

A bridge too far: Polish-Czech border incident

Agata Kleczkowska, Martin Faix

2020-08-05T09:00:52

[On 28 May 2020](#), when the Polish and Czech borders were closed due to the pandemic, two Polish soldiers, assigned to assist the Polish Border Guard, decided to relocate their guard post in the Polish town Pielgrzymowo. They crossed a bridge over a small stream and established a new border post next to a historic chapel, apparently not knowing that by crossing the bridge they also crossed the Polish-Czech border and found themselves in the Czech town Pelhřimov. In the following days Czech citizens who attempted to visit the chapel were prevented from coming closer and ordered to leave by Polish soldiers. According to the Polish Ministries of Defence and of Foreign Affairs, the situation was only a misunderstanding (quotations [in English](#) and [in Polish](#)), which was confirmed also by the Czech Ministry of the Interior. Both States [apparently consider the incident as finally settled](#).

This contribution aims to provide an international law perspective on the incident, identifying and briefly discussing its most important aspects.

Violation of sovereignty of Czech Republic

After establishing the post in the Czech territory, according to witnesses, Polish soldiers prevented local residents from getting closer to the chapel and taking pictures. (The Polish Ministry of Defence later explained that the soldiers prohibited taking pictures of themselves, not of the chapel.) Moreover, witnesses claimed that soldiers had machine guns. As one of the Czechs said, it 'is a terrible experience when a soldier with a machine gun in the uniform of a foreign army gives you orders. Why does the Polish army decide where I can go and where I cannot go in the territory of Czech Republic?' (quotation after [RMF24](#), translation by authors).

Sovereignty expresses '[internally the supremacy of the governmental institutions and externally the supremacy of the state as a legal person](#)', while territorial integrity amounts to '[control and possession of the land, airspace, or sea](#)'. The mere trespass of Polish soldiers into the Czech territory amounted to a violation of the territorial integrity and sovereignty of the Czech Republic. Nevertheless, it was not a flagrant breach, given that the situation was an accident and that the soldiers moved only about 30 meters from the Polish border. The situation changed completely when Polish soldiers, wearing uniforms and displaying their arms, started to exercise some authority over local residents. That is when the case of mere unauthorized trespass over the border changed into serious breach of a State's sovereignty, territorial integrity, and the principle of non-intervention.

Use of force?

If Polish soldiers had machine guns, does it mean that the illegal use of force is at stake? If the answer is in the affirmative, it would be of limited intensity, as the case involves two soldiers with two machine guns, and not the whole army. Criteria of [gravity and intent](#) may be helpful here. The gravity of the incident was low, given the poor border marking, the soldiers remaining close to the Polish border, and it being an isolated incident. In small-scale intrusions, however, the key is whether a State displayed hostile intent (*animus aggressionis*) which may be defined as a [‘deliberate use of armed force against another State’](#). That was not the case here as Poland did not display hostile intent against Czech Republic – it did not deliberately send these two soldiers to the Czech territory with the aim of using force against its neighbour, as soldiers were given the order only to protect the Polish border and they found themselves in the Czech Republic accidentally. Thus, there was no violation of the prohibition of the use of force.

This last finding is important as it also implies that the incident amounted neither to an armed attack nor to aggression as the [gravest forms of the use of force](#). Consequently, the Czech Republic was not entitled to the right to self-defence against Poland.

Was it occupation or annexation?

Most Polish media reported that Polish soldiers were [‘occupying’](#) or had even [‘annexed’](#) Czech territory. According to [Article 42 of the Hague Regulations](#), ‘territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised’. Thus, there are [two conditions of occupation](#): the occupying power must establish an authority; and it must be able to exercise the authority. It was mentioned above that Polish soldiers exercised some authority over Czech soil, by giving orders to local residents. However, ‘occupation indicates the exercise of governmental authority to the exclusion of the established government. This presupposes (...) the establishment of an administration to preserve law and order. To the extent that the occupant’s control is maintained and that of the civil government eliminated, [the area will be said to be occupied.](#)’ Since the mere prevention of local residents from getting closer to the chapel does not amount to the establishment of governmental powers, Polish soldiers did not take up occupation of Czech territory.

When it comes to annexation, the fact that Polish soldiers accidentally established a post in the Czech forest and limited access by local residents to the chapel cannot be recognized as a proclamation of Polish sovereignty over part of Czech territory. To call it an annexation, [the Polish soldiers must have had an intent to occupy](#) Czech soil to extend Polish sovereignty over it. Moreover, annexation is usually accompanied by the illegal threat or use of force, which, as mentioned above, did not take place.

Poland’s responsibility

The incident entails international responsibility of Poland since two elements of responsibility are present: it was an internationally wrongful act since the territorial

integrity, sovereignty, and the principle of non-intervention were breached; and the conduct is attributable to Poland as the armed forces are organs of the State.

From the list of circumstances precluding wrongfulness from Chapter V [DARS](#), two of the circumstances could be applicable – *force majeure* and necessity. However, the soldiers' error which led to the violation of international law was neither a result of an 'irresistible force or of an unforeseen event, beyond the control of the State (...)' (Art. 23 (1) DARS), nor did it satisfy the preconditions of necessity (Art. 25). In particular, it was not the only way for the State to safeguard an essential interest against a grave and imminent peril.

As to legal consequences of internationally wrongful acts, Poland ceased the further presence of soldiers on the Czech territory and thus fulfilled its duty to cease the wrongful conduct under Art. 30 (1) DARS. Two further obligations are stipulated in Art. 30 (2) and Art. 31 DARS: Poland was obliged to 'offer appropriate assurances and guarantees of non-repetition, if circumstances so require'; as well as had the duty to make full reparation for the injury caused by the internationally wrongful act. The Polish soldiers ultimately left Czech territory and thus the *status quo ante* was re-established (Art. 35 DARS). However, taking into account that injury includes not only material but also moral damage, re-establishment of the situation which existed before the breach is not sufficient for full reparation. Thus, Poland was also obliged to provide reparation in form of satisfaction (Art. 37), consisting of 'acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality' (Art. 37 (2)).

[None of the released public communications provided evidence that Poland](#) fulfilled any other of the obligations mentioned above apart from the withdrawal from the Czech territory.

Conclusions

The Polish-Czech border incident is worth reviewing as similar cases occur rarely in the heart of Europe, between two NATO, EU and Schengen Area members, in addition to the incident happening during an ongoing pandemic. Although the incident had virtually no consequences, it is worth bearing two important conclusions in mind: firstly, since armed forces are State organs, a State is responsible for all actions by its soldiers. By mistake or not, in Europe or elsewhere, a State whose sovereignty has been violated by two lost soldiers may ultimately decide to enforce its rights under international law. Consequently, a harmless border incident may turn out to spark a serious conflict (what if the Polish soldiers had accidentally crossed the border with Russia?). Secondly, even though the incident constituted an internationally wrongful act, the Czech government did not take any legal steps and immediately called it a misunderstanding. Simultaneously, the Polish government was obliged to fulfil its duties stemming from the rules of international responsibility of States, not to mention that apologies for the incident would be a matter of politeness, irrespective of any legal norms.

[Martin Faix](#) is a senior lecturer in International Law at Palacký University in Olomouc, Faculty of Law and the Charles University in Prague, Faculty of Law. He is Director of the Centre for International Humanitarian and Operational Law – [CIHOL](#) (Palacký University) and senior member of the Research Centre for Human Rights (Charles University in Prague). Martin has authored some fifty publications in the area of international organisations, use of force, human rights and law of armed conflict. Currently he serves on behalf of the Czech Republic as substitute member of the Management Board of the EU Agency for Fundamental Rights.

[Agata Kleczkowska](#) is an Assistant Professor at the Institute of Law Studies of the Polish Academy of Sciences. She serves as a member of a legal expert pool of the European Centre of Excellence for Countering Hybrid Threats and an external expert of the Centre for International Humanitarian and Operational Law – CIHOL (Palacký University). Her research interests include, but are not limited to, jus ad bellum, armed non-state actors, recognition and customary international law. She is also a Rapporteur at the Oxford International Organizations.

Cite as: Martin Faix & Agata Kleczkowska, “A bridge too far: Polish-Czech border incident”, *Völkerrechtsblog*, 5 August 2020.

