

Security Outlook 2018

Edited by
Artur Gruszczak



Security Outlook 2018





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Foreword



Today's world is increasingly preoccupied with the state of its security. Challenges, risks and threats mushrooming across the regions and continents evoke feelings of discomfort, uncertainty, and anxiety. Domestic instability, regional conflicts and global tensions reflect deep, structural security problems. Any plausible and reasonable response to those problems, challenges and dilemmas requires an insight into contemporary political, economic, social and cultural phenomena at national and international levels. This collected volume is a modest attempt to delve into some aspects of security which drew attention of the authors in the year 2018. The contributors belong in the Department of National Security of the Jagiellonian University in Krakow, Poland (http://www.zbn.inp.uj.edu.pl/en_GB/). Their chapters illustrate the research profile of the Department and individual interests of each author. The institutional factor has determined the structure of the publication: it links selected global and regional issues with some aspects of Poland's security.

Artur Gruszczak
July 2019

PAWEŁ FRANKOWSKI 

Trade Wars – the Role of the Political Economy of International Trade in Global Security



ABSTRACT

This chapter highlights the distinctiveness of international economic security as applied and formed by global powers with regard to security issues. Following the concept pursued in this outlook, the chapter will be divided into three parts. The first part discusses the principles of state-centric and non-state centric perspectives on international economy and commitment to stability as the fundamentals of contemporary security; the second part concerns the role of globalization for economic security; the third part is focused on challenges and interactions between the most powerful economies. The thesis advanced in this chapter is that the economic security system is distinct from the universal one not only in terms of relevant security issues, interests and policies, but also because of the specific application and understanding of principles and institutions of international law such as the dispute settlement system.

Keywords: trade, war, public international law, WTO, China, United States, subsidies

Economic security in 2019 should be analyzed from three intertwined perspectives. The first perspective that has to be included is the challenge to contemporary global-centric and non-state centric approaches. Even before 2008 most of the concerns on economic security and IPE focused on the role of private actors and constellations composed of private entities¹; but since the global crisis, and

¹ N. Phillips, *Globalization Studies in International Political Economy*. In: N. Phillips (ed.), *Globalizing International Political Economy*, Basingstoke: Palgrave Macmillan, 2005, pp. 20-54; F. Bourguignon, Th. Scott-Railton, *The Globalization of Inequality*, Princeton: Princeton

the growing role of China, state-oriented analysis has struck back.² The second platform for understanding global economic security should still be an ongoing and defining concern with globalization. This is an area in which private business focuses on the most efficient global allocation of resources, and the ways in which the disruptive or negative consequences of such an allocation reflect the opportunities which states, through the multilateral system of global trade, provide for global companies. Companies are constantly engaged in efforts that result in improvements in their capabilities and resilience, lead to changes in the relative positions of private companies and, accordingly, changes in strategic military relations.³

On the one hand, free trade – as an organizing principle of the global economy – emphasizes the interests of private capital, but organizing and maintaining a policy of free trade requires the control of governments through a complex system of interdependent checks and balances. Otherwise barriers to free trade will be created by those who are disadvantaged by it. The permanent debate on globalization, and the challenges to security that the phenomenon may bring to disadvantaged players, contributes, in fact, very little to the debate on the nature of contemporary states and the institutions created to facilitate trade all over the world. Thus questions of legitimacy and the size of the market will prevail as decisive factors for global commerce. Third, and finally, inclination towards security and economy that underpins the analysis presented here focuses on the market as an institution linked to modern nation states. Specific procedures, rules, practices, and regimes created for global markets govern the relations among suppliers, customers, and workers.⁴ However, a market cannot be entirely free or perfect; it has to be created, and then maintained.⁵ These rules, which are predictable and stable, consist of complex (but coherent) patterns of interactions, and nation-states in the global economy have to a great extent shared cognitive assumptions and expectations on the course of the global economy. Even with

University Press, 2015; L. Mosley, S. Uno, *Racing to the Bottom or Climbing to the Top? Economic Globalization and Collective Labor Rights*, „Comparative Political Studies” 2007, vol. 40, no. 8, pp. 923-948.

² T. Bartley, *Rules without Rights: Land, Labor, and Private Authority in the Global Economy*, Oxford–New York: Oxford University Press, 2018, pp. 259-265.

³ Th. D. Lairson, D. Skidmore, *International Political Economy: The Struggle for Power and Wealth in a Globalizing World*, New York–London: Routledge, 2017, pp. 282-283.

⁴ N. Fligstein, *The Architecture of Markets: An Economic Sociology of Twenty-First-Century Capitalist Societies*, Princeton, N.J.: Princeton University Press, 2001, p. 27.

⁵ S. K. Vogel, *Marketcraft: How Governments Make Markets Work*, New York, N.Y.: Oxford University Press, 2018, p. 3.

conflict and competition in global commerce, disagreements are solved under specific rules and practices, which in return provides stability for private actors.

Nevertheless in 2018, when firms, producers, exporters and workers faced uncertainty and uneven competition, the established rules for the market did not work as they seemed to in the past. Procedures and standards for the market, created by market economies, with all the ebbs and flows running through the existing understanding of global commerce, have been challenged by growing non-market economies, but also by actors who have realized that established institutions have been used for new arrangements. Therefore, when the rules and procedures that make a complex pattern of interaction are hijacked by those who take them *à la carte*, the major challenge for market economies is to rewrite the narrative on global commerce, and reorganize the system to reflect global ideas. This is especially important when G-7 economies are prone to foreign capital investment in infrastructure, which is important not only for commerce but also for security reasons. Therefore large-scale infrastructure investments, which are particularly important where strong states with questionable legal systems are concerned, undermines the role of comparative advantage, with the point of entry to the markets being slowly controlled and dominated by the largest producer in the world, with state-owned companies.⁶

To understand international security in 21st century, it is necessary first to understand what shapes international trade and the terms of production across national boundaries. For international security in 2018 a central feature of the world economy was the role of trade wars started and waged by the United States, the main goal of which is to reshape the global outlook of international trade. Even though production networks are spread across countries and regions, and most countries are highly dependent on the economic activities of different foreign producers, the classical vision of power politics still remains as a central part of global politics. However, the question is whether such unilateralism has been replaced by interdependence or we are just witnessing an existential crisis of the system. The global crisis of 2008 illustrated the interdependences between states, regions and regional organizations in a most dramatic way, but after ten years the lessons on the role of interdependence in global trade seemed to have faded. The volume of world trade after the 2008 crisis fell by more than 25%, and even strong economies such as Italy have been negatively impacted. The growth

⁶ R. Ulliyett, *China on Port Shopping Spree in Europe and Globally*, January 24, 2019, <https://www.portseurope.com/china-on-port-shopping-spree-in-europe-and-globally/> (accessed January 30, 2019).

of trade in 2019 is slow, and according to WTO sources the World Trade Outlook Indicator is the weakest since 2010.⁷ This slowdown, when compared to the historical record, shows that long-distance trade, accompanied with trade tensions all over the world, interacts with economic development, and fluctuations in global trade will without doubt hit both sound and developing economies. Export orders in China, an important factor for the global economy, are at their lowest for a decade⁸, which means a slowing global demand for goods and possible perturbations both for producers and consumers.

Trade and security have always been linked, and most of the research focuses on trade as a powerful contributor to peace and cooperation. With more and more free trade agreements being signed and multilateral arrangements being made, states are constrained to a significant extent in their ability to control trade. The proliferation of international agreements, of different size and regional coverage, results in the liberalization of commerce through the reduction of quotas and tariffs. But globalization has changed the very nature of global trade, and most states must now rely on imports, even small ones, from other countries. This means that growing interdependence makes trade wars less possible than before, but also that economic retaliations against wrongdoing parties are more severe than they once were. With such an argument one may claim that the exchange of different goods produces maximum efficiency for both parties, and following Ricardo's logic on comparative advantage, the more specialized production is the more stable the situation between trading partners should be. But this was 19th century logic, from a time when there were fewer actors on the scene, a significantly lower number of goods and services traded, and without the vast array of instruments for dealing with trade disputes that have appeared since WWII.

Although the comparative logic of trade remains useful for understanding global commerce, new elements should be added if we are to understand the security outlook of trade in the 21st century. First of all, gains from specialization, for example energy export, machinery, car parts or pharmaceuticals, may turn into dependence of GDP, on one sector or a number of interconnected industries. Specifically, when companies reward narrow interests and are not embedded in the economic fabric of the society, the very issue of trade may be politicized, and the political consequences of wrong decisions in global trade might be harm-

⁷ WTO, *WTO Trade Indicator Points to Slower Trade Growth into First Quarter of 2019*, n.d., https://www.wto.org/english/news_e/news19_e/wtoi_19feb19_e.htm (accessed March 13, 2019).

⁸ *Trade Dashboard Worsens as China Export Orders Take a Dive*, n.d., <https://www.bloomberg.com/graphics/global-trade-indicators/> (accessed March 13, 2019).

ful. However, in the context of the complexity of global trade and the variety of multilateral arrangements, political competition at the domestic level might play a limited role, and incentives coming from industry could be mitigated by benefits of free trade and wider competition, to the advantage of consumers. Nevertheless, while relationships between trade and political competition at the domestic level seem to be central for security, international policy determinants and the long-term consequences of global trade result in asymmetric dependence more easily than they once did, especially when a trading country supplies vital commodities such as energy, food or metals.

This dependence/interdependence nexus tends to favor specific policy preferences over trade, which in turn translates into political action. From 1999 on, most policy preferences on trade revolved around collective action and the gradual improvement of non-market economies to give particular countries a chance to compete in global trade. This idea, woven into the global trade system, remained unquestionable for decades, and along with other ideas like freedom, human rights and democracy, the possibility of participating in global commerce has remained an integral part of the diplomacy of every developed and developing country.⁹ But as of 2019 the very idea of free trade, given the internalization of governance on global trade¹⁰ and the growing role of regulatory bodies¹¹, seems to be utopian, and international commercial policy plays a more important role than ever.

This calls for a systematic understanding of why and how global trade interacts with global security, and how the mitigating effect of free trade has changed into a vast array of preferences in different countries and regions. Economies of scale create barriers to entry, as a consequence of which small exporters or trading countries must follow the rules generously provided by large economies endowed with a range of regulatory options. This means that a limited array of same goods will be exported to the large economy, and that countries tend to limit their product variety, to avoid unnecessary costs based on classification, standardization, and other technical barriers to trade. When the ben-

⁹ G. Bannerman, *The Free Trade Idea*. In: L.L. Martin (ed.), *The Oxford Handbook of the Political Economy of International Trade*, Oxford: Oxford University Press, 2015, p. 39.

¹⁰ Ch. L. Davis, *Why Adjudicate? Enforcing Trade Rules in the WTO*, Princeton, N.J.: Princeton University Press, 2012; B. M. Hoekman, P. C. Mavroidis, *WTO “à la carte” or WTO “menu du jour”? Assessing the Case for Plurilateral Agreements*, Fiesole: European University Institute, 2013; T. Voon, *The Security Exception in WTO Law: Entering a New Era*, “AJIL Unbound” 2019, vol. 113, pp. 45-50.

¹¹ T. Büthe, W. Mattli, *The New Global Rulers: The Privatization of Regulation in the World Economy*, Princeton, N.J.: Princeton University Press, 2011.

efits for consumers are clear, i.e. they are provided with standardized products, brought in under the scrutiny of the importing country, firms must focus more on differentiation and commercial activities than on the improvement of their products.

In 2018 the role of the international institutions created to facilitate global trade shrank. In general, international institutions in global commerce have been created to solve market-failure problems, i.e. to react in situations in which bilateral arrangements have failed and states decide to raise trade barriers or tariffs in order to protect their markets, or in general to achieve other political goals through trade. But tariffs work usually for big players, who are able to use these instruments to increase a state's welfare when demand for imports drops, as well as prices for particular goods. Although tariffs impose costs on trading countries, and usually result in retaliation, the interests underlying trade disputes and preferences behind remain complex; the choices in global trade taken by the most important actors reflect long-term strategies. Nevertheless, these strategies change over time, and this is the case in the strategic shift in the US-EU axis as well in EU-China relations. When both the US and China have been dubbed as strategic partners in trade for Europe, and key to each other's economic survival¹², the current outlook has changed. As of March 2019, the People's Republic of China, according to the European Commission and the High Representative for Foreign Affairs and Security Policy, can no longer be regarded as a developing country; with its power in technology and economy, as well as increasing presence in the world, it should be treated as equal player, with greater responsibilities for upholding the rules-based international order, as well as engaging in greater reciprocity, non-discrimination, and openness of its system.¹³ Therefore, even though the PRC cooperates with the EU in many ways and has closely aligned objectives, it must be treated as a strategic rival promoting alternative models of governance.

Since December 2017 the EU's representatives have been pushing anti-subsidy measures against China, with a new methodology for calculating the dumping margin in anti-dumping investigations on imports from WTO member states,

¹² M. Garcia, *The EU, China and Trade in "Green" Technologies: Cooperation and Conflict*. In: D. A. Deese (ed.), *Handbook of the International Political Economy of Trade*, Cheltenham: Edward Elgar, 2014, p. 322.

¹³ European Commission, *Joint Communication To The European Parliament, The European Council And The Council EU-China – A Strategic Outlook*, JOIN(2019) 5 final, March 12, 2019, <https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf> (accessed March 14, 2019).

where prices and costs are distorted due to state intervention.¹⁴ This methodology has been used only once so far, and only for one country, namely China, in order to clarify what kind of problems Chinese companies and the government of the PRC create for the free market. The PRC, as a member of the WTO, and a non-market economy according to the EU and the US, initiated a WTO dispute settlement case against the US and the EU for not affording China market economy status on 12th of December 2016, claiming that the EU has certain provisions in its regulations pertaining to the determination of normal value for “non-market economy” countries in anti-dumping proceedings, and that these proceedings to a large extent involve products from China.¹⁵

Nevertheless, neither the EU nor the US treat the PRC as a market economy, because it does not operate on market principles sufficient to permit the use of Chinese prices and costs for the purposes of anti-dumping analysis. According to the US Department of Commerce the Chinese government and the Chinese Communist Party are able, through legal and actual ownership, to control key economic actors and institutions in China. This is the case with large enterprises, responsible for infrastructure or telecommunications, but also for manufacturers of particular products such as pharmaceuticals. For example, as of 2019 India and China supply more than 40% of the active pharmaceutical ingredients used to make US drugs. This is a very important issue since a country's dependence on goods provides a strategic advantage for political interests, not only by threatening others with export tariffs or quotas, but with lowering the level of supply on the domestic market. Therefore the US authorities argue that the Chinese government uses different instruments to control selectively the interaction of supply and demand, and thereby distorts the incentives of market actors. When market forces, as crucial factors in the economy, are controlled by the state, from the formation of exchange rates and input prices to the movement of labor, the rules on use of land to the allocation of domestic and foreign investment and finally market entry and exit, other states cannot further develop their capacities and production when competing with such a massive economy. This is especially

¹⁴ European Parliament, Council of the European Union, *Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017 Amending Regulation (EU) 2016/1036 on Protection Against Dumped Imports from Countries Not Members of the European Union and Regulation (EU) 2016/1037 on Protection against Subsidised Imports from Countries Not Members of the European Union*, “Official Journal of the European Union”, no. L 338, December 19, 2017.

¹⁵ WTO, *WTO Dispute Settlement – DS516 European Union – Measures Related to Price Comparison Methodologies*, December 12, 2016, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds516_e.htm (accessed February 2, 2018).

the case as the role and prevalence of state-invested or state-owned enterprises in China's economy is so significant, and their relative "economic weight" is substantial in comparison with those in other major economies.¹⁶ This situation is complicated further by the fact that state-owned enterprises, with declining shares of industrial output (more than 40% in 1990s to 15-20% in 2017), now have an outsized share of corporate debt – 57% of total corporate debt, or 72% of GDP in 2016.¹⁷

China's so-called "zombie firms" that incur three years of losses, cannot meet environmental and technological standards, do not align with national industrial policies, and rely heavily on government or bank support to survive, are now more problematic than previously. When China decided to begin the reform of underperforming state industries (zombies) through their conversion to limited liability companies or mergers, these reforms were less than successful, and such firms can survive by borrowing money from state-owned banks.¹⁸ This creates a large gap in the private-owned companies, which have to find funding abroad or get it from local banks, which increasingly turn to shadow banking loans, provided by subsidiary companies, securities companies, trusts etc. These institutions do not follow banking regulations, and with an economy as large as China's this creates more political pressure from local governments to protect the domestic market. In turn the Chinese government, unable to fix domestic problems, decided to invest and gain revenues abroad while the domestic market remained fairly underdeveloped. The context of the current phase of the reconstruction of Chinese foreign investment policy must therefore be understood in terms of domestic economic factors and variables, such as growing public debt, not only from the perspective of global strategy and the Belt and Road Initiative. This is closely connected to access to big markets, namely public procurement, as an element of still-protectionist policies in many countries, including China. With a limited capacity for restructuring state-led companies the Chinese government has no other choice but to protect the interests of the SOEs with protectionist measures, and follows a coherent economic strategy abroad defined by ac-

¹⁶ United States Department of Commerce, *China's Status as a Non-Market Economy*, A-570-053, October 26, 2017, p. 5, <https://enforcement.trade.gov/download/prc-nme-status/prc-nme-review-final-103017.pdf> (accessed November 5, 2017).

¹⁷ International Monetary Fund, *People's Republic of China. Selected Issues. IMF Country Report No. 17/248*, Washington, D.C.: IMF, 2017, p. 26, <https://www.imf.org/~media/Files/Publications/CR/2017/cr17248.ashx> (accessed February 2, 2018).

¹⁸ N. R. Lardy, *The State Strikes Back: The End of Economic Reform in China?*, Washington, D.C.: Peterson Institute for International Economics, 2019, p. 6, <https://piie.com/bookstore/state-strikes-back-end-economic-reform-china> (accessed March 7, 2019).

tions that are not harmful to these interests. This is especially so at a time when, looming on the horizon, economic disruptions from policies based on measures against climate change force Chinese companies to invest and find profit abroad more than ever; in this situation Chinese companies invest in Europe by buying shares in European companies, and through these backdoors apply for public contracts. Such possibilities for direct foreign investment raise the question of security, which is why an instrument for the screening of foreign direct investments was initiated by the EU in March 2019. This allows not only for the coordination of investment policies in member states, but also follows the logic of FDI in other G-7 countries. For example the Congress of the United States passed the Foreign Investment and National Security Act in 2007.¹⁹ A regulation adopted by the EU allows for the imposition of restrictive measures on the grounds of security and public order in the WTO agreements (including, in particular, Article XIV(a) and Article XIV bis of the General Agreement on Trade in Services (12) (GATS)), followed by screening that aims to assess, investigate, authorize, add conditions to, prohibit or unwind foreign direct investments.²⁰ This calls for closer attention on the European side, both from strategic perspective²¹, i.e. in terms of incentives to boost industrial policy²² (here pressure comes from two major economies in the EU, namely France and Germany), competition policy, and also public procurement.

This new instrument for public procurement has been initiated by the EU as the largest procurement market in the world. However, this openness of the EU market is not reciprocal, and European companies fairly often face difficulties

¹⁹ *Foreign Investment and National Security Act of 2007 (FINSA)* Pub.L. 110-49, 121 Stat. 246, July 26, 2007.

²⁰ European Parliament, Council of the European Union, *Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 Establishing a Framework for the Screening of Foreign Direct Investments into the Union*, "Official Journal of the European Union", no. L 79 I, March 21, 2019; S. Meunier, *Integration by Stealth: How the European Union Gained Competence over Foreign Direct Investment*, "Journal of Common Market Studies" 2017, vol. 55, no. 3, pp. 593-610.

²¹ European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank Investing in a Smart, Innovative and Sustainable Industry. A Renewed EU Industrial Policy Strategy*, COM (2017) 0479 final, September 13, 2017, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:479:FIN> (accessed March 14, 2019).

²² European Commission, *EU Industrial Policy*, March 13, 2019, https://ec.europa.eu/commission/sites/beta-political/files/brochure_industrial_policy_euco13032019.pdf (accessed March 14, 2019).

in gaining access to public procurement bids, not only in the PRC but also in other non-EU markets. This is especially important for the sectors in which EU companies have comparative advantage, thanks to long-term investment coupled with the regulations provided by the EU. Thus such sectors as transport equipment, telecommunications, power generation, medical equipment and construction services, where EU companies may compete for public bids, are often closed, while the European market is fairly open to foreign bids. A new instrument for public procurement will replace the quite recently adopted EU regulation²³, and it will encompass guidelines and a legal framework for foreign bidders, taking into account EU and international rules on procurement such as the WTO Agreement on Government Procurement (GPA). These backstops, including those for abnormally low tenders, as well as respect for security, labor and environmental standards and state aid rules, should help European companies to compete on an equal footing with state-supported companies in states with large export capacities like China.

Moreover, the PRC has adopted a very sophisticated strategy for relations with the EU which offers the possibility to cooperate with the sub-regional framework, dubbed as the 16+1 format, in which 16 Central and Eastern European Countries are cooperating with China. This strategy undermines the consistency of EU strategic goals, as 11 EU member states – Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Hungary, Romania, Bulgaria, Croatia and Slovenia and five aspiring EU member states from the Western Balkans: Serbia, Bosnia and Herzegovina, Montenegro, Albania and North Macedonia, create a significant footprint in the European economy. This potentially promising formula contains ideas for the still-developing economies from the former Eastern Bloc, which in fact have nothing in common besides their communist heritage, to boost trade and lower trade deficits between the PRC and the countries of the region. In fact, after seven years, as the cooperation was initiated in 2011, a gap in trade is growing. For example, the trade deficit for Poland with regard to China has almost tripled, from 10.5 million USD in 2012 to 25.9 million USD in 2018. The promised access to the Chinese market or greenfield investment from China in CCE countries has not happened, and trade tensions are growing not only between China and European export-oriented economies like Germany, but also

²³ European Commission, *Amended Proposal for a Regulation of the European Parliament and of the Council on the Access of Third-country Goods and Services to the Union's Internal Market in Public Procurement and Procedures Supporting Negotiations on Access of Union Goods and Services to the Public Procurement Markets of Third Countries*, COM/2016/034 final – 2012/060 (COD), COM (2016) 34 final, January 29, 2016.

other economies like Poland and the Czech Republic. Tensions over the telecom giant Huawei and its involvement in 5G networks in Europe, from which Huawei has been excluded for security reasons, shows that relations between China and Europe will continue to be more problematic going forward.

The amalgamation of the preferences of individual states at the European level, as well as those of interest groups, is undoubtedly complex and somehow problematic; Chinese representatives may continue to convince the CEE countries that investment will come, and the hard stance against China supported by Germany and France will not be in the interests of the developing economies. Nevertheless, a tendency on the EU side when it comes to economic security is to merge trade issues with it, and even given the multiple dimensions of EU-PRC relations and cooperation it is widely believed that China may deliberately challenge the existing multilateral global trade order.²⁴ This will make it harder to resolve tensions over trade, especially when its authorities demand the right for China to be treated as a market economy.

To conclude, a major challenge for global economic security in the current environment is how to generate a consensus between the major actors around the necessary institutional and policy changes. If recent trends continue, and the trade wars which began in 2018 continue in 2019 and onwards, emerging business models will be threatened. While developed countries will surely find a way to survive, some may resort to repressive measures to maintain trade and exports at desired levels. Nevertheless, the substantial connection between economic prosperity, size of economy, and political influence leads policy makers to become very cynical about the political system. When they see the legitimate interests of a society, such as sustainable development, free trade or human rights, exercising a disproportionate influence, they conclude that the system is rigged against them. Such a narrative is clearly visible in China's intervention in the WTO and its attempt to have the PRC accepted as a market economy. Disagreements between the EU, the US, and China ultimately center on fairness, the very question of who wins and loses in the new global economy, and how to deal with the preferential treatment for those countries which enjoy financial benefits, though the outcomes of their policies vary in scale and effect. There are various ways to address the mismatch in outcomes, and recent cases brought at the WTO by the US against India, Turkey and China (DS543, DS544, DS547, DS532), as well as the decision to remove Turkey and India from the list of beneficiary develop-

²⁴ M. Hearson, W. Prichard, *China's Challenge to International Tax Rules and the Implications for Global Economic Governance*, "International Affairs" 2018, vol. 94, no. 6, pp. 1287-1307.

ing countries under the Generalized System of Preferences (GSP)²⁵ program, are among of them.

Predictions for economic security in 2019 are quite difficult, since deep complexities such as Brexit and the global economic slowdown are on the horizon. Perhaps the easiest thing to predict, and this is currently the most important feature of the global economy, is the growing need for national economies to be restructured so as to keep pace with changes in technology, especially the ongoing automation of transport and services.²⁶ Most of the changes in 2019 and in the next decade will be shaped by the patterns of evolution and adjustment of national economies, both in developed and developing countries. While developed economies will benefit from growing automation and an increasing quality of services, suddenly-developing countries will be deprived of their most crucial asset, namely cheap labor. The second challenge will be imbalances in trade and debt, not only at the national level but also in terms of the growing debts of local governments. A third problem will be connected with the negative consequences of the shrinking of the dispute settlement system provided by the WTO, where most important actors have challenged the established mechanisms, such as the appellate body, and the role of non-market economies. The resilience of this institution will be tested by the end of 2019. Much more predictable, however, are the negative consequences of climate change, not only from the perspective of the environment, but also in disturbances in the global economy. When growing economies like India and China are responsible for most CO₂ emissions, the obligations taken on by developed European economies may result in a slowing down of their economic growth. Yet the fate of developed countries and their economic systems is in the hands of big companies, and the economic crisis of 2008 demonstrated the limits of control and regulation provided by state actors.

²⁵ Office of the United States Trade Representative, *United States Will Terminate GSP Designation of India and Turkey*, March 4, 2019, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/march/united-states-will-terminate-gsp> (accessed March 4, 2019).

²⁶ D. M. West, *The Future of Work: Robots, AI, and Automation*, Washington, D.C.: Brookings Institution Press, 2018.

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Migration and Security in 2018



ABSTRACT

2018 was another year of heated debate on the consequences and effects of migration on political stability, social order and international ethics. The debate encompassed multiple specific issues and varied aspects of migration: political, criminal, legal, ethical and humanitarian. In this chapter main migration trends are analysed against the backdrop of national policies of selected states and international efforts undertaken on the global as well as regional scales. Three case studies are presented: the global compacts adopted by the United Nations; the cooperation in the EU on immigration, borders and asylum issues; the US immigration policy under the Trump administration.

Keywords: migration, refugees, asylum, global compacts, United Nations, European Union, United States

Migration has long been one of the most debatable issues in contemporary security studies.¹ Originating in local, usually unfavorable, living conditions, it affects a growing number of people regardless of their education, skills, living standards, race, ethnicity, language, religion and mindset. As a global phenom-

¹ See: A. Weinar, S. Bonjour, L. Zhyznomirska (eds), *The Routledge Handbook of the Politics of Migration in Europe*, Abingdon–New York: Routledge, 2018; V. Bello, *International Migration and International Security. Why Prejudice Is a Global Security Threat*, Abingdon–New York: Routledge, 2017; G. Lazaridis (ed), *Security, Insecurity and Migration in Europe*, Abingdon–New York: Routledge, 2016; G. Lazaridis, K. Wadia (eds), *The Securitisation of Migration in the EU: Debates Since 9/11*, Basingstoke–New York: Palgrave Macmillan, 2015; N. Steiner, R. Mason, A. Hayes (eds), *Migration and Insecurity. Citizenship and Social Inclusion in a Transnational Era*, Abingdon–New York: Routledge, 2013; J. Huysmans, *The Politics of Insecurity: Fear, Migration and Asylum in the EU*, London–New York: Routledge, 2006.

enon, it brings divergent consequences which affect different states and societies as well as regional and global organizations. Human mobility has been a dynamic process with direct effects and long-term repercussions for stability and security. This chapter aims to place issues around migration within a wider framework of security and development; this should contribute to a broader understanding of migration and mobility against the overall security backdrop presented in this Security Outlook.

MIGRATION TRENDS IN 2018

Migration is an increasingly complex phenomenon which has recently shifted from the human security perspective to a state-centric one highlighting national security interests and the principles of international order. Factors triggering local migrations and resettlements, as well as large-scale cross-border migratory movements, remain relevant irrespective of changing cultural, social, economic and environmental landscapes. They are: nature, politics, labor and technology. Natural catastrophes, diseases, climate change and demographic trends have severely affected territories, populations, and local and regional orders. Political strategies and action plans set legal and administrative frameworks for migration flows, regulating people's mobility with inclusionary as well as deterrence strategies. Labor needs in developed markets have generated a growing demand for manpower, both skilled and unskilled. Market forces stimulate migration but are not accompanied by effective employment policies and sound integration programs. Finally, technology has given a strong impulse to long-distance migration flows. The Internet and wireless communication (cellular telephony) enable the planning and coordination of inter-regional and inter-continental migratory movements as well as adaptation on arrival in the country of destination. This facilitates migrants' mobility and settlement but, unfortunately, also leaves opportunities for illegal trafficking and abuse of migrants wide open.

2018 was another year of heated debate on the consequences and effects of migration on political stability, social order and international ethics. The debate encompassed multiple specific issues and varied aspects of migration which can be divided into the following categories:

1) Political aspects:

- proliferation of local tensions and conflicts, spreading of violence,
- activities prejudicial to national security interests (radicalism, extremism, terrorism),

- radicalization of political opinions leading to anti-systemic extremist behavior.
- 2) Criminal aspects:
- ‘cimmigration’, as a nexus between migration and crime,
 - trafficking in human beings,
 - trafficking of illicit goods by migrants, such as drugs and arms,
 - forgery of documents,
 - forced labor,
 - illegal activities in host countries (participation in organized criminal groups, prostitution, extortion).
- 3) Irregular aspects:
- human smuggling (facilitation, transportation and entry),
 - irregular crossing of borders,
 - irregular employment and stay in a host country.
- 4) Ethical and humanitarian aspects:
- risks and threats to life and limb,
 - vulnerability of certain groups of migrants (children, women, the elderly),
 - displacements and resettlements,
 - asylum practices and terms of international protection of refugees,
 - assistance to asylum seekers and refugees.

The above catalogue of contentious issues refers to the migration phenomenon in 2018 in three fundamental dimensions: (1) size, intensity and geographical distribution of main migration and refugee flows; (2) risks and dangers experienced by the migrant population; (3) economic consequences of migration flows.

(1) The estimated total number of migrants increased three-fold over the past half-a-century and doubled over the last thirty years. It amounted to the record high level of 258-266 million in 2017², representing 3.4% of the global

² The International Organization for Migration, being since 2016 the United Nations Migration Agency, put the estimate at 258 million (see IOM, *Global Migration Indicators 2018*, Berlin: IOM, 2018, p. 18). According to the Organisation for Economic Co-operation and Development (OECD) and the World Bank the number of international migrants, including refugees, reached 266 million (see World Bank Group, *Migration and Remittances. Recent Developments and Outlook*, “Migration and Development Brief” 2018, no. 29, p. v).

population.³ The number of registered and identified refugees worldwide (as of the 30th of June 2018), according to the criteria established by the UN High Commissioner for Refugees (UNHCR), was 25.6 million.⁴ To that one should add 3.2 million asylum-seekers, 124,100 returned refugees, 39.7 million internally displaced people (IDPs), 2.5 million returned IDPs and 3.9 million stateless people.⁵ The clear majority of the migrant population is economically active, employed in various sectors of national economies in different regions of the world. According to the International Labor Organization (ILO) estimates for 2017, there are 164 million migrant workers in the world. They account for 70.1% of the 234 million working age migrant population (15 years and over).⁶ Although the media highlighted the migratory movements and concurring problems in Europe and the US, the largest migratory groups were concentrated in Africa and Asia. They surround zones of protracted conflicts, poverty and natural catastrophes as well as political instability or repression, located in South Asia (Pakistan, Afghanistan, India, Bangladesh), the Middle East and North Africa (Syria, Iraq, Algeria, Morocco), Central America and the Caribbean (El Salvador, Nicaragua, Honduras, Cuba, Haiti).⁷

The migrant population is active in search of better protection and improved conditions of establishment and residence. Therefore, strong pull factors in the high-income developed countries in North America and Western Europe, as well as in Australia and New Zealand (stability, safety, prosperity, job opportunities), stimulated massive movements not only from the countries which were plunged into chaos, violence, civil strife or armed conflict (as is the case of Syria, Iraq, Afghanistan, Ukraine, El Salvador or Venezuela) but also secondary movements from countries hosting migrants and refugees or being only transitory areas on long-distance migratory routes (such as Turkey, Greece, Morocco, Saudi Arabia or Mexico).

Migratory pressure generates various negative effects, in terms of law (illegal and irregular status of migrants), security (growing threats of a criminal or

³ IOM, *op. cit.*, p. 20.

⁴ This category includes 5.4 million Palestine refugees under the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). See UNHCR, *Global Trends 2017*, Geneva: UNHCR, 2018, p. 12; UNHCR, *Mid-Year Trends 2018*, Geneva: UNHCR, 2019, p. 3.

⁵ Data extracted from UNHCR mid-year 2018 report: UNHCR, *Mid-Year Trends 2018...*, p. 3.

⁶ ILO, *Global Estimates on International Migrant Workers. Results and Methodology*, 2nd ed., Geneva: International Labour Organisation, 2018, p. 5.

⁷ See an interactive map on world migration geography maintained by IOM: <https://www.iom.int/world-migration>.

terrorist nature), stability (problems of migrants' adaptation to local conditions) and administration (obligation to manage individual application for the status of refugee or residence, assistance for temporarily protected migrants). A considerable proportion of migrants either enter the territory of a host state illegally or are denied the right of residence in one. As a result, they become subject to return procedures, although the capabilities of destination countries to effectively enforce the return mechanisms differ and depend on available human, logistical and financial resources. In the EU, the number of potential returnees rose dramatically: from 1.4 million in 2011 to around 5.5 million in 2017.⁸ In 2018, the number of return decisions issued to third-country nationals was 287,000, an increase of 2% in comparison to 2017. The number of effective returns was 148,000, a decrease by 5%. The data from the beginning of the migration crisis (2014–2015) show that the effectiveness ratios have been around 50%, differing strongly in regard to main countries of migrants' origin: highly efficient in neighboring areas (Ukraine, Russia, Albania) and rather ineffective in remote countries (Iraq, Afghanistan, Pakistan, Mali).⁹ The stock of third-country nationals subject to deportation from the US increased from around 1.5 million in 2011 to 3.2 million in 2017. In Saudi Arabia, the annual average rate of migrant deportation from the beginning of the current decade has been over 500,000.¹⁰

(2) Migrants constitute a part of the global population particularly exposed to risks, threats and shocks. Because of the lack of assistance from their governments and deficits of international protection, they are especially vulnerable to various forms of abuse, including trafficking in human beings, sexual exploitation (including children), modern slavery and forced labor.¹¹ The worst conditions are in conflict situations, which exacerbate not only the smuggling of endangered populations but also abuse, violence and ruthless exploitation. Despite many efforts undertaken by international organizations (governmental and non-governmental) and numerous governments, the scale of trafficking in human beings has been growing in recent years and 2018 was no exception. Europol (EU Law Enforcement Co-operation Agency) ascertained that “Migrant smuggling remains a lucrative and highly profitable criminal business. Low risk and

⁸ World Bank Group, *Migration and Remittances. Recent Developments and Outlook*, “Migration and Development Brief” 2018, no. 30, p. xii.

⁹ See Frontex, *Frontex Risk Analysis for 2019*, Warsaw: Frontex, 2019, p. 25.

¹⁰ World Bank Group, *Migration and Remittances...*, no. 30, p. xii.

¹¹ See R. Andersson, *Illegality, Inc.: Clandestine Migration and the Business of Bordering Europe*, Oakland, Ca.: University of California Press, 2014.

comparatively low penalties attract opportunistic criminals and professionalised OCGs [organised criminal groups] alike. Specifically, the use of cash and underground banking methods such as *hawala* represent growing challenges”.¹²

An exact number is extremely difficult to arrive at because of the shortages of available data, their often contentious sources and divergent methodologies applied by international and domestic units.¹³

Experts representing global humanitarian institutions underline the gravity of this problem. The United Nations International Children’s Emergency Fund (UNICEF) and the Inter-Agency Coordination Group against Trafficking (ICAT) estimated that children account for 28% of identified victims of trafficking in human beings. This indicator is considerably higher in such regions as Sub-Saharan Africa as well as Central America and the Caribbean, amounting to 64% and 62% respectively.¹⁴ According to Henrietta Fore, UNICEF Executive Director, “Trafficking is a very real threat to millions of children around the world, especially to those who have been driven from their homes and communities without adequate protection”.¹⁵ As the most vulnerable category of migrants, minors fall victim to abduction, sexual violence, forced recruitment to armed groups (the so-called child soldier phenomenon) and slavery. Moreover, child protection systems and care arrangements often lack adequate facilities and personnel as well as sufficient funding. UNICEF noted that “Children are often placed in inadequate shelters, where they risk further traumatization and re-victimization”.¹⁶ Therefore, migrants and refugees reach the transit areas of final destinations often in very poor mental and physical condition, traumatized, exhausted, undernourished and without material resources, which demands from the receiving institutions a considerable organizational, administrative, financial and material effort. Not every transit or host country is adequately prepared for such a burden and often tends to lower reception and assistance standards. The human security dimension of the position of migrants and refugees has been determined by an entangled set of economic, geographical, political and ideo-

¹² Europol, *EMSC 3rd Annual Activity Report – 2018*, The Hague: European Union Agency for Law Enforcement Cooperation, 2019, p. 11, https://www.europol.europa.eu/sites/default/files/documents/emsc_report_final_2019_2final.pdf (accessed April 30, 2019).

¹³ See UNODC, *Countering Trafficking in Persons in Conflict Situations. Thematic Paper*, Vienna: United Nations Office on Drugs and Crime, 2018.

¹⁴ UNICEF, *Children Account for Nearly One-third of Identified Trafficking Victims Globally*, 29 July 2018, <https://www.unicef.org/press-releases/children-account-nearly-one-third-identified-trafficking-victims-globally> (accessed January 4, 2019).

¹⁵ Ibidem.

¹⁶ Ibidem.

logical factors, which throughout 2018 tended towards aggravation of the status of migrants and their existential conditions.

(3) Migratory flows are often driven by poverty and underdevelopment (as push factors) and the prosperity, welfare and job opportunities offered by destination countries (pull factors). The economic dimension of patterns of migration is therefore relevant for evaluating current trends and long-term tendencies in global mobility. Moreover, the official incomes generated by immigrants in host countries go together with a 'grey' and 'black' economy of migrant activity as well as the profits earned by the criminal organizations which exploit migrants.

It is commonly known that migrant workers transfer their incomes to their countries of origin, usually to ensure the material existence of or improve the standard of living of their families. Such deposits distributed to underdeveloped areas help diminish global material inequalities and reduce the scope of poverty and marginalization in many regions. Global remittance flows reached \$625 billion in 2017 and were estimated at \$689 billion in 2018. The strong upward trend which marked 2017 and accelerated in 2018 followed a slow decline which particularly affected low- and middle-income countries (LMICs). The rebound in 2017, showing a dynamic increase of 8.5%, led to a stable increase in the following year. According to the latest estimates from the World Bank Group, these flows in 2018 may have amounted to \$528 billion, a further increase of 10.8%.¹⁷ Remittances are now more than three times the size of official development assistance to LMICs.

Although labor migration prevails in overall migrant mobility, one has to acknowledge that international refugees, irregular migrants and illegal (criminal) migratory groups also generate considerable income which is transferred in both legal and illicit ways to various beneficiaries. Global revenue from the business of illegal migration and human smuggling is difficult to assess, and estimates vary from \$7 billion to \$35 billion annually.¹⁸ Individuals as well as organized criminal groups, often operating at the international and inter-continental scale, charge the migrants for the facilitation of cross-border journeys, for fraudulent travel documents and 'arranging things' in destination countries upon arrival. The scale of the real 'dark side' of migration is impossible to evaluate: it includes

¹⁷ World Bank Group, *Migration and Remittances...*, no. 30, p. xi.

¹⁸ *Taking Root. The Complex Economics of the Global Smuggling Economy*. In: C. Horwood, R. Forin, B. Frouws (eds), *Mixed Migration Review 2018. Highlights. Interviews. Essays. Data*, Geneva: Mixed Migration Centre, 2018, p. 104.

participation in organized gangs dealing with drug trafficking, arms smuggling, prostitution, extortion and robbery. The ‘crimmigration’ effects of migratory flows are evident, although their extent is difficult to verify empirically.

GLOBAL COMPACTS

The need to cope effectively with the challenge of global migration was expressed in various international organizations. The United Nations, as a natural forum for taking action on global issues, launched in 2016 an intense debate on a comprehensive approach to migration as a large-scale, complex, worldwide phenomenon. The adoption of the New York Declaration for Refugees and Migrants¹⁹ in September 2016 at a high-level plenary meeting on large movements of refugees and migrants constituted an important point of reference for the overall discussion on the multiple effects of migratory and refugee flows. The commitments included in the document called for the coordinated action of UN member states within a coherent political framework. As a follow-up to the New York Declaration, UN member states decided in April 2017 to develop a global compact on safe, orderly and regular migration (Global Compact for Migration – GCM). This sought to work out a 360-degree vision of international migration covering the key issues, explaining interconnectivity as well as addressing main risks and challenges. Having agreed on the guiding principles, UN member states devoted the first half of 2018 to intense intergovernmental negotiations on the detailed objectives and commitments. A “zero draft” was released in early February 2018 as a result of stocktaking meetings and the active engagement of UN Secretary General.²⁰ It was followed by negotiations held at the UN Headquarters in New York, which ended on the 13th of July 2018 with the approval of a final text of the GCM. The document was ultimately adopted on 10 December 2018 by representatives of 164 countries participating in the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration in Marrakech.

The GCM was founded on 23 goals which promote safe, orderly, predictable, non-discriminatory and regular migration. They included, amongst other things: reduction of the factors and drivers compelling people to leave their

¹⁹ United Nations, *Resolution A/RES/71/1 Adopted by the General Assembly on 19 September 2016*, <http://undocs.org/A/RES/71/1> (accessed January 4, 2019).

²⁰ Migration Data Portal, *GCM Development Process*, <https://migrationdataportal.org/themes/global-compact-migration>, (accessed 4 January 2019).

country of origin; stress on proofs of identity and legal documentation possessed by migrants; availability of pathways for regular migration; coordinated international save-and-rescue efforts for missing migrants; prevention and combating of smuggling of migrants and trafficking in human beings in the context of international migration; access to basic services for migrants; investment in skills development; faster, safer and cheaper transfer of remittances; safe and dignified return and readmission.²¹

In the last stage of the GCM process, the UN General Assembly approved the document on 19 December 2018. 152 countries voted in favor of the resolution; 5 states were against it; 12 countries abstained from the vote.²² The voting showed that the original aim of working out a comprehensive approach to a problem affecting nearly all UN member states was not fulfilled completely. Differences in national approaches to various aspects of migration and international protection of refugees meant that some of the ambitious goals pursued from the beginning of the process were discarded. Many countries voiced reservations about the final provisions of the GCM and overtly hesitated to endorse it despite its legally non-binding character. They not only boycotted the conference in Marrakech, but also declined to support the global compact in the UN General Assembly. The five opponents – namely the US, Israel, Poland, Hungary and the Czech Republic – constantly presented, for different reasons, an anti-immigrant stance, highlighting threats to national security, risks of the tolerance for uncontrolled migration and, last but not least, unfounded constraints on state sovereignty. Similar arguments were raised by those which abstained from endorsing the GCM, including Austria, Australia, Italy and Switzerland.

The New York Declaration for Refugees and Migrants provided a stimulus for a new approach to the world-wide problem of refugees. Similar to the migration issue, a global compact on refugees (GCR) was initiated by the United Nations on the basis of the report 'In Safety and Dignity: Addressing Large Movements of Refugees and Migrants'²³, prepared by the UN Secretary-General for the high-level meeting in New York, and a Comprehensive Refugee Response Framework

²¹ United Nations, *Global Compact for Safe, Orderly and Regular Migration*, A/CONF.231/3, <https://undocs.org/A/CONF.231/3> (accessed January 4, 2019).

²² United Nations, *General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants*, GA/12113, December 19, 2018, <https://www.un.org/press/en/2018/ga12113.doc.htm> (accessed January 4, 2019).

²³ United Nations, *In safety and dignity: Addressing Large Movements of Refugees and Migrants. Report of the Secretary-General*, UN General Assembly, A/70/59, 21 April 2016, https://refugeesmigrants.un.org/sites/default/files/in_safety_and_dignity_-_addressing_large_movements_of_refugees_and_migrants.pdf (accessed April 30, 2019).

(CRRF) annexed to the New York Declaration. The CRRF set four basic objectives: (1) ease pressures on the host countries involved; (2) enhance refugee self-reliance; (3) expand access to third-country solutions; (4) support conditions in countries of origin for return in safety and dignity.²⁴ The UN Resolution called on the Office of the United Nations High Commissioner for Refugees (UNHCR) to develop the CRRF on the basis of a multi-stakeholder approach in close coordination with relevant states and involving other appropriate UN entities, national and local authorities, international organizations, the private sector, civil society, academia and the media. CRRF also aimed at engaging refugees in more creative self-sufficiency mechanisms and supporting the hosting communities.²⁵ UNHCR was also authorized to coordinate works on the global compact on refugees and encourage states and non-state actors to deliver their ideas and proposals. A 'zero draft' of the GCR was presented in January 2018 and a 'draft one' in March 2018. Both documents sought to clarify basic goals of the compact and set out a program of action. Four major goals were established: (1) an improved system of burden- and responsibility-sharing; (2) strengthened national protection systems and response capacities; (3) improved socio-economic conditions for refugees and resilience-building in host communities; (4) greater efforts to address root causes and work out durable solutions to emergencies and protracted crisis situations.²⁶ The draft GCR also encompassed the CRRF and the Program of Action. The latter sought to facilitate the application of a comprehensive blueprint for assistance for refugees and countries particularly affected by large refugee movements. It also laid down principles for more equitable burden- and responsibility-sharing. It set out specific areas requiring mutually reinforcing mechanisms of support to host states as well as countries of origin, where appropriate.²⁷

The presentation of GCR was followed by formal consultations, thematic discussions and stocktaking exercises under the aegis of the UNHCR lasting until June 2018.²⁸ The official version of the GCR was presented in September 2018 in an annual report by the UN High Commissioner for Refugees to the UN Gen-

²⁴ *Comprehensive Refugee Response Framework*, Annex 1 to New York Declaration for Refugees and Migrants, United Nations, *Resolution A/RES/71/1...*

²⁵ M. Thomas, *Turning the Comprehensive Refugee Response Framework into Reality*, "Forced Migration Review" 2017, no. 56, p. 69.

²⁶ UNHCR, *The Global Compact on Refugees DRAFT 1 (as at 9 March 2018)*, <https://www.unhcr.org/events/conferences/5aa2b3287/official-version-draft-1-global-compact-refugees-9-march-2018.html> (accessed April 30, 2019).

²⁷ *Ibidem*.

²⁸ *Managing Flow. A Legal and Policy Overview*. In: C. Horwood, R. Forin, B. Frouws (eds), *op. cit.*, p. 147.

eral Assembly. It was discussed on the 24th of September 2018 during a high-level ministerial conference hosted by UNHCR. On the 17th of December 2018, the UN General Assembly affirmed the Global Compact on Refugees, adopting it as part of a resolution on the Office of the UNHCR, which received 181 votes in favor, two against (US and Hungary) and three abstentions (Eritrea, Liberia and Libya).²⁹ In addition to the above mentioned elements (guiding principles and objectives, the CRRF and the Program of Action), it contained arrangements of burden- and responsibility-sharing through a Global Refugee Forum (to be convoked every four years), national and regional arrangements for specific situations, and tools for funding, partnerships, data gathering and information sharing.

THE EUROPEAN UNION: MITIGATING LONG-TERM EFFECTS

The migration crisis which began in 2014 and reached its climax in 2015-2016 was eased in 2018 through a combination of preventive, deterrent and repressive measures taken individually by the EU's member states as well as at the level of the EU institutions and agencies.

The number of illegal crossings at Europe's external borders reached their lowest level in five years, falling by 27% to an estimated 150,000.³⁰ Likewise, the number of first time asylum applications decreased by 9% and was 581,000, reaching approximately the level of the year 2014 preceding the outburst of the crisis.³¹ Germany continued to be the most preferred EU country, followed by France, Greece and Spain. A radical drop was noticed in arrivals to Italy, resulting from the protective and restrictive measures adopted in the Central Mediterranean as well as a hard-line approach adopted by the Conte government, especially a new decree on immigration enforced by the far-right interior minister, Matteo Salvini. Although Syrian nationals continued to prevail in numbers in immigration flows to the EU, their share in the total number of asylum applications

²⁹ N. Risse, *UNGA Votes to Adopt Global Compact on Refugees*, SDG Knowledge Hub, December 18, 2018, <https://sdg.iisd.org/news/unga-votes-to-adopt-global-compact-in-refugees/> (accessed April 30, 2018).

³⁰ Frontex, *Frontex Risk Analysis for 2019*, Warsaw: Frontex, 2019, p. 8.

³¹ Eurostat, *Asylum Statistics*, March 12, 2019, https://ec.europa.eu/eurostat/statistics-explain-ed/index.php/Asylum_statistics#Number_of_asylum_applicants_drop_in_2018 (accessed March 28, 2019).

lodged in 2018 decreased to 13.9%, followed by Afghanis (7.1%), Iraqis (6.8%) and Pakistanis (4.3%).³² This confirmed a tendency towards the diversification of refugee and migrant population, thereby making immigration to the EU a truly worldwide phenomenon. These general trends were confirmed by the data on the number of people granted protected status in the EU. The overall number of positive decisions was 333,400 (down by 40% from 2017) and the recognition rate dropped from 46% to 37% in the case of first instance decisions, although it remained on almost the same level (38% and 36% respectively) in regard to final decisions on appeal. Still, Syrians constituted the biggest group of beneficiaries (29%), though their share declined from 33% in 2017. Likewise, the percentage of other major nationalities decreased: 16% down from 19% for Afghanis, 7% down from 12% for Iraqis, 3% down from 5% for Iranians.³³

What drew attention in 2018 was the further redirection of flows along the main migratory routes. While the Central Mediterranean maritime route to Italy saw lower migratory pressure due to the blockade of departures from Libya and deterrence by the Italian authorities, the Western Mediterranean path, connecting Morocco with Spain, rather unexpectedly became the major channel of irregular migrant flows to the EU. The situation in the Eastern Mediterranean, especially around the Greek Islands in the Eastern Aegean Sea, remained relatively stable, at least in comparison to the turbulent and dramatic period between mid-2015 and mid-2016. The geography of migratory movements towards Europe reflected in 2018 certain patterns which had been established in the early 2000s, concentrating on maritime routes stretching across the Mediterranean Sea and exploiting a specific ecosystem formed by state authorities, non-governmental organizations and criminal groups. The shifts in the numbers and intensity of migratory flows between the three main corridors – eastern, central and western – reflected a natural search for opportunities to find a best-chance route towards the EU's territories. Concurrently, security measures applied by Turkey

³² *Citizenship of First-time Applicants: Largest Shares from Syria, Afghanistan and Iraq*, Eurostat, 12 March 2019, https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Citizenship_of_first-time_applicants:_largest_shares_from_Syria.2C_Afghanistan_and_Iraq (accessed March 28, 2019).

³³ *EU Member States Granted Protection to More than 300 000 Asylum Seekers in 2018*, Eurostat News Release no. 71/2019, April 25, 2019, <https://ec.europa.eu/eurostat/documents/2995521/9747530/3-25042019-BP-EN.pdf/22635b8a-4b9c-4ba9-a5c8-934ca02de496> (accessed April 30, 2019); *EU Member States Granted Protection to More than Half a Million Asylum Seekers in 2017*, Eurostat News Release no. 67/2018, April 19, 2018, <https://ec.europa.eu/eurostat/documents/2995521/8817675/3-19042018-AP-EN.pdf/748e8fae-2cfb-4e75-a388-f06f6ce8ff58> (accessed April 30, 2019).

and transit countries in North Africa and in the Balkans as well as the changing *modi operandi* of migrant smugglers and facilitators, including criminal traffickers, generated opposite tendencies which channeled the streams of migrants into unexplored trails, often exposing the travelers to risks and direct dangers.

The humanitarian aspect of inflows of third-country nationals to the EU went along with the growing awareness of the negative repercussions for social stability, internal order and political balance. Some inclusionary measures adopted in 2015 (such as a resettlement scheme, refugee relocation system and solidarity mechanism) fell short of their main objectives and were often boycotted by some member states. Meanwhile, security issues were put high on the migration agenda in many member states, including by their governments and leading political parties. Statements depicting migrants as a threat to national security and identity were voiced by parties which succeeded in the parliamentary elections in 2018 in Sweden and Italy. In many others anti-immigrant discourse, including hate speech, intensified and was increasingly used as a tool for raising political capital.³⁴

Against that backdrop, EU institutions stressed not only the humanitarian and moral dimensions of the migration issues, but also negative outcomes posing risks to internal security and public order, especially due to the permanent illicit activities of smugglers and traffickers on the main routes heading to Europe. The European Council at its meeting on the 28th of June 2018 reconfirmed its determination to prevent a return to uncontrolled migratory flows and to effectively tackle illegal migration. Pointing to smugglers operating on the main migratory routes, the heads of states and governments declared their determination to definitively break the business model of the smugglers as well as increase search-and-rescue capabilities with the possible use of regional disembarkation platforms.³⁵ This position was confirmed by the European Council in October 2018 by underlining the point that the fight against people-smuggling networks needs to be stepped up in several ways. These include an intensified cooperation with third countries on investigating, apprehending and prosecuting smugglers, the setting up of a joint task force at the European Migrant Smuggling Centre

³⁴ See: European Union Agency for Fundamental Rights, *Beyond the Peak: Challenges Remain, But Migration Numbers Drop*, Luxembourg: Publications Office of the European Union, 2019, pp. 5-9, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-beyond-the-peak-migration-annual-review-2018_en.pdf (accessed April 28, 2019).

³⁵ European Council, *European Council meeting (28 June 2018) – Conclusions*, EUCO 9/18, Brussels, June 28, 2018, <https://www.consilium.europa.eu/media/35936/28-euco-final-conclusions-en.pdf> (accessed June 30, 2018).

(housed by Europol) and improved monitoring and disruption of malicious on-line communications.³⁶

A discussion on a new multiannual financial framework was started in 2018, giving the first projections of the next EU budget for the years 2021-27. Migration and borders acquired particular attention as matters of growing relevance for the stability and security of the Union and its member states, having learned lessons from the recent crisis and its prolonged repercussions. In May 2018 the Commission proposed a long-term budget for the 2021-2027 period in which funding for migration and border management was planned to triple, amounting to €34.9 billion. This radical increase in the funds for the management of migration and asylum (doubling the current financial perspective) was overshadowed by the skyrocketing spending on the management of external borders, quadrupling the current budget by establishing an Integrated Border Management Fund and allocating more than €12 billion for the decentralized agencies in charge of border management.³⁷ The latter aspect heralded the determination of the Commission to reinforce the relevant EU agencies and increase their impact on migration, asylum and border management. On the 12th of September 2018 the Commission brought forward a proposal for a new regulation on the European Border and Coast Guard, transforming it by 2020 into a standing corps of 10,000 operational staff with executive powers to effectively support member states on the ground. Similarly to that, the Commission advocated for the creation of an EU Asylum Agency in order to speed up return procedures and increase effective returns.³⁸

The political and organizational actions undertaken in 2018 at the EU level coincided with several important developments which determined, to various extents, the state of migration, asylum, border control and accompanying security-related issues. Firstly, the EU-Turkey deal on irregular migration based on

³⁶ European Council, *European Council Meeting (18 October 2018) – Conclusions*, EUCO 13/18, Brussels, October 18, 2018, <https://www.consilium.europa.eu/media/36775/18-euco-final-conclusions-en.pdf> (accessed October 30, 2018).

³⁷ European Commission, *EU Budget: Commission Proposes a Modern Budget for a Union that Protects, Empowers and Defends*, “Press Release”, May 2, 2018, http://europa.eu/rapid/press-release_IP-18-3570_en.htm (accessed March 13, 2019).

³⁸ European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and Repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council*, COM(2018) 631 final, Brussels, September 12, 2018, https://ec.europa.eu/commission/sites/beta-political/files/so_teu2018-border-coast-guard-regulation-631_en.pdf (accessed September 14, 2018).

the 2015 EU-Turkey Joint Action Plan and 2016 statement was in general implemented as far as the main conditions, i.e. halting the massive flow of refugees and asylum-seekers towards Europe in exchange for substantial financial assistance, were fulfilled. The number of refugees who came to Greece via Turkey fell in 2017 by 97% compared to the period before the agreement.³⁹ The Turkish authorities complained about the financial, organizational and administrative hardships caused by hosting more than three million refugees, mainly Syrian victims of the civil war. They also insisted that the EU transfer the money under the Facility for Refugees in Turkey scheme without delays and difficulties. On the 28th of June 2018, EU Member States agreed at the European Council meeting that the second instalment of €3 billion of the Facility (€2 billion financed from the EU budget and €1 billion by member states' contributions) would be transferred before the initial allocation of the first tranche of €3 billion has been entirely spent. By the end of 2018, the EU committed over €1 billion out of the next €3 billion instalment to humanitarian and development assistance under the Facility for Refugees mechanism.

Secondly, demographic and migratory trends were carefully monitored and analysed with a view of acquiring a full situational assessment of risks and tensions outside the EU, both at its external borders and in pre-border areas, as well as within member states' territories and at their internal borders, due to secondary migratory movements and the management of immigrants and refugees residing in the EU. As to the latter, the gradual restrictions on the movement of international migrants imposed by some countries in the Western Balkans in late 2015 / early 2016, up to the closing of the borders to migrants and asylum seekers of certain nationalities, decided on by Macedonia and Slovenia, significantly diminished the number of migrants entering the EU from the Balkans. However, long-term effects, entailing the processing of asylum application, temporary protection mechanisms, integration of immigrants, and administrative bottlenecks, exposed the main host countries in the EU to multiple problems, challenges and risks. As far as the external dimension is concerned, the EU put a proper emphasis on global demographic and migration trends, seeking viable responses to potential risks and future challenges. For instance, it extended cooperation and dialogue with African countries from the northern part of the continent to western and sub-Saharan Africa. The reason for this was the development and

³⁹ Deutsche Welle, *EU Asylum Applications Drop off Drastically in 2017*, December 30, 2017, <https://www.dw.com/en/eu-asylum-applications-drop-off-dramatically-in-2017/a-41976192> (accessed April 12, 2018).

diversification of migratory routes from sub-Saharan Africa in response to the growing demographic pressures and worsening socio-economic conditions, as well as political tensions and conflicts taking place there, particularly in western Africa, the Great Lakes region and the Horn of Africa.

Thirdly, the EU, partially under pressure from anti-immigrant factions in such states as Italy, Austria, the Netherlands, Malta, the Visegrad Four and the Scandinavian countries, promoted an exclusionary approach which consisted in preventing migrants from reaching the territories of the EU and keeping those rescued in controlled hotspots established by member states on a voluntary basis.⁴⁰ The objective of keeping migrants and refugees out of Europe by placing them in so-called regional disembarkation platforms resembles an idea of buffer zones protecting the EU from an unpleasant and politically incommodious problem.⁴¹ The securitization of internal and external migratory movements aims unambiguously at the lowering of a positive perception of immigrants by EU citizens and legal residents and portraying them as a serious problem of security and domestic order which should be deterred as early as possible and prevented from penetrating the territories of EU member states.

In spite of the declining migratory pressure on the EU's external borders and the appeasing statements of EU institutions, the long-term consequences of the migratory crisis were clearly visible during 2018. Secondary migration movements continued to cause severe strains on the immigration services in the member states. The number of asylum applications pending examination – despite a considerable reduction – still amounted to roughly 450,000 cases by the end of the year.⁴² The risk of organised criminal activities at the external borders, the threat of terrorism-related movements across the borders and the growing anti-immigrant sentiments in the EU completed the grim security picture.

⁴⁰ See F. Maiani, “Regional Disembarkation Platforms” and “Controlled Centres”: *Lifting the Drawbridge, Reaching Out Across the Mediterranean, or Going Nowhere?*, EU Immigration and Asylum Law and Policy Blog, September 18, 2018, <https://eumigrationlawblog.eu/regional-disembarkation-platforms-and-controlled-centres-lifting-the-drawbridge-reaching-out-across-the-mediterranean-or-going-nowhere/> (accessed February 20, 2019).

⁴¹ See J. Henley, *EU Migration Deal: What Was Agreed and Will It Work?*, “The Guardian”, June 29, 2018, <https://www.theguardian.com/world/2018/jun/29/eu-summit-migration-deal-key-points> (accessed June 30, 2018).

⁴² EASO, *Latest Asylum Trends – 2018 overview*, <https://www.easo.europa.eu/asylum-trends-overview-2018> (accessed March 29, 2019).

THE UNITED STATES: TIGHTENING THE SCREWS

The US policy in regard to immigration responded to the growing tension between the tradition of the US as an immigrant country and the political imperative, put forward by the Trump administration, to transform the relatively open system toward a more restrictive, exclusionary and security-driven one. Despite the increasing obstacles and disincentives, the influx of migrants continued in 2018 and the foreign-born population reached the highest level since 1910. In 2017, according to the US Census Bureau data, 13.6% of the US population, what is equivalent to more than 44 million, were foreign-born inhabitants.⁴³ More than a half of the immigrant population came from the countries of the Western Hemisphere located south of Rio Grande (27% from Mexico, 8% from Central America, 17% from South America and the Caribbean). The proportion of European migrants shrank to roughly 10%.⁴⁴ Over 75% (more than 33 million) were lawful immigrants: either having obtained US citizenship, or the status of legal permanent resident, or that of temporary resident with authorization to live in the United States. However, almost one quarter of the foreign-born population (10.7 million in 2016) lived in the country without an appropriate authorization.⁴⁵ The majority of them had lived there for more than 10 years. A substantial part of the total number of irregular migrants (almost 800,000) is constituted by those foreigners who had come illegally as children and then fell subject to deportation. Under the Deferred Action for Childhood Arrivals (DACA) program, launched in 2012, they benefited from two-year deportation deferrals and work permits.⁴⁶

⁴³ Ph. Connor, A. Budiman, *Immigrant Share in U.S. Nears Record High but Remains below that of Many Other Countries*, Pew Research Center, January 30, 2019, <http://www.pewresearch.org/fact-tank/2019/01/30/immigrant-share-in-u-s-nears-record-high-but-remains-below-that-of-many-other-countries/> (accessed February 2, 2019); C. Felter, D. Renwick, *The U.S. Immigration Debate*, Council for Foreign Relations, July 2, 2018, <https://www.cfr.org/backgrounder/us-immigration-debate-0> (accessed February 2, 2019).

⁴⁴ R. Nunn, J. O'Donnell, J. Shambaugh, *A Dozen Facts about Immigration*, The Hamilton Project, Brookings Institution, Washington, D.C., October 2018, p. 6, http://www.hamilton-project.org/assets/files/ImmigrationFacts_Web_1008_540pm.pdf (accessed January 5, 2019).

⁴⁵ J. S. Passel, D'V. Cohn, *U.S. Unauthorized Immigrant Total Dips to Lowest Level in a Decade*, Pew Research Center, November 27, 2018, p. 5, http://www.pewhispanic.org/wp-content/uploads/sites/5/2018/11/Pew-Research-Center_U-S-Unauthorized-Immigrants-Total-Dips_2018-11-27.pdf (accessed February 2, 2019).

⁴⁶ C. Felter, D. Renwick, *op. cit.*; L. Robertson, *The DACA Population Numbers*, FactCheck.org, January 12, 2018, <https://www.factcheck.org/2018/01/daca-population-numbers/> (accessed February 2, 2019).

The mounting pressure generated by the social, political and security problems in the countries of origin of migrants, especially in the 'close backyard' of the US, i.e. Mexico and Central America, was reflected in the growing number of illegal border crossings and apprehensions of third-country nationals, especially at the US-Mexico border. At the same time, this illustrated changes in the US immigration policy and border management implemented by the Trump administration. The anti-immigrant narrative spread by conservative Republicans and sharp, often xenophobic rhetoric practiced by the president elevated the issue of migration to the category of the top issues of foreign and security policies of the US and one of the key issues of American national security interests. This posture was underpinned by selective arguments pinpointing certain aspects of migration and mobility while concealing other features based on empirical evidence. First of all, despite a strong rise in the number of illegal immigrants and apprehensions at the external borders, the scale of the migratory pressure was far below the level recorded in the early 2000s, not to mention the 1980s and 1990s.⁴⁷ What has changed in 2018 is the social profile of the migrant population, especially at the US-Mexico border. More than a half (53%) of foreigners apprehended at this border travelled in families. Earlier, individual adults far outnumbered those of family members or unaccompanied minors, amounting to 68% in 2016 and 89% in 2013.⁴⁸ The geographical composition also changed radically. It is no longer primarily Mexican nationals who try to cross illegally the border. In 2018 non-Mexicans accounted for 62% of apprehensions (for comparison, in 2000 they constituted just 2%). The majority of them come from Central American countries of El Salvador, Guatemala and Honduras.⁴⁹ They arrived in 'caravans': organized waves trekking towards the US-Mexican border with the hope of crossing into the US territory.

The issue of refugees also underwent important alterations, partly as a result of the tough stance of the US authorities (including the 'refugee ban' imposed temporarily in the second half of 2017), partly due to limits on asylum.⁵⁰ The number of refugees admitted to the US fell in the first half of 2018 by 67% compared to the same period in 2017, reaching the record low in the 21st century. The

⁴⁷ J. Gramlich, L. Noe-Bustamante, *What's Happening at the U.S.-Mexico Border in 6 Charts*, Pew Research Center, April 10, 2019, <https://www.pewresearch.org/fact-tank/2019/04/10/whats-happening-at-the-u-s-mexico-border-in-6-charts/> (accessed April 20, 2019).

⁴⁸ Data from US Customs and Border Protection, quoted in: *ibidem*.

⁴⁹ *Ibidem*.

⁵⁰ See S. Pierce, *Immigration-Related Policy Changes in the Two First Years of the Trump Administration*, Washington, D.C.: Migration Policy Institute, 2019, pp. 17-21.

leading countries of nationality for refugees were: the Democratic Republic of the Congo, Myanmar, Bhutan, Ukraine, Eritrea, and Afghanistan. In the second quarter of 2018, 82% of refugees were from those six countries.⁵¹ President Trump substantially reduced the ceiling for refugee admissions and regional allocations in strong contrast to the decision taken by President Obama during his last year in office to raise the annual cap from 85,000 to 110,000.⁵² Trump reduced the ceiling in the fiscal year 2018 to 45,000 and further scaled back the refugee program to the record-low limit of 30,000 for the fiscal year 2019.⁵³ The reductions were particularly meaningful in regional allocations: for instance, the cap for the Middle East and South Asia (including war-torn Syria and unstable Iraq and Afghanistan) dropped from 40,000 to 9,000; for Africa, from 35,000, to 11,000.⁵⁴

The tough posture towards immigrants adopted by the Trump administration, accompanied by the numerous administrative and security measures implemented at the borders and in the interior, resulted in important and controversial developments which brought the US immigration policy to the forefront of public debate stimulated by the traditional, digital and social media. The legal and humanitarian aspects of the restrictive measures adopted by the federal authorities created confusion and sparked protests across the US. Four issues heated the debate:

(1) **Criminalization of illegal border crossings.** The tough attitude toward illegal crossings of the US-Mexico border was strengthened in May 2018 by the announcement from the Trump administration about the implementation of a ‘zero-tolerance’ policy. Immigrants apprehended crossing the southern border illegally were subject to prosecution.

(2) **Separation of children from their parents at the US-Mexico border.** The fast-tracking of criminal proceedings entails that every apprehended adult is sent directly to federal court under the custody of the US Marshals Service. This

⁵¹ Department of Homeland Security, *Legal Immigration and Adjustment of Status Report Fiscal Year 2018*, Quarter 3, <https://www.dhs.gov/immigration-statistics/special-reports/legal-immigration> (accessed April 30, 2019).

⁵² Congressional Research Service, *Refugee Admissions and Resettlement Policy*, “CRS Report”, no. RL31269, December 18, 2018, pp. 2-3, <https://fas.org/sgp/crs/misc/RL31269.pdf> (accessed January 4, 2019).

⁵³ J. Hirschfeld Davis, *Trump to Cap Refugees Allowed Into U.S. at 30,000, a Record Low*, “The New York Times”, September 17, 2018, <https://www.nytimes.com/2018/09/17/us/politics/trump-refugees-historic-cuts.html> (accessed January 4, 2019).

⁵⁴ Congressional Research Service, *op. cit.*

means that adults accompanied by minors must be separated because children cannot stay with their parents in jail. According to official data, 2,737 children were separated from their parents in the period between April and June 2018.⁵⁵ This practice provoked outrage and criticism at home and abroad and induced Donald Trump to sign on the 20th of June an executive order ending family separations at the border. Nevertheless, the problem of migrant children travelling alone remained pending, generating humanitarian concerns and administrative costs. The number of children in the custody of the Office of Refugee Resettlement rose significantly in 2018, exceeding 14,000 in December – an all-time high.

(3) Immigration case completion quota in courts. The anti-immigrant stance adopted by Donald Trump was followed by the Justice Department and Attorney General Jeff Sessions. Among his numerous controversial decisions, one provoked an exceptional uproar. It concerned new requirements for immigration judges to meet case closing quotas as part of their performance metrics. From the 1st of October 2018 judges were required to complete 700 removal cases per year. In addition, they were tasked to maintain a remand rate of fewer than 15%. Judges called those new standards “an attack on judicial independence” and warned that the new quota system would put the process rights of immigrants at serious risk.⁵⁶

(4) The ‘travel ban’ and limits on visas for nationals of ‘recalcitrant’ countries. The Trump administration continued the practice of preventing nationals of selected countries from entering the territory of the US, initiated in January 2017 in the form of the so-called ‘travel ban’. The third iteration of the ban in June 2018 affected nationals of seven countries: Syria, Libya, Yemen, Iran, North Korea, Somalia and Venezuela. Trump’s executive order of January 2017 also concerned limits on visas for nationals of countries which systematically refuse or delay cooperation with the US on the return of their nationals. They were upheld during 2018 although the list of recalcitrant countries was reduced to ten (compared to 23 in January 2017).⁵⁷

⁵⁵ C. Long, R. Alonso-Zaldivar, *Watchdog: Thousands More Children May Have Been Separated*, “U.S. News & World Report”, January 18, 2019, <https://www.usnews.com/news/politics/articles/2019-01-17/watchdog-many-more-migrant-families-may-have-been-separated> (accessed April 30, 2019).

⁵⁶ A. Reichlin-Melnick, *As Immigration Courts Quotas Go Into Effect, Many Call For Reform*, Immigration Impact, October 1, 2018, <http://immigrationimpact.com/2018/10/01/immigration-court-quotas-call-reform/> (accessed January 4, 2019).

⁵⁷ S. Pierce, *op. cit.*, pp. 8-9.

The last, but not least, debatable issue was the project of building a wall along the US southern border. The promise made by Trump during his electoral campaign and after being elected president was placed high on his political agenda. In 2018 it was a highly contentious issue which finally provoked a confrontation with the Congress that led to the 35-day government shutdown at the turn of 2018 and 2019. Based on the executive order on border security and immigration improvement of January 2017, the Trump administration secured in March 2018 \$1.6 billion for technical preparations and construction of a new, 160-km long section of the barrier. Hoping to gain the support of Americans concerned about the influx of Central American immigrants, in April 2018 Trump ordered the Pentagon to deploy 4,000 members of the National Guard to the southern border. Pointing to national security interests and threats from the increasing immigration and illegal border crossings, President Trump asked for \$5.7 billion for the border wall project in the 2019 fiscal year but Congress opposed it. Nevertheless, Trump's constant pressure on domestic institutions as well as foreign actors (the government of Mexico) contributed to an extreme securitization of the wall issue and its positioning as one of the most salient on the policy agenda.

CONCLUSIONS

Another year of grappling with the dynamic issue of migration was marked by the continuing attention paid to the overall consequences of global mobility for security and stability. The securitization discourse was specifically formed by extreme views and opinions highlighting imminent threats and long-term risks provoked by migrants. The growing support for anti-immigrant political forces in Europe, as well as in the US and – partially – Australia, reflected the complexity of the migration issue in terms of threats and opportunities. The significant reduction of migrants admitted to the most developed countries responded to political and ideological pressures but at the same time procrastinated on making systemic changes in the immigration and social security domains. The reinforcement of border security measures and focus on the anti-crime and anti-terrorist effects of the policies toward migrants overshadowed the long-term consequences of taming immigration for economic development and the financing of welfare systems. This tension may rise in the near future, producing additional negative outcomes for stability and security all over the world.

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Russia in the World

Cold War 2.0 on the Rise



ABSTRACT

In this paper, we briefly evaluate several of the main problems of Russian foreign policy related to its place in the world – the ones most important throughout 2018, and which will surely resonate in years to come. There are growing tensions with the West, Russia's strategy of *frozen conflicts*, involvement in the Syrian civil war, and the economic situation, which to a great extent influences its policies.

Keywords: International relations, international security, Russia, foreign policy, Cold War, Syria

1. INTRODUCTION

Since at least 2014¹ the term Cold War has been frequently used to describe the state of relations between the West and the Russian Federation. We are not going to discuss at length either the similarities or differences² between the original Cold War, which is a well-documented and conceptualized historical process, and the current state of world affairs, which is, naturally, much less understood.

¹ See for example: D. Trenin, *Welcome to Cold War 2.0*, "Foreign Policy", March 4, 2014, <https://foreignpolicy.com/2014/03/04/welcome-to-cold-war-ii/> (accessed December 27, 2018).

² See some interesting arguments in: O. A. Westad, *Has a New Cold War Really Begun?*, "Foreign Affairs", March 27, 2018, <https://www.foreignaffairs.com/articles/china/2018-03-27/has-new-cold-war-really-begun> (accessed March 28, 2018).

However, we find the term Cold War applicable to our considerations pertaining to Russia's place in the world, because its momentous contradictions with the Western world are exactly what best define today's Russia. Therefore, the main resemblance between the history and the present lies in the will of both sides to oppose each other with the use of a wide range of aggressive means, short of all-out military confrontation. This will is of course unequally distributed, because, as we shall argue, Russia badly needs heated confrontation, while the West would prefer softer means of competition. Thus, as the new Cold War is on the rise, we will argue that this is happening to a great extent by the Kremlin's own design.

In this paper we first of all briefly evaluate the position of the Russian Federation in the world and the main planes of the Russian foreign policy as of the end of 2017. This is intended as necessary background for our further considerations, which come in the next and most important part of the article. It contains an evaluation of several of the main problems of Russian foreign policy related to its place in the world – those most important throughout 2018, and which will surely resonate in years to come. And finally, we present a brief conclusion which will encompass a general assessment of the year's developments and brief predictions for the future.

2. RUSSIA AT THE END OF 2017

At the end of 2017 Russia was continuing on the course selected several years before, bound for a multi-faceted confrontation with the West. We agree with the argument that said confrontation is for the most part caused by Russia's actions.³ In this section, we will try to assess Moscow's positions by pointing to the main dimensions of the renewed Cold War. Further on we will assess the key drivers behind this Russian stance. The following is a summary of the views that we have already expressed several times in recent publications.⁴

³ R. N. Haass, *Cold War II*, Project Syndicate, February 23, 2018, <https://www.project-syndicate.org/commentary/new-cold-war-mainly-russia-s-fault-by-richard-n--haass-2018-02> (accessed February 25, 2018).

⁴ See for example: M. Czajkowski, *Kremlin's Survival Strategy – The International Dimension*. In: A. Podraza (ed.), *A Transatlantic or European Perspective of World Affairs: NATO and the EU Towards Problems of International Security in the 21st Century*, Madrid: Instituto Franklin, Universidad de Alcalá, 2018, pp. 143-159, or *Aktualna polityka zagraniczna Federacji Rosyjskiej a Unia Europejska*, "Krakowskie Studia Międzynarodowe" 2017, vol. XIV, no. 2, pp. 115-135.

2.1. The Main Dimensions of Cold War 2.0

As far as Russia is concerned, Cold War 2.0 may be characterized by several key developments, ranging from symptoms of global strategic confrontation, to keen competition in several important regions, to the propaganda war on the Russian internal front.

As to the first of these levels, we can observe hostile Russian activities directed against the US and the West as a whole. There are many instruments of this effort, ranging from intimidation via the renewed military rivalry, to information warfare intended to disrupt the Western institutions⁵, to a growing ideological assault against the values fundamental to Western identity. The most direct and clearly visible result of these actions is the interference in political processes within the Western societies, like meddling in the 2016 presidential elections in the US⁶, and influencing other political developments in the US⁷ and in other countries. With regard to this an

[...] informational pressure has become a fundamental instrument of Russian influence [...]. Pretexts for overt and covert media operations have included deliberately provoked incidents in the field of intelligence, on state borders, through migration flows, at events organised on Russia's own territory and the territories of foreign states (e.g., conferences, festivals, peace camps), violations of the air-space of NATO states and neighbouring countries, interference in parliamentary and presidential elections, financial and political support for radical environments and centrifugal trends within the EU, interfering with decision-making processes, discrediting political leaders who have opposed the Kremlin, and many more besides.⁸

⁵ For comprehensive information on Russia's disruptive activities see: GMF Alliance for Securing Democracy, *Authoritarian Interference Tracker*, <https://securingdemocracy.gmfus.org/toolbox/authoritarian-interference-tracker/> (accessed December 27, 2018).

⁶ See in detail: R. D. Blackwill, P. H. Gordon, *Containing Russia*, "Council Special Report", no. 80, Council on Foreign Relations, January 2018, pp. 6-9; and K. Yourish, L. Buchanan, D. Watkins, *A Timeline Showing the Full Scale of Russia's Unprecedented Interference in the 2016 Election, and Its Aftermath*, "The New York Times", September 20, 2018, <https://www.nytimes.com/interactive/2018/09/20/us/politics/russia-trump-election-timeline.html> (accessed September 22, 2018).

⁷ See for example a tracker that monitors Russian Twitter operations: GMF Alliance for Securing Democracy, *Hamilton 68*, <https://dashboard.securingsdemocracy.org/> (accessed December 14, 2018).

⁸ J. Darczewska, P. Żochowski, *Russia's 'Activity' toward the West – Confrontation by Choice*, "Russian Analytical Digest" 2017, no. 212, December 19, p. 2, <http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/RAD212.pdf> (accessed December 22, 2018).

The second, regional level of the new incarnation of the Cold War is the renewed Russian interest in the struggle for control of the areas in which Moscow had some influence in the 20th century but which was substantially lost after the collapse of the Soviet Union. Additionally, Russia tries with great determination to establish its presence in other places, wherever possible. There are many different ways to do so, from economic incentives, to political backing, to information warfare, to military assistance and the use of the Russian armed forces in combat. The most crucial areas in which Moscow is trying to reassert itself as the regional power are Central Europe, Eastern Europe, the Caucasus, the Middle East⁹ and Central Asia, but we should also add Africa and Latin America as areas increasingly important from the point of view of Russian foreign policy.¹⁰ In all of these regions, the Kremlin's aim is to create opportunities for co-operation through which to foster the spread of its influence and push against the interests of the Western nations. Generally speaking, this is a policy of establishing and sustaining multiple fronts of competition with the West, especially with the US.

And finally, on the third level of this new Cold War there is the propaganda war waged by the Kremlin against its own society. This is intended to inflate the perception of threat from the West and to augment the *fortress under siege* mentality. Furthermore, by praising national values, especially resilient defiance against external influence, the authorities try to underline the idea that Russians have a different set of values to the one acknowledged in West. This internal information warfare strategy is in the first place supposed to augment the political legitimization of the regime, and secondly to strengthen the Russian people's will to sustain a difficult economic situation.

2.2. *The Main Drivers of the Current Russian International Strategy*

There are many reasons for this policy of amplifying threats and then confronting their purported sources. As we do not have enough space within the framework of this article to describe the different interpretations of this proposed by various authors, but will put forward only our own argument. It is, of course, debatable, but it represents our best knowledge and the conviction based upon it.

⁹ See this very informative analysis: W. Rodkiewicz, *Bliskowschodnia polityka Rosji. Regionalne ambicje, globalne cele*, „Prace OSW”, no. 71, December 2017.

¹⁰ See this very informative and comprehensive presentation: Carnegie Endowment for International Peace, *The Return of Global Russia*, <https://carnegieendowment.org/publications/interactive/global-russia> (accessed November 11, 2018).

Our explanation encompasses three levels of argument.

The first-level considerations point to what we call the “realist-futurist” perspective. This reflects the Russian authorities’ assertion that they evaluate world affairs using *the realist* viewpoint. Therefore, they focus on analyzing the relative power of countries and international institutions, weigh what they take to be the real interests of nation-states, and try to gauge the state and resilience of the international system. This state-centric perspective, as seen from the realist point of view, stresses the capacities of countries and the strength of the instruments possessed by them, along with the willingness of their authorities to wield the tools they have. This results in the Kremlin’s assessment of what actions states and non-state actors are actually able to undertake and to what effect.

What emerges from such an analysis is a picture of a weakening West, no longer able to maintain the liberal order which it created and which has suited its interests so well. This weakness is especially visible in terms of its strength of will to act decisively, which is evidently waning, which in turn leads to a virtual lack of ability to confront mounting threats and to promote its own interests in the long run. In short, the West as a whole is, in the Kremlin’s optics, in sweeping decline without any clear vision to stop it, while self-serving political and financial elites keep it that way for their own short-term political and economic benefits.

This weakness of the West, as the narrative goes, contributes to the sharp transformation of the world order, which is driven mainly by the rise of huge countries like China or India, by change in Africa and by the turmoil in the Middle East, which is far from being over. The maturing of the new technologies of the virtual world and the emergence of the even more advanced reality of artificial intelligence are also important factors in these developments. Therefore, if we assess the world from Moscow’s standpoint there is clearly no need for Russia to conform to Western-made rules or values, as they are inevitably doomed to fade. The world as we know it is nearing its end and a new one is emerging. The international actors who have understood this will be able to shape the coming international system, while those who are stuck in the old world will fall prey to the new one’s creators. Furthermore, it seems to the Kremlin a very smart thing to contribute to the fall of the old system, to speed things up and, furthermore, to increase Russia’s ability to shape the new world order in ways considered to be most beneficial to itself. This is *the futurist* part of the whole narrative.

This argument explains first of all why the Russian leaders, who on the other hand are usually considered to be rather rational and cunning political players, are ready to commit the scarce resources of an economically weak country to huge global endeavors. It also explains why Moscow does not care for the established Western standards – even if this costs Russia a lot, due to punishing

sanctions (despite many critics' opinions¹¹, these are actually quite effective¹²), or as a result of the other Western counteractions in political and military spheres. Simply put, the stakes are extremely high and success lies ahead in the future – it is therefore necessary to invest economically and politically today to reap the benefits tomorrow.

This purportedly realist perception of the world in a state of transition is, we believe, an important driver of Russia's foreign activity. It may even be argued that this way of thinking forms the bulk of the new ideology emerging on the Russian side of the new Cold War.¹³

The second level of the interpretation is fully compatible with the first, and forms a sort of the other side of the coin that makes the whole argument's international dimension complete. It relates to the genuine perception of threat that is profoundly present within the Russian elites and the society as a whole, and which perfectly complements "realist-futurist" thinking, using the same *realist* method of measuring the world.

The threat perception that persists in the Russian collective identity encompasses two basic factors. One is the traditional awareness of the danger from the West that has lived in the Russian mind for centuries; the mentality of the *fortress under siege* has been augmented, both by real events like the devastating wars which came from the West several times, and by systematic inflation of the Western threat for internal purposes. The latter has been continuously performed throughout history by various rulers for many reasons, but especially because it was always deemed effective as one of the best tools for the legitimization of authority. The second factor is the Russian exceptionalism that stems, among other things, from the traditional concept of the Third Rome, which was nicely replaced by the communist idea to bring social justice to the world. This attitude largely contributes to the perception of a unique Russia being endangered by "the other" who do not understand it and therefore want to destroy it instead of getting along with it.

¹¹ See for example: E. Ashford, *Why New Russia Sanctions Won't Change Moscow's Behavior*, "Foreign Affairs", November 22, 2017, <https://www.foreignaffairs.com/articles/russia-fsu/2017-11-22/why-new-russia-sanctions-wont-change-moscows-behavior> (accessed December 14, 2018).

¹² N. Gould-Davies, *Sanctions on Russia Are Working*, "Foreign Affairs", August 22, 2018, <https://www.foreignaffairs.com/articles/russian-federation/2018-08-22/sanctions-russia-are-working?cid=int-lea&pgtype=hpg> (accessed August 24, 2018).

¹³ P. Felgenhauer, *Russia Develops a New Ideology for a New Cold War*, "Eurasia Daily Monitor" 2018, vol. 15, issue 52, April 5, <https://jamestown.org/program/russia-develops-a-new-ideology-for-a-new-cold-war/> (accessed April 6, 2018).

In the post-Cold War world, this perception of threat is represented by the conviction that the West attempted to isolate and subdue the Russian Federation after it emerged from the ashes of the Soviet Union. As is widely believed in Russia, the real roots of current hostilities lie in the early 1990s, when Moscow abandoned communism and tried to become a partner for the West. But instead of engaging Russia the Western powers struggled to sideline it, pressured it with their values and ideas, and pushed it from vital positions in Europe and elsewhere. This was the moment when Russia separated from the West instead of becoming a sort of third part of it, in addition to the US and the EU.¹⁴ In practical terms, this means that the West should have left post-Soviet space and Central Europe in the Russian sphere of influence, disregarding the aspirations of numerous nations. According to this narrative, Russia was entitled to decide on the destiny of those nations, and the West should have acknowledged that. When it did not do clearly meant that it had hostile intentions. The overarching propaganda machine that controls the information space in Russia, and its well-trained, experienced psychological warfare cadres, guards this view and maintains it as an important part of Russian collective and individual identity.

And this is precisely why the greater part of Russian society and the elites are genuinely convinced that their country is actually endangered by the vile West, incarnated in the increasingly aggressive NATO.¹⁵ And so, Russia is allegedly the subject of vicious attacks that take many various forms such as political, economic and military pressure or even hybrid warfare against it.¹⁶ Therefore, Russians consider their own actions against the West fully legitimate. For example, they see influencing Western political processes and elections as just a counteraction prompted by the West, which long ago started spreading its influence in the sphere that rightfully belonged to Russia – Central and Eastern Europe, Caucasus and Central Asia.

Additionally, as noted by a disarmament expert assessing Putin's state-of-the-country address of 2018, "[i]f anything, his speech revealed the persistence of deeply rooted insecurities about Russia's ability to thrive in competition with the

¹⁴ А. Храмчихин, *Россия и Запад остаются антагонистами*, "Независимое Военное Обозрение", December 15, 2017, http://nvo.ng.ru/gpolit/2017-12-15/1_977_antagonists.html (accessed December 20, 2017).

¹⁵ А. Бартош, *Гибридизация НАТО набирает обороты*, "Независимое Военное Обозрение", January 12, 2018, http://nvo.ng.ru/gpolit/2018-01-12/1_979_nato.html (accessed January 14, 2018).

¹⁶ Idem, *России неизбежать гибридных войн*, "Независимое Военное Обозрение", March 9, 2018, http://nvo.ng.ru/concepts/2018-03-09/1_987_hybridwar.html (accessed March 10, 2018).

West”.¹⁷ This tacit understanding of Russia’s inferiority in most areas is another feature which naturally calls for a firm answer to the menace of the hostile Western world.

The existence of this well-established perception of threat helps to explain why external conflict has been chosen as the uniting factor of Russian politics. This is because it was, and is, very easy to make Russians believe they were and are in danger and therefore must unite around the authorities and allow the strengthening of the state in every one of its capacities. And here, finally, we come seamlessly to the third level of our interpretation, which concerns the ruling elite and the legitimization of increasingly personalized authoritarianism¹⁸ in Russia. We might add that we are strongly convinced that this internal political plane of the whole argument is the most essential one.

As we have argued since 2015,¹⁹ the Russian authorities’ legitimacy suffered serious blows in at the turn of the first decade of the 21st century. Until then it had relied on the so-called *Putin Consensus*, which was a sort of unspoken agreement between the Kremlin and the society. It envisaged popular consent to turning the state steadily more and more authoritarian in exchange for a constant growth of the welfare of the society, ensured by the government. However, since systemic deficiencies, lack of reforms, and low oil prices contributed to the downfall of the Russian economy, which in turn reflected on the decrease of the wealth of the nation, the Russian authorities were compelled to invent another way of legitimizing themselves – the external existential threat, which, as they argued (see above), never subsided after the end of the Cold War. We fully agree with one keen observer that

[t]he present stage of development of Putin’s model of governance is characterised by stagnation and inertia in the economic, political and ideological spheres (it is frequently compared with the Brezhnev era of ‘blossoming decay’). Efforts to

¹⁷ S. Squassoni, *Threat Assessment: Potemkin Putin versus the US Nuclear Posture Review*, “Bulletin of the Atomic Scientists”, March 4, 2018, <https://thebulletin.org/2018/03/threat-assessment-potemkin-putin-versus-the-us-nuclear-posture-review/> (accessed March 5, 2018).

¹⁸ M. Zavadskaya, *The Fight for Turnout: Growing Personalism in the Russian Presidential Elections of 2018*, “Russian Analytical Digest” 2018, no. 217, March 26, pp. 2-4, <http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/RAD217.pdf> (accessed March 27, 2018).

¹⁹ M. Czajkowski, *Rosyjska operacja w Syrii – cele i możliwe następstwa*, „Analizy ZBN” 2015, no. 1 (1), October 20, http://www.zbn.inp.uj.edu.pl/analizy?p_p_id=56_INSTANCE_qVSbpBSjmGcR&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1&groupId=92718966&articleId=105026627 (accessed December 30, 2018).

mobilise public support for the government focus on negative issues: strengthening the anti-Western ideology [...], with its underlying concepts of seeking an enemy and of Russia being a fortress under siege, re-Sovietisation of the policy of memory and consenting to a rehabilitation of profoundly autocratic models of governance [...].²⁰

This is, by the way, a very convenient method of legitimization because it is based on an obvious historical background and on the carefully maintained identity of Russia being confronted with the world for centuries, which we have depicted above. It is also convenient for the government, because it interacts with a very predictable “enemy” which, certainly and first of all, wants co-operation, balance and good relations. This makes the conflict manageable in the sense that Russia may escalate and deescalate it according to its own wishes, with the comfortable confidence that it will not spin out of control as the other side will respond in the way it is expected to. The other very important feature of the presently renewed conflict, which plays into the hands of the Kremlin, is that it allows the malevolent West and its huge sanctions regime to be blamed for all of Russia’s economic woes.

The essence of the legitimization process derived from this serious but manageable conflict is that in its course the Kremlin may create opportunities to display the resolve, skills, and decisiveness necessary to protect the people of Russia. Then it may televise it to the nation to rally it under the flag, call people to the colors using patriotic slogans, and finally prove that the current régime is the one that can defend the country and its people. This narrative is also designed to distract society’s attention from internal problems because the existential external threat is portrayed as so important that it dwarfs all the other issues.

This somewhat constructivist approach to the understanding of the drivers of Russia’s conduct should complement the traditional realist approach to Moscow’s foreign and security strategies. This is because Russians really think of their place in the world in terms of existential threat, no matter what the real situation looks like. It is the natural Russian suspiciousness and the fear of the West deeply embedded in people’s minds that enable the authorities to rather easily securitize foreign policy and seek the new legitimization after the economy stagnated.

²⁰ M. Domańska, *Putin for the Fourth Time. No Vision, No Hope*, “OSW Commentary”, December 13, 2017, <https://www.osw.waw.pl/en/publikacje/osw-commentary/2017-12-13/putin-fourth-time-no-vision-no-hope> (accessed December 15, 2017).

As we have already noted, this perspective is also fully compatible with the former two; it might even be said that it shows the original dimension of the whole process. It also explains why the Russian authorities are so daring and blunt – it is because their very existence is at stake. Simply speaking, if the Kremlin's occupants cannot prove that their authority is necessary for the very survival of Russia, they will not be able to rule with the consent of the people. Consequently, this would mean that a widespread terror, with all its costs and unpredictability, would become the last resort in the preservation the power of the ruling elite.

3. RUSSIA IN THE WORLD 2018 – SELECTED PROBLEMS²¹

During the course of the year 2018 we observed a further development of the processes highlighted and briefly explained above. Particularly important was a continuation of the international strategy of controlled conflict with the West which was still the most important defining factor of the Russian foreign policy. As we have already explained, its causes are deeply rooted in multi-faceted threat perception and in the authorities' desire to stay in power at all costs. These intertwined factors also had an impact on the economy of Russia, which virtually stagnated despite some relatively positive statistics.

As we have argued several times, Russia's position in the world is driven to the greatest extent by its internal political dynamic, which, in turn, is determined mostly by the state of country's economy. Therefore, the most important and profound problem of the Russian foreign policy of 2018 was economic development and this issue must be addressed first here. The other important problems that we choose to highlight in this section are the state of relations with the West and Russia's policy of cultivating so-called "frozen conflicts", with special attention to the war in Syria.

3.1. Economy

As we often argue, the main problem that Russia faces is economic stagnation, which may even be called a creeping crisis. Its structural nature limits the

²¹ For a comprehensive assessment of Russia's current status see this very informative publication: OSW Team, *Putin for the Fourth Time. The State of and Prospects for Russia (2018-2024)*, Warsaw: Centre for Eastern Studies (OSW), March 2018.

state's ability to overcome the most acute economic pitfalls, which contributes to the lowering of the society's living standards. This, in turn, compels the authorities to continue seeking external legitimization in the way that has been described above. Although President Vladimir Putin trumpeted rosy prospects for economic and social development²² and the advent of a whole new innovative economy, it seemed overly unrealistic. No substantial structural reforms were implemented during 2018 and none are on the table for the foreseeable future, while the pauperization of the society²³, especially its weakest strata²⁴, increases.

A country's economic situation is usually described with use of some basic metrics like GDP, GDP per capita or the others like them. This is of course informative, especially when the dynamic of these indicators is considered. But these metrics do not explain everything, and some other methods of description should also be applied to show the characteristics of the economy and its prospects. Additional and more sophisticated statistical tools may of course be applied, but we cannot afford an extended analysis of that sort within the framework of this article. Instead, we will only try to enumerate and briefly describe those most important structural features of the Russian economy that reflect its current state and future prospects, against the background of some basic numbers.

In terms of the GDP PPP (measured in current international USD) Russia performed more or less steadily at the level of 3.6-3.7 trillion from 2012 to 2017.²⁵ However, due to a sharp decline of the Russian currency in this period, the GDP measured in current USD, which had peaked in 2013 at 2.3 trillion, subsequently fell to a low of 1.3 trillion in 2016 with a bounce to 1.6 in 2017.²⁶ The recent forecast²⁷ holds that the rate of growth should remain at the level 1.6-1.8% in 2018-2020. However, currently available estimates do not take into account the decline of the oil prices that started in November 2018 – Russian Urals crude blend fell from its

²² В. Путин, *Послание Президента Федеральному Собранию*, March 1, 2018, <http://kremlin.ru/events/president/transcripts/messages/56957> (accessed March 2, 2018).

²³ *Безпросвета: бедных в России стало больше*, "Газета.ru", December 11, 2018, <https://www.gazeta.ru/business/2018/12/10/12090253.shtml> (accessed December 12, 2018).

²⁴ J. Rogoża, *Watering Down the Pension Reform in Russia*, Centre for Eastern Studies, September 5, 2018, <https://www.osw.waw.pl/en/publikacje/analyses/2018-09-05/watering-down-pension-reform-russia> (accessed September 7, 2018).

²⁵ The World Bank, <https://data.worldbank.org/indicator/NY.GDP.MKTP.PP.CD?locations=RU> (accessed November 29, 2018).

²⁶ Ibidem.

²⁷ As of November 2018, untitled document <https://www.oecd.org/eco/outlook/economic-forecast-summary-russia-oecd-economic-outlook.pdf>, in: *Russian Federation – Economic Forecast Summary (November 2018)*, Paris: OECD, November 2018, <http://www.oecd.org/eco/outlook/russian-federation-economic-forecast-summary.htm> (accessed November 29, 2018).

peak of over 80 USD at the beginning of October to around 50 USD by the end of December 2018. At the onset of 2019 it is impossible to predict whether black gold's price will recover to the level of 70 USD, which is considered reasonably comfortable for Russia.

The problem of the price of hydrocarbons takes us to one of the main features of the Russian economy: its heavy dependence on the export of natural resources.²⁸ This is an obvious and often argued issue which does not need further rehearsal here; it is only worth noting that this problem is also well understood in Russia – some even say that “[...] Russia remains a raw material appendage of the EU”.²⁹ The most important long-term impact of this state of affairs on the Russian economy is that its overdependence on hydrocarbons means that related industries maintain priority in the Russian economic reality. That is why no tangible transition to high-tech industry can be observed, despite the fact that it has been frequently declared on the political level. And that is why it is so difficult to get out of the vicious circle of the priorities of the gas-and-oil-addicted economy.

This issue takes us to another problem: the increasing underinvestment in the Russian economy – and this refers to an extent even to the hydrocarbons sector.³⁰ This is mainly because state-owned and private entities usually do not use long-term planning, but concentrate on short-term extraction of profits. A good part of those profits end up in private coffers, which is another well-known and often-depicted process. Much of the capital is also transferred abroad by companies and banks – this particular phenomenon accelerated greatly throughout 2018. According to the official data it reached 42 billion USD in November, projected to rise to 66 billion USD by the end of the year.³¹ What is more, average foreign investment net flows to Russia have declined visibly since 2014³², not only

²⁸ See current and perspective budget figures: *Russia's Budget for 2019-2021: Increasing Reserves, Decreasing Transparency*, “OSW Analyzes”, November 28, 2018, <https://www.osw.waw.pl/en/publikacje/analyses/2018-11-28/russias-budget-2019-2021-increasing-reserves-decreasing-transparency> (accessed November 30, 2018).

²⁹ Р. Фаляхов, *Сырьевой придаток: как Россия меняет газ на технологии*, “Газета.ru”, April 30, 2018, <https://www.gazeta.ru/business/2018/04/17/11720185.shtml> (accessed May 2, 2018).

³⁰ V. Inozemtsev, *Claims of Peak Oil Production in Russia Probably Overblown*, “Eurasia Daily Monitor” 2018, vol. 15, issue 147, October 17, <https://jamestown.org/program/claims-of-peak-oil-production-in-russia-probably-overblown/> (accessed October 18, 2018).

³¹ *Capital Outflow from Russia Sets New Records*, “Pravda.ru”, November 13, 2018, http://www.pravdareport.com/news/russia/economics/13-11-2018/141984-russia_capital_outflow-0/ (accessed November 15, 2018).

³² Trading Economics, *Russia Foreign Direct Investment Net Flows*, <https://tradingeconomics.com/russia/foreign-direct-investment> (accessed December 28, 2018).

for purely pragmatic reasons³³ but also thanks to growing, politically motivated, economic pressure exerted on the Russian economy.³⁴

Despite this grim picture, Russia seemed to be able to weather the worsening economic situation³⁵, so the “[...] collapse is not around the corner”.³⁶ The society got accustomed to a “new normal” on a much lower level than some five years previously, although apathy and a sense of hopelessness spread.³⁷ Nevertheless, lack of real progress itself and the stagnation of the economy was the most profound feature of the Russian economic reality of 2018. The authorities seemed unable to restore significant economic growth and increase the wealth of the society, because the woes of Russia’s economy are systemic and have not been addressed in any significant way, at least until now.³⁸

One of the worst and most often discussed problems of the Russian economy is the legal system, which is unclear, full of loopholes and leaves room for arbitrary decisions to be made. This allows cohorts of bureaucrats at every level of the state apparatus to extract illegal profits from their normal activities – the overarching system of corruption is embedded in the society and economy and was alive and well in 2018, despite anticorruption rhetoric and some demonstrative anti-graft operations. And all of this is unlikely to change³⁹, because bureaucracy of every kind lives in symbiosis with the political authorities, and remains their primary

³³ See for example how Santander bank defines disadvantages for FDI in Russia: Santander Bank, *Russia: Foreign Investment*, December 2018, <https://en.portal.santandertrade.com/establish-overseas/russia/foreign-investment> (accessed December 28, 2018).

³⁴ See for example: J. Kajmowicz, *Amerykańscy giganci uderzają w rosyjską energetykę. Putin pod presją*, “Energetyka24”, March 6, 2018, <https://www.energetyka24.com/amerykanscy-giganci-uderzaja-w-rosyjska-energetyke-putin-pod-presja> (accessed March 7, 2018).

³⁵ See for example: A. Åslund, *Russia’s Economy: Macroeconomic Stability but Minimal Growth*, “Russian Analytical Digest” 2018, no. 220, May 16, pp. 2-4, <http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/RAD220.pdf> (accessed May 20, 2018).

³⁶ S. Secrieru, *The Real and Hidden Costs of Russia’s Foreign Policy*, “Brief Issue”, no. 2, Paris: European Union Institute for Security Studies, February 2018, p. 2.

³⁷ *Безрыбка: чего ждать России в 2019 году?*, “Газета.ru”, December 28, 2018, https://www.gazeta.ru/comments/2018/12/28_e_12111787.shtml (accessed December 28, 2018).

³⁸ D. Tsygankov, *Regulatory Policy in Russia – Smart Suggestions, But Poor Implementation*, “Russian Analytical Digest”, 2018, no. 224, September 26, pp. 2-4, <http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/RAD227.pdf> (accessed September 28, 2018).

³⁹ See the very informative analysis of Putin’s system in: J. Petrović, *The Putin System*, “CSS Analyses in Security Policy”, no. 225, April 2018, <http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/CSSAnalyse225-EN.pdf> (accessed May 5, 2018).

tool for exerting power over the society and an instrument for extracting profits for the inner circle of the power elites.

All in all, the economic stagnation in Russia in 2018, still balanced on the brink of crisis, limited the authorities' ability to use its instruments of internal and foreign policy alike. Hence the demand for legitimization via external threat persists, for if the authorities cannot prove themselves to be benefactors of the society, they must pose as its defenders.

3.2. Relations with the West

Based on what we have already argued, it is no wonder that Russia's relations with the West in general and the US in particular continued to deteriorate in 2018.

However, from the point of view of the vital interests of the Western nations, there were no substantial, unmanageable problems, ones that could not be at least de-escalated. The contradictions in these relations might well have been resolved in good faith and the rivalry could have easily been kept at a lower level of confrontation, or might even become a sort of friendly competition. What is more, the US and Russia shared many very important common interests in the economic and security fields. With respect to this, the current incarnation of the Cold War does not resemble the original one, which was based on ideological contradictions that could not have been overcome; they could only be set aside for tactical reasons and even then only for limited periods.

But from the Russian point of view, the national interest looks different. We must remember that the Russian Federation is a highly authoritarian state: the respected watchdog Freedom House rates it "not free" with just 20 points out of the 100 available.⁴⁰ In this kind of a system the interests of the society, such as economic growth, welfare, social development, the freedom of individuals to achieve their own goals and so on are subordinate to the interest of the power elite. This elite's well-being is not directly bound to that of the society as a whole because an unelected government is not directly dependent on its constituency. Therefore, it does not have to care for voters in order to survive and continue to control the country in such a way as to achieve the personal and corporative goals of leading figures, ruling circles and the institutions that support them.

And here is the nature of the contradictions between the West and Russia that lingered throughout 2018. For the Russian authorities, this conflict is itself

⁴⁰ *Freedom in the World 2018. Russia Profile*, <https://freedomhouse.org/report/freedom-world/2018/russia> (accessed December 28, 2018).

a value, as it is an important tool in the upholding of power, so it persists despite the fact that the Western side of it considers this struggle counterproductive and unnecessary, especially in terms of economy and security.

Therefore, Russian relations with Western nations were full of cold words and adversarial actions throughout 2018, but these were prompted rather by Russia than the West. One of the most prominent examples of brutal offensive action was the attempted murder of Sergei Skripal, a former Russian intelligence operative residing in the UK. It has been argued, and we tend to agree, that this was a sort of Russian demonstration, intended among other things to intimidate the West and prove that Russia was ready to use every means at its disposal against its enemies.⁴¹

In 2018, the mounting militarization of relations became one of their most distinctive features. Vladimir Putin's threats of new weapons,⁴² including the concept of a very powerful autonomous underwater system – an ultimate retaliation weapon with a yield of 100 Mt⁴³ – was accompanied by military provocations and the actual use of armed force as an instrument of Russia's foreign policy as highlights of the year. This prompted some voices in the US and elsewhere to promote an increase in the pace of the development of the new capabilities directed at negating Russian advances.⁴⁴ But the West, in general, did not seem inclined to counter the Russian moves with an all-out arms race – the military threat from Moscow was rather downplayed by the majority of experts and politicians. This was mostly because the Russian armed forces, despite their high rate of modernization, remained inferior to those of the advanced Western nations, especially with regard to capabilities for projection of power abroad.⁴⁵

⁴¹ W. Rodkiewicz, *The Russian Attack on the United Kingdom: The Aims and the Consequences*, "OSW Analyses", March 14, 2018, <https://www.osw.waw.pl/en/publikacje/analyses/2018-03-14/russian-attack-united-kingdom-aims-and-consequences> (accessed March 15, 2018).

⁴² P. Felgenhauer, *Putin Unveils Array of Nuclear 'Super Weapons' Aimed at US*, "Eurasia Daily Monitor" 2018, vol. 15, issue 32, March 1, <https://jamestown.org/program/putin-unveils-array-of-nuclear-super-weapons-aimed-at-us/> (accessed March 2, 2018).

⁴³ J. Drew, *Russia's Doomsday Torpedo Is A 'Third Strike' Weapon*, "Aviation Week & Space Technology", January 24, 2018; <http://aviationweek.com/defense/russia-s-doomsday-torpedo-third-strike-weapon> (accessed January 25, 2018).

⁴⁴ See for example: L. Seligman, *U.S. Calls For Better Defenses As Putin Touts New Nukes*, "Aviation Week & Space Technology", March 2, 2018; http://aviationweek.com/defense/us-calls-better-defenses-putin-touts-new-nukes?NL=AW-05&Issue=AW-05_20180305_AW-05_986&sfvc4enews=42&cl=article_1&utm_rid=CPEN1000001539178&utm_campaign=13901&utm_medium=email&elq2=f53860a09c77445e902d25c3aeac5118 (accessed March 3, 2018).

⁴⁵ A. Lavrov, *Russian Military Reform from Georgia to Syria*, Washington, DC: Center for Strategic & International Studies, November 2018, p. 26, <https://csis-prod.s3.amazonaws.com/s3fs->

And so, despite loud announcements, the military dimension of Russian foreign policy quite obviously remained trained on the internal public – it is clearly a tool of the securitization of relations with the West. In reality, Russia remained militarily inferior to the US, and the more it tried to show otherwise the more profoundly true it was. But in fact this does not matter from the Russian point of view, as Moscow is not preparing for a full-scale confrontation with the West. On the contrary, the Western advantage, along with even limited counteractions to the Russian military developments, played directly into the hands of the Kremlin. This was because Western military might, actual and inflated by propaganda alike, was used as an important justification for the actively defensive posture of the Russian authorities.

The other significant factor of relations with the West in 2018 was the alleged involvement of the Russian entities in the political life of Western nations, especially the US. This was intended, it is said, not only to influence the electoral process but also to stir-up many controversial issues in American political and social life. In 2018 a lot of information surfaced depicting the way Russian troll farms and spy agencies tried to impact heated American political debates. This not only cast a long shadow on mutual relations but was also increasingly securitized in the US political debate, in fact even more than the military threat from Russia. Thus Moscow's meddling in American political and social life was not only viewed as a menace from outside but also became an instrument of internal political struggle in the US.

It is, however, worth noting that influencing other nations' internal processes is one of the oldest instruments of foreign policy and it should not be viewed as something extraordinary. The question, rather, is this: why did the Russians decide to act so bluntly and directly that that many activities could be attributed to them relatively clearly? This, in turn, hit Russia back severely, for example through an expansion of the sanctions regime and other American counteractions that are negative for Russia's interests.

The answer to this important question is, of course, multi-faceted, the argument here being a sort of continuation of the one already presented in the overview of 2017.

First of all, it appeared that the Kremlin cared in 2018 even less about sanctions or international opinion than before – at least when it came to the opinion of the so-called democratic, developed world. Contradictions and conflict were

in themselves values for Russians, so they were ready to take some damage if only the strategy as a whole worked.

Secondly, the Western sanctions became, in fact, a positive factor for the Kremlin's narrative, because they were portrayed as an instrument of aggression against Russia. This was not only intended to strengthen the common anti-Western sentiment within the society, but it also allowed the regime to attribute the country's economic woes to external enemies instead of the country's own authorities. Thus, it was easier to call on the society to patiently muddle through adverse conditions. We argue that no matter what is officially being said on this issue, the sanctions regime is beneficial to Russia (namely, the Russian top political elite). And so, many of Moscow's actions, from the Skripal affair to saber rattling, to almost openly meddling in political and social processes in the West, might be understood as instrumental to the Kremlin's desire to preserve the sanctions regime. One might even observe that Russia was careful to not to allow the West even to ease the system of sanctions.

And finally, this sort of open incursion into Western societies seems to the Russians not only a convenient and useful tool, but also the only one that might actually work. Without a military instrument, Moscow has virtually no other way to influence the West and make it bend to Russian wishes more than it would otherwise be willing to. The real Russian political influence in the West is waning because Russia turns more and more authoritarian and aggressive and less and less stable, more isolated and marred by economic decline – thus weakening its position as a valuable political partner.

To summarize, the inflated conflict with the West remained the highlight of 2018, as it had been in the previous years. The Kremlin trod carefully to keep it at the level needed for internal reasons while at the same time tried to avoid prompting decisive Western counteraction.

3.3. The Russian Intervention in Syria as an example of the Frozen Conflict Strategy

The term “frozen conflict” refers, as we see it, to an armed conflict which currently remains in a state of relative calm but has not been resolved in any permanent way. The defining feature of this situation is that it also involves an outside actor, let us call it a “freezer”, which played a decisive role in fostering this calm by using own influence and resources. Subsequently this external player manages the conflict constantly in its already *frozen* state. To do this it needs to be able to continuously implement a multitude of effective instruments of influence, rang-

ing from political backing to economic incentives/dependence, to military assistance/combat support. The *freezer* should certainly be a very strong actor relative to the main adversaries. It is rather obvious that a country that decides to execute such a strategy does so because it sees that as most suitable for itself. Therefore, it does not matter what the interests of the nations or governments involved are; they are supposed to remain weak, vulnerable and susceptible to external influence. A *freezer* is of course not interested in seeking a lasting solution, despite its power and influence, because this would deprive it of benefits derived from the state of affairs it created. In practice, this kind of quietened armed conflict usually takes the form of a relative balance of power resulting in a *de facto* ceasefire, with hostilities escalating and de-escalating according to the wishes of the *freezer*. This modus operandi has been the Russian instrument of choice in the post-Soviet space since the early 1990s. More recently, the *frozen conflict* strategy has become a tool of the new Cold War, as we can observe in Ukraine and Syria.

Setting aside the vast Ukrainian problem, the Russian involvement in Syria may also be understood as an attempt to implement a strategy of this kind because the endgame that the Kremlin has pursued there was to divide Syria and then to freeze the conflict. This means, in the most general terms, that Moscow is not interested in strengthening anyone's position but its own. Consequently, being the balancing power gives Russia, in theory, the most influence at the least cost to itself, because all the parties to the conflict need a balancing actor for their individual purposes, so it can develop its own interests relatively freely. Theoretically, this is enough to keep all the forces more or less equal and balance them against one another. This is the logic of the frozen conflict and it is exactly what the Russians have tried to do in Syria.

Having managed to shore up the regime of the Syrian president Bashir al-Assad in the course of 2016, in 2017 the Russians decided to calm the war down and agreed to establish de-escalation zones in Syria. Officially this was in order to ease the situation of the population withered by many years of hostilities, but in fact it bought time for the regime and the forces allied with it to regroup and strengthen. Then in 2018 most of those safe zones were wiped out, resulting in the consolidation of the part of the country controlled by the government. Thus, Syria is currently divided into four zones. First is the government-controlled area which comprises roughly two-thirds of the country, in which there is also the strong Iranian presence and where the Russian military installations are located. Second is the Kurdish Rojava area which remains under international, especially US patronage. Third is Turkish controlled north-west of Syria. And finally, the Americans govern a small pocket on the southern desert by the Jordanian border, along with some anti-Assad fighters.

During 2018 we could see how the Russians tried to establish a certain pattern of balance in Syria intended to lead to the final freezing of the war in the way they wanted it to. In practical terms, this meant that Moscow allowed the participants in the conflict to pursue their goals in a limited way. And so:

- Israel conducted extensive⁴⁶ actions against the Iranian forces in Syria⁴⁷ with tacit Russian consent. This was because Tel-Aviv views Teheran expanding its presence at its northern borders as directed towards the establishment of a staging area for operations against the Jewish State – this is, of course, considered an existential threat to Israel.
- On the other hand, the Russians agreed to an Iranian presence, knowing that it both kept the Israelis at bay and limited al-Assad's power and room for maneuver. It also bogged down the Americans, who were focused on resisting the rise of Tehran's influence throughout the Middle East.
- The Syrian government was allowed to subdue almost all of the areas that had been designed as de-escalation zones but was not permitted to conquer all of them. This is because it was not necessary for the Russians and could prove costly. What is more, by securing all the territory the Syrian dictator would need Moscow much less. This is because the post-war reconstruction would require not the firepower the Russians have but rather a great deal of money, which the Kremlin cannot provide in substantial quantities. That is why Syria is intentionally left divided and the Russians evidently prefer to keep it that way.
- This refers especially to the vast portion of Syrian land controlled by the Kurdish organizations in association with some Arab tribal militias, the US and the forces of other NATO countries. The Russians see this as a counterbalance against Damascus, Ankara, and Tehran.
- And finally, there is a strong and growing Turkish presence in Syria that the Russians allowed and even welcomed because it is another counterbalance to both al-Assad and the Kurds. The latter are the foremost target of Turkish activity, as Ankara sees Kurdish aspirations to independence as the biggest

⁴⁶ Israel confirmed to have executed over 200 attacks on targets in Syria since 2017, see: D. Williams, *Israel Says Struck Iranian Targets in Syria 200 Times in Last Two Years*, "Reuters", September 4, 2019, <https://www.reuters.com/article/us-mideast-crisis-israel-syria-iran/israel-says-struck-iranian-targets-in-syria-200-times-in-last-two-years-idUSKCN1LK2D7> (accessed September 6, 2018).

⁴⁷ The latest example of Israeli airstrikes in Syria is the December 25 attack on Hezbollah and Iranian targets: *Israeli Official Confirms Aircraft Struck Iranian Targets in Syria*, "Haaretz", December 27, 2018; <https://www.haaretz.com/israel-news/israeli-official-confirms-aircraft-struck-iranian-targets-in-syria-1.6785843> (accessed December 27, 2018).

threat to its very existence, or at least cohesion. It is also very important that the authorities in Ankara use the Kurdish threat as a uniting factor for their own internal political purposes. The Turkish political and military presence in Syria is therefore portrayed as the vanguard in the defense of the nation against its sworn enemies.

By the fall of 2018, the hostilities in Syria had subsided and it might have looked like the Russians had managed to achieve their desired endgame. The Kremlin's declared ally Bashir al-Assad, to whose aid the Russians rushed in 2015, did not control his own country. The Iranians were present but constantly battered by the Israelis. The Turks and the Americans had their zones in Syria, balancing the other actors. Israel was tied to counteracting the Iranian presence, especially in the southern part of the country. And finally, the Kurds retained their strong position, balancing both Turkey and al-Assad. All of this was exactly what suited the Russian goals, as we have just explained them. But this is also exactly what might cause the whole Russian Middle Eastern policy to be unravelled.

First of all, we have to understand that the conflict in Syria is actually an entirely different story to those in the post-Soviet space, and so the Russian position in it is also entirely different. The key and profound difference is that Russians are relatively weak in the region, in comparison to Iran, Israel, Turkey or even al-Assad's Syria. The second one is the geographic remoteness of the Syrian theater from Russia's mainland – this greatly exacerbates its strategic weakness. And finally, the situation in Syria is much more complex than anything the Russians have encountered until now, and the very size of the conflict is different, too.

Of course, the above-mentioned scheme of balances and counterbalances may work for some time. In theory, it allows for a multidirectional approach, as it gives the Russians many different kinds of leverage which, if skillfully used, might prolong the existence of the system. All the participants in the conflict might consider this overall situation not particularly suitable, but at the same time they may be satisfied with partial success. Thus, instead of taking the risk to try and change it in their favour they might accept the *status quo* as it is. And this is exactly what the Russians hope for.

But the whole scheme may also fall in an instant because of its complexity, which may prove to be too high to be fully understood and controlled. Some events may bring unexpected ramifications, spill over unchecked, and escalate with the result of destroying the balance so carefully maintained by the Russians. But this could also happen intentionally, for some of the participants in the conflict may become dissatisfied and start breaking out of control. We have to reiterate that these are relatively strong entities that cannot be simply coerced

by the Russians, who do not have the forces in Syria capable of conducting full-scale combat operations on their own. The local players also have interests of an existential nature at stake, which may further embolden them.

Therefore, some of the powers engaged in the conflict may decide that the potential benefits of a change in the balance are worth the likely costs and risks of trying to achieve one. Thus, some small-scale actions may be undertaken against Moscow's will, some opportunities may be exploited to escalate tensions and to maneuver the Russians into renewed hostilities with the goal of gaining some advantage at the expense of the other main participants. Some players may even openly act against the Russians, and some may even succeed, at least partially. This would be the worst-case scenario because Russia's authority in Syria rests to a great extent on the firepower which makes it an indispensable partner for combat operations. If it is proven otherwise, for example if Israel decides to act and manages to overpower the Syrian S-300s, Russia would lose face with strongly negative consequences.

We have also to remember some military-related operational and strategic realities. Despite its great firepower, the Russian contingent is in fact a relatively small garrison isolated from its own country's territory, depending on long supply routes controlled by other nations like Turkey, Iran, and Iraq. The Russians may of course decisively contribute to the relatively small-scale operations in the form of support for local forces. But in the case of direct full-scale hostilities undertaken against the Russian forces, their positions would be extremely difficult to sustain.

We may easily imagine at least some of the circumstances of that sort which would render Russia a less important player that it has been until now:

- The Kurds may forge some agreement with al-Assad and the Iranians, especially if the US shows a decreased willingness to remain in Syria, which is currently more possible than ever. This would contribute to a swift expansion of President al-Assad's authority and diminish the need for Russian firepower.
- The Syrian government may also strike a deal with Turkey against the Kurds, and could quickly regain most of its remaining territory with the help of the Turkish army and the indifference of the Americans, who would prefer to stay with their NATO allies. The consequence would be similar to the one outlined above.
- The Israelis may decide to get rid of the Syrian S-300s if annoyed too much and if they decided that Iranians had gained too much benefit from the air defense cover. Even if the Israeli Air Force would suffer some losses in such a venture, Tel-Aviv might consider it worthwhile.

- The Iranians may commence and escalate direct attacks against Israel, leaving the Russians with tough choices: to back them or to allow Israel to execute an all-out strike against targets on the Syrian territory.
- And finally, the US might actually keep to its current commitments and withdraw their forces from Syria in a somewhat abrupt manner. This would surely contribute to the instability in the region⁴⁸ and ruin the Russian scheme of balances and counterbalances. Consequently, all the other actors would try to exploit the opportunities that would appear in such a case and the system would have to be redesigned, with unknown consequences – at any rate it would take time and be costly for the Russians if they tried to create a new balance.

All in all, the equilibrium the Russians desire may not hold, specifically because the local players have entirely different stakes in Syria. Let us reiterate that for al-Assad, the Iranians, the Kurds and the Israelis the stakes are existential. For the Russians they are not. That is why the local players may be ready to risk relatively more and commit more resources to their strategies in Syria than the Russians can.

4. CONCLUSIONS

In summarizing developments regarding the Russian place in the world during the course of 2018 there are several points that have to be stressed.

1. The economy of Russia remained vulnerable; there was also no serious attempt to change this situation, and no significant reforms have been undertaken. This was because any substantial change would mean the destruction of the existing power structure, which is tightly intertwined with the system of extraction of short-term profits from the economy by the elites.
2. The authorities remained invulnerable to any internal threats to the stability of the ruling elite. This is due to the tight control over most of the media and to the narrative of an external threat which needs to be countered by a nation united around the strong leadership which can secure it from existential dangers. The West is not only painted as a threat to the very survival of Russia

⁴⁸ P. H. Gordon, *Sudden U.S. Troop Exit From Syria Would Exacerbate Regional Instability*, Council on Foreign Relations, December 20, 2018, <https://www.cfr.org/article/sudden-us-troop-exit-syria-would-exacerbate-regional-instability> (accessed December 22, 2018).

and its identity but is also conveniently blamed for the economic woes of the society.

3. The conflict with the West is, therefore, one of the main bases of legitimization and it has been carefully maintained by the Russian authorities. It has also become increasingly militarized, as the military as a source of national pride, the defensive force of last resort, and this tool for achieving foreign policy goals has become one of the Kremlin's last remaining instruments of internal and external strategies.
4. In this context it must also be stressed that, with regard to foreign policy, Russia has no viable tools of economic influence. Even natural gas exports became leveraged against Russia, instead of being its weapon as it had been previously. This is simply because the revenues from international trade in hydrocarbons are indispensable for both the economic and internal political fronts. Because of this, and changes on the hydrocarbons market, the relevance Russian gas and oil as a political tool declined.
5. Consequently, Russia's weight in the world continued to diminish in spite of its high aspirations.⁴⁹ This is most profoundly visible in the choice of foreign policy tools. The Kremlin frequently activates the military, it takes part in open conflicts and frozen ones, threatening the world with the powerful new weapons and other modern technologies. Nonetheless, it lacks other instruments of influence like political attraction or economic co-operation. From the point of view of the world economy and global trade, Russia matters only due to its vast natural resources and arms production.

As for the future, there are several particularly important developments which have to be considered when we try to assess the dynamics pertaining to the Russian position in the world:

1. The Russian economy, despite some stabilization, seems endangered for reasons other than its well-known internal deficiencies. As global debt reached roughly 300% of global GDP⁵⁰, as hydrocarbon prices are likely not going to spike due to high production rates, and as all of the main world economies suffer from various structural problems it is unsure whether economic growth in the world will be sustained in the coming years. In the case of any

⁴⁹ P. K. Baev, *Putin's Month-Long Diplomatic Tour Highlights Russia's Growing Irrelevance*, "Eurasia Daily Monitor" 2018, vol. 15, issue 165, November 26, <https://jamestown.org/program/putins-month-long-diplomatic-tour-highlights-russias-growing-irrelevance/> (accessed November 27, 2018).

⁵⁰ B. Chappatta, *\$250 Trillion in Debt: The World's Post-Lehman Legacy*, "Bloomberg", September 13, 2018, <https://www.bloomberg.com/graphics/2018-lehman-debt/> (accessed December 28, 2018).

major global crisis, Russia will be among those countries that will be hit the hardest, due to its overreliance on exports and the ineffective structure of the economy. Although there are some signs of change in the Russian petro-economy⁵¹, we believe that this effort will not yield a substantial change in the foreseeable future. This is primarily because President Putin

[...] lacks a clear vision for a modern Russia, let alone a concrete program of reforms. His key goal is to maintain the system of power he created, rely on a strong Russian military, and keep society in check.⁵²

2. In the immediate future, Russia will continue its bellicose policy and offensive approach towards the West “[u]nless some major ‘black swan’ event intervenes, drawing Russia closer to its Western partners to face common challenges [...]”.⁵³ There will be some effects of this policy that Moscow will be able to deem a success, like some deeper divisions inside or among states or some more political chaos fueled by the Russians. But on the other hand, the West will surely step up a defensive posture, both on the internal and international fronts. With regard to that, we have to remember that the threat from Russia is highly securitized and that some powerful economic and political circles in the West understand that they would benefit from conflict with Russia.
3. Therefore we expect that in the foreseeable future Russia will behave more or less the same as it has been doing for several years, and that some meanders of its policies will be of tactical nature. On the other hand, there will be no tangible gains from this conflict, because Russian capabilities are limited and resources scarce. On the other hand, it can also be argued that due to the deterioration of the internal situation in Russia, the Kremlin may feel compelled to escalate tensions, especially in Eastern Europe.⁵⁴ To be sure, the West will also change; it will turn more xenophobic and less open and liberal, and

⁵¹ B. Aris, *Putin 4.0: State-Led Reforms to Remake Russia's Hybrid Economic Model*, “Russian Analytical Digest”, 2018, no. 224, September 26, pp. 5-10, http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/RAD_224.pdf (accessed September 25, 2018).

⁵² J. Petrović, *Putin's Challenges*, “Russian Analytical Digest” 2018, no. 218, April 10, p. 6, <http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/RAD218.pdf> (accessed April 12, 2018).

⁵³ R. Sakwa, *Putin's Fourth Presidential Term*, “Russian Analytical Digest” 2018, no. 218, April 10, p. 12, <http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/RAD218.pdf> (accessed April 12, 2018).

⁵⁴ J. Forbrig, *Expect Russian Escalation in Eastern Europe*. In: *What to Watch in 2019*, Washington, DC: The German Marshall Fund of the United States, December 20, 2018, <http://www.gmf.org>

maybe even less democratic, but this will only make Russian actions against it less effective.

4. Russian aspirations to become a leading world power are also poised to remain just wishful thinking despite the picture that the propaganda displays for internal purposes. The West may be in relative decline, and the world order may be crumbling, but Russia is in no position to gain a decisive say in the shaping of the new international system. Even its military might will not give Moscow such a capacity, as Russia is unable to create the basic capabilities⁵⁵ required to effectively project power at greater distances.⁵⁶ Conversely, it is possible that the Russian Federation will go down with the world order even faster than the West because it has no resources, internal strength or flexibility with which to adapt to the emerging new rules. Those will most likely be created out of the complex interaction between a divided West on the one side and China with the rest of the divided developing world on the other. In that process, which we believe has already started, it is clearly visible that “[...] Russia is now becoming increasingly dependent on China [...]”⁵⁷, instead of being an autonomous, global power.
5. In Syria, the equilibrium the Kremlin desires will probably not hold, and the Russians will most likely lose some of their positions in the coming years. The most recent factor leading to the breaking of this balance is the decision by the US to lower its profile in the conflict by withdrawing its ground troops. We do not know exactly how this will proceed but it has already become a factor of change in the situation in Syria. If the Turks attack the Kurdish territories with American blessing, Damascus will surely take over southern Syria and its oilfields. In such an event Rojava will most probably cease to exist; some part of it will fall into Turkish hands, while the rest will be back under al-Assad’s rule. In this process, many of the Kurdish administrative entities will subordinate themselves to Damascus peacefully in order to avoid being over-

fus.org/blog/2018/12/20/what-watch-2019?utm_source=email&utm_medium=email&utm_campaign=2019-2-1%20world%20wire (accessed December 22, 2018).

⁵⁵ М. Климов, *ВМФ РФ лишают океанского статуса*, “Независимое Военное Обозрение”, November 30, 2018, http://nvo.ng.ru/concepts/2018-11-30/1_1024_status.html (accessed December 2, 2018).

⁵⁶ I. Kabanenko, *Russia’s Shipbuilding Program: Postponed Blue-Water Ambitions*, “Eurasia Daily Monitor” 2018, vol 15, issue 59, April 18, <https://jamestown.org/program/russias-shipbuilding-program-postponed-blue-water-ambitions/> (accessed April 20, 2018).

⁵⁷ А. Храмчихин, *Станет ли Москва младшим братом Пекина*, “Независимое Военное Обозрение”, June 29, 2018, http://nvo.ng.ru/concepts/2018-06-29/1_1002_place.html (accessed June 30, 2018).

run by the Turks. This will create a whole new set of dynamics in the situation in Syria, diminishing the need for Russian help and greatly emboldening the regime. It will be the undoing of the Russian scheme and its Middle Eastern high position, at least partially and at least for the time being. This is because Moscow will not be able to provide significant funds for reconstruction and post-conflict stabilization.

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PAWEŁ TARNAWSKI

Detective Training in Countries Undergoing Transition – the Examples of Poland and Ukraine



ABSTRACT

This chapter analyses the training of police detectives as an aspect of the security systems reform in transitional states. The author argues that such systems of training are crucial aspects of police reform in countries trying to replace a dictatorship or quasi-mafia system with democratic structures. The traditional system of detective training, which the author finds ineffective and expensive, is analyzed and contrasted with a more modern approach. A discussion of the modern approach to detective training is followed by a description of some of the practical exercises used by trainers active at the international level.

Keywords: Police reform, detective training, political transition, Ukraine, Poland

1. INTRODUCTION

The reform of law enforcement agencies (LEA) has been one of the main problems of states in political transition and is one of the pillars of international support for their governments. Transition does not only refer here to legal or structural changes but also – and this is much more difficult – to changes in individual mindsets and social attitudes. The developing countries, post-conflict states or the states in transition from dictatorship to democracy have benefited from wide international assistance related to the security sector reform (SSR). One of the most relevant aspects of this reform is the training of police officers. The most

important democratic actors in the international community were involved in this kind of activity in 2018.

These issues have played an important role in the transition that began in the early 1990s in Eastern Europe. Only the Federal Republic of Germany had a chance to automatically include post-communist structures – those of the former German Democratic Republic – into democratic police services, as part of the reunification process. Other post-communist states had to struggle with the old system and old ways of thinking. Some of the states approached democratic standards step by step (for example Poland or the Czech Republic). Others – especially those which had been part of the Soviet Union – experienced an additional degradation of the already pathological Soviet patterns. They often underwent a transition of the local LEA to mafia-style organizations having little to do with accountable state agencies.¹

Ukraine has been an example of a post-communist state trying over the last few years to make up for lost time. Its LEA reforms are often based on the experiences of its neighbors and extensive help from the international community.² Police training systems were one of the most archaic elements in the post-communist states and this has often had long-term consequences, some of which still persist. In this paper I will try to diagnose the weak points of the old-style police detective training on the basis of the examples of Poland and Ukraine. My approach is based both on the literature and – in the main part – my own experience of 20 years in police service and detective training. Interviews with officers in both countries are also included. The Polish and Ukrainian experiences are set against the wider backdrop of the training systems of other countries.

¹ Conversations with Ukrainian officers and my own observations point to the existence of a long-standing mafia-style system within LEA. Honest officers were often eliminated from their institutions. Newcomers were pulled into schemes of corruption on their first day on duty. Officers protected criminal gangs, extorted money, took over private companies. After their duties had been performed they had to give part of their illegally earned money to their superiors, who then had to give part of it to *their* superiors. Admission to one of the police academies cost some thousands US dollars as a bribe. The candidates used to borrow this money knowing that they would be able to earn it back later.

² This assistance comes mainly from the EU member states, Canada and the United States. The author trained Ukrainian officers within the framework of international assistance schemes.

2. THE TRADITIONAL TRAINING MODEL

The traditional model of detective training is based on networks of police academies. For many years the full training in Poland could include basic training, two stages of non-commissioned courses, and a high-ranking officers' school. The duration of the studies changed over the years, however each of them was quite long. The subjects and courses repeated at different levels. For some time the Police Academy in Szczytno used to recruit young high-school graduates for four-year studies. They graduated as second-degree lieutenants. Usually they were shocked upon meeting the reality of police work after having learned theory for four years; theory often had little to do with practice.

The Ukrainian system is a multiplication of the Polish conditions. There are seven state police universities. Every detective needs to graduate from one of them. The studies take four years. The pickpocket detective actually needs to receive same education as an attorney. It is worth mentioning that the basic training of FBI detectives takes only five months. The officers often complain about the traditional training system. The same complains can be learned from the Internet police forum in Poland. It seems that the main problems of the training include the following: the lecturing model and its highly formalized, hierarchical setting; the tendency for everything to be made „quasi-scientific” (difficult to understand); the lack of practical exercises; the little (if any) practical experience of the teachers, and their „rooting” in the academies without contact with field work.

Lectures and definitions

In the traditional model teachers and students are strictly separated. Teachers give lectures, students listen to them and take notes. In extreme cases the teacher is so “important” that the students may be afraid to ask questions. Due to the lack of practical exercises the students have to memorize the definitions provided. Some definitions are necessary, especially during the basic training. However, later on, even these legal rules should be put into the context of practical exercises. Teaching practical subjects based on definitions and lectures is pathological; effective learning should be based on actually completing tasks, not only listening to somebody talk about them.

In addition, trying to make everything very difficult and using a lot of “quasi-scientific” vocabulary instead of being clear and professional is not effective. In Poland the Police Academy in Szczytno at the same time provides courses

for civilian students. The teachers-officers teach the civilian (not police officers) students instead of spending that time on practice in the field. One can hardly see the benefits for the police of mirroring the civilian academies. At the same time the professional level and the willingness to combat crime among the young officers seems to be quite low.³

A “teacher” instead of a “trainer”

In the “teaching” rather than “training” model being a teacher is a profession. Many teachers spend most or all of their professional lives in academia. This implies a lack of linkage with field work and usually little practical knowledge. Therefore the respect they receive is based not on their professionalism but on military-style formalism and the underlining of their status on the symbolic level (e.g. separate tables in the cafeteria, waiters to serve them).⁴ At the same time, in one of the best police schools in the world – the FBI Academy in Quantico, USA – there are common areas and queues in the cafeteria – the trainers sit with the students. The VIP category is non-existent. The highest experts working as teachers there use to “ask” the students to fulfill tasks instead of giving “orders”. Of course everything they “ask” for is going to be done with the highest involvement. Respect for them is built on their professional knowledge not on fear, which is much less motivating.⁵

Consequently, the practical usefulness of the issues learned in the Eastern European system is not high and one can often hear that it should be forgotten just after having passed an exam.⁶ The small amount of practical knowledge, overloaded with university-style theory, creates high costs for the LEA budget. An additional negative effect is the fact that the non-police subjects (e.g. foreign languages) are often taught by high-ranking police officers. The Canadian system seems to be more effective – police officers teach the field subjects, academic teachers the social subjects, and practicing lawyers teach the legal subjects.⁷

³ Following the conversation with one of the police recruiters the candidate who claims “willingness to combat crime” as a motivation for joining the police would be not hired as being “over-motivated”. The effects of such an approach can be seen while talking to young officers. They often do not want to “go after the case”, and do not agree to work overtime even if the operational situation requires it.

⁴ The author’s own observations.

⁵ The author graduated from the 204th Session of the FBI NA in 2001.

⁶ From conversations with Polish officers.

⁷ M. R. Haberfeld, *Critical Issues in Police Training*, Upper Saddle River, NJ: Prentice Hall, 2002, p. 287.

3. THE MODERN APPROACH TO DETECTIVE TRAINING

Students should already have graduated from the basic police training and preferably have professional experience. “Professional” does not necessarily mean “investigative”. During the training provided for detectives it sometimes happened that the students with long-term investigative experience had more problems than their inexperienced colleagues; it is easier to teach newcomers than to eliminate bad habits in experienced ones. Sometimes flexibility of mind is more important than experience. This seems especially relevant for states in the process of a systemic transition from dictatorship or a mafia-state to a democratic regime. One of the main problems with mentality in those cases is peoples’ habituation to a lack of legal responsibility and the perception of force and fear as being the only investigative assets. Although those last two elements are sometimes required, they are usually not the only, or even the most effective, approaches. An additional bad habit characteristic of some experienced detectives is their fixed thinking, e.g. “I know everything” or “It was always done that way”. This proves to be a killer of any innovation and development.

It is worth mentioning that the first “new-generation” of detective training was introduced in Poland in the 1990s and 2000s by officers from outside the police academies. These were field officers who had had an opportunity to participate in international training, and later on adapted what they had learned to the Polish conditions. Some of those training sessions were implemented afterwards in the police academies. In Ukraine, the precursor of this kind of approach was a psychology teacher in one of the police academies.

Modern detective training⁸ should be based on four pillars:

1. A practical approach based on scientific findings.
2. The field and teaching experience of trainers.
3. A “trainer” instead of “lecturer” approach.
4. Intensive topic training without strict time limits.

A practical approach based on scientific findings

Practical exercises should comprise about 70% of any training. The lectures should be based on scientific findings and field experience. If possible, each

⁸ The approach described below is based on author’s observations as investigative trainer, and as participant in many police training programs.

lecture should be interrupted by short exercises. These activate the group and help participants absorb knowledge much more effectively – otherwise most of it can quickly flow out of the memory. An example of such an “interruption exercises” is as follows:

We ask two students to sit in front of the class and try to persuade the trainer to do something (for example, to buy a car). The trainer ignores the student, who is talking more and advancing more arguments. The trainer’s body is turned more in the direction of the other student as he gives his replies. After a minute the exercise is reviewed; this emphasis here is working in a team and paying attention to the nonverbal behaviour of an interlocutor. Those signals indicate which detective is more “acceptable” to the interlocutor (for whatever reasons). The exercise is followed by a description of a real, similar situation. In that case the “accepted” detective continues the conversation, and the “non-accepted” one concentrates on the interlocutor’s behaviour and takes notes.

Such exercises can be the first step to developing the ability to work in a team, effective communication, and trainees’ self-observation of their behavior. It would probably be less effective if it were presented in PowerPoint. During the police intelligence training one of those “interruption exercises” relies on showing pictures of well-known movie characters. The students, divided into teams, have to quickly work out their psychological profiles, their possible motivations for cooperation with the police, and choose the officer who best matches the needs of the subject. The quantity and character of these exercises depends on the inventiveness of the trainers.

The main exercises should be maximally practical. After Tomasz Cichoń⁹, we can divide them into:

- **Staging** – the students play given roles in a scenario. The participation of external actors is often included.
- **Simulations** – the students solve the problems given in a scenario.
- **Simulations with staging elements** – the students plan how to solve a problem and then try to implement their plan.
- **Realistic games** – the students fulfill tasks in a real environment among people who do not know about the exercise taking place around them.

⁹ T. Cichoń, *Metody gier w dydaktyce nauki o bezpieczeństwie*, “New Directions in Research and Science on Education and Security in the 21st Century”, 2012, no. 2.

The practical approach to training does not mean forgetting about scientific knowledge and legal regulations. However, at this stage learning is not based on memorizing but on practicing. This should be highlighted in the exercises. The scenarios should be constructed in such a way that the principles of theoretical knowledge can be clearly seen against their practical background. For example, a staging in which a victim being interviewed is falling into hysteria provides more knowledge for the students than just telling them what hysteria is and what the reaction of an interviewer should be. This enables students to:

- challenge the problem contained in a scenario and observation of one's own emotions and reactions (in the case of students participating in the exercise);
- observe the dynamics of the situation (in the case of the rest of students observing the exercise);
- receive feedback from an actor (how the conversation was conducted, what helped to calm down the person, what disturbed the communication, what arguments were effective etc.);
- talk over the exercise with the other students and the trainers, one of whom should be a psychologist.

When it comes to the legal regulations, the students should already be familiar with them before the specialized training – they should be put into the scenarios as “traps” or problems to be solved. Detectives often act “on the edge” of law and one mistake can affect their legal liability, or determine proceedings in court. Such legal traps (along with psychological ones), as elements of practical exercises, should be discussed after every session in which the main task of an actor was to make the student break the law. Resistance to social influence is an important skill of an officer (who, however, should be able to work well in a team at the same time). These traps, combined with the extended duration of these exercises, become increasingly difficult every day – the “police version” of the Asch experiment included.¹⁰

¹⁰ A psychological experiment showing the role of social influence on the perception of reality. The experiment was conducted by Solomon Asch in the USA in the 1950s and was continued and modified in the Soviet Union, where it was kept secret. During the training the influence of social pressure on a detective is shown during exercises invented by Dr. Tomasz Cichoń. For more on the Asch Experiment and similar and others like it, see: М. А. Цискаридзе, *Влияние установки на проявления конформности индивида в подставной группе*, p. 143, <https://www.simplypsychology.org/asch-conformity.html> (accessed January 16, 2019).

The field and teaching experience of trainers

It often happens that a person possessing a great deal of knowledge cannot pass this knowledge on to others. Knowledge itself does not guarantee the success of a trainer. However, a lack of field experience while teaching practical professional matters guarantees a lack of success. Field experience brings great, important opportunities from the training perspective:

– **Building respect based on knowledge, not on rank or position held**

This is an important factor influencing the cooperation between students and trainer. Often – especially at the beginning of a period of a program – the students test the trainer. If the trainer shows a lack of experience he or she has little chance of changing the students' attitudes, which is itself often an important goal of the training. Every argument, even the most rational, can cause a skeptical reaction in the group. They will end up thinking about the arguments in terms of "it's just a theory which is impossible to be implemented in real life". If a change of attitudes is the goal, then field experience is crucial. It seems that an additional positive factor would be describing the trainer's way of changing attitudes while working in the field and showing its positive practical effects.¹¹

Additionally, the group perceives a trainer as "one of us". This helps break the wall between the trainer and the group. The relationships are then not so formal and both parties can perceive each other as colleagues exchanging experience. A lack of experience makes this exchange impossible. Talking about the mistakes and achievements of a trainer during their field work seems to be an important element of building respect: by revealing his mistakes the trainer enables lessons to be learned from them, and shows that he is not trying to build an unreal, ego-centric image of a person who is never wrong. He simply becomes more credible.

– **Building scenarios based on real situations**

The Cracow CBS¹² officers of the first part of the 2000s used to conduct training every few months. Between courses they investigated criminals. When they invented creative solutions or identified mistakes they'd made in real situations

¹¹ Teachers' efforts are often met with skepticism at the beginning of a course. Then understanding and acceptance comes when the students are confronted with practical arguments. In the case of Ukrainian officers, some of their problems are similar to those faced by the Polish Police at the beginning of the 1990s; showing some negative examples from the trainers' experience makes them more credible. If trainers come from the West they could be less credible as people "who cannot comprehend our problems".

¹² Central Investigation Bureau – special branch of the Polish police, created in 2000 to fight organized crime.

they used them as material for subsequent training sessions.¹³ Constructing scenarios based on real mistakes is important. If one has already made a mistake, others should avoid repeating it. Let the students learn these lessons of these experiences during the training and not in the field.

When building scenarios, especially in games, it is important to make them as similar to the reality of fieldwork as possible. Field experience not only gives trainers the chance to construct games, but also helps to modify them in real time. The scenario of a game should usually be “open”¹⁴ – the authors prepare the frame but do not know what the students’ reactions and decisions will be, so they may need to modify things during the game to achieve their teaching goals.¹⁵

– **Ability to realistically evaluate the course of an exercise**

Every exercise should be reviewed when finished (sometimes certain stages should be discussed *during* the exercise). Discussion should include the maximum number of elements that illustrate the possible consequences of the students’ decisions and behaviours in two dimensions of reality: the tactical and the legal. Adding examples from real life helps in talking over an exercise.

– **Ability to answer questions**

Interesting training usually includes questions from students. When finishing any topic a trainer should always ask if everything has been understood and if there are any questions. Often the questions do not relate only to the topic discussed but also concern other operational problems that are important to students. A lack of field experience on the part of the trainer makes finding answers to such questions difficult. Sometimes a question is aimed to test the trainer and to check if he/she has real experience or just repeats theoretical knowledge. However, it is important to underline the fact that when the trainer does not know the answer, he/she should not “play the smart one”. Admitting to a lack of knowledge in certain circumstances makes the trainer more credible when he/she defends his/her thesis.

¹³ From the author’s experience.

¹⁴ For more about “open scenarios”, see P. Tarnawski, *Fikcja zarządzania kryzysowego*, “Rzeczpospolita”, July 22, 2010; P. Tarnawski, P. Guła (eds), *Zarządzanie kryzysowe w praktyce*, Kraków: Wydawnictwo Zdrowie i Zarządzanie, 2011.

¹⁵ When talking about „the game” one should emphasize the fact that this is not a game between trainers and students. The trainers know the scenario and can modify it during the game. It is good to communicate this to the students in order to avoid competition and frustration.

A “trainer” instead of “lecturer” approach

The trainer approach is more flexible and shortens the distance between the teacher and the students. All the barriers between them should be removed. Therefore, usually it is better to use informal communication (first names rather than “sir” and “madam”). The training should start with short integration exercises. The desks should not be put in a „classroom” way – it is better to put them in a circle and minimize all physical barriers.

Professor Maria Haberfeld,¹⁶ an experienced field officer and later an academic scholar in New York, emphasizes the following skills required of a professional police trainer¹⁷:

- extensive knowledge of the subject – both field and literature;
- knowledge of various methods of instruction. He/she should be able to present the subject in a way that is understandable to students;
- leadership ability¹⁸;
- professional attitude;
- sincerity;
- enthusiasm¹⁹;
- “salesmanship”²⁰;
- sense of humor²¹;
- pleasant appearance²²;
- desire to do the job.²³

¹⁶ M. R. Haberfeld, *op. cit.*, p. 96.

¹⁷ The first seven skills are quoted after Klotter, the remaining three are added by M. R. Haberfeld.

¹⁸ It is important to underline the fact that the difference between a “leader” and a “boss” is not only a lexical one. For the trainer it implies the approach to oneself and to students.

¹⁹ Even the most interesting topic can be difficult to digest if the person presenting is bored, or reads a lecture, sits without any movements, speaks in a monotonous way, and if there is no interaction with the audience.

²⁰ Even if it sounds strange, marketing skills help “sell” knowledge to students.

²¹ A sense of humor is an often-underestimated but very important skill. Jokes not only relax the atmosphere but can serve as “bookmarks” in the memory. This refers not only to security studies – the more difficult the subject, the more humor seems to be useful. Additionally, the human brain works better when the content is not too serious, as has been proven during studies on creative thinking. See P. Tarnawski, *Techniki heurystyczne w taktyce kryminalistycznej*, “Problemy Kryminalistyki” 1997, no. 1.

²² This does not mean that the trainer should try to look like a TV star. However, they should be neat, able to smile, and should have a positive approach towards students.

²³ This does not relate only to trainers but also to managers. An efficient commander delegates tasks in such a way that every officer can apply themselves to what they do best. Unfortunately, the way of thinking in post-communist states is often contrary to this approach. The manager

I would add the following to the above-mentioned skills:

- distance to yourself, including the ability to admit your lack of knowledge or your own mistakes;
- ability to cooperate with other trainers, avoiding competition with them.

4. INTENSIVE TOPIC TRAINING WITHOUT STRICT TIME LIMITS

If the program includes too many formalities, training can be less effective than it might otherwise be. Such formalities can be seen in a tight schedule in which a teacher cannot exceed the time of the lecture set by the organizers. 45-minute classes are divided strictly according to topics, with an exact number of minutes allocated to each of them. Filling “the minutes” with the topics is the basis of a teacher’s evaluation more than his ability to communicate with the group.²⁴ However, every group of students is different. While fulfilling the training plan one needs to observe which topics require more time for a particular group of students than others. Important skills for trainers include being able to observe group dynamics and the development of each student, so that an exercise can be modified to maximize the progress of each student.

In the academies, the “classroom” time framework usually seems to be necessary. Nevertheless, some flexibility should not only be permitted, but even required. In the case of topic-oriented training, the time framework should be much more flexible in order for it to be the most effective one.

In the case of some specialized training sessions it is reasonable to limit the time framework to the starting hour. Performing exercises under stress and not knowing how long the exercises are going to continue is one of the important elements during some kinds of training. Detectives need to learn this to effectively fulfill their duties in real life. Sometimes they have to work while they are maximally stressed, and tired both physically and mentally.

In that case it seems reasonable to concentrate on lectures in the morning, and continue with the exercises later on. The students can also receive some practical tasks to be solved at the end of the day to be completed by next morning – even if they are already tired by an evening’s staging. Each evening the “commander”

often wants an officer to do the tasks least matching his skills and preferences. This is done to “show who is the boss”.

²⁴ Based on conversations with teachers of the police academies.

should be appointed among the students for the night. In case something happens to one of the students (e.g. a sudden phone call requiring rapid reaction in the field) he/she should call the “commander”. The “commander” makes the necessary decisions, as it were, in real life, wakes up the other students and divides the tasks among them. Then he/she takes command on the street of all the students’ activities (securing a scene, surveillance, counter-surveillance, decisions on what to do next etc.). When errors occur the trainers can modify the scenario. For example, they can “kidnap” one of the students. From that moment on the scenario develops in the direction of hostage negotiations and a hostage investigation.

The timing of less complicated exercises can, in addition, be varied and modified. For example, if a student talks with an actor the timing depends on the tactics and the behaviour of the practicing student.

After a few days of this kind of training the participants start living in a “virtual” world. The training situation is felt as the real situation. This makes it possible to observe their reactions, and the reactions of other people, while they are tired and stressed. This can then be talked over with trainers, including a psychologist.

Topics of detective training

The detectives conducting training sessions should, apart from legal matters, concentrate on developing skills such as interviewing and interrogation, investigative techniques, criminal intelligence, working with information, and the application psychology to the investigative framework.

Working with information

Information is the main term in the detective’s vocabulary. Information is received in an open way (open sources, crime search, laboratory tests, interviews etc.) or a confidential way via criminal intelligence (working with confidential sources, surveillance, wire tapping, infiltration etc.).²⁵ While receiving information from a person, the following skills seem to be crucial:

²⁵ It should be noted that the terminology differs between states, according to their legal systems. In the Eastern part of Europe, a detectives’ work is strictly divided into what is called “investigation procedures” and “intelligence procedures”. “Investigation” is supervised, or even conducted by a prosecutor. It is regulated by a Criminal Procedure Code and serves to gather evidence for a court. Running an “intelligence case” (“operative” in most Eastern European

- ability to listen,
- ability to ask appropriate questions,
- logical thinking and effective note taking,
- psychological and communication skills.

Asked whether it is easy to listen and ask questions, most people will be surprised – what could be easier? Even a child can do it! In detective training we ask this question on the first day. This is an important moment, especially if some participants have an approach of “I know everything” and “what new they can tell me?”. An exercise was invented at the beginning of the 21st century by a detective of the Cracow CBS (and later the CBA)²⁶ Dr. Tomasz Cichoń who is also an experienced trainer. It shows that even the most experienced detective can always improve his/her craft.

The exercise is based on the sport version of the bridge game approach. All the players receive the same cards, though not everybody can accumulate the same score with them. The level of complication will differ according to the level of a student’s knowledge and the characteristics of his/her duties. However, the structure is always the same. The scenario below is an example that can be modified whenever necessary.

In the first stage of the exercise, each student has 5 minutes for conversation with a trainer. The trainer reads aloud for the student some incomplete information, such as is given by witnesses during their spontaneous accounts. For example:

Spontaneous information from “witness Charles”:

A week ago I met a well know crook called George Brown. He said that he had clients from Italy, from a strong crime group. They are planning a money laundering operation in Poland via a network of Polish and Italian companies. He wanted me to find some homeless guys with documents to register fake companies in their names, and to find some lawyers to help him with it. He said that the direct contact with the Italians was made by his friend “Johnny”, his last name is probably Melnyk. The day before they met with some important accountant from Warsaw. They

lexicons) is secret and based on other legal acts than the Criminal Procedure Code. What detectives find out does not become evidence automatically; however, it leads to the finding of evidence that will sometimes be included in an “investigation” following special procedures. The source of information obtained in such a way cannot usually be disclosed even in court. This system is hard to understand in the Anglo-Saxon model, where everything is evidence and an informant can become a witness.

²⁶ Central Anti-Corruption Bureau – a LEA created in 2006.

should meet with the Italians next month. George does not use phone connections – he talks only through the Internet applications.

Having heard the information a student can ask questions. The trainer has more information known by “Mr. Charles”; however, it will be given to the student only if he/she asks the correct question. No question – no answer. If the student asks a question without an answer on the paper, the trainer answers “I don’t know”.

Additional information it is possible to obtain in this exercise (an example – it depends on the person who prepares the exercise):

George Brown lives at Pulawska Street in Warsaw. I don’t know the number. He doesn’t meet anybody there. He is about 40 years old.

Johnny comes from Northern Poland but he hasn’t lived there for a long time. He lives with his girlfriend somewhere in Warsaw. Her name is Julia. They have a daughter called Angelika.

Johnny knows the accountant through Gregory Patela, who served a term in prison but was recently released. He lives with his girlfriend.

The meeting with the accountant took place where Patela lives.

The meeting with the accountant took place before noon. The accountant had some business lunch in the center of the city and he even gave a ride to Johnny.

At this stage some students receive all of the possible information known by “Mr. Charles”, and some do not.

Based on what the students received during the conversation, they have to check all the elements of the information in the relevant data bases. This relates both to the internal data bases and to open sources.²⁷

At the next stage each student meets a trainer one more time for a few minutes. This time the trainer plays the role of a computer. The student ask questions as if he were entering them into a data base – e.g. he says: “I am checking George Brown subscribed in Pulawska Street in Warsaw in the citizens’ data base”.

The trainers have in their notes all the additional information it is possible to find in the data bases. If the particular question is asked correctly, students receive additional pieces of information. If there is no information related to the question asked, or if the question is put in a wrong way, or in the wrong data base, they get the answer: “no data”. A question can be asked incorrectly because it is illogical, uses diminutives (e.g. “Johnny” instead of “John”), mixes up nicknames

²⁷ In the case of training for non LEA detectives (private investigators, business internal security), only the data bases available to them in their real work should be considered.

with names, or contains spelling errors if the name sounds similar when written in a different way, etc.

Below is the additional information it is possible to obtain at this stage of the exercise:

Citizens Data Base:

Gregory Patela – DOB: 4.01.1970 no address available

Angelika Melnyk DOB: 5.05.2009; Father's name: John; Mother's name: Julia; Address: Warsaw, 20/20 Nadrzeczna St.

At the same address: Julia Zakrzewska DOB: 30.06.1979

Police Records:

Gregory Patela DOB: 4.01.1970 /picture and fingerprints available/

Data Base of sentenced persons:

Gregory Patela – prison in Wisnicz – 4 years for obtaining bank credit under false pretences... Released 2 months ago. Address unknown.

Wisnicz prison administration: When in prison Gregory Patela was visited by Tatiana Nowak DOB: 1.07.1970, address: Warsaw, 1/1 Niewiadoma St.

Video surveillance at 1 Niewiadoma St. in Warsaw:

On the day of the meeting 20 cars entered the property in the morning and early afternoon.

One of them – a Porsche Cayenne license plate nr: WE 1111 entered with one male (a driver) at 9:25 and left containing two males (a driver and a passenger) at 11:45

Cars database:

Porsche Cayenne license plate nr: WE 1111 – belongs to John Kowalski, Accountancy Office, Warsaw, 1 Uniwersytecka St.

Facebook:

– Tatiana Nowak has a partially-accessible account. A picture from her trip to Naples, Italy last year is accessible. There is a comment of a certain Antonina Sulizi from Naples, in English: "So it seems I know how to take pictures".

– Antonina Sulizi from Napoli – partially-accessible account. Married to Romano Sulizi.

Police Records:

– Romano Sulizi – a fine for traffic violation on 20.05.2017 in Warsaw while driving a car rented at the Warsaw airport.

Asking the correct questions of the data bases requires a lot of thinking. For example, finding John Melnyk is difficult. The name is common, so putting it into the citizens' data base is ineffective – there are too many records under the same last name. However, having learned that he is in relationship with "Julia", that they have a daughter called "Angelika", and that they live in Warsaw, the question can be:

First name: "Angelika" (possible last name: "Melnyk"); Father's name: "John"; Mother's name: "Julia"; Address: "Warsaw"

Thus we can learn their full personal data and address.

The crucial point is to find out where the meeting with the accountant took place. We only know that it was at the place where Gregory Patela lives. This is the place, belonging to his girlfriend, that he moved to when released from prison.

If we have checked where he served the sentence, we can also check who visited him in prison during that time, and who sent him parcels. In this way we find his girlfriend, who is crucial to finding further information.

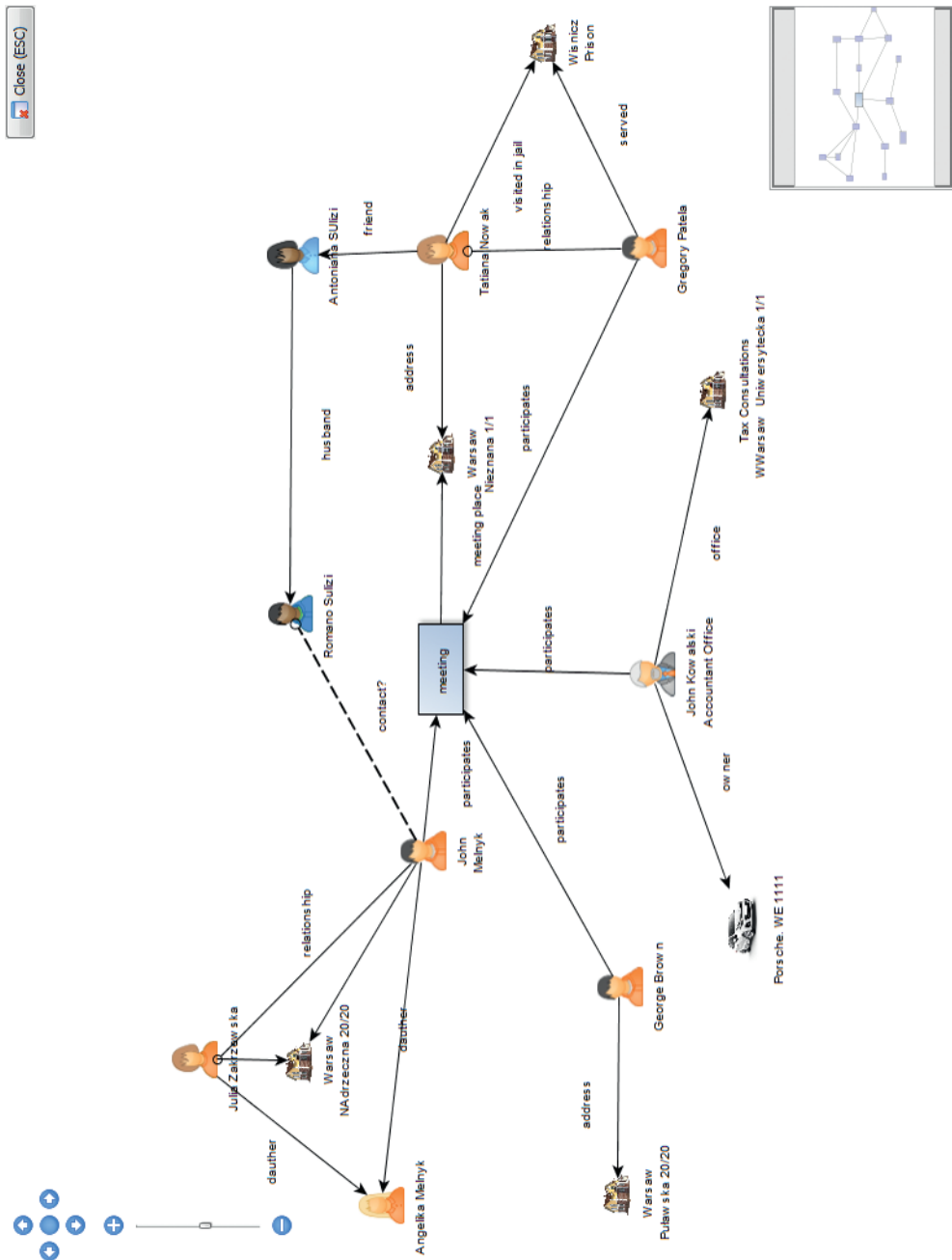
Knowing the address at which the meeting took place, we now have to check whether it is covered by CCTV monitoring (positive). We know from the information obtained from "Mr. Charles" that the accountant came alone by car and left with John Melnyk. We have to look for a car that came and left before lunch time with one male, and left with two males. Thus we find the accountant.

Checking open sources online we find the Facebook account of the meeting place owner, and we find the Italian link. Thus we now have quite good knowledge about a group that can be further investigated.

The structure looks like this:

Presenting other possible information management exercises exceeds the framework of this article. It is important that exercises included such elements as:

- creation of an investigation hypothesis,
- visualization of information,
- evaluation of information,
- basics of the criminal intelligence system,
- basics of criminal analysis,
- safe reporting.



Psychological training

Psychological training seems to be necessary for detectives. It should include following elements:

- Effective communication, including recognition of their own verbal and non-verbal communications as well as those of other people, matching other people's styles of talking and behaviour, recognition of their own emotions and those of others, making a report with a victim or a person suffering trauma, as well as with someone with psychological problems.
- Managing their own stress, realizing their limits and the destructive role of "ego". Working in a team, they have to show the ability to accept failure. Using failure as an asset to strengthen their team work, rather than denying their own mistakes or failures, will make them more effective.
- Creative thinking.
- Psychology of perception, remembering, recalling. Recognition of suggestion and projection, and learning how to deal with them.

During the last few years we have tried to include daily psychology classes, in addition to the psychology elements of other classes and exercises. A psychologist is also present during the entire training – his role is important, especially when reviewing staging sessions with actors.

The special psychological classes include theoretical and practical fields such as²⁸:

- avoiding thinking and behavioural stereotypes,
- perception, concentration,
- team work,
- recognition of one's needs and those of others,
- knowledge of manipulation techniques and how to defend oneself against them,
- empathy, anticipating what people are going to do, defining the interlocutors' personality.

It should be emphasized that, apart from the psychology classes, these elements are developed during exercises, especially during staging sessions with ac-

²⁸ В. В. Карпенко, *Спеціальна психологічна підготовка працівників правоохоронних органів до оперативної роботи*. In: Н. М. Бамбурак (ed), *Психічне здоров'я особистості у кризовому суспільстві. Збірник тез III-ї Всеукраїнської науково-практичної конференції [19 жовтня 2018 року]*, Lviv: ЛьвДУВС, 2018, pp. 165-172.

tors. Staging should develop all the elements learned theoretically. When the exercises are talked over, the trainers should refer to the lectures and show how the scientific knowledge works in the real situations. The more difficult and more emotionally exhausting exercises should be conducted every day, as they enable students to better understand real duty situations and states of mind.²⁹ They can then discuss with a psychologist, especially everything related to their emotions, feelings, needs, and thoughts.³⁰ The psychologist gives individual consultations and conducts corrective procedures whenever necessary.³¹

Some of the exercises are so stressful that some students have difficulties with handling them. It is important to teach them how to cope with stress as effectively as possible; however, it is also important at the same time not to do any damage, and to figure out what kind of duties will be optimal for each person.

The last day of the training should be the easiest. It should pull the students out of the long period of stress they have been through. The role of the psychologist is also crucial at this stage.

Other elements of detective training

Apart from working with information and psychological training, the lectures and the exercises include such elements of detective work as:

- Basics of surveillance and counter-surveillance – professional surveillance training takes a lot of time. However, every detective should be familiar with the basics. This should be one of the elements of the street exercises.
- Physical and legal threats to detectives and those cooperating with them – this includes the protection of information sources and witnesses, ways of conducting and securing tasks in the field, applied legal rules and reporting.
- Gathering unconventional information – for example, garbage analysis, use of water and electricity analysis.
- Basics of Internet investigations – recently we included an Internet and Analysis Class as part of the everyday routine of normal training. It can also be included in the exercises outside of that class.
- Basics of covering police intelligence.
- Basics of management.

²⁹ *Ibidem.*

³⁰ *Ibidem.*

³¹ *Ibidem.*

All the aspects of basic detective training described above should be the subject of daily discussion among trainers based on their observation of the students. Thus, at the end of the training the trainers can formulate conclusions for the management of the organization:

- suggestions related to the division of tasks. The goal here is to maximally use the talents of each detective and to prevent potential problems;
- the weakest points of the organization, the issues that need to be worked out;
- selection of candidates to participate in specialized training (for example surveillance training, criminal analysis training);
- selection of officers with management skills;
- suggestions for possible future trainers.

It is worth noting that the postulates contained in this paper are corroborated by the participants' anonymous answers to the following questions, which are collected at the end of each training course:

- Was the training practically helpful for your work?
- How understandable were the classes?
- How did you like the way the training was organized?
- Did you learn something new?
- What did you like the most? What could be changed?

The answers to these questions indicate a high level of satisfaction in both countries, no matter which organization was receiving the training. Most of the students give maximum scores for most questions. Sometimes they suggest organizing more training programs of a similar kind, or that the period of training be made longer.

4. CONCLUSIONS

A modern approach to detective training is a necessary element of security sector reform in the transitional states. The more damage caused to the system by the previous regime, the more modern training is needed.

The training should be practical and the trainers should have extensive prior experience in the field.

The training methods can be improved and modified in a creative way. This applies both to the training methods and to the subjects taught.

The traditional lecture-style system typical of the old-style academies should be replaced with intensive topic-based training wherever possible.

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ARKADIUSZ NYZIO 

The Internal Security of Poland in 2018 – Key Changes and Events



ABSTRACT

The article presents the most important changes and events of the year 2018 in the field of Polish internal security. It analyses the changes concerning local security, police services, and secret services, and the creation of new security institutions. Despite a cabinet reshuffle, there could be no major changes in the field, as the Law and Justice party remained in power. The year 2018 was definitely one of continuation. Some of the most important events marked the finalization of previous declarations, and some were caused by the EU. The author argues that the events of 2018 confirm that Poland's internal security policy is characterized by stability and predictability.

Keywords: internal security of Poland, police services, secret services, surveillance, reforms

INTRODUCTION

Despite the cabinet reshuffle, which included the appointment of Mateusz Morawiecki as the new Prime Minister and Joachim Brudziński as the new Minister of the Interior and Administration, 2018 did not bring major changes in the field of Poland's internal security. The reforms initiated by the Law and Justice party after the 2015 parliamentary election have been continued, with a couple of important projects being finalized. The aim of this article is to present the most important changes and events of the year 2018 in the field of Polish internal

security. The author focuses on analysing the activities of institutions subordinate to the government, as according to the Polish constitution the Council of Ministers is responsible for ensuring internal security and public order. The article is divided into four parts: it analyses the changes concerning local security (part 1), police services (part 2), secret services (part 3), and the creation of the new security institutions (part 4).

1. LOCAL SECURITY

Local security remains in the background of highly centralized public security policies. Since 2015 the Law and Justice-led government has been consistently restoring Police stations closed in the years 2007–2015. Its predecessor, the coalition of the Civic Platform and the Polish People's Party, closed 418 out of 817 stations, arguing that it would increase the effectiveness of Police operations, as more officers would be put on the ground, rather than sitting behind desks. In 2018, 25 stations were restored, and thus the number of reactivated stations exceeded 90.¹ This means that the government began to approach its planned goal, which is to restore at least 100 stations. It was announced that it is willing to surpass this number, acting in accordance with the demand reported by voivodship Police commanders.²

At the same time, municipal guards, which are subordinate to and financed by local governments and complement Police activities at the local level, have been struggling with serious financial and staffing problems. The number of municipal guards in Poland has been decreasing since 2013 and this trend continued in 2018. Over the past six years, the number of municipal guards has decreased by nearly 20% and now stands at around 488³, which means that less than one in five municipalities (in Polish: *gmina*) has a municipal guard. The official statistics concerning municipal guards in 2018 have not yet been made public, but

¹ *Realizacja programu modernizacji służb mundurowych na półmetku*, February 6, 2019, www.policja.pl/pol/aktualnosci/169260,Realizacja-Programu-Modernizacji-Sluzb-Mundurowych-na-polmetku.html (accessed February 6, 2019).

² *Jarosław Zieliński: Do 2020 powstaną 43 nowe posterunki policji*, February 5, 2018, <https://www.portalsamorzadowy.pl/wydarzenia-lokalne/jaroslaw-zielinski-do-2020-powstana-43-nowe-posterunki-policji,103665.html> (accessed February 2, 2019).

³ M. Weber, *Bezpieczeństwo to sprawa gminy*, October 1, 2018, <https://www.rp.pl/Prawo-dla-samorzadow/310039907-Bezpieczenstwo-to-sprawa-gminy.html&cid=44&template=restricted> (accessed February 2, 2019).

regardless of what the exact figures are it is clear that the issue must be addressed in new regulations.

In the second half of 2018, a draft of an act dissolving municipal guards was submitted to the Sejm, but was resolutely rejected. Rather than closing it down, Polish politicians are interested in the institution's reform. Discussions regarding this have been under way for several years. Since 2012⁴ they have been conducted by the Inter-ministerial Team for Cooperation with Municipal (City) Guards, an auxiliary body of the Prime Minister. During the discussion a number of changes, concerning tasks, competences, staff and payroll issues, were proposed. Among them there is a proposal concerning the requirement of a two-thirds supermajority in the municipal council in favour of the dissolution of a guard unit.⁵ Another proposition is that the existence of a guard unit would be mandatory in cities with a population of more than 100,000. Also under consideration has been the question of whether to grant guards the right to make with their body cameras not only visual but also audio recordings of the people with whom they come into contact.⁶ At the end of 2018, the Team was dissolved⁷, which marks the end of exploratory work. A project amending the act on municipal guards should be expected in 2019.

One of the areas in which municipal guards are becoming increasingly important is environmental protection, most notably preventive measures against smog. The improvement of air quality in Poland, which is among the worst in Europe, requires effective legal measures to enforce bans and restrictions on the combustion of solid fuels. On the 1st of November, 2018, the new regulation on situations in which guards are entitled to impose fines came into force.⁸ Their ability to impose fines is no longer limited to catching red-handed somebody burning waste. The guards are now able to enforce anti-smog regulations passed

⁴ Zarządzenie Nr 69 Prezesa Rady Ministrów z dnia 29 sierpnia 2012 r. w sprawie powołania Międzyresortowego Zespołu do spraw Współpracy ze Strażami Gminnymi (Miejskimi), Monitor Polski 2012, item 631.

⁵ T. Żółciak, *Minister Błaszczak szykuje rewolucję w strażach miejskich*, Forsal.pl, June 28, 2017, forsal.pl/artykuly/1053813,minister-blaszczak-szykuje-rewolucje-w-strazach-miejskich.html (accessed February 20, 2018).

⁶ Grupa robocza do spraw kompetencji straży gminnych – rekomendacja, November 15, 2018.

⁷ Zarządzenie nr 200 Prezesa Rady Ministrów z dnia 28 listopada 2018 r. w sprawie zniesienia niektórych organów pomocniczych Rady Ministrów i Prezesa Rady Ministrów, Monitor Polski 2018, item 1191.

⁸ Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 11 października 2018 r. zmieniające rozporządzenie w sprawie wykroczeń, za które strażnicy straży gminnych są uprawnieni do nakładania grzywnien w drodze mandatu karnego, Dziennik Ustaw 2018, item 1996.

by local governments, which are introducing certain restrictions or prohibitions regarding fuel usage. Before this change, guards who reported violations of the anti-smog resolutions could only refer a case to the Police or apply to the court for the offending person to be punished. Long-lasting court proceedings made it difficult to be certain that punishment would be meted out. In addition, the courts sometimes lowered the sum of the fine, which made the punishment less severe.⁹ According to the changed ordinance, the guards now have the right to impose fines for offenses specified in “local law acts, laying down provisions for ensuring order, peace and public security, violation of which is punishable by a fine”.¹⁰ This alone will not stop the trend towards the closing of guard units, but it proves that there are still a lot of tasks no other institution can perform.

2. THE POLICE SERVICES

2.1. *Budget, staffing, equipment and organizational changes*

In 2018, budget expenditures on public security and fire protection increased by 3% compared to the previous year and amounted to almost PLN 14.994 billion. The Police remain the most expensive service, consuming 61% of the funds. Its 2017 budget was PLN 9.137 billion, while in 2018 it was PLN 9.292 billion. The budgets of other selected police services are presented in the chart 1.

In 2017, 2.6% of the funds were allocated for investments, and in 2018 the figure was 2.9%.¹¹ The change was minor but nonetheless noticeable, as it made the long-anticipated purchase of equipment possible. Particularly important purchases were made by the Police. In April 2018, the body camera pilot program, which had been underway since December 2017, came to a close. As its effect was considered satisfactory, in the middle of the year a tender for the supply of two thousand cameras was launched.¹² In November the winner of the tender

⁹ *Straż miejska może karać mandatem za łamanie uchwały antysmogowej*, portal Samorządowy.pl, November 2, 2018, <https://www.portalsamorzadowy.pl/prawo-i-finanse/straz-miejska-mo-ze-karac-mandatem-za-lamanie-uchwaly-antysmogowej,116124.html> (accessed December 12, 2018).

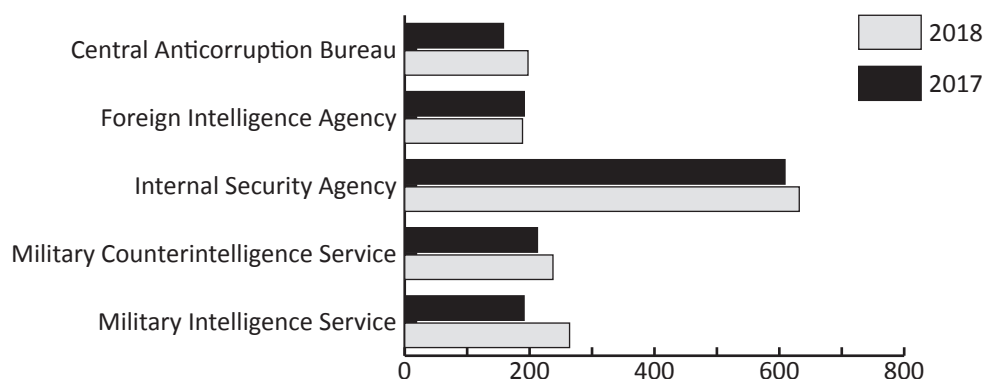
¹⁰ *Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 11 października...*

¹¹ *Ustawa budżetowa na rok 2017 z dnia 16 grudnia 2016 r.*, Dziennik Ustaw 2017, item 108; *Ustawa budżetowa na rok 2018 z dnia 11 stycznia 2018 r.*, Dziennik Ustaw 2018, item 291.

¹² *Ponad dwa tysiące kamer osobistych trafi do policjantów*, July 26, 2018, <https://www.policja.pl/pol/aktualnosci/161930,Ponad-dwa-tysiace-kamer-osobistych-trafi-do-policjantow.html> (accessed February 2, 2019).

was selected¹³ and the delivery of cameras to Police units has begun. A month later the Police granted the tender for delivery of eight light armoured personnel carriers.¹⁴

Figure 1: The comparison of selected police services' budgets in 2017–2018 (in PLN millions)



Source: *Ustawa budżetowa na rok 2017...*; *Ustawa budżetowa na rok 2018...*

Another important purchase made by the Police was of two S-70i Black Hawk helicopters, intended for the Bureau of Anti-terrorist Operations. The contract was signed in May, and the helicopters, both assembled in the Polish city of Mi-elec, were handed over to the Police in November.¹⁵ The date of delivery of the third machine is set for March 2019¹⁶, and the purchase of two more is planned. The three Black Hawks are the beginning of the process of reconstruction of the Polish Police fleet. Joachim Brudziński, Minister of the Interior and Administration, said that this was a necessity, as “the oldest helicopter in the Police is 47 years old, and the youngest – 13”.¹⁷ Also, several hundred cars are on the list of

¹³ 203/CUT/18/EJ/PMP, przetargi.policja.pl/zp/archiwum-1/2018/161673,203Cut18EJPMP.html (accessed February 12, 2019).

¹⁴ 272/CTR/18/TJ/PMP, przetargi.policja.pl/zp/postepowania-o-zamowie/164959,272Ctr18TJPM.html (accessed February 12, 2019).

¹⁵ *Polish National Police Accept Delivery of First Two S-70i Black Hawk Helicopters*, December 3, 2018, <https://www.pzlmielec.pl/en/media/news/art,136,polish-national-police-accept-delivery-of-first-two-s-70i-black-hawk-helicopters.html> (accessed February 2, 2018).

¹⁶ *Third Black Hawk for the Polish National Police*, November 20, 2018, <https://www.pzlmielec.pl/en/media/news/art,135,third-black-hawk-for-the-polish-national-police.html> (accessed February 2, 2019).

¹⁷ *Brudziński: jednym z naszych priorytetów było zwiększenia bezpieczeństwa Polaków*, December 5, 2018, <https://www.pap.pl/aktualnosci/news%2C369435%2Cbrudziński-jednym-z-na-szych-priorytetów-było-zwiększenie-bezpieczeństwa> (accessed February 2, 2019).

the purchases made by the Police.¹⁸ In 2018, they planned to buy over a thousand cars¹⁹, but the exact number actually purchased is not yet publically known.²⁰ This is of great importance in the context of deficiencies that the Supreme Audit Office has noted. In its report published in January 2018, it was stated that in 2016 there was a shortage of more than six hundred such vehicles.²¹

These purchases would not have been possible if not for “The Programme for modernization of the Police, Border Guard, State Fire Service and State Protection Service in the years 2017–2020”, which was established in December 2016. In 2018 it was decided to increase the total amount of expenditure for the implementation of the programme, from 9.186 billion PLN to 9.208 billion PLN.²² In addition, the purchase of many police cars was co-financed by local governments.

Some of the Police investments were related to the organization of the United Nations Climate Change Conference (COP24), which took place in Katowice. This was the biggest event for the security institutions in 2018, requiring many months of preparation and exercises, the involvement of 8% of all Polish police officers and extensive coordination efforts. In connection with securing COP24, Poland temporarily reinstated border controls (from November 22 to December 16) and introduced the first (the lowest) level of terrorist alert (ALFA). The operation, codenamed “Climate 2018”, was successful; there were no serious security breaches during the summit.²³

Other police services made noticeable purchases as well. For example the Border Guard signed a contract for the supply of the H135 helicopter produced by Airbus Helicopters. The transaction will be financed by the “Programme”.²⁴ Some

¹⁸ *Nowe radiowozy w polskiej policji*, December 4, 2018, <https://mojafirma.infor.pl/moto/wiadomosci/wydarzenia/2825985,Nowe-radiowozy-w-polskiej-policji.html> (accessed February 2, 2019).

¹⁹ *Brudziński: jednym z naszych priorytetów...*

²⁰ *Interpelacja nr 27811 do ministra spraw wewnętrznych i administracji w sprawie taboru samochodowego Policji*, November 20, 2018, <https://www.sejm.gov.pl/Sejm8.nsf/InterpelacjaTresc.xsp?key=B6SEQ3&view=null> (accessed February 2, 2019).

²¹ *Użytkowanie samochodów służbowych przez funkcjonariuszy Policji*, Najwyższa Izba Kontroli, Warszawa, January 2018, p. 7.

²² *Ustawa z dnia 22 listopada 2018 r. o zmianie ustawy o ustanowieniu „Programu modernizacji Policji, Straży Granicznej, Państwowej Straży Pożarnej i Służby Ochrony Państwa w latach 2017–2020”*, Dziennik Ustaw 2019, item 88.

²³ *Operacja „Klimat 2018” zakończona*, December 18, 2018, <https://www.csp.edu.pl/csp/aktualnosci/4034,Operacja-Klimat-2018-zakonczone.html> (accessed February 2, 2019).

²⁴ E. Gajewska, *Podpisanie umowy na dostawę śmigłowca Airbus Helicopters*, October 30, 2018, <https://www.strazgraniczna.pl/pl/aktualnosci/7090,Podpisanie-umowy-na-dostawe-smiglowca-AIRBUS-HELICOPTERS.html> (accessed February 2, 2019).

significant investments were co-financed by the EU's Internal Security Fund. That was the case with, for example, the purchase of 140 vehicles for the Border Guard.²⁵ Another important change regarding the security of Poland's borders took place in November, when a contract for the implementation of automated border control systems (ABC) was signed. In 2019 passengers with biometric passports will be able to use biometric gates at the two Warsaw airports.²⁶

The aforementioned Bureau of Anti-terrorist Operations (BOA) was reorganized in November 2018, but the new regulations would come into force in April and July 2019. The Central Counter-terrorist Unit of the Police BOA will become separated from the General Police Headquarters. BOA will be directly subordinate to the Chief Commander of the Police. It is a part of a larger organizational change, with the counterterrorist forces becoming the sixth type of the service within the Police, after criminal, investigative, internal, preventive and the support-providing ones. Together with 17 independent counter-terrorist units (one in each of the voivodships and additional one in the capital city of Warsaw), the BOA will serve as a counter-terrorist service "responsible for conducting counterterrorism activities" and "supporting the activities of the Police organizational units in conditions of particular danger or requiring the use of specialized forces, resources and tactics".²⁷

A remaining, serious problem for some of the services, especially the Police, the Border Guard and the State Protection Service (see 4.1.), is the number of unfilled vacancies. Despite a pay rise²⁸ and extensive promotional efforts in the media, ongoing recruitment not only failed to eliminate the problem, it did not even reduce it. As of the 31st of December, 2018, there were 4,598 vacancies (4.45%) for Police officers. A year earlier the number was 4,588 (4.44%). The main obstacle in employing new officers is not the shortage of resources, but the lack of suitable candidates. The Police remains a popular employer, but in 2018 only one in four candidates successfully passed through the qualification process.²⁹ The

²⁵ A. Michalska, *Samochody ze środków FGW*, December 20, 2018, <https://www.strazgraniczna.pl/pl/aktualnosci/7241,Samochody-ze-srodkow-FGW.html> (accessed February 2, 2019).

²⁶ M. Pietraszczyk, *Bramki biometryczne ABC na polskich lotniskach*, November 30, 2018, <https://www.strazgraniczna.pl/pl/aktualnosci/7182,Bramki-biometryczne-ABC-na-polskich-lotniskach.html> (accessed February 2, 2019).

²⁷ *Ustawa z dnia 9 listopada 2018 r. o zmianie ustawy o Policji oraz niektórych innych ustaw*, Dziennik Ustaw 2019, item 15.

²⁸ *Systematycznie podnosimy wynagrodzenia w służbach podległych MSWiA*, March 27, 2018, <https://www.policja.pl/pol/aktualnosci/156734,Systematycznie-podnosimy-wynagrodzenia-w-sluzbach-podleglych-MSWiA.html> (accessed February 12, 2019).

²⁹ *Liczba policjantów w polskiej Policji – fakty*, January 10, 2019, <https://www.policja.pl/pol/aktualnosci/168231,Liczba-policjantow-w-polskiej-Policji-fakty.html> (accessed February 12, 2019).

problem became the subject of an anonymous petition addressed to the Sejm, which proposed to enable foreigners to serve in the Police.³⁰ As expected, the petition was rejected. The vacancies in the Border Guard are even more of a problem: as of the 30th of November, 2018, there were 1,221 (7.61%).³¹

2.2. *The uniformed services protest*

2018 will be remembered as a time of nationwide protest by the uniformed services. Although in May the least-paid officers received increases, their scale and amount did not satisfy the demands. After months of expressing dissatisfaction, in July the Federation of Trade Unions of the Uniformed Services, consisting of the unions of the Police, the Prison Service, the Border Guard, the State Fire Service, and the Customs and Tax Service, began a series of protest actions. It demanded, among other things, a pay rise and return to the previous, more favourable pension system, which was in force until the end of 2012.³²

The Police limited the issuing of fines, which reduced budget revenues. Then, on the 2nd of October, about 30,000 Police officers, firemen, border guards and prison guards protested in Warsaw. The demonstration was called the largest in the history of the Polish uniformed services.³³ Then came the biggest event of the protest. Because police officers, border guards and prison guards are not legally entitled to strike, the protesters reached for a controversial measure, with many of them taking sick leave. The exact number remains unknown, but the General Police Headquarters estimated that at the beginning of November about 30,000 Police officers, i.e. about 30% of their total number, were absent from duty due to sick leave.³⁴ The date of the action was not accidental, as National Independence Day (11 November) and celebration of the centenary of Poland regaining its independence were approaching. Due to the scale of the action, it would have been impossible to effectively secure the ceremonies. The protests proved to

³⁰ *Petycja w sprawie nowelizacji Ustawy o Policji*, [www.orka.sejm.gov.pl/petycje.nsf/nazwa/145-417-18/\\$file/145-417-18.pdf](http://www.orka.sejm.gov.pl/petycje.nsf/nazwa/145-417-18/$file/145-417-18.pdf) (accessed February 12, 2019).

³¹ *Sytuacja kadrowa w służbach MSWiA. Stan na 1 grudnia 2018*, <https://www.nszzp.pl/aktualnosci/sytuacja-kadrowa-w-sluzbach-mswia-stand-na-grudzien-2018/> (accessed February 20, 2019).

³² *Uchwały Federacji Związków Zawodowych Służb Mundurowych*, July 11, 2018, https://www.zzsflorian.pl/images/aktualnosci/2018/2018_07_13/2018_07_11_uchwaly_Rada_Federacji_ZZ_SM.pdf (accessed February 12, 2019).

³³ L. Kostrzewski, *Policja grozi L4*, "Gazeta Wyborcza", October 22, 2018.

³⁴ *Rzecznik ZUS: Zakład nie ma uprawnień do kontroli zwolnień lekarskich policjantów*, November 8, 2018, <https://www.gazetaprawna.pl/artykuly/1339349,rzecznik-zus-zaklad-nie-ma-uprawnien-do-kontroli-zwolnien-lekarskich-policjantow.html> (accessed February 2, 2019).

be effective, and the Minister of the Interior and Administration was forced to sign an agreement with representatives of the uniformed services he oversees. It covered an increase in salaries and more favourable retirement conditions.³⁵ Similar agreements were then signed with other protestors, representing security institutions subordinated to the Minister of Justice (the Prison Service) and the Minister of Finance (the Customs and Tax Service).³⁶

The opportunity created by the protest was not taken advantage of by producing a comprehensive framework of wage regulation in the security institutions, as the agreement was limited to simply satisfying the specific financial demands being made during the protest. Salaries are still set individually for each institution; there is no specified linkage between salaries and the types of duties carried out. No objective guidelines indicate how much employees of specific uniformed services earn in relation to each other. It is also worth pointing out that no demands regarding changes in the organization of work, for example concerning ineffective statistics-oriented policing, were formulated by the protestors.

2.3. The transposition of the Police Directive

The so-called Police Directive of the European Union was passed on the 27th of April, 2016.³⁷ It is considered to be “a second part” of the General Data Protection Regulation. Regulations and directives are different types of EU legal acts. The former are binding for all EU countries and do not need to be transposed into national law. The latter establish specific results which the EU member states are obligated to meet, but give them a free hand in choosing the methods for achieving them. Failure to implement the directive may result in infringement proceedings being taken by the European Commission.

³⁵ P. Malinowski, *Protest policjantów. Związkowcy porozumieli się z MSWiA*, November 8, 2018, <https://www.rp.pl/Sluzby-mundurowe/181109413-Protest-policjantow-Zwiazkowcy-porozumieli-sie-z-MSWiA.html> (accessed February 2, 2019).

³⁶ J. Bereźnicki, *Związkowcy z KAS rezygnują z protestu. Rząd ugiął się pod żądaniami podwyżek*, November 21, 2018, <https://www.money.pl/gospodarka/wiadomosci/arttykul/zwiazkowcy-z-kas-rezygnuja-z-protestu-rzad,17,0,2422033.html> (accessed February 2, 2019).

³⁷ *Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA*, “Official Journal of the European Union”, no. L 119, May 4, 2016.

The purpose of the directive is to ensure “a high level of protection of personal data” of EU citizens in relation to preventing and combating crime. The EU member states had two years from the date of the directive’s entry into force in which to implement it – the deadline was the 6th of May, 2018.³⁸ The government presented a draft version of the act implementing the directive in mid-April, but it was not until the end of August that the Council of Ministers decided to send it to the parliament. The act was officially submitted to the Sejm on the 30th of October.³⁹ It was passed on by the Sejm on the 14th of December and the president signed it on the 8th of January, 2019. The act will come into force on the 6th of February, 2019, precisely nine months after the deadline. The other EU member states had similar problems with punctuality⁴⁰, but the case of Poland was significant as it was yet another example of the fact that the implementation of European surveillance regulations meets with resistance in the country.

The bill regulates the rules for the processing and protecting of personal data, and the rights of data subjects. The scale of the implementation of the directive raises a number of issues. Firstly, the fundamental dispute concerns the fact that the Polish secret services were excluded from the act.⁴¹ The government standpoint is that this is consistent with the directive, which states that “activities concerning national security, activities of agencies or units dealing with national security issues and the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 2 of Title V of the Treaty on European Union”, entitled “Specific provisions on the common foreign and security policy”, should not be considered “to be activities falling within the scope” of the Police Directive.⁴² This interpretation is problematic because, as the Polish Commissioner for Human Rights pointed out, “not all statutory duties carried out by the secret services fall within the scope of the term ‘national security’”.⁴³ Secondly, oversight of the processing of personal data is to be carried out by presidents of the courts, the National Council of the Judiciary and

³⁸ *Ibidem*.

³⁹ *Rządowy projekt ustawy o ochronie danych osobowych przetwarzanych w związku z zapobieganiem i zwalczaniem przestępczości*, the Sejm paper no. 2989, October 30, 2018.

⁴⁰ *Transposition of the Directive (EU) 2016/680. State of play in the Member States – February 2018*, <https://www.ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=12946> (accessed February 2, 2019).

⁴¹ *Ustawa z dnia 14 grudnia 2018 r. o ochronie danych osobowych przetwarzanych w związku z zapobieganiem i zwalczaniem przestępczości*, *Dziennik Ustaw* 2019, item 125.

⁴² *Directive (EU) 2016/680 of the European Parliament and of the Council...*

⁴³ *Krytyczna opinia RPO dla Senatu co do ustawy, która ma wdrażać unijną „dyrektywę policyjną”*, December 20, 2018, <https://www.rpo.gov.pl/pl/content/Krytyka-RPO-dla-senatu-ustawy-o-danych-osobowych-ws-dyrektywy-policyjnej-UE> (accessed February 2, 2019).

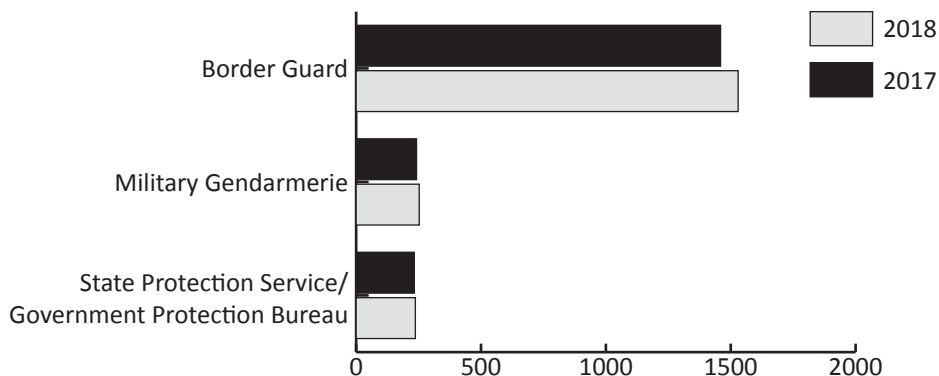
the prosecutors at the appropriate level.⁴⁴ This begs the question of the regulation's compliance with the EU's stance that the member states should establish "supervisory authorities" overseeing the processing of personal data with "complete independence".⁴⁵ Thirdly, classified information has been exempted from the provisions of the act. Such a wide deviation from the principles introduced by the directive can be regarded as inconsistent with its general assumptions.⁴⁶

3. THE SECRET SERVICES

3.1. Budget, staff, equipment and organizational changes

The Polish secret services cost slightly over PLN 1.5 billion in 2018. Out of the five, only the 2018 budget of the Foreign Intelligence Agency was decreased (by 1.5%). The budget of the Internal Security Agency went up by 4% and the budgets of the other three intelligence agencies were increased significantly: the Military Counterintelligence Service by 12%, the Central Anti-Corruption Bureau by 25% and the Military Intelligence Service by 38%.⁴⁷ The numbers are presented in the chart below.

Figure 2. The comparison of secret services' budgets in 2017–2018 (in millions PLN)



Source: *Ustawa budżetowa na rok 2017...*; *Ustawa budżetowa na rok 2018...*

⁴⁴ *Ustawa z dnia 14 grudnia 2018 r. o ochronie danych osobowych...*

⁴⁵ *Krytyczna opinia RPO dla Senatu...*

⁴⁶ *Ibidem.*

⁴⁷ *Ustawa budżetowa na rok 2017...*; *Ustawa budżetowa na rok 2018...*

Details of the exact number of people employed by the Polish intelligence and counterintelligence institutions are not available to the public. Among the secret services, the most transparent in this area is the Central Anticorruption Bureau, which publishes annually a report containing employment data. The 2018 report was not yet available at the time of writing. However, even without these data it is known that all of the secret services are looking for new employees. For this purpose the Foreign Intelligence Agency has even started an online promotional campaign.⁴⁸

In 2018 the public got to know the structure of the Foreign Intelligence Agency, which has been classified since 2011. Currently, it consists of nine departments: the Operational Department; the Information Department; the Technical Department; the Security Office; the Finance and Administrative Office; the Personnel and Training Office; the Legal Office; the Cabinet of the Head; and the Independent Department for Crisis Management.⁴⁹

In May 2018 the Terrorism Prevention Centre of Excellence (TPCoE) was established within the structure of the Internal Security Agency. The official opening of the TPCoE was held on the 22nd of May.⁵⁰ The Center carries out tasks in four priority areas: terrorism prevention, international cooperation, analytical and expert support, and information strategy. It aims at “shaping the security culture” by building counterterrorist “awareness in society”. Other asymmetrical threats are also within the scope of the Center. The TPCoE will be responsible for organizing “tailored training for officers and employees of secret services, as well as public administration bodies and other entities”. The organizers see it as “an important step toward institutionalization and facilitation of the cooperation” within Three Seas Initiative, consisting of Austria, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.⁵¹

⁴⁸ See for example *Agencja Wywiadu – Wizerunek*, January 12, 2018, <https://www.youtube.com/watch?v=whAGdO15XSE> (accessed February 12, 2019).

⁴⁹ *Zarządzenie nr 106 Prezesa Rady Ministrów z dnia 3 lipca 2018 r. zmieniające zarządzenie w sprawie nadania statutu Agencji Wywiadu*, Monitor Polski 2018, item 660.

⁵⁰ *Opening of TPCoE – Warsaw*, <https://tpcoe.gov.pl/cpe/events/3,Opening-of-TPCoE-Warsaw.html> (accessed February 2, 2019).

⁵¹ *Mission. Shaping the Security Culture by Building CT Awareness in Society*, <https://tpcoe.gov.pl/cpe/about-us/1,MISSION.html> (accessed February 2, 2019).

3.2. Surveillance procedures

Although in 2018 there was yet another extension of the surveillance competences of the Polish security institutions (this time of the National Revenue Administration), the most important event in this area was one which did not take place.

At the beginning of 2018 the Constitutional Tribunal was due to present the results of the assessment of the compliance of the so-called Polish Surveillance Act, i.e. the Act of 15 January 2016 amending the Police Act and certain other acts, with the constitution. The Act caused great controversy upon its creation, and it has become one of the most discussed topics in the media. The scale of its interference in individual privacy rights and the effectiveness of control and supervision of the processing of personal data it has introduced have caused serious concern. An application to examine the compliance of its provisions with the fundamental law was made in February 2016 by the Commissioner for Human Rights. Also, in 2016 a number of other provisions of fundamental importance for human rights were adopted, for example the act on the “fruits of the poisoned tree” in criminal proceedings and the antiterrorism law. The Commissioner expressed his doubts about their provisions as well, filing six applications with the Constitutional Tribunal.⁵²

However, the Constitutional Tribunal did not issue a ruling concerning the surveillance act, as the Ombudsman withdrew his application. Between March and December 2018, the Commissioner withdrew a total of six of his applications. He argued that the change of the formation of the court had no legal basis (it was changed from the full bench to a five-person bench) and that two judges should not be a part of the formation, as they were appointed to the Tribunal via an infringement of the constitution (the so-called ‘anti-judges’).⁵³ The composition and functioning of the Tribunal, as well as its independence from the political elite, have been the subject of dispute since the 2015 Polish constitutional court crisis. Agnieszka Grzelak, the director of the Commissioner’s office, stated that though those issues remain unresolved, “the road via Constitutional Tribunal is almost impossible now”.⁵⁴

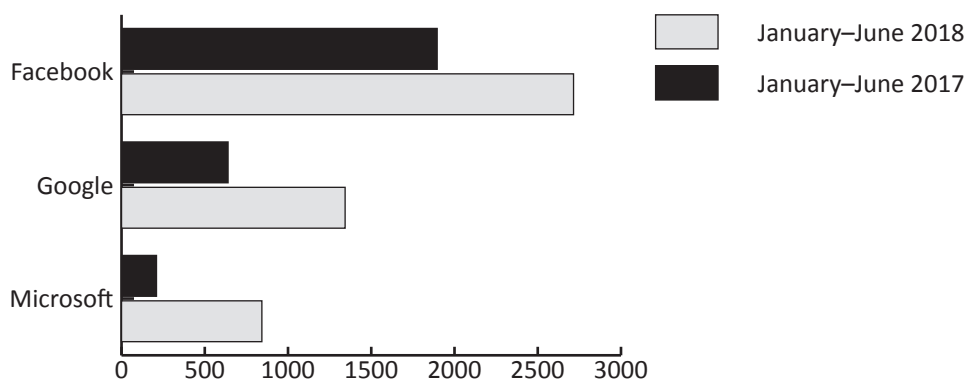
⁵² A. Nyzio, *Wokół „ustawy inwigilacyjnej”. Geneza, przepisy i konsekwencje Ustawy z dnia 15 stycznia 2016 r. o zmianie ustawy o Policji oraz niektórych innych ustaw*, “Jagielloński Przegląd Bezpieczeństwa” 2017, no. 1, p. 68.

⁵³ *Ibidem*, pp. 69-70.

⁵⁴ A. Grzelak, *Choosing between two Evils: the Polish Ombudsman’s Dilemma*, Verfassungsblog, May 6, 2018, <https://verfassungsblog.de/choosing-between-two-evils-the-polish-ombudsmans-dilemma/> (accessed February 2, 2019).

This issue is of great importance in the context of the increasing scale of the surveillance activities undertaken by Polish security institutions. Although exact numbers on data retention and operational control in 2018 are not yet available, the partial information provided by the largest telecommunications companies indicates that the trend continues to grow. The chart below presents the number of requests concerning users/accounts submitted by the Polish security institutions in the first half of 2018. Data for the first half of 2017 are presented for comparison.

Figure 3. Total number of users (accounts) specified in the government's request



Source: *Facebook transparency*, at <https://transparency.facebook.com/government-data-requests/country/PL> (accessed February 2, 2019); *Google transparency*, at <https://transparencyreport.google.com/user-data/overview> (accessed February 2, 2019); *Microsoft corporate responsibility*, at <https://www.microsoft.com/en-us/corporate-responsibility/lerr/> (accessed February 2, 2019)

Information on the number of wiretaps authorized in 2018 will be published in the late spring, and information on telecommunications, postal and internet data that has been processed by the Polish security institutions in 2018 will be made available to the public in the summer.

4. THE NEW INSTITUTIONS

4.1. The State Protection Service

In 2018 the Government Protection Bureau (GPB), a police service responsible for the protection of the state's officials for more than sixty years, was disbanded. Thus the ruling Law and Justice party acted upon a proposal from its 2014 manifesto, fulfilling one of its most important promises in the field of internal security. The party had criticized the Bureau for years, accusing it of a lack of professionalism, mismanagement and, above all, negligence contributing to the Smolensk plane catastrophe in 2010. The government argued that the audit conducted on the Bureau in December 2015 exposed major organizational pathologies and the lack of a vision for institutional development.⁵⁵ The act establishing the State Protection Service (SPS) was passed on the 8th of December, 2017. The president signed the act on the 9th of January, 2018, and on the 1st of February it came into force.

The State Protection Service is the direct successor of the Government Protection Bureau, as its structures and most of its personnel have been transferred to the new service. The main difference between the two is related to the wider tasks and competences with which the State Protection Service has been equipped. In relation to the tasks carried out by the Bureau, the number of people and objects protected by the institution was increased. Not only are the facilities of the president, the prime minister, the interior minister and the foreign minister now protected, but also those used by the other members of the Council of Ministers. Therefore, the SPS replaced the private security companies which had hitherto protected some government properties.⁵⁶

The most important change, however, concerns the right to conduct operational and investigative activities, including operational control, which the Bureau lacked. The SPS's predecessor conducted only "preventive actions", which were partially similar but carried out on a smaller scale. Authorizing the State Protection Service to conduct operational and intelligence activities, i.e. surveillance, opened the debate on its actual status. Due to this change and the overwhelming secrecy surrounding its functioning, some have recognized the SPS

⁵⁵ *Odpowiedź na interpelację nr 27082 w sprawie strukturalizacji Służby Ochrony Państwa*, December 12, 2018, <https://www.sejm.gov.pl/sejm8.nsf/InterpelacjaTresc.xsp?key=B7EK44&view=1t> (accessed February 2, 2019).

⁵⁶ *Rządowy projekt ustawy o Służbie Ochrony Państwa z projektami aktów wykonawczych*, the Sejm paper no. 1916, October 10, 2017.

as the sixth Polish secret service. In the functional or institutional sense, this is certainly a reasonable argument, but in the legal sense the matter is clear – the legislator considers it to be a police service.

The setting up of the SPS lasted until the end of April 2018. The reform enabled major personnel changes, as the transfer of staff between the GPB and the SPS was not carried out automatically. Until the end of March 2018, the chief of the State Security Service was responsible for deciding which officers and employees of the Government Protection Bureau would be invited to join the new institution. The average number of officers employed by the GPB was 2210, and the SPS is to have bigger staff. In 2017 there were 1966 officers in the GPB; the goal for the SPS is to achieve an employment level of 3,000 officers by the end of the year 2022. It was planned to employ 165 officers in 2018, which would bring the staff number closer to the mid-term point of 2375.⁵⁷ However, it turned out that the new institution is struggling with a major staffing problem. By the 1st of December 219 people had decided to leave the service. In mid-2018, 1932 officers were employed, which meant that the number of vacancies was around 19%.⁵⁸ Later, the Deputy Minister of the Interior and Administration, responsible for overseeing the SPS, declared that 108 Police officers, 8 Border Guard officers, 34 officers of the Prison Service and 2 officers of the Customs and Tax Service had been transferred to the new institution.⁵⁹ As of the 1st of December, 1,990 officers served in the SPS.⁶⁰

In the budget for 2018, PLN 237 million was allocated to the GPB and the SPS.⁶¹ The total cost of the reform of the institution in 2018–2027 will amount to not more than PLN 3.34 billion.⁶²

⁵⁷ *Ibidem*.

⁵⁸ *Odpowiedź na interpelację nr 22652 w sprawie delegowania funkcjonariuszy innych służb mundurowych do służby w Służbie Ochrony Państwa*, July 24, 2018, <https://www.sejm.gov.pl/sejm8.nsf/InterpelacjaTresc.xsp?key=B2ZHEZ&view=1t> (accessed February 2, 2019).

⁵⁹ *Odpowiedź na interpelację nr 27609 w sprawie przechodzenia funkcjonariuszy do służby w SOP*, December 12, 2018, <https://www.sejm.gov.pl/Sejm8.nsf/InterpelacjaTresc.xsp?key=B7FJWT> (accessed February 2, 2019).

⁶⁰ *Odpowiedź na interpelację nr 27082...*

⁶¹ *Ustawa budżetowa na rok 2018...*

⁶² *Rządowy projekt ustawy o Służbie Ochrony Państwa...*

4.2. The Internal Oversight Inspector and the Internal Oversight Office

The establishment of the Internal Oversight Office is another example of an idea of the Law and Justice that was carried out in 2018. The party has called for years for a strengthening of the supervision procedures over the uniformed services, arguing that in order for the units responsible for this to work effectively it is necessary to strengthen their independence. Furthermore, the party emphasized that it is essential to increase and specify the supervisory competences of the minister responsible for internal affairs. To this end, in the spring of 2017 a draft of the act amending the act on specific forms of supervision by the minister was created. The act establishing the position of the Internal Oversight Inspector and the Internal Oversight Office was passed on the 9th of November, 2017. The president signed the act on the 28th of December, 2017, and on the 27th of January, 2018, it came into force.⁶³

The Internal Oversight Inspector is appointed by the minister responsible for internal affairs and directly subordinate to him. The main objective of the Inspector is to support the minister in exercising his supervision of the relevant services. The position of the Office in the system of state organs and institutions may seem misleading. It is a new security institution, but not a new security service. Strictly speaking, the Office is an organizational unit of the Ministry of the Interior and Administration. Its purpose is to provide organizational support for the Internal Oversight Inspector's statutory tasks. The Office was granted competence to conduct operational and investigative activities, but these are narrow in scope: both objectively (limited to corruption offenses and organized crime) and subjectively (limited to Police officers, border guards, officers of the State Protection Service and the State Fire Service, and other employees of these services). Internal affairs units functioning within the Police and the Border Guard have been separated within the structure of those institutions to become organizational units. Their chiefs were granted the status of organs, similar to the status of the commander of the Central Bureau of Investigation of the Police.⁶⁴

⁶³ Ustawa z dnia 9 listopada 2017 r. o zmianie ustawy o niektórych uprawnieniach pracowników urzędu obsługującego ministra właściwego do spraw wewnętrznych oraz funkcjonariuszy i pracowników urzędów nadzorowanych przez tego ministra oraz niektórych innych ustaw, Dziennik Ustaw 2018, item 106.

⁶⁴ *Ibidem*.

4.3. *The National Cybersecurity System*

On the 5th of July, 2018, the Sejm passed the Act on the National Cybersecurity System, which came into force on the 28th of August.⁶⁵ It introduced yet another subsystem to Poland's national security, after the National Firefighting Rescue System (functioning since 1995), Civil Defence (in its current form since 1997), the Emergency Medical Services (2006), and Crisis Management (2007). The act implemented the EU's directive on security of network and information systems⁶⁶ and defined the organization of the system, the tasks and duties of its elements and the scope of the Cybersecurity Strategy of the Republic of Poland. The system consists of twenty types of entity, including operators and key service providers, research institutes, the National Bank of Poland, the Government Plenipotentiary for Cybersecurity and the Council for Cybersecurity, with the last of these being created by the act.⁶⁷ The position of the Plenipotentiary, which plays the key role in the system, was filled in December 2018.⁶⁸ The setting up of the new institution came to an end, but the system is yet to become fully operational.

CONCLUSIONS

The year 2018 was not as decisive for Polish internal security as 2016 had been. The changes introduced in this period are above all a continuation of previous efforts. The policy of the Law and Justice-led government in this area remains consistent. It is worth emphasizing the importance of the EU, which either forced some of the changes or contributed to their financing. The views of the Polish legislators and government on security remain unchanged, and a consensus prevails between the most important political parties. In fact, there is not much to

⁶⁵ *Ustawa z dnia 5 lipca 2018 r. o krajowym systemie cyberbezpieczeństwa*, Dziennik Ustaw 2018, item 1560.

⁶⁶ *Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union*, "Official Journal of the European Union", no. L 194, July 19, 2016.

⁶⁷ *Ibidem*.

⁶⁸ *Premier powołał Karola Okońskiego na stanowisko Pełnomocnika Rządu do spraw Cyberbezpieczeństwa*, December 7, 2018, <https://www.gazetaprawna.pl/artykuly/1382629,premier-powolal-karola-okonskiego-na-stanowisko-pelnomocnika-rzadu-do-spraw-cyberbezpieczenstwa.html> (accessed February 2, 2019).

say about the opposition's actions, as it does not offer any proposals for far-reaching changes to the security policy. On the one hand, this means that the system is stable and predictable. On the other, however, it signifies that the problems that have been visible for years are probably here to stay.

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Surveillance Powers of Law Enforcement and Intelligence Services in Poland



ABSTRACT

The article presents three cases from 2018. They show that in Poland there is a tendency to build strengthened surveillance powers without finding a balance between security and respect for human rights. In the first case, the Commissioner for Human Rights withdrew his application from the Constitutional Tribunal (March 2018), in which he questioned the reforms introduced in 2016. According to the Polish Ombudsman, in the Polish legal system there is still a shortage of the legal safeguards which would make sure that surveillance measures do not violate fundamental rights. In the second case, the Prosecutor General submitted one application to the Constitutional Tribunal concerning the constitutionality of obtaining of evidence of the committing of another offence different from the one covered by operational surveillance. The third case concerns two new institutions which emerged in 2018, which were granted considerable powers in terms of surveillance: the National Security Services and the Internal Supervision Bureau, which is subject to the Ministry of Internal Affairs. The circumstances surrounding the emergence of these institutions will also be analyzed.

Keywords: state surveillance, intelligence services, intelligence reform, Poland, accountability

INTRODUCTION

Surveillance measures are typical in the work of law-enforcement agencies and intelligence services. They make it possible to fight against such threats as terrorism, cyber-attacks, organized crime etc. However, these activities may also seriously interfere with some fundamental rights of citizens, in particular privacy and data protection. Nowadays technological advancements have generated new threats and, at the same time, have provided means of fighting those threats, making such work increasingly complex. Technological progress means that intelligence services have tools for almost unlimited surveillance. It follows that the obligation of a state authority in this sphere is to provide adequate safeguards for its citizens. Reforms in this area are needed not only in Poland but also in other EU countries which are also subject to criticism concerning their surveillance laws.¹ In Poland there were no significant surveillance reforms in 2018. So why would an article about the lack of such reforms be important? The simplest answer to this question is this: the starting point of surveillance law at the beginning of 2018 in Poland was not satisfactory.²

The amendments to the Police Act of 1990³ implemented many recommendations included in the Constitutional Tribunal judgment of the 30th of July 2014.⁴ However, the most essential principles formulated in the judgment, which had to be reflected in the process of the revision of surveillance law, were not included. In this judgment, the Tribunal specified essential principles that must be jointly met by provisions which regulate the obtaining of information on individuals in secrecy by public authorities in a democratic state ruled by law. The Polish legislator has not introduced any such principles to date. For example, according to the judgment the law should provide for the right of the monitored person to be informed about the surveillance of them once it is finished, and the right to initiate a judicial review thereof (however, in exceptional circumstances a depar-

¹ See e.g. R. J. Aldrich, D. Richterova, *Ambient Accountability: Intelligence Services in Europe and the Decline of State Secrecy*, "West European Politics" 2018, vol. 41, no. 4, pp. 1003-1024; H. Born, M. Caparini, *Democratic Control of Intelligence Services: Containing Rogue Elephants*, Hampshire-Burlington: Ashgate, 2007; J. H. Dietrich, *Of Toothless Windbags, Blind Guardians and Blunt Swords: The Ongoing Controversy about the Reform of Intelligence Services Oversight in Germany*, "Intelligence and National Security" 2016, vol. 31, no. 3, pp. 397-415.

² See A. Nyzio, *Wokół „ustawy inwigilacyjnej”*. *Geneza, przepisy i konsekwencje Ustawy z dnia 15 stycznia 2016 r. o zmianie ustawy o Policji oraz niektórych innych ustaw*, „Jagielloński Przegląd Bezpieczeństwa” 2017, no. 2 (1) and literature referenced in this article.

³ The Act of 15 January 2016 amending the Police Act and certain other acts.

⁴ The Constitutional Tribunal, *Judgment of 30 July 2014* (no. K 23/11).

ture from the notification rule should be possible).⁵ Such a right has not yet been granted to citizens.

A number of recommendations from the Venice Commission have not been introduced in Polish law. According to the Opinion of 2016, procedural safeguards and material conditions set in the police acts⁶ on implementing secret surveillance are still insufficient because they do not prevent excessive use of powers and unjustified interference in the privacy of individuals. Detailed recommendations of the Venice Commission concerned the strengthening of the proportionality principle in the following way: first, the limitation of the use of secret surveillance only to the most serious cases; secondly, the limitation of the duration of metadata monitoring. It is also important that respecting lawyer-client privilege (and other privileged communications) while ordering secret surveillance was mentioned. A number of recommendations concerned the mechanism of oversight of secret surveillance and metadata collection (to complement the system of judicial pre-authorization of secret surveillance with additional procedural safeguards, e.g. a privacy advocate, a complaints mechanism, a system of *ex-post* automatic oversight of such operations by an independent body).⁷

Many opinions regarding surveillance in the EU countries can be found in the reports of the European Union Agency for Fundamental Rights (FRA).⁸ The issue of the impact of surveillance on fundamental rights is crucial in democratic countries. One of the FRA reports makes, e.g. the following recommendations: a clear legal framework; defining in law the competencies of oversight bodies over

⁵ See also: The Constitutional Tribunal, *Decision of 25 January 2006* (no. S 2/06).

⁶ The term “the police acts” includes the act of the 6th of April 1990 on the Police; the act of the 12th of October, 1990 on the Border Guard; the act of the 24th of August 2001 on the Military Police and military law enforcement bodies; the act of the 24th of May 2002 on the Internal Security Agency and the Foreign Intelligence Agency; the act of the 9th of June 2006 on the Central Anticorruption Bureau; the act of the 9th of June 2006 on the Military Counterintelligence Service and the Military Intelligence Service; the act of the 16th of November 2016 on the National Revenue Administration; and the act of the 8th of December 2017 on the National Security Service.

⁷ Council of Europe, Venice Commission, *Opinion on the Act of 15 January 2016 Amending the Police Act and Certain Other Acts*, pp. 32-33, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)012-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)012-e) (accessed March 17, 2019).

⁸ See e.g. European Union Agency for Fundamental Rights, *Surveillance by intelligence services: fundamental rights safeguards and remedies in the EU. Volume I: Member States' legal frameworks*, Luxembourg: Publications Office of the European Union, 2017; European Union Agency for Fundamental Rights, *Surveillance by intelligence services: fundamental rights safeguards and remedies in the EU. Volume II: field perspectives and legal update*, Luxembourg: Publications Office of the European Union, 2017.

international intelligence cooperation, efficient protection of whistleblowers, safeguards against surveillance for protected professions (e.g. members of parliament, members of the judiciary, lawyers and media professionals). These reforms should be introduced along with broad consultation and openness during the legislative process. A significant number of the recommendations concerned the oversight systems of intelligence services. The legal system should provide independent intelligence oversight with sufficient powers and competencies, technical expertise, openness to public scrutiny etc.

In the Polish case, the introduction of these recommendations would require fundamental systemic changes in surveillance and intelligence law. Such extensive reforms have been implemented in France, Germany, the Netherlands and the United Kingdom in recent years.⁹ In Poland there are no governmental proposals for such reforms although the program of the ruling PiS ('Law and Justice') party assumes the strengthening of parliamentary oversight of intelligence services and the adoption of comprehensive surveillance law.¹⁰ Neither the program nor the governmental policy links the surveillance issue to the protection of individual rights. Poland is definitely going in a different direction, by strengthening the surveillance powers of the security services without material and procedural safeguards for fundamental rights. This article will present three cases from 2018. They show that in Poland there is a tendency to build strengthened surveillance powers without finding a balance between security and respect for human rights.

In the first case, the Commissioner for Human Rights withdrew his application from the Constitutional Tribunal (March 2018), in which he questioned the reforms introduced in 2016.¹¹ According to the Polish Ombudsman, in the Polish legal system there is still a shortage of the legal safeguards which would make sure that surveillance measures do not violate fundamental rights. However, the Ombudsman stated that there was no chance of independent and substantive judgment of the Constitutional Tribunal. The main reasons were changes in structure and personnel of the Tribunal after controversial reforms after 2016.

In the second case, the Prosecutor General submitted one application to the Constitutional Tribunal concerning the constitutionality of art. 168b of the Code of Criminal Procedure (July 31, 2018). This provision concerns the obtaining of

⁹ European Union Agency for Fundamental Rights, *Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU. Volume II...*, p. 9.

¹⁰ *Program Prawa i Sprawiedliwości 2014. Zdrowie. Prawa. Rodzina*, p. 62, <http://pis.org.pl/dokumenty> (accessed March 19, 2019).

¹¹ The Commissioner for Human Rights, application no. K 9/16.

evidence of the committing of another offence different from the one covered by operational surveillance. In this case it is crucial to understand what the concept “another offence” means. The Prosecutor General claims that “another offence” means all offences – if operational surveillance has provided evidence of a different crime (any offence), or one committed by a different person (any person), the prosecutor shall take a decision as to whether to use this evidence in criminal proceedings. According to the Resolution of the 28th of June 2018 of the Supreme Court, “another offence” means a catalog of crimes for which operational surveillance could be legally applied. These are only serious offences, mainly crimes.¹² The Prosecutor General does not accept such a narrow understanding of the concept.

The third case concerns two new institutions which emerged in 2018, which were granted considerable powers in terms of surveillance: the State Protection Service (established on the 1st of February 2018 to replace the Government Protection Bureau), and the Internal Supervision Bureau, which is subject to the Ministry of the Interior and Administration. The second institution is supposed to keep other services under surveillance by request of the Minister of the Interior and Administration. The circumstances surrounding the emergence of these institutions will also be analyzed in the following.

CASE NO. 1

In March 2018 the Commissioner for Human Rights withdrew his application from the Constitutional Tribunal in which he questioned the reforms introduced in 2016. The reform significantly extended the surveillance powers of law enforcement agencies and intelligence services. That is why in February 2016 the Polish Ombudsman questioned the most important provisions of the amendment to the Constitutional Tribunal. According to him, the reform not only fails to execute the judgment of the Constitutional Tribunal of 2014, but “seriously violates the constitutional rights and freedoms and the standards set out in international law”.¹³

¹² According to article 7 of the Polish Penal Code: The offence is either a crime or a misdemeanor (§ 1). The crime is a prohibited act subject to penalty of imprisonment of not less than 3 years or to a more severe penalty (§ 2). A misdemeanor is a prohibited act subject to the penalty of a fine higher than 30 times the daily fine, the penalty of restriction of liberty or the penalty of deprivation of liberty not exceeding one month (§ 3).

¹³ The Commissioner for Human Rights application no. K 9/16, p. 6.

The most important allegations included in the application concerned the violation of the right to privacy and the protection of the personal data of citizens:

- **The lack of a time limit, or the disproportionately long duration of operational surveillance** (named in the official English translation of the police acts as “operational control”). Operational surveillance is a power of the police and intelligence services which includes such measures as listening to and recording the contents of telephone conversations and correspondence conducted via telecommunication networks (e-mails, messengers, etc.), in ordinary letters or recorded “live” conversations with listening devices, etc. Therefore, operational surveillance allows these services to know the content of communications assumed to be private by those involved in them.¹⁴ Operational surveillance is performed, as a rule, with the prior consent of a regional court.¹⁵ This power can be prolonged to a maximum of 18 months. This is too long a time period for the Ombudsman, and in his opinion it does not satisfy the condition of the proportionality principle. The Ombudsman questions the fact that for one and a half years the services may listen in on people or read their correspondence – regardless of whether criminal proceedings will be initiated on this basis.
- **The very broad mandate of police and intelligence services to collect metadata.** Metadata is all data connected to and regarding a (tele-)communication. It may include information about phone calls placed or received, numbers dialed, duration of calls, geographical location of mobile devices at a given moment, websites visited, login details, personal settings, addresses of e-mail correspondence etc.¹⁶ This power gives police and intelligence services the opportunity to reveal considerable information about a person’s private life. The grounds for collecting metadata under the police acts are very wide. Services may collect metadata for any useful purpose related to their very broad mandate to maintain peace and order.¹⁷ Metadata may be obtained without prior consent of a court or another independent body external to police and intel-

¹⁴ See Council of Europe, Venice Commission, *op. cit.*, p. 7.

¹⁵ In “cases of the utmost urgency, where any delay could result in the loss of information or the obliteration or destruction of the evidence of a crime”, police may start surveillance without prior consent of the court but with the authorization of a prosecutor. If consent is not granted within the following 5 days, surveillance must be suspended and the material obtained must be destroyed.

¹⁶ See Council of Europe, Venice Commission, *op. cit.*, p. 7.

¹⁷ E.g. under Article 20c para. 1 of the Police Act, the Police can obtain metadata “in order to prevent or detect crimes or in order to save human life and health, or in order to support search and rescue missions”.

ligence services. Moreover, metadata collection does not have to be related to criminal proceedings. According to the Ombudsman, such a very broad mandate for the collection of metadata leads to the risk of abusive surveillance being employed: metadata can be collected not only when it is necessary but also when it is just convenient for the services.

- **No real oversight of metadata collection by an independent body.** Regarding the collection of metadata, there is only a system of ex-post review in Poland. The police acts require police and intelligence services to submit, to competent regional courts, biannual reports containing generalized information about the metadata collected during a given period of time. According to the Ombudsman, courts do not have all the necessary legal tools with which to fulfill their controlling function. The reporting obligation is insufficient because reports contain only summarized information, which does not give insight into the particulars of each specific case. That is why the system of ex-post review provides only illusory oversight.
- **The lack of the right of a monitored person to be informed about surveillance.** As already noted above, such a right has not yet been granted to citizens. According to the current provisions a citizen does not receive such information, even when no evidence was detected during the surveillance.
- **Flaws in the provisions regulating the surveillance of privileged communications.** The Ombudsman in his application drew particular attention to the weaker professional privilege which covers notaries, advocates and legal advisors (who do not act as defense lawyers), tax advisors, doctors, mediators or journalists. Nothing in Polish law prevents the police and intelligence services from listening to such conversations. Moreover, the court must allow recordings of such conversations as evidence if two conditions are met: first, it is “necessary from the viewpoint of the justice system”; second, when there are no other means of establishing the facts of the case available. The concept of the “viewpoint of the justice system” is blurred. It is necessary for the Ombudsman to reflect on a more stringent rule which would describe the circumstances in which privileged professional communications may be secretly recorded and then introduced as evidence.

The allegations of the Commissioner for Human Rights are based on the case-law of the European Court of Human Rights, Court of Justice of the EU and the Polish Constitutional Tribunal¹⁸ The case-law of these courts is essentially convergent. Therefore, the allegations are very similar to the recommendations of

¹⁸ The Constitutional Tribunal, *Judgment of 12 December 2005* (no. K 32/04).

the Venice Commission. *Nota bene*: the Venice Commission, “in deference to the Constitutional Tribunal”, avoided commenting on the compatibility of the 2016 amendments with the Polish Constitution and based its analysis on international standards.¹⁹

The key issue here is to determine the reason for the Ombudsman’s withdrawal of his application. As noted above, he stated that there was no chance of independent and substantive judgment of the Constitutional Tribunal. Primarily (before the changes in Tribunal), the Ombudsman’s application was due to be recognized by the Constitutional Tribunal in full panel (at least 11 out of 15 judges). Later, structural and personnel changes in the Constitutional Tribunal influenced the manner in which application was considered. In January 2017 the President of the Constitutional Tribunal, Julia Przyłębska, decided that the case would be examined by a panel of five. The Ombudsman drew attention to the lack of a legal basis for the change in the composition of the Tribunal in this case. Moreover, the judges elected – in violation of the constitution – were members of the panel of five judges. At this point, there is no need to delve into this legal dispute – it is clear that the application of the Ombudsman would be considered by a panel of five judges of the Tribunal instead of full branch. The majority of the judges in this branch were selected after the controversial reforms of the Constitutional Tribunal by the current government.

The withdrawal of the application for the above reasons is very significant if we take into account the role of the Constitutional Tribunal in limiting the powers of surveillance. Until now it has been one of the key institutions in the system of oversight of the police and intelligence services. The jurisprudence of the Constitutional Tribunal has often contributed to changes of surveillance law in the direction of the introduction of procedural and material safeguards for human rights.

CASE NO. 2

On the 31st of July 2018 the Prosecutor General submitted one application to the Constitutional Tribunal concerning the constitutionality of art. 168b of the Code of Criminal Procedure.²⁰ As to the substance, he proposes to literally understand

¹⁹ See Council of Europe, Venice Commission, *op. cit.*, p. 5.

²⁰ This provision was introduced by the Act of the 11th of March, 2016 amending the Act – Code of Criminal Procedure and some other acts.

this provision – if operational surveillance provided evidence of a different crime or one committed by a different person, the prosecutor shall take a decision as to whether to use this evidence in criminal proceedings. In this case, the catalog of crimes is no limitation as to when operational surveillance could be legally enforced. This opinion includes all offences prosecuted *ex officio* or fiscal offences – be they serious, very serious or minor. This means wider possibilities in the use of surveillance powers.

The application of the Prosecutor General includes, besides the legal arguments, a proposal regarding the vision of criminal policy. Political arguments are more important for understanding why he is in favor of increasing surveillance powers. The most important of them are presented below:

- **Surveillance powers as an effective tool of the state to fight and prevent crime.** In the application, the confidentiality of these powers is defined as their primary advantage.²¹ The perspective of the state is visible in this statement, and not the individual's perspective.
- **Trust in the state.** The police and intelligence services may have broad powers, because they will be used against criminals and not “ordinary” citizens. The state must prevent and prosecute crimes in the name of the common good and the interests of victims of crime.²² The common good can only be represented by a state that can effectively administer justice – only such a state can induce citizens' trust.²³ Essentially, since we already have evidence of a crime, we must use it. If law enforcement does not use them for only formal reasons, then it limits trust in the state. According to the application, such a state deprives itself of effective tools with which to fight crime and becomes an additional burden on citizens.²⁴
- **A catalog of offences as protection of the criminal.** According to the Prosecutor General, we cannot limit the possibility of using evidence of offences. A limit (e.g. the catalog of offences for the monitoring of which operational surveillance may be legally enforced) means promoting the reprehensible behavior of a citizen disloyal to the community at the expense of others – loyal citizens.²⁵
- **Focus on the offender.** A person, against whom evidence of an offense has been gathered, is just an offender. Such a person has no right to privacy

²¹ The Prosecutor General's application (no. K 6/18), p. 9.

²² *Ibidem*, p. 28.

²³ *Ibidem*, p. 33.

²⁴ *Ibidem*.

²⁵ *Ibidem*, p. 66.

because he or she stands against the community and does not fulfill their basic constitutional duty – to observe the law.²⁶ If we have evidence, then the offender must be held criminally liable.²⁷

- **Victim of an offence.** Almost any offence involves the harming of a person – a victim of an offence. A task of the state is to guarantee the victim that the offender will be held criminally liable.²⁸ In addition, the state is obliged to ensure that everyone shall respect the freedoms and rights of others.

The General Prosecutor's application presents the powers of operational surveillance from the perspective of the state, specifically its law enforcement agencies. Surveillance is simply an effective tool with which to fight crime and we should not limit such tools. It is also specifically limited to focusing only on criminals and victims.

Another perspective is presented in the application of the Ombudsman regarding this provision.²⁹ His application focused on the protection of individual rights. The possibility of using evidence gathered by surveillance without limitation creates the risk of law enforcement agencies acting arbitrarily. The provisions covering criminal liability should be more precise from the perspective of individual rights. In addition, such powers of the state authorities require the creation of an effective and independent oversight system.

It is clear that the two perspectives presented above are very different. Now the Constitutional Tribunal will have to settle the Prosecutor General's application. In this situation the Tribunal will decide on whether or not to extend the state's powers of surveillance.

²⁶ In accordance with article 31 para 2 Polish constitution: "Everyone shall respect the freedoms and rights of others. No one shall be compelled to do that which is not required by law. In accordance with article 83 of the Polish constitution: Everyone shall observe the law of the Republic of Poland".

²⁷ The Prosecutor General's application (no. K 6/18), p. 32.

²⁸ Ibidem, p. 65.

²⁹ See The Commissioner for Human Rights' application, no. K 24/16. This also withdrew his application from the Constitutional Tribunal.

CASE NO. 3

In 2018 two new institutions emerged which were granted considerable powers in terms of surveillance: the State Protection Service (in Polish: Służba Ochrony Państwa, SOP) which was established on the 1st of February, 2018 and replaced the Government Protection Bureau (in Polish: Biuro Ochrony Rządu, BOR) as well as the Internal Supervision Bureau (in Polish: Biuro Nadzoru Wewnętrzznego), which is subject to the control of the Ministry of the Interior and Administration.

The SOP, just like the Government Protection Bureau, is responsible for providing VIP security services for the Polish government (security of incumbent and former Presidents of Poland, high-ranking state officials etc.). However, the new service has gained much wider powers. Controversy was aroused by the granting of surveillance powers to the SOP, because the BOR did not have such powers. The surveillance powers of the SOP are wide and include operational surveillance and the collection of metadata. It is particularly worth noting that the draft law copied solutions of other police acts without any new proposals for better safeguards for human rights. This draft law was criticized for two reasons.³⁰ Firstly, the SOP should not have any surveillance powers at all because such powers are not needed for the performance of its tasks.³¹ Secondly, surveillance powers should be limited by better safeguards for human rights. The frequently mentioned safeguards in the context of this draft law were as follows:

- providing real control over the collection of metadata³²;
- limiting arbitrariness in collecting metadata – the principle of subsidiary³³;
- an obligation to inform (*ex post*) a person about the use of operational surveillance.³⁴

These safeguards were proposed by, e.g., the Ombudsman and the Venice Commission regarding the police acts. They are based on the case law of the Constitutional Tribunal and the European Court of Human Rights. Finally, no new mechanisms were introduced to the Act. From the point of view of protect-

³⁰ Approval for the act: see J. Wyrembak, *Opinia prawna dotycząca rządowego projektu ustawy o Służbie Ochrony Państwa (druk sejmowy nr 1916)*, Warsaw 2017.

³¹ Opinion of the Panoptykon Foundation on the draft law on the National Security Service, p. 2.

³² Opinion of the Supreme Court on the draft law on the National Security Service, p. 4; Opinion of the Panoptykon Foundation..., p. 5

³³ Opinion of the Supreme Court..., p. 5.

³⁴ Opinion of the Panoptykon Foundation..., p. 4; see the Constitutional Tribunal, *Decision of 25 January 2006* (no. S 2/06).

ing human rights, or not, the State Protection Service is another agency authorized to carry out surveillance on people. This shows the lack of willingness to improve surveillance law.

In late 2017 and early 2018 another agency – the Internal Supervision Bureau – was established. On the 27th of January 2018 the first head of this institution was appointed. The Internal Supervision Bureau is specific – it is a part of the Ministry of the Interior and Administration and is supposed to keep under surveillance other services upon the request of the Minister of the Interior and Administration. The purpose of this service is to improve and unify ministerial control of other services: the Police, the Polish Border Guard and the State Protection Service. One of the tasks of the new agency is control of the surveillance activities of the above-mentioned services. Seconded police officers, border guards and SOP officers work primarily in the Internal Security Bureau. Formally, this institution is a part of the internal organization of the Ministry of Interior.

The wide surveillance powers of the Internal Security Bureau are controversial. Since 1990 – when civil control over security services was established – only the services (the Police, the Polish Border Guard, intelligence services etc.) have had surveillance powers. Prior to this Police forces and intelligence services were a part of the ministries, which were highly centralized, hierarchized and party-dependent. The police acts of 1990 completely reshaped the structure of the Ministry of Internal Affairs. It was divided into civil and political Ministry of Internal Affairs as well as politically neutral departments subject to the control of the minister. However, the new structure also singled out a few autonomous central authorities: the chief constable, the chief of the Office for State Protection and the chief of the Border Guard. Thereafter the Minister of Internal Affairs was responsible for the protection of state safety. However, neither he nor his office would be directly involved in commanding the services or carrying out surveillance. Since this time the burden of running the Office for State Protection (in Polish: Urząd Ochrony Państwa), the Police and the Polish Border Guard has fallen on the chiefs of these organizations. The Minister had the right to interfere only when he was entitled to do so by the applicable acts. This solution was designed to separate civil and political management in the ministry from professional and apolitical services. Until now, control over surveillance powers has belonged to prosecutors and courts.

The surveillance powers of the new services under the control of the Ministry of Internal Affairs work against the above-mentioned model. On the one hand, the Minister of the Interior gets the opportunity to view the surveillance materials of the subordinate services. On the other, his service – The Internal Security

Bureau – also has wide surveillance powers. For example, this institution can use operational surveillance or collecting metadata.

Surveillance methods form the core of the activity of each service. The problem of monitoring this activity is visible in many countries. However, the common standard is oversight exercised by an independent, external body. The appointment of the Internal Security Bureau does not meet this standard. The Ministry of Internal Affairs is politically accountable for the activities of the services controlled by it (the Police, the Polish Border Guard, the National Security Bureau). That is why a reliable explanation of violations may conflict with the minister's potential accountability. This lack of independence concerns the principles of secondment to serve in the Internal Security Bureau. Dismissal from the post may take place at any time. The consequences of such an arrangement may be the unwillingness of officers to undertake certain official activities for fear of being dismissed from the post. To sum up, in order to prevent violations in the functioning of the services, the minister was given the opportunity to influence the substantive (surveillance) activities of the supervised formations. 35 people are to serve in the Internal Security Bureau. It is debatable whether it was necessary to deconstruct the existing control system in order to enable 35 officers to perform their duties, especially since no previous attempt had been made to improve the system.

CONCLUSIONS

In 2018 there were no significant reforms in Poland which increased the safeguards of individual rights regarding state surveillance. This status quo is far from the standard set by the Constitutional Tribunal and the European Court of Human Rights. In addition, personnel and organizational changes in the Constitutional Tribunal have made it difficult to predict the development of its further case-law. In 2018 the Polish Ombudsman withdrew a number of his applications to the Constitutional Tribunal, including applications related to surveillance. The intentions of his decisions are important. The Ombudsman withdrew his applications regarding surveillance not because the law has been corrected and already provides basic safeguards of individual rights. The reason is different – he stated that there was no chance of independent and substantive judgments of the Constitutional Tribunal. However, the Tribunal will consider the application of the General Prosecutor. This is interesting because he claims that the police

and intelligence services should have wide surveillance powers. In his opinion it is unconstitutional to over-limit the possibilities of services in this area. Until now, the Constitutional Tribunal's case law has significantly reduced surveillance powers and was of major importance for statutory changes in the matter of surveillance when it comes to increasing safeguards of individual rights.

The government's surveillance policy of last year was not linked to the protection of individual rights. Surveillance powers are treated by the government only as an effective tool with which to fight crime. This approach was evident when the National Security Service was given very wide surveillance powers. The BOR – the predecessor of the SOP – had no surveillance powers. In this case there is a visible tendency for a multiplication of the services authorized to use surveillance powers. This has been a problem since the early 1990s. The newly established services keep getting extensive surveillance powers. There is a lack of deeper reflection on the relationship between these powers and the tasks of the individual services.

In 2018, surveillance became not only an effective tool for the services, but also a tool that politicians could use. This has involved the establishment of the Internal Security Bureau in the Ministry of the Interior and Administration. Formally, the Bureau is the internal structure of the ministry. In fact, it has the same surveillance powers as police and intelligence services. *Nota bene*: the Internal Security Bureau can apply surveillance powers to the services subordinate to the Minister of the Interior and Administration (the Police, the Polish Border Guard and the SOP). This means that surveillance activities of these services are available to a politician – the Minister of the Interior and Administration.³⁵ This arrangement does not create a system of independent control over surveillance.

³⁵ This is the second politician that affects surveillance powers. According to the new Law on the Prosecutor's Office (*Act of 28 January 2016 Law on Prosecutor Office*, "Journal of Laws" 2017, item 1767 as amended) the office of the Prosecutor General is held by the Minister of Justice. This is especially important because prosecutors are also entitled to give permission for the use of some surveillance methods.

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