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DEFINITIONS AND LEGAL ASPECTS OF THE TERM “WAR” AND THE RELATED TERMS*

In the normative acts in force in the Republic of Poland, there is no shortage of concepts such as war, state of war, or time of war, and—importantly—inconsistency in their use. Waldemar Kitler notes that the subject “lacks definitions of certain terms,”¹ which only further complicates their use. This leads to a situation where the lack of a legal definition results in a multitude of interpretations. This is also the case with the above concepts, as they have a significant impact on national security.

In the nomenclature, an ongoing conflict is one of the constituents of war, a state which at the same time has the characteristics of both an internal and international conflict.² This means that a local or internal conflict which is recognised as non-international by the theory of international law of armed

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¹ W. KITLER, *Bezpieczeństwo narodowe RP. Podstawowe kategorie. Uwarunkowania. System* (Warszawa: Wydawnictwo Akademii Obrony Narodowej, 2011), 45.

² R. BIERZANEK and J. SYMONIDES, *Prawo międzynarodowe publiczne* (Warszawa: LexisNexis, 2002), 378.

conflict is nowadays often internationalised through the involvement of other parties or actors of international law. But it is still difficult to determine whether there is war in its basic sense, or whether it should still be acknowledged that there is an (armed) conflict? We are not just talking about issues related to definition, but about legal and organisational regulations and legal consequences that improper terminology can lead to.

METHODOLOGICAL INTRODUCTION

In this article, we will consider the concept of war seen in its fundamental aspect within the meaning of international law of armed conflict and, more generally, public international law. The central issue comes down to the question: how (and if at all) is the concept of war and the related notions defined? The goal of this study is to characterise the concept of war and the related terms. However, the hypothesis is manifested in the assumption that there are no legal regulations defining war and most of the related terms. This gives rise to a situation where, in the absence of necessary legal regulations, multiple formulations, a variety of definitions and, consequently, many interpretations may be in use. This is the case with the concept of “war,” which, considering Polish regulations, should be distinguished from “state of war” and “time of war.”

THEORETICAL AND SEMANTIC ASPECTS OF WAR

“War” is a term taken from public international law. Nowadays, war is banned despite still being but one method of pursuing a policy. As experts in international law generally emphasise, war is the breach of peace relations between states and the launching of hostile actions, which involve an armed conflict. Jan Białocerkiewicz admitted, if somewhat simplistically, that “war is a state of relations between states in which an acute conflict arising from the existing politics is solved by some or all political, military and economic forces which these states have at their disposal.”³

However, politicians, philosophers and the military tried to define war centuries ago. One of the most well-known definitions was created by Carl

³ J. BIAŁOCERKIEWICZ, *Prawo międzynarodowe publiczne. Zarys wykładu* (Olsztyn: Wydawnictwo UWM, 2005), 440.

von Clausewitz, who stated that “war is not only a political act, but also a real tool of politics, the continuation of political relations, and conducting them by other means.”⁴

In turn, “war” is defined variously by dictionaries. An interesting perspective is presented in *Słownik terminów wojskowych* [*Glossary of Military Terms*], where we can find the term “national war,” no longer used. It says that national war is “a just war waged for the honour, freedom and independence of the nation against foreign invaders.”⁵ It seems, however, that this approach is not devoid of some inaccuracies, as there is no indication that this is a situation existing between states rather than nations. It should be stressed that war is a state occurring between the original subjects of public international law. This means that it can only be conducted between states and not between nations.⁶ Nowadays, it is often the case that states are multinational or home to numerous minorities. It is therefore difficult to agree that this is all about the independence of one nation. The question of invaders is similar—it cannot be just any group, but official representatives or the army of another state. Notably, the definition emphasises that this must be a just war because another kind of war is in theory prohibited.

In the era of the Polish People’s Republic, there was a characteristic indication that war was a struggle between “blocs of states.” *Mała encyklopedia wojskowa* [*A Small Military Encyclopaedia*] indicates that war is “an armed conflict between states, state blocs, nations or social classes, the continuation of politics by means of violence in order to fulfil specific political, economic or ideological interests.”⁷

In turn, in a dictionary from the early 2000s, dealing with issues of the contemporary world, it is said that “war” is “a continuation of a policy by means of violence, chiefly manifested by armed struggle”⁸ and that it is “a condition of the State characterized by the existence of an acute external

⁴ C. VON CLAUSEWITZ, *O wojnie* (Warszawa: Wydawnictwo Ministerstwa Obrony Narodowej, 1958), 15; as cited in *Słownik terminów z zakresu bezpieczeństwa narodowego*, ed. J. Pawłowski (Warszawa: Wydawnictwo Akademii Obrony Narodowej, 2002), 155.

⁵ *Słownik terminów wojskowych* (Warszawa: Wydawnictwo Ministerstwa Obrony Narodowej, 1958), 300.

⁶ There is a debate in international law about the subjectivity of nations, but even if some people consider them to be subjects of international law, nations will never be primary subjects, only secondary ones. However, it is a very contentious issue.

⁷ *Mała encyklopedia wojskowa*, ed. J. Urbanowicz (Warszawa: Wydawnictwo Ministerstwa Obrony Narodowej, 1971), 3: 494; as cited in *Słownik terminów z zakresu bezpieczeństwa narodowego* (2002), 156.

⁸ *Słownik terminów z zakresu bezpieczeństwa narodowego* (2002), 156.

or internal conflict resolved by means of violence, engaging most of the State's potential."⁹ It is hard to fully accept these definitions. In a nutshell, the first definition can be accepted in part, although war does not always have to imply a continuation of a policy, and an armed struggle does not have to be present at all. However, in relation to the second definition, it should be noted that under international public law, internal struggle in which no other entity is involved cannot be called war.

In the dictionary compiled for the activities undertaken by NATO, there is no term "war." Although it would not be a legal definition, we could think that it be a point of reference for the scope and content of various definitions. Perhaps it would even show the path to follow for a similar definition.¹⁰

"WAR" AND "TIME OF WAR"

The Constitution of the Republic of Poland has quite a few inaccuracies related to the use of these terms. Concepts such as "state of war," "time of war," but also "armed assault"¹¹ and "aggression," albeit not referring to the same factual and legal situation, are used in different configurations. The disputable term used in Article 134 is "period of war." The definition of "period of war" may give rise to doubt because, as already indicated, there are no legal regulations defining such a situation. It can be accepted that this concept is in opposition to time of peace and refers to actual military operations and events related to an armed conflict.¹² In semantic terms, "time of war" is defined as "the period in which a state's functioning is characterized by the existence of an acute conflict, in which the regulation of disputes between conflicting (antagonistic) parties (states, blocks of states, nations, social groups) is carried out by means of violence (using armed forces) in

⁹ Ibid.

¹⁰ *Słownik terminów i definicji NATO zawierający wojskowe terminy i ich definicje stosowane w NATO*, AAP-6 (NATO, April 2014), accessed August 20, 2018, http://www.wcnjk.wp.mil.pl/plik/file/N_20130808_AAP6PL.pdf.

¹¹ In Polish legal acts the following phrases are also used "armed attack" and "armed aggression."

¹² See S. BUKOWICKA, "Wybrane zagadnienia z zakresu zadań Ministra Obrony narodowej na czas wojny," in *Minister Obrony Narodowej i Naczelny Dowódca Sił Zbrojnych w systemie kierowania bezpieczeństwem. Wybrane problemy*, ed. W. Kitler (Warszawa: Wydawnictwo Akademii Obrony Narodowej, 2013), 138.

order to pursue certain political, economic, ideological or other interests.”¹³ It seems that the definition of “time of war” should be identical with the definition of “war,” except for one element—this expression should refer to a period of actual warfare. Therefore we cannot fully accept the view that this time can occur otherwise than in the course of military operations between states. The correct interpretation is important because the constitutional expression “for a period of war” legitimizes the appointment of Commander-in-Chief of the Armed Forces or of an emergency court or an ad hoc procedure. In the event of internal tensions, unrest or even non-international conflict, the Commander-in-Chief cannot be appointed (no legal basis involving external circumstances).¹⁴

It should be noted, however, that the legislator also sees the problematic absence of such a definition. However, no decision has been made to regulate this concept in the legislative work. Therefore, it has become necessary for the President of the Republic of Poland to announce the moment when the time of war will commence at a request of the Council of Ministers, but there is no indication how this time should be distinguished. The expression “for the period of war”¹⁵ has already caused interpretation difficulties. Now it is for the President of Poland to decide when the time of war begins on the territory of the Republic of Poland.¹⁶ However, there is still no legal definition of “time of war.” Legal opinions and expert opinions on this subject indicate that the concept of “for the period of war” determines the actual state of military operations that already take place on the territory of the Republic of Poland.¹⁷ The opinion expressed by Bogusław Banaszak seems valid, who

¹³ *Słownik terminów z zakresu bezpieczeństwa narodowego*, ed. J. Kaczmarek, W. Łepkowski, and B. Zdrodowski (Warszawa: Wydawnictwo Akademii Obrony Narodowej, 2008), 29.

¹⁴ For more on the Commander-in-Chief of the Armed Forces, see M. KOŁODZIEJCZAK, “Naczelny Dowódca Sił Zbrojnych w polskim systemie prawnym,” in *Naczelny Dowódca Sił Zbrojnych w systemie obronnym Państwa Polskiego*, ed. T. Kośmider (Warszawa: Wydawnictwo Akademii Obrony Narodowej, 2014), 133–34.

¹⁵ Notably, it has been calculated that the expressions “time of war” or “for the period of war” have been used in about 40 normative acts and about 70 regulations, see M. SURMAŃSKI, “Pojęcie ‘czas wojny’ oraz problemy wynikające z jego nieodokreśloności w polskim systemie prawnym,” *Bezpieczeństwo Narodowe* 30, no. 2 (2014): 97.

¹⁶ Act of 21 November 1967 on the general duty to defend the Republic of Poland, Journal of Laws of 2018, item 1459, as amended. [hereinafter referred to as AGDDRP], art. 4a para. 1 point 4a: “In case of the necessity to defend the State, the President of the Republic of Poland decides, at the request of the Council of Ministers, on the date on which the time of war begins on the territory of the Republic of Poland. In the same way, he decides on the day on which the time of war ends.”

¹⁷ It is also worth noting that, as it seems, such an understanding is consistent with the literal interpretation—*imperatio declarativa*, which means that what the legislator wanted to include in

stated that “the time of war lasts from the beginning of military operations until their actual or formal (truce) cessation, and it depends neither on the formal declaration of war or martial law nor on the conclusion of peace pursuant to Article 116 para. 1.”¹⁸ It should be noted, however, that this interpretation emerged before the provision concerning the necessity to declare war time was incorporated.

Moreover, it should be noted that the announcement of time of war will not have any legal consequences, for example related to the limitation of human rights and liberties. Therefore, the time of war, that is, actual warfare, could also determine the military operations launched within the country by internal groups. This could have some validity—in the case of operations which the President and the Council of Ministers assessed as the basis for the introduction of time of war—no discussion would be relevant or necessary on the legal nature of the emergent situation. However, the law explicitly states that this is only about the “necessity of defending the State” (Article 4a § 1 point 4a AGDDRP). Thus, an armed assault must follow. It should be noted, however, that since now there is a statutory procedure for deciding on time of war, it seems that without such a prior decision, the President will not be authorised to appoint the Commander-in-Chief. So, what will happen if actual military operations take place in Poland, but the Council of Ministers will not be able to convene and request the President to impose martial law or to declare a time of war?

“WAR” VERSUS “STATE OF WAR”

The expression “state of war” is also questionable. According to Article 116 of the Constitution of the Republic of Poland, it is for the Sejm to decide about the state of war and peace. In the event of an armed attack on Poland or if an international agreement imposes an obligation of joint defence, the Sejm may adopt a resolution on the state of war.¹⁹ It should be

a given provision was defined directly, in accordance with the letter of the law. Therefore, if the constitutional legislator wished the Commander-in-Chief to be appointed earlier, this would probably be expressed.

¹⁸ B. BANASZAK, *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (Warszawa: Wydawnictwo C.H. Beck, 2009), 668.

¹⁹ The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws. no. 78, item 483, as amended, Article 116 § 1: “The Sejm decides on behalf of the Republic of Poland on the state of war and the conclusion of peace,” and § 2: “The Sejm may adopt a resolution on the state

noted that it is permissible to declare a state of war on the state which has assaulted our (NATO) ally, and to carry out the actual military operations outside the territory of Poland. This is therefore not always tantamount to actual warfare. As Leszek Garlicki argues, "Article 116 § 2 refers to «the state of war». Although not defined in the Constitution, this concept traditionally refers to a special relationship between two or more states. So, it is an institution directly related to international relations (and thus with international law), which makes it fundamentally distinct from martial law or state of emergency, which applies to internal relations in a state. This is also demonstrated by the structure of the Constitution, and it does not seem to merely result from chance (or tradition) that the institution of the state of war was normalized outside the chapter on states of emergency."²⁰

Since there is no single, coherent legal definition, it is often impossible to classify certain events or operations without ambiguity, as it is difficult to determine whether there is an armed conflict or war going on. It should be noted, however, that sometimes an armed struggle ends before states move from the state of war to peace (the armed operations have ceased but no peace treaty has been signed). There may also be a declaration of war "on paper," without any real armed struggle (e.g. the state of war is declared due to obligations arising from an international agreement on joint defence), which will cripple diplomatic relations and trade contacts, but will not be associated with military operations in the territory of the Republic of Poland. It seems, therefore, that we can assume that war always entails actual military operations, which must also be interpreted as time of war, while the state of war may also be related to hostile relations between states (as the original subjects of international law), yet not necessarily resulting in military operations. Therefore, the state of war will not always involve an armed conflict, aggression or armed assault directly on a given country because an armed assault or aggression may affect an ally. Marian Kallas aptly described the meaning of war saying that: "The state of war is a legal situation existing between warring states. The state of war also implies: severance of diplomatic, consular, economic and direct relations between their citizens

of war only in the event of armed aggression on the territory of the Republic of Poland or in the event of an obligation under international agreements to jointly defend against aggression. If the Sejm is unable to meet for a meeting, the President of the Republic of Poland shall decide on the state of war."

²⁰ L. GARLICKI, "Rozdział IV. Sejm i Senat. Artykuł 116," in *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. L. Garlicki (Warszawa: Wydawnictwo Sejmowe, 2001), 2:5.

and suspension of international agreements between the states at war.”²¹ Piotr Winczorek, on the other hand, argued: “The state of war may not coincide with the time of war and, in particular, may last longer than the time of war.”²²

Most importantly, however, a distinction must be made between the state of war and martial state.²³ As Piotr Radzewicz claims: “the declaration of the state of war is addressed primarily to another state, as well as to the international community. It entails consequences arising from international law, such as the possibility of military action, the severance of diplomatic relations, restriction of the rights of citizens of a State–party to a conflict, etc.”²⁴

As a result, it is difficult to put an equation mark between the state of war and the time of war. If the legislator’s intention was to treat these expressions as identical, it would seem that only one selected term would be used. Piotr Radzewicz noted similarly that “it seems that the «state of war» should be identified with neither the «time of war» (Art. 134 § 4 and 175 § 2 of the Constitution) nor «martial law» (e.g. Art. 228 § 1 and Art. 229 of the Constitution). In this case, the linguistic differences between the two concepts also have their significance content-wise.”²⁵ Moreover, the Council of Ministers has already pointed out the need to add a definition of these terms: “finally, it should be stressed that the constitutional notions of «directing the defence of the State», as well as «time of war» and «state of war», need to be properly defined and detailed in the law. Such a definition should, among others, make a clear distinction between the sphere of directing the defence of the State and commanding the Armed Forces during martial law and during

²¹ M. KALLAS, *Konstytucja Rzeczypospolitej Polskiej* (Warszawa: Wydawnictwa Prawnicze PWN, 1997), 85–87; as cited in *Słownik terminów z zakresu bezpieczeństwa narodowego* (2002), 128.

²² P. WINCZOREK, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku* (Warszawa: Wydawnictwo LIBER, 2000), 147.

²³ Martial law is one of the states of emergency which may be imposed by the President of the Republic of Poland at the request of the Council of Ministers: “In the case of external threats to the State, acts of armed aggression against the territory of the Republic of Poland or when an obligation of common defence against aggression arises by virtue of international agreement, the President of the Republic may, on request of the Council of Ministers, declare a state of martial law in a part of or upon the whole territory of the State” (Art. 229 of the Constitution). For this reason, this expression is not discussed in this article because the author believes that martial law, as but one case of state of emergency, requires a separate study.

²⁴ P. RADZIEWICZ, “Opinia prawna z 5 grudnia 2001 r. w sprawie projektu ustawy o stanie wojennym,” accessed August 28, 2018, <http://orka.sejm.gov.pl/rexdomk4.nsf/Opwsdr?OpenForm&16>.

²⁵ *Ibid.*, 8.

the state or period of war.”²⁶ The state of war will therefore govern international relations, while martial law will regulate domestic affairs in the case of a threat originating externally.

CONCLUSIONS

The conclusions to be drawn from the issue we have barely outlined, that is the lack of many legal definitions related to security or defence, can be summarised in a few points. The definition of war, or at least one of state of war and time of war, should be attributed some legal significance. Proper defining is essential for the proper definition of situations, their consequences and legal effects they produce. It should therefore be noted that only a precise and clear definition of these concepts, preferably by incorporating them into national or international law, would dispel many doubts and eliminate the possible occurrence of sometimes contradictory interpretations. It is impossible to ignore the very interesting and valuable opinion held by Zygmunt Cybichowski, who claimed that “war is a non-legal concept due to the fact that it undermines the essence of the fundamental rights of states,”²⁷ so interference with natural rights cannot be regulated in any way. Indeed, after World War II, the UN Commission on International Law decided that if a war is illegal, it is pointless to analyze the regulations that concern it. According to Remigiusz Bierzanek, “such views have had a significant impact on the development of international law on armed conflicts.”²⁸ Therefore, it is not surprising that most of the existing provisions of international law on armed conflict do not correspond to the modern understanding of conflict, and it is difficult to find a legal definition of war. Such a definition, just like the elaboration of “time of war” and “state of war,” terms which can be considered to have emerged for specific situations, though used in the fundamental normative acts, have not been defined or legally regulated.

It seems, therefore, that the constitutional legislator, as confirmed by the legislation, reserved the declaration of martial law only for the gravest threat represented by war. However, it should be stressed at this point that war,

²⁶ Position of the Council of Ministers on a draft bill on martial law submitted by the President of the Republic of Poland, February 18, 2002 (form no. 16) (Warszawa, DSPR-140-142(2)/01).

²⁷ Z. CYBICHOWSKI, *Prawo międzynarodowe publiczne i prywatne*, 3rd ed. (Warszawa: Wydawnictwo Seminarjum Prawa Publicznego Uniwersytetu Warszawskiego, 1928); as cited in BIAŁOCERKIEWICZ, *Prawo międzynarodowe publiczne*, 441.

²⁸ BIERZANEK and SYMONIDES, *Prawo międzynarodowe publiczne*, 398.

time of war, state of war and, above all, martial law, albeit related, are not the same. Also, it has not been indicated that before a period of war the Sejm (President) should decide on the state of war, or a time of war should be announced before deciding on the state of war. It cannot therefore be assumed that before a decision on the time of war is taken, a state of war must be declared, or that these must occur simultaneously.

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DEFINITIONS AND LEGAL ASPECTS OF THE TERM “WAR”
AND THE RELATED TERMS

Summary

Normative acts applicable in the Republic of Poland do not lack a multitude of formulations of terms such as: war, state of war or time of war. The lack of legally binding definitions and the inconsistency of the use of identical definitions lead to different, often contradictory interpretations of particular situations, which may have different legal consequences.

Only a precise and detailed definition of these concepts, preferably by incorporating them into national or international law, would dispel many doubts and close the way to sometimes contradictory interpretations, which is particularly important for security and defence concepts

and issues. Therefore, in this paper the author will present definitions and regulations resulting from Polish legal acts, relating to war, war time and the state of war.

Key words: war; time of war; state of war; legal definitions.

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