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ESSAY

Do terrorists dream of rational sheep? Analysis of “strategic brutality” as a policy solution

Zoltán SZÁSZI

ABSTRACT

For decades, the phenomenon of modern terrorism has been an object of interest for scholars both from the field of Political Science and International Relations Theory. Since the start of the Syrian Crisis, the rise of radical militant factions in Syria and Iraq has been a serious issue. Out of these factions, the most powerful and influential is arguably the organisation named Islamic State. In 2013 the organisation extended its influence over vast territories of Iraq. Since this organisation has the power to destabilize entire nations, occupy territories, control populations and strategic resources, policy makers have to count this faction in their assessment as a formidable non-state actor. This paper aims to analyse a certain (limited) segment of the actions undertaken by the Islamic State in its regional activities to highlight the strategic thinking behind its military operations. The Islamic State relies on „brutality” as a policy tool to gain power and maximize its own utility.

Keywords: Islamic State, non-state actors, rational decision-making

*Introduction**Relevance of the topic*

For decades, the phenomenon of modern terrorism has been an object of interest for scholars both from the field of Political Science and International Relations Theory. After 9/11, academic discussions focused on the idea that, despite public perception¹, international terrorist organisations are in fact rational actors that use resources and forces at their disposal to achieve strategic goals^{2 3}. This has been the case with the analysis of Al Qaeda as a power in the international system and the Middle Eastern region.

Since the start of the Syrian Crisis, the rise of radical militant factions in Syria and Iraq has been a serious issue. Out of these factions, the most powerful and influential is arguably the organisation named Islamic State. In 2013 the organisation extended its influence over vast territories of Iraq and claimed authority over the militarist Al-Nusra front leading to its rise to power, although this claim was later disputed.^{4 5}

Since this organisation has the power to destabilize entire nations, occupy territories, control populations and strategic resources, policy makers have to count this faction in their assessment as a formidable non-state actor.⁶ Formulating foreign policies that successfully tackle the challenge the Islamic State poses, however, require the strategic observation of the actions undertaken by the organisation.⁷

This paper aims to analyse a certain (limited) segment of the actions undertaken by the Islamic State in its regional activities to highlight the strategic thinking behind its military operations. The Islamic State relies on „brutality” as a policy tool to gain power and maximize its own utility. The concept of „Brutality as a tool” is based on fear mongering⁸ by high levels of hostility towards both military targets and civilians. For the sake of academic reasoning, we apply the term *strategic brutality* to address this hypothesised pattern of rational thinking.

Analysis method

In order to study the impact of the Islamic State and the strategic planning behind its actions, the analysis uses a modelling method. This paper focuses on a limited set of actions conducted by the Islamic State as the goal of the study is not to fully assess the rational nature of the IS or the full extent of its relations in the Middle East and North Africa regional system. Rather, it relies on its limited model to prove rational planning on an operational level and on a regional scale over a certain period of time.

This study does not aim to establish new theories that explain the institutional planning behind international terrorism. On the contrary, it merely adopts the existing academic theories⁹ to understand and analyze a small but significant fraction of the undertakings of the Islamic State, as a major actor in the Levant region of the Middle East. In order to do so, we must work with a model that consists of two parts. The first part, *IS as an actor* formulates a modelled recreation of the Islamic State. This part is based on theories explaining the behaviour of terrorist organisations and focuses on three key elements that work together to grasp the nature of the Islamic State as a non-state actor in the Middle Eastern system. The second part, *Rational Brutality* integrates into the model strategic brutality, as a „policy tool” conducted by the IS to increase its power. This part also focuses on three main elements.

Modelling, as a foreign policy analysis instrument, has its limitations. Instead of dealing with cultural and historical dimensions of the Middle East region, this paper solely focuses on the hard power layer and the politico-economic engine of international actors and the rational planning of their decision-makers. It cannot explain the political, social and cultural nature of the Syrian Crisis nor the shift of powers in the Middle East. The aim is solely to explain the pattern of rational thinking behind certain operations conducted by the Islamic State as a non-state actor.

The Islamic State as an actor

Analysing a terrorist organisation is no simple task. While most scholars agree on the fact that terrorist organisations represent a form

of non-state actors, academic opinions on the patterns of their internal decision-making diverge. From the social science point of view, internal norm creation is very important in terrorist organisations. Although sociological conceptualization of terrorism focuses on norms and perceived normative goals,¹⁰ a wider social science approach also counts in rational utility maximization. In this sense, institutional perception leads to bounded rationality.¹¹ While sociologists and cultural anthropologists focus on the terrorist's own perception of utility, social constructivists go as far as to state there is no *terrorist action* but certain events of political violence conducted by organisations that try to manipulate *others'* perception into seeing an image desirable for the political goals of these organisations.¹² From this perspective terrorism is a means of political violence that certain organisations employ to achieve their political goals that maximize their perceived utility, by forcing others' perception at the same time. This suggests that terrorism is at least as much about influence through manipulation as it is the conventional gaining of power through violence.

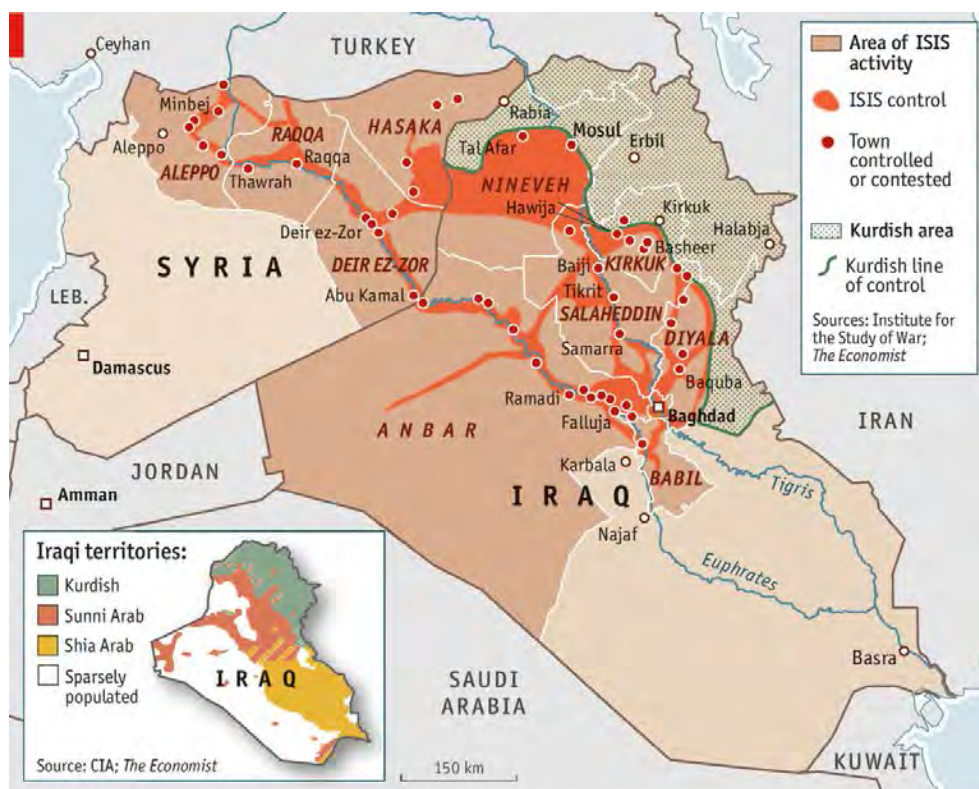
Not surprisingly, IR professionals look at international terrorism from less sociology-centered points of view, highlighting threats and viable policy solutions. Certain scholars, looking at the mid-range level of policies, connect terrorism to nonconventional and/or asymmetric warfare^{13 14}. This does not leave much room for interpretations of perception. In this sense, we only see threats and capabilities in the international space of state and non-state actors, whereas policy measures are counterbalancing forces, unconventional warfare included.

In light of these theoretic discourses, we must create a new model of the Islamic State in a way that fits into the already existing conceptual framework of terrorism. Three main elements are required to create this working model of the IS for the sake of the analysis. These are the following: The part that observes the *IS as an independent actor*, a limited understanding of its *internal structure* and effectively, the pattern of *policy outputs* behind the operations in question.

The IS as an independent actor

This element is a formulated observation that, although it undeniably has international ties, the Islamic state functions – at least to a degree – as an independent organisation acting on its own. Two arguments support this claim.

The first argument is that the IS effectively filled a power vacuum¹⁵ in the Levant region of the Middle East. Arguably, the American withdrawal from Iraq already projected the possibility of this power vacuum, as perceived by the US itself through strategic intelligence.¹⁶ During the military campaigns conducted by the organisation in 2013 and 2014, the IS conquered considerable territories in Syria and Iraq, including strategic cities and vast resources.



Source: The Economist, 2014.¹⁷

This has been done using conventional military tactics and not asymmetric warfare, a regular trait of terrorist groups. The Islamic

State employed infiltration and a head-on ground offensive to capture Mosul, the second-largest Iraqi city, showing enough power not to just attack and deal damage in an asymmetric fashion but effectively took control over a city from armed governmental forces.^{18 19 20 21} Considering these facts it can be argued that the IS cannot be seen „only” as a conventional domestic or international terrorist group in terms of strategic theories, namely „rational enterprise undertaken by those too weak to organize an armed rebellion”²² because empirical observations prove that the IS in fact has the capabilities to counter state power with military force, obtain territories, control populations and resources. This effectively makes the IS a full-blown non-state actor in the regional system.

The second argument is that the Islamic State has an operational capability that is at least potentially and partially based on its own, independent resources. While the monetary transactions of the organisation are largely obscure²³ and do not provide enough hard evidence to properly assess the organisation’s level of financial independence, it can be argued that through its operations, IS gained strategic resources on its own that establish a certain level of economic independence. This includes independent monetary funds and other vital resources like supplies, strategic oil fields, and military equipment such as weaponry and vehicles.^{24 25 26 27}

This means that even conventional counter-terrorist strategies like the distribution of the international financial support system of the organisation have limited potential for success as the group has arguably achieved a certain level of potential self-sustainability.²⁸ At this point, this is not only based on military raids but also on controlled resources and population.²⁹ This means that for the sake of this analysis, we must count on the fact that the IS has the potential for a certain level of economic independence.

Internal structure

In order to analyse the decision-making system of the IS, we must first integrate our conceptualisation of this organisation, as a considerably independent actor into a wider IR theoretic background. The shifting balance of the regional system of the Middle East is in

harmony with the neo-classical interpretation of the complex international space and regional systems,^{30 31} and one can argue that the conceptual works on which we base this model fit into the neo-realist theories of world politics with bounded rationality as a synthesised concept of the sociological/constructivist interpretation and the IR theory background. It is also clear at this point that we must approach the politico-economic structure of the IS in this section of the model.

The rational nature of the Islamic State is a claim that is based on two arguments. The first argument is that the IS effectively has a politico-economic structure that can only signal a level of professional decision-making based on political and economic rationality. It is a fact, based on various observations^{32 33} that the organisation already has substantial economic power at its disposal³⁴. The managing of this economic power in its own is a considerable task. The use of strategic resources, however, to gain power is also entirely politico-economic in nature^{35 36}. This does not only include controlling strategic oil reserves but also control over Syrian electrical plants. The IS was reported to have been selling electricity back to the Assad government in Syria. This feat suggests that the IS seeks economic influence over the country. It also suggests that the organisation relies on its resources to wield a form of economic hard power in the region. This feat requires strategic planning and policy making capabilities, traits of a rational actor.

The second argument is that the Islamic State lacks the social norm creational elements of state actors, especially Western democracies. Thorough observation makes it clear that the IS has a well-organised command structure,^{37 38} with Abu Bakr al-Baghdadi as its top leader with the title *emir*, born as Ibrahim Awad Ibrahim al-Badri proclaimed by his followers to be Caliph Ibrahim two deputies, a top religious and military council, various administrative compartments and centralised regional authorities.^{39 40} The sources indicate that the IS has a top-down ideological socialization structure instead of a grassroots norm creational system. The centralised local authorities depend on the central administration which is compartmentalised functionally into operational divisions. Comparing this fact with the theoretical background, one can argue that the socio-

economic factors that neoclassical realists borrow from the structuralist, neo-realist approach are not in play in the decision-making of the Islamic State. The IS therefore has the capabilities to act as an international actor but does not have the internal structure and dynamics of a stable state.

Policy outputs

This element of the model focuses on the external side of a rational decision-making structure, the “policy outputs” (the term being employed for a better explanation) of the organisation. It concludes the observation that the IS have been formulating decisions in a well-organised strategic manner in order to maximize utility. Two main arguments support this claim.

The first argument is that the IS effectively adapted different approaches in different “theatres”, (an argument supported by the two previous elements of the model) all falling into a larger strategy orchestrated by the organisation. While it focuses on military operations in the Levant region, the IS relies on conventional social media campaigns to gain influence abroad.^{41 42} This is arguably conducted based on a rational seek for soft power.⁴³ While it is far from a formulated institutional framework for the wielding and channelling of soft power, arguably, this social media campaign, which infiltrates foreign social networks is a well-designed and well-funded policy strategy aimed to gain influence, and through it, increase the influx of foreign fighters to the organisation. This proves that the IS employs various experts in its various operations, aiming for maximal effectiveness through professionalism. This capability for adaptation on the operational level highlights the rational decision-making pattern in formulated policy outputs.

The second argument is that in developing strategies, the IS relies on violence and fear-mongering as an effective policy tool. It is based on rational calculations rather than irrational normative considerations. Fear-mongering has been theoretised as a policy solution before ^{44 45} and arguably, this policy tool has been used by the IS to reach its strategy goals. (This will be further discussed in the next chapter.) The beheadings of Western individuals, for instance,

have been conducted locally, with a massive media campaign built around them, orchestrated in a way to reach maximum penetration.⁴⁶

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Consequences of Rational Brutality

In the second part of the model we discuss “brutality as a tool” conducted by the IS on an operational level in Iraq and Syria, effectively, the Levant region. Two main elements are important for the assessment of this strategic brutality, namely, the *influx of support* for the Islamic State and the *increase of influence* in the system.

Influx of support

To understand the logic of the brutal behaviour of the IS, we must see how it is a rational choice on the part of the decision-maker. As we discussed Mearsheimer’s understanding of lying as a policy option, we saw that lies can be used for “fear-mongering”, inserting the element of shock and fear into domestic or foreign societies. Mearsheimer makes his case by pointing out the “fear-mongering” elements behind Western military interactions. In this analysis, we use the same argument with the IS, stating that through fear-mongering, the organisation gained massive support from the societies it operates in. Two arguments support this claim.

The first argument is that the IS effectively uses fear to force support from the populations they control. Applying Mearsheimer’s understanding of fear-mongering here it is used for the extortion of civilians. As we have established the rational decision-making of the IS before, brutality as a tool is a very pragmatic instrument for effective local terrorisation. The IS aims to gain funds, resources, supplies from the local population⁴⁹ and wives for its militants through forced marriage.⁵⁰ Brutal actions^{51 52 53} merely set an example to highlight the possibility of torture and murder⁵⁴ as a worse scenario as opposed to cooperation. Fear-mongering uses the better scenario/worse scenario dichotomy to reach its goals and the IS’ “policy” does exactly that.

The idea to connect brutal extortion with rational gains is not a new one. This analysis is not the first to explain seemingly senseless violence with utility maximization. Academics have theorised in the past that, a rebel or militant group tends to employ violence to force the local population to cooperate.^{55 56} Extortion is in fact a long-term strategy to ensure the cooperation of the local community.⁵⁷ Applying the same academic reasoning in this case suggests that the local operations of IS are not unique in their nature, rather, they fit into a behavioral pattern of militant factions that prey on their local communities. This is in accordance with empirical observations regarding the material gains of IS through its hostilities against the civilian population.

The second argument supporting the claim that brutality increases local support is that it connects to radical elements in the polarized societies it operates in. As we discussed before, this model leaves out the cultural layer of societies. Therefore, sectarian infighting and religious hostility cannot be discussed in the analysis. Polarization, however, has been increasing in Iraq and Syria as a socio-cultural tendency reaching into every level of their societies. Polarization therefore will only be discussed here as a purely political phenomenon of polarized groups of societies opposing each other ultimately leading to armed atrocities.⁵⁸ In this sense, it is arguably a rational choice for any militant faction to connect with one of these groups and gain support through their alliance while forcing the same support out of others.⁵⁹ Empirical observation proves that for at least a short period of time the IS received voluntary support from certain communities in the societies it operates in.^{60 61 62} Analysing the long-term productivity of the dependence on voluntary support of the Islamic State is hard. The available data only suggests an initial increase of support towards the organisation during late spring and summer 2014, during and after the capture of Mosul by the Islamic State. Further observation of the continuity of voluntary support of the IS by certain factions is impossible due to the obscurity of available data and the fact that without the cultural elements, this model cannot analyse the long-term mechanisms of the regional societies.

Increase of influence

The Islamic State is a unique phenomenon in its region because it is a non-state actor that undoubtedly possesses some state-like elements, like territoriality⁶³. Arguably, another element is influence in the regional system. Although the role of influence originates in the neoliberal interpretation of soft power, it is not alien in the neoclassical realist conceptual framework that this paper is based on⁶⁴. In a theoretic approach, the influence the IS strives for through violent means is a shift in the relation of relative powers. In this sense, brutality shocks the societies the IS operates in and it increases its relative military power compared to its adversaries through the increase in its efficiency and the decrease of efficiency in theirs.⁶⁵ Two arguments support this claim.

The first argument is that strategic brutality has a severe domestic shocking effect that decreases the efficiency of the power of state actors. The pieces at play here are the IS forces and the opposing regular armies. Cities and populations are valuable resources in the hands of the opposing factions. Increased efficiency of the IS through its violent means on an operational level means that the IS forces have to advance at a faster pace than what the power of their state adversaries would dictate. The available evidence is in line with that projection.^{66 67 68} The Iraqi chief command has to deal with low morale and combat readiness, a very inefficient state of their army despite their superiority in numbers and military hardware. On the operational level, this proves that the brutality the IS employs leads to their increased efficiency, which increase is reversely proportional to that of their state adversaries.

The second argument is that employing brutality as a strategic tool is not only efficient against state actors with regular armies but it is also effective against rival non-state military factions. The strongest adversary of the IS in the region is arguably the terrorist organisation Al-Qaeda. This group is widely spread and well-connected but scarce, with no observable control over territory, population or strategic resources, which the IS has.⁶⁹ Observations suggest that during the spring and summer of 2014, the IS swiftly captured territories, populations, cities and resources that gave them a strategic advantage over Al-Qaeda very early in their campaign.

These quick victories followed a series of violent and brutal actions⁷⁰
⁷¹. This suggests that an early advancement and capture of strategic locations and resources by military operations is crucial and due to their brutal means, the campaign conducted by the IS placed the Al-Qaeda at a great disadvantage. The IS effectively gained more state-like elements, like territoriality, control of populations and resources. This means that the organisation could set foot as a considerable non-state actor immensely more powerful in the Levant region than the Al-Qaeda network.

Conclusion

Terrorism has been a much debated and studied topic for decades and yet there still are new issues that policy makers have to address and academists have to study. The purpose of this paper was to observe and analyse one of these new problems connected to the ever-present threat of global terrorism.

We are all standing on the shoulders of giants. Scholars of Political Science and International Relations Theory have been researching the phenomenon that is international terrorism and the rationality behind it since 2001. This paper aims to use their academic tools to observe and analyse the rationality behind the choice of brutality as a policy solution by the terrorist organisation called the Islamic State of Iraq and Syria.

The analysis used sociologic and cultural anthropologic conceptualisation and integrated it into an IR framework based on a neo-classical realist theoretic approach to study brutality, as a policy choice by the IS. In order to do so, we used the modelling method and focused on the operational level of the organisation's "policy" and observing only the operations conducted in the Levant area by the organisation from 2013 to 2014. The two parts of the model, a chapter discussing the independent actor nature of the IS and one covering *strategic brutality* as a policy instrument, came to the conclusion that brutality was not only a rational choice but also a very effective way to gain power in the region. The evidence suggests that based on their operations confined to the Levant, the IS has a rational decision-making structure, which, combined with its state-like elements,

makes it a powerful and threatening actor of the region. It is at least to a level, independent, although its economic background is somewhat obscure due to the lack of data in certain aspects, like funding and monetary transactions. It is, however, clear that they operate on their own with a great efficiency, thus traditional counter-terrorist operations will remain ineffective. It is clear that there is no easy way out of the situation. The complex issues of the region need strategic planning. Tackling the threat of a powerful non-state actor like the Islamic State is challenging, as there is no quick solution for solving the problem. The Islamic State is, after all, an intelligent disaster.

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The authors discuss the early stages of public discussion regarding terrorism as a phenomenon in the wake of the 9/11 attacks. They document that the public saw socio-economic factors as the source of terrorism, issues that need higher levels of „cultural stability”.

² Gregory D. Miller, “Terrorist decision making and the deterrence problem.” *In: Studies in Conflict & Terrorism*. Taylor & Francis group, 2013.

pp. 132-133. *„Despite the popular misconception that terrorists are crazy, the conventional wisdom among*

scholars has long been that terrorists are rational. ... As discussed above most scholars dismiss the suggestion that terrorists are irrational.”

³ Heinrich Harald Nax, “Modelling Hostage-Taking: On Reputation and Strategic Rationality of Terrorists” *In: Studies in Conflict & Terrorism*, 2008.a

p. 158. *„Instrumental rationality defines the notion of an agent’s decision making as being optimal*

for serving this agent’s objectives, given a set of constraints” pp. 161-162. *„Terrorists’ real-world behavior with respect to other situations has shown to be consistent with rational choice theory. Sandler and Enders make use of econometric analysis to conclude that “terrorists’ rationality is given credence by their predictable responses to changes in their constraints. ... A terrorist must be rational in some instrumental sense.”*

The author discusses the perception of terrorists as rational actors, using game theory to argue that terrorist organisations can be perceived as rational decision-makers.

⁴ ISI Confirms That Jabhat Al-Nusra Is Its Extension In Syria, Declares 'Islamic State Of Iraq And Al-Sham' As New Name Of Merged Group *In: The Middle East Media Research*

Institute(/www.memri.org) April 8, 2013.

URL: <http://www.memri.org/middle-east-media-research-institute.html> (Accessed: 2015.02.16.)

⁵ Agence France-Presse, “Qaeda in Iraq confirms Syria's Nusra is part of network” *In: GlobalPost* (www.globalpost.com) April 9, 2013

URL: <http://www.globalpost.com/dispatch/news/afp/130409/qaeda-iraq-confirms-syrias-nusra-part-network> (Accessed: 2015.02.17.)

⁶ Kate Brannen, “Air-Sand Battle” *In: Foreign Policy* (<http://www.foreignpolicy.com>) November 14, 2014. The author projects that with the military reductions and the increased focus on the Middle East, new, fine-tuned defence policy solutions will have to be made in order to deal with „pockets of violence”, including the IS threat in the Middle East

URL:

http://www.foreignpolicy.com/articles/2014/11/14/the_isis_challenge_ground_forces_Pentagon_assumptions (Accessed: 2014. 11.14.)

⁷ Emily Pronin, Kathleen Kennedy, and Sarah Butsch, “Bombing Versus Negotiating: How Preferences for Combating Terrorism Are Affected by Percieved Terrorist Rationality” *In: Basic and Applied Social Psychology*. Lawrence Erlbaum Associates, Inc., 2006.

„People readily impute irrationality and bias to the judgments and actions of others ... Disagreement with terrorists likely contributes to the perception that their views and actions are biased and irrational.

Media depictions of terrorism may provide another source of such perceptions. ... We predict that perceptions of terrorists as subject to biasing and irrational influences in their decision making versus as objective and rational in their decision making will lead to different preferred strategies for dealing with terrorism ..."

The authors proved in their group psychology experiment that different perceptions towards terrorism and terrorist organisations lead to different preferences in counter-terrorist policies

8. Charles Krauthammer, "The Case for Fear mongering" *In: Time*, 16/164. 2004.

The author puts forward the idea that „fear mongering” is a well-planned strategy of terrorist organisations. His argument is that the presentation of the destructive capabilities of a terrorist organisation gains it influence by creating rational fear in its adversaries.

9. Scott Helfstein, "Governance of Terror: New Institutionalism and the Evolution of Terrorist Organizations" *In: Public Administration Review*, 2009.

„Rational choice, specifically game theory, has been used to model different features of terrorism by

focusing on the micro-level decisions of terrorists, governments, and populations. ... The underlying assumption in all of these works is that terrorists, like the governments they compete with and the citizens they interact with, are economically rational in the most basic sense of the term."

Based on the author's arguments, it is logical that the reasoning of conventional rationalism is most applicable for hypothesising rational decision-making behind terrorist actions on a limited, operational level.

10. Jack P. Gibbs, "Conceptualization of Terrorism" *In: American Sociological Review* Vol. 54, No. 3 June 1989. pp. 329-332.

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The author highlights the risks of loose nuclear weapons and lays down priorities for policy answers to prevent nuclear terrorism. The author does not differentiate new nuclear states and non-state organisations

14. William C. Potter, Charles D. Ferguson, Leonard S. Spector, "The Four faces of Nuclear Terror" *In: Foreign Affairs* Vol. 83. No. 3, May-June 2004. pp. 130-132.

The authors highlight that technical details of nuclear weaponry have to be taken into count in the case of nuclear terrorism and that non-state and state actors may pose different levels of threat

15. Peter Harling, "Etat islamique, un monstre providentiel" *In: Le Monde Diplomatique*

(<http://www.monde-diplomatique.fr>) (September 2014.) (French)

URL: <http://www.monde-diplomatique.fr/2014/09/HARLING/50787> (Accessed: 2014.11.18.)

16. Glenn Segel, "The Predictable and Permanent Nature of the Islamic State" *In: e-International Relations* (www.e-ir.info) November 12, 2014.

„Many of the predictions in the 2007 worst case scenario were based on expectations of American withdrawal of forces from Iraq. ... The scenario was monitored and since there was no loss of American intelligence on ISIL in

Iraq there has progressively since 2011 been an accurate assessment of ISIL in Iraq's manpower, military and financial capabilities, leadership, and planned targets for attack."

URL: <http://www.e-ir.info/2014/11/12/the-predictable-and-permanent-nature-of-the-islamic-state/> (Accessed: 2014.11.17.)

17. Regional map of the region URL: <http://www.economist.com/news/middle-east-and-africa/21604627-crisis-iraq-has-roots-going-far-back-history-recently-fully> (Accessed: 2015.03.08.)

18. Michael Knights, "Iraq War III has now begun" *In: Foreign Policy* (www.foreignpolicy.com) June 11, 2014. URL:

http://www.foreignpolicy.com/articles/2014/06/11/iraq_war_iii_has_now_begun_mosul_isis_tak_cover

The author recounts the ISIS-lead capture of Mosul, Iraq's second largest city. *Omar AL-Nidawi: How Maliki lost Iraq In: Foreign Affairs*, <http://www.foreignaffairs.com/articles/141579/omar-al-nidawi/how-maliki-lost-iraq> June 18, 2014.

URL: <http://www.foreignaffairs.com/articles/141579/omar-al-nidawi/how-maliki-lost-iraq>

The author discusses sectarian infighting in Iraq – Which will not be further discussed in this analysis since the model removes the cultural layer of the region. However, the author also points out the Iraqi policy making mistakes that lead to the success of the IS in northern Iraq. This explanation suggests a conventional politico-military power shift in the regional balance of power.

19. "The Islamic State" (video) by Vice News (<https://news.vice.com>) (Uploaded to YouTube on August 14 2014.) URL: <http://youtu.be/AUjHb4C7b94>

Filed by videojournalist Medyan Dairieh, this piece by Vice News covers both daily activities in IS-controlled territories and first-hand battlefield reports. The observations in this video support the claim that IS forces advanced in Iraq through regular and militia tactics, and not conventional terrorist asymmetric warfare.

20. "The capture of Mosul, Terror's new headquarters" *In: The Economist* (www.economist.com) June 14th, 2014. URL: <http://www.economist.com/news/leaders/21604160-iraqs-second-city-has-fallen-group-wants-create-state-which-wage-jihad> (Accessed: 2015.02.27.)

21. Ned Parker, Isabel Coles, Raheem Salman, "Special report - How Mosul fell: An Iraqi general disputes Baghdad's story" *In: Reuters* (<http://uk.reuters.com>) Oct 14, 2014

URL: <http://uk.reuters.com/article/2014/10/14/uk-mideast-crisis-gharawi-special-report-idUKKCN0I30ZA20141014> (Accessed: 2015.02.27.)

A detailed report of the capture of Mosul documents that after fighting between militants and governmental forces broke out, the Islamic State launched a head-on charge in the vicinity of the city. Their forces have already infiltrated the city and vehicles carrying armed men also crossed the Syrian border.

22. Thomas Plumber, Eric Neumayer, "Terrorism and Counterterrorism: An Integrated Approach and Future Research Agenda" *In: International Interactions*, Taylor&Francis Group, July 22 2014. The authors discuss theoretical and empirical research approaches to terrorism and counterterrorism based on the understanding of terrorist strategic goals and counter-terrorist policies.

23. Jamila Trindle, "No Blacklist Yet for Islamic State Banks" *In: Foreign Policy* (<http://www.foreignpolicy.com>) November 12, 2014.

The article highlights a certain controversy behind the IS-lead bank heist in Mosul that implicates ties between the organisation and the Iraqi government. These allegations cannot be analyzed in

this paper due to the lack of hard evidence. This means that the argument that states that the IS is financially independent can only lead so far as to conclude that the organisation possesses *some* level of economic independence. This however, is enough for the sake of this paper as we only observe the independent actions of IS on an operational level.

24. Borzou Daragahi, “Biggest bank robbery that ‘never happened’ – \$400 Isis heist” *In: Financial Times* (<http://www.ft.com>) July 17, 2014.

The article reports that during the siege and conquest of Mosul, IS obtained massive funds from a bank raid, leaving approximately \$430 million in the hands of the organisation

URL:<http://www.ft.com/intl/cms/s/0/0378d4f4-0c28-11e4-9080-00144feabdc0.html#axzz3IIVtBUef> (Accessed: 2014.11.15.)

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<http://www.nytimes.com/2014/06/21/world/middleeast/isis-iraq-insurgents-reaping-wealth-as-they-advance.html> (Accessed: 2014.11.16.)

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⁵¹ "Syria: ISIS Tortured Kobani Child Hostages" *In: Human Rights Watch* (<http://www.hrw.org>) November 4, 2014.
URL: <http://www.hrw.org/news/2014/11/04/syria-isis-tortured-kobani-child-hostages> (Accessed: 2014.11.25.)

⁵² Hillel Fendel, "Held Captive by ISIS, Girl Tells of Endless Torture" *In: Israel National News* (<http://www.israelnationalnews.com>) September 12, 2014.
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⁵³ "ISIS commit another massacre: 30 Sunni men are paraded through Iraqi town before being brutally shot dead" *In: Daily Mail* (<http://www.dailymail.co.uk>) October 29, 2014.
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⁵⁴ "Gruesome Footage Of ISIS Atrocities Reveals Al Qaeda Jihadists "Will Stop At Nothing"" *In: The Iranian* (<http://iranian.com>) June 14, 2014. (Retrieved from Zero Hedge (<http://www.zerohedge.com/>))
URL: <http://iranian.com/posts/view/post/34070> (Accessed: 2014.11.25.)

⁵⁵ Rachel Sabates-Wheeler, Philip Verwimp, "Extortion with Protection: Understanding the Effect of Rebel Taxation on Civilian Welfare in Burundi" *In: Journal of Conflict Resolution*, September 23, 2014. 1479-1481.

The authors discuss the dependence of a militant group on a local population. Violence is employed to force support either by protection from rival factions or their further atrocities

⁵⁶ Alan Carling, "Extortion and Exploitation" *In: Political Studies*, Vol. 35. Issue 2., June 1987. 173-177.

Marxist take on extortion and exploitation describes extortion through the available rational choices to interacting actors. In this sense, extortion is a form of inter-class relation in a society that bears feudalistic elements

⁵⁷ Christian Hilbe, Martin A. Nowak, Arne Traulsen, "Adaptive Dynamics of Extortion and Compliance" p. 4. *In: PloS ONE*, Public Library of Science

... although extortioners are defined as strategies with the lowest payoff against themselves, their exclusion reduces the average payoff of the population for all population sizes ... This effect is especially pronounced in larger populations; ... [this] indicates that it is almost impossible to reach a cooperative regime without extortioners."

⁵⁸ "Islamic State Situation and the U.S. Response" *In: Congressional Digest*. Vol. 93 Issue 9, November 2014. pp. 2-30.

This piece gives a detailed account of armed atrocities among radical militant fractions in Iraq and Syria. This data suggests that certain groups did effectively align themselves with the Islamic State.

⁵⁹“Even animals don’t do it’: Kobani siege survivors on ISIS brutality” *In*: RT News (<http://rt.com>) October 19, 2014.

URL: <http://rt.com/news/197232-rt-survivors-isis-kobani/> (Accessed: 2014.11.25.)

⁶⁰Mosul's rude awakening on ISIS *In*: Al-Monitor (<http://www.al-monitor.com>) June 12, 2014.

URL: <http://www.al-monitor.com/pulse/ru/originals/2014/06/iraq-isis-mosul-aleppo.html#> (Accessed: 2014.11.25.)

This piece reports initial support from locals upon the IS-lead capture of Mosul

⁶¹“Inside Mosul: why Iraqis are celebrating Islamic extremists’ takeover of their city” *In*: Niquash news (<http://www.niqash.org>) June 12, 2014.

URL: <http://www.niqash.org/articles/?id=3458> (Accessed: 2014.11.25.)

Niquash news also reports local support of IS militants shortly after their capture of Mosul.

⁶²“Iraq crisis: Key players in Sunni rebellion” *In*: BBC (<http://www.bbc.com>) July 1, 2014.

URL: <http://www.bbc.com/news/world-middle-east-28053496> (Accessed: 2014.11.25.)

⁶³George Friedman, “The Islamic State Reshapes the Middle East” *In*: Geopolitical Weekly. Stratfor Global Intelligence (<http://www.stratfor.com/>) November 25, 2014.

URL: <http://www.stratfor.com/weekly/islamic-state-reshapes-middle-east#axzz3K17snwqD> (Accessed: 2014.11.25.)

⁶⁴Brian Rathbun, “A Rose by Any Other Name: Neoclassical Realism as the Logical and Necessary Extension of Structural Realism” *In*: Security Studies Vol. 17 Issue 2, April-June 2008. pp. 300-301
„Domestic politics and ideas are fair game for realism, ... Most obviously, neoclassical realism

uses domestic politics and ideas to flesh out the concept of power, the central variable in neorealism. ... it shows how domestic politics and ideas are key elements in the process of self-help inherent to an anarchic system. Anarchy in structural realism provides strong incentives for states to accumulate power, but we cannot understand power without reference to what happens within states and how people think and what they believe.”

⁶⁵Gideon Rose, *Neoclassical Realism and Theories of Foreign Policy* p. 151.

Relative power is a chief independent variable in the neoclassical realist approach. In this sense, power generally is „the capabilities or resources... with which states can influence each other”

⁶⁶Martin Chulov, “Iraq army capitulates to Isis militants in four cities” *In*: The Guardian

(<http://www.theguardian.com>) June 12, 2014.

URL: <http://www.theguardian.com/world/2014/jun/11/mosul-isis-gunmen-middle-east-states> (Accessed: 2014.11.26.)

This piece reports in details how fast the Iraqi army fell back upon the ISIS-lead capture of four strategic cities in northern Iraq. The fast retreat was largely uncalled for.

⁶⁷“Iraq's army probably isn't strong enough to defeat ISIS” *In*: The Week (<http://theweek.com>) June 23, 2014.

URL: <http://theweek.com/speedreads/index/263583/speedreads-iraqs-army-probably-isnt-strong-enough-to-defeat-isis> (Accessed: 2014.11.26.)

⁶⁸Kirk Semple, „Iraq Army Woos Deserters Back to War on ISIS” *In*: The New York Times (<http://www.nytimes.com>) September 28, 2014.

URL: <http://www.nytimes.com/2014/09/29/world/middleeast/iraq-army-woos-deserters-back-to-war-on-isis.html> (Accessed: 2014.11.26.)

This piece reports the dangerously low level of morale in the Iraqi army, leading to inefficiency and mass desertion

⁶⁹Daniel Benjamin, "Threat Assessment As the fight moves to Syria, jihadist should be confronted not feared" *In: TIME* Vol. 184 Issue 13. October 6, 2014. pp. 16-17.

This threat assessment piece highlights the strategic infrastructure and supply chains of the IS behind the frontline.

⁷⁰Dale Sprusansky, "Understanding ISIS: Frequently Asked Questions" *In: Washington Report on Middle East Affairs*, Vol. 33, Issue 7. October 2014.

This special report recounts the early advances of the IS and their ongoing conflict with the Al-Qaeda. The latter, largely incapable of stopping its adversary, denounced the IS, but was essentially shocked and rendered powerless against the advancement of the Islamic State

⁷¹John Bew, Shiraz Maher, "Blowback" *In: New Statesman* Vol. 143 Issue 5215, p22-26. June 20, 2014.

This piece quotes IS leaders sending public messages to Al-Qaeda, rebuking them for their „slow responses“. It reports that the IS leaders themselves pragmatically see their actions as a „more effective formula“.

Essay

(Mis)Perceptions of Terrorism in Hungary. Some remarks on history, criminal law and legal practice

Péter Stauber

ABSTRACT

Hungary is usually not considered as a country particularly associated with terrorism. Nevertheless, in a somewhat broader context, politically motivated violence has been present in Hungary for decades, and some of the acts committed may even qualify (with a somewhat retrospective aspect though) as genuine acts of terrorism. Against this context, the author gives an overview of the history of politically motivated violence in Hungary since the period between the two World Wars. Evolution of the concept of act of terrorism is analysed in detail since the first codification in 1978. Last but not least, some contradictions in the practice of court when applying the law are also presented, the most striking example of which is the case of the serial murder against Roma persons in 2008-2009. As a conclusion, the author finds that the legislation in force and its rather restrictive application is misleading: a much more complex (and maybe more realistic) picture on the prevalence of terrorist behaviour could be drawn with some minor amendments to the existing legal provisions and by another methodology. Based on such findings and recalling an earlier incident now mostly forgotten, the public opinion as regards the existence of terrorism in Hungary might shift, too.

Keywords: terrorism, criminal law, history

Hungary is usually not considered as a country particularly associated with terrorism. Having worked more than a decade in Hungarian public services, I have often encountered statements that terrorism is even non-existent in Hungary. I have always had problems with such simplistic approaches. In this paper I try to confute three common perceptions of the public opinion and of practitioners, as follows:

- Terrorism is unknown in Hungary.
- The Hungarian legislation covers all forms of terrorism.
- Hungarian authorities apply the law properly.

To avoid misunderstandings, of course, I admit that, luckily, Hungary is not a target country of the currently predominant international terrorist threat. Nevertheless, on the one hand, this might change in the very volatile international environment, and, on the other hand, one should not forget that terrorism is much more than that, represented mostly by Islamist terrorist groups.

Having said that and before going into details, I have to clarify one more issue. In the following, my starting point is that I would not deal with terrorism in a positivistic sense that equals terrorism with what is called terrorism in the Criminal Code. I will rather use the term terrorism as a concept of politically motivated violent acts of particularly serious nature that aim to reach effect beyond their immediate target. This concept, although it has much in common with the latest developments in criminal law¹ as regards the problem of definition of terrorism or acts of terrorism, may refer to several offences of the Criminal Code in a given moment.

Traditions of politically motivated violence in Hungary

In this part of the paper, I will turn to the first (mis)perception, namely, that terrorism would be unknown in Hungary. In my view, it is not: although not prevalent, but it has been present in the history of the country throughout the 20th century and ever since. Terrorism (in the meaning provided above) appeared in Hungary after the First World War, and in the period between the two World Wars, politically

motivated violent acts were even quite frequent, especially in the early '20s and late '30s, mostly committed by militant extreme right-wing groups, sometimes, to a lesser extent, by extreme left-wing groups (similarly to many other European countries). These incidents have become mostly forgotten by now, nevertheless, it is worth giving a brief overview of the most important ones.²

27 July 1920: bomb attack against a café in Budapest, committed by a group of extreme right-wing militants, with several victims.

20 October 1921: in the course of a failed attack to regain his throne, former king Charles IV of Habsburg and his followers seize an aircraft in Switzerland and force it to fly to Hungary (this case being the first known plane hijacking in the world).³

16 January 1923: failed plot to attack a theatre in Budapest by extreme right-wing militants.

20 February 1923: failed bomb attacks against the editorial office of an opposition newspaper and against opposition politician Károly Rassay.

16 February 1926: attack against MP Vilmos Vázsonyi by extreme right-wing militants.

13 September 1931: a railway bridge near Budapest explodes under the Vienna-Budapest express train (22 people die). The outrage is attributed to a mentally disturbed person Szilveszter Matuska – nevertheless, his apparent contacts to extreme right-wing circles who planned a coup d' état remain unclear.⁴

9 October 1934: assassination of King Alexander of Yugoslavia and French Foreign Minister Barthou in Marseille by Croatian Ustasha terrorists – investigation reveals that they were previously trained in Hungary.

26 June 1937: violent clashes between activists of the Hungarian Social Democrat Party and the far-right Arrow Cross Party in Budapest.

16 September 1937: attack by communist and social democrat activists against the Budapest headquarters of the Arrow Cross Party.

12 November 1938: attacks of extreme right-wing activists against leftist facilities in Budapest.

3 February 1939: bomb attack against the main synagogue in Budapest by Arrow Cross activists, leaving 13 people wounded.

Even this short list that concentrates only upon those incidents that were recorded in the literature used by historians demonstrates that politically motivated violence had been present in Hungary between the two World Wars. Although a bit retrospectively, but one may even state that at least some of these acts were, under present terms, acts of terrorism. Undoubtedly however, they serve as an evidence that politically motivated violence does have a tradition in Hungary.

After the Second World War, as well-known, Hungary became a part of the Communist bloc, and a dictatorial, Soviet-type state emerged in the course of 1947-1948. It goes without saying that state oppression made resistance, especially armed resistance impossible, except for the period of the revolution in October and November 1956 (one may state that politically motivated violence in this period was exercised by the state itself). Nevertheless, sporadically, there were cases of violent or even armed resistance: of course, I would not dare to identify these and their perpetrators with terrorism, on the other hand, their courage to act against a dictatorship deserves appraisal. However, if we use the concept of politically motivated violence in a value-neutral manner, these acts also underscore of approach, namely, the existence of a tradition of politically motivated violence in Hungary.

The incidents I refer to are the following:

4 January 1949: hijacking of a domestic flight. The perpetrators use the airplane to flee to West Germany, where they are granted asylum.⁵

13 July 1956: hijacking of a domestic flight. The perpetrators use the airplane to flee to West Germany, where they are granted asylum.⁶

15 October 1956: failed attempt to hijack a domestic flight. The security personnel of the plane kills one of the perpetrators, the rest escape trial due to the subsequent revolution.⁷

16 August 1958: two Hungarian emigrants attack the Hungarian embassy in Bern, Switzerland. Security personnel of the Embassy kills one of the attackers, the other one will be arrested by Swiss police (receives later on a very mild sentence).⁸

7-12 January 1973: two sons of a Border Guard officer take hostage of several schoolgirls at a dormitory in Balassagyarmat (near the Czechoslovakian border), using firearms stolen from their father. Inspired by news of terrorist attacks in the world, the siblings demand money and free passage to the West. Police kills one of the perpetrators, the other one receives prison sentence. This case can be considered the first „modern” terrorism or terrorism-like incident in Hungary and it contributed to the codification of the relevant offence (Act of Terrorism), as we will see it later.⁹

We have to note that the *modi operandi* in these cases are very similar to the typical terrorist attacks of the first huge wave of international terrorism in the '70s (namely, hijacking airplanes and attacking embassies). Another peculiarity is the fact that, among Cold War circumstances, in some cases the perpetrators were granted asylum: something that will become contrary to the relevant instruments of the international community some two decades later, when, at least in theory, consensus emerges that terrorists should be punished by all states regardless of political motivations. Last but not least, except for the attack in Bern, perpetrators used violence in order to leave the country: hence, the political motivation in these cases is much more remote, and it is questionable, whether there was any aim to reach effect beyond the immediate target.

Due to effective consolidation of the communist regime after the revolution in 1956, politically motivated violence became more or less obsolete in Hungary in the last decades. The transition from socialism to democracy in 1989-1990 was peaceful as well. After very sporadic incidents, politically motivated violence erupted in the autumn of 2006, after the publication of a speech by Prime Minister Ferenc Gyurcsány. The Prime Minister's statements he delivered some months earlier at a closed meeting with MPs of his party, admitting the poor conditions of the state budget and using „lies” to win the elections, provoked violent protests in Budapest. In the subsequent months and years, the political life became extremely polarized and a prolonged political crisis situation emerged. Against this background and due to the detrimental effects of the global economic crisis that hit Hungary particularly hard, legal, semi-legal and illegal radical groupings took shape, some of which did not refrain from using

politically motivated violence, planning and in some cases executing actions, that can easily be defined as terrorist, even in terms of criminal law. Public life consolidated after the elections in 2010 and such actions are currently not taking place. Nevertheless, as we have seen, a possible political destabilization might create similar tensions in the future.

Looking back upon the last century of Hungarian history with this particular optics, one may state that, although not prevalent, but politically motivated violence (which, in my view, is more or less equal to terrorism) has been present in Hungary. Hence, the perception I referred to at the beginning of my paper (namely, that terrorism is unknown in Hungary) deserves some reconsideration.

Development of the concept of terrorism in the Hungarian penal law

Terrorist behaviour became a *sui generis* criminal offence with the adoption of the second „socialist” Criminal Code in Hungary, namely Act IV. of 1978. This Code, that has replaced the previous Act V. of 1961 entered into force on 1 July 1979 and (although with more than hundred amendments) remained in force until 1 July 2013. The offence „Act of Terrorism” was already included in the original version of the Act. This offence (Section 261) found its place among the offences against law and order (Chapter XVI of the Code), under Title I within the Chapter, namely among the crimes against public security.

During the codification, the above-mentioned hostage-taking case of 1973 certainly had an impact on the concept of the offence. Back in 1973, the authorities had difficulties in finding the proper offence within the Criminal Code enabling to punish the surviving perpetrator in a way that could match the seriousness of the actual deed. At the end of the day, the basis of the conviction was the attempt of homicide on multiple persons, enabling to impose 15 years of imprisonment, nevertheless, the peculiarities of the hostage-taking action could not be reflected in the sentence.

The ministerial justification of the new Criminal Code in 1978 put the emphasis on this kind of criminal behaviour, underlining that

terrorism is seen „as a qualitatively new form of constraint and blackmail, more horrendous than the ones previously known... the perpetrator tries to exclude the possibility of failure by obtaining previous safeguards. He detains another person against his will or seizes considerable assets or property, and makes demands to government agencies or non-governmental organizations in exchange for the release of the person or refraining from doing harm or injury, or the return of said assets and property.”¹⁰

As we can read out of the language of the offence, the legislator aimed to target this particular behaviour of hostage-taking as act of terrorism, if the demands are addressed to government agencies or non-governmental organizations (hence, the same behaviour with demands addressed to private persons did not qualify as an act of terrorism). By doing so, beyond the 1973 case, the first wave of international terrorism of the 1970s and the typical *modi operandi* were certainly taken into account, just as the relevant instruments adopted under the umbrella of the United Nations.¹¹ Hence, including this offence in the Criminal Code was also a step to align domestic law with obligations under public international law.¹²

The 1978 codification has introduced additional elements that have become parts of the concept of the offence ever since, i.e. the penalisation of preparation and the failure to report the crime, just as the possibility of mitigation in case of voluntary abandon. Some of the language reflects the „socialist” legal environment, e.g. the qualified case of war-time, or the reference to „non-governmental organisations”.¹³ All in all, one may say that this concept, although having somewhat narrow scope, concentrating upon one particular type of terrorist behaviour, corresponded to the circumstances of the time of the adoption of the Act and it can be seen as a very progressive approach by that time.

The language of the offence remained practically unchanged until 2001, when the 9/11 terrorist attacks against the United States changed the international environment drastically. The only amendment that affected the offense was of a general nature, namely, the abolishment of the death penalty in 1990, by one of the first decisions¹⁴ of the newly created Constitutional Court, a landmark of transition from the communist dictatorship into democracy.

In 2001 and 2002, two subsequent amendments transformed the text of the offence, introducing a completely new and much broader approach, motivated by the change of the international legal environment, already in progress for years but finally catalysed by the 9/11 attacks. As a first step, Act LXXXIII of 2001 that was adopted in December 2001 introduced the financing of terrorism, as a part of the offence, with the same penalties.¹⁵ This amendment was part of an Act that was aimed to align Hungarian legislation with UN Security Council Resolution 1373, directly after the 9/11 attacks, with a focus on anti-money laundering and terrorism financing issues.¹⁶

One year later, following the adoption of a new instrument by the European Union (namely, Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism), that became immediately a part of the *acquis communautaire* for candidate countries to comply with and the ratification of the 1997 International Convention for the Suppression of Terrorist Bombings¹⁷ and of the 1999 International Convention for the Suppression of the Financing of Terrorism¹⁸, the offence was, finally, completely changed. Act II of 2003¹⁹ tried to align the Hungarian legislation with the above-mentioned EU instrument, creating a much more complex offence with a broader scope.

The ministerial justification of Act II of 2003 emphasized the changing nature of terrorism as the main reason of the amendment, stating: „In the past years, the goal of terrorist actions have become destruction and demolition, the offenders not formulating any kind of demand... this has already appeared in terrorist behaviour prior to 11 September 2001 and the international legal development responding thereto; nevertheless, it is even more true as regards the events since that date... the Framework Decision on combating terrorism adopted by the Council of the European Union on 13 June 2002 has a particular importance from the point of view of our accession to the European Union.”

The amendment, leaving the name of the offence unchanged, has introduced several new punishable actions, using a very complex approach, making the text somewhat complicated. Altogether six variations of the offence can be distinguished:²⁰

a) „New types of terrorist behaviour”: the new paragraph 1 of the Section created a *delictum compositum* following the logic of the EU Framework Decision, using an exhaustive list²¹ of violent crimes against persons referred or a crime that endangers the public or involves the use of a firearm that are committed by one of three possible *sui generis* motivations, as follow:

[in order to]

- coerce a government agency, another state or an international body into doing, not doing or countenancing something;
 - intimidate the general public;
 - conspire to change or disrupt the constitutional, economic or social order of another state, or to disrupt the operation of an international organization.
- b) The traditional hostage-taking behaviour remained punishable by paragraph 2 with minor amendments. The *actus reus* became limited to seizing considerable assets or property, as the involvement of persons as hostages became punishable under paragraph 1, kidnapping becoming one of the listed offences. Furthermore, the motivation for this kind of action was limited to the first type of motivation mentioned above (i.e. „to coerce a government agency, another state or an international body”). Thirdly, the old notion of „non-governmental organisations” was deleted from the possible addressees of the demands.
- c) The new formulation retained the possibility to penalise the preparation for both previous behaviours (paragraph 4), using the general notion of preparation, not specifying any particular behaviour under this paragraph.
- d) As a new element, the membership in a terrorist group became punishable, and the financing of terrorism was also included, in paragraph 5. The terrorist group was defined following the pattern of the definition of criminal organisations in an explanatory provision in paragraph 9 within the Section.

- e) As a new behaviour, threatening to commit the first two cases mentioned-above became *sui generis* punishable under paragraph 7.
- f) The failure to report a planned act of terrorism remained punishable under paragraph 8.

It is arguable, whether the reformulation of Section 261 had an actual added value. As Professor Mihály Tóth points out²², this might be seen rather as a demonstrative, than a substantial step of legislation, as nearly all of the offences that could have been applicable under the Hungarian law in force in the case of the 9/11 attacks were already punishable by life sentence. Nevertheless, implementation of the EU Framework Decision was a necessity and, undoubtedly, the amended text of Section became mostly compliant with that instrument.

From 2003 to 2012 (adoption of the new Criminal Code), three additional amendments affected Section 261, out of which two were merely of technical nature.²³ The only substantial amendment took place in 2007, by Act XXVII. of 2007. The main reason behind this amendment were the findings of the third round evaluation report of the MONEYVAL expert group of the Council of Europe, adopted in 2005 as regards terrorist financing provisions of the Criminal Code.²⁴ This report stated that the offence [of financing terrorism] had been defined in relation to the financing of the activities of terrorist groups, while the financing of individual terrorists is only covered through ancillary offences and recommended that the criminal provision should cover all conduct constituting terrorist financing as set forth in the UN International Convention for the Suppression of the Financing of Terrorism. This led to a reformulation of paragraphs (4) and (5) of Section 261.²⁵ Another element of this amendment was to lower the punishment foreseen for these two types of behaviour, for which the ministerial justification gave the explanation that the previous wording was „far too harsh within the structure of the offence and compared to the other offences of similar significance”.

The new Hungarian Criminal Code (Act C. of 2012) that has entered into force on 1 July 2013, has split the former single offence of Act of Terrorism into three separate offences, namely:

- act of terrorism (Sections 314-316)
- failure to report a terrorist act (Section 317)
- terrorist financing (Section 318)

These offences are placed under Chapter XXX (crimes against public security²⁶). According to the ministerial justification of the Code, the law was meant to be made more transparent by this division. Nevertheless, beyond this restructuring, there were only a few major changes compared to the previous Code from a substantial point of view.²⁷

These changes mostly affected the offence of terrorist financing, once again, due to the recommendations by MONEYVAL. In the report of the follow-up round in 2010²⁸, the group stated that the Criminal Code did not provide for an offence of terrorist financing in the form of provision or collection of funds with the unlawful intention that they should be used or in the knowledge that they are to be used by an individual terrorist for any purpose, it was unclear whether the financing of terrorist organisations' day to day activities are incriminated, and collection of funds for terrorist organisations' day to day activities were not covered. The new concept of terrorist financing under Section 318 of the new Code tried to address these concerns, by broadening the scope. The introduction of a definition of funds, referring back to Council Regulation (EC) No. 2580/2001 of 27 December 2001 is certainly a step towards more clarity of the law, also as a result of the MONEYVAL report.

As regards Section 315, one must note that these preparatory offences (paragraphs 1 and 2) entered into force on 1 July 2013 with an already amended wording, as Act CCXXIII. of 2012 has amended the Criminal Code at this point even before the entry into force of the original text. The reason for that was to create full compliance with the 2005 Council of Europe Convention on the Prevention of Terrorism that was ratified by Hungary in 2011.

Having taken a quick look to the evolution of the substantial criminal law as regards the penalisation of terrorism in Hungary, one may have the following remarks *de lege lata*:

- One peculiarity is the relative stability of the text of the relevant sections. While the former Criminal Code was amended more

than hundred times during the 35 years of its existence, the section on acts of terrorism was only affected by three major amendments.

- It is also remarkable that the evolution of the concept in criminal law was clearly driven by external factors (i.e. the process of accession to the European Union and the activities of the periodical evaluation mechanism by MONEYVAL).

Furthermore, if we go back to our starting point („the Hungarian legislation covers all forms of terrorism”), we can state that the Hungarian penal law is mostly in line with the relevant international requirements. Nevertheless, some discrepancies remain:

- Either the previous or the new Criminal Code does not incriminate the direction of a terrorist group, which is clearly non-compliant with Framework Decision 2002/475/JHA that stipulates that directing a terrorist group should be a *sui generis* criminal offence with a more severe punishment than the one foreseen for membership in it.

- It is questionable, whether the notion supporting a terrorist group „in any other form” is proper to be included under the offence „financing of terrorism”, as the material element may be lacking from such supporting behaviour.

- Training and recruiting to terrorism are only covered by general notions of criminal law, which might give rise to concerns as regards the practical implementation in concrete cases.

- Although there is no international obligation for doing so, but Hungary does currently not criminalizing the public glorification of terrorist acts and the obtaining of terrorist training (skills or special knowledge) if there is no direct link established to an actual act of terrorism.

- As regards the latest developments, it is too early to determine, whether the Hungarian penal law is compliant with the provisions of UN Security Council Resolution 2178 (adopted on 24 September 2014) that aim to tackle the phenomenon of the so-called foreign fighters (persons travelling to crisis areas to join an armed conflict, one of the parties of which is considered to be a terrorist organisation).²⁹

Misleading statistics, questionable practice

Notwithstanding the evolution of the penal law, the number of criminal cases linked to terrorism has remained low in the last decades.³⁰ According to statistics³¹ of the Hungarian Ministry of Interior, from 1980 to 2014 (first semester), there have been 92 registered criminal offences, 180 criminal proceedings launched and 62 prosecutions. These figures, at a first glance, could correspond to the statements emphasizing that in Hungary, there is hardly any terrorist threat. Nevertheless, if we look behind the numbers, we find some disturbing issues.

Firstly, 92 acts of terrorism are not that few for a country claiming that it is not directly affected by terrorism. The explanation for this is quite simple, though: the overwhelming majority of the cases known represent actually no genuine terrorist action. There are no statistics showing the differentiation among the particular variations within the given Sections of the Criminal Code: however, empirical evidence underlines that nearly all of the cases concerned represent the „hostage taking” scenario, hence, the original concept of the 1978 codification: „a person detains another person against his will or seizes considerable assets or property, and makes demands to government agencies in exchange for the release of the person or refraining from doing harm or injury, or the return of said assets and property”. In practice, these actions are often results of family conflicts, sometimes committed by mentally disturbed perpetrators.³² By a mechanic application of the text of the law, holding a knife against one’s throat and telling a policeman „Let me go or I kill him/her” results quite often in a conviction for an act of terrorism: a behaviour falling within the definition of the objective element, nevertheless, it appears to be quite far removed from the essential concept of genuine terrorist behaviour, as set out in the EU Framework Decision.

Another issue of concern is the concept of „another state” in the law. As it was explained above, the main motivation of the act of terrorism is „to coerce a government agency, another State or an international body into doing, not doing or countenancing something”. This means that, if a terrorist action does not aim to coerce a government agency that can be defined in a certain situation (e.g. the police) but it is directed against the public authorities of Hungary as

a whole (which would be typical in a genuine terrorist case), this action would not be punishable as an act of terrorism: it would qualify as an offence against the state, under Chapter XXIV of the new Criminal Code (and Chapter X. of the former one). I admit, that only a few cases of this kind of offences occurred, nevertheless, my impression is that these are usually left out of the scope of any study or analysis of actual terrorist threat or terrorist activities in Hungary.

Another striking issue is the high number of dropped cases (i.e. criminal proceedings launched not resulting in a prosecution). Certainly, this has to do with difficulties of evidence and the temptation for police and prosecutors to build up cases based on another sections of the Criminal Code, which are easier to prove in front of a court. Nevertheless, some case studies³³ demonstrate an enduring reluctance by the authorities to apply the provisions of the offence of act of terrorism even if everything seemed to be in place for doing so.

In the first case, in August 1986, a mentally disturbed person seized a Tintoretto painting in a museum in Budapest. With a knife in his hand, he requested the Minister of Health to arrange his operation to change his sex, in exchange of leaving the painting unharmed. Guards managed to neutralise him and save the precious artwork. Although this case is clearly an example of an act of terrorism within the meaning of the criminal law in force of the time of the perpetration, both the prosecution and the judgement were based on another offence (attempt of deterioration).

In the second case, which happened in early 2007, a person was apprehended, and 102 kg of different substances and other means that were necessary for the production of improvised explosive devices (IEDs) were seized at his flat. Both the confession of the suspect and his e-mail messages proved his intention to create an explosion at a public gathering (as mentioned at the beginning of the paper, this period was characterized by a surge of politically motivated violence in Hungary). Although the suspect was prosecuted for preparation of an act of terrorism, the sentence was only applied for a minor offence of pyrotechnics.

In the third case, a serial of murders took place in in 2008-2009 against persons of Roma origin: a group of four persons committed

nine attacks killing six victims (among them a child) and leaving several others injured. The motivation of the perpetrators was racism: according to their statements, their aim was „to restore order as a response to the atrocities and crimes alleged to Gypsies. They intended to shake up the country and drive people against Gypsies and ignite ethnic rioting.” In my view, this is very straightforward case of an act of terrorism, as defined by the Criminal Code (both by the previous one and the current one), namely under the motivation of „intimidation of the general public”. However, both the prosecution and the sentence of first instance were based on other offences (i.e. homicide, planned in advance, for a base reason or purpose, committed in criminal conspiracy).³⁴

Conclusions

What conclusions can be drawn? *De lege ferenda*, some proposals could be considered in order to obtain a concept in the criminal law that would reflect the intentions of the legislator more properly and that would bring along a more accurate picture as regards the prevalence of terrorism in Hungary. My first proposal would be to fine-tune the text regarding the hostage taking behaviour, introducing a higher threshold, requiring actual political motivation behind the demand, beyond the mere fact that the addressee of the demand is a state agent (e.g. a policeman). Secondly, the differentiation between Hungary and „other states” as the passive subjects of coercion should be reconsidered. These two simple legislative steps would result in a much more clear-cut optics of the law. It could also bring along a better acceptance of these offences among practitioners which could actually lead to a more correct application of the provisions. My impression at this point is that terrorism so far has been considered and perceived by the community of legal practitioners as something strange and remote- we could see how much the evolution of these offences in the Criminal Code has been determined by purely external factors, with steps of codification carried out as compulsory homework, without going into detailed considerations on the genuine added value of it.

Furthermore, beyond legislation, I would call for a shift from the positivistic approach that identifies terrorism with one or several sections of the Criminal Code to the use of the broader concept of politically motivated violent acts of particularly serious nature. I am convinced that we could have a much more precise picture about the actual presence of terrorism in Hungary- which, luckily enough, may be not particularly serious, nevertheless, it might be more severe, than it is commonly perceived, taking into account the existing traditions of politically motivated violence and the anomalies of the legal environment I tried to demonstrate above.

Bibliography

¹ E.g. the Council Framework Decision 2002/475/JHA of the European Union on combating terrorism.

² For this list I used the Historical Chronology of Hungary, Band III (1848-1944) (*Magyarország történeti kronológiája*. Akadémiai Kiadó, Budapest, 1983).

³ <http://iho.hu/hir/kiralypuccs-a-vilag-also-repulogeteritese-111027>

⁴ For the latest results of historical research, cf. Gyula Vargyai, “A Plot Against the Plot. The Attack of Biatorbágy” (Merénylet a merénylet ellen. A biatorbágyi merénylet), *Hadtörténelmi Levéltári Kiadványok*, Budapest, 2002. Electronic version available: <http://mek.oszk.hu/04900/04964/html/#d1e1924>.

⁵ cf. endnote 3.

⁶ cf. endnote 3.

⁷ For a detailed description of the case cf. Balázs Ábrahám, “Attempt to hijack a plane on the eve of the revolution” (“Repülőgép eltérítési kísérlet a forradalom előestéjén”) at *Betekintő.hu* URL: http://www.betekinto.hu/2009_4_abraham#_edn9.

⁸ For a detailed description of the case, cf. Zsolt Krahulcsán: „Our warning was a bit radical” („*A mi figyelmeztetésünk egy kicsit radikális volt*”) at <http://www.betekinto.hu/en/node/115>.

⁹ Original documents of this case are available at http://www.nogradarchiv.hu/index.php?action=gallery&category_id=320.

¹⁰ The complete wording of the offence was, as follows:

Section 261

(1) Any person who detains another person against his will or seizes considerable assets or property, and makes demands to government agencies or non-governmental organizations in exchange for the release of the person or refraining from doing harm or injury, or the return of said assets and property is guilty of a felony and is punishable with imprisonment of between five to fifteen years.

(2) The punishment shall be imprisonment from ten years to fifteen years or life imprisonment or capital punishment, if the act of terrorism is committed

a) causing death or an especially grave disadvantage,

b) in war-time.

(3) The person who perpetrates preparation for an act of terrorism, shall be punishable for a felony with imprisonment from one year to five years.

(4) The person who credibly obtains intelligence suggesting that the perpetration of an act of terrorism is being prepared, and fails to report that to the authorities as soon as he can, commits a felony, and shall be punishable with imprisonment of up to three years.

(5) The punishment of the person who abandons an act of terrorism before any grave consequence has arisen therefrom, may be mitigated without limitation.

¹¹ Hungary has ratified most of these instruments by law-decrees of the Presidential Council, the collective body acting as Head of State under the socialist Constitution, the first one being the 1963 Tokyo Convention on Offences and Certain Other Acts Committed On Board Aircraft, ratified by law-decree 24 of 1971.

¹² The subsequent Section 262 under the name of „Seizure of Aircraft” served similar purpose.

¹³ The English translation does not reflect the peculiarity of the Hungarian original „*társadalmi szervezet*”, which was a typical notion of socialist law, meaning organisations, that were not directly state authorities but private entities either, e.g. trade unions, etc.

¹⁴ Decision 23/1990. (X. 31.) of the Constitutional Court.

¹⁵ This amendment added the words „as well as any person who provides material means to abet any act of terrorism” to the main provision (paragraph 1) of Section 261, leaving the rest unchanged.

¹⁶ Beyond the 9/11 attacks, the direct reason behind the adoption was that the Hungarian legislation on money-laundering was assessed as non-compliant with the international obligations by the Financial Action Task Force, which was a key issue in the process of the accession to the European Union.

¹⁷ By Act XXV. of 2002.

¹⁸ By Act LIX. of 2002.

¹⁹ Actually adopted in December 2002, but the promulgation of the law took place in early 2003.

²⁰ The text of Section 261 as amended by Act II. of 2003 was, as follows:

Section 261

(1) Any person who commits a violent crime against persons referred to in paragraph (9) or commits a crime that endangers the public or involves the use of a firearm in order to:

- a) coerce a government agency, another state or an international body into doing, not doing or countenancing something;
- b) intimidate the general public;
- c) conspire to change or disrupt the constitutional, economic or social order of another state, or to disrupt the operation of an international organization;

is guilty of a felony punishable by imprisonment between five to fifteen years, or life imprisonment.

(2) Any person who seizes considerable assets or property for the purpose defined in point a) and makes demands to government agencies or non-governmental organizations in exchange for refraining from harming or injuring said assets and property or for returning them shall be punishable according to paragraph (1).

(3) The punishment of any person who:

a) abandons commission of the criminal act defined under paragraphs (1) and (2) before any grave consequences are able to materialize; and

b) confesses his conduct to the authorities;

in such a manner as to cooperate with the authorities to prevent or mitigate the consequences of such criminal act, apprehend other coactors, and prevent other criminal acts may be reduced without limitation.

(4) Any person who prepares to commit any of the criminal acts defined under paragraphs (1) and (2) is guilty of felony punishable by imprisonment between five to ten years.

(5) Any person who instigates, suggests, offers, joins or collaborates in the commission of any of the criminal acts defined under paragraphs (1) and (2) in a terrorist group or any person who is involved in aiding and abetting such criminal conduct by providing any of the means intended for use in such activities or by providing or raising funds or supports the terrorist group in any other form is guilty of felony punishable by imprisonment between five to fifteen years.

(6) The perpetrator of a criminal act defined in paragraph (4) or (5) shall not be liable for prosecution if he confesses the act to the authorities before they become aware of it and reveals the circumstances of the criminal act.

(7) Any person threatening to commit the crimes specified in paragraphs (1) and (2) is guilty of a felony punishable by imprisonment between two to eight years.

(8) Any person who has positive knowledge concerning plans for a terrorist act and fails to promptly report that to the authorities is guilty of a felony punishable by imprisonment for up to three years.

(9) For the purposes of this Section:

a) 'violent crime against a person and crime of public endangerment that involves the use of firearms' shall mean homicide [paragraphs (1) and (2) of Section 166], battery [paragraphs (1)-(5) of Section 170], willful malpractice [paragraph (3) of Section 171], violation of personal freedom (Section 175), kidnapping (Section 175/A), crimes against transportation safety [paragraphs (1) and (2) of Section 184], endangering railway, air or water traffic [paragraphs (1) and (2) of Section 185], violence against public officials (Section 229), violence against persons performing public duties (Section 230), violence against a person aiding a public official (Section 231), violence against a person under international protection (Section 232), public endangerment [paragraphs (1)-(3) of Section 259], interference with public works [paragraphs (1) and (2) of Section 260], seizure of an aircraft, any means of railway, water or road transport or any means of freight transport (Section 262), criminal misuse of explosives or explosive devices (Section 263), criminal misuse of firearms or ammunition [paragraphs (1)-(3) of Section 263/A], criminal misuse of military items and services, and dual-use items and technology (paragraphs (1)-(3) of Section 263/B), criminal misuse of radioactive materials [paragraphs (1)-(3) of Section 264], criminal misuse of weapons prohibited by international convention [paragraphs (1)-(3) of Section 264/C], crimes against computer systems and computer data (Section 300/C), robbery (Section 321), and vandalism (Section 324);

b) 'terrorist group' shall mean a group consisting of three or more persons operating in accord for an extended period of time whose aim is to commit the crimes defined in paragraphs (1)-(2).

²¹ Provided by paragraph 9.

²² Tóth Mihály, “Changes of regulation and practice of acts of terrorism in criminal law” (*A terrorselekmény büntetőjogi szabályozásának és gyakorlatának változásai*). In: *Hadtudomány*, 2013/1-2, 30-40.

²³ Act LXXIX. of 2008 amended the list of basic offences in paragraph 9, while Act LXXX. of 2009 raised the maximum length of imprisonment to be imposed from 15 to 20 years, as part of a general amendment to the Code.

²⁴ http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL%282005%2917-I_Rep-HUN_en.pdf

²⁵ The text of these two paragraphs were, following this amendment, as follow:

„(4) Any person who instigates, suggests, offers, joins or collaborates in the commission of any of the criminal acts defined under paragraphs (1) and (2) or any person who is involved in aiding and abetting such criminal conduct by providing any of the means intended for use in such activities or by providing or raising funds to finance the activities is guilty of felony punishable by imprisonment between two to eight years.

(5) Any person who is engaged in the conduct referred to in paragraph (4) or in the commission of any of the criminal acts defined under paragraphs (1) and (2) in a terrorist group, or supports the terrorist group in any other form is guilty of felony punishable by imprisonment between five to ten years.”

²⁶ There are no separate Titles within the Chapters in the new Code.

²⁷ The text of Sections 314-319 of the new Criminal Code is, as follows:

Acts of Terrorism

Section 314

(1) Any person who commits a violent crime against the persons referred to in Paragraph (4) or commits a criminal offense that endangers the public or involves the use of arms in order to:

a) coerce a government agency, another State or an international body into doing, not doing or countenancing something;

b) intimidate the general public;

c) conspire to change or disrupt the constitutional, economic or social order of another State, or to disrupt the operation of an international organization;

is guilty of a felony punishable by imprisonment between ten to twenty years or life imprisonment.

(2) Any person who seizes considerable assets or property for the purpose defined in Paragraph *a)* and makes demands to government agencies or international organizations in exchange for refraining from harming or injuring said assets and property or for returning them shall be punishable according to Paragraph (1).

(3) The punishment of any person who:

a) abandons the commission of the terrorist act defined under Paragraph (1) or (2) before any grave consequences have resulted therefrom; and

b) confesses his conduct to the authorities;

in such a manner as to cooperate with the authorities to prevent or mitigate the consequences of such criminal act, apprehend other coactors, and prevent other criminal acts may be reduced without limitation.

(4) For the purposes of this Section, violent crime against the person, or criminal offense that endangers the public or involves the use of arms shall include:

a) homicide [Paragraphs (1)-(2) of Section 160], battery [Paragraphs (2)-(6) and (8) of Section 164], professional misconduct with intent [Paragraph (3) of Section 165];

b) kidnapping [Paragraphs (1)-(4) of Section 190], violation of personal freedom (Section 194);

c) offenses against transport security [Paragraphs (1)-(2) of Section 232], endangerment of railway, air or water transport systems [Paragraphs (1)-(2) of Section 233];

d) misappropriation of radioactive materials [Paragraphs (1)-(2) of Section 250];

e) assault on a public official [Paragraphs (1)-(5) of Section 310], assault on a person entrusted with public functions (Section 311), assault on a person aiding a public official or a person entrusted with public functions (Section 312), assault on a person under international protection [Paragraph (1) of Section 313];

f) unlawful seizure of a vehicle [Paragraphs (1)-(2) of Section 320], public endangerment [Paragraphs (1)-(3) of Section 322], interference with works of public concern [Paragraphs (1)-(3) of Section 323], criminal offenses with explosives or blasting agents [Paragraphs (1)-(2) of Section 324], criminal offenses with firearms and ammunition [Paragraphs (1)-(3) of Section 325];

g) criminal offenses with weapons prohibited by international convention [Paragraphs (1)-(5) of Section 326], criminal offenses with military items and services [Paragraphs (1)-(3) of Section 329], criminal offenses with dual-use items [Paragraphs (1)-(2) of Section 330];

h) robbery [Paragraphs (1)-(4) of Section 365] and vandalism [Paragraphs (1)-(6) of Section 371];

i) breach of information system or data [Paragraphs (1)-(3) of Section 423].

Section 315

(1) Any person who instigates, suggests, offers, joins or collaborates in the commission of any of the criminal acts defined in Paragraph (1) or (2) of Section 314 or any person who is involved in aiding and abetting such criminal conduct by providing any of the means intended for use in such activities is guilty of a felony punishable by imprisonment between two to eight years.

(2) Any person who is engaged in the conduct referred to in Paragraph (1) or in the commission of any of the criminal acts defined in Paragraph (1) or (2) of Section 314 in a terrorist group, is punishable by imprisonment between five to ten years.

(3) The perpetrator of a criminal act defined in Paragraph (1) or (2) shall not be prosecuted if he confesses the act to the authorities first hand and unveils the circumstances of the criminal act.

Section 316

Any person threatening to commit a terrorist act is guilty of a felony punishable by imprisonment between two to eight years.

Failure to Report a Terrorist Act

Section 317

Any person who has positive knowledge concerning plans for a terrorist act and fails to promptly report that to the authorities is guilty of a felony punishable by imprisonment not exceeding three years.

Terrorist Financing

Section 318

- (1) Any person who provides or collects funds with the intention that they should be used in order to carry out an act of terrorism, or who provides material assistance to a person who is making preparations to commit a terrorist act or to a third party on his behest is guilty of a felony punishable by imprisonment between two to eight years.
- (2) Any person who commits the criminal offense referred to in Paragraph (1) in order to carry out an act of terrorism in a terrorist group, or on behalf of any member of a terrorist group, or supports the activities of the terrorist group in any other form is punishable by imprisonment between five to ten years.

(3) For the purposes of this Section ‘material assistance’ shall mean the assets specified in Point 1 of Article 1 of Council Regulation (EC) No. 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, including legal documents and instruments in any form.

Interpretative Provision

Section 319

For the purposes of Sections 315 and 318 ‘terrorist group’ shall mean a group consisting of three or more persons operating in accord for an extended period of time whose aim is to commit acts of terrorism.

²⁸ http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/HUN-MERMONEYVAL%282010%2926_en.pdf

²⁹ The recently adopted UNSCR 2178 (2014) requires all States to establish in their domestic legislation as serious criminal offences the following:

- travel or attempt to travel for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;
- financing of such travel
- organisation, or other facilitation, including acts of recruitment, of such travel.

³⁰ In this sense, I refer to criminal proceedings launched on the basis of Section 261 of the previous Criminal Code and Sections 314-318 of the new Code.

³¹ Data regarding the last 5 years has been made public at <https://bsr.bm.hu/SitePages/Nyitolap.aspx>. Historical data (data preceding 2009 was disclosed to the author as a courtesy by the Coordination and Statistics Unit of the Ministry of Interior.

³² Another typical case is that of a robbery, if perpetrators take hostage in order to ensure their free passage- it goes without saying that this behaviour lacks any political motivation as well.

³³ The first two cases described below are referred to by Mihály Tóth, *op. cit.*, cf. footnote 23. Detailed description of the third case in English is available at <http://ciganyvadaszat-per.blog.hu/tags/english>.

³⁴ The procedure of appeal is still in progress. Three out of the four offenders received life sentence at first instance.

Essay

The "New Jihadists" and the Visual Turn from al-Qa'ida to ISIL / ISIS / Da'ish

Attila Kovács¹

" (...) the fear of the image, the anxiety that the 'power of images' may finally destroy even they creators and manipulators is as old as image-making itself."²

ABSTRACT

Visual representation has always belonged among the sensitive, in certain periods even highly problematic issues of the Islamic tradition. This was especially true for various forms of depicting living creatures, or "creatures possessing a soul," which in the Islamic view show human and animal beings.³ When taking this basic Muslim viewpoint into account, one could assume that the movements and thinkers of radical Islam, which emerged during the 19th and 20th centuries, further stressed the fundamentals mentioned above, the same as in many other issues, and would pursue forbidding and refusing images as such for their movements and followers. However, the situation is much less unequivocal. Despite the theoretical prohibition, or, more accurately, the strict control, one often finds themselves facing an extensive visual culture while examining the various radical and reformist Islamic movements. The aim of this work is to briefly introduce the factors behind these ostensible contradictions, i.e. to schematically characterize the viewpoints of leaders and thinkers of various Sunni⁴ Islamic radical and reformist movements concerning visuality.

Keywords: visual representation in Islam, ISI/ISIS/Da'ish, terrorism

Islam and the Images

There is no direct reference concerning visual depiction or its prohibition in the Qur'an. When discussing the issue, the verses concerning the prohibition of idolatry are the most frequently cited (see mainly 7:148 and 21:51-54, as well as 7:191-198; 16:20-22; 25:3-4; 35:40; 53:23). This is where the explicit prohibition of depicting human and animal figures hails from, since they correspond the most with the forms of the idols. Various expressions are used to describe them in the Qur'an: *awthan* (sing. *wathan*) (22:30; 29: 17, 25) "idol", "depiction of God", especially made of metal; *tamathil* (sing. *timthal*) (21:52; 34:13) "picture", "pictorial representation", "statue", *ansab* (5:90) or *nusub* (5:3; 70:43) especially with the meaning of "sacrificial stone"⁵. The word *sura* (plur. *suwar*), used in modern standard Arabic for "picture" is mentioned in the Quran several times (3:6; 7:11; 40:64; 64:3), but always in connection with Allah as God – Creator and as a meaning of stressing of "forming" or "shaping" as a privilege of God. "He is Allah, the Creator [*al-Khaliq*], the Shaper [*al-Baqi*], the Fashioner [*al-Musawwir*] (...)" (59:24) In summary, the Qur'an gives an exact and at the same time banning viewpoint concerning visual representation only in relation to idolatry and / or its potential dangers. The opinions offered by Sunna, the prophetic tradition, are much more unequivocal. Numerous references concerning images can be found in the classical *hadith* collections.⁶ey can be roughly categorized in the following way:

(1) The first category includes the hadiths which consider images "unclean" and preventing human obligation (*ibadat*) towards God, for instance the practice of prayer (*salat*). This group is well characterized by the prophetic tradition, which claims that "Angels will not enter a house in which there is a dog or there are pictures"⁷.

(2) The next category of *hadiths* commenting on the prohibition of images could be characterized by concern over creating images and statues, since this activity itself violates Allah's exclusive right of creation and forming. This group is well characterized by this statement, attributed to Muhammad: "Those who make these pictures will be punished on the Day of Resurrection, and it will be said to them. "Make alive what you have created. But they will be unable to do so."⁸

(3) The following group includes traditions, which allow the portrayal of non-human and non-animal creatures. This field is not free of troubles either, since not all the standpoints concerning plants are unequivocal.

(4) The fourth and last group of hadiths is created by the exceptions of the categories mentioned above. We mean the prophetic tradition concerning the “most favorite” wife of Muhammad, ‘A’isha. It is well-known, that ‘A’isha became the Prophet's wife at a very young age and therefore Muhammad made an exception and allowed her to perform her daily prayers accompanied by her dolls – anthropomorphic visual representations!⁹

As the examples and categories presented above illustrate, Sunna has a firm and, compared to the Qur’an, a very definite view concerning visual representations. Naturally, this theoretical viewpoint changed numerous times in various historical periods and at various geographical settings. It covered or tolerated various practices and ranged from firm prohibition until permissive, even supportive standpoints. However, this short work does not allow detailed elaboration of the issue, therefore attention will be paid to Sunni reform or radical movements in the following part.

Islamists and the Images

The re-definition of visual representation belongs among the numerous challenges, which the nearly two-hundred-year-old reformist Islamist movements need to face in modern times. There are two fundamentally disparate standpoints concerning visual representation (*taswir*):

(1) The first was formulated by Wahhabism, a movement leaning on a neo-Hanbali tradition led by Muhammad ‘Abd al-Wahhab (1703-1792). The early definition of this standpoint opts for a complete refusal and visual representations are, among many other things (for instance the veneration of saints, coffee, smoking etc.) listed among the impermissible innovations (*bid’a*) or things to be destroyed. This standpoint is kept by most modern Saudi religious scholars and various radical groups following the neo-Hanbali or neo-Wahhabi traditions.

(2) The second standpoint, which differs significantly, relies on the teachings of the representatives of the Egyptian Nahda, especially those of Muhammad ‘Abduh (1849-1905) and Muhammad Rashid Rida (1865-1935). This standpoint retains a certain allowing position while keeping in mind the prohibition of idolatry.

This line is followed by The Muslim Brotherhood (*Jama’at al-ikhwan al-muslimin*) and the thinkers and movements connected to it, both in theory and practice. The fairly rich visual culture of e. g. the Palestinian Hamas movement relies on this standpoint as well. In the next part of this paper we shall further examine the development and relationship between these two interpretations.

We may begin with the neo-Wahhabi tradition and the practice of individual Neo-Salafi, Jihadi and Takfiri groupings. The interpretation of Islamic doctrine formulated by Muhammad ‘Abd al-Wahhab has changed significantly in the past centuries, but despite this, the thought and practice which creates the essential character of Saudi Islam is based upon his teachings. One of the defining official representative organs of this standpoint is the Permanent Committee for Islamic Research and Issuing Fatwas (*al-Lajna ad-da’ima li ‘Ibuhuth al-‘ilmiya wa ‘Ifta*). For a long time, the leader of the Committee was ‘Abd al-‘Aziz b. ‘Abdullah bin Baaz (1909–1999). Its members included Shaykh Salih al-Fawzan (1933-), Shaykh Muhammad b. Salih al-Uthaymin (1925–2001) and the present leader of the Committee, Muhammad b. Hadi al-Madkhali (1931-). These key figures of neo-Wahhabi thought have paid a lot of attention to the issue of visual presentations.¹⁰ Their fatwas, despite representing the “hard line”, do not refuse the use of images in all cases. It is tolerated as necessary (*daruri*) in cases such as ID photos, pictures in newspapers “mediating information” or portraits on banknotes, but they may never be self-serving.¹¹

This standpoint was followed on the brink of 20th and 21st century by radical Jihadi groups, (like al-Qa’ida for instance) that rely on many aspects of the neo-Wahhabi tradition. However, there is a field, where the thought and practice change completely, namely the audiovisual depiction. The video-messages of Osama bin Laden (1957–2011), Ayman az-Zawahiri (1951-), Abu Mus’ab az-Zarqawi (1966–2006) are well-known. How is this possible despite all the strict refusal

and banning? The answer is less complicated than one may expect: the judgment of modern telecommunication devices and technologies in the neo-Wahhabi tradition is very pragmatic, since they may be viewed as excellent and highly effective tools of the mission (*da'wa*) and therefore serve the common interest of the Muslim community. As for the human depictions occurring in such cases, they are not viewed as images but only as “shadows” of human or other beings. This standpoint created space not only for the videos carrying ideological messages mentioned above, but also for other film material directly ordered by the Saudi government, such as cartoons presenting the life of Prophet Muhammad or religious TV channels, e. g. *al-'Iqra*. In a slightly paradox way, these visual forums often feature the vehement opposers of visual representations as well. However, in the past centuries several jihadist movements have turned away from this Wahhabi tradition marked by the policy of al-Qaeda and, even though with applying several restrictions, assigned visuality a much more important place in its propaganda. The most typical example could be the so called Islamic state in Iraq and the Levant (*Da'ish* / ISIL / ISIS) which created its own visual world, hand in hand with the “classic” video messages and fighter videos¹²¹³.

Besides the strict stances mentioned above, there exists a different and much more allowing tradition, which led to the creation of several new reformist-radical movements, which have a rich and fairly diverse visual culture. This contemporary moderate Islamist interpretation of pictorial tools can be traced back to the leading personality of the Egyptian *Nahda* movement – Muhammad ‘Abduh. He is the main thinker who established this allowing, even approving tradition. He devoted a separate text to the issue, titled “Paintings and sculptures: their usefulness and ruling” (*as-Suwar wa 't-Tamathil wa Fawa'iduha wa Hukmuha*)¹⁴. ‘Abduh of course kept in mind the dangers of idolatry hiding behind visual culture, but he kept a stance allowing the use of images, which they called “a form of poetry that one sees instead of hearing”¹⁵.

The second important representative of the *Nahda*, Muhammad Rashid Rida is not so enthusiastic about visuality. In a writing published in *al-Manar*, the main text of the *Nahda* movement, he systematically names the fields in which he considers visual

representations to be allowed. They are the following: (1) “beings possessing a soul” in books, in case their verbal characteristics is not possible or sufficient; (2) in works concerning natural sciences, especially anatomy; (3) in works concerning military technology (first of all in the case of weapons and topography); (4) in works concerning security policy and spying¹⁶. In his work titled “The Caliphate or the Great Imamate” Rida sharply commented against the, in his consideration Ottoman, practice of the public depiction of high-ranking statesmen¹⁷. This seemingly strict standpoint in many ways approaches those of various radical jihadist groupings, which, not accidentally, often refer to Rashid Rida not only in the issue of visual representation.

However, the viewpoints of ‘Abduh have found their followers as well. Among them are found personalities of no smaller significance than Hasan al-Banna’ (1906–1949), the founder and first leader of the Muslim Brotherhood. In his pamphlet titled “Our Mission” (*Da’watuna*), Banna’ even calls visual propaganda praiseworthy¹⁸. The later ideologist of Egyptian Islamists Sayyid Qutb (1906-1966) was sharing the same position. The Brotherhood retains this standpoint in later periods as well, not only in Egypt, but also in the organization's branches abroad (e. g. in Syria, Jordan, Palestine etc.) and movements inspired by them, for instance the aforementioned Palestinian Hamas movement.

This is the basis of the standpoints of Shaykh Dr. Yusuf al-Qaradhawi (1926–), which are best described in his well-known book “The Lawful and Prohibited in Islam” (*Halal wa haram fi ’l-Islam*)¹⁹. Qaradhawi is one of the most determining a most controversial representatives of modern radical Islam. Being of Egyptian origin, he began his activities in the Muslim Brotherhood, but then he was forced to exile. He lives in Qatar, where he regularly explains his viewpoints on issues of all kinds. The most significant discussion among the above-mentioned radical standpoints are connected to Qaradhawi. Several renowned Saudi scholars, including Muhammad Nasr ad-Din al-Albani (1914–1999) and Salih al-Fawzan, have sharply criticized Qaradhawi's allowing views concerning images. Salih al-Fawzan dedicated to this issue an entire book, “The rules of Islam on Visualization” (*Hukm al-Islam fi ’l-taswir*). However, despite all

criticism, Qaradhawi cannot be accused of extensive permissiveness. In fact, he applies the standard Islamic tradition to the challenges of the modern era. His standpoints are moderate, yet still characteristic of certain “puritanism”. A proper example is his view on the use of images, e. g. portraits of family members, in Muslim households. This is permissible according Qaradhawi, however, should not be overdone and rational thinking should be kept in mind²⁰. Despite this standpoint Qaradawi, similarly to Rashid Rida, refuses the public display of historical figures or “heroes”^{21 22}. Qaradhawi, together with numerous religious scholars holding moderate views on visual depictions, refuses three-dimensional representations that is statues of all kinds²³.

However, beside scholars who permit the use of visual representation while obeying certain rules, such as Qaradawi, there are ones who pronouncedly support it. One of the most important of them is without doubt Hasan at-Turabi (1932–) from Sudan. In his article “The Dialogue of Religion and Art” (*Hiwar ad-din wa 'l-fann*)²⁴. Turabi presents the view, that images, photographs, even sculptures (!) are allowed, as long as they depict the persons appropriately (respectfully, fully dressed etc.). Furthermore, visual culture – together with poetry and theater – should according to at-Turabi become the most suitable tools of Islam's fight against the “Western cultural invasion”²⁵.

Even though not in at-Turabi's decorative way, numerous radical Islamic organizations view visual representation as the first and most important carrier of their political, religious and ideological messages. Visuality is complete, does not struggle with language or other similar problems, has a direct effect on emotions and is probably the most straightforward method of communication and therefore it became the basic propaganda tool of several radical Islamic movements. They opted for the largely pragmatic and indoctrinative use of images and imagery, which in many cases lead to the creation of a new, rich and widespread, visual culture of radical Islamic movements, which might be “foreign”²⁶ in its formal elements, but its content is undoubtedly Islamic. This new world of images became an important and inseparable part of these movements' way of expression and the researchers examining these movements are required to

involve the new visual culture in their analyses beside the traditional reading and interpretation of texts.

Jihadist visual Images from the al-Qa'ida to ISIL

In a revealing letter to former al-Qa'ida in Iraq leader Abu Mus'ab az-Zarqawi, Ayman az-Zawahiri provided his reason why a media campaign is part of his group's list of strategic priorities. Az-Zawahiri explained, "More than half of this battle is taking place in the battlefield of the media"²⁷ and this media was from the birth of the Jihadist ideology at least partly a visual one. If we looking to the typology of Jihadist visual representation there we can find following categories: a.) „iconic images”, b.) audiovisual materials, c.) photography, d.) journals, pamphlets, bulletins, e.) posters, billboards, murals, graffiti f.) computer graphics. I will illustrate the different in the use of visual representation by the al-Qa'ida and ISIL following those categories.

In the use of basic „iconic images” is the *ar-Raya* „black flag“ or the „eagle flag“ with the inscription of the Islamic creed (*Shahada*), a historic Islamic flag, used by the most of Salafist or Jihadist movements (see picture 1).



Picture 1.

Both al-Qa'ida and ISIL use this basic visual symbol, but in the case of the black flag of the so called Islamic State (see picture 2 and 3) the simple inscription of the first part of the *Shahada* (“there is no god but God”) is combined with „the seal of the Prophet” (see picture 4) containing the second part of it (“Muhammad is His messenger”).



Picture 2.



Picture 3.

Those symbols are used in many variations and forms by many Jihadi, Salafi and Takfiri movements from the Caucasus to Somalia.

From the Jihadists visual representation the videotapes of the Jihadist leaders are most well-known. The first Jihadist media organization was created during the final days of the Afghan war by ‘Abdullah ‘Azzam (1941-1989) (see picture 5) a Palestinian-Jordanian Islamist, leader of the „Arab-Afghans”, the first mentor of Usama bin Laden.



Picture 4.



Picture 5.

This media organization called as-Sahab (“The Cloud”, see picture 6) produced the famous video-tapes of Usama bin Laden (see picture 7) and Ayman az-Zawahiri (see picture 8).



Picture 6.



Picture 7.



Picture 8.

But the audiovisual footages (DVD, VHS, TV, etc.) of the speeches and communiqué of al-Qa'ida leaders are made with only basic visual skills, a static camera and fully focused on the text missing the full potential of visual propaganda. The videotape of al-Qa'ida in Iraq, a predecessor of ISIL, and his leader Abu Mus'ab az-Zarqawi are more dynamic, but still copies the classical al-Qa'ida / as-Sahab visual style (see picture 9).



Picture 9.

Zarqawi, who made many important ideological shifts in the doctrine of the Jihadists also made some steps forward in the use of visual representation. Both Azzam and Zarqawi are of Palestinian descent and came from an Islamist environment very different from the “classical” Jihadi-Salafi ideological position, especially on visual representation.

On the other hand the audiovisual materials and videotapes published by the major media organizations of ISIL as the al-Hayat Media Center (see picture 10) or al-Furqan Foundation (see picture 11) are made in a completely different way with a well-trained media professionals with excellent visual skills.²⁸



Picture 10.



Picture 11.

For example the famous video of the ISIL leader Abu Bakr al-Baghdadi or „Caliph Ibrahim” performing Friday preaching (*khutba*) in Mosul (Iraq) on the 9th of Ramadan 1435 / July 7th, 2014 is working with many cameras moving dynamically around the leader of ISIL showing him and his audience (see pictures 12 and 13).



Picture 12.



Picture 13.

ISIL as well as other Islamists are always emphasizing how strictly are they following the footsteps of Prophet Muhammad and the “only authentic” Muslim tradition, but in many cases they are much more influenced by contemporary western populist political ideas, media technics and other manners of religious fundamentalism. In the visual representation of ISIL we can identify many influences of the western popular visual culture. A good example of this influence is the preaching video of Abu Bakr al-Baghdadi. On this videotape the leader of ISIL is posing and dressing like the famous Muslim ruler

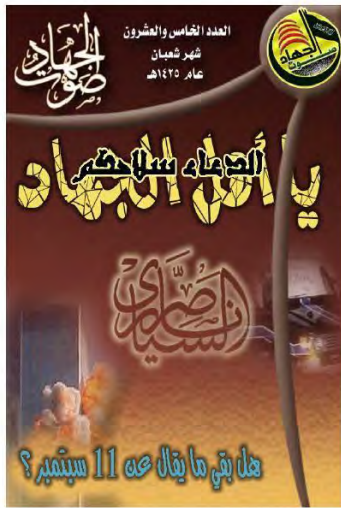
sultan Salah ad-Din in the Hollywood movie *The Kingdom of Heaven* (Ridley Scott, 2005) played by the Syrian actor Ghassan Mas'ud.

The Jihadist – booth “old” and “new” – are massively using the photography. A wide distribution of photographs showing fighters posing with weapons was always an important cornerstone of the Jihadist visual representation (see picture 14).



Picture 14.

A central role in the Jihadist propoganda plays the pamphlets, magazines and other publications.



Picture 15.



Picture 16.

From the production of the al-Qa'ida the most representative are the *Sawt al-jihad* ("The Voice of Jihad", see pictures 15 and 16) magazine or the military magazine of the movement named *Mu'askar al-Battar* ("al-Battar military camp", see pictures 17 and 18). Both publications are using some visual images, but never cross the line with the figural representation of humans or animals, or if they stay on the ideological position of Muhammad Rashid Rida (see there).



Picture 17



Picture 18

The ISIL Arabic language publications as the *al-Gharba'* or the *an-Naba'* magazines are in some way similar to this visual style, but on the cover we can see some figural visual representations of fighters (see picture 19 and 20).

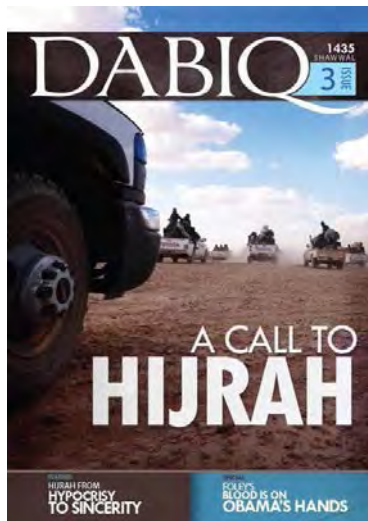


Picture 19



Picture 20

On the other hand the English languages periodicals of ISIL as the *Dabiq Magazine*²⁹ or the *IS Report* and *IS News* are on the cover and inside as well full of figurative representations of humans (see pictures 21 and 22).



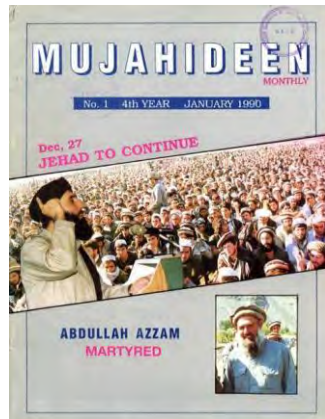
Picture 21



Picture 22

There is a significant difference in the use of the images in the ISIL publications addressed to Arabic and English speaking audience. This kind of differentiation was not new to the Jihadist press. The Afghan Mujahids English languages periodical the *Mujahideen Monthly* was using many visual images in the late 1980s and early 1990s (see picture 23). A most recent example is the English language

magazine of the al-Qa'ida in Arabic Peninsula distributed mainly in the USA and Western Europe the *Inspire Magazine* (see picture 24).



Picture 23



Picture 24

The posters, graffiti, murals and billboards were and are very intensively used during the so called Arab spring. We can see the great importance of those public images in the political struggle across the region, especially in Egypt³⁰, but also in Libya, Syria, Iraq and elsewhere. In the case of ISIL the most significant act of this kind of visual dominance the public space is the massive covering of ar-Raqqa with the billboards of propaganda (see picture 25) using figurative images after the conquest of the city.



Picture 25.

The newest, but the most advancing kind of the visual representation produced and used by the Islamist world-wide and across ideological differences is the computer graphics. The “classical” al-Qa’ida propaganda didn’t use digital images, but the Zarqawi lead al-Qa’ida in Iraq started to use computer graphics in the years 2004-2005. Some of those digital posters showing the leader Abu Mus’ab az-Zarqawi as “the lover of Jihad” (see picture 26) or reflecting the shift in the ideological position of the movement as for example the radicalization of the Shi’i-Sunni conflict (see picture 27).



Picture 26.



Picture 27.

The computer based digital images are used by ISIL websites and social media in an advanced way. Those images are showing predominantly the fighters of the movement (see pictures 28-33). The digital posters are mostly signed by the authors so we can identify from 8 to 10 different “artists”, which is not a significant number yet, but this segment of propaganda can play a major role in the future as we have seen in the case of other Islamist movements.



Picture 28.



Picture 29



Picture 30



Picture 31



Picture 32



Picture 33

Conclusions

In the case of using pragmatic approaches in the use of images as highly effective means of propaganda of the movements' ideology and thoughts, a basic fact applies: images as an ideal carrier of a direct and often emotional message perfectly fit the needs and goals of these movements, since they want to address their potential audience directly, without language or other barriers (literacy and understanding of written texts), with the aim of creating mainly an emotional reaction. In this sense, images are much closer to live speeches – a favorite verbal tool of these movements' propaganda – than written texts (pamphlets or books). One should not forget, that

the understanding of a written text is, compared to verbal expression or images, a much more difficult and complex task. Images, unlike books, allow an effective distribution of highly simplified ideological messages. As a plus, the ideology of radical Islamic movements is rarely significantly sophisticated. However, even if the situation was different, images can still serve the function of the first and primary level of propaganda, ideological indoctrination or struggle.

The third prerequisite of the creation and development of visual culture of radical Islamist movements is the technological factor associated with the commercialization of imagery. As mentioned several times above, images were before the era of modern technologies of reproduction (e. g. press, photography, television, computers, digitization etc.) a luxurious and relatively hardly accessible product. That means, that no matter how effective they were as carriers of any messages, they were useless due to their low accessibility. This changed rapidly in the twentieth century, especially in its last decade, when the spread of computers and digitization became a true catalyst of the world's global visualization. Computers and the Internet provided opportunities not only for simple reproducing, but they became unprecedentedly effective tools of distribution of these images.

Due to these factors we witness a massive “visual turn” of certain radical Islamist movements at the beginning of the 21st century. These movements have not only created their own images and other visual representations with the aim of spreading their ideological message and propaganda, but they connected them to an integrated visual culture. A certain “emancipation” of images in relation to texts is occurring, while the classical Islamic tradition has been based on texts and their interpretation, some radical Islamic movements have begun a wide use of visual representations as well. This practice of using images (too) led to a great extent to what might be called a “pictorial turn” using the words of T. J. W. Mitchell³¹. Despite the fact that Mitchell elaborated his theses in the Western context, several aspects of his iconology, which he applied mainly on Christianity, can be, with certain modifications, applied on Islam or Judaism. However, in the case of radical Islamic movements, one may not say that images could fully substitute texts, due to the very recent

shift from texts to images. The issue is more about the interconnection of texts and images in which both components have equal positions. As seen on the examples analyzed in this work, the text is often an integral part of the image and the same applies vice versa. However, this “equal position” means a significant shift and the process of a “pictorial turn” in the case of these radical Islamic movements is with no doubt one of the most dynamic and fascinating changes that we witness in the current Islamic world³². The Palestinian Islamist movements as the Hamas and the Palestinian Islamic Jihad already created an “empire of images” and to compare to them the new Jihadist as the ISIL are only on the beginning of that process, but as we know in the last two years humans created more visual images than for the rest of all human history. The Islamist are not an exception and researchers focusing on present changes on the Middle East should definitely not underestimate them.

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⁷ *Sahih Bukhari* 7: 72: 833 and elsewhere.

⁸ *Sahih Bukhari* 7: 72: 835 and elsewhere.

⁹ *Sahih Bukhari* 8: 73: 151 and elsewhere. Among others, this precedent enabled the creation of the „Muslim Barbie doll”, distributed under the name *Fulla*.

¹⁰ See: <http://www.marabic.com/creed/pictures/index.htm>

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- ²² This is probably closely connected to the cult of Gamal ‘Abd an-Nasir and his followers in the post of the Egyptian president, who harshly stepped up against the Muslim Brotherhood several times.
- ²³ Al-Qaradawi (n.d.): 102.
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