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European Security after Terrorist Attacks in Madrid – Polish Perspective

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Poland is joining the European Union at an exceptional and difficult time, when internal and anti-terrorist security issues have come to the top of the European agenda. This is because by failing to safeguard security of its citizens, the EU would put an interrogation mark on the purpose of its existence as a supranational project, particularly if some nations began to perceive their role in such a failing Union as carrying a potential for their greater exposure to terrorist attacks (This could be mainly true of those states that are not engaged in the fight against terrorism or those situated away from the main trails of expanding organized crime). This is an issue of special importance to Poland, a “frontier” state in the context of both terrorist and organized crime threats and one additionally perceived (notably in Germany and Austria) as a „supplier” of common crime risks. Short of a common, solidary and consistently enforced, not merely declarative, project of joint security measures and institutions, Europe will not live up to these challenges of the coming decade.

Before 11th September 2001, public opinion and some politicians and experts had felt that organized crime and illegal immigration from the east and south were predominant threats to security of the EU area. Analysts forecasted¹ that Western societies would find it most difficult to accept any eventual lessening of the standard or sense of security in the wake of the EU enlargement to the post-communist East. They did so, because for the “old” EU Member States the enlargement signified a potential and definitely psycho-social aggravation of the threat of organized and common crime originating in the East, in conjunction with the anxiety about the tightness of the enlarged EU borders. This aspect of the enlargement has been, on the whole, a recurrent theme of political discussions and media opinion for many years.

The accomplishment of the enlargement in spite of all that does not detract from the pertinence or rationale for cautioning against the use of the „Eastern bogey” for current political ends in “old Europe”. Furthermore, even the 2002 Europol report² refers to the dismantlement of the Iron Curtain in 1989 as one of the causes of increased threat to the EU internal security, although a few text indents further down it admits that the West’s criminal underworld is still in the hands of indigenous and not East European crime gangs. It is only worth recalling in this context that the new menace is more than offset by the disappearance

¹ Jorg Monar – „The Area of Freedom, Security and Justice after the 11th September: Problems of Balance and Challenge of Power, R. IV.

² EU 2002 Organized Crime Report.

of the menace once posed by the military and sabotage-intelligence muscle of the Warsaw Pact. The presence of East European crime gangs in the EU's Western countries also is a spin-off of the visa regime that those countries enforce upon the ex-USSR nationals, and not merely an offshoot of shortcomings in the performance of, for instance, Polish Police or Border Guard.

Most likely, such way of looking on the East and the concern for a politically thorny and sensitive decline of the EU citizens' sense of security, rather than the concern over a decline in the real standard of security, have translated into sui generis „safeguard clauses” vis-à-vis New Member States (NMS) as evident in the deferral by at least two years of the Schengen Area expansion into the NMS that joined the EU on 1st May 2004, i.e., most simply, the postponement of the lifting of passport and customs controls on the NMS borders with the “old Member States”³.

However, those pre-9/11 concerns over crime threats – the main driving force behind the EU integration in the area of internal security – have been superseded by much more evidence-based threat of terrorism from both within and without the EU area. But still national particularisms appear to take the upper hand in view of the actual effects of the legal regulations that the European Commission and the Council have come up with after the events of 9/11. If, indeed, much progress has been made declaratively, the practical achievements remain much less impressive. The European Commission and the Secretary General/High Representative Javier Solana, have worked out the relevant solutions – documents concerning the strategy of combating terrorism⁴ and broader European Security Strategy⁵ as well as specific legal measures. The successive Framework Decisions adopted in the span of two years have been designed to codify the earlier agreed mechanisms of joint fight against terrorism and organized crime. This involves the development of the European Arrest Warrant⁶, the European list of terrorist organizations and the European definition of terrorism⁷, the establishment of special task forces such as joint investigation teams⁸, European prosecutor's agency Eurojust and the mechanism of police and judicial

³ Information notes of the European Commission of July 2001: *Schengen and Enlargement* and of August 2001: *List of provisions of the Schengen acquis*).

⁴ Action Plan on Terrorism approved at the special session of the European Council on 21 September 2001.

⁵ European Security Strategy of 12.12.2003.

⁶ Council Framework Decision of 13 June 2002 relative to the European Arrest Warrant and surrender procedures between the Member States, JO L 190 of 18.7.2002, p.1.

⁷ Council Framework Decision of 13 June 2002 on combating terrorism, JO L 164 of 22.6.2002, p.3).

⁸ Council Framework Decision of 13 June 2002 on joint investigation teams, JO L 162 of 20.6.2002, p.1.

cooperation⁹, plans to establish a European Agency for the protection of borders¹⁰, inclusion of special forces into the to-date police cooperation¹¹, and paying more attention to the abuses of the financial system to bankroll terrorism and organized crime (mainly money laundering)¹² as well as the issue of seizing and confiscation of instrumentalities and proceeds of crime¹³.

However, none of the aforesaid Framework Decisions has been fully implemented across all Member States and the related performance statistics is rather discouraging¹⁴. On the other hand, how can one speak of full-scale implementation of the Community law if not all Member States have yet ratified the 1999 UN Convention on the prevention of financial terrorism and the UN Security Council Resolution 1373 concerning the freezing of assets relating to crime.

Thus, it is only appropriate to ask about the causes of these problems and delays. One of them is insufficient and erratic threat awareness across All Member States, another is legal regime differences and still another is differences in democratic cultures and related treatment of terrorism, particularly in the countries not yet affected by terrorist attacks. It is true that in the 1990s, after the Schengen area acquis had been agreed upon, the agendas of the following EU Summits featured discussions on integration in the area of security (example: The Madrid Declaration on terrorism as a threat to democracy), appropriate provisions were incorporated in the EU-regulatory Treaty of Amsterdam, and the European Council meeting at Tampere in 1999 resolved to take a step further down the road of integration of the EU's internal and anti-terrorist security. But these steps were mainly declarative and the pace was too slow, and they were initiated above all by the states already imperiled by home-bred terrorism. The real shock came only with the terrorist attack in Madrid, although even before that there had been numerous and evidently belittled warning signals, such as the attacks on tourists in North Africa or the terrorist attacks in

⁹ Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, JO L 63 of 6.3.2002, p.1; Council Decision of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP.

¹⁰ The Commission Proposal for a Council Regulation establishing a European Agency for the Management of Operational Cooperation at the External Borders, 11.11.2003.

¹¹ Council Decision of 28 November 2003; Council Decision of 28 February 2002.

¹² Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, JO L 182 of 5.7.2001, p.1.

¹³ Council Framework Decision of 22 July 2003 on the execution in the European Union of orders for the freezing of property or evidence, JO L 196 of 2.8.2003, p.45.

¹⁴ Commission Press Room - MEMO04/63 – “Existing legislative instruments relevant to the fight against terrorism, and draft measures already on the Council table”.

Turkey. Particularly, the November, concerted and simultaneous attacks in Istanbul should have driven home the warning that Al-Qaeda or the like groups have the logistics to carry out such attacks in Europe as well¹⁵.

An answer to the question about specific mistakes or at least omissions made in Europe between 9/11 2001 and 11/3 2004, mistakes exposing the Old Continent rather than America again to another horrendous act of Al-Qaeda terror, can be found in the Declaration adopted by the March European Council in Brussels¹⁶, which was preceded by the session of the Justice and Home Affairs (JHA) Council. We find there a number of indications relating to the actual situation assessment most certainly made beforehand by the JHA ministers, national and EU security agencies and, finally, the leaders of the Member States. The earlier mentioned delays in the implementation of individual legal regulations were highlighted as reproof in the Declaration and the given deadlines for the final enforcement of the urgent solutions mostly by the end of June this year, with one exception, are also indicative of the European leaders' irritation at the snail-paced integration process in this area. The leaders were critical of the actual cooperation between national security and law enforcement agencies and the use of the available EU bodies, especially Europol and Eurojust for the enhancement of collaboration in the fight against terrorism or for the inclusion of Europol and Eurojust representatives in the work of inter-state Joint Investigation Teams (JIT). They were equally critical of the performance by the Police Chief's Task Force (PCTF). At long last they saw in full focus the problem of delays in the work on the second-generation Schengen Information System (SIS II) and indicated specific deadlines for the entry into force of the underlying SIS II Decisions (June 2004) and for its siting, funding and administration (May 2004). Also falling short of target is the EU capacity to combat the financial back-up of terrorism (and other crime), particularly the effectiveness of the mechanism of freezing the financial assets of terrorists and their organizations, identifying the real and beneficial owners of bank accounts, wherever they reside. The Brussels Summit demonstrated that alongside foot-dragging on Union decision enforcement, another serious weakness in the development of the European security system are insufficient information flows and notably the reluctance to share state sovereignty-related sensitive data garnered by special services. But short of such information sharing – "the master key to the common fight against terrorism"¹⁷ – no effective European security system is possible. A certain hope for improvement arises from this „examination of conscience" made by the European statesmen in Brussels and the

¹⁵ Daniel Keohane, Adam Townsend – „A Joined-up EU Security Policy" – CER Bulletin, Issue 33, Centre for European Reform, December 2003.

¹⁶ The European Council Declaration on Combating Terrorism, 25.03.2004.

¹⁷ Antonio Vittorino, Commissioners for Justice and Home Affairs (JHA) - IP/04/425.

deadlines set by them, as well as from specific steps made by the European Commission already several days after the Summit. The Commission suggested maximum expansion of information sharing about terrorism and especially the development of a separate database of persons and organizations suspected of terrorism and the development of a European dossier of convicted persons by the end of 2004¹⁸.

In the same context, the issue of intelligence agencies' cooperation and proposals for another European agency to this end came to the fore with a highly emotional media response. However, the shortfalls, as the Declaration indicates, of the intelligence data flows to Europol and the lack of inter-agency cooperation is largely an effect of quite ubiquitous hurdles to the cross-border collaboration of intelligence services and even cooperation between these services and the police on the domestic scene. Compounding the problem in the EU is also different positioning of these mechanisms, whereby Europol is under the 3rd Pillar and intelligence as part of CFSP under the 2nd Pillar.

The idea to create a European intelligence agency has been broached for some time now in numerous deliberations by analysts and working documents of the West European Union (WEU)¹⁹, and it was formally tabled by Austria in February 2004²⁰, arguing that the benefit from establishing the "European Intelligence Agency (EIA) would be in its capacity to acquire information needed for threat assessment" as the EIA's remit would be to identify potential threats to the EU security. That idea was followed on after the Madrid tragedy by the Belgian prime minister, who proposed the setting up of a European center for information exchange and analysis. Also Javier Solana²¹ reminds us in an article he had published on the eve of the Brussels Summit that he "suggested even before the Madrid events that we should enhance the Council's capability for terrorism-related intelligence analysis" though he also qualified it by saying that he did not believe in the need to establish a "European CIA". He received support for this view from the Commissioner for Justice and Home Affairs, Antonio Vittorino²², who pointed to the need to implement hitherto solutions before any new agencies are created. For it is not true that the Union has no mechanism for intelligence sharing, or even the kernel of such an agency already now. But such bodies as Intelligence Division (INTDIV) within the European Union Military Staff (EUMS) and the Joint Situation Centre

¹⁸ The EC Communication of 30.03.2004 – IP/04/425.

¹⁹ Ex. in: "The new challenges facing European intelligence – reply to the annual report of the Council" –Assembly of Western European Union. The Interim European Security and Defense Assembly. Report of the Defense Committee, 04.06.2002, Document A/1775, p.20.

²⁰ 19.02.2004, session of JHA Council.

²¹ Javier Solana – „Three ways for Europe to Prevail against the Terrorists” - Financial Times; 25.03.2004.

²² BBC News, 19.03.2004.

(SITCEN) are placed under the 2nd Pillar as part of CSFP and EDSP. This particularly applies to SITCEN, a specific unit comprised of INTDIV staff, Secretariat and intelligence officers seconded from seven Member States, operating within the European Council Secretariat and supervised by the Secretary General/High Representative, Javier Solana²³.

Calls for a European intelligence body are heard coming from small states, which of themselves have no effective intelligence services that would be capable of detection and neutralization of terrorist threats and which do not trust or are dissatisfied with the to-date collaboration within this scope with the states that do have such services. The latter, on the other hand, notably the Big Five (Italy, United Kingdom, Germany, France and Spain) are obviously against the idea. In effect, a successful move has been made by Javier Solana, who, under the Council decision, appointed, if not an intelligence coordinator, then the Counter-terrorism Coordinator (Gijs de Vries), whose remit is in fact overlapping on intelligence analysis, coordination and supervision.

The Brussels decisions – representing a kind of juridical stock-taking exercise of the issues covered mainly by the 3rd Pillar – and the appointment of the Counter-terrorism Coordinator situated within the 2nd Pillar institutions still keep open the issue of a genuine pan-European coordination of the fight against terrorism, a challenge requiring to overcome the traditional delimitation between internal and external security, between police and intelligence information. As rightly observed by Daniel Keohane and Adam Townsend²⁴, the European security structures, whether on the national or Community level, continue to be organized in a manner rather responding to the conventional 20th century and Cold War threats than to the non-state and supranational Al-Qaeda terrorism. If the same kind of terrorist threat may come from both without and within a given state or the Union, these authors suggest that the war on terrorism be waged according to the prevailing threat factor consideration rather than the conventional state-territorial determinant²⁵. However, the powers, within their limits, of the new Coordinator for Antiterrorism, particularly in the scope of JHA institutions and mechanisms, indicate that the Union leaders may have eventually espoused the belief about the non-European sources of terrorist threats.

²³ Bjorn Muller-Wille – „For our eyes only? Shaping an intelligence community within the EU”; EU Institute for Security Studies, 2004, s. 29.

²⁴ Daniel Keohane, Adam Townsend – „A Joined-up EU Security Policy” – CER Bulletin, Issue 33, Centre for European Reform, December 2003.

²⁵ Daniel Keohane, Adam Townsend – „A Joined-up EU Security Policy” – CER Bulletin, Issue 33, Centre for European Reform, December 2003.

For Poland, the Brussels Summit conclusions indicating the poor effects of to-date cooperation based on bilateral contacts and insufficient use or no use being made of Community institutions (Europol, Eurojust), signify both an opportunity and a serious threat, but they certainly necessitate Poland's more active role on the European scene than so far. The threat to Poland undoubtedly resides in the risk that the Madrid bomb attacks and the Brussels declarations would in reality change nothing in the European security practice, because particularisms and mistrust would not be overcome and effective Community institutions would fail to be erected. For a state that is potentially threatened by both Islamic terrorism and post-Soviet criminality and one that does not command the financial and technical resources to ensure full security in this area, a situation like this is very dangerous. Moreover, the failure by the Member States to foot the bill for European security on a solidary basis would carry the potential risk of „soft underbellies” emerging in such a system, which would thus mark easier targets in contrast to the wealthy and better protected states (by analogy to the fact that an unprepared Europe and not mobilized America became the target of another attack by Al-Qaeda). An opportunity for Poland is that the European backlogs in this respect give Poland a chance of not only catching up with the partners, but also making a theoretical and practical contribution to the architecture of the system being developed. This can also be perhaps Poland's last chance to benefit from the kind of „backwardness annuity” especially in telecommunications, so that Poland builds all at once database and information exchange systems that will correspond to the threats and will be compatible with the Union systems now being under development.

From the positions of a non-government organisation, it is difficult at present to advise the Polish government on specific follow-up actions, and even more so when this organisation has by paradox better access to the knowledge about the Union's plans and actions than about the Polish ones. Certainly, however, it is in the Polish interest to develop codified and not discretionary mechanisms of cooperation between the security and justice authorities and to favor the creation of Community agencies that would support national agencies and gradually take over from them in future the brunt of security, crime hunting or intelligence responsibilities. One should revise Poland's negative attitude to the idea to establish a European Border Guard (EBG), particularly in the context of the parallel efforts to locate in Poland the headquarters of a European Agency for the Management of Operational Cooperation at the External Borders, a kernel for the EBG structure. It also is in the interest of Poland as a „frontier” state in the fight against terrorism and organized crime to favor an expansion of the powers of Europol²⁶ by equipping it additionally with the capacity to join in

²⁶ Article 2(1) of the Europol Convention.

the fight against crime when a criminal activity affecting even one state only has its roots beyond its borders – or in Poland’s case, for instance, in the ex-USSR, Iraq or Afghanistan. Another area requiring Poland’s greater activeness is the work on the EU mechanisms and structures of intelligence exchange and analysis and the soonest possible delegation of Poland’s representative to SITCEN – the right place for EU security assessments and the analytical back-up for both the Secretary General/High Representative and his new subordinate – the Counter-terrorism Coordinator.

It goes without saying that there is a need in Poland to completely incorporate (not only into laws but also in practice) all of the aforesaid Framework Decisions concerning the fight against crime and terrorism. Importantly, owing to its “pre-accession discipline” Poland is well on this way, especially in the scope of Framework Decisions on the European Arrest Warrant²⁷, Joint Investigation Teams²⁸ and combating terrorism²⁹.

There is an absolute necessity to launch into practice the National Criminal Information Center and the National Information System as the sine qua non of more intensive efforts by the Polish security institutions to see the earliest possible launch and to acquire access to the Schengen Information System.

Poland should care about the overcoming of particularisms and mutual mistrust that stand in the way of collaborative enhancement of our common security. It is a paradox that the common sense of terrorist threats, which usually originate externally or with self-exclusive and non-assimilated ethnic and religious minorities and which are based in cultures and civilizations different from European, reduces the earlier fears and phobias about the alleged threat to the EU internal security coming from the enlargement by ex-communist countries. In turn, for states and nations such as Poland and the Poles, which are still attached to the traditional attributes of their sovereignty (such as border and customs protection or the exclusive national police-judicial jurisdiction), the integration in the area of internal security,

²⁷ Framework Decision of 13 June 2002, concerning the European Arrest warrant and surrender procedures between the Member States, JO L 190 of 18.7.2002, transposed entirely into the national legal order by way of the Act of 18 March 2004 amending the Act – Criminal Code, Act – Criminal procedure Code and the Act – Misdemeanor Code (Dz. U. (OJ) Nr 69, item 626), which came into force on 1 May 2004.

²⁸ The Council Framework Decision of 13 June 2002 on the Joint Investigation Teams, JO L 162 of 20.6.2002, transposed to the national legal order under art. 2 p. 2 of the Act of 16 April 2004, amending the Act – Criminal Code, and some other legal acts.

²⁹ The Council Framework Decision of 13 June 2002 on combating terrorism, JO L 164 of 22.6.2002, transposed into the national legal order entirely by way of the Act of 16 April, amending the Act – Criminal Code, and some other legal acts.

taking place under the call of fight against terrorist threats, should not longer be as controversial an issue as, for example, integration in the area of foreign or financial policies. It remains to cherish the hope that Chancellor Gerhard Schroeder is right in saying that “the Europeans are beginning to understand that they are mutually interdependent and that Europe is not only an area of freedom, security and justice, but also an area where the Europeans face common threats and where no one can assume that s/he can buy her or his way out at the expense of another”³⁰.

2004-05-06

³⁰ Gunter Hofmann: „Przewodnicy stada” (*Bellwethers*), Gazeta Wyborcza 17-18.04.2004; quoted after Die Zeit nr 14, 25.03.2004.

Center for International Relations

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The founder and president of the Center for International Relations is Mr Janusz Reiter.

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