

PhD Dominika Dróżdż

assistant professor at the Polish Academy of Sciences, Łódź, assistant professor at the Social Academy of Sciences, Łódź

ORCID 0000-0001-5745-1548

PROPOSAL OF THE DEFINITION OF “AN ACT OF TERRORISM” IN THE WORKS OF THE UNITED NATIONS

Summary

The UN Committee on the Comprehensive Terrorist Act has failed to persuade countries to adopt the draft UN convention. The only country that has unreservedly adopted the draft of this convention is India, which would also like to adopt a comprehensive convention relating to international terrorism. South America, the OIC and the United States of America are reluctant to accept it. It would also be advisable to get acquainted with European Union countries, including Poland, which, referring to the solutions adopted by the Security Council No. 1373 of 2001 and 1566 of 2004, should also rethink the draft UN convention taking into account the Comprehensive Terrorist Act this time.

Keywords: Act of terrorism, Draft of the Comprehensive Act of Terrorism in the United Nations' Comprehensive Commission of Terrorism, European Union, Global Counter Terrorism Strategy, Organisation of Islamic Cooperation

Introduction

The issues raised in this article relate to the problem of terrorism. Terrorism is understood as “the deliberate instilling of fear in an entire community through the use or threat of violence in an effort to effect a change of a political nature”¹. This thesis cannot be accepted in criminal law, which should be geared to combat any variety of terrorism, including criminal². In addition to the concept of terrorism taking into account its political nature, for example, non-political terrorism with no connection to politics or power is also taken into account, when the motivation of the

¹ B. Hoffman, *Oblicza terroryzmu*, Świat Książki, Warsaw 2001.

² K. Indecki, *W sprawie definicji normatywnej terroryzmu*, in: E.W. Pływaczewski (ed.), *Przestępczość zorganizowana: świadek koronny, terroryzm: w ujęciu praktycznym*, Kantor Wydawniczy Zakamycze, Kraków 2005, p. 292.

action is to commit terrorist acts for profit or for pathological reasons³. Any terrorist act substantially violates human rights (of the victims of the act), such as the right to life, liberty, bodily integrity, property, etc.⁴

Currently, according to Brunon Hołyst, international terrorism is “acts of violence aimed at destroying the symbolic status, identity and being or essence of the victim (society, institutions, civilians)”⁵. These definitions are classified as doctrinal definitions. According to Krzysztof Indeck, in the literature, the concept of terrorism refers to both state activity and the activity of individuals. “It is debatable whether these terms can be referred to any fact of law”⁶. There are many types of terrorism. Terrorism is also the respective tactics of the perpetrators, which can take various forms, including offensive, defensive and repressive.

It is also worth noting that at the 1919 La Paz Conference, systematic terrorism was discussed, by which term meant behaviour that included the form of assaults by the Central Powers on the laws of war in the form of crimes “committed against all” or “complicity in massacres.” In 1926 in Brussels, under the auspices of the International Association of Penal Law, efforts were made to define international terrorism, recognizing it as an unlawful act of violating the international order. This criminal act could be prosecuted regardless of where it was committed. During subsequent criminal law conferences, it was recognized that this would not be a manifestation of political activity. It was assumed that a terrorist act would be “a criminal act aimed at creating a state of terror in the minds of individuals, groups of individuals, collectivities”⁷. Taking into account UN resolutions and conventions on terrorism from the 1970s-90s, as well as aspects of domestic law, Krzysztof Indeck concluded that the “normalization” of a terrorist act does not have to take the form of a type of criminal act. However, regardless of how the relevant terms related to terrorism are defined and introduced in acts of international and domestic law, it prejudices the general acceptance of the punishability of such behaviour.”⁸.

This is also confirmed by the functioning problem with the adoption of a single comprehensive definition of terrorism by the committee that drafted the form of the act of terrorism in the United Nations, and it is still unheard of for states to recognize such a form of comprehensive coverage of the act of terrorism in the UN. Countries are currently taking measures to prevent and counter terrorist acts, “e.g. through the creation of relevant criminal legal norms contained in criminal codes or other

³ B. Zasieczna, *Encyklopedia terroryzmu*, Bellona Publishing House, Warsaw 2004, p. 72.

⁴ K. Indeck, *Application of human rights towards perpetrators of terrorist acts*, in: K. Indeck, P. Potejko (eds.), *Terroryzm: materia ustawowa?*, Internal Security Agency, Central Training Center of Gen. Stefan Rowecki, Warsaw 2009, p. 85.

⁵ Por. B. Hołyst, *Terroryzm*, t. I, LexisNexis, Warszawa 2011, s. 51

⁶ K. Indeck, *W sprawie definicji...*, op. cit., s. 263.

⁷ Idem, *Prawo karne wobec terroryzmu i aktu terrorystycznego*, University of Lodz Publishing House, Lodz 1978, p. 18.

⁸ Idem, *W sprawie definicji...*, op. cit, p. 292.

supplementary legislation”⁹. The requirements are placed before the concept of the crime of terrorism also in Polish law, taking into account, however, in the solution used, the patterns taken from the legal acts adopted in the world¹⁰. The purpose of this work, therefore, is to show the possibility of the UN creating a definition of an act of terrorism that is useful to the countries concerned, so that it takes into account the concept of the perpetrators of this act, who may also be the leaders responsible for these crimes. This article presents only the essence of the issues concerning the act of terrorism to combat it and create opportunities to try its perpetrators, mainly related to international humanitarian law¹¹. In addition, the most relevant entities related to the issue of terrorism will be mentioned, namely: The Organization of Islamic Cooperation (whose member states would like to include their possession of a legitimate aspiration for self-determination), India (a country that is the only one to have adopted the UN General Assembly’s draft Comprehensive Convention on Terrorism), the European Union (taking into account the definition of terrorism from UN Security Council Resolution 1566 of 2004), realizing the cooperation of these countries also with other countries of the world.

⁹ Idem, *Stosowanie praw człowieka...*, op. cit., p. 85.

¹⁰ The globe, made up of many states, has been “working” on terrorism issues for many years, paying attention to states led by leaders once aiming to conquer larger territories. As early as the 15th-16th centuries. Spain and Portugal were colonial powers. They were joined by England, the Netherlands, France and Russia. As a result of numerous wars between colonial powers in the 17th-19th centuries. Britain and France took the place of Spain and Portugal. In the 19th century. The Netherlands had an intact possession in the East Indies (since the heyday of the *United Provinces*), and Belgium in the Congo (originally the private property of King Leopold II). In 1815. The Netherlands was merged with the Southern Netherlands (today's Belgium) into the Kingdom of the United Netherlands. The joint state did not last long, however, for as early as 1830 the Belgians seceded from the kingdom in a revolution to form their own state. The Spanish and Portuguese colonies remained in crisis until the end of the 19th century. The areas of the colonies were likely to become states in the future, such as Brazil and the Spanish colonies in South and Central America. In contrast, some countries attempted to join the ranks of colonial powers only in the 19th and early 20th centuries. (e.g., Germany, USA, Italy, Japan). Britain had the largest colonial possessions in the 19th century. - At the end of the century, a fourth of the globe belonged to this country in the form of India, Australia, Canada or Egypt and South Africa. France and Russia were also significant empires. Cf. https://www.plwiki.pl/Leksykon/Imperium_kolonialne (accessed 18.09.2022).

¹¹ Many organizations around the world are working on this topic. For more on this topic, cf. e.g. B. Hołyst, op. cit. vol. I and II; B. Bolechów, *Terroryzm*, University of Wrocław, http://www.repozytorium.uni.wroc.pl/Content/59705/PDF/03_Bartosz_Bolechow.pdf (accessed 18.09.2022). Prof. Bartosz Bolechów highlighted the following organizations interested in terrorism: Organization of American States, African Union, League of Arab States, Organization of the Islamic Conference, International Criminal Police Organization (Interpol), Council of Europe, Organization for Security and Cooperation in Europe, North Atlantic Treaty Organization (NATO), European Union.

Even before World War II, legislation was being created to address the phenomenon of terrorism¹². Prof. Otto Triffterer, recognizing the need to include in the issue the actions of state leaders in the course of their control of the state, presented a historical overview of the doctrine of terrorism starting from the mid-19th century¹³. However, a piece of legislation dealing with the perpetrators of terrorism, who were, in fact, their leaders¹⁴, was missing and should have appeared earlier so that countries could ratify it before the start of World War II. Meanwhile, the project was considered to be a cause of tension and misunderstanding due to its overly ambitious counter-terrorism¹⁵. The above solution to the counter-terrorism project would have prevented the commission of such crimes by introducing the possibility of criminal prosecution, which apparently failed.

The disintegration of the colonial powers gained momentum after World War II, continuing for about 20–30 more years. At the time, attention was drawn to the need to analyze the activities of state leaders, who could be considered within the framework of the international treaty at the time, regardless of the fact that there were terrorist attacks in the states¹⁶.

¹² Cf. Articles 227-230 of the Treaty of Versailles. It was published in the OJ. U. 1920 No. 35, item 200. Four articles of its Part VII dealt with the issue of war criminals' responsibility. It said, "The Allied and Associated Powers are placing William II Hohenzollern, former Emperor of Germany, under public indictment," but this was not achieved, as he was given refuge in the Netherlands, which refused to extradite him. Trial of other World War I German criminals was to be the responsibility of German tribunals or those of associated or allied countries. Regarding penalties, the courts applied their own laws. See M. Plachta, *Międzynarodowy Trybunał Karny* vol. I, Zakamycze, Kraków 2004, p. 58.

¹³ O. Triffterer, *Causality, a separate element of the doctrine of superior responsibility as expressed in article 28 Rome Statute?*, "Leiden Journal of International Law" 2002, no. 15, p. 179. Prof. Otto Triffterer also referred to the inadequate consideration of the concept of superior responsibility within the framework of the activities of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC).

¹⁴ *Ibid.*, p. 181.

¹⁵ Cf. K. Indecki, *Prawo karne wobec terroryzmu...*, op. cit., p. 64.

¹⁶ In the UK, there were terrorist attacks in front of Parliament in 1605 (see N. Britten, *Gunpowder plot terror and toleration*, "History Today", April 21, 2005, <https://www.telegraph.co.uk/news/uknews/1488402/Gunpowder-Plot-was-Englands-911-says-historian.html>, accessed 18.09.2022), rules were introduced in India to deal with separatists and "seditionists" designated as terrorists by the British East India Company (see C.M. Abraham, *India – an overview*, in: A. Harding, J. Hathard (eds.), *Preventive Detention and Security Law: A Comparative Survey*, Martinus Nijhoff Publishers, Dordrecht–Boston–London 1993). Acts of communal terrorism occurred in France during the Jacobin rule, which ended in bloody persecution in 1794. See J. Crawford, *Gothic fiction and invention terrorism: The politics and aesthetics of fear in the age of reign of terror*, Bloomsbury Publishing, September 12, 2013. This author addressed the issue of terror before terrorism and the wars of terror acts in France, however, also mentioning the assassinations of the French President, the Spanish

The period after World War II until 1996

The concept of terrorism was pondered after World War II. Its existence¹⁷ was recognized before the definition of aggression was adopted during the actions of states in the United Nations General Assembly (UNGA). In all, the UNGA has adopted 13 conventions relating to terrorism¹⁸, including the International Convention on the Elimination of All Forms of Racial Discrimination opened for signature in New York on March 7, 1966.

According to Joseph J. Lambert, developing countries believed that actions taken in the name of national freedom should not be considered terrorism¹⁹. Their consideration of national freedom specifically assumed the activities carried out by national liberation movements in African countries. On the other hand, the imperial states wanted to recognize certain behaviour as terrorist regardless of the political motivations attributed to it²⁰. Communist (then socialist) states, on the other hand, took the position that freedom fighters in colonial territories should be supported²¹. Thus, one can note the difficulties that had to be solved in the search for a common definition of terrorism satisfactory to all countries.

When the adoption of a definition of terrorism corresponding to the above groups of states for the purposes of the UNGA convention was considered, a proposal on the subject by Kurt Waldheim on September 22, 1972, was accepted. It included “measures to be taken to prevent international terrorism that threatens the health or causes the death of innocent people and violates fundamental freedoms, and an analysis of the causes of those forms of terrorism and acts of violence that are based on misery and disillusionment, sorrow and despair causing some people not to hesitate to sacrifice their own lives and those of others in order to bring about radical change.” This was the definition of terrorism prevention that was adopted by representatives of the 35 countries deliberating on the Convention in the Ad Hoc Committee dealing with these issues at the UN. It definitely could have been accepted by countries with such different views on terrorism.

At the time, a number of countries indicated their willingness to take into account the International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted on November 30, 1973, by UNGA Resolution 3068 (XXVIII). In

Prime Minister, the Italian King, the President of the United States, the Austrian Archduke, the King of Yugoslavia, and the President of Poland.

¹⁷ See A. Cassese, *The Geneva Protocols of 1977 on humanitarian law of armed conflict and customary international law*, “Pacific Basin Law Journal” 1984, no. 3(1–2).

¹⁸ On anti-terrorism conventions, see, among others: R. Drzazga, *Konwencje antyterrorystyczne ONZ – charakterystyka oraz zakres zobowiązań nałożonych na państwa – strony*, in: K. Indecki, P. Potejko (eds.), op. cit., pp. 15–26.

¹⁹ K. Indecki, *Prawo karne wobec terroryzmu...*, op. cit., p. 65, after: J.J. Lambert, *Terrorism and Hostages in International Law – A Commentary on the Hostages Convention 1979*, Grotius Publications Limited, Cambridge 1980.

²⁰ Cf. B. Hołyst, op. cit., vol. II, pp. 1130.

²¹ Cf. K. Indecki, *Prawo karne wobec terroryzmu...*, op. cit., pp. 72–73.

contrast, in Resolution 3103 (XXVIII) of December 12, 1973.²² Concerning “the basic principles of the legal status of combatants who fought against colonial and foreign domination and against racist regimes,” the term “freedom fighter” does not have the status of a legal concept, which means that it does not appear in the Additional Protocols to the Geneva Conventions. The Assembly more generally recognized that the provisions of the Geneva Conventions III and IV of 1949 should apply to combatants fighting for freedom and self-determination.²³ Resolution (No. 30/XXVIII) adopting basic principles for combatants fighting against colonial and foreign domination and racist regimes was approved in New York on December 12, 1973, and article 1(4) of the Geneva Conventions referred to the protections under the provisions of those conventions dealing with international armed conflicts. A new category of veterans was invoked, that is, combatants fighting against colonial power, foreign occupation and racist regimes, so those who carried out armed actions on behalf of the nation in wars of national liberation were given veteran status²⁴.

The definition of terrorism, therefore, functions alongside the definition of aggression, especially since it also falls within the definition of aggression adopted in 1974²⁵, so the term terrorism adopted to define aggression can function in this sense along with the crime of aggression. Territories under colonialism were given the right to self-determination, freedom and independence, and their leaders, ministers, and senior officials, as those responsible for directing or controlling the state,²⁶ should not commit acts contrary to the above values²⁷. Similarly, militants fighting against colonial and foreign domination and racist regimes - individuals who are terrorists in this view - should not have demonstrated the need to create a new state independent of the said powers. Therefore, in order to prevent the commission of these crimes, the above-mentioned legal acts stemming both from the provisions of the Additional

²² ZO resolution of December 12, 1973 (3103/XXVIII) on basic principles concerning the legal status of combatants fighting against colonial and foreign domination and racist regimes.

²³ Previously, the UN General Assembly has included an unequivocal position on the above issue in its resolutions, for example, in Resolution 2674 (XXV) of December 9, 1970 on respect for human rights in armed conflict, it called for the treatment of participants in resistance movements and freedom fighters in South Africa and territories subject to colonial and foreign domination and occupation, fighting for their liberation and self-determination, as prisoners of war.

²⁴ Cf. M. Marcinko, *Bojownicy o wolność czy terroryści? Członkowie ruchów narodowo-wyzwoleńczych w świetle międzynarodowego prawa humanitarnego*, „Polski Rocznik Praw Człowieka i Prawa Humanitarnego” 2010, no. 205(1), p. 213.

²⁵ ZO resolution of December 14, 1974 (definition of aggression).

²⁶ Currently, such wording relating to those who may be liable for the crime of aggression is included in the definition of the crime of aggression in the ICC Statute.

²⁷ “Sometimes the head of state still remained the local ruler, who had his own army. However, important decisions were made by European advisors. Often, however, power in the colonies was exercised directly by governors and subordinate officials sent from the metropolis”. https://www.plwiki.pl/Leksykon/Imperium_kolonialne (accessed 18.09.2022).

Protocols to the Geneva Conventions²⁸ and from other treaties and customary norms of humanitarian law²⁹ are in place. Also, colonial governments can take into account the principles indicated to them by metropolises, among others, without committing the crime of terrorism.

Recognized by the UNGA, the term “freedom fighters” was accepted by the participants of the Diplomatic Conference, resulting in the following article 1(4) of the Additional Protocols (Protocol I³⁰ and Protocol II) to the Geneva Conventions

²⁸ Additional Protocols to the Geneva Conventions of August 12, 1949, Relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), drawn up in Geneva on June 8, 1977, OJ. U. 1992 No. 41, item 175, and Protocol Additional to the Geneva Conventions of December 8, 1949 Concerning the Adoption of an Additional Distinctive Mark (Protocol III), Geneva; Protocol Additional to the Geneva Conventions of August 12, 1949, OJ. U. 2010 No. 70, item 447 of April 26, 2010.

²⁹ In addition to the concept of terrorism at the UN, it also introduced the concept of aggression. It appeared shortly after the adoption of the definition of terrorism, and as Brunon Holyst stated, considering the article in the UN resolution defining aggression, there is a convergence between aggression and terrorism. Indeed, the UNGA resolution of December 14, 1974 stated that an act of aggression is, among other things, the dispatch by or on behalf of a state of armed bands, irregular or mercenary forces that commit armed acts against another state to such an extent that they are treated as acts of aggression “within the meaning of Article 3g” of the resolution. Article 7 of the aforementioned resolution states that no provision in the resolution, especially in its Article 3, can take away the right to self-determination, freedom and independence of peoples deprived of this right by force through colonialism or racism, which according to the aforementioned definition of aggression could be treated as international terrorism. Cf. B. Holyst, *op. cit.*, vol. II, p. 1131. When it was decided for the purposes of the International Criminal Court in 2009 to introduce the concept of “aggression” in relation to Kampala, it could be assumed that the definition of aggression was adopted here along with the definition of international terrorism; it should be said that there was another definition of the concept of terrorism relating to the territories of colonial states included in the definition of the crime of aggression for the purposes of the ICC Statute.

³⁰ According to the U.S. position, Additional Protocol I is flawed since “it has become possible to grant veteran status to members of irregular armed forces, even if they have not fulfilled the basic condition of distinguishing themselves from the civilian population and have thus acted in a manner contrary to the laws and customs of war. According to the views of the U.S. government, the issues mentioned are fundamental, and therefore the provisions that address them cannot be omitted from ratification by way of reservations, which means rejecting the entire Additional Protocol I, even if most of its provisions reflect the principles and norms of customary international humanitarian law or constitute new rules relating to methods and means of warfare and respect for civilian persons and objects.” Moreover, evidence of such “deference” to humanitarian law was “the norm expressed in Article 1(4) of PD I, according to which ‘wars of national liberation’ became armed conflicts of an international character” (M. Marcinko, *op. cit.*, pp. 205–206). Article 1(4) of PD I alludes to situations historically associated with colonial rule and foreign occupation (territorial domination), hence “the adoption of the relevant provision by consensus was opposed by Israel, primarily because of concerns that PD I could make good on the PLO’s demand that its fighters be treated as prisoners of

extended the protection of the provisions of those conventions relating to international armed conflicts to a new category of combatants – fighters who fought against colonial rule, foreign occupation and racist regimes. Foreign occupation can be dealt with even when there is a complete dismantling of colonialism and the eventual collapse of racist regimes³¹. This meant that those who carried out armed actions on behalf of the nation in the wars of national liberation were granted the status of veteran, which resulted in the granting of certain rights and, consequently, also certain obligations under both the provisions of the Protocol and other treaty and customary norms of humanitarian law³².

Draft terrorism act in the UN General Assembly since 1996.

As part of the work of the aforementioned committee, a number of terrorism-related acts of varying importance have been published. They are, therefore, sectoral in nature rather than comprehensive. In 1996, at the UN³³, the Comprehensive Convention on International Terrorism (CCIT) Committee made a decision relating to the act of terrorism. This committee was supposed to work on international conventions to complement international instruments and direct resources to create a framework for regulating international terrorism. Thus, a draft document addressing terrorism, which would be comprehensive in nature, was presented to all countries in the world³⁴. The need to define an act of terror and to take it into account when taking measures to prevent such acts was also recognized³⁵. The mandate of this committee is renewed annually by the UNGA. The countries of the Organization of Islamic Cooperation (OIC) wanted to exclude from

war. Israel based its legal argumentation regarding the qualification of the wars of national liberation and the new category of combatants on the same grounds as the United States” (ibid., p. 211). One can assume that these arguments should still be attributed to the state, especially given the current situation in Israel versus Palestine and other PLO states (*Hot on the Israel-Palestine line. Leader's death, attacks, mobilization*, PTA, August 5, 2022, <https://www.o2.pl/informacje/goraco-na-linii-izrael-palestyna-smierc-przywodcy-ataki-mobilizacja-6798235697347552a>, accessed 18.09.2022).

³¹ S.E. Nahlik, *Status prawny kombatanta*, „Sprawy Międzynarodowe” 1988, No. 12, p. 117.

³² Cf. M. Marcinko, op. cit., s. 213–214. See also A. Cassese, *The status of rebels under the 1977 Geneva Protocol on non-international armed conflicts*, “International and Comparative Law Quarterly” 1981, vol. 30/31, p. 417.

³³ United Nations General Assembly Resolution 51/210 of December 17, 1996 (draft), United Nations General Assembly, Resolution 51/210 (draft).

³⁴ India has agreed to such an act (D. Roy Chaudhury, *SCO endorses India's proposal or UN treaty*, “Economic Times”, June 11, 2018, <https://economictimes.indiatimes.com/news/defence/sco-endorses-indias-proposal-for-un-terror-treaty/articleshow/64548213.cms>, accessed 18.09.2022).

³⁵ Cf. B. Hołyst, op. cit., vol. II, p. 1131; S. Setty, *What is the name? How nations define terrorism ten years after 9/11*, “Journal of International Law” 2011, vol. 33, p. 27, <https://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1204&context=facscho>, accessed 18.09.2022.

the definition of terrorism terms involving those engaged in self-determination. However, these projects were not adopted³⁶.

In 2002, the report of the said committee accepted by the UNGA was accompanied by a draft enumerating the forms of an act of terror. Reference can be made to the report's definition of an act of terror relating to international criminal responsibility. Any such effort on the part of the drafters may end only in the subjective feelings of the recipient, who supports the draft legislation or is discouraged³⁷. It is worth mentioning again that this committee is not sectoral but comprehensive. His report, therefore, should address the issue in a comprehensive manner and read as follows, but it currently remains only at the draft stage.

The forms of committing an act of terror of an act according to the above draft concern:

1) causing serious damage done against public or private property, including a place of public use of the state or government, against the public transport system, infrastructure or the environment, or

2) wyrządzenia poważnej szkody dokonanej przeciwko własności publicznej lub prywatnej, w tym także miejscu publicznego użytku państwa lub rządu, przeciwko systemowi transportu publicznego, infrastrukturze lub środowisku lub

3) causing serious damage to property, places, or systems listed in par. 1 b) resulting or likely to result in serious economic losses when the purpose of the behaviour is to intimidate a population or to induce a government or international organization to perform or refrain from any act³⁸.

According to Krzysztof Indeck, acts of a terrorist nature endanger the victims of these acts, as well as governments, as they can cause instability in the state and pose a threat to peace and security. In doing so, it is worth distinguishing and singling out both terrorists and victims of human rights violations³⁹. Problems arose, however, not as separate legal comments from the opposing side relating to the above definition, but more as an inquiry as to whether the definition would be applied to the armed forces of states or *self-determination* of a state (national liberation movements).

The negotiating coordinator, supported by most Western delegates, proposed the following exceptions to the issues:

1) nothing in this definition should refer to other rights, obligations, and responsibilities of states, people, and persons in their own right treated individually in accordance with international law, especially in accordance with the purposes and principles of the Charter of the United Nations and international humanitarian law, or to the

³⁶ United Nations General Assembly, Report of the Ad Hoc Committee established by General Assembly Resolution 51/210 of December 17, 1996, Sixth Session (January 28 – February 1, 2002), United Nations General Assembly, Report of the Ad Hoc Committee established by General Assembly Resolution 51/210 of December 17, 1996, Sixth Session (January 28 – February 1, 2002, Annex II, Article 2.1)..

³⁷ S. Setty, op. cit., p. 8.

³⁸ The draft of this definition can be applied to perpetrators who are both state leaders and “mere” individuals.

³⁹ K. Indeck, *Stosowanie praw człowieka...*, op. cit., pp. 85–87.

2) the activity of armed forces during an armed conflict, as these activities are understood in accordance with international humanitarian law, which is taken into account by this law and not by the said Convention,

3) the activities of the armed forces during an armed conflict are carried out as their official duties as long as they remain in compliance with international law, not this Convention,

4) nothing in this article tolerates or does lawful other unlawful acts or precludes prosecutions that are consistent with other laws⁴⁰.

In contrast, members of the Organization of Islamic Cooperation suggested that the following wording be included: “Activities of the parties during armed conflicts, including situations of foreign occupation, as these terms are understood in accordance with international humanitarian law, which is in accordance with this law, and not with the above Convention. Activities will be taken into account by the armed forces of the state in the performance of their official duties as long as they comply with international law and are not regulated by Convention”⁴¹.

The forms of committing terrorist acts are therefore related to the situation faced by the OIC countries, for example. It would be their citizens who would find themselves before the courts for crimes committed by them against citizens or governments of other countries, according to a draft UN convention relating to terrorism. Apparently, in the process of creating terrorist acts, it was more important to take into account the activity of armed forces during an armed conflict, the military activities of states, including, for example, the OIC, and the complex terrorist acts provided for in the UN convention, committed during the operation of armed forces. For the OIC countries, the problematic subject of terrorism has primarily to do with the OIC countries’ militaries and how they operate in other countries. This raises the question of whether it is possible to punish terrorism under the UN convention: the individual carrying out the order or the superior issuing it, convinced of his authority legitimized by aspirations for self-determination.

The terrorist forms of the draft UN convention were not intended to be controversial per se. This information would be used domestically in the creation of a form of such an act concerning terrorism that is not political, religious, ethnic, national, etc. Perhaps the expected results were achieved by the *Global Counter-Terrorism Strategy*, which, however, has nothing to do with international criminal law. Although one might think that the definition of forms of terrorism is imprecise, it was intended to be sufficient for the countries accepting it to be able to make adjustments later for their own country’s needs. After all, this does not exclude the possibility that persons belonging to the aforementioned groups may fulfil the elements of such a crime. Hence, more relevant here would be the issue of judging terrorists on the basis of the definition of the forms of a terrorist act, especially if, for example, they were at

⁴⁰ United Nations General Assembly, Report of the Ad Hoc Committee established by General Assembly Resolution 51/210 of 17 December 1996, Sixth Session (28 January – 1 February 2002, Annex II).

⁴¹ Ibidem, Annex IV, art. 18.

the same time people with aspirations for state self-determination, whose acts to this end would fulfil the characteristics of terrorist acts. Thus, one could proceed from the assumption that the hallmarks of their acts or omissions are intentional rather than common. According to Krzysztof Indecki, human rights “can create a platform for equal treatment of terrorists coming from different political ideologies, not allowing them to be treated as *genesis hostesses*, and facilitate the cooperation of states ‘at the global level’, which is their absolute duty”⁴².

The Draft of the Comprehensive Convention on International Terrorism (DCCIT) was adopted by India in 2000. A year earlier, in 2001, there had been terrorist acts there, causing the country to intensify discussions on the definition of terrorism in domestic and international law. The definition of terrorism was considered extensively with the establishment of the *Indian Law against Terrorism* (POTA) of 2002, published in 2004, and passed in response to the resolution 1373 on combating terrorism⁴³. *The Unlawful Activities Prevention Act* (UAPA) was also introduced, making its provisions more akin to those of the colonial system, as Soudha Setty writes⁴⁴. Nonetheless, India has sought changes to its laws in line with those introduced by the Security Council⁴⁵ and CCIT, hence the emergence of more legislation.

The Organization of Islamic Cooperation has sought to incorporate national-freedom movements into law in the Israeli-Palestinian context. It can be seen that the OIC would like, for example, Palestinian residents not to have to bear criminal responsibility under the CCIT for the murder of people (perceived as Israeli citizens) wanting to ensure the sovereignty, independence and independence of the territory where these people live. One would therefore have to ascertain whether Israel and Palestine⁴⁶ would be interested in joining the Convention and on what terms they would

⁴² K. Indecki, *Stosowanie praw człowieka...*, op. cit., p. 91.

⁴³ See P. Ogonowski, *Rezolucja 1373 Rady Bezpieczeństwa ONZ w sprawie zwalczania terroryzmu międzynarodowego i jej wykonanie*, “Państwo i Prawo” 2003, no. 3, p. 102. See also W. Czaplinski, A. Wyrozumska, *Prawo międzynarodowe publiczne. Zagadnienia systemowe*, ed. II, C.H. Beck Publishing House, Warsaw 2004, p. 729.

⁴⁴ S. Setty, op. cit., p. 6.

⁴⁵ Security Council Resolution on Combating International Terrorism of September 28, 2001 (UN Security Council Resolution 1373). An Anti-Terrorism Committee has been established to check the progress of countries fulfilling the mandate of Resolution 1373. The only obligation of states would be to report on its implementation. It was joined by the African Union, the Organization of American States (SAARC), the European Council, among others. Marcello di Filippo noted that the resolution introduces discrepancies between states and, in a theoretical approach, does not lead to a comprehensive definition of terrorism. Cf. M. di Filippo, *Terrorist crimes and international cooperation*, “European Journal of International Law” 2008, no. 19, p. 537.

⁴⁶ Palestine is a semi-recognized state located within historic Palestine. Territorially, it is to cover the Gaza Strip and Jordan’s West Bank. While still a Palestinian Authority, on January 29, 2012, it was granted the status of a non-member UN observer state (138 votes in favor, 9 against, 41 abstentions, 5 absent for the vote). On January 4, 2013, President Mahmoud Abbas transformed the Palestinian Authority into the State of Palestine by decree.

want to join, i.e., whether considering only the draft convention on the comprehensive act of terrorism or taking into account the OIC's intentions as well.

This definition would be similar in the above respect to the requirements placed on terrorism by the Global Counter-Terrorism Strategy officially adopted on September 19, 2006, by the UNGA⁴⁷. It established a common position on combating terrorism. Its basis is the unequivocal, unconditional, and firm condemnation of this phenomenon in all its forms, regardless of where for whatever reasons and by whomever such acts are committed⁴⁸.

To a greater extent, modern terrorism is a consequence of the world's intra-cultural rupture, so international concepts of combating it should take into account two forms of influence: the fight against the causes of terrorism (the fight against terrorism) and the war on terrorism (the fight against terrorists)⁴⁹. Since the above principles are in force, there was a basis for the creation of terrorism legislation. India reacted this way to Pakistan in response to the behaviour of a Pakistani man that led to the death of Indian police officers. However, to build on the legislation, India has taken into account the *Draft of Comprehensive Convention (DCCIT)* on the terrorist act, proposing that Pakistan consider it as well. They also noted the low practical impact of the Global Counter-Terrorism Strategy and the lack of a legal basis for combating international terrorism that takes into account the legislation providing for it⁵⁰. In 2014, India has submitted another draft of the Crime of Terrorism Act (DCCIT), requesting that the crime be recognized as *a comprehensive crime of terrorism in a separate international convention*.

India was also keen to embrace DCCIT after the 2016 attack in Dhaka. Such expectations of individual states do not indicate the need to include legislation relating to the draft of a comprehensive act of terrorism (or the international comprehensive act of terrorism). Negotiations in this regard by the United States, the OIC, South American countries and India have been stalled since July 2016. It is worth noting that India has suffered a setback from the Eurasian organization for political, economic and security cooperation among countries (Shanghai Cooperation Organization – SCO). Indeed, the organization raised that a comprehensive UN treaty related to counter-terrorism should be submitted after a compromise based on UN documents⁵¹. The negotiations were repeated in July 2017. India was keen for other countries in the world, primarily Pakistan, to accept the comprehensive definition of an act of

⁴⁷ It is worth noting that in September 2005, the World Summit of Heads of State passed the Counter-Terrorism Strategy, which formed the basis for the UNGA to adopt such a concept.

⁴⁸ Cf. B. Hołyst, op. cit., vol. II, pp. 1133–1135.

⁴⁹ Cf. M. Stańczyk-Minkiewicz, *Terroryzm – „zderzenie cywilizacji” czy „rozłam wewnątrz-kulturowy”?*, „Rocznik Bezpieczeństwa Międzynarodowego” 2007, p. 355.

⁵⁰ *India laments inability of UN to adopt legal framework against terrorism*, “The Economic Times”, October 5, 2018, <http://www.economicstimes.indiatimes.com/news/politics-and-nation/> (accessed 12.12.2019).

⁵¹ D. Roy Chaudhury, op. cit.

terrorism. The countries of the European Union were not interested in this, having primarily adopted UN Security Council Resolution 1566 of 2004.

Such expectations addressed to individual states do not indicate the need to include legislation relating to the draft of a comprehensive act of terrorism (or the international comprehensive act of terrorism). Apparently, European Union countries are not interested in agreeing on a definition of the crime of terrorism with the UN Comprehensive Terrorism Committee. Nor can it be overlooked that the United States would like to specifically treat peacetime actions against “terrorism” by soldiers, police officers, agents of government institutions and individuals engaged in professional acts of terrorism, which would be in line with the US position vis-à-vis its non-acceptance of Additional Protocol I. What is at stake here is the permissibility of radical actions against individuals committing terrorist acts, including the liquidation of such unit(s)⁵², without having to submit the case of these individuals to a court of law, along with the circumstances of the alleged terrorist act committed by them⁵³. However, the United States is not a member of the ICC Statute belonging to the UN⁵⁴, and there are no domestic criminal law provisions addressing such issues⁵⁵. South American countries, on the other hand, during the discussion of the aforementioned Convention on the Complementary International Act of Terrorism, do not see the possibility of adopting a definition of the indicated act regardless of whether it was committed in wartime or in a state of peace. The OIC would like to exclude national liberation movements, especially in the context of the Israeli-Palestinian conflict. It could be argued that in this regard, not much has changed since the original agreement on the concept of terrorism in the UN conventions. The same was true in the 1970s in Eastern Europe and Africa, as well as in Western European countries⁵⁶.

⁵² M.V. Hayden, *Na krawędzi. Amerykański wywiad w epoce terroryzmu*, Prószyński i S-ka, Warsaw 2016, p. 67. Speaking at the UN, Secretary of State Colin Powell addressed the situation surrounding the taking of military action against Iraq. It is now known that there were no weapons of mass destruction in the country, which was due to an intelligence error, according to Michael V. Hayden – former director of the NSA and CIA (Central Intelligence Agency).

⁵³ See A. Cassese, *International Criminal Law*, Oxford University Press, 2003, pp. 162–178. This publication refers only to the ICC. Matters related to the US and terrorism are covered in the article by the same author: *Terrorism is also disrupting some crucial legal categories of international law*, “European Journal of International Law” 2001, no. 12, p. 995–1000.

⁵⁴ Initially, the United States (represented by Roger Clark) and India (whose delegate was Rama Rao – then chairman of the group working on the ICC Statute) aimed to include the concept of terrorism for use by the International Criminal Court. Ultimately, this did not happen due to the lack of acceptance by ICC participants of the proposed definition of terrorism. These countries have withdrawn from participation in the ICC.

⁵⁵ See B. Kellman, *Targeted killings – never an act of international criminal law enforcement*, “Boston College International and Comparative Law Review” 2017, vol. 40, p. 44.

⁵⁶ It can even be seen that the approach to terrorism issues was still similar to the ideas and achievements of the 1970s, although the possibilities have changed, for example, as to the weapons they possess. The proposals from the OIC, whose member states are partly African, could be surprising, and would draw “rather belated” attention to the need for rules to allow

These issues are in conflict with the aforementioned Convention on the Complementary International Act of Terrorism (CCIT). The CCIT provides a legal structure binding on all signatories to make it more difficult to finance terrorism and prevent terrorists from obtaining safe havens. “The CCIT will give ‘legal teeth,’ i.e., provide legal acts to prosecute, Indian officials stressed. India has raised the issue of the need to support the CCIT in several bilateral and multilateral forums over two decades regardless of who sat in the Indian government”⁵⁷.

In 2016, work on the definition of terrorism was blocked by the U.S., as mentioned above, as well as OIC members and South American countries. The U.S. wanted the draft CCIT to exclude acts committed by military forces of states in peacetime. The OIC, on the other hand, demanded that national insurgent movements, especially in the context of the Israeli-Palestinian conflict, not be included as activities considered and evaluated by the CCIT. This is similar to proposals from the time of the work on the definition of terrorism back in 1972–1973, so one can see here the desire of the OIC countries to implement similar demands on this issue as then. The Modi government, at the head of India, has been courting at least a few OIC governments to adopt the DCCIT.

In 2017, at the 73rd session of the General Assembly, a UNGA resolution recommended the creation of a group to work on completing the process related to the draft convention on international terrorism. India pointed to the lack of a UN legal basis to combat international terrorism and the limited practical impact of the Global Counter-Terrorism Strategy in this sphere⁵⁸. In 2018, they also sought to introduce definitions of terrorist acts on the basis of comprehensive acts in this regard, keeping in mind the following Global Strategy for Combating terrorism⁵⁹. They are convincing Pakistan to take such acts as well⁶⁰.

In October 2018, during the 73rd session of the 6. Committee of the UN General Assembly, participants from around the world raised that the lack of consensus

those who want justification for their actions to act without being adjudicated guilty, such as in the Palestinian territories. No difference can be seen between the issues taken up by the creators of the 1974 concept of combined aggression and terrorism and the definition of terrorism of December 14, 1973, which can be attributed to the originator and creator of the term “terrorism” Kurt Waldheim, aiming to resolve the conflict between supporters of developing countries and Western states (this group included, for example, the powers mentioned above).

⁵⁷ D. Roy Chaudhury, op. cit.

⁵⁸ *India laments inability...*, op. cit.

⁵⁹ Ibid.

⁶⁰ The 2019 attack took place in the village of Pukvana in the Indian state of Jammu and Kashmir. A suicide bomber attacked a convoy of an Indian police unit. He belonged to the Jaish-e-Mohammad (JEM) organization, which has (had) its camps in Pakistan. Indian combat forces have therefore struck targets they say are in Pakistan. Thus, India has resorted to using the *Global Counter Terrorism Strategy*. The Pakistani government has launched a counterattack. China and Russia have called for de-escalation, with the United States playing a peacemaking role. Cf. K. Iwanek, *Indie i Pakistan w sporze o Kaszmir. How serious is the crisis?*, <https://tvn24.pl> or <https://wiadomosci.onet.pl>, accessed 28.02.2022.

regarding the draft of a comprehensive convention is an obstacle to combating terrorism. Efforts have therefore been made to complete the process as quickly as possible by resolving several case-specific issues, such as linking terrorism to legitimate aspirations for self-determination⁶¹.

Since the DCCIT failed to pass, the thought was to issue three separate sectoral protocols to confront terrorism; these included: The International Convention for the Suppression of Terrorist Bombings, adopted on December 15, 1997; the International Convention for the Suppression of the Financing of Terrorism, adopted on December 9, 1999, and the International Convention for the Suppression of Acts of Nuclear Terrorism, adopted on April 13, 2005.

Terrorism Act in UN Security Council Resolution 1566 of 2004 and related actions in the European Union

The act of regulating terrorism is an issue of importance to the European Union; hence issues concerning it are the subject of a number of legal acts in the European Community and later in the European Union (EU). Wojciech Filipkowski listed a number of other legal acts adopted before the acceptance of the aforementioned Security Council Resolution 1373 on the fight against terrorism, including the Europol Convention, Convention on Simplified Extradition Procedures between EU Member States of September 27, 1996, Convention on Extradition between EU Member States of September 27, 1996, Council Joint Action 96/610/JHAQW on the Establishment and Maintenance of a Data Set of Counter-Terrorism Characteristics, Skills, Knowledge to Facilitate Counter-Terrorism Cooperation between EU Member States of October 15, 1996, Council Joint Action 98/428/JHA on the Establishment of a European Judicial Network of June 27, 1998, Convention on Mutual Assistance in Criminal Matters of September 29, 2000.⁶² On September 20, 2001 fifteen countries of the European Community adopted the definition that “a terrorist act is any deliberate act committed by individuals or organizations against one or more states, their institutions or their population with the aim of intimidating and seriously weakening or destroying the political, economic and social structure of a country.” In the Council Framework Decision of June 13, 2002, on combating terrorism, the European Union defined a broad catalogue of characteristics that determine the “terrorist” nature of a criminal act. According to Krzysztof Liedel, it recognized the need to bypass the political dimension of defining terrorism, which for so long prevented the formulation of a universally accepted definition of the phenomenon⁶³.

⁶¹ “Fight Against International Terrorism Impeded by Stalemate on Comprehensive Convention, Sixth Committee Hears as Seventy-Third Session Begins Meetings Coverage and Press Releases”. Welcome to the United Nations, October 3, 2018 (accessed 20.08.2022).

⁶² Cf. W. Filipkowski, *Formy zwalczania terroryzmu na podstawie wybranych uregulowań Unii Europejskiej i NATO*, in: K. Indeckii, P. Potejko (eds.), op. cit., pp. 30–32.

⁶³ Cf. K. Liedel, *Terroryzm międzynarodowy jako zjawisko wpływające na bezpieczeństwo międzynarodowe i ład globalny*, in: idem (ed.), *Zwalczanie terroryzmu międzynarodowego w polskiej polityce bezpieczeństwa*, Difin, Warsaw 2011, p. 24.

The Security Council Resolution 1566 of 2004 recognized that terrorist acts are criminal acts that include, from their scope, acts against the civilian population committed with the intent to cause death or grievous bodily harm or to take hostages, in order to cause terror within a state as a whole or against a group of persons or an individual, in order to terrify the public or to compel a government or international organizations to take a given action or refrain from taking any action to the extent defined in international conventions or protocols related to terrorism, when such acts are not justified by political, ideological, racial, ethnic, religious and other similar aspects under any other circumstances.

International cooperation in the fight against terrorism is expected to have relatively little preventive value. This may be due to the passive situation of countries that react only when there is an imminent threat⁶⁴ rather than taking exorbitant prior action or inaction. African and Arab definitions adopted on the basis of the above considerations in accordance with Resolution 1566 of 2004 propose the right to self-determination and freedom struggle⁶⁵. The EU Counter-Terrorism Strategy has defined counter-terrorism for the organization.

Comprehensive definitions of terrorism would be a useful conclusion to the work on terrorist acts since, previously, EU countries have signed and ratified sectoral UN international conventions relating to terrorist acts. However, the EU still does not see the need for a comprehensive definition of the crime of terrorism, as its member states can use a definition of terrorism in line with UNSC regulations, the EU and national definitions of terrorism⁶⁶. Thus, as highlighted above, Polish law is also in line with UN terrorism conventions and has been aligned with solutions in EU law. Poland has also adopted a definition of terrorism in the Criminal Code. Thus, it is one of the elements related to the issue of terrorism in Polish criminal law⁶⁷.

The solution adopted by the European Union takes into account crimes of terrorism committed during peace and war. The question can be asked whether, in the event of such a need, the terrorism act will be dealt with in the European Union in accordance with the Security Council's existing solution and the associated EU solution or whether the solution adopted by the Committee on Terrorist Acts of a Comprehensive nature will also be considered (or included).

⁶⁴ K. Liedel, P. Piasecka, *Bezpieczeństwo w czasach terroryzmu. Jak przeżyć zamach terrorystyczny?*, Difin, Warsaw 2018, pp. 9–10.

⁶⁵ D. Blocher, *Terrorism as an international crime: The definitional problem*, "Eyes on the International Criminal Court" 2011–2012, vol. 8(1), p. 110.

⁶⁶ Cf. W. Filipkowski, op. cit., p. 32.

⁶⁷ However, this is an issue beyond the scope of this paper. This article only points out the importance of taking into account the issues of the act of terrorism and the possibility of judging its perpetrators, while the actions of the European Union, all of whose countries are members of the United Nations, are discussed in another publication of mine (D. Dróżdż, *Terror oraz terroryzm międzynarodowy i globalny z prawnego punktu widzenia*, vol. I, My Book, Szczecin 2019; eadem, *Terror oraz terroryzm międzynarodowy i globalny z prawnego punktu widzenia*, vol. II, My Book, Szczecin 2020). There, the issue related to Polish law, including the Criminal Code referring to a terrorist act, was addressed more broadly.

Conclusion

It can be seen that the Organization of Islamic Cooperation has sought, for example, to ensure that Palestinian residents do not face criminal liability under the Comprehensive (Comprehensive) Convention on the Terrorist Act (DCCIT), wanting to ensure the sovereignty, independence and independence of the territory in which they live. The OIC's achievement in 2018 was to block work on DCCIT once again. India, in turn, is trying to ensure that the individual OIC countries, in particular, are willing to recognize the draft convention of the UN committee related to the Convention relating to complex terrorist acts. Since the Global Strategy to Combat Terrorism pledges to condemn the phenomenon in all its forms, it should therefore come as no surprise that such actions by individuals that may fulfil the hallmarks of terrorist acts envisioned in the draft document submitted by the UN committee dealing with these issues should be considered illegal.

However, the Convention for the Prevention of Acts of Nuclear Terrorism in the World remains the most up-to-date at present. This is the International Convention on Combating Acts of Nuclear Terrorism, adopted by the United Nations General Assembly on April 13, 2005. China was the first country to accept it⁶⁸. It was also adopted by Poland, as confirmed in the Official Gazette of 2010. No. 112, item 740. Since the concept of an act of terrorism has also been addressed in the European Union thanks to the acceptance of UN Security Council Resolution 1566 of 2004, a corresponding legal provision has been introduced into the Polish Criminal Code, which provides the basis for defining an act of terrorism⁶⁹.

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⁶⁸ Cf. D. Roy Chaudhury, *op. cit.*

⁶⁹ Polish law has been adapted to the solutions in European Union law. The general part of the Polish Penal Code (in Article 115 of the Penal Code) includes a definition of terrorism to bring it in line with the provisions of the special part of the Code. Poland has also adopted UN conventions relating to sectoral terrorist acts. It would be appropriate to consider taking into account another concept proposed by a committee functioning in the United Nations, which deals with the international comprehensive terrorism act.

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Rezolucja Rady Bezpieczeństwa w sprawie zwalczania terroryzmu międzynarodowego

ERRATA

PROBLEMY WSPÓŁCZESNEJ KRYMINALISTYKI

„Proposal of the definition of “an act of terrorism” in the works of the united nations”, strona 133-134

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