

LEGAL ASPECTS OF THE EVOLUTION OF EU SECURITY IN THE CONTEXT OF INTERNATIONAL LAW REGULATIONS ON SECURITY

Dr. habil. Wojciech Konaszczuk, University Professor

Department of Public International Law, Faculty of Law and Administration

Maria Curie-Skłodowska University in Lublin, Poland

e-mail: wojciech.konaszczuk@umcs.lublin.pl; <https://orcid.org/0000-0003-0364-0727>

Abstract. The global legal order governing the security of states, international organizations or individuals is heterogeneous and multifaceted in nature. It clashes between the norms of international, EU and internal law. The genesis of the European Union lacked the legal basis for the creation of internal and external security structures, while normative efforts were directed towards the economic development of the organization. At the same time, within the framework of the UN, normative solutions were introduced for the prevention of breaches of peace, spheres of security within the supranational framework. Both the European Union and members of the United Nations must introduce normative solutions to combat threats, including terrorist threats, as actions to protect the European system of values and the system of the United Nations.

Keywords: international security law, international organizations, EU security system, counter-terrorism

PRELIMINARY REMARKS

The genesis of internal and international security in the European Union is of a multi-faceted nature. This is so, because from the international-law point of view, the European Union has been an entity having a character of international organization.¹ Granting the Union the status of an internation-

¹ There were disputes between scholars specialised in international law, EU law and administrative law which focused mostly on the question of the essence of the European Union as an independent entity in international and internal relations. The European Union was granted the legal subjectivity in some international organizations, e.g. the World Trade Organisation, which was expressed by granting voting rights along the parallel voting rights of the Member States of the Union. Theoretical disputes in the legal literature both at home and abroad ended with the entry into force of the Treaty of Lisbon, which was drawn up on 13 December 2007 and substantially amended the Treaty on European Union (known as the Maastricht Treaty) made on 7 February 1992. The Treaty of Lisbon, being a revision treaty and thus amendment of the earlier treaty provisions, unequivocally states in Article 47 that “the Union shall have legal personal-

al organization was a fundamental decision which introduced considerable transparency in the consecutive stages of European integration and contributed to the strengthening of its cohesion. As a consequence, its operational efficiency increased and the decision-making process was unified. Concurrently, the transformation of the Union based on the regulations resulting from the Treaty of Lisbon led to significant changes (to be discussed below) in the field of internal and international security of the Union [Barcz 2009, 4–9]. The idea of a single international organization bringing together all the member states as it is today did not exist in the initial phase of forming the European communities.² The security paradigm existed at that time in a different form than currently [Huysmans 1998, 227–45]. This is so since the present Union stems from post-war tendencies resulting from the division of spheres of influence not only in Europe but also across the world.

1. THE PURPOSE AND SCOPE OF RESEARCH

The primary aim of this research is to evaluate and analyze the internal and external factors shaping the legal solutions in the field of security of the European Union. The group of internal factors shaping the development of security regulations of the Communities, and later the Union, includes the negative phenomena accompanying the development of the Communities. The group of external factors entailing the necessity of harmonization of community law with international law includes those related to the membership of the EU countries in the UN, and more recently to the status of the European Union as an international organization. The analysis also takes into account the historical aspect. In this situation, it seems appropriate to first formulate the following theses: 1) the European Communities, until the entry into force of the Maastricht Treaty, did not have a legal framework allowing the development of a common security policy; 2) the legal regulations contained in the Lisbon Treaty established a single common security space for member states; 3) until the European Union acquired the status of an international organization, the functioning of the Communities in the international environment was of a heterogeneous nature; 4) the overriding character of international law regulations is justified by the need to ensure the security of the Union from the perspective of protection against terrorist threats.

ity” (Article 47 added and numbered as set out in Article 1(55) and Article 5(1) of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (OJ EU.C.2007.306.1) as of 1 December 2009].

² The European Union currently is made of 27 states, following the withdrawal of the United Kingdom from the organization, see https://europa.eu/european-union/about-eu/countries_en/ [accessed: 11.01.2021].

2. THE ORIGINS OF THE CONCEPT OF INTERNAL SECURITY OF THE EUROPEAN COMMUNITIES

After the end of World War II, the divisions clearly emerged in Europe into the American and the Soviet spheres of influence.³ The American sphere of influence has traditionally been concentrated within the so-called Western Europe, as it was liberated earlier, in the final phase of World War II, by the American army, and this zone also includes Great Britain. The societies of these countries sought to establish the United States of Europe. This idea was proclaimed by Winston Churchill, who was a strong advocate of cooperation with the United States and a staunch opponent of the domination of the Soviet Union in the sphere of international relations, both in Europe and globally. The concept of common Europe was presented by Churchill at the Zurich conference in September 1946 [Churchill 1996].⁴ The pursuit towards reconstruction of European countries from the wartime destruction has, in essence, coincided with very serious concerns and threats from the Soviet Union, which during World War II decisively and unequivocally expanded its zone of influence in Europe. Economic factors have combined with elements related to the security of Western European countries in both the internal and external spheres. The political elites in the United States were aware of the nature of the situation and were ready to help countries across Europe. This was expressed in the formulation in 1947 of the European Recovery Program known as the so-called Marshall Plan.⁵ Marshall himself stated in a speech delivered in June at

³ Countries that are now part of the European Union and previously were states or autonomous republics in the orbit of influence of the USSR (Union of Soviet Socialist Republics) or formed part thereof include: Czech Republic and Slovakia (formerly Czechoslovakia), the GDR (German Democratic Republic) incorporated into the FRG (Germany), Poland, Bulgaria, Romania, Lithuania, Latvia, Estonia.

⁴ See more at <https://winstonchurchill.org/resources/speeches/1946-1963-elder-statesman/unity-of-europe/> [accessed: 21.12.2020].

⁵ George C. Marshall (1880–1959) achieved the rank of General of the Army of the United States as early as in 1939 and served as a military advisor to US President Franklin D. Roosevelt. He was one of the supporters of the Truman Doctrine, which was the US foreign policy programme. It was formulated by Harry Truman and presented to the US Congress on 12 March 1947. Generally, the doctrine stated that the United States should engage in assistance to countries, societies and ethnic groups that resist external pressure and attempts by armed minorities or external factions to seize power or establish new authority. This doctrine, forming part of a security policy in the broad sense, was undoubtedly directed against the pursuit of hegemony by the USSR both within and outside Europe. In a speech delivered at a joint session of Congress (House of Representatives and Senate), President Truman made it clear that “the peoples of a number of countries of the world have recently had totalitarian regimes forced upon them against their will. The Government of the United States has made frequent protests against coercion and intimidation, in violation of the Yalta agreement, in Poland, Rumania, and Bulgaria,” see Yale Law School, Lillian Goldman Law Library, The Avalon Project, Docu-

Harvard University that “the United States should do whatever it is able to do to assist in the return of normal economic health in the world, without which there can be no political stability and no assured peace.”⁶ The plan involved 16 European countries and Turkey. The offer was also addressed to the countries of the so-called Eastern Bloc, including Poland, which, under pressure from the USSR, was forced, like other countries of the bloc, to refuse to accept the programme. The project was implemented between 1948 and 1951. It coincided with the so-called Schumann Plan,⁷ which gave rise to the establishment, under the Treaty signed on 18 April 1951, of the European Coal and Steel Community (ECSC), which was an economic organization which achieved a spectacular success in the field of coal and steel in a very short period of time.⁸ As a consequence, after the Conference of Foreign Ministers held in Messina in June 1955, Belgian Foreign Minister Paul Henri Spaak presented in 1956 a report on the economic integration of the Community countries, which formed the basis for further negotiations with a view to even closer cooperation between the states. They resulted in the signing of two so-called Treaties of Rome, establishing the European Atomic Energy Community (EAEC, Euratom) and the European Economic Community (EEC). Like the ECSC, the States-Parties to the Convention were France, Germany, Italy, Belgium, the Netherlands and Luxembourg. These three intergovernmental organizations have provided the economic basis for western European countries to operate within their framework. They were collectively referred to as the European Communities. It is worth noting that the Communities were an economic response to the USSR’s aspiration to establish, together with its satellite countries, a privileged position as part of the so-called hegemony of socialist states. With the spectacular success of the European Communities, other elements of cooperation between states also had to emerge, the most important being the development of the internal security of the Member States of the Communities⁹ in the light of the growing tension in international relations between the US and the USSR.

ments in Law, History and Diplomacy-Truman Doctrine. See more: https://avalon.law.yale.edu/20th_century/trudoc.asp [accessed: 21.12.2020].

⁶ Yale Law School, Lillian Goldman Law Library, The Avalon Project, Documents in Law, History and Diplomacy-George Marshall’s Harvard Speech. See more: <https://www.oecd.org/general/themarshallplanspeechatharvarduniversity5june1947.htm> [accessed: 21.12.2020].

⁷ Robert Schuman, a former French Foreign Minister, is known as the father of the European Union.

⁸ The Treaty establishing the organisation entered into force on 23 July 1952 and was concluded for 50 years. The founding countries were Belgium, France, Germany, Italy, Luxembourg and the Netherlands.

⁹ After the Second World War, as early as in 1945, it was known that the spheres of influence in Europe were divided between the USA and the USSR. This situation was particularly vivid in the German state, whose territory was divided into two spheres of influences, i.e. the American

Given that only six countries are in the initial phase of development of the Communities, the roots of the internal security of the European Communities should be sought in the efforts to establish the European Defence Community, the work of which was initiated by France, initially unwilling to cooperate with Germany but eventually allowing such a solution in the light of a possible conflict with the USSR. This concept was preceded by the signing on 17 March 1948 by France, the Netherlands, Belgium, the United Kingdom and Luxembourg of the so-called Treaty of Brussels, which regulated also the issues of self-defence.¹⁰ The concept, referred to as the Pleven plan,¹¹ assumed, apart from the integration of the Federal Republic of Germany into European defence structures, the defence of Western Europe from a possible attack by the USSR, establishing a European army under the authority of the European Defence Minister and military independence on the US. The plan was supported by the Popular Republican Movement (led by R. Schuman), which strove to establish a federal Homeland Europe. The Communist Party and the Republicans gathered around Ch. de Gaulle fought the project, seeing it as a restriction on French sovereignty. The establishment of the European Defence Community and the European Political Community in 1954 failed as a result of a veto by the French National Assembly. The project of common security policy was frozen for quite a long time, mainly as a result of the negative attitude of France, Belgium and the Netherlands to federalist ideas. The harmonisation of the economic sphere did not go in line with a similar

zone and the Soviet zone. The direct cause of the escalation of tension between the USA and the USSR was the introduction by the USA in its zone of a new currency: the German mark. The USSR, concerned about losing economic control over its part of Germany, introduced on the night of 23/24 June 1948 in its zone a physical blockade (military posts and barriers) of the western sectors of Berlin. At the same time, they cut off electricity supplies. Access to the American, British and French sectors of Berlin was closed. In response, the US and UK began to arrange an "air bridge" (Berlin airlift). The blockade lasted 11 months and, in political terms, accelerated the division of the German state into two separate geopolitical entities, with later capitals in Bonn and Berlin.

¹⁰ The Polish literature on the subject also points out that the Brussels Treaty of 17 March 1948, as amended by the protocols of 23 October 1954, was under the so-called Paris agreements the legal basis for the functioning of the Western European Union (WEU). The Western European Union, originally formed by Belgium, France, the Netherlands, Luxembourg and the United Kingdom, expanded after 1954 to include Germany and Italy. Spain and Portugal accessed to WEU in 1990, and Greece in 1995. The main goal of the WEU was security cooperation. It was intended to perform most of the functions of the EDC, excluding the integration function. WEU was an organization that had no operational functions and in this sense played no role whatsoever. In fact, it was only a forum for exchanging views on the military capabilities of the Member States. It was dissolved on 31 March 2010 by decision of the Member States due to the entry into force of the Lisbon Treaty in December 2009. Logistics activities of the organization were terminated until 30 June 2011 [Ruszkowski, Górnicz, and Żurek 2003].

¹¹ The plan is related to French Prime Minister Rene Pleven, who presented it at the National Assembly of the French Republic on 24 October 1950.

process in the area of security. It should be stressed that until the entry into force of the Maastricht Treaty, the Communities did not have legal mechanisms to uniformly address the security policy. This is seen in the different pace of economic and security integration. Two plans by French diplomat Christian Fouchet are an example. The first plan of 2 November 1961 was to devise a common security and foreign policy. The second, on the other hand, was intended to establish a cooperation between governments. The two programmes were opposed mainly by Belgium and the Netherlands, which feared an increase in France's position in the Communities and weakening of the North Atlantic Alliance (NATO). By the end of the 1960s, it is difficult to distinguish a unified course of action in the area of security. As a consequence, the common idea of the internal security of the Communities could only be pursued in the form of loose consultations between government representatives and exchange of views. An example supporting this statement was the creation of the TREVI programme in 1975 at an informal meeting of interior ministers of the Member States of the European Communities. The aim was to set up groups for the cooperation on internal security between Member States. The name TREVI was an acronym standing for French words meaning "terrorism, radicalism, extremism, international violence." The following programmes were separated from the TREVI programme: TREVI I (counter-terrorism), TREVI II (police techniques, equipment and training of officers). TREVI groups have launched an internal security cooperation in the strict sense [Bryksa and Adamczuk 2008, 9–10]. From a practical point of view, it is quite difficult to talk about a uniform, centralised structure of internal security in the Communities, even in the context of the common defence policy, until the entry into force of the Maastricht Treaty.¹² It is worth noting that even the global crises, such as the Soviet intervention in Afghanistan, have not been able to lead to taking a unified position on the foreign policy by the Member States of the Communities. In 1981, a meeting of the Foreign Ministers of the Member States was held in London, with the Foreign Ministers of Germany¹³ and Italy¹⁴ playing a central role. They proposed the signing of a European Act, the main aims of which referred to political, cultural cooperation, fundamental rights, harmonisation of legislation not included in the Treaties of the Communities, combating terrorism, crime and violence and the common security policy [Perez–Bustamente and Colsa 2004, 106–108]. It was one of the

¹² The Maastricht Treaty, formally the Treaty on European Union, is an international agreement establishing the European Union, which entered into force as late as on 1 November 1993, even though it was signed much earlier on 7 February 1992 in Maastricht, the Netherlands. The long period for the entry into force of this international agreement resulted from the need to hold referendums in 12 Member States.

¹³ Hans Deitrich Genscher.

¹⁴ Emilio Colombo.

elements of the adoption of the so-called London Report, which was accepted and subsequently adopted on 13 October 1981.¹⁵

3. THE TREATY ON EUROPEAN UNION AND THE AMSTERDAM TREATY AS A BASIS FOR THE DEVELOPMENT OF COMMUNITY LEGAL NORMS IN THE SPHERE OF INTERNAL SECURITY

Huge progress has been made in the area of the common foreign and security policy since the entry into force of the Treaty on European Union (colloquially referred to as the Maastricht Treaty). The Agreement introduced provisions on this subject under Title V “Provisions on a common foreign and security policy.”¹⁶ In accordance with Article 11 (consolidated version) the Union implements a security policy for protecting common values, in accordance with the principles of the United Nations Charter, strengthening the security of the Union in all its forms, maintaining peace and strengthening international security. These objectives are to be pursued in accordance with Article 12 under which the Union decides on the principles of the common foreign and security policy, common strategies, the adoption of joint actions, and on the strengthening of systematic cooperation between Member States in pursuing their policies. The Treaty has fully reactivated the Common Foreign and Security Policy in a uniform form and harmonized scope. The Treaty also required that the Union’s institutions act coherently in the sphere of foreign and security policy as part of the so-called second pillar. It should be stressed that the Treaty provisions referred to the relationship between the European Union and the North Atlantic Alliance, which was a compromise between the supporters and opponents of the concept of Atlantic cooperation. In the light of Article 17: “The policy of the Union in accordance with this Section shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty

¹⁵ This report was a response to the inefficiency and inability to agree common positions on defence, security and foreign policy issues between the Member States of the European Communities. Based on its provisions, the so-called joint Troika Secretariat was established. It was also decided that the security issues of the Communities would be integrated into European political cooperation. The report also set out a crisis procedure that included the possibility of the Political Committee or a ministerial meeting to be convened within 48 hours. However, the first attempt to use this mechanism in the face of the introduction of martial law in Poland turned out to be a failure. See also Zięba 2007, 33–35.

¹⁶ Title V “Treaty Provisions on European Cooperation in the Sphere of Common Foreign and Security Policy” [Przyborowska–Klimczak, and Skrzydło–Tefelska 2004; Staszewski, Przyborowska–Klimczak, and Wrzosek 2000].

Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.”

In 1997, the Treaty of Amsterdam was signed.¹⁷ It strengthened the role of the Union institutions in the area of internal security by clarifying the terms and defining forms of combating crime, including corruption, terrorism, crime against children, human trafficking, drug smuggling. A very important provision of the Treaty of Amsterdam was the integration of the Schengen *acquis* into the EU legal system. The idea of the Schengen Agreements was to phase out border control between the contracting parties and to allow the free movement of nationals of these states.¹⁸ Quite an important regulation of the Treaty of Amsterdam referred to the possibility of conducting so-called Petersberg missions. Petersberg missions consist in the possibility of carrying out humanitarian, rescue, peace-keeping, crisis management tasks both by specialised formations of the Member States and by military units of NATO members [Wojciuk 2012, 190–95].

Since 2003, the Union has had its own security strategy as part of the so-called European Security Strategy. It was adopted on 12 December 2003 on the initiative of the Council of Foreign Ministers and representatives of Greece. It was stated that while large-scale aggression against any member state is unlikely, Europe is nevertheless facing new threats: more diverse, less visible and less predictable. The strategy mentions as the main threats the proliferation of weapons of mass destruction, regional conflicts, the collapse of statehood and organised crime [Kuźniar 2004, 23–25]. The Union’s strategic security goal, in a situation where threats are increasingly of non-military nature, is to have at hand multilateral tools tailored to different scenarios, including terrorist attacks and WMD threats.

In turn, in 2005 the European Council adopted the EU Counter Terrorism Strategy,¹⁹ which obligated the Union to take steps to combat terrorism. Also

¹⁷ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain acts related thereto. It entered into force on 1 May 1999.

¹⁸ The name “Schengen Agreement” refers to a number of agreements, the first of which was signed on 14 June 1985 in Schengen, which was subsequently supplemented by the Schengen Convention in 1990. The agreement was entered into by Belgium, the Netherlands, Luxembourg, France and the Federal Republic of Germany for gradually abolishing border controls between Member States. The Agreement was concluded outside the Community legal order. Membership of the Schengen Agreement is not tantamount to membership of the European Union. At present [as of 01.12.2020], a total of 22 EU Member States are full members of the Agreement, while Bulgaria, Cyprus, Croatia and Romania are entitled to accede to the Agreement. Iceland, Liechtenstein, Norway and Switzerland, the European Free Trade Association (EFTA) Member States, have signed the agreement while remaining outside the EU.

¹⁹ EU Counter Terrorism Strategy, <https://data.consilium.europa.eu/doc/document/ST%2014469%202005%20REV%204/EN/pdf> [accessed: 22.12.2020]. The EU security institutions designed to deal with terrorism matters include: The High Representative of the Union for Foreign Affairs and Security Policy, The Foreign Affairs Council, Committee of Permanent

in 2005, the European Council adopted the European Union Strategy for Combating Radicalisation and Recruitment to Terrorism.²⁰ Another very important document is the EU Internal Security Strategy – “Towards a European Security”²¹ of 2010 also adopted by the European Council. It sets out in detail the issues governing the Union’s internal security cooperation with third countries. Cooperation with third countries concerns the following sensitive areas:²² combating terrorism in any form,²³ serious and organised transnational crime,²⁴ computer crime, cross-border crime including human trafficking into the EU territory, organised violence (riots, attacks on state bodies and private entities), destructive actions (causing floods, fires, destruction of power lines, water supply, IT and telecommunication networks, causing traffic disasters, etc.).

4. LEGALISM OF THE LISBON TREATY IN THE CONTEXT OF THE INTERNAL SECURITY OF THE EUROPEAN UNION

One of the most recent documents, which currently has a far-reaching impact on the formation of internal security of the European Union is undoubtedly the Treaty of Lisbon.²⁵ This Treaty makes many important changes, including reforms in the field of external and internal Union policy as the most prominent. In this respect, the most important changes are those concerning the European area of freedom, security and justice. This Treaty introduces

Representatives (COREPER), The Political and Security Committee (PSC), The Working Party on Terrorism – International Aspects The Common Position 931 Working Party (CP 931 WP) on the application of specific measures to combat terrorism, The Committee for Review of Listings under Regulation 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban.

²⁰ See more Oliveira and Ziegler 2018.

²¹ The EU Internal Security Strategy – towards a European security, Council of EU, 2010.

²² Council of European Union, Rev 2, 5842/2/10.

²³ Under a joint programme the Eurojust has carried out in 2007 an operation to detain 26 people in Romania, France, Italy and the UK as part of an international counter-terrorism operation. The terrorist organization planned attacks in Italy, Afghanistan and Iraq. See also: Eurojust Annual Report 2007, p. 34–35.

²⁴ As part of the programme the Operation PIPAS was carried out in 2008 against an organised bank fraud group, during which 112 people were detained and 48 properties searched at one time in 11 countries. See also: Europol Annual Report 2008, p. 24.

²⁵ The Treaty of Lisbon is a continuation of previous attempts to make reforms in the European Union under the Treaty establishing a Constitution for Europe. The Constitution was signed in Rome on 29 October 2009. The process of its ratification failed. In July 2007, a conference was convened in Lisbon during which negotiations were launched to draft a treaty reforming the Union. The treaty was signed on 13 December 2007, and entered into force on 1 December 2009, after ratification by all member states.

the need to intensify efforts to build a common European area. The common area should meet the expectations of EU citizens and regulate issues related to immigration control, fight against organised crime and terrorism. To implement these assumptions, the cross-border and pan-European cooperation is necessary. The area of freedom, security and justice can be classified into four categories: the first relates to border control, asylum and immigration, the second to judicial cooperation in civil law, the third to judicial cooperation in criminal matters, and the fourth to cooperation between police services. Border control, migration and asylum policy has been strengthened by granting special powers to European institutions in the form of common management of the EU's external borders (Frontex), establishment of a common asylum system, introduction of legal immigration procedures. Judicial cooperation in civil and criminal matters has been based on the introduction of dispute resolution solutions, real access to justice, joint training of personnel, strengthening of the Eurojust agency, the concept of establishing a European Public Prosecutor's Office. The police cooperation is based on a genuine strengthening of the European Police Office (Europol).

5. NORMATIVISM OF INTERNATIONAL LAW TOWARDS THE CONCEPT OF INTERNAL AND EXTERNAL SECURITY OF THE EUROPEAN UNION

The EU normative security system does not operate isolated from international law. It should also be strongly emphasized that the Union acts within the global security system as an international organization with all the rights and consequences of this fact. Undoubtedly, it is important to recognise the specific nature of the notion of internal security in international relations. This is one of the most difficult concepts in the areas of political science, international relations, international law and European Union law. This is so because it is much easier to speak of international security and national security, than about internal security in international relations. However, given the complexity and specificity of the problem and the changes resulting from the collapse of the Soviet Union and the Eastern bloc after 1989, devaluation of the notion of "peace" in its traditional form, and finally escalation of hybrid threats after the 11/09 attacks, it seems right to provide a synthesis of many definitions in this regard.²⁶

Internal security in international relations should primarily be understood as the striving, in cooperation between States or international organizations, in the international forum, in bilateral or multilateral agreements or in cooperation within international organizations, towards the elimination of threats to

²⁶ In a broader perspective see Bobrow, Halizak, and Zięba 1997.

their nationals or members of organizations, the integrity, independence and sovereignty of States or international organizations resulting from internal or external action by organised groups of either a state or a non-state character or natural persons. The mainspring of a state is to ensure the security of its citizens within a given territory, and the meaning of an international organization in many cases is to ensure the security of its members or the smooth implementation of its statutory objectives. A notable example of such an international organization, whose bodies currently aim at the security of citizens of all Member States, is the European Union [Popescu 2013, 28–31]. Therefore, the essence of internal security in international relations refers to groups of states, international organizations of a governmental nature, the international community, citizens of states participating in the security system, the stability of international processes and the stable functioning of elements of the state. In this sense, the concept is quite narrow, as it does not cover human rights issues. The system of actions related to international security recognizes as a paradigm and axiom the priority of protecting the health and life of citizens as a whole and not the individual, which is the priority in the human rights system [Halizak and Popiuk–Rysińska 1995, 14–15]. In this regard, the dominance of the State or executive bodies of international organizations is therefore undisputed [Kitler 2002, 44–45].

The origins of security in international relations, in contrast to the definition of the concept itself, have not posed many problems for researchers neither in Poland nor abroad [Rosas 2015, 1074–1080]. As one of the most prominent specialists in international law L. Antonowicz writes: “international law has always known the distinction between peace and war, and the law of war has always formed its integral part. Such state of affairs is still valid [...]. A gradual replacement of the concept of war by the concept of armed conflict may be noticed” [Antonowicz 2002, 225–27]. In the Middle Ages and in modern times, there were strong tendencies to limit wars in general, and if allowed, they could only be waged as a so-called just war, the concept of which was developed by the school of natural law. One of the main assumptions of this school was the conviction that states can only initiate wars if there is a just cause. It was generally accepted that state sovereignty in international relations is expressed by the possession of a triad of rights: the right to make treaties, the right to send and receive diplomats and the right to war (*ius tractatum, ius legationis, ius ad bellum*) [Kowalski 2013, 30–35]. Over time, waging wars without any legal consequences has led, mainly in Europe, to negative consequences both in relations between states, economic, cultural and other relations. This was particularly evident in the 19th century, with Napoleon’s aspirations to win hegemony in Europe, countered by successive coalitions. One of the most important documents was the resolutions of

the Vienna Congress of 1815,²⁷ which established rules aimed at maintaining peace and balance between the great powers. Peace in this sense corresponded to the security of the peoples of Europe. The world literature on the subject emphasizes that the decisions of the Congress of Vienna have ensured the internal security of European society for a period of one hundred years [Bobbit 2002, 487–90]. Formally, the Congress established a directorate of five powers but did not prevent uprisings, revolutions and internal conflicts in Europe. Security was granted only to the great powers and institutions associated with them, not to individuals. Therefore, European security in international relations did not work in tandem with internal security. This was so because it did not provide the population with those elements that we can talk about today. The stability on the international stage between the great powers and the lack of real signs of preserving elements of internal security in Europe confirmed the lack of correlation between external relations and the situation within states just before World War I. Legal security in international relations was to be safeguarded by peace agreements. This objective is undoubtedly served by the legal mechanisms adopted within the framework of international organizations, including military accords. The delegation of powers to structures bringing together sovereign states is nothing new. The first were military alliances, specialized agreements aimed at defending the states that were part of the agreement or, accordingly, military activities.²⁸ However, it quickly became apparent that specialised coalitions such as military agreements were not useful in times of peace, when the main objective is to develop the economy, and exceptions relate to ensuring peace and security.

The League of Nations supposed to be a model of such an organization.²⁹ The Covenant of the League of Nations was signed at the end of the Paris

²⁷ The Vienna Congress was held from September 1814 to June 1815. It was convened with the aim to decide about political and territorial changes and brought together representatives of 16 European countries. See more Dobrzycki 2009.

²⁸ An example of such an alliance was the Triple Entente. This alliance between the Great Britain, the French Republic and the Russian Empire was a response to the Triple Alliance. Initially, the alliance was based on a desire to preserve peace in Europe and seek common solutions in the event of third-country aggression. At the outbreak of World War I, 25 countries were part of this agreement, the core of the coalition being the founding states [Mansergh 1949, 35–37].

²⁹ League of Nations. The initiative to establish this first universal international organization with a global reach is attributed to President of the United States Woodrow Wilson, although in fact this proposal was put forward by a group of American congressmen. It was included in the speech of the President of the United States to Congress on 8 January 1918, referred to in the literature on the subject as the Fourteen Points, stating that “a general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.” These assumptions, which found the fertile soil in Europe, given the consequences of the world war, were developed during the Paris Peace Conference in January 1919. An interesting fact is that the United States, the originator of the project in the person of President Wilson, withdrew from participation in this

Peace Conference on 28 June 1919 and was the first collective security system in human history. It was the first international document to contain the term “security.” The essence of the League of Nations was collective security. It consisted in a strict prohibition of aggressive war and a mechanism prohibiting the use of force. Despite many shortcomings used to be attributed to this organization, it should be regarded as a forerunner of supranational organizations having legal instruments but without mechanisms that could prevent negative phenomena in terms of international security breaches. The League of Nations was the first supranational organization to take “any action to protect peace,” establish dispute resolution procedures and create mechanisms for imposing economic and military sanctions on states where necessary. The lack of effective mechanisms within the League of Nations resulted in the organization being criticised for decades.

The end of the Second World War³⁰ resulted, on the one hand, in the establishment of a new organization whose overriding objective is to ensure security, i.e. the United Nations,³¹ and on the other hand, divided the world into two main areas of influence. Security interests of states in the “war of totalitarianisms” have once again led to a violation of the principle of equivalence of security in the sphere of international relations and internal security.

6. THE ROLE OF ARTICLE 51 OF THE UNITED NATIONS CHARTER IN THE EVOLUTION OF THE INTERNATIONAL SECURITY OF EUROPEAN STATES

The post-war legal and economic order has led to the application of Article 51 of the UN Charter under which each member of the organization has the right to individual or collective self-defence before the Security Council takes the necessary measures to maintain international peace and security

organization and never became a member of the League of Nations, however American ideas were reflected in this organization.

³⁰ World literature underlines that during World War II, in relation to the German occupation, a sense of safety was extracted from people and replaced with a permanent state of the individual in danger. The German state applied genocide having no precedent in the history of mankind, especially to the Jewish people (Holocaust) [Howard 2007, 144–46].

³¹ The United Nations Charter, which established the United Nations Organization was signed at the United Nations Conference in San Francisco on 26 June 1945 and its provisions entered into force on 24 October 1945. This document is currently one of the most important international documents (if not the most important one) which unites UN Member States in their efforts to ensure security. Regardless of the types of security and scientific disciplines that describe security issues, there is a common denominator, namely the Charter. Under Article 1(1), one of the main objectives of the organization is to maintain international peace and security with the use of effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace.

[Przyborowska–Klimczak 1998, 19]. Although the provisions of the article do not explicitly mention the possibility of forming defence alliances against security threats, an expanding interpretation was adopted, according to which it provides the basis for establishing alliances and political and military blocks in case of a possible attack. Article 51 is invoked by the Inter-American Treaty of Reciprocal Assistance of 1948,³² the North Atlantic Treaty of 1949,³³ the Southeast Asia Collective Defence Treaty of 1954,³⁴ the Baghdad Pact of 1955,³⁵ the Warsaw Pact of 1955.³⁶ During the Cold War the issue of internal security in international relations was mainly focused on members of two alliances, i.e. NATO and the Warsaw Pact [Nowak 2011, 350–53]. According to Article 5³⁷ of the North Atlantic Treaty in the event of an attack, “The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.” Also, in accordance with the

³² Also known as TIAR or the Rio Pact. Signed by representatives of 21 American countries, it entered into force on 3 December 1948. The main provisions of the Treaty concern the defence of Member States against attack. It specifies the types of threats that include armed attack, threat to peace or security, conflict on the continent or elsewhere.

³³ The Alliance’s provisions entered into force on 24 August 1949 under the international agreement signed on 4 April 1949. Initially, the organization was to provide military defence against the Soviet Union (USSR). It formed part of maintaining a strategic balance between the eastern and western worlds. The Alliance currently consists of 28 countries.

³⁴ Under the treaty, the Southeast Asia Treaty Organization was established as a military-political organization. The purpose of establishing organizations of this nature was the need to contain the influence of China and the USSR in South and East Asia, manifesting in communist ideology. The aim of the organization was to ensure security in the region and peaceful resolution of disputes.

³⁵ I was one of the few international agreements of a bilateral nature. It was signed on 24 February 1955 between Turkey and Iraq. The primary aim of the agreement was to prevent the spread of communist ideology in the Middle East. Very quickly, other countries acceded, including the UK, Pakistan, Iran.

³⁶ The Warsaw Pact, signed on 14 May 1955 in Warsaw, with the dominant position of the Soviet Union, was one of the most important political and military agreements in post-war history, alongside the North Atlantic Alliance. The Joint Military Command was based in Moscow. The Warsaw Pact existed until July 1991. The alliance consisted of the following countries: Soviet Union (USSR, Union of Soviet Socialist Republics), People’s Republic of Albania, People’s Republic of Bulgaria, Czechoslovakia Socialist Republic, German Democratic Republic (GDR), Polish People’s Republic, Romanian People’s Republic, Hungarian People’s Republic. It was intended as a response to the establishment of the North Atlantic Alliance in 1949.

³⁷ Journal of Laws of 2000, No. 87, item 970.

provisions of Article 4³⁸ of the Warsaw Pact, “In the event of an armed attack in Europe on one or more of the States Parties to the Treaty by any State or group of States, each State Party to the Treaty shall, in the exercise of the right of individual or collective self-defence, in accordance with Article 51 of the United Nations Charter, afford the State or States so attacked immediate assistance, individually and in agreement with the other States Parties to the Treaty, by all the means it considers necessary, including the use of armed force. The States Parties to the Treaty shall consult together immediately concerning the joint measures necessary to restore and maintain international peace and security. Measures taken under this article shall be reported to the Security Council in accordance with the provisions of the United Nations Charter. These measures shall be discontinued as soon as the Security Council takes the necessary action to restore and maintain international peace and security.” As it can be concluded, the two opposing political and military blocs have formed alliances based on a common legal provision and UN membership. Moreover, both the former Soviet Union and the US were permanent members of the UN Security Council. The literature on the subject used to point to the danger associated with the fact that states sought to ensure their security by establishing political and military systems and organizations. It is significant that during the Cold War a security deficit arose, which was filled by the development of procedures entailing an arms race, which in turn were to ensure the security of citizens of member states of the agreements. The pursuit of security entailed (mainly in the case of the Eastern Bloc, which also included Poland) a very strong emphasis on issues related to internal security and a significant increase in the role of the state and its organs vis-à-vis its own citizens. In particular, an increase in the role played by the intelligence, counterintelligence, police, military intelligence and counterintelligence and border services can be observed during the Cold War period. This was related to potential threats from the opposing political and military bloc, as well as the striving to limit the influence of other ideologies. At the same time, state authorities sought to control all activities that were incompatible with the policy of a particular country.³⁹ It is worth noting that despite the intensity of arms race during the Cold War, ideological confrontation, the utmost threat of World War III (the Cuban crisis in October 1962), it was possible to avoid a confrontation of a military nature

³⁸ Journal of Laws of 1955, No. 30, item 182.

³⁹ This was largely the case for the eastern bloc’s societies. It was typical that uprisings against the authorities, or revolutions, were suppressed by military force or with the use of Warsaw Pact troops (Hungary 1956, Czechoslovakia 1968). However, it cannot be stated that the phenomenon of the strengthening of the role of state services did not occur in the USA. In the 1950s, a very common phenomenon was McCarthyism, which can be characterised as targeted political action using various means, often harsh (brutal interrogation methods), to fight the communist threat. The target of these actions carried out by US security services were American citizens.

between the US and the USSR. This was due to the instruments allowing the maintenance of internal security in international relations. The drive to slow down the pace of arms race, the disarmament and détente in the 1970s and 1980s was the result of institutionalised activities aimed precisely at keeping international peace and security. The UN played a major role in this process, with the conclusion of the most important disarmament agreements (except for SALT). Also, the launch of a security dialogue in international relations within the framework of the Conference on Security and Cooperation in Europe,⁴⁰ with an enormous intellectual potential of researchers and analysts, contributed to raising awareness, overcoming divisions and the process that led to the final end of the Cold War in the early 1990s.⁴¹ The moment of the end of the Cold War coincided with the dissolution of the USSR, and with it, the risk of the outbreak of global conflict vanished. Geopolitical changes in Europe, covering also the USSR, have made the phenomenon of competition between the “east” and the “west” no longer relevant. Indeed, new phenomena have emerged (terrorism) or escalated (cross-border organised crime, cyberterrorism, trafficking in weapons of mass destruction) which replaced the threats associated with cold war politics. Both in world literature and in Polish literature, the system of threats is referred to as asymmetric or hybrid threats. According to M. Madej, asymmetric threats relate to a threat posed in conflict by a party which has much less potential than the adversary and thus uses methods, means and techniques that are different from the standard ones, routinely used and considered acceptable. In this sense, asymmetric threats include four main categories: international terrorism, organised crime, especially cross-border crime, the use of weapons of mass destruction by non-state actors, the hostile use of information technology [Madej 2012, 80–85].

7. UN CONVENTIONS AS A SOURCE OF COUNTER-TERRORISM LAW IN THE EUROPEAN UNION

Currently, the most serious threats to the internal security of democratic states, not only in EU, are the activities and functioning of terrorist organizations, which cover with their operations all countries of the world. The largest forum for cooperation in the field of countering terrorist threats is the UN, which has adopted more than a dozen anti-terrorism conventions since 1963. It is worth mentioning that international terrorism has been the subject of the

⁴⁰ The Conference on Security and Cooperation in Europe (CSCE) functioned until 1995 as a platform for dialogue between the two opposing blocs during the Cold War. Since 1995, the CSCE has taken an institutionalised form of a political organization as the Organization for Security and Cooperation in Europe. It has currently 57 member states, including those from Europe, Asia and North America (USA and Canada).

⁴¹ See more Krukowski, Potrzyszcz, and Sitarz 2016; Czaputowicz 2003.

work of the international community since 1934, when the League of Nations drafted a convention on the prevention of terrorism. However, this convention has never entered into force. All these international agreements define the type of terrorist activity, impose on states the requirement to penalise criminal acts, the states are obliged to establish jurisdiction over the perpetrators of these acts. The most important ones are the following: 1) Convention on Offences and Certain Other Acts Committed on Board Aircraft signed in Tokyo on 14 September 1963 (signed by Poland on 14 September 1963, entered into force in relation to Poland on 17 June 1971), 2) Convention for the Suppression of Unlawful Seizure of Aircraft signed in The Hague on 16 December 1970 (signed by Poland on 16 December 1970, entered into force for Poland on 20 April 1972), 3) Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done in Montreal on 23 September 1971 (signed by Poland on 23 September 1971, entered into force for Poland on 27 February 1975) [Konaszczuk and Tokarski 2014, 30–35]; 4) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted in New York on 14 December 1973 (Poland signed it on 7 June 1974, it entered into force with respect to Poland on 13 January 1983); 5) International Convention against the Taking of Hostages adopted in New York on 18 December 1979 (signed by Poland on 18 December 1979, entered into force in relation to Poland on 26 June 2000); 6) International Convention for the Suppression of the Financing of Terrorism was signed in New York on 9 December 1999; 6) International Convention for the Suppression of Terrorist Bombings was adopted in New York on 15 December 1997 (signed by Poland on 15 December 1997, entered into force in relation to Poland on 04 March 2004); 7) Convention on the Marking of Plastic Explosives for the Purpose of Detection was signed in Montreal on 1 March 1991 (entered into force for Poland on 25 November 2006); 8) Convention on the Physical Protection of Nuclear Material was opened for signature on 3 March 1980 (Poland signed it on 6 August 1980, the Convention entered into force for Poland on 8 February 1987); 9) International Convention for the Suppression of Acts of Nuclear Terrorism of 13 April 2005; 10) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation of 10 March 1988 (signed by Poland on 10 March 1988, entered into force for Poland on 1 March 1992); 11) Protocol for Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf of 10 March 1988 (signed by Poland on 10 March 1988, entered into force for Poland on 1 March 1992) [Drzazga 2009, 15–23]. Among the most important terrorist organizations in the light of reports by the CIA⁴² and the US Department of State⁴³ operating worldwide are: Abu Sayyaf (Father of

⁴² Central Intelligence Agency, report at: <http://www.cia.gov/> [accessed: 21.12.2020].

⁴³ See <http://www.state.gov/j/ct/rls/other/des/123085.htm> [accessed: 21.12.2020].

Swordsmith) [Izak 2015, 15], Al-Adl wa al-Ihsane (Justice and Spirituality) [ibid., 20], Da Afghanistan Islami Amarat (Islamic Emirate of Afghanistan) [ibid., 22], Aktivna Islamska Omladina (Active Muslim Youth) [ibid., 37], Allah in Partisi (Turkish Hezbollah) [ibid., 43], Amal (Lebanese Resistance Regiments) [ibid., 46], Ansar al Islam (Supporters of Islam) [ibid., 54], Ansar as Sunna (Supporters of Tradition) [ibid., 60], Boko Haram (Western civilization is forbidden) [ibid., 69], Darum Arqam (Arqam House/Land) [ibid., 76], Dawlat al Iraq al Islamiyya (Islamic State of Iraq) [ibid., 81], Jaish e Mohammad (Muhammad Army) [ibid.], Jaish al Mahdi (Mahdi Army) [ibid.], Hamas (Islamic Resistance Movement) [ibid., 102], Hezbollah (Party of God) [ibid., 240], Al Qaeda (Base) [ibid., 307], Sipah e Mohammad Pakistan (Pakistani Army of Muhammad) [ibid., 443], Tenzim al Qaeda fi Jazirat al Arab (Al Qaeda's Organization on the Arab Peninsula) [ibid., 473]. These are just examples of the most influential radical organizations. These organizations are very well prepared to carry out hybrid activities in any part of the globe, and according to Krzysztof Izak they belong to Islamist movements.⁴⁴

FINAL CONCLUSIONS

From the point of view of the subject matter under consideration, the following conclusions can be formulated: a) the legal basis for the establishment of the European Communities did not contain normative legal regulations covering the sphere of security; b) negative social phenomena, in practice, forced the need for legal regulation of internal and international security; c) the consolidation of the area of security by the Maastricht Treaty and the Amsterdam Treaty contributed to the influence on the harmonization of this sphere with the norms of international law; d) the Union's failures on the international plane in the field of security was due to the Union having no formal status as a subject of international law. Taking into account the above conclusions, it should be emphasized that until now the direction of normative solutions in the international sphere has been determined by the UN system – thus creating security guarantees for the future. Thus, due to the lack of identification with the *raison d'être* by citizens in the EU and the still existing inability to choose effective measures to combat the threat of terrorism, it is subject to the control of international law norms.

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⁴⁴ See more Izak 2015.

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