehensive, complex and covering all of the issues. The Tokyo Convention applies to offences against penal law and acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board (article 1 p. 1). The Convention deals with jurisdiction over offences and acts committed on board granting it to the State of the aircraft registration (articles 3-4). It also provides (for the first time in the legal history of aviation) powers of the aircraft commander listing reasonable measures including restraints that are necessary i.e. to protect the safety of the aircraft, or of persons or property therein or to maintain good order and discipline on board (articles 5-10). In case of an unlawful seizure of aircraft, the Convention entitles Contracting States to take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the

2 On the details of the Chicago Conference arrangements see: D. MacKenzie: ICAO: A history of the International Civil Aviation Organization, University of Toronto Press Incorporated 2010, p. 26 and next.

3 Between years 1948-1960 there were 29 successful aircraft hijackings, between years 1961-1967 – total of 16 and in 1968 alone the number raised to 33. See: P. Dempsey: Aviation security: the role of law in the fight against terrorism, 41 Colum. J. Transnat'l L. 649 (2003), p. 654.

4 Convention on Offences and Certain Other Acts Committed On Board Aircraft, signed in Tokyo on September 14, 1963, ICAO Doc 8364.

5 J. Huang: Aviation Safety through the Rule of Law. ICAO mechanisms and practices, Wolters Kluwer 2009, p. 112.

aircraft (article 11). Powers and duties of states in terms of dealing with a person who has committed the offences under jurisdiction of the Convention are also described including some extradition issues without however obligation of the extradition of persons committing the offences (articles 12-15). The Tokyo Convention was an important step in the regulation of counter-terrorism measures. It has been signed and ratified by 185 countries. The high number of contracting states proves that international society needed such solutions but it also says that, being quite general in its provisions, the Tokyo Convention was easily adopted and could be differently interpreted. It certainly lacked precise details (no list or examples of offences were given) and covered only limited actions that is offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State (article 1 p. 2).

An attempt to remedy the deficiencies of the Tokyo Convention was made in 1970, when after the intensification of aircraft hijackings in the late 1960s, member states of ICAO signed another universally binding treaty.⁶ This time the final conference was organized in the Hague and succeeded in the introduction of the Convention for the Suppression of Unlawful Seizure of Aircraft⁷.

In the opening provisions, the unlawful seizure of aircraft (hijacking) is defined and qualified as an offence. In addition, contracting states are said to take steps to make such offence punishable by severe penalties (articles 1-2). The Hague provisions extended jurisdiction provided in the Tokyo Convention to the following situations: when the offence is committed on board an aircraft registered in that State, when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board and when the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State (article 4 p. 1). Taking the offender to custody or taking other measures to ensure his presence until criminal or extradition procedures are carried out, is established as the obligation of a state in the territory of which such person is present. The *aut dedere aut punire* clause was clearly stated. Moreover, the Convention imposes obligation to include the offence of unlawful seizure as an extraditable offence in any extradition treaty existing between contracting states (articles 6 and 8). Interestingly, the complex section on extradition included in article 8 of the Convention, was later used as the model extradition provision in several United Nations' counter-terrorism

6 The need for the supplementation of the Tokyo resolution was very real as proved by the fact that the Hague Convention came in force in 1971. A year is a relatively short period for the completion of required ratifications in member states (to compare it took member states 6 years to finalize the ratification of the Tokyo Convention).

7 Convention on for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970, ICAO Doc 8920.

conventions.⁸ Recognized as an enforcement-oriented and valuable element of the world's legal artillery against unlawful interference with civil aviation, the Hague Convention is also criticized for non-sufficient definition of the "offence", failure to address acts of terrorism preceding the flight, or the conclusion that it does not apply to a situation where a hijacker commandeers an international flight and has it land in the country of its departure. It is also criticized for the failure to cover unlawful interference with air navigation, facilities and services such as airports, air control towers or radio communications.⁹ Despite inevitable deficiencies, the Hague Convention is a universally binding document with 185 contracting states party to it.

The Tokyo-Hague duet was very soon supplemented with the third international treaty dedicated to the safety of international civil aviation. Again, under the auspices of the International Civil Aviation Organization, a series of meetings were scheduled to arrive at a final draft of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation introduced on September 23, 1971, at the conference in Montreal.¹⁰ It entered into force two years later and imposes rights and obligations on the 188 states that ratified the document.

The main purpose of the Montreal Convention was to provide regulations concerning sabotage committed on the ground, as well as unlawful interference with air navigation facilities and services as none of the earlier treaties covered those issues. In the first article the Convention lists acts regarded as offences once committed unlawfully and intentionally including: act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft, destruction of an aircraft in service or damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight, placement on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, as well as cause damage to it which renders it incapable of flight, or damage to it which is likely to endanger its safety in flight, destruction or damage of air navigation facilities or interference with their operation, if any such act is likely to endanger the safety of aircraft in flight, communication of false information thereby endangering the safety of an aircraft in flight (article 1 p. 1). Just as in the Hague Convention, each contracting state has to implement measures for the above listed offences to be punishable by severe penalties (article 3) and, just as in the Hague text, the term "severe penalties" is not defined. Further, the Convention clarifies which flights are under its force excluding of course military, customs and police services and narrowing its scope to cover only those air navigation facilities

8 C.C. Joyner, *International Extradition and Global Terrorism: Bringing International Criminals to Justice*, 25 *Loy. L.A. Int'l & Comp. L. Rev.* 493 (2003), p. 512.

9 Arguments brought among others by: R.I.R. Abeyratne: *Attempts to ensure peace and security in international aviation*, 24 *Transp. L.J.* 27 (1996), p. 53-54 and P. Dempsey, *Aviation*, op .cit, p. 668.

10 *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed in Montreal on September 23, 1971, ICAO Doc 8966.

in action, which are used in international air navigation (article 4). Solutions similar if not identical to those implemented by the Hague Convention are included in the 1973 document with regards to the jurisdictional powers of the contracting states and the extradition or prosecution rules. As noted by several observers, including R.I.R. Abeyratne, and pointed as the weakness of the Montreal system, prosecution is not mandatory when proper analysis of the provisions are applied as it does not mandate the actual prosecution of the offender but merely the submission of the case to the competent domestic prosecuting authorities.¹¹

In 1988, a protocol (the so-called Montreal Airports Protocol¹²) to the Montreal Convention was signed to encompass terrorist acts at airports serving international civil aviation. There are 171 parties to the Protocol who agreed to add Article 1 bis to the Montreal Convention stating that “Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon: 1. Performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or 2. destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport.”

Aviation security in other ICAO activities and actions

The legal instruments described above constituted the basis for aviation safety worldwide. For many years no binding additional or supplementary documents were signed or negotiated with regards to safety and/or security issues.¹³ It only proves that despite the fact that problems with air terrorism continue to develop, the possibility of compromises and common ideas for counter measures included in binding agreements is difficult to achieve among the international civil aviation players.¹⁴

It has to be underlined, however, that security of civil aviation has been on the ICA agenda for some time and actions on different levels were undertaken to

11 R.I.R. Abeyratne: *Attempts...*, op. cit., 62.

12 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971, ICAO Doc 9518.

13 In fact the only convention which came in force since then was the 2001 Convention on International Interests in Mobile Equipment together with the Protocol on Mobile Equipment signed at Cape Town on 16 November, 2001, ICAO Doc 9793 and 9794.

14 The Hague solutions of 1970 were further backed up by members of the G7 expressed in the 1978 Bonn Declaration. The idea was to impose effective sanctions on states which would fail to obey the Hague rules regarding prosecution or extradition of the alleged offenders. 3 years later, the Bonn Declaration was followed by the Montebello Summit Statement on Terrorism signed after tragic events of 2 March 1981 hijacking of the Pakistani plane when 141 passengers were kept for 13 days before dramatic negotiations were finished. M. Milde, *International air law and ICAO, Essential air and space law*, vol 4, Eleven International Publishing 2008, p. 254-255.

guarantee safe air travels around the world. The 1944 Chicago Convention is the basic document for the regulation of international civil aviation and it was amended to add basic provisions for strengthening aviation safety and security. There are a total of 18 Annexes to the Convention. The role of the Annexes is to introduce standards and recommended practices¹⁵ (SARPs) in particular fields including personnel licensing, rules of the air, metrological service, aeronautical charts, telecommunications and information services, units of measurement, operation, nationality and airworthiness of aircraft, air traffic services, search and rescue, aircraft accidents, aerodromes, environmental protection. SARPS, as based on the provisions of the Chicago Convention, do not have the same legally binding force as the articles of the Convention themselves (no ratification is required and they constitute a form of “technical international legislation” – as labelled by several air law specialists).¹⁶ On the other hand, any departures from international standards (not recommended practices) are to be notified immediately to ICAO. Article 38, provides that states “shall give immediate notification” which is considered as a legally binding obligation.

Annex 17, is titled “Security: Safeguarding International Civil Aviation Against Acts of Unlawful Interference”. It had been added to the Convention in 1974 and since then amended 12 times and supplemented by the ICAO Aviation Security Manual. The Annex requires each contracting state to establish its own aviation security program and provides for basic instruments to be used in such program.

It should be emphasized that ICAO also implemented a special auditing program – Universal Security Audit Program (USAP) as a part of ICAO’s Aviation Security Plan of Action. USAP provides for mandatory and regular audits of all ICAO Contracting States. The audit is to assess the implementation of the state’s security programs. The first round of the USAP began in 2000, the second one in 2008 and is to be concluded in 2013.¹⁷

15 Distinction between an international standard and recommended practice is given in the ICAO Assembly Resolution A 35-14 on Consolidated Statement of Continuing ICAO Policies and Associated Practices Relating Specifically to Air Navigation, Appendix A, ICAO Doc 9849. Both terms mean „any specification for physical characteristics, configuration, material, performance, personnel or procedure” provided for uniform application. In case of international standards the uniform application is recognized as „necessary for” and in case of recommended practices as „desirable in the interest of” the safety or regularity of international air navigation.

16 Articles 37 and 38 of the Chicago Convention. See also: L. Weber, International Civil Aviation Organization. An Introduction, Kluwer Law International 2007, p. 34.

17 See: Universal Security Audit Program (USAP) website: <http://www2.icao.int/en/AVSEC/USAP/default.aspx>

Post September 11 declarations and statements of ICAO and its member states

All of the above-described ideas for the safety of aviation have been adopted under the auspices of ICAO but in fact, it was the tragic and shocking events of September 11, 2001, that actually refocused the attention of the world community on the problem of aerial terrorism¹⁸. During the 33rd Assembly Session, a resolution including a special Declaration on the misuse of civil aircraft as weapons of destruction and other terrorist acts involving civil aviation was adopted as a direct response to the September 11 attacks (the session was held from 25 September to 5 October 2001). The Resolution states that events of September 11 force states to recognize a new threat to civil aviation, which require new concerted efforts and policies of cooperation. It also called upon states to adhere to the ICAO SARPs regarding aviation security and directed the ICAO Council to convene, an international, high-level, ministerial conference on aviation security with the objectives of preventing, combating and eradicating acts of terrorism involving civil aviation.¹⁹

Almost a decade later, another Declaration was adopted during the 37th ICAO Assembly session in 2010, inspired by attempted sabotage of Northwest Airlines Flight 253 on 25 December 2009²⁰. Once again, the ICAO Assembly urged the member states to strengthen and promote SARPs, with particular focus on Annex 17, to strengthen security screening procedures, to develop and implement enhanced security measures, etc.

A Series of declarations and statements of the President of the ICAO Council²¹ were only to manifest some of the attitudes and to protest against the spreading force of aerial terrorism. There were several meetings and seminars devoted to the development of technological mechanisms necessary to improve security at airports, which led to actual improvements and changes in the airport procedures.²² Member states of ICAO were open to adopt any kind of cooperation strengthening document or to confirm the need to act further. The ICAO's SARPs were amended in accordance with the newest developments. On the other hand, discussions on the possibility to negotiate and adopt a new binding convention or at least – to amend

18 P. Dempsey: Aviation security..., op. cit., p. 649.

19 A33-1 Declaration on misuse of civil aircraft as weapons of destruction and other terrorist acts involving civil aviation, ICAO Doc 9790, Part VII, p. VII-1 and next. See also: R.I.R. Abeyratne, Aviation Security Law, Springer 2010, p. 16-17.

20 Declaration on Aviation Security, ICAO Doc. 9958, Appendix H, p. VII – 14 – 15.

21 For example: Address by the President of the Council of the International Civil Aviation Organization (ICAO), Mr. Roberto Kobeh González, to the Bucharest Air Law Conference on “New Challenges and Threats in Civil Aviation”, Bucharest, Romania, May 3, 2010, available on the ICAO website at: http://www.icao.int/icao/en/pres/kobeh/20100503_PRES_Bucharest_Romania_Air_Law_Conference_en.pdf

22 Those events are still organized, for example a Regional Seminar on Machine Readable Travel Documents (MRTDs), Biometrics and Security Standards held in Mozambique on 24-26 November 2010. For details see ICAO website: <http://www.icao.int/MRTDseminar/2010africa/>

the existing agreements were difficult, if not impossible, for a number of years. In 2005, ICAO convened an ad hoc Secretariat Study Group to identify deficiencies in the existing unlawful interference treaties²³ (including the Tokyo, Hague and Montreal Conventions of the 1960s and 1970s) but then for another 2 years ICAO member states were not able to take any step further. It has to be emphasized that some of the ICAO works and decisions on security standards were strongly opposed by many human rights and civil liberties organizations.²⁴ It has been quite a challenge to find a compromise among the 190 member states of ICAO to agree on new legal provisions or to find a common view for the amendments of the existing, yet outdated laws.

Amending the old and drafting the new – ICAO’s legal reaction to aerial terrorism in the world

Between 2008 and 2010 a total of four international conventions regulating civil aviation were either amended or drafted. Two of them regarded issues of civil liability for damages and the other two were dedicated to the changes in the criminal air conventions from 1970 (Montreal) and 1971 (Hague).

The first set of changes was discussed during a meeting in Montreal in 2008. The idea was to draft new conventions dealing with compensations for damage caused by acts of unlawful interference involving aircraft and for damage caused by aircraft to the third parties. They would replace the Rome Convention of 1952²⁵ that proved to be ineffective. The meeting of the Legal Committee in 2008 was followed by the Legal Seminar organized by the regional ICAO office in Paris a year later and finally – by a diplomatic conference of ICAO held in Montreal in 2009 with 81 participants (members of the ICAO) and representatives of 16 other organizations. The conference was the last step in negotiations and debates over drafts of two conventions: Unlawful Interference Compensation Convention (UIC)²⁶ and General Risks Convention (GRC)²⁷. The discussions were not easy and even the definitions of basic terms (such as “event”, “in flight” or “operator”) caused problems. In the

23 During the meeting it was decided that only the Hague and Montreal treaties can be amended or changed. More see: M. Jennison: *The Beijing Treaties of 2010: Building a modern great wall against aviation-related terrorism*, 23 No. 3 *Air&Space Law*, 9, p. 10.

24 On March 30, 2004 An Open Letter to the ICAO: A second report on “Towards an International Infrastructure for Surveillance of Movement” was published expressing concerns of over 20 organizations from different regions of the world regarding ICAO the screening procedures as well as the biometric measures. The Open Letter is available on the website of the Electronic Frontier Foundation at: <https://www EFF.org/files/filenode/rfid/icaoletter.pdf>

25 Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface signed at Rome on 7 October, 1952, ICAO Doc 7364.

26 Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft done at Montreal on 2 May 2009, ICAO Doc 9920.

27 Convention on Compensation for Damage Caused by Aircraft to Third Parties done at Montreal on 2 May, 2009, ICAO Doc 9919.

end, on the last day of the conference, only a few states signed the conventions.²⁸ There are presently 8 signatories to the UIC and 10 signatories to the GRC (in both cases – mostly African states), and 35 ratifications are needed for those to come in force.²⁹

The reviews of the Montreal and Hague conventions from the 1970s were sparked by the September 11 events, yet it was not until when from a series of ICAO meetings it was concluded that the existing international regime did not cover the full range of elements regarding situations such as the attacks on the WTC and Pentagon. What was left outside the scope of the conventions, as noted by D. van der Toorn, was for example the use of aircraft to cause death and destruction, use of weapons of mass destruction onboard, from or against aircraft and other ancillary offences, such as organizing or conspiring to commit such offences.³⁰

The Legal Committee of ICAO met in September 2009 to work on the modernization of the Montreal and Hague Conventions and that is when the final texts were prepared. During the meeting it was not decided whether the existing conventions will be amended in forms of protocols or whether new treaties will be adopted replacing the 1970s laws. The need to speed up works on those issues was clearly stated during the meeting emphasizing that it has been 8 years since September 11 happened and the Committee decided to work on two separate documents creating a fully new and complex structure for legal acts. During the meeting several specific legal problems were discussed including the kinds of offences to be covered by new provisions, with special emphasis on so called “transport offences”. Some definitions were also not easy to agree to (especially controversial were those regarding biological weapons and dangerous materials), some new ideas (such as additional new jurisdiction for a state whose citizen committed the offence) were not widely supported. Some of the most crucial problems were left to be solved at the final diplomatic conference.³¹

The final diplomatic conference – International Conference on Air Law – was held in Beijing between August 30 and September 10 of 2010³². 400 participants from over 80 states and international organizations attended and worked on many compromises. The first obstacle – that is the form of new provisions (new

28 M. Polkowska: *Prace (ICAO) nad modernizacją konwencji*, „Jurysta” nr 3, 2000, p. 48-51.

29 As the present article focuses on the criminal issues of the aerial terrorism, the civil liability conventions will not be discussed further. All the 2009 diplomatic conference documents can be found on the ICAO website at: <http://www.icao.int/DCCD2009/doc.htm>. A full analysis of both of the documents is provided, [in:] R.I.R. Abeyratne: *Liability for third party damage caused by aircraft – some recent developments and issues*, *J Transp Secur* 2 (2009), p. 91-105.

30 D. van der Toorn: *September 11 Inspired Aviation Counter-terrorism Convention and Protocol Adopted*, *Insights of American Society of International Law*, vol. 15, issue 3, January 26, 2010, p. 1.

31 M. Polkowska: *Prace (ICAO)...*, op. cit., p. 51-53.

32 All the conference documents are available on the ICAO website at: <http://www.icao.int/DCAS2010/>. A full report on the changes provided by the Beijing instruments is provided, [in:] *Widening the Net*, *ICAO Journal*, vo. 6, n. 1, 2011 p. 6-14.

conventions or amendment of the old ones) – was overcome during the second week of the conference as the so-called “consensus package”: a separate document would be adopted replacing the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and an amending protocol would be added to the Hague Convention for the Suppression of Unlawful Seizure of Aircraft.

As an outcome of the conference in Beijing then, ICAO presented the world with a new Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation³³ called the Beijing Convention with a total of 25 articles. Article 1 of the Convention introduced a new, extended list of actions regarded as offences if performed unlawfully or intentionally. The new law lists for example, use of “an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or environment” (art. 1 p. 1 l. (f) of the Convention) as a direct reflection of the September 11 actions. It also considers as an offence a release or discharge from as well as use against or on board “an aircraft in service any BCN³⁴ weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment” (art. 1 p. 1 l. (g) – (h) of the Convention)³⁵. The “transportation offences” were eventually included in the list with a provision that the transportation of some dangerous items and materials (used in nuclear explosive activity) will not be punishable as long as they are transported in accordance with applicable multilateral non-proliferation treaty laws (art. 1 p. 1 l. (i) (1)–(4) of the Convention). It is also illegal to communicate false information thereby endangering the safety of an aircraft in flight. The new Convention does not stop the list on the actual action (use, performance, transportation, destruction, damage). It also states that a credible threat to commit such offence is an offence itself, as well as assistance to an offender to evade investigation, prosecution or punishment and that conspiracy to commit an offence, or its equivalent, is also punishable under the new regime (art. 1 p. 3–4–5 of the Convention). The list included in art. 1 is an answer and an update to the most challenging threats that could be used in aerial terrorism. Article 5 excludes application of the Convention to the aircraft used in military, customs or police services (it was one of the long debated problems throughout the diplomatic conference). The controversial issue of an additional, new jurisdiction for a state whose citizen committed the offence was addressed in art. 8. As the majority refused to support the opponents of the new possibility, the jurisdiction of such state was left in the provision.

33 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, done at Beijing on 10 September 2010, ICAO Doc. 9960

34 Biological, Chemical, Nuclear weapons, precisely defined in article 2 of the Convention – footnote from the Authors.

35 The list of all the applicable treaties is provided in article 7 of ten Beijing Convention.

Articles 9 through 11 establish procedure which states take when a person accused of committing the listed offences is present in the territory of the state and taken into custody. For the first time, it guarantees the offender fair treatment during any procedures against him (article 11 of the Convention). Extradition principles are included in articles 13 through 14 introducing some new solutions as well. For example, as provided in article 13 “none of the offences set forth in Article 1 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. By art. 14 the offender is protected from discrimination based on race, religion, nationality, ethnic origin, political opinion or gender. In other articles the Convention provides for cooperation and support of states – parties to the Convention to prevent the offences and when they happen – to assist each other. The Convention requires any of the offence to be reported to the ICAO Council.

During the same conference in Beijing, another major change was discussed and adopted. The Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft³⁶ (the Beijing Protocol) introduces changes to the existing Hague regime. As a rule, those changes are equivalent to those provided by the new Beijing Convention.

Importantly, the Beijing Protocol replaces article 1 of the Hague Convention and it now states: “Any person commits an offence if that person unlawfully and intentionally seizes or exercises control of an aircraft in service by force or threat thereof, or by coercion, or by any other form of intimidation, or by any technological means” (art. 1 p. 1 of the amended Hague Convention). A threat to commit the mentioned offence is also regarded as an offence along with any attempt, participation as an accomplice, assistance, organization or directing others to commit such offence (article 1 p. 2 and 3 of the amended Hague Convention). Again, each state party is obliged to make the discussed offences punishable by severe penalties (art. 2 of the amended Hague Convention). Interestingly, the Protocol allows the state parties, in accordance with its national legal principles, to take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence and allows such liability to be criminal, civil or administrative (art. 2 bis addend to the Hague Convention).

Issues of jurisdiction, including the new type of jurisdiction when a national of a state commits the offence, are handled similarly to the solutions in the new Beijing Convention. The same solutions are accepted with regards to procedures against the

36 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft done at Beijing on 10 September 2010, ICAO Doc 9959.

offender in custody, principles of extradition and finally – party states’ cooperation and mutual assistance.

Final remarks

The Beijing Convention received 18 signatories on the day it was adopted and the Protocol was signed on that day by 19 states (including the US, United Kingdom and China). Presently (as of October 2011), 21 states signed the Convention and 23 signed the Protocol. Entry into force of both documents must be preceded by 22 ratification, acceptance, approval or accession procedures of the ICAO member states. The Montreal Convention of 1971 along with its Protocol of 1988, are still in force and will be in force until all of their signatories accept the new Beijing Convention of 2010. Even though only 22 ratifications are required for the binding force of the new laws, it has been emphasized that: “not until they both achieve 180 or more ratifications will we have a truly universal, modern legal regime to address the attacks on civil aviation that will continue to be attempted”³⁷.

Certainly, use of both instruments would be helpful in the world’s most dynamic fight against terrorism. It should be regarded as an accomplishment, although the undeniable technical development should not be forgotten. Technology makes air travels safer but it also provides new possibilities for those who want to use aircrafts for dangerous reasons and missions. The ICAO member states have to stay on constant alert as new possibilities and threats are just around the corner or rather, just around – in cyberspace – the so-called hydra-headed monster that can effect air transport in any number of ways.³⁸

37 M. Jennison: *The Beijing Treaties...*, op. cit., p. 12.

38 R.I.R. Abeyratne: *Cyberterrorism: the next great threat to aviation*, 24 No.1 Air & Space Law. 4, p. 5.

NOWE PRAWNE INSTRUMENTY ZWALCZANIA TERRORYZMU MIĘDZYNARODOWEJ ORGANIZACJI LOTNICTWA CYWILNEGO

Celem artykułu jest przedstawienie roli Międzynarodowej Organizacji Lotnictwa Cywilnego w przeciwdziałaniu terroryzmowi lotniczemu. Analizie poddano zapisy Konwencji Tokijskiej będącej pierwszą międzynarodową inicjatywą mającą na celu zapobieganie uprowadzeniom samolotów. Zapisy Konwencji Tokijskiej rozszerzyła Konwencja Haska z 1970 r., ustanawiając m.in. szerszy zakres jurysdykcji oraz zasadę aut dedere aut punie. Konwencje zostały uzupełnione trzecią konwencją podpisaną w Montrealu, która po raz pierwszy wprowadziła regulacje odnoszące się do aktów sabotażu z ziemi czy zakłócenia funkcjonowania urządzeń nawigacyjnych. Pakiet trzech konwencji stanowi podstawę regulacji dotyczących bezpieczeństwa lotnictwa. Wydarzenia z 11 września 2001 r. uaktywniły poczynania Międzynarodowej Organizacji Lotnictwa Cywilnego w zakresie przeciwdziałania terroryzmowi, ale nie przyniosły konkretnych efektów. Dopiero w latach 2008-2010 przygotowano cztery nowe konwencje: dwie odnoszące się do zasad cywilnej odpowiedzialności za szkody oraz dwie wprowadzające zmiany do karnoprawnych konwencji z Montrealu i Hagi.

Key words:

International Civil Aviation Organization, civil aviation, security, aerial terrorism, aircraft accidents

TERRORISM IN RUSSIA – MECHANISMS OF DEVELOPMENT AND A STRATEGY TO COUNTER IT

The evolution of Russian terrorism

Terrorism has been present as a phenomenon in Russia's social and political life for a long time. This is confirmed by the fact that as early as the 16th century, there were legal provisions in Russia addressing this problem. The adoption of such provisions had certainly been related to the frequent political killings of dignitaries and tsarist officials. In the centuries that followed, these events resulted in the tsars and the magnates terrorizing the subjects. In the 19th century, Russian terrorism was thought to have certain distinct features: it was nationalistic, revolutionary, and extremely reactionary¹

Contemporary terrorism constitutes a threat to the security of the whole international community. This complex phenomenon has different characteristics in different countries, depending on the country's history, size, variety of domestic problems, the capacities of the state to counter and combat terrorism and the difficulties it has in doing so. Russia's unique characteristics are particularly salient due to the country's complex and often tragic history that shaped the specific relations between the society and the authorities that lead to numerous serious conflicts.

The subject of this paper is terrorism in Russia. In order to understand its essence, one must define the term "terrorism" as it pertains to Russia, its evolution and genesis, the reasons for its growth, and its goals and types. This will make it possible to discover the tendencies of this phenomenon. Then, one must discuss the scope of the specific actions aimed at preventing and fighting terrorism. This approach to studying Russian terrorism will make it possible to understand the growth mechanisms and to determine the strategy of countering terrorism in Russia.

¹ В.В. Лунеев, Ю.М. Антонян, Терроризм [в:] В.Н. Кудрявцев, В.Е. эминов (ред.), Криминология, Москва 2005, с. 335.

Thus, one can say that before the October Revolution, terrorism was a manifestation of the objection of certain persons and organizations to tsarist Russia's political regime and the methods of governance, as well as an expression of religious and national conflicts which were oftentimes related to the division of the territory, the zones of influence, and the political interests.² Examples of acts of terrorism in that period include the attempt to kill Alexander II and the assassination of the prime minister of the government, P.A. Stolypin, in 1911. In the following years, on the one hand, the concessions of the tsar and his government in response to the terrorist acts and, on the other hand, ruthless punishment of perpetrators in public view made this method of exerting pressure on the authorities quite popular. The impact of terrorism was heavy not only among the Social-Revolutionary party members and anarchists, but also among social democrats. Remarkably, W. Lenin stated that he "never renounced terror." In the fall of 1905, Lenin forced the Bolshevik party to switch to mass terror, which he called guerilla warfare. The seed of revolutionary terror fell on fertile soil and it became a mass phenomenon. The tsarist regime responded with repressions in the form of death penalty, deprivation of liberty, exile to penal colonies, ban on inhabiting certain locations, ban on holding specific offices or performing specific activities, expelling the perpetrators from universities, banning them from entering the country or leaving it.³

After 1917, Russia was a proving ground for unique forms of political and ideological terrorism: revolutionary (red) and counter-revolutionary (white) terrorism during the revolution and the ensuing civil war; domestic state terrorism in the period of Stalin's political repressions; state international terrorism in the period of rule of Soviet authorities. These forms were not criminalized during their occurrence and were not considered by the society and the state as political terrorism until the collapse of the socialist system.⁴

State terrorism in the Soviet period, especially during the Stalin era, was monstrous. In order to conduct it, the Soviet state established a unique system of administration of justice aimed at the destruction of political opponents. Millions of people died or suffered repressions for political reasons. According to W.W. Luneev, approximately 40 million people in that period were victims of repressions.⁵ The society was terrorized with the hideous, albeit effective, methods of the totalitarian system aimed to crush people to the extent that they were unable to oppose the

2 In the years 1902-1907, the SR's (socialists-revolutionaries) and other terrorists committed 5,500 acts of terror in Russia, to include assassinations of ministers, members of the State Duma, military police officers, police officers, and public prosecutors. See: O.M. Хлобустов, Терроризм в современной России, www.nasledie.ru (access on 14 March 2006).

3 Д.И. Дзюба, Некоторые аспекты террористического опыта борьбы с терроризмом в России [в:] А.И. Долгова (ред.), Организованный терроризм и организованная преступность, Москва 2002, с. 80-83.

4 В.В. Лунеев, Ю.М. Антонян, *ibid.*, 335.

5 В.В. Лунеев, Преступность XX века. Мировые, региональные и российские тенденции, Москва 1997, с. 187-189.

cruel government. Thus, Soviet citizens hardly ever employed terrorist attacks. Nevertheless, in the 1970's and 1980's the Soviet government reported several such acts: 1973 – an explosion of an airliner flying from Moscow to Chita; 1978 – a series of explosions in the Moscow subway; 1982 – hijack of an airliner flying to Turkey; 1983 – hijack of an airliner from Tbilisi airport and an attempt on the life of the 1st Secretary of the Communist Party and other leaders.⁶

In the period of Perestroika (the second half of the 1980's), and the ensuing period of social, political, and economic transformation, terrorist activities only intensified. They actually occurred on a mass scale, especially since the early 1990's, due to the multiple political, separatist, nationalist, and religious events that took place both in Russia and the neighboring post-soviet states, such as Azerbaijan, Armenia, Georgia, Tajikistan, and Uzbekistan. These events inevitably influenced the situation in Russia. The terrorists were successful in conducting their attacks thanks to the support they frequently received from other countries. Consequently, domestic terrorism in Russia became intertwined with international terrorism.⁷

One must remember the complex domestic situation in the Soviet Union in the fall of 1991 when the legally-elected Supreme Council of the Republic of Chechnya was disbanded. This act signified the taking away of the power by the Chechen National Congress from an elected organ as a result of mass riots and violent actions. On 27 October 1991, an election was held in Chechnya for national government bodies and for the office of the President of the Republic. The will to become independent and separate from Russia led in the following years to exacerbation of the situation and even to warfare. Therefore, with time, terrorist-type groups, which operated both in Russia and outside of its borders, became more and more active. The Russian authorities began to treat members of such groups as terrorists and fight them intensively (as they still do).⁸ The terrorist attacks that ensued in response to the actions by the Russian government (in particular the Russian Army) involved hostage taking (Budionovsk – 1995, Pervomaiskoye – 1996) as well as more violent and better organized attacks (the attack on the Dubrovka theater in Moscow in 2002 and on the Beslan school in 2004).

Nonetheless, Russians themselves are not sure what to think about the events in Chechnya. For instance, the legal acts of the State Duma and the Council of the Federation use the following terms: mass riots, illicit actions involving the use of violence, illicit armed groups (in the criminological sense related to combating crime), armed conflict, war in the territory of the Republic of Chechnya, and

6 В.В. Лунеев, Ю.М. Антонян, *ibid.*, 336.

7 *Ibid.*, 336.; Д.И. Дзюба, *ibid.*, 80.

8 A timeline of events in Chechnya in the period of the last dozen or so years, see: А.И. Долгова, О.А. Евланова, Некоторые правовые проблемы оценок событий в Чеченской Республике [в:] А.И. Долгова (ред.), *Организованный терроризм...*, с. 91-99.

prisoners of war (in the military sense). While the events that took place in the Republic of Chechnya in the years 1991-1994 were perceived as criminal acts and countering of operations of illegal armed groups, those between December 1994 and 1998 are considered as warfare.⁹ Official Russian documents did not use terms such as fight for national liberation or fight for the independence of the Chechen nation. With time, the events in Chechnya were more and more often described as terrorism and the war was defined as counterterrorist operations.¹⁰

The definition of terrorism in Russia

As the above discussion indicates, terrorism in Russia has a centuries-long tradition. Over the years, the meaning and the scope of the term changed. An analysis of the history of anti-terrorist laws in Russia shows that the term “terrorism” is defined in three acts: the penal code of 1996¹¹ which, in art. 205, defines terrorism as: the perpetration of explosion, fire, or other acts causing the risk of death of people, significant material damage, or occurrence of socially dangerous consequences, if such acts are effected with the aim of breaching public security, intimidating the society, or influencing decisions of authorities, as well as a threat to perpetrate such acts with such aims. The act of 27 July 2006¹² changes the term used to describe such crimes from “terrorism” to “acts of terror.” The legislator, in art. 205 of the Penal Code, defines the term as: the perpetration of an explosion, fire, or other acts that intimidate people and cause a risk of human death, significant material damage or occurrence of other serious consequences, with the aim of influencing decisions of authorities or international organizations, as well as a threat to perpetrate such acts with such aims. As we can see, the definitions of terrorism and of terrorist acts (as crimes) are nearly identical; the Act of 1998 on combating terrorism¹³ which, in art. 3, defines terrorism as: violence or threat of violence towards natural persons or organizations and destruction or threat of destruction of property and other material objects that causes a risk of human death, significant material damage, or occurrence of other socially dangerous consequences, perpetrated with the aim of breaching public security, intimidating people, influencing state authorities to make decisions that are advantageous to the terrorists, or of achieving their illicit financial and (or)

9 А.И. Долгова, Конкретизация понятия терроризма в криминологических и правовых целях, Уголовное право 2003, № 2, с. 100.

10 In April 2009, the Russian government decided to stop the counter-terrorist operation in Chechnya.

11 Уголовный кодекс Российской Федерации с 13. 06. 1996, Российская газета 1996, № 113-115.

12 12 Федеральный закон Российской Федерации от 27.07.2006 № 153-ФЗ «О внесении изменений в отдельные законодательные акты Российской Федерации в связи с принятием федерального закона «О ратификации Конвенции Совета Европы о предупреждении терроризма» и федерального закона «О противодействии терроризму», Российская газета 2006, № 4131

13 Федеральный закон от 25.07.1998, № 130-ФЗ «О борьбе с терроризмом», Собрание законодательства РФ 1998, № 31, Ст. 3808.

other interests; an attempt to kill a state or social activist perpetrated with the aim to stop his or her state or other political activity or as a retribution for such an activity; an attack against a representative of a foreign state or an employee of an international organization who is provided international protection and against official premises or means of transportation of persons covered by international protection, if such deeds are perpetrated with the aim of provoking war or complicating international relations. This act is no longer in force; the act of 2006 on countering terrorism¹⁴ which, in art. 3 (1) defines terrorism as: an ideology and practice of influencing the decision making of state authorities, local authorities, or international organizations, which involves intimidating the society and (or) other forms of illicit acts involving the use of violence. The act includes a definition of a terrorist act which is analogous to that provided in art. 205 of the Penal Code.

As the above definitions of terrorism in legal acts indicate, only the act of 2006 defines the term. A.S. Kulikov and J.S. Romashev find this definition of terrorism to be correct. They believe that the legislator rightly regarded terrorism not only as the totality of crimes of terrorist nature, but also as a dangerous social phenomenon, with its key elements being a certain ideology and practice, founded on the use of violence, intimidation, and efforts to exert illicit influence on the decisions made by authorities so as to achieve certain advantages.¹⁵ J.G. Baybakov and W.D. Ivanov¹⁶, on the other hand, point to certain shortcomings of this definition. They believe that it consists in identifying the ideology of violence as an obligatory characteristic of terrorism. They support their claim by saying that violent acts can also be perpetrated without such ideological motives, e.g. as a revenge or to liberate leaders of criminal groups detained by law enforcement agencies.¹⁷

Now, it is necessary to define the scope of a criminological definition of terrorism. To do so, an analysis has been performed of definitions of terrorism formulated by Russian criminologists. The analysis has led to the identification of characteristic features of the phenomenon:

- acts involving violence (physical or mental) or a threat to use it,¹⁸
- demonstration of influence on state authorities by striving to achieve goals defined by terrorists,¹⁹

14 Федеральный закон с 06.03.2006, № 35 – ФЗ «О противодействии терроризму», Собрание законодательства РФ 2006, № 11, Ст. 1146.

15 А.С. Куликов, Ю.С. Ромашев, О новом российском антитеррористическом законе, Государство и право 2007, № 7, с. 40-49.; Ю.А. Дмитриев, О противодействии терроризма, Государство и право 2006, № 10, с. 38.

16 Ю.Г. Байбаков, В.Д. Иванов, Комментарий федерального закона «О противодействии терроризму», Ростов на Дону 2006, с. 19-20.

17 Ibid., 20.

18 А.А. Матвеева, Терроризм [в:] Н.Ф. Кузнецова (ред.), Криминология, Москва 2006, с. 127.; А.И. Долгова (ред.), Преступность в России начала XXI века и реагирование на неё, Москва 2004, с. 65.; Я.И. Гилинский (ред.), Девиантность, преступность, социальный контроль. Избранные статьи, Санкт-Петербург 2004, с. 301.

19 В.В. Лунеев, терроризм [в:] Н.Ф. Кузнецова, В.В. Лунеев (ред.), Криминология, Москва 2004, с. 433.

- intimidation and suppression of both political opponents and competitors and the society,²⁰
- performance of criminal plans,²¹
- socially dangerous acts,²²
- criminal acts.²³

As the above characteristics indicate, terrorism, in the criminological sense, can be defined as acts involving the use of violence (physical or mental) or the threat to use it, aimed at intimidating authorities and the society so as to achieve certain goals (e.g. political, economic, religious, or ideological). This definition encompasses both the goals and the methods of such crimes, while indicating the danger posed by such acts to the society.

An analysis of the definitions, both from the legal and from the criminological point of view, shows that they have the following common elements that constitute an essence of terrorism: the use of violence, the intimidation of the society, and the illicit influence on the decision of authorities.

The causes of terrorism in Russia

As the history of Russian terrorism shows, the causes of this phenomenon are related to the complex political, social, and economic situation of the country over the centuries. The causes have been analyzed by both criminologists²⁴ and analysts²⁵ of the problem who have divided them into political, economic, and social causes and emphasized their internal and external character.

Because terrorism most often springs from political motives, it is the political causes that will be discussed first. The political causes of terrorism in Russia include the difficult and complex situation of the Russian state, especially after the collapse of the Soviet Union. It was at that time that new political movements, parties, fronts, and organizations with different political views emerged and tried to control the government.²⁶ This has led to political pluralism, a new phenomenon in Russia. The situation resulted in more intense fighting between the numerous parties representing

20 Ibid., 433.

21 В.Д. Малков, (ред.), Криминология, Москва 2004, с. 298.; А.И. Долгова, Терроризм и организованная преступность [в:] А.И. Долгова (ред.), Организованный терроризм..., с. 3.

22 В.Н. Кудрявцев, преступность и нравы переходного общества, Москва 2002, с. 225.; А.И. Долгова, Конкретизация понятия..., с. 101.

23 А.В. Гыскэ, Современная российская преступность и проблемы безопасности общества. Политический анализ, Москва 2000, с. 223.

24 e.g. В.В. Лунеев, А.И. Долгова, А.А. Матвеева.

25 e.g. А.В. Гыскэ.

26 А.В. Гыскэ, *ibid.*, 225.

the interests of various social groups. This has led to the worsening of relations between the different nations within the Russian Federation, the strengthening of religious hate and animosity²⁷, and was conducive to the occurrence of ethnic conflicts.²⁸ National minorities began to strive to become sovereign and enjoy the benefits of their own culture, tradition, and government.²⁹ Criminologists point to the importance of the “Chechen factor” and the “Islamic factor” and of the related activities of foreign terrorist organizations. They emphasize the tendency of Islamic activists to propagate their religion and to increase its influence.³⁰ One of the political causes of the growth of terrorism in Russia is also the war in Chechnya (especially in the years 1995-1996) where terrorist acts became a part of regular warfare.³¹

The economic and social situation in Russia has also had a significant impact on the growth of terrorism in Russia. The political transformation of the early 1990’s has led to a profound economic crisis and to sharp inequalities of wealth in the society.³² The misguided policies of the government have led to a drop in the social protection of the society³³. This was reinforced by the process of globalization of the social relations which has led to the creation of an ideology of the poor fighting against the rich (the state, the government, and the individuals).³⁴ Thus, social antagonisms arose and parts of the society became hostile to one another. The society took efforts to protect their interests by supporting separatist tendencies.³⁵ Some social groups were ready to use violence (to include terrorism) to solve their problems and to satisfy their needs.³⁶ The lack of mechanisms of social control greatly facilitated such actions.

One can say that the background of the social and economic causes of terrorism in Russia is mainly the existence of multiple unsolved social and economic problems. Such problems easily transformed into conflicts between the different nations of the Federation. The society had the sense that the weak government was building barriers to separate itself from the people and engaging in ineffective transformation³⁷ and that its authority and trust was not strengthened by the mass media which propagated violence as a means of solving issues.³⁸ The media often referred to Russia’s history and tradition where violence and terror used to achieve political objectives were

27 В.Д. Малков (ред.), *ibid.*, 304.

28 А.В. Гыскэ, *ibid.*, 236.

29 А.А. Матвеева, *ibid.*, 131.

30 В.В. Лунеев, *Терроризм [в:] Н.Ф. Кузнецова, В.В. Лунеев (ред.), ibid.*, 454.; А.И. Долгова (ред.), *Криминология*, Москва 2007, с. 616

31 В.В. Лунеев, Ю.М. Антонян, *ibid.*, 339.

32 А.В. Гыскэ, *ibid.*, 225.; В.Д. Малков (ред.), *ibid.*, 304.

33 В.Д. Малков (ред.), *ibid.*, 305.

34 В.В. Лунеев, *Терроризм [в:] Н.Ф. Кузнецова, В.В. Лунеев (ред.), ibid.*, 459.

35 А.И. Долгова, *Преступность террористического...*, с. 617.; В.В. Лунеев, Ю.М. Антонян, *ibid.*, 340.

36 А.И. Долгова, *Преступность террористического...*, с. 614.

37 В.Д. Малков (ред.), *ibid.*, 304 and 306.

38 А.И. Долгова, *Преступность террористического...*, с. 618.

commonplace.³⁹ This complex situation was reinforced by the collapse of the system of spiritual and moral values as well as legal awareness. This was particularly important because, as Russian criminologists emphasize, support for terrorism in the Russian society is very salient.⁴⁰ This is not completely true because some Russians express their support not of terrorism but of the Chechen's struggle for national liberation.

It should also be highlighted, that Russia has a large pool of people who may potentially join terrorist groups. They include former soldiers, former special services operatives, and former combatants who are well-prepared for difficult tasks.⁴¹ It is them who often form and lead organizations that use weapons and explosives.⁴²

What supports the growth of terrorism in Russia is also, as some say, a complete lack of control over the market for weapons and explosives which are used for acts of terror and over the market for drugs which are largely sold illegally to finance illegal activities.⁴³

Other causes include the problem of poor effectiveness of the combat against terrorism in Russia, which is due to the shortcomings of the operation of law enforcement (low detection rate) and administration of justice (difficulties with proving guilt), and the inadequacy of the adopted programs, strategy, and laws.⁴⁴

The tendencies in terrorism in Russia

Over the years, terrorism in Russia has been transformed. New types and features emerged and the threats posed by terrorism changed and increased.

W.W. Luneev and J.M. Antonyan⁴⁵ distinguished the following types of terrorism present during the different periods of the Russian state:

- political terrorism – related to the fight for power and directed to intimidate political opponents. The activities of the SR's and the activists of "Narodnaya Volya" can be classified in this type;

39 Ibid., 305-306.; В.В. Лунеев, Ю.М. Антонян, *ibid.*, 340 and 344.

40 В.В. Лунеев, Ю.М. Антонян, *ibid.*, 341.

41 *Ibid.*, 342.

42 В.Д. Малков (ред.), *ibid.*, 305.

43 А.И. Долгова, *Преступность террористического...*, с. 618.

44 *Ibid.*, 618.; В.Д. Малков (ред.), *ibid.*, 306.; K. Laskowska, *Rozwój antyterrorystycznego ustawodawstwa w Federacji Rosyjskiej* [Development of anti-terrorist laws in the Russian Federation] [in:] K. Indecki, ed., *Przestępczość terrorystyczna. Ujęcie praktyczno-dogmatyczne* [Terrorist criminal activity. Practical-dogmatic approach], Poznań-Białystok-Łódź 2006, 104-118.

45 В.В. Лунеев, Ю.М. Антонян, *ibid.*, 332-333.

- state terrorism – aiming to fully subordinate the society to the government, to destroy and eliminate those who oppose the state and are hostile to it. This type of terrorism was present in the USSR;
- religious terrorism – aiming to recognize and elevate one religion, one church, and to weaken the influence of other religions. According to W.W. Luneev and J.M. Antonyan, this type of terrorism is currently present in Chechnya. However, one must say that qualifying the events in Chechnya as religious terrorism is probably wrong and proves the misunderstanding of the essence of the Chechnya conflict among Russians;
- nationalistic terrorism – aiming to degrade one nation and to deprive it of power and national dignity. According to W.W. Luneev and J.M. Antonyan, the current Chechen separatism is a manifestation of this type of terrorism.

They refer to the attack on the Dubrovka theater to emphasize that this separatism has nothing to do with patriotism;

- criminal terrorism – one that is closely related to illicit profits and power achieved through the destruction of competitors with violence and threats. It is manifested in the contemporary activities of organized criminal structures who use such methods;⁴⁶
- ecological terrorism – one that encompasses a wide range of activities: from actions by radical political “green” organizations through those by groups striving to take over nuclear power installation. Such terrorism is currently used, among others, by ecologists;⁴⁷
- cyber terrorism – one using the most advanced information technologies for terrorism-related purposes, especially to obstruct the operation or to damage the infrastructure of a state. This type of terrorism can nowadays pose a threat to the Russian state;
- nuclear terrorism – one consisting in illegal use of nuclear energy and radioactive materials to achieve terrorism-related goals.⁴⁸ This type of terrorism can nowadays be a threat to the Russian state.

Each of the above types of terrorism poses specific threats to the society and the state, which result from its objectives and the character and effects of the measures used. Russian criminologists believe that the key goals of contemporary terrorism

46 В. Замковой, М. Ильчиков, *Терроризм – глобальная проблема современности*, Москва 2006, с. 50; В.В. Лунеев, *Организованная преступность, организованный терроризм в условиях глобализации*, Социологические исследования 2002, № 5, с. 62 и др.; K. Laskowska, *Rosyjskojęzyczna przestępczość zorganizowana. Studium kryminologiczne [Russian-speaking organized crime. A criminological study]*, Białystok 2006, 205-214.

47 В. Морозов, В. Пушкарев, *Экологический терроризм, понятие, сущность, квалификация*, Уголовное право 2007, № 2, с. 122-124.

48 К.И. Косачев, *Ядерный терроризм и международно-правовые механизмы борьбы с ним*, Государство и право 2004, № 8, с. 85-94

in Russia are: to change the political regime and the policies of the state, to break the territorial integrity of the Russian state, to disrupt the national government, to force the government to make concessions, to provoke a war or an armed conflict, and to establish new (national, religious) standards in social relations.⁴⁹ These goals are achieved by using any of the various means and measures that are effective in triggering off fear and anxiety through the use of violence or its threat and taking advantage of the mass-media.⁵⁰ This leads to destabilization of the state, loss of health and life of people, exposure to radioactive and toxic materials, and financial losses.⁵¹ It may also lead to a large number of victims (dead or ill).

According to A.A. Matvieyeva⁵², contemporary terrorism in Russia is characterized by severity of acts of terror, uncompromising attitudes of terrorists, use of state-of-the-art technologies, global reach⁵³, increase in the number of terrorist acts, complex organization and extensive conspiracy of the activities, and difficulties with forecasting terrorist acts. An important feature of terrorism is also determined by its links to organized crime, which is a source of financing. This is important because terrorists need money to pay mercenaries who perpetrate acts of terror, to prepare and arm them, to provide transportation, to arrange terrorist bases and camps, and to recruit new persons.⁵⁴

Thus, as W.W. Luneev⁵⁵ rightly emphasizes, recent years were a period of growth with regards to the organization and the financial and material backing of terrorism and the scale of its consequences. W.W. Luneev substantiates his view by presenting the results of his analysis of over ten spectacular acts of terrorism that took place in the recent years. Some examples of such acts include:

- 14 April 1995 – attack on Budionovsk,
- 19 March 1999 – bombing in Vladikavkaz,
- 9 September 1999 and 13 September 1999 – bombing of residential houses in Moscow,
- 9 May 2002 – bombing in Kaspiysk,
- 23-26 October 2002 – attack on the Dubrovka theater,

49 В. Д. Малков (ред.), *ibid.*, 299

50 *Ibid.*, 300.

51 *Ibid.*, 301.

52 А.А. Матвеева, с. 130-131, 133-134.

53 In earlier times, terrorism was not directed at everyone, whereas nowadays it is intended to intimidate everyone. See: Р.Х. Макуев, *Терроризм в условиях глобализации, Государство и право* 2007, № 3, с. 44.

54 А.И. Долгова, *Преступность террористического...*, с. 612.; Е.А. Степанова, *Роль наркобизнеса в политэкономии конфликтов и терроризма*, Москва 2005, с. 258-259.; Ю.И. Авдеев, А.Я. Гуськов, *Проблемы организованности современного терроризма* [в:] А.И. Долгова (ред.), *Организованный терроризм...*, с. 31.

55 В.В. Лунеев, *Терроризм* [в:] Н.Ф. Кузнецова, В.В. Лунеев (ред.), *ibid.*, 451-452.

- 1 August 2003 – explosion of a truck with explosive materials in Mazdok (North Ossetia),
- 6 February 2004 – explosion in the Moscow subway,
- 31 August 2004 – explosion of a bomb in front of a Moscow subway station,
- 1-3 September 2004 – attack on the Beslan school.

All these events involved large numbers of casualties.

A unique tendency of contemporary terrorism is to cause as extensive damage as possible. Terrorists victimize people who are not involved in politics and have no influence on the key decisions of the state, which was evident in such attacks as those in Dubrovka and Beslan. The scale of terrorist attacks is larger and larger, which is due both to the links to organized crime (and its support with regards to financial backing, conspiracy, and organization of activity) and, as W.P. Zhuravliov emphasizes, to the higher intellectual and education level of the leaders.⁵⁶

As W.W. Luneev and J.M. Antonyan indicate, terrorists in Russia have not formed one consolidated group but many groups, especially Chechen ones. Interestingly, none of them claim responsibility for terrorist attacks that have been perpetrated. Thus, one can conclude that terrorism in Russia has not split from traditional organized crime, has not become legalized, and has not been transformed into a separate structure of political terrorism.⁵⁷

Countering terrorism in Russia

In an effort to develop a strategy to counter terrorism in Russia, one must point to the fact that the Russian legislator has defined the term of countering terrorism in art. 3 (4) of the act on countering terrorism. According to the definition, it is an activity of organs of the state government and the local governments consisting in:

- preventing terrorism, to include detecting and eliminating the causes of and the conditions conducive to the perpetration of acts of terrorism (prevention of terrorism),
- identifying, preventing, stopping, detecting, and investigating acts of terrorism (fight against terrorism),
- reducing and (or) eliminating the consequences of manifestations of terrorism.

56 В.П. Журавлёв, *Терроризм и некоторые подходы к борьбе с ним* [в:] А.И. Долгова (ред.), *Организованный терроризм...*, с. 48-49.

57 В.В. Лунеев, Ю.М. Антонян, *ibid.*, 336.

The legislator has determined the areas where efforts must be made, which include both prevention of and fight against terrorism. For that purpose, the legislator has also defined the duties of the individual state organs with regards to preventing terrorism. Pursuant to art. 5 of the act, the following organs are competent in this area: the President of the Russian Federation (establishing the policies of the state with regards to countering terrorism, defining the competences of the organs of the federal executive power), the Government of the Russian Federation (defining the competences of the organs of the federal executive power, organizing and implementing measures to minimize and eliminate the consequences an manifestations of terrorism), the organs of the federal executive power and organs of the state power of the constituent entities of the Russian Federation.

The Russian Armed Forces (art. 6) also play an important role in countering and combating terrorism as they may be quickly deployed counter-terrorist operations on land, sea, and in the air.⁵⁸

The act also points to the involvement of the society in combating terrorism by defining, in art. 11, restrictions imposed on the population for the purpose and in the event of counter-terrorist operations. Therefore, the act provides for the payment of compensation to citizens who have suffered as a result of such an operation and for legal and social protection to persons involved in combating terrorism.

In order to achieve the assumptions of the 2006 act, the Russian government must undertake and perform a complete system of measures correlated with causes. This is why it is necessary to monitor and to systematically learn, study, and analyze the causes of terrorism. Such efforts must consist, most of all, of operational, informational, analytical, and prognostic activities.⁵⁹

Because Russia's security system is not fully ready to counter terrorism, the actions taken are inadequate and delayed due to the ineffective operation of its organizational structures and the use of the same schemes for various manifestations, scales, goals, and motives of terrorism,⁶⁰ the need for restructuring is more than evident.

As W.W. Ustinov emphasizes, one must remember that a strategy to combat terrorism should be comprehensive, not linked to any specific threat, long-term, and specific with regards to the needed reforms to be implemented in stages, according to their priority. Such a strategy must involve the whole nation, as opposed to the

58 The need to widen the competences of the Armed Forces in anti-terrorist operations was emphasized by: Д.В.Гордиенко, Опыт борьбы вооружённых сил с терроризмом в Российской Федерации, Государство и право 2001, № 1, с. 75-78.

59 Ibid., 347.

60 А.Г. Чернов, Проблемы борьбы с терроризмом в Чеченской Республике [в:] А.И. Долгова (ред.), Организованный терроризм..., с. 63.

government only, and reflect and consider terrorist threats in the context of other threats to national and international security.⁶¹

Effective ways of countering and fighting terrorism in Russia will also require stringent control of storage and trade of firearms, ammunition, and explosives, as well as radioactive, chemical, and biological materials. The state must also face the big challenge of discovering and eliminating sources of financing of terrorism. It should also take steps to establish an effective system of educating the society in the spirit of respect for other cultures, religions, and traditions of the different peoples living in this multi-ethnic country. The Russian government must also strive to resolve the religious, ethnic, and economic problems that are at the roots of terrorism. It is necessary to broaden international cooperation on various levels, including exchange of information and joint activities of special forces aimed at intensifying the fight against terrorism.⁶²

What I. Trunov proposes is that in order to encourage the Russian populace to actively participate in combating terrorism, it is necessary to establish a legal mechanism for paying for information on crimes and acts of terrorism submitted by citizens, similar to systems adopted in other countries (e.g. the prize for capturing Bin Laden).⁶³

Based on the above discussion, one can say that Russia is aware of the gravity of the threat posed by terrorism and undertakes many actions to eliminate or limit it. Nevertheless, effective implementation of adopted solutions has been sabotaged by poor technical and psychological preparation of persons involved in anti-terrorist operations and by the scale of the threat. As it turns out, countering terrorism is not an easy task because, as J.I. Gilinskiy states, “there are no simple solutions to complex social problems.”⁶⁴

61 В.В. Устинов, Государственная антитеррористическая стратегия: общая концепция и правовые аспекты, Государство и право 2003, № 3, с. 7.

62 В.В. Лунеев, Ю.М. Антонян, *ibid.*, 348-349.

63 И.Я. Трунов, Правовые основы борьбы с терроризмом, Уголовное право 2004, № 4, с. 92.

64 Я.И. Гилинский, *ibid.*, 305.

TERRORYZM W ROSJI – MECHANIZMY ROZWOJU I STRATEGIA PRZECIWDZIAŁANIA

W opracowaniu przedstawiono złożoność terroryzmu w Rosji. Dokonano tego poprzez ukazanie pojęcia omawianego zjawiska, jego fenomenu i przemian, a także podłoża jego rozwoju w tym kraju. Z przeprowadzonych analiz wynika, że terroryzm w Rosji ma długą historię, sięgającą kilku wieków wstecz. U podstaw jego rozwoju leżały i leżą trudne do rozwiązania problemy polityczne i społeczno-ekonomiczne państwa rosyjskiego. Rodzą one różne nowe przejawy i rodzaje zjawiska, w tym terroryzm ekologiczny czy cyberterroryzm. Współcześnie zjawisko charakteryzuje drastyczność aktów, używanie nowych niebezpiecznych technologii, wzrost skali. Jako szczególnie niebezpieczne należy wskazać powiązania terroryzmu z przestępczością zorganizowaną. Zagrożenia te państwo rosyjskie próbuje ograniczać poprzez prawo i działalność organów ochrony porządku prawnego zajmujących się przeciwdziałaniem terroryzmowi oraz jego zwalczaniem. Jednakże ograniczenie jego skali jest przedsięwzięciem trudnym. Rozwiązanie tego problemu wymaga zarówno woli politycznej władz rosyjskich, jak też zmiany postawy społeczeństwa wobec zjawiska.

Key words:

Terrorism, Russia, acts of terror, legal regulations

FIGHTING TERRORISM IN POLISH CRIMINAL LAW – THE INFLUENCE OF EU LEGISLATION

Poland, fortunately, does not belong to those countries in Europe which have been forced to fight terrorism for many decades, sometimes throughout most of the 20th century. And even now, in the era of enhanced global awareness of the danger of international terrorism, Poland has not become an arena for any of those dramatic events that have taken place in other countries and there is no reason to believe that this situation is going to change¹. The fact that for many years terrorism has not been an urgent problem (not even an urgent threat) has had many consequences, the lack of any references to terrorism in Polish criminal law being one of the most notable of them.

The term “terrorism” appeared for the first time in Polish criminal legislation in 2004², though many scholars had been writing much earlier about the need to incorporate this particular type of criminal behaviour in criminal law³. Before the legislative change of 2004, a terrorist attack could only be treated as an ordinary offence and qualified as one of the common felonies or misdemeanours recognised

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- 1 Of course, there have been many undertakings on different levels to prepare Poland to react to a possible terrorist attack. Initiatives of this kind are often connected with the more sophisticated system of organised crime fighting. About these problems, see: E.W. Pływaczewski, *Przestępczość zorganizowana z punktu widzenia polityki, teorii i praktyki*, [in:] E.W. Pływaczewski (ed.), *Przestępczość zorganizowana, świadek koronny, terroryzm w ujęciu praktycznym*, Kraków 2005, pp. 91-124 and E.W. Pływaczewski, *The Polish Platform for Homeland Security – a Pioneer Initiative for up-to-date Security in the European Union*, [in:] E.W. Pływaczewski (ed.), *Current Problems of the Penal Law and Criminology*, Białystok 2009, pp. 445-474. The problem of terrorism, especially after September 11, 2001 has revived the interest in terrorism in Poland, which resulted in a number of publications about this phenomenon, see e.g. B. Hołyst, *Terroryzm*, vol I, vol. II, Warszawa 2009; K. Wiak, *Prawnokarne środki przeciwdziałania terroryzmowi*, Lublin 2009; K. Liedel, P. Piasecka, *Współpraca międzynarodowa w zwalczaniu terroryzmu*, Warszawa 2004, C. Dycz, *Terroryzm początku XXI wieku jako zagrożenie bezpieczeństwa międzynarodowego i narodowego*, Gdynia 2005; T. Aleksandrowicz, *Terroryzm międzynarodowy*, Warszawa 2008; K. Karolczak, *Terroryzm. Nowy paradygmat wojny w XXI wieku*, Warszawa 2010.
 - 2 The change was introduced by an act entitled: *Ustawa z 16 kwietnia 2004 o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw* (Dz.U. Nr 93, poz. 889).
 - 3 See: R. Aleksandrowicz, *Pojęcie czynu o charakterze terrorystycznym „de lege lata” i „de lege ferenda”* (wybrane zagadnienia), *Problemy Praworządności* 10/1988, p. 24, K. Indecki, *Prawo karne wobec terroryzmu i aktu terrorystycznego*, Łódź 1998, p. 335, M. Filar, *Terroryzm – problemy definicyjne oraz regulacje prawne w polskim prawie karnym w świetle prawa międzynarodowego i porównawczego*, [in:] V. Kwiatkowska-Darul (ed.), *Terroryzm. Materiały z sesji naukowej*. Toruń 11 kwietnia 2002 r, Toruń 2002, pp. 27-36.

in the criminal statutes with, however, no possibility of applying aggravated punishment to the perpetrator of a terrorist act. More severe punishment could be imposed on terrorist offenders only when they were acting within a criminal organised group or a criminal association as the law considered such a fact to be an aggravating circumstance (but it did not matter what kind of offences – whether terrorist or common – were the aim of the criminal structure).

The situation changed because of the accession of the Republic of Poland to the European Union in 2004. Poland had to meet many legal requirements of the EU, including those considering criminal law. And the European law knew the concept of terrorist offences and required the member-states to recognise it in their internal systems as well. The problem of terrorism has been dealt with in the framework decision of 13 June 2002 on combating terrorism (2002/475/JHA)⁴. According to this legal act all member states were obliged to introduce changes in their internal legal systems so that the notion of terrorist offences would be instituted. According to art. 1 of the framework decision, by terrorist offences the criminal law of each member state should understand a number of intentional acts which, given their nature or context, may seriously damage a country or an international organisation, if they are committed with the aim of: seriously intimidating a population or unduly compelling a government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation. In art. 1 the following acts are listed as offences which are to become terrorist, if committed with one of the above mentioned aims: a) attacks upon a person's life which may cause death, b) attacks upon the physical integrity of a person, c) kidnapping or hostage taking, d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss, e) seizure of aircraft, ships or other means of public or goods transport, f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons, g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life, h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life, and i) threatening to commit any of the acts listed in (a) to (h).

The Polish legislator decided to implement the obligations stemming from art. 1 of the framework decision not by creating a new group of terrorist offences in the

4 Official Journal L 164, 22.06.2002.

special part of the criminal code, but by introducing a broad concept of a terrorist offence in the general part of the code, so that a larger group of offences than in the framework decision could be considered “terrorist”. The definition of a terrorist offence can be found in art. 115 § 20 of the Polish criminal code (PCC). According to it, an offence becomes terrorist when it is punishable by a maximum imprisonment of at least five years, if it is committed with the aim of: seriously intimidating many persons, compelling a public authority organ of the Republic of Poland or of another state or an organ of an international organisation to perform or abstain from performing certain acts, causing serious destabilisation in the political system or economy of the Republic of Poland, another state or international organisation. A threat to commit such an act should also be considered a terrorist offence⁵.

If one compares the two definitions, the second one seems to be broader. While the framework decision imposes the obligation to treat as terrorist a specified group of offences listed in points (a) – (i), the Polish legislator decided to use a general clause, which means that theoretically any offence can become terrorist, provided it is “serious” enough (there is a minimum penalty of imprisonment of not less than 5 years.). This, of course, means that many more offences can be considered terrorist by the Polish criminal law, though a number of those offences that are punishable by the required term of imprisonment are not, by their very nature, suitable to become the means of terrorist activity (e.g. in the group of offences punishable by at least five years of imprisonment one finds offences such as domestic violence, infanticide, child pornography and other child sex offences)⁶. Other offences, though they may be actually committed by terrorists, will not always be executed directly for those aims mentioned in the definition, e.g. terrorists may commit a number of offences against property in order to obtain funds for their future actions, or they may give bribes to obtain some information that might be useful for them in the future – in such cases the offences cannot be considered terrorist, as the aims described by the law are yet too distant from the committed acts⁷.

5 There have been expressed, however, some doubts about the way the threat is described. E.g. K. Indeckci claimed that the requirement that the penalty for an act should be at least 5 years of imprisonment refers also to the penalty provided for the threat to commit a given offence, which would mean that no threat could be considered a terrorist offence under the binding criminal law, as the maximum penalty for the misdemeanour of threatening somebody with committing an offence against him is two years of imprisonment (see: K. Indeckci, *W sprawie definicji normatywnej terroryzmu*, [in:] W. Pływaczewski (ed.), *Przestępczość zorganizowana, świadek koronny, terroryzm w ujęciu praktycznym*, Kraków 2005, pp. 289-291. Most authors, however, interpret the discussed article in such a way that they do not refer the requirement of 5 years imprisonment punishment to the offence of threat as such but claim the offence that the offender threatens to commit should be punishable by such punishment (see, e.g. J. Majewski, [in:] A. Zoll (ed.), *Kodeks karny. Część ogólna. Komentarz*, Warszawa 2007, p. 1244 and K. Wiak, *Prawnokarne środki przeciwdziałania terroryzmowi*, Lublin 2010, p. 240).

6 See: K. Wiak, *Prawnokarne środki...*, s. 231, J. Giezek, [in:] J. Giezek (ed.), *Kodeks karny. Część ogólna. Komentarz*, Warszawa 2007, p. 773.

7 Such offences would, however, fall under the category of offences linked to terrorist activities in the meaning of art. 3 of the framework decision. This concept will be discussed later.

Looking at the aims which are intended by the terrorists, one can see that the Polish legislator, to a great extent, used the framework approach to that problem.

The descriptions of terrorist aims are very similar in the framework decision and in the Polish criminal code, though there are some minute differences. While the framework decision requires the intention to seriously intimidate a population, the Polish criminal code makes use of the phrase “seriously intimidating many persons”. This again might lead to the conclusion that the Polish definition is broader, as “many persons” would generally require a lower number than a “population”, which means that actions smaller in scope can also be considered terrorist under the binding Polish criminal code provisions. Commentators disagree, however, about the interpretation of “many persons”. Some authors establish the minimum number of persons which the offender intended to intimidate as at least ten⁸, others claim the number could be even as small as six⁹ or even two¹⁰, and others assume that the minimum number of persons required to be “many” should be established depending on the actual circumstances of a given case¹¹.

The second possible aim of a terrorist offender is practically identical in the Polish criminal code and in the framework decision, there are, however, some differences in the wording of the third aim – while the framework decision speaks of “seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation”, art. 115 § 20 PCC speaks of “causing serious destabilisation in the political system or economy of the Republic of Poland, another state or international organisation”. The omission of destruction as the aim of a terrorist offence can be explained in such a way that it is, in fact, encompassed by the term “destabilisation”. Some doubts could arise whether the current Polish law allows for treating as terrorist a serious offence committed with the aim of destabilising the social structures of a country, which is not expressly mentioned in art. 115 § 20 PCC. It seems, however, that any attack with such an aim could be considered to constitute an attack on the political system of the Republic of Poland, so as far as the description of terrorist aims is concerned, the Polish criminal law seems to meet the framework requirements in full.

There is, as yet, an area in which the solutions adopted by the Polish legislator seem to fall short of the framework decision demands. The decision in art. 1 obliges

8 See: e.g. O. Górniok, *Prawo karne gospodarcze*, Bydgoszcz 2003, p. 108, M. Bojarski, [in:] O. Górniok, *Kodeks karny. Komentarz*, Warszawa 2006, p. 889, A. Michalska-Warias, [in:] T. Bojarski (ed.), *Kodeks karny. Komentarz*, 4th edition, Warszawa 2011, p. 758.

9 See: K. Buchała, [in:] A. Zoll (ed.), *Kodeks karny. Część szczególna. Komentarz do kk.*, vol. II, Kraków 1999, p. 331.

10 See: R. Zawłocki, [in:] A. Wąsek (ed.), *Kodeks karny. Część szczególna. Komentarz*, vol. II, Warszawa 2005, pp. 1280-1284.

11 See: A. Marek, *Kodeks karny. Komentarz*, Warszawa 2010, p. 552, J. Majewski, [in:] A. Zoll (ed.), *Kodeks karny. Część szczególna. Komentarz*, vol. III, Kraków 2008, pp.709-710, K. Wiak, *Prawnokarne środki...*, p. 246.

the member states to penalise the act of threatening to commit any of the acts listed in points (a) to (h). At the first glance, the Polish law seems to do so, as a threat to commit any of the serious offences described in art. 115 § 20 PCC is mentioned as a possible manifestation of a terrorist offence. The problem which appears here is, however, connected with the fact that the discussed definition constitutes a general clause and not a specific type of offence. All forbidden acts (which are punishable by five years of imprisonment or the threat to commit them) can become terrorist, but they first have to constitute offences in all. If an act falls under the definition of art. 115 § 20 PCC but does not fulfil the statutory features of an offence defined in the special part of the criminal code (or in some other statute) it does not constitute an offence at all. A punishable threat is defined in art. 190 § 1 of the criminal code as a threat to commit an offence against the threatened person or against his or her close relatives. The limitation of punishable threats to threats directed at the victim himself or his or her close relatives means that, under the binding criminal code, to threaten a person with the commission of an offence against a third party and their close relatives is not unlawful and does not constitute a punishable threat. In this regard the threats typical of terrorists may often refer to public property or e.g. the safety of people who are not in any way related to the threatened person or institution¹². As stated by the Supreme Court in a sentence issued on 13 February 2008¹³, threats directed by a prisoner to the police about blowing up a block of flats together with its inhabitants do not constitute the offence of punishable threat for the very fact that they were not directed to the intended victim or his or her close relatives.

The amendment to the criminal code of 16 April 2004 introduced some more changes connected with the requirements of the framework decision. As per art. 5 (2) of the decision, the terrorist offences specified in art. 1 (1) should be punishable by custodial sentences heavier than those imposable under national law for such offences in the absence of the special intent required pursuant to Article 1(1), save where the sentences imposable are already the maximum. This requirement was met by introducing changes to art. 65 of the Polish criminal code. Before the amendment of 2004 that article entitled the courts to treat as multi-recidivists (which meant the possibility of imposing aggravated punishment on them and longer terms in prison to be served before conditional release could be granted to them) two more categories of offenders: the so-called professional offenders, who commit offences to source their regular income and offenders who commit an offence as members of a criminal organised group or a criminal association. In 2004 a new category of offenders was

12 About this problem, see: J. Majewski, [in:] A. Zoll (ed.), *Kodeks karny. Część ogólna. Komentarz*, Warszawa 2007, p. 1244 oraz K. Wiak, *Prawnokarne środki...*, p. 240. See also: A. Michalska-Warias, [in:] T. Bojarski (ed.), *Kodeks karny. Komentarz*, Wyd. IV, Warszawa 2011, p. 423.

13 See: Supreme Court sentence of 13 February 2008, IV KK 407/07, *Biul.P.K.* 2008, nr 4, poz. 10.

added to art. 65 PCC – the perpetrators of a terrorist offence. This change meant in fact that the scope of the article was broadened only as far as to include a terrorist act carried out by a lone-terrorist – in the case of typical terrorist activity connected with working within some kind of organised structure, the offender being a member of a criminal structure could be punished more severely before the legislative change became effective¹⁴ (of course, this could only happen where participation in the criminal organisation could be proven, so the change introduced in 2004 means that in the case of terrorist offenders proving one of the two categories – participation in an illegal structure or the terrorist character of the offence committed – will suffice to apply the more severe rules of punishment according to art. 65 PCC).

The framework decision of 13 June 2002 on combating terrorism also introduces the concept of offences relating to a terrorist group. According to art. 2 (1) “terrorist group”, for the purposes of the framework decision means “ a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences”, and by “structured group” one should understand “ a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure”. Moreover, all member states, were obliged to take the necessary measures to ensure that the following intentional acts are punishable: (a) directing a terrorist group; (b) participating in the activities of a terrorist group including supplying information or material resources, or by funding its activities in any way with the knowledge that such participation will contribute to the criminal activities of the terrorist group.

As far as the requirements of art. 2 of the framework decision are concerned, some changes were introduced into art. 258 PCC, which penalised the offences of establishing, directing and participation in a criminal organised group or a criminal association. First of all, a modification that cannot be directly connected with fulfilling the EU obligations was effected. The Polish criminal code of 6 June 1997 in its first version penalised in art. 258 § 1 PCC only the participation in an organised group or an association which intended to commit offences. The plural form used in the provision meant that criminal associations whose members intended to commit only one offence could not be prosecuted under that article. Such a decision of the legislator was criticised by some authors¹⁵, and there were even attempts

14 The aggravation of punishment for multi-recidivists, according to art. 64 § 2 of the Polish criminal code means that the court is obliged to impose the punishment of imprisonment higher than the minimum term of imprisonment for a given offence and the punishment imposed can be as high as the maximum term of imprisonment enlarged by 50%. Yet, in the case of felonies, the upper limit of punishment cannot be changed at all. Multi-recidivists cannot be generally granted the suspension of the execution of the imposed punishment and they can be conditionally released from prison after serving the 3/4 of their term, while no-recidivist offender can be released after serving half of the imposed term of imprisonment.

15 See: O. Górniok, [in:] O. Górniok, S. Hoc M. Przyjemski, Kodeks karny. Komentarz, Tom III, p. 304, A. Marek, Komentarz do kodeksu karnego. Część szczególna, Warszawa 2000, p. 256, A. Michalska-Warias, *Przestępczość*

at interpreting the article in such a way that it would refer also to those criminal groups or associations which intended to commit only one offence¹⁶. Though one could argue that the framework decision did not oblige the states to penalise the participation in a terrorist group which intended to commit only one offence – in the definition of such a group a plural form was used¹⁷ – the Polish legislator decided to change the wording of the offence in art. 258 § 1 PCC, by defining criminal structures as those organised groups and associations which intend to commit an offence. As far as the understanding of “criminal organised group” and “criminal association” is concerned, the interpretation of those terms by Polish scholars was fully accordant with the definition proposed in the framework decision¹⁸.

The changes effected in 2004 brought into the Polish legal system a new type of criminal organised groups and criminal associations. Before the introduction of the above mentioned amendment, criminal law recognised two types of unlawful structure: the common type (groups and associations which intended to commit offences including fiscal offences) and the aggravated type i.e. organised armed criminal groups and armed criminal associations, which were more severely punished. The implementation of the framework decision brought about not only the introduction of a new type of aggravated participation in a criminal structure in the form of an organised terrorist group and terrorist association but also the heightening of punishment for participation in the already known criminal structures. This was connected with the obligations imposed by art. 5 (3) of the framework decision, which obliged member states to take the necessary measures to ensure that offences listed in Article 2 are punishable by custodial sentences, with a maximum sentence of not less than fifteen years for the offence of directing a terrorist group, and for the offences listed in Article 2(2)(b) – i.e. the different forms of participating in the activities of a terrorist group – a maximum sentence of not less than eight years. In so far as the offence of directing a terrorist group referred only to the threatening to commit any of the acts listed in art. 1 (1) (a) to (h), the maximum sentence should not be less than eight years.

After the amendment of 2004 to the criminal code became effective, the participation in a “standard” criminal structure has become punishable by

zorganizowana i prawnokarne formy jej przeciwdziałania, Lublin 2006, pp. 257-258, C. Sońta, Przepięstwo o charakterze terrorystycznym w prawie polskim, *Wojskowy Przegląd Prawniczy* 4/2005, pp. 18-19.

16 See: Z. Cwiakalski, [in:] A. Zoll (red), *Kodeks karny. Część szczególna. Komentarz*, vol. II, Kraków 1999, p. 929, R. Góral, *Kodeks karny. Praktyczny komentarz*, Warszawa 1998, p. 111.

17 Yet, a singular form is used in the definition of a structured group, so the interpretations of the required range of penalisation could differ and both, a minimalistic and a wider approach could be defended.

18 The Polish law recognised two types of criminal structures: an organised group and a criminal association. The second term is the traditional one, used by all Polish 20th century criminal codes and is used to describe better organised criminal structures. The second term appeared for the first time in the criminal code of 1969 as late as in 1995 as a response to changing economic and political situation, which in turn was connected with the appearance of more powerful criminal group in the Polish criminal underground. About the interpretation of these two terms, see: A. Michalska-Warias, *Przepiępczość zorganizowana...*, p. 256-277.

imprisonment from 3 months to 5 years, while participation in an armed or terrorist criminal structure has become punishable by imprisonment from 6 months to 8 years. Establishing or directing one of the "standard" or armed structures has been punishable by imprisonment from 1 to 10 years, and establishing or directing a terrorist structure has become a felony (the only one described in art. 258 PCC) punishable by imprisonment from 3 to 15 years. The Polish legislator did not make use of the option granted by art. 5 (3) of the framework decision to differentiate penalties for directing a terrorist group by providing lower penalty in the case of directing a group whose aim was to threaten with the commission of terrorist offences. The maximum penalty of 15 years of imprisonment refers to every type and form of terrorist group direction.

According to the framework decision participating in the activities of a terrorist group includes, in any way, the supply of information, material resources or funding, with the knowledge that such participation will contribute to the criminal activities of the terrorist group. The acts referred to as supplying of information or material resources fall in the Polish criminal law system under the definition of aiding and abetting, which is – as a rule – punishable in the same way as the offence whose commission was facilitated by the aider and abettor¹⁹. As to the financial support given to a terrorist group – it can also be generally considered as a form of aiding and abetting, and depending upon the intention and consciousness of the offender, his financial help could be seen as both aiding the terrorist group to exist (so the charges would be based on art. 258 § 2 PCC in connection with art. 18 § 3 PCC, which defines aiding and abetting) and aiding in the commission of a specified offence where the offender knew how his financial help was going to be used – if one of these charges were difficult to prove the other would suffice to bring the offender to Justice²⁰. As a result and insofar that the framework decision demands referring to the criminalisation of funding the activities of a terrorist group, there was at this time no need to introduce further changes into the criminal code. However, some concerns were expressed in the literature about the need to establish a new offence of financing terrorist activity as a response to other international obligations of the Republic of Poland²¹. It was even claimed that solidarity with those European

19 See: T. Bojarski, [in:] T. Bojarski (ed.), *Kodeks karny. Komentarz*, Warszawa 2011, pp. 73-74.

20 About the aiding in the commission of the offence defined in art. 258 § 2, see: A. Michalska-Warias, *Przestępczość zorganizowana...*, pp. 291-293.

21 Many of the UN Conventions and other international law documents require the criminalisation of some forms of terrorist financing. The UN International Convention for the Suppression of the Financing of Terrorism adopted on 9 December 1999 in art. 2 (1) states that "any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: a) an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex, or b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act. Similar obligations can be found e.g. in art. 1 (b) of the Security Council resolution

countries that were actually fighting with terrorism on their own territory made it necessary to have a separate offence of financing terrorist activity²² – thus Poland's determination in the global war on terrorism would be visible at first sight.

In 2009, as a result of international obligations, another amendment²³ to the criminal code introduced for the first time into the Polish criminal law system the offence of giving financial support to the perpetrator of a terrorist offence. According to art. 165a of the criminal code, this offence takes place when somebody collects, transfers or offers legal tender, financial instruments, securities, foreign currency, proprietary interest or other movable or immovable property in order to finance a terrorist offence. The misdemeanour in question is punishable by imprisonment from two to twelve years.

As has already been underlined in criminal law literature, there can be some doubts raised about the wording of the new offence and, as a result, its actual scope. The most serious problem is connected with meeting the requirement to prove specific intent on the part of the offender. To convict somebody of the aforementioned offence the prosecution must prove not only the full knowledge of the possible use of the property by the person or organisation to whom it was given, but also the intention on the part of the offender that the property should be employed in committing a specific terrorist offence, and proving the existence of such an intention at the moment of the commission of the offence may often be quite difficult²⁴. This also leads to some doubts about the fulfilment of the International and EU law demands²⁵, as in those acts no such specific intention is required (according to the 1999 UN Convention for the Suppression of the Financing of Terrorism the offender must act “with the intention” or “in the knowledge“ that the funds are to

no 1373/2001, which obliges the states to criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts”. Within the European Union the obligation to criminalise the financing of terrorism can be found in the directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Official Journal L 309/15, 25.11.2005) according to which by “terrorist financing” one should understand “the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism” (art. 1 (4)).

22 See: W. Filipkowski, R. Lonca, Kryminologiczne i prawne aspekty finansowania terroryzmu, *Wojskowy Przegląd Prawniczy* 4/2005, p. 43. The proposition to introduce a new crime was also advocated by Filipkowski and Guzik-Makaruk, see: W. Filipkowski, Polskie regulacje w zakresie zwalczania finansowania terroryzmu, [in:] T. Dukiet-Nagórska (ed.), *Zagadnienia współczesnej polityki kryminalnej*, Katowice 2006, p. 198; E. Guzik-Makaruk, W. Filipkowski, Kryminalizacja finansowania terroryzmu na tle prawnoporównawczym, *Studia prawnoustrojowe* 10/2009, pp. 64-65;

23 See: Ustawa z 25 czerwca 2009 r. o zmianie ustawy o przeciwdziałaniu wprowadzaniu do obrotu finansowego wartości majątkowych pochodzących z nielegalnych lub nieujawnionych źródeł oraz o przeciwdziałaniu finansowaniu terroryzmu oraz o zmianie niektórych innych ustaw (Dz.U. Nr 166, poz. 131).

24 This problem has been stressed by: K. Wiak, Kryminalizacja finansowania terroryzmu w polskim prawie karnym, *Palestra* 7-8/2010, pp. 64-65 and E. Guzik-Makaruk, W. Filipkowski, Kryminalizacja finansowania..., p. 62.

25 See: K. Wiak, Kryminalizacja finansowania..., p. 65, E. Guzik-Makaruk, W. Filipkowski, Kryminalizacja finansowania..., p. 62.

be used, in full or in part, in order to carry out the terrorist offences mentioned in the Convention. Also the directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, uses exactly the same expressions to describe the subjective side (*mens rea*) of the offence of terrorist financing).

It should be, however, noted that the above mentioned doubts about the fulfilment of international demands in the sphere of terrorist financing are not fully justified. In those cases where it is not possible to prove the specific intent required by art. 165a of the criminal code (e.g. because the offender knew that he was providing financial support for committing an offence, but it would be impossible to prove that he was aware of the terrorist character of such an offence), it will remain to be seen whether the offender can be held responsible for aiding and abetting in the commission of a specific offence and in such cases where the help was given to some kind of organisation, the offender could be charged with aiding and abetting under the offence of participation in a criminal structure. This means that the types of behaviour which are to be criminalised in accordance with the above-mentioned legal acts constitute offences under Polish criminal law, even though they may not always be labelled as “terrorist offences”.

The framework decision of 2002, art. 3 applies the expression “offences linked to terrorist activities. By such offences three categories of unlawful act are meant: a) aggravated theft with a view to committing one of the acts listed in Article 1(1), b) extortion with a view to the perpetration of one of the acts listed in Article 1(1) and c) drawing up false administrative documents with a view to committing one of the acts listed in Article 1(1)(a) to (h) and Article 2(2)(b). It should be stressed here that in art. 5, which refers to the penalties for offences described in the framework decision, no special aggravated penalties are connected with this category of terrorism-linked offences, since the unlawful acts described in art. 3 are mentioned in the most general terms in art.5(1) according to which the member states should take the necessary measures to ensure that the offences referred to in Articles 1 to 4 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.

As a result the Polish legislator did not decide to formally recognise the category of offences linked to terrorist activity, which means that the offences listed in art. 3 of the framework decision cannot be labelled as terrorism-linked by the courts when sentencing, though, at the stage of imposing punishment, the courts should take into account all circumstances of the commission of an offence²⁶, and where there can be no doubt that e.g. an aggravated theft or extortion was committed with a view to

26 About the rules of imposing punishment, see e.g. T. Bojarski, [in:] T. Bojarski (ed.), *Kodeks...*, pp. 139-145.

preparing or committing a terrorist offence, this will constitute a factor inducing the court to impose a more severe punishment than it would otherwise have imposed on the offender in absence of this type of motivation.

Another obligation referring to the scope of national criminalisation is contained in art. 4 of the framework decision. According to that provision, each member state shall take the necessary measures to ensure that inciting or aiding or abetting an offence referred to in Article 1(1), Articles 2 or 3 is made punishable. Moreover, each member state should take the necessary measures to ensure that attempting to commit an offence referred to in Article 1(1) and Article 3, with the exception of possession as provided for in Article 1(1)(f) and the offence referred to in Article 1(1)(i), is made punishable.

These demands of the framework decision required no changes in the internal Polish criminal law system, as it is a general rule of the criminal code that inciting, as well as aiding and abetting any offence are always punishable with the same penalties as the “main” offence, committed by the person who was incited by the instigator or assisted by the aider and abettor²⁷. The same rule applies to attempting to commit an offence – such attempts are also always punishable in the same way as the successful commission of an offence²⁸.

This way of regulating the aforementioned forms of committing an offence, means that the rules of applying punishment as referred to in art. 65 PCC, also refer to the commission of the offence by an instigator, an aider and abettor, as well as to cases where the offender only attempted to commit a terrorist offence – so also the demands of art. 5 (2) are met by the Polish criminal legislation²⁹.

Another problem regulated by the framework decision is the reduction of penalties for terrorist offenders in cases where by their behaviour they help the legal justice system and show substantial change in their attitude to justice and order. According to art. 6 of the framework decision each member state may take the necessary measures to ensure that the penalties referred to in Article 5 may be reduced if the offender: a) renounces terrorist activity, and b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to: prevent or mitigate the effects of the offence, identify or

27 About instigation, aiding and abetting in Polish criminal law, see e.g.: P. Kardas, [in:] A. Zoll (ed.), *Kodeks karny. Część ogólna. Komentarz*, Kraków 2004, pp. 340-384.

28 About criminal attempts in Polish criminal law, see e.g.: A. Zoll, [in:] A. Zoll (ed), *Kodeks karny. Część ogólna. Komentarz*, Kraków 2004, pp. 236-261.

29 Art. 5 (2) of the framework decision imposes on the member states the obligation to take the necessary measures to ensure that the offences referred to in Article 4, inasmuch as they relate to terrorist offences, are punishable by custodial sentences heavier than those imposed under national law for such offences in the absence of the special intent required pursuant to Article 1(1), save where the sentences imposed are already the maximum possible sentences under national law.

bring to justice other offenders, find evidence, or prevent further offences referred to in Articles 1 to 4.

This provision is again in accordance with existing regulations contained in Polish criminal law which refer to the reduction (sometimes elimination) of punishment in cases where offenders who change their attitude and either renounce their criminal activity or actively assist the criminal law enforcement agencies or criminal courts. The binding legal regulations provide a whole system of solutions which can be applied to such offenders (there are no special regulations, however, referring to terrorist offenders as such). Since 1997 Polish criminal law has recognised the institution of the crown witness³⁰, which at first was to be only a contemporary tool used in fighting the most dangerous types of crimes³¹, but which now seems well installed in the system and is bound to remain so for many years to come. An offender granted leave by the prosecution to become a crown witness, is afforded total immunity from prosecution in exchange for evidence provided to the law enforcement agencies. As far as substantial criminal law is concerned, one of the most important clauses in affording an offender total immunity from prosecution is to be found in art. 259 PCC. This clause is connected with the offence of participating in a criminal structure of any kind and accordance therewith, no prosecution is possible in the case of an offender who committed the offence of participating in a criminal organised group or association (or the offence of establishing or directing such a structure), if that person has renounced his participation in that unlawful group or association and either revealed before a law enforcement agency all important circumstances of the act committed or prevented the commission of an intended offence, including a fiscal offence. Furthermore, the Polish criminal law system recognises the institution of the so-called “small crown witness” which is defined in art. 60 § 3 and 4 PCC. These provisions allow the extraordinary mitigation of punishment in the case of two categories of offender: those who committed an offence together with at least two other persons and reveal to the prosecution organ the identity of those persons and the circumstances of the commission of the offence (the mitigation of punishment is then mandatory – art. 60 § 3 PCC) and those who during criminal proceeding concerning an offence they have committed, beside testimony in that proceeding, reveal to the prosecution unknown important facts about the commission of another serious offence (in this case mitigation of punishment is, however, only optional).³² As for these “small crown witness” regulations, there are no exemptions of any offenders so even a person who committed murder or who directed a terrorist group

30 See: Ustawa z dnia 25 czerwca 1997 r. o świadku koronnym (Dz.U. Nr 114, poz. 738).

31 When the new institution was introduced, it was to function only until the end of 2001, but the time was once prolonged and then the provisions establishing the expiry date of the law were abolished (see: A. Michalska-Warias, *Przestępczość zorganizowana...*, p. 371).

32 About those two institutions and their application in the fight against organised criminal structures, see: A. Michalska-Warias, *Przestępczość zorganizowana...*, pp. 219-236 and the literature quoted there.

or other criminal group could benefit from these solutions – this can be the source of some doubts on the one hand, yet, on the other hand, art. 60 § 3 and 4 PCC might constitute an offer capable of convincing serious criminals to assist law enforcement for the benefits it offers particularly in cases where other forms of benefits are not accessible (e.g. persons who were involved in a murder cannot be granted the status of the “crown witness” and cannot be afforded total immunity from prosecution, no matter how much they are willing to cooperate).

The regulations referring to terrorism in Polish substantial criminal law, discussed above, constitute a comprehensive system of instruments which could be useful in reacting to various manifestations of terrorism. This means that Polish substantial criminal law generally meets the EU standards and requirements in the field of fighting terrorism³³, which also ensures that if international cooperation were required, the internal Polish systems would make proper reaction to various challenges in that field possible.

33 The legal solutions adopted in the Polish criminal code can, of course, be modified in order to improve their possible application and usefulness. About such propositions to change the definition of a terrorist offence, see: R. Zgorzały, *Przestępstwo o charakterze terrorystycznym w polskim prawie karnym*, Prokuratura i Prawo 7-8/2007, pp. 68-77.

ZWALCZANIE TERRORYZMU W POLSKIM PRAWIE KARNYM – WPŁYW PRAWA UNIJNEGO

Artykuł omawia aktualny stan polskich regulacji odnoszących się do terroryzmu. Samo pojęcie przestępstwa o charakterze terrorystycznym zostało wprowadzone do polskiego systemu prawnego dopiero w 2004 r. w związku z koniecznością dostosowania prawa polskiego do wymogów prawa wspólnotowego. W artykule wskazano, jakie sposoby reakcji na zachowania terrorystyczne istniały w prawie polskim przed tymi zmianami oraz jakie możliwości reakcji istnieją obecnie. Omówiono także problem zgodności polskiego prawa karnego z wymogami decyzji ramowej Rady z 12 czerwca 2002 r. w sprawie zwalczania terroryzmu (2002/475/JHA) – autorka analizuje rozwiązania decyzji ramowej oraz przepisy kodeksu karnego, które miały ją implementować. W konkluzji wskazano, że antyterrorystyczne rozwiązania polskiego prawa karnego stanowią dość kompleksowy system instrumentów, które mogą być wykorzystane do zwalczania różnych przejawów tego zjawiska. Polskie prawo karne generalnie spełnia standardy unijne w zakresie zwalczania terroryzmu, co oznacza również, że w razie konieczności współpracy na arenie międzynarodowej, polski system wewnętrzny pozwoli na prawidłową reakcję w tej dziedzinie.

Key words:

Terrorism, anti-terrorism legislation, organized crime

THE U.S. IN THE AGE OF TERRORISM: SECURITY, JUSTICE AND CIVIL RIGHTS

George W. Bush entered the White House without much experience in either U.S. foreign policy or international relations. As the governor of Texas (1995-2001) he was considered as being the archetypical Southerner and a provincial politician. To his critics and many of his countrymen, he was an ignoramus in world affairs, with foggy ideas about international order. Ironically, from the outset of his administration, President Bush was challenged with the grave danger of terrorism involving the U.S. in international policymaking, much more so than was predicted by strategists.

September 11, 2001, after the terrible and spectacular terrorist attacks on the World Trade Center in New York and the Pentagon in Washington, D.C, became a very sad and traumatic day and not only for Americans. Four hijacked airplanes destroyed the World Trade Centre, heavily damaged the Pentagon and killed around 3000 people. On September 11(now commonly referred to as 9/11), the symbols of U.S. economic and military power were the terrorists' goals. The unprecedented character and scale of the attacks was shocking for Americans and for the whole of the civilized world. Speculation grew over the intended target of the fourth hijacked plane, which was heroically downed by its passengers in Pennsylvania. Most likely it was the White House or Capitol Hill, which together with many other governmental facilities were evacuated¹. In circumstances of uncertainty and under the possibility of additional attacks, the U.S. government took immediate action to respond and plan retaliation. This tragic day, as claimed by many, changed America and Americans forever.

On the evening of September 11, in his Address to the Nation speech, President Bush condemned this cruel attack and encouraged his fellow countrymen. He said: The pictures of airplanes flying into buildings, fires burning, huge structures collapsing, have filled us with disbelief, terrible sadness, and a quiet, unyielding

¹ Rick Fawn, *From Ground Zero to the War in Afghanistan*, [in:] *Global Responses to Terrorism. 9/11, Afghanistan and Beyond*, ed. by Mary Buckley and Rick Fawn, London-New York, 2003, p. 12.

anger. These acts of mass murder were intended to frighten our nation into chaos and retreat. But they have failed; our country is strong.

A great people has been moved to defend a great nation. Terrorist attacks can shake the foundations of our biggest buildings, but they cannot touch the foundation of America.(...) America and our friends and allies join with all those who want peace and security in the world, and we stand together to win the war against terrorism. (...). This is a day when all Americans from every walk of life unite in our resolve for justice and peace. America has stood down enemies before, and we will do so this time. None of us will ever forget this day. Yet, we go forward to defend freedom and all that is good and just in our world².

Europe identified with the U.S. after 9/11 in symbolic declaration “we are all Americans!” sprang from the front pages of the press. Immediate international Sympathy for Americans and solidarity was tremendous and visible around the world. In Poland the mass media covered this tragic event in detail, sharing sorrow and mourning with Americans and their anxiety for the security³.

On September 11, 2001, America and Americans were confronted by a traumatic event that effected people individually and collectively. Their personal sense of security was shattered, and America’s territorial integrity was violated to an even greater degree than at Pearl Harbor. At Pearl Harbor, soldiers protecting the state were killed; at the World Trade Center, civilians, who were supposed to be protected by the state, were victims⁴.

Americans responded to the terrorist attacks with a remarkable and visible patriotism and bitter anger. The hijackings and subsequent killings were crimes under America’s law that the U.S. had jurisdiction to prosecute. President Bush immediately declared a strong response to this criminal act and grave danger for the security of America and its citizens.

The cruel terrorist attacks on the World Trade Center and Pentagon emotionally devastated Americans, the more so since America was attacked within its own boundaries, in the heart of the country. According to many witnesses and scholars this was an unprecedented horrible day. America had just been dealt its biggest blow since Pearl Harbor. Half of lower Manhattan lay buried in rubble, dust and smoke. The Pentagon, the symbol of US invincibility, was smoldering. Citizens

2 “We Will Prevail”. President George W. Bush on War, Terrorism, and Freedom. Selected and Edited by National Review, New York 2003, p. 2.

3 In TV, radio and every-day press there was a lot of sympathy and condolences addressed to the friendly American nation.

4 George Soros, *The Age of Fallibility. The Consequences of the War on Terror*, London, 2006, p. 101.

were terrified; the country was clearly under attack. And enemy agents could still be somewhere within its borders⁵.

The Bush response to the 9/11 attacks was to declare that the United States was at war. On 12th September the president labeled the attacks “acts of war” and firmly declared to fight those terrorists responsible and their supporters. In the following days Americans, shocked and emotionally devastated, shared the official views and approach towards terrorists. Immediately after the attacks on New York and Washington, American public opinion polls had found majorities (ranging from 66 to 81 percent) of Americans accepting a formal declaration of war against terrorism. Many Americans believed 9/11 to be the prelude to further serious terrorists’ attacks. On September 14, 2001 both houses of Congress passed a resolution giving the president right: to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorist against the United States by such nations, organizations, or persons⁶.

In a radio address on September 15, 2001, Bush declared “the war against terrorism”. He repeated his thanks to brave and understanding Americans and assured that the U.S. government took a broad and sustained campaign to secure our country and eradicate that evil terrorism. (...) Great tragedy has come to us, and we are meeting it with the best that is in our country, with courage and concern for others. Because this is America. This is who we are. This is what our enemies hate and have attacked. And this is why we will prevail⁷.

On September 17, 2001, the president issued a top–secret directive to George Tenet, director of the CIA, ordering the agency “to hunt, capture, imprison, and interrogate suspects around the world”. So, under this order, the CIA began to function as “global military police, throwing hundreds of suspects into secret jails”⁸. Soon Osama bin Laden was pronounced the chief suspect. Later, in a video recording shown on television, he took credit for the 9/11 attacks and called on Muslims to fight a jihad against America and its allies.

On September 20, at the joint session of Congress, President Bush demanded the surrender of Al Qaeda leaders and terrorists from the Taliban leadership in Afghanistan and a few days later, on September 24, he issued an Executive Order

5 Mattew Brzezinski, *Fortress America: On the Frontlines of Homeland Security, and Inside Look at the Coming Surveillance State*, New York, 2004, p. 86.

6 Timothy J. Lynch, Robert S. Singh, *After Bush. The Case for Continuity in American Foreign Policy*, Cambridge, 2008, p. 74. The resolution was accepted by unanimous voting in Senate (98:0) and the House of Representatives (420:1).

7 “We Will Prevail”..., p. 8-9.

8 Tim Weiner, *Legacy of Ashes. The History of the CIA*, New York 2008, p. 555-556.

to disrupt and freeze terrorist finances. In the meantime, although unsuccessful, Pakistani President Musharraf tried to convince the Taliban to surrender bin Laden and to seek a diplomatic solution with the Americans. The U.S. administration, supported by Great Britain and other Western countries, as well as Russia, was preparing for a war, which – as many predicted – was inevitable⁹.

In the meantime the American administration declared as its main goal to fight and eliminate of global terrorism, focused much of attention on its leaders. The FBI published the names and photos of the twenty-two “most wanted terrorists”. In the atmosphere of fear and alerts of imminent further attacks forecast by the FBI and Attorney General John Ashcroft, government took very strong anti-terrorists approach.

In the later judgment of many observers and scholars, September 11 was that catastrophic failure which might almost have been predictable. They argued that the possibility of danger of terrorists’ attacks was visible, as George Tenet, CIA director in 1997-2004, had predicted three years before. In the consequence, as critically and bitterly argued by one author: It was systematic failure of American government – the White House, the National Security Council, the FBI, the Federal Aviation Administration, the Immigration and Naturalization Service, the congressional intelligence committees. It was a failure of policy and diplomacy. It was a failure of the reporters who covered the government to understand and convey its disarray to their readers. But above all it was a failure to know the enemy¹⁰. What’s more, there are some serious arguments that prior to the 9/11 attacks, the Bush administration did not implement carefully and seriously a homeland security policy. It is hard to expect that Tenet was objective in his later judgement about Bush and U.S. security policy, but similar opinions were and are shared by other officials and scholars.

So, as we see, the U.S. declared “war on terrorism” immediately after the attacks and in an atmosphere of fear of further possible danger The “crusade” against terrorism declared by President Bush on September 16, 2001, was supported by many politicians and congressmen¹¹. Americans responded to the attacks with mixed feelings – a bitter anger and fear. Common support for the government’s activities became very visible and loud. Actually, such phraseology is quite typical in American policymaking. The U.S. government often declared “war” or “crusade” against sometimes “nebulous enemies” at home – poverty, drugs, crime or abroad – communism, evil empire or tyranny etc.

President Bush proclaimed “the war against terrorism” and was searching for the strong and substantial support of Americans as well as foreigners. The attacks

9 R. Fawn, *op. cit.*, pp. 13-15.

10 T. Weiner, *op. cit.*, p. 555.

11 www.yale.edu/lawweb/avalon/sep_11/president_015.htm; www.yale.edu/lawweb/avalon/sep_11/house_proc_091401.htm

could have happened anywhere else, so all free nations were invited to fight against terrorism together, side by side. So, as some politicians admitted, the war on Islamic terrorism ensured that the United States was committed to a long fight against jihadism in many places, not limited only to the Middle East. While many commentators focused attention on strategic and military aspects, scholarly critics of the military intervention in Afghanistan (and later in Iraq) also focused on the growing power of the president and executive office. The more so, they saw that the announced preventive war against Iraq was a “a war of choice” rather than necessity¹².

After 9/11 Washington began “buzzing” about the possibility of Saddam Hussein providing weapons of mass destruction (WMD) to Al Qaeda or other terrorist groups and networks for use against America and/or its allies. The danger of further terrorist attack (proved in some way by a series of anthrax attacks beginning on September 18) was unpredictable, yet quite possible, the more so the media and public opinion were deluged with speculations about such potentiality¹³.

In the following weeks the administration had been preparing the military attack against the Taliban in Afghanistan with the substantial support of foreign countries. The U.S. and its allies – as argued by its politicians and later also by many scholars – were justified in resorting to force in Afghanistan under the principle of self-defense or preventive war. Other nations enlisted in that struggle; NATO sent troops to Afghanistan and most countries exchanged intelligence and cooperated through police and the courts in searching for and bringing to justice terrorists and those suspected of having links with terrorist organizations. The fight with the Taliban became a sort of prelude to the next step in the war against terrorism – the preparation to attack Saddam Hussein and Iraq. The U.S. declared war against the Taliban on the premise that the regime supported the activities of Al-Qaeda, so the main goal of this mission in Afghanistan (“Operation Infinite Justice”, “Operation Enduring Freedom”) was to root out the Al-Qaeda terrorists and destroy their training camps¹⁴.

On October 7, 2001 the United States together with its allies began the attack against Al-Qaeda and the Taliban in Afghanistan. Initially the war produced some visible results; some Al-Qaeda leaders were captured or killed and some of those providing aid to it were punished. So America and its allies rapidly accomplished the main objectives of being in Afghanistan, but they didn’t capture bin Laden, and many others terrorist warriors escaped to Pakistan and other neighboring countries.

12 Louis Fischer, *The Way We Go to War: The Iraq Resolution*, [in:] *Considering the Bush Presidency*, Oxford, 2004, pp. 107-124.

13 More on the role of media: Elinor Kelley Grusin, Sandra H. Utt, eds., *Media in an American Crisis: Studies of September 11, 2001*, Lanham, c2005; Anthony R. Dimaggio, *Mass Media, Mass Propaganda: Examining American News in the “War on Terror”*, Lanham, c2008.

14 R. Fawn, *From Ground...*, p. 13-15.

According to scholars: In Afghanistan, U.S. forces failed to eliminate the leadership of Al-Qaeda. Equally, although they toppled the Taliban regime that had ruled most of that country, they failed to eliminate the Taliban movement which soon began to claw its way back. Indeed as a brief campaign, the Afghan War became a protracted one. Nearly seven years after it began, there is still no end in sight. If anything, America's adversaries are gaining strength. The outcome remains much in doubt¹⁵. Perhaps from today's perspective this critical opinion has justification, the more so we know that the fight is not yet finished. But we should remember that in October 2001 there was another perspective and both American and European public opinions were very supportive to the idea of fighting against terrorists in Afghanistan.

On October 25, 2001, the President signed two directives implementing the fight against terrorism and others improving U.S. national security. In coming weeks the administration undertook some action to modernize and improve the efficiency of units and agendas promoting security for citizens and the state. First of all, in October 2001, President Bush strengthened the status of homeland security through establishment of the Office of Homeland Security (OHS), Later raised to a departmental position. Governor Tom Ridge, as its director, was charged with coordinating and implementing homeland security policy. In coming months he became quite successful in his activities¹⁶.

In following weeks the administration developed a variety of strategies in the campaign against Al-Qaeda, focusing on the wide spectrum of domestic and international resources, assets and tactics. The most important tool to implement the strategy and policy of fighting terrorism was the congressional decision, known as the USA Patriot Act, signed into law by President George W. Bush on October 26, 2001¹⁷.

The Attorney General, John Ashcroft, became extremely active and innovative in the war against terrorism, which later resulted in bitter criticism from many of his fellow countrymen. First of all he ordered the surveillance of all individuals and organizations suspected of being involved in terrorist activities. Many people of Arabic roots came under surveillance, some were arrested and interrogated (without legal consent) and some were deported¹⁸. Up to the beginning of November 2001

15 Andrew J. Bacevich, *The Limits of Power. The End of American Exceptionalism*, New York, 2009, p. 125.

16 Robert Singh, *Superpower Response*, [in:] *Global Responses to Terrorism. 9/11, Afghanistan and Beyond*, ed. By Mary Buckley and Rick Fawn, London-New York, 2003, p. 58.

17 The acronym stands for *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT)*. More on the Patriot Act, Stewart A. Baker, John Kavanagh, eds., *Patriot Debates: Experts Debate the USA Patriot Act*, Chicago, 2005; Howard Ball, ed., *The USA Patriot Act of 2001: Balancing Civil Liberties and National Security: A Reference Handbook*, Santa Barbara, 2004; Debra A. Miller, *The Patriot Act*, Detroit, 2007.

18 John Ashcroft in book *(Never Again. Securing America and Restoring Justice*, New York, 2006) presented his own judgment of governmental activities and his role in fighting terrorism. He was quite satisfied and proud of the results of this policy.

more than 1140 people were arrested under suspicion of terrorism. The important and timely problem in the war against terrorism was how to do it effectively and adequately within American values. Later it became a more and more serious problem for the Bush administration, mostly because of the cruel, inhuman and degrading treatment of detainees¹⁹.

George Bush put in place a number of new federal agencies and institutions to fight terrorism at home. The Department of Homeland Security (DHS)²⁰ established in 2002 in the Department of Defense, was his substantial achievement in counter terrorism strategy. The national security of the U.S. has been subject to formal control since 1947, but homeland security has not. There was not a single governmental agency which could focus its attention on home security. Instead many dispersed organizations were responsible for conducting homeland security²¹.

For the United States, the war on terror became and still is a fundamentally strategic goal, which involves a series of campaigns to secure the geo-strategic situation, retardation of terrorism and building the prospects of democracy and stabilization. Officially declared by Bush, the Global War on Terrorism (GWOT), it became a fundamental part of U.S. foreign policy in the following years. Politicians of all political persuasions declared their support for “the global war”, which was likely to continue for decades if not generations. The Bush Doctrine became the fundamental initiative for U.S. national security²². The National Security Strategy declared that the aim of the war is to defeat global terrorism. The first application of the Bush Doctrine took place in Afghanistan; the second occurred in Iraq.

The Patriot Act became the most important legal base in the National Strategy for Combating Terrorism (NSCT), which was officially announced in February 2003, just before the invasion of Iraq. What is interesting, is that around 70 percent of American approved of this invasion. Certainly, in the following months some of them, learning more about the reality of it, changed their minds, but most of them believed (or wanted to believe?) that there was a real danger to American and world safety from Saddam Hussein. Moreover, most of them believed that he was the organizer of the 9/11 attacks in New York and Washington²³.

19 Phillip H. Gordon, *Winning the Right War. The Path to Security for America and the World*, New York, 2007, pp. 17-22.

20 Tom Lansford, “Homeland Security from Clinton to Bush: An Assessment”, *White House Studies*, 3, 4, 2003.

21 T. Lynch, R. Singh, *op. cit.*, pp. 115-116.

22 www.whitehouse.gov/nsc/nss.pdf

23 Morris Berman, *Dark Ages America. The Final Phase of Empire*, New York, 2006; Al. Gore, *The Assault on Reason*, London, 2007, p. 3. Gore, heavily critical about conducting policy by the Republican administration and the president wrote: In fact, not long after the attacks of 9/11 President Bush made a decision to start mentioning Osama bin Laden and Saddam Hussein in the same breath, in a cynical mantra designed to fuse them together as ones in the public's mind. He repeatedly used his device in a highly disciplined manner to create a false impression in the minds of the American people that Saddam Hussein was responsible for 9/11 (p. 108).

The Bush administration's policy, accepted largely by U.S. public opinion, as shown constantly in polls, sought also congressional approval for its fight against global terrorism. On October 10, 2002, the Senate (77:23) and the House of Representatives (296:133) voted in favor of the Iraq resolution. It is worth mentioning that at this time Congress was not so united on this issue. Republican senators voted "yes" (48; one was in opposition), but Democrats were divided (29 "yes" and 21 "no"). In the House of Representatives, 215 Republicans supported the resolution, while 6 voted against. The majority of Democrats (126) voted against, while 81 of them voted in favor of it. The resolution authorized the president: 'to use the Armed Forces of the U.S. as he determines to be necessary and appropriate to (1) defend the security of the U.S. against the continuing threat posed by Iraq and (2) enforce all relevant Security Council Resolutions regarding Iraq²⁴.

In the State of the Union Speech on January 28, 2003, the president talked about biological weapons possessed by Saddam who can use them at any time against America²⁵. All of this was terrifying but none of it, as was discovered later, was true. But the U.S. government used all possible arguments to find any reasons (or rather excuses) for its decision about the war against Iraq. Secretary of State Colin Powell went to the United Nations to get understanding and support for the American policymaking. On February 5, 2003, he talked about biological weapons in Iraq and assured the audience that there were "facts and conclusions" based on "solid intelligence". Yet his arguments were rather doubtful for the audience felt quite hesitant about it²⁶. On March 18, 2003, Bush formally declared war on Iraq, which started two days later without the support of the United Nations. One of Bush's critics wrote that: the administration made ostentatious claims about weapons of mass destruction that turned out to be false, alleged links between Iraq and Al-Qaeda that did not exist, berated allies for refusing to back an invasion they argued would be unwise, and carried out the invasion without a viable plan for what to do if it produced chaos, civil war, and terrorism, which it did²⁷. Unlike in the case of the war in Afghanistan, this time round America failed to get the unanimous weight of public opinion behind it. This decision, already questioned by some, seriously damaged America's credibility and moral authority. Six weeks after the invasion, on May 1, 2003, President Bush landed on the "USS Abraham Lincoln" and proclaimed "Mission Accomplished". He publicly declared that major military operations have ended. Yet, in the following months and years Americans have been losing in Iraq even more soldiers than during the invasion²⁸. The killing of Americans became

24 T. Lynch, R. Singh, *op. cit.*, p. 76.

25 <http://whitehouse.gov/news/releases/2003/01/20030128-19.html>

26 See, Russ Hoyle, *Going to War: How Misinformation, Disinformation, and Arrogance Led America into Iraq*, New York, 2008.

27 P.H. Gordon, *op. cit.*, p. 18.

28 A.J. Bacevich, *op. cit.*, p. 203. The author dedicated book to his son, who was killed in action in Iraq on May 13, 2007.

an increasingly more serious argument for their fellow countrymen against U.S. involvement in the region. If and how successful the U.S. has been in Iraq, remains a highly debated topic, the more so now that Americans know much more about the hidden facts of “the Bush war”.

When the war was officially declared won on May 1, 2003, the subsequent occupation proved that many difficult problems existed in Iraq. The rogue states – Syria and Iran – supported the rebels in many ways and both armed and financed them. The war on terrorism had not ended, but rather – as many predicted – it was growing.

Richard A. Clarke, a former anti-terrorism coordinator has argued that the war on terrorism is being lost, showing the atrocities, which have doubled since 9/11²⁹.

By the end of 2007, nearly 4000 Americans had been killed in Iraq. The major criticism went to the occupation and misconduct. The Iraq war divided and polarized America and pushed president and Congress against each other after the mid-term elections in 2006. According to some critics much of the “Vietnam Syndrome” was being regenerated as the “Iraq Syndrome”³⁰.

The United States had to pay a huge amount of money for its security and the international security as well. There is a systematic rise in the costs of many activities linked with it and so-called security alerts. Nobel Prize winner, Joseph E. Stiglitz, with anxiety and uncovered criticism wrote about the enormous cost of “Iraq’s disturbance”. According to Stiglitz, up to 2008 America had paid more for the Iraq war than for Vietnam and twice that of Korea³¹.

Under the concept of preemptive war, the U.S. had, before 9/11, prepared for war with the Taliban in Afghanistan. Similarly, the invasion of Iraq formed part of U.S. preemptive strategy in the fight against terrorism. Bush and his close associates (Dick Cheney, Condoleezza Rice, Donald Rumsfeld – to name only a few albeit the most influential) rolled on the war machine, even though from the outset the motives were questioned by many Americans as well as by many of America’s foreign allies³². Yet many other Americans believed the information about Weapons

29 Richard A. Clarke, *Against All Enemies. Inside America’s War on Terror*, New York, 2004. He was also bitterly critical about President Bush and his staff ignoring in Summer, 2001 the alerts on danger of terrorism for America and after 9/11 misusing by them this tragic experience. And later he wrote sarcastically: In the end, what was unique about George Bush’s reaction to terrorism was his selection as an object lesson for potential state sponsors of terrorism not a country that had been engaging in anti-U.S. terrorism but one that had not been, Iraq. It is hard to imagine another President making that choice (p. 244).

30 A.J. Bacevich, *op. cit.*, pp. 125-126. In Iraq he saw “a reprise of Vietnam, although in some respects at least on blessedly smaller scale”.

31 Joseph E. Stiglitz, Linda Bilmes, *The Three Trillion Dollar War: The True Cost of Iraq Conflict*, New York, 2008.

32 Ahmed Nafeez is extremely critical about American policy before and after the attacks (*The War on Freedom: How and Why America Was Attacked September 11, 2001*, London, 2002); also Emmanuel Todd, *Schyłek imperium. Rozważania o rozkładzie systemu amerykańskiego*, Warszawa 2003; Bob Woodward, *Stan zakłamania*, Warszawa, 2007; *State of Denial*, New York: Simon & Schuster, 2006.

of Mass Destruction (WMD) that were being produced or likely to be produced by Iraq. So the fight against terrorism was in part implemented by the plan to relieve the world of a potentially grave danger – the possession of WMD by Iraq. Another goal was to overthrow Iraq's cruel and bloody dictator and to build democracy and freedom for the Iraqi people. Americans, with their idea of mission, were gained over by such a promising moral aspect of U.S. intervention in Iraq. Perhaps this explains unquestionably the high level of approval and support afforded to President Bush's policy by the majority of Americans, not only at the beginning of the war but also later.

Historically the United States had enjoyed a special providence, based mostly on exceptionalism in terms of geography, ideas and policy of continental expansion. Its policy has been shaped by some threats, real or potential, and Americans have experienced some hard times and insecurity; the Alamo, fort Sumter, Pearl Harbor and recently September 11, 2001, to name but a few. America was more secure than other countries and U.S. foreign activities have been expansive and moralistic, the more so for its geographic situation. But moral aspirations are rather dubious in implementing foreign policy. Certainly, in such unpredictable and dangerous circumstances Americans have reasons to demand improvements in the nation's security whether at significant cost or otherwise. But they want to know the truth, the reality and the possible price they have to pay.

For many Americans the question of whether the Bush administration cynically exploited a climate of fear to advance presidential power, became more than an academic issue. They gradually criticized the abuse of power by Bush and his close associates for violation of the Constitution and building the "imperial presidency". As a consequence of the war in Iraq, according to many anxious countrymen, the rise of presidential power and strengthening role of the military was clearly visible. In the following years many Americans became concerned over the potential failure of obedience to the Constitution and the abuse of civil right³³s.

One critic of Bush and his policy was Al Gore. In his book "The Assault on Reason" he attacked the president and his close associates for the falsification and manipulation of Americans and Congress after 9/11 using government officials and the media. He argued against the Bush Doctrine, which used the extraordinary conditions to expand the prerogatives of the executive branch and for building a national security system based on a garrison state fed by fear and obsession³⁴.

33 There is huge amount of literature on the subject: Nancy Chang, *Silencing of Political Dissent: How Post-September 11 Anti Terrorism Measures Threaten Our Liberties*, New York, 2002; Donald J. Musch, *Balancing Civil Rights and Security: American Judicial Responses Since 9/11*, Dobbs Ferry, 2003; Elaine Casel, *The War on Civil Liberties: How Bush and Ashcroft Have Dismantled the Bill of Rights*, Chicago, 2004; Fagan Ginger Ann, ed., *Challenging U.S. Human Rights Violations Since 9/11*, Amherst, 2005.

34 Al Gore, *The Assault on Reason*, London 2007, p. 17, 39.

In President Bush's policy and U.S. involvement in a long and devastating war in Iraq, Gore saw a real danger for the American political system and its credibility. He was extremely critical of the Republican establishment and abuse of power by the president and executive branch, which were using the real, as well as the imaginary danger of terrorism to America. Under Bush's guidance the U.S. did not follow the Geneva Conventions, which in consequence led to creating (with the semi-approval of officials) the inhuman prison systems in Gauntánamo and Abu Ghraib³⁵.

Many Americans, mostly leftists, were against Bush's handling of civil liberties in the war on terror and persistent U.S. violations of international law – from the Geneva Conventions to the UN Charter. Participating in this public debate on U.S. involvement in Iraq and “the war on terrorism” were many intellectuals, lawyers, historians, journalists and the like, which included Noam Chomsky³⁶ – celebrated linguist, Benjamin R. Barber³⁷ – renowned political scientist, Tony Judt³⁸ – author, editor and frequent contributor to “The New York Review of Books”, and many others. Benjamin R. Barber, author of several articles and books on jihad, Islam and terrorism, explains that American insecurity and fear are the base for the sacrifice of its freedom. He claimed that John Ashcroft took advantage of the situation and built in the “fear estate” a feeling of security for Americans. In consequence the Prosecutor General himself became the real danger to American democracy and civil rights. Terrorism then, as he argued, a real danger to fundamental freedom is successfully spreading its mission and seeding its fear³⁹.

Bush critics raised a growing list of charges such as, warrant less wiretapping, monitoring of financial transactions by the National Security Agency (NSA), surveillance, prisoner abuse, interrogation, military tribunals, presidential primacy, etc. Civil libertarians objected to many aspects of post-9/11 politics as “cynical overreaction” to the security threats that threatened liberties, such as privacy protection, freedom of speech and press etc. They argued that counter- terrorism must accommodate itself to the law and constitutional liberties, the more so they claimed that the erosion of wartime liberties will remain after the war and its emergency. They criticized the presidential power and “imperial presidency”, very dangerous for the American Constitution and political system itself⁴⁰.

35 A. Gore, op. cit., p. 60-65.

36 Noam Chomsky, *Interventions*, San Francisco, 2007. This is a selection from his writings from newspapers on Bush and his policy. See also in Polish, *Polityka, anarchizm, lingwistyka. Terror, wojna i globalny kapitalizm*, Poznań 2007. His critical book on U.S. policy (*Hegemony or Survival*, New York, 2004), got a lot of publicity and careful attention not only in America. There is also Polish edition – *Hegemonia albo przetrwanie: Amerykańskie dążenie do globalnej dominacji*, Warszawa, 2005.

37 Benjamin R. Barber, *Jihad vs. McWorld*, New York, 1996; *Fear's Empire: War, Terrorism, and Democracy*, New York, 2003.

38 Tony Judt, Denis Lacorne, eds., *With Us or Against Us: Studies in Global Anti-Americanism*, New York 2005.

39 Benjamin R. Barber, *Imperium strachu. Wojna, terroryzm i demokracja*, Warszawa, 2005, pp. 81-82.

40 Susan J. Tabrizi, *At What Price? Security, Civil Rights, and Public Opinion in the Age of Terrorism*, [in:], David B. Cohen, John W. Wells, eds., *American National Security and Civil Liberties in An Era of Terrorism*, New York,

Some authors argue that the war against terrorism was approved by most Americans and that civil rights essentially were unhampered, which is confirmed by polling data⁴¹. Perhaps the citation from George Soros explains it somewhat. The author, critical of Bush and his policy, emphasized that his administration fostered and magnified the fear that gripped the nation and used it to further its own interests. The public lined up behind the president in the war on terror and allowed him to engage in policies that would have been impossible in normal times (...). The terrorist attack was real indeed, and it required a strong response; but the response chosen by the Bush administration carried the nation into a fantasyland created by misinterpretation of reality. What is worse, people still do not recognize the phantasmagoric element in the war on terror. I shall have a hard time getting my point across because the war on terror has been unquestioningly accepted by the public; indeed, it is seen as the natural response to the terrorist attacks of 9/11 even by those who are opposed to the Bush administration's policies⁴².

The neo-conservatives played a significant role in arguing for the strengthening of U.S. defense and security in the age of terror. The Bush rhetoric was a sort of ideological direction in which many Americans expected the promise for stability and order. The declared war with "Islamofascism" and "Axis of Evil", pronounced many times by the president, became a visible part of his "crusade" against terrorism⁴³.

Since April 2004, when Abu Ghraib began to appear in the media, there was a new wave of strong criticism on the torture and the abuse of power by Americans. American democracy, which was and should be an example and role model for other states and nations, came under fire around the world, even in friendly nations⁴⁴. The activists of Amnesty International (AI) were strongly against brutal abuses at the prisons in Guantánamo and Abu Ghraib⁴⁵.

In public debate many prominent activists, journalists and writers raised again a serious problem facing America and the world, e.g. the relationship between

2004, pp. 185-197; Al Gore, *op. cit.*, pp. 132-139, 142-150.

41 www.galluppoll.com/content/default.aspx?ci=5263. In 2005, 62 percent Americans thought the Patriot Act was about right" and/or that it "does not go far enough". 34 percent believed it "goes too far".

42 G. Soros, *op. cit.*, pp. 101-102.

43 Ira Chermus, *Monsters to Destroy: The Neoconservative War on Terror and Sin*, Boulder 2006, pp. 121-142, 151-162.

44 Seymour M. Harsh, *Chain of Command: The Road From 9/11 to Abu Ghraib*, New York, 2004; Joseph Margulies, *Guantánamo and the Abuse of Presidential Power*, New York, 2006.

45 <http://washingtonpost.com/wp-dyn/content/article/2005/05/25/AR200505525018>

security and civil liberties⁴⁶. The official commission was established to explain this shameful case and involvement of American soldiers⁴⁷.

In the “war against terrorism” perhaps the most active and important role was played by the Secretary of Defense, Donald Rumsfeld, “the war hawk”. His strong militaristic approach after a few years of controversial war became an object of criticism even from Republicans, including some governmental officials. The growing criticism towards this very unpopular secretary, especially after the “discovery” of inhuman treatment and abuses in Abu Ghraib and Guantánamo, resulted finally in his resignation from office in the autumn of 2006. Yet he finished his job with a special official ceremony and honors⁴⁸.

An important part in the public debate on the prison system, its tortures and legal Abuse, was played by lawyers⁴⁹. Joseph Margulies from Northwestern University Law School in Chicago is very critical about the prison system built by Bush in 2002, which he called “the ideal interrogation chamber”. This is “unaccepted in the American legal system”, the more so as many of these prisoners were not guilty of any terrorist activity against the U.S.⁵⁰

Some of the lawyers, such as Alan Dershowitz, a renowned academic from Harvard Law School, became a strong defender of President Bush and his policy⁵¹. Quite a similar attitude was demonstrated in his writing by Jean Bethke Elstain from the School of Divinity at the University of Chicago, who strongly defended the Bush policy and “brutal by its nature, the war against terrorism”. He emphasized that America’s struggle, not appreciated enough and criticized by many, was a devoted fight for the security of America and the whole world⁵².

America’s involvement in Iraq without legal basis and against the tradition of a long-held commitment to international law, influenced a sharp decline of U.S. respect and credibility in the international community. There is a growing number of

46 There are interesting interviews with 25 intellectuals and public persons in Sut Jhally, Jeremy Earp, eds., *Hijacking Catastrophe. 9/11, Fear and the Selling of American Empire*, Northampton, 2004. Similar with the idea of interviews is the book of Polish writer, Artur Domosławski – *Ameryka zbuntowana. Siedemnaście dialogów o ciemnych stronach imperium wolności*, Warszawa, 2007. It’s worth mentioning very interesting lawyer’s book, Maureen Webb, *Illusions of Security: Global Surveillance and Democracy in the Post-9/11 World*, San Francisco, 2007

47 Strasser Steven, ed., *The Abu Ghraib Investigations. The Official Reports of the Independent Panel and Pentagon on the Shocking Prisoner Abuse in Iraq*, New York, 2004.

48 Andrew Cockburn, *Rumsfeld. An American Disaster*, London, 2007.

49 See: Richard M. Pious, *The War on Terrorism and the Rule of Law*, Los Angeles, c2006; James R. Silkenat, Mark R. Shulman, eds., *The Imperial Presidency and the Consequences of 9/11: Lawyers React to the Global War on Terrorism*, Westport, c2007.

50 Joseph Margulies, *Guantánamo and the Abuse of Presidential Power*, New York, 2006.

51 *Should the Ticking Bomb Terrorist Be Tortured? A Case Study in how a Democracy Should Make Tragic Choices* (pp. 132-163).

52 Jean Bethke Elstain, *Just War Against Terror. The Burden of American Power in a Violent World*, New York, 2003.

books on anti-Americanism as an international political phenomenon⁵³, which badly astonishes and worries Americans. After Bush, the decline of America's role and its position in the world order became visible. It's very likely that U.S. power is and will be accepted, mostly not for its moralistic approach but for its constant utility in an unstable and dangerous world. At least there are such expectations.

As many authors suggest, the U.S. cannot operate successfully outside of or against the international legal framework. Yet, according to Robert Keegan, who repeated it many times, security, not law, established American legitimacy' in those predominantly Western European nations that sought it⁵⁴. Truly speaking, in U.S. history we can hardly find a president who has put the requirements of international law above the demands of national security.

The intervention in Afghanistan and invasion of Iraq, even for many friendly Muslims towards United States, became a sort of wider war against Islam, which worried many Americans. Distinguished diplomat and former Ambassador to Saudi Arabia Chas W. Freeman, on October 4, 2007, talked to the Pacific Council on International Policy and the American Academy of Diplomacy about diplomacy in the age of terror. He said: But our actions and rhetoric have served to persuade a very large majority of Muslims that we are engaged in a global assault on them and their faith. American relations with the Islamic world, especially the fifth of it that is Arab, have never been so hostile or mutually disrespectful. Our television and radio talk shows, aimed at domestic audiences, are heard abroad. In discussion among ourselves we routinely equate Islam with terrorism. This has made it even harder for Muslim friends of the United States to openly to cooperate with us in opposing the extremists who are our common enemies.⁵⁵

Ambassador Freeman noted that in Bush's America there was a strong preference for solving problems by militaristic behavior rather than diplomacy, cooperation or promotion of legal norms. "Islamofascism" was invented and the rise of "Islamophobia" took place. This impacted heavily on the worsening image of the U.S. around the world, not only in evil states but also in friendly nations. To regain its spiritual strength and allied support, America must restore its reputation "as the speaker for the world's conscience, not its most powerful abuser". He declared that the urgent task for Americans will be to devise a coherent strategy to deal with the very real danger posed by terrorists with global reach and their ideological base among the world's Muslims. The United States needs a strategy that integrates intelligence,

53 Andrew Ross, Kristin Ross, eds., *Anti-Americanism*, New York, 2004; Brendon O'Connor, Martin Griffiths, eds., *The Rise of Anti-Americanism*, London-New York, 2006; Peter J. Katzenstein, Robert O. Keohane, eds., *Anti-Americanism in World Politics*, New York, 2006; Richard Higgott, Ivona Malbasics, eds., *The Political Consequences of Anti-Americanism*, Milton Park, 2008; Giacomo Chiozza, *Anti-Americanism and the American World Order*, Baltimore c2009.

54 Robert Kagan, "A Matter of Record", *Foreign Affairs* 84, 1, 2005, p. 170-173; T. Lynch, R. Singh, op. cit., p. 41.

55 http://www.unc.edu/depts/diplomat/item/2007/1012/free/freeman_diplomacy.html

diplomacy, economic measures, and information policy with law enforcement and military power. We need a grand strategy that unites us with the enemies of our enemies and regains the collaboration and support of now alienated allies and friends. (...) Rediscovering diplomacy, professionalizing it, developing doctrine to coordinate other instruments of statecraft with it, and training to get better at it are essential components of the grand strategy for combating Islamic terrorism that we require⁵⁶. Restoring peace and security in a disturbed world is the main goal and a real challenge for the United States and its allies. Many American experts, including officials, emphasize the need and necessity to learn more about Islam and restoration of respectful relationships with the Muslim world.

In coming to a close, I would like for a moment to go back in chronology. On May 20, 2000, in a commencement address to the U.S. Coast Guard Academy in New London, Connecticut, Secretary of State Madeleine Albright shared some thoughts and remarks on the general problem of security for the U.S. and the world. She emphasized that Americans must be better prepared and also protect themselves from the unexpected because of our military strength, potential enemies may try to attack us by unconventional means such as sabotage and terror. They may seek to disrupt our government, sow fear within our communities, inhibit our travel, and make it harder for us to keep or deploy our troops overseas⁵⁷.

Madeleine Albright stressed that in so dangerous a world Americans must act together with others, since no nation can guarantee its security alone. In responding to this grave possible danger, the U.S. must be prepared for the fight any time. Concluding she said: Our purpose is to create an ironclad web of arrangements, laws, inspectors, police, and military power that will deny criminals and aggressors the space they need to operate and without which they can not survive⁵⁸. It looks that there still remains a current and timely problem, and a real challenge for America, her associates and for all of us.

In the global village terrorism became the public evil number one. The terrorist attacks on the U.S. and European cities (Madrid, London) as well as many other places and countries around the world, show evidently that there are no limits and no borders for such a danger and attempts of terrorist attacks. Extremists could also try suicidal attacks on public gatherings, government buildings or airplanes, using conventional or non-conventional weapons. The more important is then a better information system and close cooperation to prevent such a potential danger and protect the security for the people. The question of how long the threat will remain –

56 http://www.unc.edu/depts/diplomat/item/2007/1012/free/freeman_diplomacy.html

57 Madeleine Albright, *Focus on the Issues Building Peace and Security Around the World*, United States Department of State, 2000, p. 44.

58 M. Albright, *op. cit.*, p. 46.

and what evolving balance between liberty and public safety is prudent to meet the threat – is rather impossible to predict or estimate.

Neither George W. Bush nor the U.S. and its allies had won “the war on terror”. But it is very likely that the strong American response against the grave danger had made her future more safe from such traumatic incidents as 9/11. It lies beyond measurement but fortunately it did not happen and hopefully will never happen again.

USA W DOBIE TERRORYZMU: BEZPIECZEŃSTWO, SPRAWIEDLIWOŚĆ I PRAWA OBYWATELSKIE

Atak terrorystyczny na Stany Zjednoczone 11 września 2001 r. spowodował ogromną traumę Amerykanów, którzy odebrali to jako zamach na ich wolność i bezpieczeństwo. Ogłoszona przez prezydenta George'a W. Busha „wojna z terroryzmem” była w pełni aprobowana przez zszokowanych rodaków, a wkrótce też uzyskała duże poparcie międzynarodowe. Zarówno Kongres (Patriot Act), jak i miliony Amerykanów poparły politykę administracji republikańskiej, godząc się także – w imię bezpieczeństwa własnego i państwa – na działania ograniczające ich niezbywalne prawa i swobody obywatelskie. Jednakże wkrótce poczynania rządu, a w szczególności naruszanie praw obywatelskich (aresztowania, inwigilacja, podsłuchy etc.) i budowanie imperialnej prezydentury spotkały się ze wzrastającą krytyką Amerykanów. W Stanach Zjednoczonych podjęto rozległą publiczną dyskusję na ten temat, ogniskując uwagę na realnych i potencjalnych zagrożeniach swobód obywatelskich, wynikających z bezpardonowej walki z międzynarodowym terroryzmem. Interwencja przeciwko talibom w Afganistanie jesienią 2001, potem wojna w Iraku postawiły wiele dalszych pytań i wywołały wątpliwości odnośnie metod i celów polityki amerykańskiej. W niemałym też stopniu nadszarpaneły pozycję międzynarodową i autorytet moralny Stanów Zjednoczonych, zwłaszcza po ujawnieniu faktów o torturach i znęcaniu się nad więźniami w Guantánamo i Abu Ghraib.

Key words:

Terrorism, U.S. security, civil rights, George W. Bush, war in Iraq

ORGANISED TRAFFICKING IN PROTECTED SPECIES OF WILD FLORA AND FAUNA AS A MEANS OF SUPPORTING ARMED CONFLICTS AND TERRORISM

Wildlife crime: an introduction

Following in the wake of 9/11, anti-terrorist agencies in several countries blocked the bank accounts of numerous organizations suspected of terrorist activity or of supporting terrorism in some way. One outcome of this operation was that rebel groups and terrorist organizations immediately turned their attention to seeking new sources of income from which to fund their activities.¹ Crime targeted at natural environmental resources was an area which, at that time, lay beyond the interest of those fighting terrorism. In the global map of crime, poaching was recognized as a dangerous phenomenon as early as the 19th century but it was not until the 1980s that the intensification, scale and dynamism of this particular crime – together with its political entanglements – attracted serious attention. Thus today, we are dealing with a phenomenon the statistical image of which is both incomplete and far from clear. Most of those organizations charged with the responsibility of addressing the issue, stress that crimes against nature may be considered on a par with those of organized drug trafficking and the illegal arms trade. One thing of which there is no doubt, is that the latter two areas of criminal activity are interlinked with the illegal trade in endangered species of flora and fauna. It is also clear that such natural resources are being exploited to fund armed organizations who conduct terrorist activities in support of dictatorial regimes in a number of geographical locations around the world.

In some African, Southeast Asian and South American countries, funding is also being raised by granting licences or concessions to large industrial corporations

¹ See: B. Hołyst, *Terroryzm*, 2009, p 67 ff.; see also: W. Filipkowski, *System przeciwdziałania finansowaniu terroryzmu w ujęciu regulacji międzynarodowych*, [in:] E.W. Pływaczewski (ed.), *Aktualne problemy prawa karnego i kryminologii*, Białystok 2005, pp. 25-46.

for the exploitation of tropical forests. This has been going on for decades and has resulted in huge swathes of land being deforested. Hitherto, deforestation on this scale was primarily a dictate of warfare where deforestation was used to clear battlefields or to deny the enemy the use of strategic materials, or both. An example of such activity was the clearing of the primeval forests in the Białowieża region of Poland by the German military administration during World War I.² In more recent history, conflicts, both global and localized, have continued to reap devastation on the world's forestry resources. During the war in Indochina for example, in pursuing the "scorched earth" doctrine and using chemical defoliants, America laid waste to large areas of tropical rainforest in the territories of Vietnam, Laos and Cambodia, the purpose of which was to deny protective cover to North Vietnamese forces moving men and supplies into South Vietnam.³ It is not difficult to appreciate that along with the destruction of the forested areas concerned, the species of wildlife that inhabited those regions, some of them valuable, would also have perished. It is also worth mentioning that innocent people fall victim to war games of this nature, too. The effect of that destruction on the Indochinese Peninsular is still visible today – the chemicals used in the defoliants having been designed to work over a long period of time.

The Plundering of Flora and Fauna from the standpoint of UNODC operations

In the arena of environmental protection, particularly with regard to the protection of species of wild flora and fauna, the extremely efficient actions undertaken by the United Nations Office on Drugs and Crime (UNODC), calls for being both recognized and appreciated.⁴ It is worth noting that a long time ago the UNODC experts dealing with wildlife crime linked the phenomenon with the activities of organized international criminal structures involved in drug production and distribution, money laundering, deception, arms trafficking and the like. That such relationship exists is evidenced in reports prepared both by UNODC and those organizations with whom it collaborates. Such reports also make reference to the involvement of terrorist organizations and rebel groups.⁵

UNODC data illustrates that in Africa, destruction of the natural environment during armed conflicts between warring nations (including tribal wars) is not an

2 See: S. Kossak, *The Białowieża Forest Saga*, Muza S.A. p. 42 ff.

3 Cf. W. Pływaczewski *Międzynarodowa współpraca policyjna w zakresie przeciwdziałania przestępczości związanej z nielegalnym handlem chronionymi gatunkami fauny i flory*, "Przegląd Policyjny" No. 4(100)/2010 pp. 71-93.

4 www.unodc.org/documents/southasia/Newsletter/other/TRAFFIC (info dated June 15, 2010).

5 Cf. C. Nelleman, J. Redmond, J. Refisch, *The Last Stand of the Gorilla. Environmental Crime and Conflict in the Congo Basin*, United Nations Environmental Programme 2010, p. 25.

uncommon occurrence. As an example, during the course of the civil war in Uganda, soldiers on both sides committed not only crimes against humanity but also embarked on the mass killing of protected species of wild life – particularly elephant, rhinoceros and gorilla. Elephants were killed for their tusks and rhinoceros for their horn. The money raised from the sale of ivory and rhinoceros horn was subsequently used to buy arms. Gorillas were killed indiscriminately to provide meat for the warring factions. During such hunting raids, large areas of forest were burned in order to drive out the game, destroying or seriously damaging other valuable species of flora and fauna.⁶ Similar actions occurred in Kenya between 1963 and 1967 when the southeastern region of the country became the theatre for war between the Kenyan army and rebel Somali tribes. Both parties to that conflict participated in the mass slaughter of animals and burning of the habitats in which they lived, deeming such actions to be an element of tactical warfare which, among other things, was aimed at destroying the enemy's food base. Although the governments of Kenya and Somalia eventually signed an armistice in 1967, some marauding secessionists found new employment for themselves with poaching gangs – the so-called “shifta”.⁷ These gangs are responsible for having driven to a critical state, the survival of many rare species of animal, especially elephant and rhinoceros.

Today, the shady and unsavoury practice of hunting protected animal species continues driven on by a successive generation of Somali poachers. Indeed, the illicit acquisition of rare species of flora and fauna, not just the valuable parts of protected animals, has become a specialized area of activity for rebel groups operating in the territory of the Congo. UNODC experts firmly believe that the proceeds of such crime are used for the purpose of buying arms.⁸

Protection of mountain gorillas along the eastern frontier of the Democratic Republic of the Congo

It is particularly notable that the area where the frontiers of the Congo, Uganda and Rwanda adjoin each other has become one of Africa's hotspots, with troops of opposing political affiliation stationed in the region engaging in combat. The National Congress for the Defence of the People – *Congres National pour la Défense du Personnes* (CNDP), established by members of the Tutsi tribe, is one such organization and it is estimated that some 4,000 CNDP insurgents are deployed in the area of Virunga National Park. Their rival and bitter enemy for the past six-decades, are members of the Huta tribe which are gathered around the Democratic Forces

6 Ibidem, p. 25ff.

7 See: A. Alao, *Natural Resources and Conflict in Africa: the Tragedy of Endowment*, Rochester 2007, p. 101.

8 *The Last Stand of the Orangutan: State of Emergency: Illegal Logging, Fire and Palm Oil in Indonesia National Park*, UNEP 2007, p. 6ff.

for the Liberation of Rwanda – Forcer Démocratiques de Libération du Rwanda (FDLR). The military activity of these two forces is concentrated in an area that ranks as one of the most valuable natural nature reserves worldwide. Armed conflict between the warring tribes came to a head in Rwanda in 1994 when some 800,000 Rwandans (mainly Tutsis) were murdered by the Hutu. Although not appreciated at the time, this act of genocide was to have serious and tragic consequences for the unique natural features appearing in that part of the African continent, for it resulted in more than one-million Rwandans fleeing their native country to seek refuge in the Congo. Most went into refugee camps but the area many others chose was the remote and mainly inaccessible confines of Virunga National Park and its neighbouring nature reserves, where they established camps and the means to defend themselves. When the Hutu regime was overthrown in Rwanda, another wave of fugitives fled the country. These were the torturers and executioners of the Tutsis who, along with their families feared reprisal from their former victims – they too made for the sanctuary of the parks and that is how the hapless mountain gorilla found itself in the firing line, along with several other species of rare and valuable fauna. Armed combat groups fought each other and conducted their activities over a relatively small area which could not leave the otherwise pristine condition of the local flora and fauna unaffected. Particularly vulnerable were the mountain gorillas whose initial small stock of 380 specimens was ultimately reduced to a critical level as a result of rebel attacks.⁹ Although each party to the conflict officially declared their willingness to protect the habitat of these unique apes’, in reality and as independent sources have affirmed, this does not happen. A third force that attempts, at least officially, to alleviate ethnically imbued conflict in this neuralgic area, is the Congolese army. In practice, however, members of the army of the Democratic Republic of the Congo (DRC) – Armée de la République du Congo Démocratique (ARCD) often support FDLR troops which does little to further mutual relations between the forces situated in the Congolese/Rwandan border region.

Defence of the protected species of animals placed under threat is primarily in the hands of guards of the Congolese Nature Protection Service – Institut Congolaise pour la Conservation de la Nature (ICCN), who enjoy sporadic support from UN peacekeeping forces. The “blue helmets” are tasked with the responsibility of stabilizing the situation in the Congolese province of North Kivu but they also participate in operations aimed at taming poachers, rebels or whoever else may be threatening the natural habitat of the mountain gorillas’. These sites, which include large areas of tropical forest, are also at danger from excessive exploitation. Indeed, the unlawful removal of rare species of flora and fauna has risen to become a specialized area of crime for a variety of syndicates cooperating with rebel groups

9 M. Jenkins, Kto zabił goryle z gór Wirunga? [a Polish translation of: idem, Who Murdered the Virunga Gorillas?], National Geographic (Poland), Special Report, No. 7/2011, pp. 50-67.

on DRC territory. As before, the proceeds of such crime are mainly used to acquire arms.¹⁰ The Congo basin as a whole has become an area of special interest to well organized and well armed gangs who trade in the illicit trafficking of protected flora and fauna and who also control the illegal logging of tropical timber. Leaders of local militia tend to enter into informal arrangements with representatives of businesses or consortiums resourcing tropical hardwoods, guaranteeing them protection in their illicit trade in exchange for a suitable payment in forced tribute.

The protection offered by the insurgents is not limited to logging consortia: it also extends to those smuggling a wide variety of other illicit raw materials out of the country. Sporadic attempts by government forces in smashing paramilitary organizations in the east of the DRC have not yielded the results expected, as these organizations take advantage of the strong support afforded by their fellow tribesmen living in transient refugee camps. In the view of those tribesmen, cooperation with the militias offer the only opportunity to improve their tragic fate. Suffice it to say that in the Congolese city of Goma, which has become the main hub for refugees, the camps are at present home to over 800,000 people. It is from these camps that the local militias recruit workers for forest clearing, collecting further tributes from entrepreneurs in the process. One other important fact which has to be taken into consideration is that, in Africa, charcoal is the primary source of cooking and heating fuel. The Wirunga National Park buffer zone presently accommodates some 100,000 families and the demand for charcoal amounts to 4,000 bags per day. What this means is that, in order to protect their national parks from devastation, the authorities of the DRC and those of neighbouring countries (Uganda, Rwanda, Kenya), must take immediate action to ensure that this essential commodity is provided on a regular and sustainable basis. Alternative sources of fuel stock promoted by “green” organizations may in the near future serve to avoid irreparable damage to natural habitats, thus saving rare species of flora and fauna from the threat of extinction. For example, the World Wildlife Fund for Nature (WWF) supports the planting of eucalyptus trees around national parks. This solution was successfully adopted in Ethiopia some time ago and it effectively rescued Addis Ababa – population circa eight-million – from a chronic energy shortage. Another initiative, which is winning financial support from a number of international organizations and the DRC government, is the launch of kitchen ranges and increased-capacity stoves fired by butane or by processed blocks of grass or sawdust.

10 The Last Stand of the Orangutan..., pp. 6-8.

Protection of flora and fauna versus the activities of drug cartels and paramilitary organizations in South America

As emphasized earlier, the illegal clearing of tropical forests is involving, to an increasing degree, the drug processing and distribution sector. Some South-American countries (Columbia, Brazil, Peru) see their valuable rainforests being depleted by the slash-and-burn practice of farmers clearing land for agriculture, not for the production of foodstuffs but for the cultivation of poppy-seed and coca. With the support of U.S. experts, the Colombian government endeavours to locate and destroy these illicit crops which results in the farmers being pushed further and further into the heart of the jungle. This is how increasingly large and valuable areas of rainforest are being destroyed by illegal farmers cultivating illegal crops.¹¹ Many of the drug processing and distribution facilities run by the so-called Colombian cartels, are also concealed deep in the forests and this too exposes the areas in which they are located to the destructive actions of the criminal gangs operating them. Another damaging feature of these hidden facilities, is that if they become known to government forces, which is not an infrequent occurrence, they are immediately incinerated to destroy evidence. As a result of this action, large areas of forest are destroyed and many rare species of flora and fauna die out.¹² From the foregoing it may be safely concluded that the illegal clearing of tropical forests is often associated with the production and distribution of drugs. Cultivating coca – the source of cocaine – has significantly accelerated devastation of the Colombian and Peruvian rainforests and placed under threat the regions biodiversity hotspots. Data acquired by scientists at Stony Brook University, record that the pace of deforestation has increased over the past twenty years even though population growth has slowed and the economy has moved away from traditional agriculture to other sources of revenue income.¹³ Conversely, cultivation of coca has clearly grown with 75% of world production coming from Colombia in 2000. Earlier scientific reports indicated that the impact of coca cultivation on deforestation was small with (by 2005) as little as 150 sq. km. of forest being annually given over to coca farming.¹⁴ It needs

11 See: F.E. Thoumi, *El imperio de la Droga: Narcotrafico, ekonomia y sociedad an los Andes*, Planeta, Bogota 2002; idem, *Illicit drugs in the Andes five years after UNGASS-98*, [in:] *Global Organized Crime. Trends and Developments*, ed. by D. Singel, H. van de Bunt and D. Zaitch, Dordrecht-Boston-London, 2003, pp. 33-45; also, Bastos F. Pinkusfeld, *The Colombian Puzzle: drugs, society, and human rights*. "The International Journal of Drug Policy", Volume 16, Issue 2, pp. 132-133.

12 Cf. B. Hołyst, *Kryminologia (10th [Anniversary] Edition)*, Warszawa 2009, p.300ff. also, see: W. Pływaczewski, *Przeciwdziałanie nielegalnej eksploatacji lasów pierwotnych*, "Przegląd Policyjny", 2011 (forthcoming).

13 <http://pubs.acs.org/doi/abs/10.1021/es102373d>. The year 2011 has nonetheless see a disturbingly increasing number of illegal clearing sof primeval forests In Brazil. It is believed that this has occurred owing to the announced amnesty for those who committed acts against valuable fauna prior to entry-into-force of a new law banning the clearing of natural forests. Farmers and their principals, i.e. owners of sawmills and other firms dealing with the clearing and distribution of wood try to 'catch up for the time' by sourcing as much timber as possible before the new regulations come in. The novel law offers radically severer penalties for illegal clearing of protected trees.

14 <http://www.sciencedaily.com/releases/2011/01/1101281144723> (info dated January 12, 2011).

to be remembered, however, that 10% of all known plant and animal species are contained within the world's tropical forests and deforestation to any degree can significantly impact on biodiversity. Subsequent analysis of land use data, also indicates that a forest close to newly developed coca farms was likely to be cut, as was land in areas where the majority of farmland was given over to coca cultivation. Scientists have also identified that local population density linked with weak rural development also impacts on deforestation.

The criminal gangs and organizations who plunder flora and fauna or who otherwise use the rainforests for their illicit activities, include the Colombian drug cartels and the various revolutionary paramilitary groups with whom they are associated. Armed conflict has been going on in Colombia for many years. It involves on the one side government forces and on the other left and right-wing guerilla paramilitary organizations, and – the drug syndicates. This has severely debilitated the authority of the state's constitutional bodies and authorities for which Colombia has suffered a long-standing political and moral crisis. The “bosses” of the Medellin and Cali drug cartels – the like of Carlos Enrique Lehder Rias, Gilberto Orejuela and Pablo Escobar-Gavira, who are known to have commissioned the assassination of government officials and police and military commanders alike – have grown to become influential personages in Colombia, with Mr. Escobar even being elected as an MP in 1982, albeit a mandate he was later forced to waive. As he feared denunciation and deportation to the U.S., Escobar accepted terms of isolation negotiated with the Columbian government. The prison in which he dwells – reminiscent of a luxury hotel replete with swimming pool, casino and sports field – became in reality a new management centre for his drug trafficking business.

Many of the drug bosses (narcotraficantes or “narcos” as they are more commonly known), such as Lehder, have directly cooperated with paramilitary forces. The attack on the Supreme Court building in Bogotá in 1985 and consequent destruction of court files (including those containing material charging drug cartel leaders) serves as evidence to such liaisons.¹⁵ Blackmail and abduction are the means typically adopted by revolutionary and criminal organizations to neutralize or eliminate political opposition. In Colombia, abduction is normally carried out by criminal gangs, to include the drug cartels, or by paramilitary forces; either for the reasons aforementioned or for ransom. At their present stage of activity, these organizations resemble classic quasi-terrorist structures albeit without the same motives or methods usually associated with so-called criminal terror.¹⁶ Among the

15 See: F.E. Thoumi, *El Imperio de la Droga...*, pp. 33-34.

16 Cf. W. Pływaczewski, *Terror kryminalny – nowe zjawisko w obszarze badań kryminologicznych*, [in:] A. Bulsiewicz, A. Marek, V. Kwiatkowska-Darul (ed.), *Doctrina multiples, veritas una*, Toruń 2004, pp. 383-390; also see: J. Świerczewski, M. Hausman, *Kryminologiczno-wiktymologiczne aspekty uprowadzenia osób w celu wymuszenia okupu. Raport z badań*, “Przełęcz Policyjny” No. 2(78)/2005, p. 61.

insurgent forces, the largest number of abductions goes doubtlessly to the credit of the leftist Revolutionary Armed Forces – Fuerzas Armada Revolucionarias de Colombia (FARC), the United Self-Defence Forces – Ab Urbe Condita (AUC), and the National Liberation Army – Ejército Liberation Nacional (ELN). The activities of these paramilitary organizations assures us that in the realities of South-America, political objectives are often interrelated with typical criminal activity. It also appears that kidnapping (with some 3,000 victims annually) along with gains from the narcotics business, is one of the most important sources of funding for these organizations. In 2003 alone, the FARC abducted a total of 673 people including: civil servants (high-ranking state or local government officials, members of the judicature, police and military officers), politicians (including congressmen), clergymen, representatives of foreign diplomatic outposts or foreign businesses, or family members of any of the foregoing (including children). The total number of aliens abducted in Colombia in the years 1995-2000 amounted to 408.¹⁷

Diamond mining versus terrorist and rebel activity

The mining of conflict diamonds (the so-called “blood diamonds”) is perhaps the most criminogenic activity to be associated with the African continent. For several African dictators, diamond mines have been, and still are, a source of funding to combat political opponents. It is also from this source that the means originate to fund rebellion, crime and terrorist activity.¹⁸ These strict relationships are confirmed in the biography of Charles Taylor, former president of Liberia, who was put before the UN-backed Special Court for Sierra Leone in 2006. Among the seventeen charges classified as instances of war crime or homicide, the indictment enumerated acts consisting of pillage of valuable natural resources (timber) and trafficking in conflict diamonds to source funding with which to fight political opponents.¹⁹ Charles Taylor’s criminal activity is no exception as it is but one of the numerous examples of how power is utilized by modern dictators in fighting political opposition. The circle of those suspected of trading illicit diamonds has been joined by the Russian, Viktor Bout – today, a renowned arms trader.²⁰ Bout was arrested in 2008 in Bangkok, Thailand, following a “sting” operation set up by agents of the Drug Enforcement Agency (DEA). The numerous charges put forth by U.S. law enforcement agencies included the attempted sale of arms to representatives of

17 B. Hołyst, *Socjologia kryminalistyczna*, Warszawa 2007, p. 429ff.

18 *Transnational Organized Crime In the West Africa Region*, United Nations Office on Drugs and Crime 2005, p. 27.

19 See: P. Milik, *Geneza Specjalnego Trybunału Organizacji Narodów Zjednoczonych dla Sierra Leone*. “Prokuratura i Prawo”, No. 4/2011, p. 123ff.

20 The feature movie *Lord of War*, starring Nicholas Cage, was made in 2005 based on the biography of Viktor Bout.

FARC.²¹ It is to be reminded that FARC is listed by the U.S. government as a terrorist organization.

It is no secret that many diamond deposits are located either in or close to areas of significant ecological value. When they are mined primeval forests or savannah are damaged or destroyed and valuable species of flora and fauna are annihilated. Those members of local tribes who resist such devastating projects, find themselves confronted by paramilitaries who subject them first to intimidation and if that fails, to elimination. Activists from international ecological organizations are also subject to the same treatment.²² The perpetrators are difficult to identify as they are protected by top-ranking government representative who support the interests of large transnational consortia in return for personal gain.

Private military businesses

Large business concerns which make use of natural resources situated in politically and economically unstable countries, invariably employ specialist companies to look after their security. Officially the services provided by such companies is limited to the protection of installations and/or the provision of personal security but in reality, such firms may also provide a much wider range of services, some of which grossly collide with the law. In the past, private companies of this nature tended to hire former mercenaries who could be used to good effect in creating political instability in a specified African country. An example of such activity was the involvement of mercenaries in a plot to bring about secession in Biafra, a province of the Congo (then, of Zaire) renowned for its considerable natural resources. Another infamous quasi-military operation inspired by an international consortium and local tribal leaders, was the attempt to overthrow the legitimate government of Equatorial Guinea. It ended in fiasco and triggered a worldwide scandal as one of those involved in the putsch was Mark Thatcher, the son of the former UK prime minister.²³

According to R. Uessler, private military partnerships and international business consortia – particularly mining consortia – form a shared informal holding structure. As this author notes, these entities “march separately while acting commonly”.²⁴ It seems that the role of private military businesses is destined to increase in the years

21 D. Farah, and S. Braun, *Merchant of Death: Money, Guns, Planes, and the Man Who Makes War Possible*, New York 2004.

22 In 1985, Dian Fossey, the internationally known wildlife defender, was killed by poachers. She had for many years researched mountain gorillas in the Rwanda/Congo/Uganda borderland area.

23 R. Uessler, *Wojna jako usługa. Jak prywatne firmy wojskowe niszczą demokrację*, Warszawa 2008, p 211; also see: H. Myrtilinen, *Alte neue Kriege. Die Privatisierung der Gewalt In Indonesien*, [in:] W. Azzelini, *Kanzleiter: Das Unternehmen Krieg*, p. 212.

24 *Ibidem*, pp. 129-142.

to come. Entities such as Executive Outcomes or Pacific Architects and Engineers (PA&E) build powerful empires, running their businesses across the continents. Although international industrial consortia enjoy the assistance of local militias or insurgent forces, given the increasing rapacity and low credibility of their leaders, these consortia prefer to cooperate with professional partners. Not only do private military agencies offer the best facilities and the best in state-of-the-art equipment: transport, communications and weaponry; they also employ former professional soldiers who are likely to be familiar with the terrain over which they will be required to operate. Such companies also have at their disposal their own intelligence teams whose function, using up-to-date methods of analysis, is to identify and eliminate high-risk situations.

Given the increasingly powerful protests of local communities against the limitless exploitation of their natural resources, the involvement of private armies in ecology-imbued conflicts is expected to grow year-by-year. Already mercenaries are being engaged not just to protect their employers from attack but also to deal with winning a favourable attitude from local communities toward future investments. This is achieved by bribing the leaders of such communities – particularly tribal elders and both central and local government representatives. Those who offer the strongest resistance are intimidated, or – eliminated. The enormous profits assured to these companies by the international consortia who source timber, crude oil, cobalt, copper or diamonds and the like, have caused, and shall continue to cause, the appropriation of ecologically valuable areas of our planet to be an extremely gainful phenomenon. There is no doubt that apart from the official market for natural resources, there is another under development which – aided by a dynamic private military machine – is extremely expansive: the appropriation and pillage of land at the expense of valuable species of flora and fauna. Such dealings increasingly resemble those of organized criminal structures.²⁵

Illegal exploitation of primeval forest areas

Charcoal production is yet another sector controlled by organized gangs including the aforementioned paramilitary forces in the Congo. An estimated 10% of charcoal supplied on the African continent is legal, the remainder – the so-called “dark figure” – is sourced illegally. What this means is that the basic raw material for charcoal is not being cut from sustainable sources but by clearing virgin forests. Given the growing demand for charcoal the scale of illegal clearings of primeval forests is also increasing, thus leading to uncontrolled destruction of the habitats

25 See: A. Labrousse, *The war against drugs and the interests of governments*, [in:] *Global Organized Crime. Trends and Developments*, Dordrecht – Boston – London 2003, pp. 19-25.

of many unique species of flora and fauna, including rare and much sought-after species of timber.

Data provided by the United Nations Environmental Programme (UNEP), indicates that the predatory exploitation of primeval forests in the Congo basin poses a serious threat to natural habitats of the gorilla. It is estimated that the population level of this great ape will decrease by 90% by the year 2030.²⁶ As WWF data tells us, Liberia and Gabon are facing the most dramatic challenge. Tropical timber is regarded in those countries as a means of raising funds to support warfare.²⁷ International ecological organizations confirm that protection of illegal charcoal processing facilities is provided by rebel groups or local militias. Attempts to close down the sites by forest guards, frequently end up in fights in which many of the guards have lost their lives.

As an example, on 24 January 2011, three guards and five of their bearers, were murdered in Wirunga National Park, probably by FDLR rebels.²⁸ The ability of the Congolese forest guards to counter the illegal pillage of tropical timber is limited, primarily due to their weak numerical force: with only 650 members in total, it cannot stand up to the insurgents who number many thousands. Their equipment also triggers numerous concerns, all the more so that guard outposts are often attacked by rebels, the guards being disarmed and relieved of their weapons, uniforms and other equipment essential for monitoring the animal habitats they are there to protect. This is further complicated by the complex political situation in the Congo, which favours corruption across all levels of authority. In practice this means that many civil servants – including in numerous cases forest guards – and government soldiers, act in the interests of the timber mafia, with the soldiers often protecting transportation of the stolen material. Timber gangs also tend to enjoy the support of high-ranking military officers. Such officers render indispensable equipment available to the gangs including the trucks used for the transportation of charcoal. Should a convoy such as this be discovered, ICCN forest guards are powerless to detain the offenders as such intervention would place their lives at risk. Hence, when forest guards do intercept and inspect transport suspected of carrying illicit material, more often than not they use the assistance of UN peacekeeping forces: The presence of the peacekeepers dissuades corrupt government soldiers from using their weapons and enables the forest guards to check the vehicles in safety.

26 Cf. The Last Stand of the Gorilla. Environmental Crime and Conflict in the Congo Basin, a report, at: grida.no/publications/rr/gorilla.

27 W. Pływaczewski, *Combating Organized Poaching in Africa: Activities of the Kenya Wildlife Service*, [in:] *Organized Crime and Terrorism, Reasons – Manifestation – Counteractions*, ed. by W. Pływaczewski, Olsztyn 2011, p. 40ff.

28 *Ibidem*.

Interpol combats crime against valuable species of flora and fauna

In September 2010, Interpol launched operation RAMP which targeted the illegal trade in reptiles and amphibians. The operation, which was coordinated by Interpol, extended to 51 countries across five continents and involved wildlife enforcement authorities, including police, customs and specialist units, in each of the participating countries. RAMP resulted in many arrests worldwide and the seizure of thousands of animals and illicit goods valued at EUR 25 million.²⁹ The unquestionable success of this operation not only dealt a blow to those trading in rare reptile and amphibian species but also created a model for the future cooperation of national agencies dealing with wildlife protection. RAMP also served to confirm intelligence reports that there was a connection between those involved in the illicit trade in wild flora and fauna, and syndicates involved in drugs and arms trafficking.³⁰

An earlier and similar operation coordinated by Interpol – TRAM, took place in February 2009. On this occasion the target was the illegal trade in traditional medicines containing products from protected species of wildlife. It is well known fact that certain plants and animal products provide the main ingredient of many traditional medicines that are claimed to possess qualities for treating a wide variety of ailments.³¹ However, a significant volume of such medicines use raw material obtained in violation of both domestic and international laws.³² Experts are of the opinion that the popularity of traditional Asiatic therapies, internationally advertised by the purveyors of such medications, has played a decisive part in the rapid decline of the world's tiger population. Tiger bones are commonly used in the manufacture of agents intended to cure arthritis and muscle atrophy.³³ A similar situation relates to the rhinoceros population – particularly the black Africa rhinoceros and three unique Asian species. The horn of the animal is traditionally used in Chinese medicine for the treatment of fever, convulsions and delirium. It is also claimed to be an effective cure for cancer.³⁴ For paramilitary organizations, the trade in animals or their derivative products for use in traditional medicines is an important source of income; it buys weapons, uniforms, communications equipment and transport, as well as rations. Although some rebel leaders in Africa proclaim themselves to be guardians of wildlife, as remarked before, such declarations amount to little more

29 www.cawtglobal.org/home/2010/11/1/interpol-co-ordinate-operation [...] -info dated November 1, 2010.

30 See: J. Delaney, Wildlife smuggling Nets Big Bucks for Organized Crime, "The Epoch Times", No. 8/2010; also, see: B. Halstead, Traffic in Flora and Fauna. Trends and Issues in Crime and Criminal Justice, Australian Institute of Criminology, Canberra, No. 41/1992.

31 These raw materials tend, with increasing frequency, to be used in the manufacture of a variety of psychoactive stimulants, including the so-called legal highs (or designer drugs).

32 www.interpol.int/Public/EnvironmentalCrime/Meetings/7thConference/Default.asp - info dated December 12, 2010.

33 An estimated 6,000 specimens of the tiger are living at large today; cf. B. Holyst, Kryminologia..., p. 434.

34 There are ca. 2,800 specimens living in Asia; www.traffic.org/trade (info dated July 11, 2010).

than lip-service. It appears, not infrequently, that the interest expressed in valuable species of plants and animals is purely exploitive. What the rebel leaders would really like is to gain control of the lucrative ecotourism market to line their own coffers; the money being used to pay their troops, bribe corrupt officials and enlist the collaboration of government army commanders. A model example of such opportunist tendencies can be seen in the activities of General Laurent Nkunda, leader of the CNDP, who considered himself to be guardian of the mountain gorillas. It is nonetheless commonly known that his soldiers were responsible for numerous attacks on the habitats of these creatures as well for participation in illegal coal contraband which was progressively devastating the very areas in which these great apes live.³⁵

Madagascar: predatory activity of local criminal syndicates

Madagascar, a country that is renowned for its endemic flora and fauna, serves as an example of how transnational businesses are expanding with the support of local criminal structures. The focus of interest to foreign investors in Madagascar, as well as of local timber moguls and the militias they support, is mahogany and rosewood, used in the manufacture of high quality furniture. Officially both species of tropical hardwood are subject to strict preservation controls. In reality, systematic clearing of the forests in which these noble species of tree are to be found goes unabated; rosewood forests in particular are exposed to extinction. Troubled by political conflicts, Madagascar attempted to improve its economic status via the export of rosewood but pressure exerted by international public opinion, led to reinstatement of a ban on trading this and other species of tropical hardwoods, a ban that had earlier been lifted. As a result the black market in rosewood blossomed and, as ecologists report, is continuing to develop at a disturbing pace. This situation exists because the country's authorities entangled themselves in several ethically questionable arrangements and are now either incapable of or unwilling to effectively deal with illegal logging gangs. Thus, illicit clearing has now been extended to include national park areas. Masoala National Park for example, acclaimed for its wide variety of rare plant and animal species, has been the subject of intense logging carried out by these gangs. One outcome of this mass-stripping of Madagascar's forests is progressive pauperization of the indigenous population. In quite large number, more-and-more people are leaving their traditional occupations of fishing, land cultivation and cattle breeding, to become involved in illicit clearing activities. As a result the nation is facing shortages of basic foodstuff and day-to-day commodities, with prices spiraling for those which remain available. Aside from

35 M. Jenkins, *Kto zabił goryle...*, pp. 57-59.

destroying Madagascar's primeval forests, mass clearing on the scale described is also posing a serious threat to the many species of plant and animal life they support. Two particularly endangered species are the Leaf-tailed Gecko (*Uroplatus henkeli*) and the Angonoka or Ploughshare Tortoise (*Astrochelys yniphora*) both being endemic to Madagascar. The black market price for a single specimen of the Ploughshare Tortoise is circa USD 3,000. Another factor associated with mass-scale deforestation, apart from fostering poaching that is, is soil erosion. The question is to what end is this destruction? If one were to look at it in purely economic terms any gain from exploitation of the forests can only ever be short-term. Long-term it has little to offer. Even if all of the cleared land were given over to agriculture the value of crops produced would not begin to compensate for the annual loss of income derived from ecotourism, currently estimated at USD 390 million. It is this that permanent depletion of the forests is placing at risk.³⁶

Corruption and the activities of paramilitary organizations

As emphasized earlier, the pillage of Africa's natural resources, especially its valuable species of tropical hardwoods, more often than not enjoys the support of corrupt local officials and wildlife guards who, in exchange for regular payment, turn a blind eye to this criminal activity. Soldiers and policeman at checkpoints are also bribed which allows illegally cut timber to pass freely on to the buyer without hindrance. Such corruption extends across the very top levels of both central and local government, which for all intents and purposes negates any serious attempt to fight this dangerous phenomenon. The scale of corruption which exists can be measured from the case of Honoré Mashagiro, former commander of the national park guard and ICCN director for North Kivu. This official had for many years been involved in the illegal charcoal trade in association with paramilitary organizations, gaining hundreds of thousands of dollars a year for himself in the process. It is claimed that Mashagiro ordered the killing of a half-dozen or so mountain gorillas in order to place blame for the act on Paulin Ngobobo, the park warden responsible for safeguarding the gorillas but who was also attempting to expose and shut down charcoal activities in Virunga. At the suggestion of Mashagiro, Ngobobo was subsequently arrested and imprisoned. The gorilla massacre echoed loudly around the world, inspiring international reaction which in turn forced the government of the Democratic Republic of the Congo to take decisive action. As a result Mashagiro was arrested to face penal charges for the murder of the gorillas and his involvement in the charcoal trade. Ngobobo was reinstated in his former position. This affair

36 See: Environment of Madagascar: Illegal Logging in Madagascar. Madagascar Dry Deciduous Forests, Ecoregions of Madagascar, Books LLC, 2010, p. 5ff.

clearly demonstrates the financial entanglements and arrangements that are woven by criminal structures engaged in wildlife crime. Suffice it to say that in 2006, legitimate gorilla tourism to Virunga brought in less than USD 300,000. By contrast, the Virunga charcoal trade was worth more than USD 30 million. To effectively fight these criminal structures, supported as they are by high-ranking military officers and paramilitary organizations, does not constitute an easy task and this is where the international community has a role to play. It needs to use its weight, particularly through ecological institutions and NGOs, in publicizing the pathological systems orientated towards plundering the world's flora and fauna and destroying their habitats.³⁷

Summary

There is no doubt that in the coming years crimes against nature will grow to present major challenges to the international community, especially for those individuals and organizations charged with the responsibility of maintaining global security. Consequently, wildlife crime should become an area of penetrating research – particularly in the field of criminology – so that an optimal model for counteracting the pillage and destruction of valuable species of wildlife can be established. A peculiar role in this respect lays not just with the judicature and national park guard services but also with research centres tasked with identifying new phenomena in the domain of wildlife crime. As emphasized herein, one such phenomenon is the appropriation of natural resources by organized criminal structures who regard those resources as a potential source of funding for rebel or terrorist activity. The information presently available is far from complete and renders it necessary for the aforementioned entities to intensify collaboration. Equally such collaboration needs to be coordinated by an organization enjoying the confidence of the international community and which has a reputation for leadership and experience in combating wildlife crime.

Without doubt Interpol is one such entity suited to this task. The organization's wide-ranging interest in crime targeted at wildlife and its experience in coordinating multi-national law enforcement agencies to combat it, lend to its credibility as too does its ability to cooperate with other entities and initiatives dedicated to protecting the world's natural resources. Among them, the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), referred to as the Washington Convention, is definitely to be counted. The existing relationship between the Convention's Secretary and the Secretary General of Interpol, serves as a model example of effective cooperation. This opinion can be

37 See: W. Pływaczewski, *Międzynarodowa współpraca...*, pp. 71-93.

extended to undertakings carried out by Interpol in conjunction with other global entities, to name in particular: the UN Environmental Programme (UNEP); the Convention on Biological Diversity (CBD);³⁸ the Convention on the Conservation of Migratory Species of Wild Animals (CMS);³⁹ the Great Apes Survival Project (GRASP),⁴⁰ and the International Tropical Timber Organization (ITTO).⁴¹ Credit must also be given to UNODC, for the part it has played on counteracting crimes against nature. It ought to be remarked that both Interpol and UNODC are signatories to the International Consortium on Combating Wildlife Crime (ICWC).⁴² One of the notable tasks of the latter is counteracting the use of valuable flora and fauna in financing armed conflicts and terrorism. Non-government organizations are important allies in this task as they monitor, on a continual basis, occurring threats in the area of natural environment protection. Representatives of “green” NGOs are also the greatest threat to poachers as they continually monitor the numbers of protected animal species, informing national park guards of anything they find wrong. Because of this, they too, often fall victim to poaching gangs.⁴³

Among the many problems addressed by research centres, one that should become the subject of in-depth analysis is the corruption of officials of weak or bankrupt states. This needs to be given particular attention along with the sell-off of national natural resources made under so-called disgracing contracts, where state structures are transformed into criminal structures (criminalization of power) and where the involvement of international consortia exploiting the Earth’s natural resources becomes tangled with paramilitary groups, militias and private military companies to pillage or destroy the habitats of valuable species of wildlife.

This article has attempted to demonstrate that armed conflicts, often assuming the form of tribal wars, pose the greatest threat to valuable areas of nature. Their source cannot simply be placed at the door of mutual prejudices with underlying tribal or religious differences, the true cause lays in poverty and lack of education. Consequently, without first putting thorough socio-economic reforms in place, solution of the various conflicts which prevail in certain areas of our planet (Chad, Somalia, Sudan/Darfur, South Sudan, Sri Lanka, Colombia, Palestine, et al –

38 CBD came into being in Rio-de-Janeiro as of June, 1992, with Poland ratifying it in 1996 (i.e. *Journal of Laws* 2002, No. 184, item 1532). The Convention is meant to protect biodiversity, balanced use of its elements, and fair and just distribution of benefits ensuing from use of genetic resources.

39 CMS, also called the Bonn Convention, was drawn up on June 23, 1979, in Bonn, former West Germany, with a view to provide protection to wild animals that, on migrating, crossed one or more state jurisdiction frontiers in their various life cycles (cf. *JL* 2003, No. 2, item 17).

40 The project is implemented under the aegis of the CITES Convention and provides for imposition of a complete ban on commercial trading in great apes and derivative products thereof.

41 ITTO was set up in 1986 under the auspices of the UN, with the view of monitoring undertakings associated with the protection of tropical forests.

42 See: W. Pływaczewski, *Inicjatywy Międzynarodowe Organizacji Policji Kryminalnej – INTERPOL na rzecz ochrony dzikich gatunków zwierząt* “*Prokuratura i Prawo*” No. 10/2011.

43 W. Pływaczewski, *Combating Organized Poaching in Africa...*, p. 55.

where poverty and deficit of education have been the main reasons for warfare and terrorism) is hardly to be expected.

This situation is often contributed to by the activities of large transnational corporations which specialize in the exploitation of natural wildlife resources and which, in the pursuit of profit, are prepared to plunder protected species of flora and fauna. Civil servants corrupted by these concerns, in turn organize private armies to protect their interests and those of their foreign paymaster. These transactions to appropriate natural resources and which are often convoluted, involve political figures, civil servants, members of the military, members of the police and at the foot of the ladder, national park guards, although their role is sometimes without option. Resulting from this uncontrolled plunder and destruction of areas opulent with valuable flora and fauna, poverty is expanding. This triggers subsequent social tensions which are a source of new conflicts and wars. In turn, this state of affairs can often cause weak countries – which may otherwise have formally declared their willingness to create democratic structures – to transform into classic dictatorships which thrive on the back of international consortia. The appropriation of natural resources by such organizations – especially of protected species of wildlife – does not just lead to poverty and political chaos. It also generates a sense of injustice and promotes willingness to seek revenge, which, in extreme cases, may encourage dissidents in local communities to resort to terrorism. The international community should thus be made well aware that the establishment of efficient mechanisms to control operations of great international concern, is an essential condition to ensure global order. As this article has attempted to prove, protection of the world's natural resources is its material guarantor.

ZORGANIZOWANY HANDEL CHRONIONYMI GATUNKAMI DZIKIEJ FAUNY I FLORY JAKO FORMA WSPIERANIA KONFLIKTÓW ZBROJNYCH I TERRORYZMU

Artykuł stanowi pierwsze w polskiej literaturze kryminologicznej opracowanie na temat związków pomiędzy przestępczością przeciwko środowisku naturalnemu, w tym chronionym gatunkom fauny i flory, a konfliktami zbrojnymi oraz terroryzmem. Autor przede wszystkim charakteryzuje poszczególne przejawy i formy tej przestępczości, ukazując ją na tle ogólnej problematyki dotyczącej ochrony przyrody oraz uwarunkowań społeczno–politycznych w tzw. zapalnych regionach naszego globu. Zawarte w niniejszym opracowaniu uwagi i spostrzeżenia dotyczą najbardziej zagrożonych konfliktami zbrojnymi obszarów naszej planety (Afryka, Azja południowo–wschodnia, Ameryka Południowa). Jako modelowy przykład grabieży i niszczenia cennej przyrody autor wskazuje objęte walkami zbrojnymi wschodnie pogranicze Demokratycznej Republiki Konga a także nękane wewnętrznymi konfliktami cenne przyrodniczo obszary Madagaskaru. Uważa on jednocześnie, że w najbliższych latach relacje pomiędzy zorganizowanymi strukturami przestępczymi zajmującymi się grabieżą przyrody a organizacjami destrukcyjnymi i terrorystycznymi będą systematycznie się zacieśniać, stanowiąc tym samym poważne zagrożenie dla globalnego ładu. W ramach działań zapobiegawczych autor postuluje zintensyfikowanie międzynarodowej współpracy na rzecz ochrony najbardziej zagrożonych obszarów ziemi. Pośród licznych podmiotów, które stanowią już dziś ważne ogniwo w walce z zorganizowaną przestępczością godzącą w naturalne zasoby przyrodnicze (m.in. Międzynarodowa Organizacja Policji Kryminalnej – INTERPOL, Biuro Organizacji Narodów Zjednoczonych ds. Narkotyków i Przestępczości oraz Sekretariat Konferencji CITES), autor wskazuje także organizacje pozarządowe, uznając je za istotny element działań proekologicznych. W zakończeniu opracowania podkreślono potrzebę niwelowania dysproporcji społecznych i szerzenia edukacji na obszarach dotkniętych ubóstwem, uznając te dwa elementy za podstawę przyszłego modelu przeciwdziałania zjawiskom destrukcyjnym na świecie, w tym zamachom na światowe dziedzictwo przyrody.

Key words:

Organized crime, wildlife crime, armed conflicts, illegal exploitation of primeval forest areas

THE THREAT OF TERRORISM PERCEIVED BY POLISH SOCIETY*

I. Violence and terror are as old as the human race. Terrorism is a type of violence which, as B. Hołyst has noted¹, is a fairly new and has “developed” in the contemporary world. In his opinion, what contributed to the expansion of terrorism was technological progress and growth of the mass media. “After all, what the perpetrators of such acts want most of all is to gain publicity” and to instill fear in a large number of people. The terrorist attacks in New York City, Bali, Madrid, and London, confirm the words of Ban Ki-Moon² who said that terrorism affects “all nations – large and small, rich and poor. Its victims are people of all ages, incomes, cultures, and religions.”

Although no terrorist attacks have taken place in Poland, the mass media have made us realize how tragic the events in New York City, Madrid, London, and Egypt were. Has this caused Poles to be concerned that Poland, too, may one day become the target of terrorist attacks?

In an effort to answer this question, I will present the results of public opinion surveys performed by the Public Opinion Center (CBOS). CBOS has conducted public opinion polls for many years, and lately one of its research topics has been terrorism. The research was conducted on a representative sample of Polish citizens, selected randomly in conformance to the principles of randomization which assure that the sample fully represents the Polish society with regards to gender, age, education level, place or residence, and region.

II. The first time terrorism was an object of public opinion research was in September 2001, immediately after the terrorist attacks on the twin towers of the World Trade Centre in New York City. At that time over half (51%) of the survey

* Article was done in 2009.

1 B. Hołyst, *Terroryzm [Terrorism]*, volume 1, Warsaw 2009, 47.

2 http://www.unic.un.org.pl/terroryzm/dzialania_sekr.php/

participants expressed their concern that Poland may become the target of terrorist attacks.

Table no. 1 Do you believe that Poland may become the target of terrorist attacks?

Can Poland become the target of terrorist attacks?	Responses, by date of survey (in %)					
	SEP 2001	OCT 2001	DEC 2001	JAN 2002	JUN 2002	JUN 2003
Probably so	51	52	54	49	45	53
Probably not	37	38	37	41	44	38
It's hard to tell	12	10	10	10	11	9

Source: Data from CBOS research reports mentioned in the bibliography.

Over one third (37%) of survey participants did not share this concern. A fairly small group (only 12%) of respondents did not have an opinion on this issue. A month later, the number of persons who believed that Poland could become the target of terrorist attacks was a little larger (one percentage point) compared to September 2001. Interestingly, in October 2001 the governments of the United States and the United Kingdom decided to launch military operations in Afghanistan against Osama bin Laden's Al-Qaeda and the Taliban regime which supported it. These operations did not make a significant impact on the opinion of Poles' regarding the threat of terrorism. In December 2001, the percentage of respondents who thought that Poland could become a target of terrorist attacks increased by 2 percentage points.

The survey conducted in January 2002, showed a decrease in the respondents' sense of being threatened. The percentage of respondents who thought that Poland could become the target of terrorist attacks dropped by 5 percentage points compared with that in December 2001. The trend continued in June 2002. Compared to September 2001, the percentage of survey participants who believed that Poland could become the target of terrorist attacks decreased from 51% to 45%. The survey conducted in June 2003 showed a growing concern about terrorism among Poles. Over a half of the survey participants believed that Poland could be attacked by terrorists. The increase could be explained by the fact that prior to the survey it was publically announced that, starting on 1 September 2003, Polish troops would administer one of the stabilization zones in Iraq.

Table no. 2 Do you agree with the opinion that, due to the presence of Polish soldiers in Iraq, Poland may become a target of terrorist attacks by Islamic fundamentalists?

Do you agree with the opinion that Poland may become a target of terrorist attacks?	Responses, by date of survey (in %)									
	JUL 2003	SEP 2003	NOV 2003	DEC 2003	MAR 2004	MAY 2004	JUL 2004	SEP 2004	OCT 2004	AUG 2005
I agree	66	58	75	71	87	86	83	83	82	83
I disagree	23	33	18	21	9	10	13	13	13	13
I do not know	8	9	6	8	4	4	4	4	5	104

Source: Data from CBOS research reports mentioned in the bibliography.

As previously announced, between June and August 2003, the Polish Army deployed troops to the Middle East in order to fulfill its 1 September commitment. This situation could have made an impact on the concerns among Poles. The survey conducted in July 2003 showed that 66% of respondents agreed with the opinion that, due to the presence of Polish soldiers in Iraq, Poland may become the target of terrorist attacks by Islamic fundamentalists. However, this data may be considered as questionable, due to the fact that very different results were obtained in the September 2003 survey, when the Polish forces began their administration of the stabilization zone in Iraq. The percentage of respondents who agreed with the statement that Poland could become the target of terrorist attacks dropped by 4 percentage points and the percentage of respondents who thought otherwise increased by 6 percentage points. However, in November the former value significantly increased, by 7 percentage points, compared to that in September 2003. In December 2003, the percentage of persons who agreed with the statement amounted to nearly 3/4 (71%) of all respondents.

The next survey was conducted in March 2004. That was the month of the most bloody terrorist attack perpetrated by Al-Qaeda in Europe. The bombing in the Madrid subway left 200 people dead and 1,400 wounded in its wake. This event did make an impact on public opinion in Poland with regards to the likelihood of terrorist attacks in our country. A large majority of participants (over 3/4, or 87%) believed that Poland could become the target of terrorist attacks. It should be noted that September 2004, was the month of the tragic events in Beslan, where the death toll was 339, including 159 children. Such a large increase in the percentage of concerned persons (approximately 83%) remained unchanged in the following months, indeed until July 2005. In July 2005, terrorist attacks paralyzed the British capital city. In the London attacks 52 people were killed and 700 – wounded. Also, in July 2005, terrorists perpetrated a series of bombings in the Egyptian resort

Sharm El Sheikh. The attacks resulted in the death of at least 70 people and left 150 wounded.

The next survey was conducted in November 2007, when Polish soldiers participated in military operations in Afghanistan.

Table no. 3 Are you concerned that the participation of Polish soldiers in military operations in Afghanistan may lead to terrorist attacks by Islamic fundamentalists in Poland?

Are you concerned that the participation of Polish soldiers in military operations in Afghanistan may lead to terrorist attacks by Islamic fundamentalists in Poland?	Responses, by date of survey (in %)		
	NOV 2007	APR 2008	SEP 2008
I am concerned	65	57	60
I am not concerned	27	33	33
It's hard to tell	8	10	7

Source: Data from CBOS research reports mentioned in the bibliography.

The percentage of respondents who declared that they were concerned that this may provoke terrorists to attack Poland was 63%. The results of the survey conducted in June and September of the following year indicate that in June the percentage of respondents who were concerned that the participation of Polish soldiers in military operations in Afghanistan may lead to terrorist attacks by Islamic fundamentalists in Poland, dropped by 7 percentage points, but as early as September the percentage of such respondents reached 60%.

Another survey was conducted during talks regarding the installation of elements of the American missile defense system in Poland. In that survey, respondents were asked about their opinions regarding the impact of such a system on the likelihood of terrorist attacks in Poland.

Table no. 4 Do you believe that construction of an American military base constituting a part of the missile defense system will increase the risk of attacks by Islamic fundamentalists in Poland or that it will not increase this risk?

Do you believe that construction of an American military base constituting a part of the missile defense system will increase the risk of attacks by Islamic fundamentalists in Poland or that it will not increase this risk?	Responses, by date of survey (in %)			
	FEB 2008	APR 2008	SEP 2008	DEC 2008
It will increase the risk.	56	56	53	54
It will not increase the risk.	29	31	33	35
It's hard to tell	15	13	14	11

Source: Data from CBOS research reports mentioned in the bibliography.

The survey conducted in February 2008 indicates that most respondents (56%) believed that an American military base constituting a part of the missile defense system would increase the risk of attacks by Islamic fundamentalists in Poland. More than 1 in 4 respondents (29%) did not believe so. In the following months, the percentage of people who thought that elements of the missile defense system installed in Poland would increase the risk of terrorist attacks decreased, but not significantly: only by 2-3 percentage points. No significant changes in the opinions of survey participants were recorded in August 2008, when the Polish government and the United States government signed an agreement concerning the location of anti-ballistic missiles in Poland. What is notable is that the surveys conducted in April, September, and December 2008 showed a growth, compared to the results of the February 2008 survey, in the percentage of persons who thought that installation of elements of the missile defense system in Poland would not increase the risk of terrorist attacks in Poland. Such persons constituted 31%–35% of all the respondents, whereas in February 2008 the number was 29%. This increase was the result of the drop (from 15% to 11%) of the number of people who declared that they were unable to assess the threat.

III. The surveys also included questions concerning the respondents' personal sense of being threatened.

Table no. 5 Are you concerned about terrorist attacks at all?

Are you concerned about terrorist attacks at all?	Responses, by date of survey (in %)							
	NOV 2001	DEC 2001	JUN 2002	DEC 2003	MAR 2004	APR 2004	AUG 2005	SEP 2007
Yes, very concerned	12	11	11	15	29	22	18	17
Yes, rather concerned	27	28	27	37	35	39	38	48
I am concerned	39	39	38	52	64	61	56	65
No, rather not concerned	38	36	37	30	24	27	29	7
I am not concerned at all	22	21	20	10	10	11	13	20
I am not concerned	60	57	57	40	34	38	42	27
It's hard to tell	2	4	5	8	2	1	2	8

Source: Data from CBOS research reports mentioned in the bibliography.

The responses indicate that in November 2001, over 1 in 3 respondents (39%) declared that they were concerned about terrorist attacks. The sense of being threatened personally was on the same level at the end of 2001 and in June 2002 it had increased by 1 percentage point. It should be noted that at that time over a half

of all respondents believed that Poland could become the target of terrorist attacks. Thus, one can conclude that a certain group thought that they would not be affected by terrorist acts. This may be caused by the fact that the terrorist attacks perpetrated in the United States focused on selected targets.

A significant increase in personal concerns was noted in the survey conducted in December 2003. At that time over a half (52%) of respondents declared that they were personally concerned about becoming a victim of a terrorist attack or that a member of their family could become one. When considering this data, one must remember that at that time Polish soldiers were involved in military operations in the Middle East. A large increase in the personal sense of being threatened was recorded in March 2004. The percentage of persons who declared that they were personally concerned about terrorist attacks grew by 12% compared to December 2003. This significant increase of personal concern can be linked to the Madrid bombing which took place in March. There are two possible explanations for this result. Firstly, at that time Spanish soldiers were involved in operations in the Middle East and terrorists have issued several warnings that they would strike countries that send their troops to the region. Thus, the bombing was a fulfillment of these warnings. Secondly, one must also consider the impact of the location of the bombing on the personal fears of the respondents. The bombing took place in the subway, which is a place where anyone could go, as opposed to places accessible to only small groups of people, such as office buildings.

In August 2005, the percentage of persons who were personally concerned about terrorist attacks decreased by 5% compared to April 2004. In the next survey, which was conducted in September 2007, 65% of respondents declared their personal concern.

IV. The definition of a threat is of particular importance in surveys where respondents are asked about their opinions regarding the presence of the threat. In the case of terrorism there are problems with defining it. It should be noted that B. Hołyst, who is an expert in this field, in his two-volume book titled "Terrorism" says that "so far it has been impossible to elaborate universally binding or unanimously accepted definitions of 'terror' and 'terrorism'" and that "one should be aware of the fact that there are over one hundred different definitions of terror and terrorism and that some authors claim that there are about two hundred such definitions³." One could expect that the persons who conducted the surveys presented several definitions to avoid related problems. When asked the question "What is contemporary terrorism," respondents could pick from among the following definitions: an effort to intimidate and to raise fear, a means to acquire a lot of money and power, a contemporary

3 B. Hołyst, *ibid.*, 47.

method of fighting opponents, and a method of bringing attention to one's needs and problems.

Table no. 6 In general, what in your opinion is contemporary terrorism?

In general, what in your opinion is contemporary terrorism?	Responses, by date of survey (in %)		
	OCT 2001	APR 2004	AUG 2005
An effort to intimidate and to raise fear	42	52	51
A means to acquire a lot of money and power	25	16	19
A method of fighting opponents	14	13	13
A method of bringing attention to one's needs and problems	15	9	11
I would use a different definition	2	3	1
It's hard to tell	2	7	5

Source: Data from CBOS research reports mentioned in the bibliography.

The largest group of respondents identified terrorism as an effort to intimidate and to raise fear. In the research conducted in October 2001, which was after the terrorist attacks on the World Trade Center in New York, nearly half (42%) of all respondents selected this definition and one in four indicated that terrorism is a means to acquire a lot of money and power. In the survey conducted in April 2004, which was after the tragic terrorist attack in Madrid, the percentage of respondents who believed that terrorism was an effort to intimidate and to raise fear grew significantly, by 10 percentage points. Equally significant (9 percentage points) was the reduction of the number of people who thought that contemporary terrorism was a means to acquire a lot of money and power. The results of the surveys conducted in August 2005, after the terrorist attacks in London and Egypt, were similar.

The cause of terrorism that the respondents identified most often was religious fanaticism. Over half of respondents indicated this cause.

Table no. 7 What in your opinion is the most important cause of terrorism?

What in your opinion is the most important cause of terrorism?	Responses, by date of survey (in %)	
	OCT 2001	AUG 2005
religious fanaticism	50	52
poverty	13	13
lack of possibility to satisfy one's demands	10	7
political fanaticism	11	6
lack of freedom and independence	5	5
sense of helplessness and powerlessness	6	4
defense of traditional values and lifestyle		3
different customs and culture		2
others	4	1
it's hard to tell	1	7

Source: Data from CBOS research reports mentioned in the bibliography.

Only a minority (13%) indicated poverty, lack of possibility to satisfy one's demands, and religions fanaticism as the causes of terrorism.

VI. Considering the fact that many countries, including Poland, have implemented a number of measures aimed at preventing terrorist attacks and that such measures may become an obstruction in human lives and even interfere with citizens' rights and freedoms, there is a question of whether citizens are willing to accept such measures.

Table no. 8 In exchange for a better sense of security, would you consider as just:

In exchange for a better sense of security, would you consider as just:	Responses, by date of survey (in %)		
	OCT 2001	APR 2004	AUG 2005
intensified checks at national borders, airports, and train stations	95	94	95
bearing the cost of security systems	71	50	56
tapping of telephone lines	48	30	44
control of mail and e-mail	42	26	46
search of homes of persons suspected of contacts with terrorists			91
placing fingerprints in personal identity cards and passports			81
monitoring the sales of simple chemicals			79
implementation of more rigid immigration laws			79
mandatory collection of genetic material (DNA) of persons suspected of terrorist activity			78
search of luggage of public transportation passengers			75
shooting at suspects without warning and with the purpose of killing			24

Source: Data from CBOS research reports mentioned in the bibliography.

In the survey conducted in October 2001, respondents were asked about four measures that could help fight terrorism, namely: intensified checks at national borders, airports, and train stations, bearing the cost of security systems, tapping of telephone lines, and control of mail and e-mail. A large percentage of respondents (95%) declared that they considered as justified intensified checks at national borders, airports, and train stations, which are possible places of arrival of terrorists into Poland or places that may become targets of terrorist attacks due to the large number of people there. One should note that in the survey conducted in June 2004 and August 2005, equally large groups of respondents considered such measures to be justified actions aimed at increasing the sense of security. Thus, the respondents accepted some inconveniences caused by the more thorough checks. They were less willing to bear the cost of security systems and efforts. Less than 3 out of 4 respondents (71%) declared that they were willing to bear such costs. Remarkably,

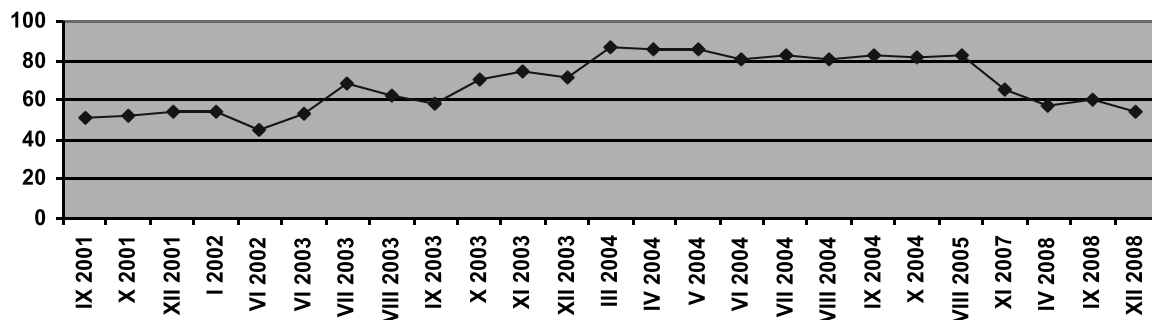
this group greatly decreased in the subsequent surveys. In the survey conducted in April 2004, only 50% of respondents declared such willingness, and in August 2005 – 56%.

Another remarkable fact is that respondents were much less willing to accept measures that interfere with their freedom. In the survey conducted in October 2001, tapping telephone lines and controlling mail and email was acceptable to only 48% and 42% of respondents, respectively. In the subsequent research the percentages went down significantly: by 18 percentage points in the case of tapping telephone lines and by 16 percentage points in the case of controlling mail and email. In the research conducted in August 2005, the percentage of persons approving such measures was similar to that in October 2001.

The survey conducted in August 2005 included a greatly expanded list of measures aimed at increasing the sense of security. The distribution of data in table 8 shows that the most widely accepted measure was intensified checks at border crossings, airports, and train stations. This measure was accepted by nearly all respondents (95%). An equally large group of respondents (91%) accepted search of homes of persons suspected of contacts with terrorists. More than 3 out of 4 respondents (81%) approved of placing fingerprints on personal identity cards and passports. The measures that the respondents thought would not affect them directly, such as monitoring the sales of simple chemicals, implementing more rigid immigration laws, and mandatory collection of genetic material (DNA) from persons suspected of terrorist activities, were widely accepted (78-79%). A large group of respondents (75%) approved of search of luggage of public transportation passengers. Notably, fewer than 1 in 4 respondents (24%) approved of shooting at suspects without warning with the purpose of killing.

V. The sense of being threatened by terrorism has remained high in Poland since the attack on the World Trade Center in New York City on 11 September 2001.

Diagram no. 1 The sense of being threatened by terrorism



Data from CBOS research reports mentioned in the bibliography.

In the years 2001-2003, a large number of respondents (51%–71%) were concerned that Poland could become the target of terrorist attacks. The fears grew after the bombings in Madrid and London. At that time, over 80% of respondents believed that events similar to those that had happened in Spain and United Kingdom could take place in Poland. In the ensuing years, no events took place that could fuel the respondents' sense of being threatened and the level of concern about terrorist attacks remained constant.

The survey conducted as a part of the research project titled “Monitoring, identifying, and countering threats to public security” shows that currently respondents believe that the level of terrorist threat is low. Only 27% of respondents declared that they were concerned about terrorist attacks.

ZAGROŻENIE TERRORYZMEM W OPINII POLSKIEGO SPOŁECZEŃSTWA

Wprawdzie w Polsce nie miały miejsca zamachy terrorystyczne, lecz środki masowego przekazu uwidocznily nam tragizm wydarzeń w Nowym Jorku, Madrycie, Londynie czy Egipcie. Czy zrodily się obawy, iż pewnego dnia nasz kraj również może stać się obiektem działań terrorystów? Podejmując próbę odpowiedzi, wykorzystano wyniki badań opinii publicznej prowadzonych przez Centrum Badań Opinii Publicznej (dalej jako CBOS). Instytucja ta od wielu lat zajmuje się badaniami opinii społecznej, a w ostatnich latach wśród problemów badawczych pojawiło się także zagrożenie terroryzmem. Cezura czasowa to lata, w których miały miejsce zamachy terrorystyczne w wyżej wymienionych obszarach.

Key words:

Violence, terror, terrorist attack, public opinion, personal sense of being threatened

REVIEWS

Wiesław Pływaczewski (ed.)

ORGANIZED CRIME AND TERRORISM. REASONS, MANIFESTATIONS, COUNTERACTIONS

*University of Warmia and Mazury
Olsztyn 2011, pp. 304*

Without doubt globalization is impacting on just about every aspect of life in the modern world. One may argue about the positive and negative issues involved in the process but what cannot be overlooked is that it is creating new opportunities to expand criminal activity, particularly in the form of organized crime and terrorism. As such, this phenomenon needs to be carefully studied both for purposes of cognition and the development of effective countermeasures. Quite apart from its economic advantages, the expansion of multinational bodies such as the European Union combined with increasing freedom to move capital, goods, services and people across national boundaries unhindered, has opened up new areas for organized crime, challenging existing penal laws and creating a situation where they require to be constantly adjusted and improved. Insofar as this relates to Poland specifically, one has to remember that since its integration into the European Union, Poland has not only been required to adapt its law to that of the EU but also to secure EU borders. Moreover, organized crime in Poland is a recent phenomenon - one which did not exist prior to the collapse of communism. Another major challenge and one that is much more visible than organized crime, is the growing threat of terrorism and on a scale previously unimaginable (e.g. 9/11 which led to the “War on terror”). The East/West conflict is almost certainly a consequence of continuing economic, social and political globalization that is seen by some in eastern countries (countries negatively affected by changes) as a threat that can only be countered using terrorist means.

The book “Organized Crime and Terrorism – Reasons, Manifestations, Countermeasures” is the latest publication from the Faculty of Criminology and Criminal Policy at the University of Warmia and Mazury in Olsztyn. As the title suggests the book focuses on the problem of organized crime and terrorism and its cognition by penal and criminal law science. The study, edited by prof. Wiesław Pływaczewski, LL.D. of the University of Warmia and Mazury, contains a series of

articles produced by participants of the Scientific Forum “Podlasie – Warmia and Mazury, a cooperation by different academic centres in north eastern Poland. The output of the second forum meeting held in May 2010, dedicated to the problems associated with organized crime and to the different aspects of terrorism, was the main source and inspiration for the book.

The study contains a synthetic database of articles presented in three thematic parts. Part I, entitled “Organized Crime – Domestic and International Perspective”, contains articles by researchers from the University of Białystok, the University of Thessaloniki, and the University of Warmia and Mazury in Olsztyn. The prospect of being able to address issues globally as well as domestically provided an opportunity to broaden discussion to encompass crime on both Polish and foreign territory. Part II, Phenomenon of Terrorism, Diagnosis of Phenomenon and Possible Countermeasures”, is mainly devoted to the prevention of terrorism in specific countries using different solutions drawn from e.g. Swiss law and Roman law. Part III, “Countering Other Pathological Phenomena”, comprises a collection of papers addressing various other contemporary issues in the field of criminality that were also discussed at the second forum meeting.

The “Second Scientific Forum of Podlasie, Warmia and Mazury”, enabled a summation of opinion from research scholars of academic centres located in Poland and abroad to be presented and discussed. It provided an opportunity to take a fresh and in depth look at the problems associated with organized crime and terrorism, as always, with a view to furthering research and development on issues of criminological and criminal law interest. In this particular instance it also widened understanding of the problem in its many diverse forms, extending beyond the standpoint of domestic affect, to Europe and other regions of the world. In addition to characterizing the nature of organized crime and terrorism the publication also characterizes ways to counter the phenomenon.

The most extensive chapter of the book, Chapter 1, summarizes studies on the various aspects of organized crime as it effects both Poland and the world as a whole. The first article, “Threats to the Security of Poland’s Borders in the Context of Organized Crime”, evaluates the threat posed to Polish borders by criminal organizations and assesses whether current legal instruments and provisions of law provide adequate protection. “Selected Aspects of Organized Crime in Contemporary Greece”, characterizes the main types of organized crime prevalent in Greece, profiles Greek penal law and presents a study of how (and if) it can be adjusted to curtail such activities. “Combating Organized Poaching in Africa: Activities of the Kenyan Wildlife Service”, addresses the issue of effective forms of combating illegal hunting. The article, “Role of Women in the Criminal World of the Mafia”, presents the reader with some interesting findings on social and cultural

determinants seen in the behavior of “mafia women” from around the world. The next article, “Legal Instruments Intended for the Fight Against Organized Crime in the Opinion of Public Prosecutors”, presents the results of a survey conducted by the authors’. The forfeiture role in preventing organized crime is discussed by Justyna Karazniewicz. The paper on “Stadium Crime” deals with the problem of football hooliganism which (due to recent conflict between football fans and the government) is still echoing in the Polish media and which, with Euro 2012 on its way, is of ever significant importance. The final essay in the chapter, “Illegal Trade in Waste – Domestic and International Determinants of this Phenomenon”, focuses on the socio-economic factors underlying the illegal trade in waste and stresses the need to raise ecological awareness in society along with the need to create international regulations for dealing with the problem.

Chapter II, characterizes the nature of terrorism, its diagnosis and possible means of prevention from a variety of perspectives. The introductory article captures perfectly the truth about Islamic terrorism as it is today. The chapter goes on to address the concept of terrorism in the context of Polish and Italian legal systems and illustrates the face of the phenomena against a background of Roman law. Among the circle of international studies contained in this chapter, one can find methods of preventing and combating terrorism in Swiss legislation, as well as discussion on issues such as the suppression of terrorist financing and the general characteristics of terrorism and its relationship to organized crime.

Prima facie Chapter III may appear to depart from the subject matter suggested by the title of the book. However, such is the nature of the Forum that a wide range of material was gathered on other topics that, either directly or indirectly, can be related to the subjects of organized crime and terrorism, and which could be compiled under a common heading. Consequently, this chapter presents other pathological phenomena and their eradication. It includes noteworthy studies on unfair conviction in North America, the issue of adopting the private security industry as an element of public security, the fight against corruption from the perspective of the CBA, and the principles of humanitarianism. The closing article is devoted to the development of social reaction to counterfeiting money.

The aim of this publication was to bring together the achievements of many scientists in the field of criminal law and criminology and to combine this with the works of those authors from other branches of law who participated in the study. This diversity provided a view of organized crime and terrorism from an entirely different perspective and provided an opportunity to select topics that would be of most interest to the reader. Naturally, the extent of problems which exist cannot be covered by a single study and what has been included in the book is confined to those issues raised during the Scientific Forum. However, seed has been sown for

future publications as the phenomenon of organized crime and the phenomenon of terrorism provide rich fields for further research.

The book “Organized Crime and Terrorism. Reasons, Manifestations, Countermeasures” will appeal to a wide audience not just to a narrow group of penal law theoreticians and practitioners. The subjects addressed are rich in variety, interesting, and readily understandable. Worth particular mention is the fact that whilst the issues covered come from all over the world, the conclusions drawn from each article have a wide application and are not limited to the specific geographical territory in which the study took place. This makes the book a must-have for all who are interested in cognition of the modern aspects of organized crime and terrorism.

Anna Banasziewicz, Agnieszka Lipińska

Douglas R. Burgess, Jr.

THE WORLD FOR RANSOM: PIRACY IS TERRORISM, TERRORISM IS PIRACY

*Prometheus Books
Amherst, New York 2010, pp. 312*

In 2010, Prometheus Books published a work by Douglas R. Burgess Jr., *The World for Ransom. Piracy is Terrorism. Terrorism is Piracy*. The author is assistant professor of history at Yeshiva University and of legal history at its Benjamin N. Cardozo School of Law.¹

The book consists of two logically structured parts preceded with foreword and introduction. The title of the first part is *Piracy is Terrorism* and it contains the following subchapters: 1. *At War with All the World*, 2. *Piracy and the American Experience*, 3. *A new Hybrid: Political Piracy and Maritime Terrorism*. The second part is titled: *Terrorism is piracy* and it is divided into the following subchapters: 4. *The Pirate Muse*, 5. *Trial and Error: The Definition of Terrorism*, 6. *A new Terrorist Law*. The book ends with conclusions. There are additional items such as bibliography, calendar of significant incidents of piracy and maritime terrorism in the period 1961–2010 and glossary of certain legal and political terms of art discussed in this book.

The war on terrorism has already taken a decade and it is not expected to end any time soon. The American reaction has not only caused war crises in Iraq and Afghanistan but it has also equipped Islamic fundamentalists with the argument that the West's intention is to destroy the Islamic world. More, the US crossed swords with many of its existing allies. Burgess examines the legal instruments used by the US government in the war on terrorism and draws interesting conclusions. The war on terrorism is often fought in breach of human rights and fundamental freedoms. Importantly, many measures undertaken after 11th September 2001 to fight the

1 He is the author of the *Pirates Pact: The Secret Alliances between History's Most Notorious Buccaneers and Colonial America* and *Seize the Trident: The Race for Superliner Supremacy and How It Altered the Great War*. His articles have appeared in the *New York Times*, *Legal Affairs*, *American Bar Association National Security Law Report*, *Legal Affairs: The magazine at the intersection of law and life* and other periodicals.

terrorist plague were not supported in international law or even contradicted its standards. The author claims that the solution lies not in innovatory legal formulas but rather in drawing from historic experience.

This historian and lawyer offers a simple solution: terrorists should be treated as pirates. D.R. Burgess claims that contemporary terrorism is not an unprecedented phenomenon. The world struggles with terrorists now just as it did with pirates before. D.R. Burgess goes on to prove that the war once fought with pirates was the only known state versus non-state conflict until the current war on terrorism began. The author claims terrorism to be the oldest crime against international law: *delicta juris gentium*, otherwise known as piracy. In our struggle against terrorism, we should rely on the legal instruments developed a long time ago to combat piracy and treat terrorists as *hostis humani generis*. This way we can combine effective fight on terrorism and respect for the law.²

D.R. Burgess, in his introduction to the book, provides an outline of the the Italian cruise ship *Achille Lauro* being hijacked in October 1985. On that occasion four members of the Palestine Liberation Front assumed control over the ship and took the crew and passengers hostage, demanding that several dozen Palestinians be released from Israeli prisons. The hijackers killed one person, Leon Klinghoffer, an American billionaire of Jewish decent. Those captive passengers were some of the first victims of the phenomenon which was soon to be known as “the war on terror”. At that time, however, on hearing that Palestinians hijacked the ship, US President Ronald Reagan referred to it as “an act of piracy”. Also, the rapid increase of terrorist attacks through hijacking planes in the 1970s was termed “aerial piracy”.³ Such terminology issues are not accidental. D.R. Burgess proves that there are many similarities between terrorism and piracy. Both terrorism and piracy involve bands of brigands that divorce themselves from their nation-states, both crimes aim at civilians; both involve acts of homicide and destruction and last but not least both crimes act for private ends. Furthermore, the phenomenon of piracy has for many years been developing from common sea robbery to maritime terrorism. Criminal organisations learn from one another. Terrorists use the pirate *modus operandi* and commit acts of piracy themselves to gain funds for their operations. Pirates are either directed by terrorist organisations or basically considered by the latter as useful. Nowadays, the relations between terrorists and pirates are so close that we can coin the term *piraterrorism* to name this phenomenon.⁴

2 See also: D.R. Burgess. The Dread Pirate Bin Laden. How thinking of terrorists as pirates can help win the war on terror, *Legal Affairs: The magazine at the intersection of law and life*, July/August 2005, available at: http://www.legalaffairs.org/issues/July-August-2005/feature_burgess_julaug05.msp

3 D.R. Burgess, Somali Piracy: Send in the Marines... Then the Lawyers, available at: http://www.huffingtonpost.com/dr-burgess/somali-piracy-send-in-the_b_829989.html

4 D.R. Burgess, *The World for Ransom. Piracy is Terrorism Terrorism is Piracy*, Amherst, New York 2010, p. 24.

In his article “Piracy is Terrorism” published in the New York Times in 2008, D.R. Burgess commented on the raging plague of piracy off the Somalian shore and proposed that pirates be treated as terrorists. In his most recent work, however, he goes on to claim that it is terrorists that should be thought of as pirates. Although the international community has successfully developed a number of sectoral conventions for combating individual forms of terrorism, there still exists no single general convention on terrorism just as there is no universal definition of this phenomenon. The history of piracy is, however, incomparably longer and we have several hundred years of experience combating this crime. The Roman creator of law, Marcus Tullius Cicero, defined piracy as crime against the entire civilisation. English lawyer, Edward Coke, coined a popular term for this concept: “hostis humani generis” which means enemies of the human race. This special definition distinguished pirates from all other criminals and meant they could be hunted down at will by anyone, at any time, anywhere they are found.

D.R. Burgess claims that the war on terror which began after 11 September 2001 is a war on ideas. The phenomenon of terrorism has existed since the beginning of time. The temptation to achieve political goals with crime is an indispensable part of human history. We cannot combat ideas but we can fight terrorist organisations trying to implement the ideas. Unfortunately, it will be difficult to win the war as long as we are unable to define the notion of terrorism. To date, many attempts have been made to create a universal definition of terrorism.⁵ None of them was successful – largely due to the unique hybrid status of terrorism. Terrorists are neither common criminals nor military combatants. So who are they actually? The author believes they are pirates – enemies of the human race.⁶

D.R. Burgess argues for his thesis that piracy and terrorism are one crime. For this uniformity to occur, terrorism and piracy need to share three elements: *mens rea* – the criminal subject which involves mental phenomena driving the culprit’s behaviour; *actus reus* – the criminal object or behaviour constituting the crime; and *locus in quo* – the location where crime is committed. Doug Burgess believes that terrorism and piracy share enough elements to merit joint definition under international law.

Both Article 101 of the Territorial Sea Convention of 1958 and Article 15 of the Maritime Law Convention of 1982 stipulate that an act of piracy should be committed for private ends. Whether this condition excludes politically motivated terrorist activity from the definition of piracy is a highly controversial scholarly issue. D.R.

5 These attempts have been vividly and accurately described by Geoffrey Levitt: “The search for a legal definition of terrorism in some ways resembles the quest for the Holy Grail: periodically, eager souls set out, full of purpose, energy and self-confidence, to succeed where so many others before have tried and failed”, [in:] G. Levitt, *Is “Terrorism” Worth Defining?*, [in:] *Ohio Northern University Law Review* 1986, no. 13, p. 97.

6 Available at: <http://www.nytimes.com/2008/12/05/opinion/05burgess.html>

Burgess points out that based on travaux préparatoires of the Geneva Convention of 1958 and the Jamaica Convention of 1982, the notion of private ends has been used in Article 101 to exclude from the definition of piracy activities undertaken by rebels who have not been recognised as combating party by the country they fight against but who restrict their attacks solely to targets belonging to this country. The authors of this definition intended to avoid a situation where governments fighting against rebels could qualify the rebellious activities as piracy. Another important factor is the historical context of when the definitions were created, namely the Cold War. At that time international law distinguished only between two kinds of wars: state versus state and civil war. The ongoing war on terror is a third, previously unknown, category of military conflicts: state versus non-state. Contrary to conventional wars, the war on terror is not fought either within the territory of a single state or against a single state but it is rather fought all over the world against a multitude of states. The situation is completely different from the times when the Geneva Convention and the Montego Bay Conventions were created. For authors of these conventions, the understanding of “political” was limited to state conflicts and civil wars. The Cold War period is now over but the then-created definition of piracy still applies despite over 50 years of evolution in piracy, the emergence of terrorism and the growing relations between the two phenomena.

The mere fact that terrorists claim to be driven by political reasons is far from sufficient to judge that they are in fact politically motivated. As Samuel Menefee accurately pointed out: “I don’t think we can let terrorists define what the ends are”.⁷ Therefore, summarises D.R. Burgess, unless they act on behalf of some national authorities or recognised rebel organisations, they are not realising political aims and, hence, they may be considered pirates. The condition which excludes political activity from the definition of piracy applies only to state officers and not to those who act for political ends. Other authors support this claim made by D.R. Burgess. Professor Gerald Fitzmaurice believes that political, or public, ends are those which have previously been authorised by relevant state authorities. This leads to the conclusion that activities conducted for private ends, as stipulated in Article 101 of the Jamaica Convention, are those which have not been authorised by any recognised government.⁸ Also D.H.N. Johnson judged that it would be much more beneficial to assume that non-authorisation by any state government is the factor defining piracy rather than the private ends condition.⁹

7 D.R. Burgess, *The World...*, op. cit., p. 156.

8 M. Halberstram, *Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety*, *American Journal of International Law* 1988, vol. 82, p. 281.

9 D.H.N. Johnson, *Piracy in Modern International Law*, *Grotius Society Transactions. Problems of Public and Private International Law* 1957, Vol. 63, p. 77.

The author's reasoning is convincing. The authors of the definition provided in Article 101 of the Montego Bay Convention did not intend to restrict piracy to activities conducted for profit (*lucri causa*) when they added the private ends condition to it. In the comment to open sea articles developed by the 7th Maritime Law Committee in 1955, it is stipulated that while an act of piracy needs to be committed for private ends, the desire for profit (*animus furandi*) is not required and acts of piracy may be driven by hatred and revenge rather than for the desire for profit only.¹⁰ Hatred and revenge are, as a matter of fact, some of the most critical forces behind terrorism.¹¹

By strictly applying the requirement that pirates should aim for private ends (personal benefit) and excluding the political ends, we face the risk that many contemporary acts of piracy will not fulfil the conditions stipulated in Article 101 of the Convention and that offenders will not be considered pirates thereunder. How do we, for example, treat Somalian pirates who transfer a major part of the ransom they get for hijacked ships to an extremist Islamic militia al-Shabaab, which has contacts with Al-Qeada and has been qualified by the US as a terrorist organisation fighting to seize control over Somalia from the internationally recognised Temporary Federal Government?¹²

Another issue which needs solving is the issue of the location where criminal act is committed. A basic question emerges: can piracy occur on land? The Harvard draft¹³ accepted the possibility of piracy occurring on land by descent from the sea. Unfortunately, this provision was not used in the Territorial Sea Convention of 1958 or the Maritime Law Convention of 1982. Both conventions limited the location of piracy to areas outside of any state jurisdiction but the author believes such an option may still be considered acceptable under the international customary law. The occurrence of piracy on land has been accepted in the international law doctrine for a long time. For example, a Soviet manual of international law (1952) said that: "Sea piracy or buccaneerism are violent acts committed either by ships and their crews upon other ships at sea or they are attacks committed by ships upon seashore locations, mostly for robbery or to hijack ships and kidnap people, and less frequently for other illegal purposes."¹⁴

10 United Nations General Assembly A/CN, 4/94, p. 20. Available at: http://untreaty.un.org/ilc/documentation/english/a_cn4_94.pdf

11 Under the definition of piracy used by the International Maritime Bureau, piracy does not need to be committed for private ends only. Also politically and ecologically motivated activities fall under the notion of piracy.

12 See also: Piracy ransoms funding Somalia insurgency, <http://www.reuters.com/article/2008/08/24/us-somalia-piracy-interview-idUSLO00572320080824>

13 The Harvard Draft Convention on Piracy developed under the supervision of Prof. Joseph Bingham in 1932 was, to a large extent, a model for the authors of the Territorial Sea Convention of 1958 which means that some of the stipulations therein were also used in the Maritime Law Convention of 1982.

14 Editors: W.N. Durdieniewski, B. Kryłow, *Podręcznik Prawa Międzynarodowego*, Warszawa 1950, p. 269.

Furthermore, as D.R. Burgess points out, the legal systems of many countries, including the USA and the UK, allow for piracy to occur on land. The author emphasises the potential behind the concept of “descent by sea”. The descent may not only come from a seagoing vessel. The concept of aerial piracy largely extends the understanding of descent by the sea. Terrorists arriving in a country either by sea or by air could also be considered pirates and regardless so of whether their aim is against a coastal state or one that is landlocked. This thesis proposed by D.R. Burgess belongs to the most tentative ones. Terrorists commit criminal acts without territorial restrictions whether on land, at sea or in the air. Pirates, however, under Article 101 of the Montego Bay Convention may only act at open sea. Although history records many pirate attacks against coastal locations, nowadays the risk of an attack by descent from the sea seems rather unlikely. Contemporary piracy occurs only at open sea. This was accurately described by Martin N. Murphy: “piracy is a crime of the land that is manifested at sea”.¹⁵

D.R. Burgess knocks this argument down, however, with logical reasoning: “If some pirates are terrorists, and all pirates are *hostis humani generi*, then some terrorists must be *hostis humani generi* as well. Does it make sense for some terrorists to be enemies of the human race and others not?”.¹⁶

D.R. Burgess shows how important it is to come up with a universal definition of terrorism by presenting the Hamdan vs Rumsfeld case.¹⁷ Salid Ahmed Hamdan was a Yemeni citizen taken into custody by the US. Army during the invasion in Afghanistan, held in Guantanamo Bay prison and accused of conspiracy to commit terrorism as a member of Al-Qaeda. Salid Ahmed Hamdan went on trial before a military commission established under Military Commission Order No. 1, of 21 March 2002.¹⁸ Ahmed and other persons put on trial were judged as enemy combatants at war with the USA. The American administration originally intended to treat person charged with terrorism as POW’s – as if they belonged to another army and fought on behalf of a foreign state. The problem was that enemy combatants had many rights guaranteed under the Geneva Convention. Bush’s administration did not want to grant these rights to Ahmed and his companions. This rhetoric had yet another gap in it. Ahmed was not charged with any particular act of terrorism, merely of conspiracy, which does not constitute a crime of war and may not serve as basis for putting charges before a military commission. Criminal conspiracy is a felony charge, appropriate only for domestic criminal courts. The problem emerged: how to proceed with Ahmed Hamdan and his companions? If we want to

15 M.N. Murphy, *Future Scenarios and Future Threats: What Happens if Piracy is not Controlled, and How Might Manifestations Change?*, [in:] *Global Challenge, Regional Responses: Forging a Common Approach to Maritime Piracys*, Dubai 2011, p. 37.

16 D.R. Burgess, *The World...* op. cit., p. 158.

17 Syllabus of *Hamdan v. Rumsfeld* available at: <http://www.supremecourt.gov/opinions/05pdf/05-184.pdf>

18 Available at: <http://www.defense.gov/news/Mar2002/d20020321ord.pdf>

treat them as POW's, they have rights under the Geneva Convention. If we want to charge them with conspiracy rather than any particular act of terrorism, they should be taken before domestic criminal courts. To preserve the possibility of putting the captives charged with terrorism before a military commission and be able to charge them with membership in terrorist organisations without evidence to prove their participation in any specific act of terrorism, the Bush administration started to label such persons "unlawful military combatants". The author claims that this term has no meaning under law and thinks that the attempts made by Bush's administration to define the crime of international terrorism was a complete disaster.¹⁹ D.R. Burgess wants to convince the reader that building the definition of terrorism on the notion of piracy is much better than placing terrorism within the framework of genocide or crimes against humanity. The author claims that the latter mostly refer to states, governments and criminals acting on behalf of state authorities. Piracy is the only case in the law of nations where a single human being is covered by universal jurisdiction without governmental nexus.²⁰

One could obviously argue with the reasoning presented by D.R. Burgess. Regardless of whether we subscribe to the author's view that piracy is terrorism and terrorism is piracy, the fact is the Doug Burgess provides an in-depth analysis of the relations between terrorism and piracy. In his work, Doug Burgess offers a completely new and fresh insight into the problem of combating international terrorism. To sum up, D.R. Burgess's work is an interesting book written by an expert in the field. It may be recommended to anyone interested in the phenomena of terrorism and sea piracy.

Bartosz Fieducik

19 D.R. Burgess, *The Word...* op. cit., p. 200.

20 *Ibidem*, p. 203.

CASE LAW

Judgments of the Court of Justice of the European Union

Case T-315/01 Yassin Abdullah Kadi v Council of the European Union and Commission of the European Communities¹

Key words: Common foreign and security policy – Restrictive measures taken against persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban – Competence of the Community – Freezing of funds – Fundamental rights – Jus cogens – Review by the Court – Action for annulment

Judgment of the Court of First Instance (Second Chamber, extended composition) of 21 September 2005

110 In this regard, it must be pointed out that the Community has no express power to impose restrictions on the movement of capital and payments. However, Article 58 EC (Article 65 TFEU) allows the Member States to adopt measures having such an effect to the extent to which this is, and remains, justified in order to achieve the objectives set out in the article, in particular, on grounds of public policy or public security (...). The concept of public security covering both the State's internal and external security, the Member States are therefore as a rule entitled to adopt under Article 58(1)(b) EC (Article 65(1)(b) TFEU) measures of the kind laid down by the contested regulation. In so far as those measures are in keeping with Article 58(3) EC (article 65(3) TFEU) and do not go beyond what is necessary in order to attain the objective pursued, they are compatible with the rules on free movement of capital and payments and with the rules on free competition laid down by the EC Treaty (TFEU).

242 Thus, in so far as respect for the right to property must be regarded as forming part of the mandatory rules of general international law, it is only an arbitrary deprivation of that right that might, in any case, be regarded as contrary to jus cogens.

243 Here, however, it is clear that the applicant has not been arbitrarily deprived of that right.

¹ See judgment of the Court of First Instance of 21 September 2005 in case T-306/01, European Court Reports 2005, p. II-03649, source: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62001TJ0315:EN:HTML>

244 In fact, in the first place, the freezing of his funds constitutes an aspect of the sanctions decided by the Security Council against Usama bin Laden, members of the Al-Qaeda network and the Taliban and other associated individuals, groups, undertakings and entities.

245 In that regard, it is appropriate to stress the importance of the campaign against international terrorism and the legitimacy of the protection of the United Nations against the actions of terrorist organisations.

247 It is in the light of those circumstances that the objective pursued by the sanctions assumes considerable importance (...). The measures in question pursue therefore an objective of fundamental public interest for the international community.

248 In the second place, freezing of funds is a temporary precautionary measure which, unlike confiscation, does not affect the very substance of the right of the persons concerned to property in their financial assets but only the use thereof.

250 In the fourth place (...) the legislation at issue settles a procedure enabling the persons concerned to present their case at any time to the Sanctions Committee for review, through the Member State of their nationality or that of their residence.

251 Having regard to those facts, the freezing of the funds of persons and entities suspected, on the basis of information communicated by the Member States of the United Nations and checked by the Security Council, of being linked to Usama bin Laden, the Al-Qaeda network or the Taliban and of having participated in the financing, planning, preparation or perpetration of terrorist acts cannot be held to constitute an arbitrary, inappropriate or disproportionate interference with the fundamental rights of the persons concerned.

252 It follows from the foregoing that the applicant's arguments alleging breach of the right to respect for property and of the general principle of proportionality must be rejected.

259 (...) the Council was not obliged to hear the applicant on the subject of his inclusion in the list of persons and entities affected by the sanctions, in the context of the adoption and implementation of the contested regulation.

260 The applicant's arguments based on the alleged infringement of his right to be heard by the Council in connection with the adoption of the contested regulation must therefore be rejected.

274 None the less, in circumstances such as those of this case, in which what is at issue is a temporary precautionary measure restricting the availability of the applicant's property, the Court of First Instance considers that observance of the fundamental rights of the person concerned does not require the facts and evidence adduced against him to be communicated to him, once the Security Council or

its Sanctions Committee is of the view that that there are grounds concerning the international community's security that militate against it.

276 It follows that the applicant's arguments alleging breach of the right to be heard must be rejected.

On those grounds,

The Court of First Instance (Second Chamber, Extended Composition) hereby:

1. Declares that there is no need to adjudicate on the application for annulment in part of Council Regulation (EC) No 467/2001 of 6 March 2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, and repealing Regulation (EC) No 337/2000 and for annulment of Commission Regulation (EC) No 2062/2001 of 19 October 2001 amending, for the third time, Regulation No 467/2001;
2. Dismisses the action in so far as it is brought against Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, and repealing Regulation No 467/2001;

(...)

Case T-306/01 Ahmed Ali Yusuf and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities²

Key words: Common foreign and security policy - Restrictive measures taken against persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban - Competence of the Community - Freezing of funds - Fundamental rights - Jus cogens - Review by the Court - Action for annulment

Judgment of the Court of First Instance (Second Chamber, extended composition) of 21 September 2005

120 More particularly, the chief object of the sanctions at issue in this case was to prevent the Taliban regime from obtaining financial support from any source whatsoever, as is apparent from Paragraph 4(b) of Resolution 1287 (1999). The sanctions might have been circumvented if the individuals who were thought to maintain that regime had not been affected by them. As regards the relations between

² See judgment of the Court of First Instance of 21 September 2005 in case T-315/01, European Court Reports 2005, p. II-03533, source: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62001TJ0306:EN:HTML>

the former Taliban regime and Usama bin Laden, the Security Council considered that the latter, during the period in question, received assistance, at this point crucial, from the regime of which he could be regarded as forming part (...)

121 Thus, contrary to what the applicants maintained, the measures at issue were indeed intended to interrupt or reduce economic relations with a third country, in connection with the international community's fight against international terrorism and, more specifically, against Usama bin Laden and the Al-Qaeda network.

124 It follows from the foregoing that, contrary to what the applicants claimed, the Council was indeed competent to adopt Regulation No 467/2001 (...)

167 In this instance, the fight against international terrorism and its funding is unarguably one of the Union's objectives under the CFSP, as they are defined in Article 11 EU (Article 24 TEU), even where it does not apply specifically to third countries or their rulers.

288 It falls therefore to be assessed whether the freezing of funds provided for by the contested regulation, as amended by Regulation No 561/2003, and, indirectly, by the resolutions of the Security Council put into effect by those regulations, infringes the applicants' fundamental rights.

289 The Court considers that such is not the case, measured by the standard of universal protection of the fundamental rights of the human person covered by *jus cogens*, and that there is no need here to distinguish the situation of the entity Al Barakaat, as a legal person, from that of Mr Yusuf, as a natural person.

291 The express provision of possible exemptions and derogations thus attaching to the freezing of the funds of the persons in the Sanctions Committee's list clearly shows that it is neither the purpose nor the effect of that measure to submit those persons to inhuman or degrading treatment.

293 Thus, in so far as respect for the right to property must be regarded as forming part of the mandatory rules of general international law, it is only an arbitrary deprivation of that right that might, in any case, be regarded as contrary to *jus cogens*.

294 Here, however, it is clear that the applicants have not been arbitrarily deprived of that right.

295 In fact, in the first place, the freezing of their funds constitutes an aspect of the sanctions decided by the Security Council against Usama bin Laden, members of the Al-Qaeda network and the Taliban and other associated individuals, groups, undertakings and entities.

296 In that regard, it is appropriate to stress the importance of the fight against international terrorism and the legitimacy of the protection of the United Nations against the actions of terrorist organisations.

299 In the second place, freezing of funds is a precautionary measure which, unlike confiscation, does not affect the very substance of the right of the persons concerned to property in their financial assets but only the use thereof.

301 In the fourth place (...) the legislation at issue settles a procedure enabling the persons concerned to present their case at any time to the Sanctions Committee for review, through the Member State of their nationality or that of their residence.

302 Having regard to those facts, the freezing of the funds of persons and entities suspected, on the basis of information communicated by the Member States of the United Nations and checked by the Security Council, of being linked to Usama bin Laden, the Al-Qaeda network or the Taliban and of having participated in the financing, planning, preparation or perpetration of terrorist acts cannot be held to constitute an arbitrary, inappropriate or disproportionate interference with the fundamental rights of the persons concerned.

303 It follows from the foregoing that the applicants' arguments alleging breach of their right to make use of their property must be rejected.

320 None the less, in circumstances such as those of this case (...) the Court of First Instance considers that observance of the fundamental rights of the persons concerned does not require the facts and evidence adduced against them to be communicated to them, once the Security Council or its Sanctions Committee is of the view that there are grounds concerning the international community's security that militate against it.

321 It follows that the applicants' arguments alleging breach of their right to be heard by the Sanctions Committee (...) must be rejected.

330 The applicants' arguments based on the alleged infringement of their right to be heard by the Community institutions before the contested regulation was adopted must therefore be rejected.

331 It follows that the applicants' arguments alleging breach of the right to a fair hearing must be rejected.

On those grounds,

The Court of First Instance (Second Chamber, Extended Composition)
hereby:

1. Declares that there is no longer any need to adjudicate on the application for annulment of Council Regulation (EC) No 467/2001 of 6 March

2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, and repealing Regulation (EC) No 337/2000 and for annulment of Commission Regulation (EC) No 2199/2001 of 12 November 2001 amending, for the fourth time, Regulation No 467/2001;

2. Dismisses the action in so far as it is brought against Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, and repealing Regulation No 467/2001;

(...)

Joined cases C-402/05 P and C-415/05 P Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities³

Key words: Common foreign and security policy (CFSP) - Restrictive measures taken against persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban - United Nations - Security Council - Resolutions adopted under Chapter VII of the Charter of the United Nations - Implementation in the Community - Common Position 2002/402/CFSP - Regulation (EC) No 881/2002 Measures against persons and entities included in a list drawn up by a body of the United Nations - Freezing of funds and economic resources - Committee of the Security Council created by paragraph 6 of Resolution 1267 (1999) of the Security Council (Sanctions Committee) - Inclusion of those persons and entities in Annex I to Regulation (EC) No 881/2002 - Actions for annulment - Competence of the Community - Joint legal basis of Articles 60 EC (Article 75 TFEU), 301 EC (Article 215 TFEU) and 308 EC (Articles 352 and 353 TFEU) - Fundamental rights - Right to respect for property, right to be heard and right to effective judicial review

Judgment of the Court (Grand Chamber) of 3 September 2008

361 As the Court has already held in connection with another Community system of restrictive measures of an economic nature also giving effect to resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations, the importance of the aims pursued by a Community act is such as to justify negative consequences, even of a substantial nature, for some operators, including

3 See the judgment of the Court of Justice of 3 September 2008 in joined cases C-402/05 P and C-415/05 P, European Court Reports 2008, s. I-06351, source: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005CJ0402:EN:HTML>

those who are in no way responsible for the situation which led to the adoption of the measures in question, but who find themselves affected, particularly as regards their property rights (see, to that effect, *Bosphorus*, paragraphs 22 and 23).

362 In the case in point, the restrictive measures laid down by the contested regulation contribute to the implementation, at Community level, of the restrictive measures decided on by the Security Council against Usama bin Laden, members of the Al-Qaeda organisation and the Taliban and other individuals, groups, undertakings and entities associated with them.

363 With reference to an objective of general interest as fundamental to the international community as the fight by all means, in accordance with the Charter of the United Nations, against the threats to international peace and security posed by acts of terrorism, the freezing of the funds, financial assets and other economic resources of the persons identified by the Security Council or the Sanctions Committee as being associated with Usama bin Laden, members of the Al-Qaeda organisation and the Taliban cannot per se be regarded as inappropriate or disproportionate (...)

366 It must therefore be found that the restrictive measures imposed by the contested regulation constitute restrictions of the right to property which might, in principle, be justified.

369 The contested regulation, in so far as it concerns Mr Kadi, was adopted without furnishing any guarantee enabling him to put his case to the competent authorities, in a situation in which the restriction of his property rights must be regarded as significant, having regard to the general application and actual continuation of the freezing measures affecting him.

370 It must therefore be held that, in the circumstances of the case, the imposition of the restrictive measures laid down by the contested regulation in respect of Mr Kadi, by including him in the list contained in Annex I to that regulation, constitutes an unjustified restriction of his right to property.

371 The plea raised by Mr Kadi that his fundamental right to respect for property has been infringed is therefore well founded.

372 It follows from all the foregoing that the contested regulation, so far as it concerns the appellants, must be annulled.

373 However, the annulment to that extent of the contested regulation with immediate effect would be capable of seriously and irreversibly prejudicing the effectiveness of the restrictive measures imposed by the regulation and which the Community is required to implement, because in the interval preceding its replacement by a new regulation Mr Kadi and Al Barakaat might take steps seeking to prevent measures freezing funds from being applied to them again.

374 Furthermore, in so far as it follows from this judgment that the contested regulation must be annulled so far as concerns the appellants, by reason of breach of principles applicable in the procedure followed when the restrictive measures introduced by that regulation were adopted, it cannot be excluded that, on the merits of the case, the imposition of those measures on the appellants may for all that prove to be justified.

375 Having regard to those considerations, the effects of the contested regulation, in so far as it includes the names of the appellants in the list forming Annex I thereto, must, by virtue of Article 231 EC (Article 264 TFEU), be maintained for a brief period to be fixed in such a way as to allow the Council to remedy the infringements found, but which also takes due account of the considerable impact of the restrictive measures concerned on the appellants' rights and freedoms.

376 In those circumstances, Article 231 EC (Article 263 TFEU) will be correctly applied in maintaining the effects of the contested regulation, so far as concerns the appellants, for a period that may not exceed three months running from the date of delivery of this judgment.

On those grounds,

The Court (Grand Chamber)

hereby:

1. Sets aside the judgments of the Court of First Instance of the European Communities of 21 September 2005 in Case T-315/01 Kadi v Council and Commission and Case T-306/01 Yusuf and Al Barakaat International Foundation v Council and Commission;
2. Annuls Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, in so far as it concerns Mr Kadi and the Al Barakaat International Foundation;
3. Orders the effects of Regulation No 881/2002 to be maintained, so far as concerns Mr Kadi and the Al Barakaat International Foundation, for a period that may not exceed three months running from the date of delivery of this judgment;

(...)

Judgments of the European Court of Human Rights

GRAND CHAMBER

Case of Saadi v. Italy (application no. 37201/06) – Judgment Strasbourg 28 February 2008⁴

I. The circumstances of the case

A. The criminal proceedings against the applicant in Italy and Tunisia

On 9 October 2002 the applicant, was arrested on suspicion of involvement in international terrorism (Article 270 bis of the Criminal Code), among other offences, and placed in pre-trial detention. He and five others were subsequently committed for trial in the Milan Assize Court.

The applicant faced four charges. The first of these was conspiracy to commit acts of violence (including attacks with explosive devices) in States other than Italy with the aim of spreading terror. It was alleged that between December 2001 and September 2002 the applicant had been one of the organisers and leaders of the conspiracy, had laid down its ideological doctrine and given the necessary orders for its objectives to be met. The second charge concerned falsification “of a large number of documents such as passports, driving licences and residence permits”. The applicant was also accused of receiving stolen goods and of attempting to aid and abet the entry into Italian territory of an unknown number of aliens in breach of the immigration legislation.

At his trial the prosecution called for the applicant to be sentenced to thirteen years’ imprisonment. The applicant’s lawyer asked the Assize Court to acquit his client of international terrorism and left determination of the other charges to the court’s discretion.

In a judgment of 9 May 2005 the Milan Assize Court altered the legal classification of the first offence charged. It took the view that the acts of which he stood accused did not constitute international terrorism but criminal conspiracy. It sentenced the applicant to four years and six months’ imprisonment for that offence, for the forgery and receiving offences. It acquitted the applicant of aiding and abetting clandestine immigration, ruling that the acts he stood accused of had not been committed.

⁴ See the judgment of the European Court of Human Rights of 28 February 2008 in case of Saadi v. Italy, source: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=37201/06&sessionid=84043811&skin=hudoc-en>

As a secondary penalty the Assize Court banned the applicant from exercising public office for a period of five years and ordered that after serving his sentence he was to be deported.

In the reasons for its judgment, which ran to 331 pages, the Assize Court observed that the evidence against the applicant included intercepts of telephone and radio communications, witness statements and numerous false documents that had been seized. Taken together, this evidence proved that the applicant had been engaged in a conspiracy to receive and falsify stolen documents, an activity from which he derived his means of subsistence. On the other hand, it had not been established that the documents in question had been used by the persons in whose names they had been falsely made out to enter Italian territory illegally.

As regards the charge of international terrorism, the Assize Court first noted that a conspiracy was “terrorist” in nature where its aim was to commit violent acts against civilians or persons not actively participating in armed conflict with the intention of spreading terror or obliging a government or international organisation to perform or refrain from performing any act, or where the motive was political, ideological or religious in nature. In the present case it was not known whether the violent acts which the applicant and his accomplices were preparing to commit, according to the prosecution submissions, were to be part of an armed conflict or not.

In addition, the evidence taken during the investigation and trial was not capable of proving beyond a reasonable doubt that the accused had begun to put into practice their plan of committing acts of violence, or that they had provided logistical or financial support to other persons or organisations having terrorist aims. In particular, such evidence was not provided by the telephone and radio intercepts. These proved only that the applicant and his accomplices had links with persons and organisations belonging to Islamic fundamentalist circles, that they were hostile to “infidels” (and particularly those present in territories considered to be Muslim) and that their relational world was made up of “brothers” united by identical religious and ideological beliefs.

Using coded language the defendants and their correspondents had repeatedly mentioned a “football match”, intended to strengthen their faith in God. For the Assize Court it was quite obvious that this was not a reference to some sporting event but to an action applying the principles of the most radical form of Islam. However, it had not been possible to ascertain what particular “action” was meant or where it was intended to take place.

Moreover, the applicant had left Milan on 17 January 2002 and, after a stopover in Amsterdam, made his way to Iran, from where he had returned to Italy on 14 February 2002. He had also spoken of a “leader of the brothers” who was in Iran.

Some members of the group to which the applicant belonged had travelled to “training camps” in Afghanistan and had procured weapons, explosives and observation and video recording equipment. In the applicant’s flat and those of his co-defendants the police had seized propaganda about jihad – or holy war – on behalf of Islam. In addition, in telephone calls to members of his family in Tunisia made from the place where he was being detained in Italy, the applicant had referred to the “martyrdom” of his brother Fadhil Saadi; in other conversations he had mentioned his intention to take part in holy war.

However, no further evidence capable of proving the existence and aim of a terrorist organisation had been found. In particular, there was no evidence that the applicant and his accomplices had decided to channel their fundamentalist faith into violent action covered by the definition of a terrorist act. Their desire to join a jihad and eliminate the enemies of Islam could very well be satisfied through acts of war in the context of an armed conflict, that is, acts not covered by the concept of “terrorism”. It had not been established whether the applicant’s brother had really died in a suicide bombing or whether that event had been the “football match” which the defendants had repeatedly referred to.

The applicant and the prosecution appealed. The applicant asked to be acquitted of all the charges, while the prosecution wanted him to be convicted of international terrorism and aiding and abetting clandestine immigration too.

In the prosecution’s appeal it was submitted that, according to the case-law of the Court of Cassation, the constituent elements of the crime of international terrorism were made out even where no act of violence had occurred, the existence of a plan to commit such an act being sufficient. In addition, an action could be terrorist in nature even if it was intended to be carried out in the context of an armed conflict, provided that the perpetrators were not members of the “armed forces of a State” or an “insurrectionary group”. In the present case, it was apparent from the documents in the file that the applicant and his associates had procured for themselves and others false documents, weapons, explosives and money in order to commit violent acts intended to affirm the ideological values of fundamentalist Islam. In addition, the accused had maintained contacts with persons and organisations belonging to the sphere of international terrorism and had planned a violent and unlawful action, due to be carried out in October 2002 as part of a “holy war” and in a country other than Italy. Only the defendants’ arrest had prevented the plan being implemented. Furthermore, at that time the armed conflict in Afghanistan had ended and the one in Iraq had not yet started.

The prosecution further submitted that the applicant’s brother, Mr Fadhil Saadi, had been detained in Iran; the applicant had visited him there in either January or February 2002. After his release Mr Fadhil Saadi had settled in France and stayed

in contact with the applicant. He had then died in a suicide bombing, a fact which was a source of pride for the applicant and the other members of his family. That was revealed by the content of the telephone conversations intercepted in the prison where the applicant was being held.

Lastly, the prosecution requested leave to produce new evidence, namely letters and statements from a person suspected of terrorist activities and recordings transmitted by radio microphone from inside a mosque in Milan.

On 13 March 2006 the Milan Assize Court of Appeal asked the Constitutional Court to rule on the constitutionality of Article 593 § 2 of the Code of Criminal Procedure (“the CCP”). As amended by Law no. 46 of 20 February 2006, that provision permitted the defence and the prosecution to appeal against acquittals only where, after the close of the first-instance proceedings, new evidence had come to light or been discovered. The Assize Court of Appeal stayed the proceedings pending a ruling by the Constitutional Court.

In judgment no. 26 of 6 February 2007 the Constitutional Court declared the relevant provisions of Italian law unconstitutional in that they did not allow the prosecution to appeal against all acquittals and because they provided that appeals lodged by the prosecuting authorities before the entry into force of Law no. 46 of 20 February 2006 were inadmissible. The Constitutional Court observed in particular that Law no. 46 did not maintain the fair balance that should exist in a criminal trial between the rights of the defence and those of the prosecution.

The first hearing before the Milan Assize Court of Appeal was set down for 10 October 2007.

In the meantime, on 11 May 2005, two days after delivery of the Milan Assize Court’s judgment, a military court in Tunis had sentenced the applicant in his absence to twenty years’ imprisonment for membership of a terrorist organisation operating abroad in time of peace and for incitement to terrorism. He was also deprived of his civil rights and made subject to administrative supervision for a period of five years. The applicant asserted that he had not learned of his conviction until, the judgment having become final, its operative part was served on his father on 2 July 2005.

The applicant alleged that his family and his lawyer were not able to obtain a copy of the judgment by which the applicant had been convicted by the Tunis military court. In a letter of 22 May 2007 to the President of Tunisia and the Tunisian Minister of Justice and Human Rights, his representatives before the Court asked to be sent a copy of the judgment in question. The result of their request is not known.

B. The order for the applicant’s deportation and his appeals against its enforcement and for the issue of a residence permit and/or the granting of refugee status (...)

C. The diplomatic assurances requested by Italy from Tunisia (...)

II. Alleged violation of article 3 of the convention

The applicant submitted that enforcement of his deportation would expose him to the risk of treatment contrary to Article 3 of the Convention, which provides:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment

The Court's assessment

The Court notes first of all that States face immense difficulties in modern times in protecting their communities from terrorist violence (...) It cannot therefore underestimate the scale of the danger of terrorism today and the threat it presents to the community. That must not, however, call into question the absolute nature of Article 3.

Accordingly, the Court cannot accept the argument of the United Kingdom Government, supported by the respondent Government, that a distinction must be drawn under Article 3 between treatment inflicted directly by a signatory State and treatment that might be inflicted by the authorities of another State, and that protection against this latter form of ill-treatment should be weighed against the interests of the community as a whole. Since protection against the treatment prohibited by Article 3 is absolute, that provision imposes an obligation not to extradite or expel any person who, in the receiving country, would run the real risk of being subjected to such treatment. As the Court has repeatedly held, there can be no derogation from that rule. It must therefore reaffirm the principle (...) that it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion in order to determine whether the responsibility of a State is engaged under Article 3, even where such treatment is inflicted by another State (...)

The Court considers that the argument based on the balancing of the risk of harm if the person is sent back against the dangerousness he or she represents to the community if not sent back is misconceived. The concepts of "risk" and "dangerousness" in this context do not lend themselves to a balancing test because they are notions that can only be assessed independently of each other (...)

Furthermore, the Court has frequently indicated that it applies rigorous criteria and exercises close scrutiny when assessing the existence of a real risk of ill-treatment (...) in the event of a person being removed from the territory of the respondent State by extradition, expulsion or any other measure pursuing that aim. Although assessment of that risk is to some degree speculative, the Court has always been very cautious, examining carefully the material placed before it in the light of

the requisite standard of proof (...) before indicating an interim measure under Rule 39 or finding that the enforcement of removal from the territory would be contrary to Article 3 of the Convention. As a result, since adopting the *Chahal* judgment it has only rarely reached such a conclusion.

In the present case the Court has had regard, firstly, to the reports of Amnesty International and Human Rights Watch on Tunisia (...), which describe a disturbing situation. The conclusions of those reports are corroborated by the report of the US State Department (...). In particular, these reports mention numerous and regular cases of torture and ill-treatment meted out to persons accused under the 2003 Prevention of Terrorism Act. The practices reported – said to be often inflicted on persons in police custody with the aim of extorting confessions – include hanging from the ceiling, threats of rape, administration of electric shocks, immersion of the head in water, beatings and cigarette burns, all of these being practices which undoubtedly reach the level of severity required by Article 3. It is reported that allegations of torture and ill-treatment are not investigated by the competent Tunisian authorities, that they refuse to follow up complaints and that they regularly use confessions obtained under duress to secure convictions (...)

The applicant was prosecuted in Italy for participation in international terrorism and the deportation order against him was issued by virtue of Legislative decree no. 144 of 27 July 2005 entitled “urgent measures to combat international terrorism” (...). He was also sentenced in Tunisia, in his absence, to twenty years’ imprisonment for membership of a terrorist organisation operating abroad in time of peace and for incitement to terrorism. The existence of that sentence was confirmed by Amnesty International’s statement of 19 June 2007 (...)

In these circumstances, the Court considers that in the present case substantial grounds have been shown for believing that there is a real risk that the applicant would be subjected to treatment contrary to Article 3 of the Convention if he were to be deported to Tunisia. That risk cannot be excluded on the basis of other material available to the Court (...)

The Court further notes that on 29 May 2007, while the present application was pending before it, the Italian Government asked the Tunisian Government (...) for diplomatic assurances that the applicant would not be subjected to treatment contrary to Article 3 of the Convention (...). However, the Tunisian authorities did not provide such assurances.

Consequently, the decision to deport the applicant to Tunisia would breach Article 3 of the Convention if it were enforced.

(...)

For these reasons, the court unanimously

1. Declares the application admissible;
2. Holds that, if the decision to deport the applicant to Tunisia were to be enforced, there would be a violation of Article 3 of the Convention;
3. Holds that it is not necessary to examine whether enforcement of the decision to deport the applicant to Tunisia would also be in breach of Articles 6 and 8 of the Convention and Article 1 of Protocol No. 7;
4. Holds that the finding of a violation constitutes sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
5. Holds
 - (a) that the respondent State is to pay the applicant, within three months, EUR 8,000 (eight thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. Dismisses the remainder of the applicant's claim for just satisfaction.

by Tomasz Dubowski

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