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EUROPEAN RESPONSE TO

TERRORISM

THE CASES OF SPAIN AND SLOVAKIA

Lucana M. Estévez Mendoza, Dalibor Pavolka, Jaroslav Nižňanský

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FOREWORD

This publication is the culmination of the cooperation project between the Spanish Instituto Español de Estudios Estratégicos (IEEE) and the Slovak Institute for Security and Defence Studies (IBOŠ). The project began during year 2004 with first contacts between institutes' representatives. At that time there was a proposal of a cooperative project consisting of research work on terrorism. Finally it was agreed to develop a study consisting of two separate parts, each one drafted by national (Slovak and Spanish) experts, in which they would analyse the respective antiterrorist policies, legislation and regulations in fighting terrorism.

Discussion about actual opinions on the project and mutual presentation of preliminary results of the research took place on the premises of the IEEE in Madrid in June 2005. Since the reorganisation of the Slovak MoD, IBOŠ ceased to exist and the work on this book has been delayed. However, we are pleased that this project successfully reached its goal in the form of this publication.

For Slovakia it is essential and utmost interesting to gather the knowledge based on extensive Spanish experience in fighting terrorism and consequent policies and concrete steps. This experience can serve as a guideline for Slovak own policy formulation process and actions in the fight against terrorism.

On the Spanish side the rigorous research work developed by Ms. Lucana M. Estevez has allowed to bring together the elements of the Spanish counter terrorism legislation and national regulations concerning the fight against terrorism and to show the role of the different institutions in this field. Among the conclusions Ms. Estevez highlights the requirement for international cooperation to achieve better benefits in the fight against this threat in the current globalised world.

The cooperative project developed by both the Spanish IEEE and the Slovak IBOŠ, now materialised in this work could be a model for international cooperation on the analysis of strategic issues and a contribution to the efforts against international terrorism.

“The ideas contained herein are the responsibility of the authors and do not necessarily reflect the Slovak MoD and IEEE opinions, who have sponsored this publication”

I. GENERAL ASPECTS

1. INTRODUCTION

Ever since 1934, when King Alexander I of Yugoslavia and the French Foreign Minister, Barthou, were assassinated, the newspapers have been reminding us almost daily that we are living with a plague: international terrorism.

By way of an example, 1,907 people were killed and 6,704 injured in 2004 as a result of 650 acts of terrorism perpetrated across the length and breadth of the globe¹.

These figures—unimaginable a priori—together with the New York and Washington attacks of 11 September 2001, whose horrifying images are still ingrained on our minds, spur or should spur society to ask itself two basic questions: Exactly what is terrorism? What can be done to combat it?

Furthermore, facts like these force, or should force, the leaders of the states that make up today's international society—modern states whose most obvious characteristic is their bureaucratic nature²—to clearly define their stances towards the terrorist threat by asking the following questions: To what extent am I a terrorist target? What can I do in the face of, and to combat, terrorism? With what means can I fight against this phenomenon?

This paper is intended precisely as a reply to these questions, as its aim is:

- To supply information providing an idea, as full as possible, of what terrorism is.

¹ These figures reflect a much higher number of attacks, deaths and casualties than in previous years which is logical considering the large number of acts of terrorism that occurred in the Middle East and the 11 March attacks in Madrid. In order to give a closer idea of the monthly average of attacks, it would perhaps be appropriate to bear in mind the figures for January 2004, which total 478 dead, 740 wounded and 143 terrorist actions committed all over the world. US DEPARTMENT OF STATE : Country Report on Terrorism 2004, Office of the Coordinator for Counterterrorism, April 2005, available from Boletín nº. 66 del Real Instituto Elcano, 5 May 2005, <http://www.state.gov/documents/organization/45313.pdf>, TEMBOURY, M., La Coopération entre les États-membres de l'Union européenne pour la lutte contre le terrorisme, Synthèse no. 130 in La Carte Robert Schuman no. 163 of 19 April 2004 p.1, MINISTERIO DE INTERIOR, Balance de la lucha antiterrorista en 2004. Madrid, 5 January 2005 (HOME OFFICE: 2004 Balance on the fight against terrorism) and EUROPA PRESS, Las Fuerzas de Seguridad detuvieron en 2004 a más el doble de terroristas islamistas que en los tres años anteriores, Madrid 5 January 2005. (In 2004, the double of the Islamic terrorists has been trapped by the Security Forces in comparison with the previous three years).

² PÉREZ, A., Las Fuerzas Armadas como servicio público: percepción y realidad, Grupo de Estudios Estratégicos GEES, Colaboración nº 245, 28 January 2004, p. 1 (Armed forces as public service: perception and reality).

- To describe the basic features of the Spanish and Slovak policies towards this phenomenon, including the available state mechanisms for attempting to combat it.

2. WHAT IS TERRORISM?

In order to combat an evil it is first necessary to determine its nature and origins³, which is why clarifying these points is the first hurdle that needs to be cleared in order to be able to fight against a phenomenon that has become extreme and exportable to all the states of international society over the past decade.

Terrorism is an issue that everyone talks about but few could aptly define, as to sum up everything that terrorism means in a few words is no easy task. An example of this difficulty and of the related conceptual problems is the fact that the United Nations does not yet have a commonly accepted definition⁴ of what should be understood by terrorism⁵, since international leaders differ on this⁶. We may therefore speak of various definitions of terrorism, such as those upheld by:

- Academics, according to whom terrorism is linked to use of violence or its threat in order to create an atmosphere of fear, terror and alarm to help achieve specific political aims.
- Governments, in some cases with diverging ideas, since whereas some, such as that of Australia⁷, fail to take into account the roots or causes of the problem when defining and combating it⁸, others do; and while some representatives view terrorist attacks as being aimed only at the civilian population⁹, others consider that they also extend to attacks perpetrated against states' security forces.

3 CHEVALLIER GOVERS, C., *De la Coopération à l'intégration policière dans l'Union Européenne*, Bruylant, Brussels 1999 p. 88.

4 BAYEFSKY, A., *Errores Humanos: la ONU no puede definir el terrorismo, por no decir enfrentarlo*, Grupo de Estudios Estratégicos GEES, Colaboración nº. 152, 30 September 2004 p. 1-2. (Human faults: The UN are not able to define terrorism, neither face it).

5 One of the main short-term objectives of the United Nations agenda is to reach a common definition of acts of terrorism. ANNAN, K., *A Global Strategy for Fighting Terrorism*, Address to the Closing Plenary of the International Summit on Democracy, Terrorism and Security, Madrid, 10 March 2005. See the Club of Madrid website, <http://www.clubmadrid.org/cmadrid/index.php?id=590>, and RUIZ, R., *Juntos contra el Terrorismo*, Revista Española de Defensa no. 205, Marzo 2005, p. 32-37 (Together against terrorism).

6 I.C., *Discrepancias en la definición de terrorista*, Diario El País, 10 March 2005 (Disagreement to define a terrorist act).

7 WRIGHT-NEVILLE, D., *Terrorism in Southeast Asia: Australia as Part of the Problem*, <http://spanish.safe-democracy.org/frente/> 22 February 2005. Paper presented to Safe Democracy at the Madrid International Summit on Democracy, Terrorism and Security, Madrid, March 2005.

8 These positions could be justified by the fact that terrorism does not originate from a single, isolated cause but from the interaction of various factors such as political, economic, cultural, religious and even individual conflicts. CLUB DE MADRID, *Plenary: Conclusions of the Working Groups of 8 March 2005*, Madrid International Summit on Democracy, Terrorism and Security <http://spanish.safe-democracy.org/conferencias/plenario-conclusiones-de-los-grupos-de-trabajo.html>, March 2005, p. 1.

9 Such is the case of Canada. Cf. I.C. op. cit.

- Specialised organisations, such as the FBI, according to which terrorism is operational networks that make illegal use of force and violence against persons and/or targets in order to intimidate or pressure governments, peoples and/or specific sectors to achieve their political and social aims¹⁰.

Nor can we ignore an element that accounts for the different conceptions of this phenomenon, the fact that terrorism has always been analysed and defined independently within various frames of reference such as crime, politics, war, revolution, propaganda and religion and that, depending on which framework is chosen, certain aspects of terrorism are considered and others are not. In other words, some features are clarified while others are left out of the picture, as only one of these contexts is used.

2.1. Conceptual problems: Definition

In order to attempt to alleviate the conceptual problems arising from the term “terrorism”, at least for the purposes of this paper, this phenomenon will be addressed primarily from an etymological perspective and, secondly, from a legal viewpoint, as these approaches help us understand the meaning of terrorism.

Etymologically speaking, terrorism is a concept that is derived from the noun “terror”, which means extreme fear or fright, in the most varied possible forms. Reflecting this root, the first time the term “terrorism” was used in the legal sphere was in 1930 at an International Conference for the Unification of Criminal Law held in Brussels, where it was defined as the wilful and systematic use of terror to achieve certain ends¹¹.

However, since then we have witnessed the emergence of new elements that complicate the task of fully defining terrorism. Indeed, it is a complex notion because it combines facets of criminal law, public international law and political science; subjective aspects linked to political criteria that cause what some consider terrorism not to be regarded as such by others; and a host of different motivations that it is impossible to embrace.

Therefore, although within the United Nations, the international organisation that encompasses the largest number of states, many treaties deal with different aspects closely

10 CAMPOS-DUGONE, R., Ciberterrorismo: Nefasta evolución! 6 March 2003 p.1 <http://www.segu-info.com.ar/pdf/A4E-ciberterrorismo.PDF> (Cyber terrorism: Dreadful evolution!).

11 LEVASSEUR, G., Les aspects répressifs du terrorisme international, Institut des hautes études Internationales de Paris, Pedone, 1977 p. 62, in CHEVALLIER GOVERS, C., op. cit. p. 88 and SANSÓ-RUBERT PASCUAL, D., (2) Terrorismo o acto de guerra. Necesidad de una redefinición de la lucha antiterrorista de cara al siglo XXI p. 27 (Terrorism or act of war. The need to redefine the fight against terrorism facing XXI century), in Aproximación a las cuestiones de seguridad en el continente americano, (Approach to security matters in the American continent) Monografías del CESEDEN nº. 73, Seminario de Estudios de la Defensa Nacional de la USC-CESEDEN. Ministerio de Defensa, Madrid, October 2004.

related to terrorism—hostage taking, suppression of financing and suppression of attacks committed with bombs, among others¹²—none dares to define the phenomenon itself. Given this lack of a generally accepted definition, which has delayed the adoption of a general convention on terrorism, it is necessary to seek clarifications of what this phenomenon entails in legal instruments that are more geographically limited in scope.

Nevertheless, we cannot fail to mention the proposed definition expressed by the UN Secretary General—which is not without its criticisms and shortcomings¹³—according to which terrorism is:

“Any action (...) that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, (...) is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.”

Although KOFFI ANNAN has expressed his regret that the United Nations’ authority has been tarnished by the spectacle of certain negotiations on the concept of terrorism, he continues to advocate that the UN should be the organisation that spearheads the fight against this phenomenon this century. He therefore proposes that if an agreement were reached on this definition, it should be understood more as a point of departure than as a point of arrival and be reflected in a general convention on the matter¹⁴.

As for the other legal instruments that can be consulted to ascertain what an act of terrorism entails, independently of whether or not they are binding, those drawn up by the following players in international society are particularly worthy of note.

The Council of Europe ventured to define what a terrorist act is, providing one of the definitions that best encompasses the diverse reasons that inspire this type of act in 1999, with Recommendation 1426¹⁵. According to this definition, which currently prevails in the international sphere when identifying these crimes:

12 All United Nations legislation on terrorism is available from the relevant UN website <http://untreaty.un.org/English/Terrorism.asp>.

13 Steve Lukasik, a US consultant, criticises the definition proposed by the United Nations as it refers only to killing people, whereas the terrorist phenomenon is more than that. Andrés Ortega draws attention to the fact that, on the basis of the proposed definition, it might be considered that any armed person (police, soldiers or colonists with guns) could be attacked without being a terrorist target. He also points out that these cases, in addition to state terrorism, are covered by other conventions on armed conflicts. CLUB DE MADRID: Summary of the session: Terrorism goes high-tech, 10 March 2005, <http://spanish.safe-democracy.org/conferencias/terrorismo-y-alta-tecnologia.html>, and ORTEGA, A., El consenso de Madrid, Diario El País, 11 March 2005, p. 4 (The Madrid consensus).

14 CEMBRERO, I., La ONU pide combatir al terror con la Ley, Diario El País, 11 March 2005, p. 2 (hereinafter CEMRERO, I.,(2)) (The UN ask for fighting terror across the law).

15 COUNCIL OF EUROPE: Recommendation 1426 (1999): European democracies facing up to terrorism.

An act of terrorism is

“any offence committed by individuals or groups resorting to violence or threatening to use violence against a country, its institutions, its population in general or specific individuals which, being motivated by separatist aspirations, extremist ideological conceptions, fanaticism or irrational and subjective factors, is intended to create a climate of terror among official authorities, certain individuals or groups in society, or the general public”.

Taking this definition as a basis, the EU describes terrorism in a Council Framework Decision¹⁶, pointing out two fundamental features:

- One is subjective, and states that such offences are committed with the aim of:
 - a. Seriously intimidating a population;
 - b. Unduly compelling a Government or international organisation to perform or abstain from performing any act; or
 - c. Seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or international organisation.
- The other is objective: acts deemed to be terrorist offences. These are merely common offences that are classified as terrorist offences if committed with terrorist motivation, namely murder, the causing of bodily harm, kidnapping/hostage taking, and the theft and possession of weapons or explosives, among others.

In Spain the Penal Code (Código Penal), which defines the acts that constitute misdemeanours or criminal offences, lists the characteristics that allow a common offence to be considered a terrorist offence. The most significant aspect of its provisions with respect to defining such acts is that terrorist offences are referred to as those committed with the objective or aim of subverting the constitutional order or seriously disturbing public peace and perpetrated by people belonging to, acting in the service of or collaborating with armed bands, organisations or groups with this purpose or aim in mind¹⁷.

According to the Slovak Penal Code the criminal offence of terrorism is the one targeted not only against domestic constitutional order and institutions but international as well, forcing them to do or to refrain from acting. There is also present an important factor concerning CBRN

¹⁶ OJEC L 164 of 22 June 2002: Council Framework Decision, of 13 June 2002, on Combating Terrorism.

¹⁷ Article 571 of the Spanish Penal Code. Even so, it cannot be ignored that Spanish legislation also establishes as offences certain acts which, although committed by people who do not belong to armed bands or terrorist organisations or groups, pursue the same ends: if their acts disturb the constitutional order or public peace or contribute to these ends by terrorising the inhabitants of a population centre, the members of a social, political or professional group (article 577).

weapons – their unauthorised production, research, handling or use are strictly concerned to be terrorist activity under Article 419.

2.2. Characteristics of terrorism

Generally speaking, a number of characteristics can be considered common to any manifestation of terrorism, whatever the motivation of the terrorists and independently of the offence that is committed. According to MIGUEL TEMBOURY¹⁸, the following features are characteristic of this phenomenon:

- Clandestinity, although terrorism declares war on the state, it avoids head-on war, as the terrorist organisations operating in civil society veil themselves in a certain amount of secrecy in order to commit their attacks violently and with total impunity.
- Victimisation, which all terrorist organisations claim to suffer from, resorting to the argument that their fight espouses the cause of national, racial, political and/or religious oppression and that their means are the only ones available to them because the state they belong to does not enable them to use others. SANMARTÍN maintains that terrorists always view themselves as people who need to defend themselves from the implicit or explicit attacks of the people against whom they subsequently direct their violent actions¹⁹.
- Disproportionateness, insofar as terrorism seeks to cause the greatest damage possible with the fewest possible risks. The degree of disproportionateness of the most recent manifestations of terrorism is such that it is capable of paralysing a state and intimidating its inhabitants in a manner never witnessed until recently²⁰.
- Propaganda, linked to the etymology of the term, is essential in order to meet the organisations' need to achieve maximum publicity for their acts, as it helps instil fear and, accordingly, enables them to use blackmail as an instrument of persuasion in their negotiations. It is generally held that the bigger the audience an attack has, the nearer the terrorist is to achieving his aims, as he does not actually want too many deaths but plenty of observers of his actions: he kills one person to terrorise a thousand²¹.

18 TEMBOURY, M., op. cit. p. 2.

19 SANMARTÍN, J., *El terrorista. Cómo es. Cómo se hace*. Ed. Ariel, Barcelona 2005. p. 18. (The terrorist: How is he? How does he do it?)

20 In this respect, 11 September marks a break with the past, a qualitative and quantitative leap which, in view of the quality of the execution and results obtained, can be considered one of the most spectacular operations ever staged. SANSÓ-RUBERT PASCUAL, D., (3) La transformación del terrorismo internacional como instrumento de desestabilización global. CESEDEN document, available from <http://www.usc.es/ceseden/danielsanso.pdf>, (February 2005) (The transformation of international terrorism as a global destabilization instrument).

21 JENKINS, B.M., *International Terrorism: A New Mode of Conflict*, in CARLTON, D. and SCHAERF, C. (Eds): *International Terrorism and World Security*, Croom Helm, London, 1975, p. 15 and SANMARTÍN, J., op. cit p. 23.

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- Parasitism, as terrorism feeds off the very democratic and social structures it attacks, using all the advantages of the most developed countries in devising its strategy.
 - Complexity, resulting from the coordination of means necessary to commit the crimes. The actual authors are just one of the cogs in the machine: the success of the actions also requires logistic, financial, propaganda, social and political organisation, and recruitment and training.
 - Perpetuity, as the argument that terrorists cease their actions once their demands have been satisfied is false. They always “want more”, once they start they cannot stop of their own accord, and tend to continue.
 - Internationality, which encompasses two different but equally significant aims:
 - a. One is operational: the authors of acts of this kind endeavour to take advantage of the existing differences and lacunae in various states’ legislation and borders, which makes them more difficult to find. They normally prepare their attacks in a different country to the one where they are to be committed.
 - b. The other is political: terrorist organisations attempt to secure the support of an international community in an attempt to afford their action a certain political legitimacy.

2.3. Typologies: special forms of terrorism

Although these defining elements are common to all criminal actions committed for terrorist motives, past generations remember a type of terrorism that differs from the kind witnessed nowadays, as the terrorist phenomenon is marked by the social situation of every age. Accordingly:

- Since the nineties, the terrorists who fought for liberation after the Second World War have been motivated by ideals of rootless militants lacking in precise political aims. They are driven by the vengeful wish to assert their irreversible ability to cause harm and exalt the cult of death transfigured. In other words, whereas the classical terrorist groups pursued left- or right-wing objectives, today’s organisations embrace extremist ethnic or religious ideologies.
- Whereas the material resources at their disposal for instilling fear used to be scanty, today’s technological advances both in weapons and explosives and in telecommunications enable them to achieve broader ranging and more devastating effects. Violence itself has become a form of political mobilisation designed for the age of the media. What is more, whereas classical terrorists tended to attack strategic targets, terrorists nowadays carry

out large-scale massacres, suicide attacks or abominable atrocities such as beheadings that are recorded on video.

- The territorial limitations of years ago have been overcome by globalisation, which has brought about the freedom of movement of people and ideals between countries. As a result of this phenomenon, unlike the hierarchic terrorist organisations of the past formed by close-knit secret cells, the militant groups that have sprung up in recent years are loosely and horizontally associated, united by a common ideology but comprised of a variety of groups, cells, religious institutions, non-governmental organisations, charities and even individuals.

One difference between past and present forms of terrorism that nonetheless does not appear to be related to any type of historical event is the claiming of responsibility for acts. Whereas in the seventies or eighties terrorist groups issued communiqués explaining their reasons for perpetrating these acts, since the nineties responsibility has either not been claimed for a significant number of attacks, particularly the most spectacular and lethal, or has not been done so truthfully²².

In view of the foregoing, ROBERT HUTCHINGS has stated that “*current terrorists appear to have suffered a mutation with respect to the old breed of terrorism*”²³. However, it is on the basis of similarities and differences between classical terrorism of the 20th century and the so-called new terrorism that this phenomenon can be catalogued. Rather than examining the broad range of possible types of criminal acts that can be committed²⁴, we should focus either on the motivation behind these acts or on the dimension of their gestation and effects, or even a combination of both factors. Taking this as a guideline, the terrorism that is threatening and worrying the 21st century world can be classified according to the following types:

- Depending on its motivation:
 - a. Lay terrorism: Generally characterised by its composition of a small number of people with a highly hierarchic structure, underpinned by either nationalist or extremist

22 Examples of this new characteristic, which Professor García Luengo links to a more lethal terrorism with a more religious component are, undoubtedly, the attacks of 11 September 2001 and 11 March 2004, which point to the authorship of international terrorism, specifically Osama Bin Laden, though he never claimed responsibility for them. GARCÍA LUENGO, O., Los Medios de Comunicación y las Nuevas Tendencias del Terrorismo Internacional, <http://www.comminit.com/la/tendencias/lact/lasld-153.html>, p. 3 (Mass media and new tendencies of international terrorism).

23 CLUB DE MADRID, Plenary: Democracy and Terrorism, 9 March 2005, Madrid International Summit on Democracy, Terrorism and Security, <http://spanish.safe-democracy.org/conferencias/plenario-democracia-y-terrorismo.htm>, p. 1.

24 A model definition based on the types of acts that terrorists can commit consists of classifying as international terrorism incidents in which terrorists travel to a foreign country to attack their targets, select objectives or choose victims with particular links to their foreign state (diplomats, businessmen, employees of foreign corporations) or trigger international incidents by attacking passengers of flights and/or crews or cause damage to their material components. GARCÍA LUENGO, O., op. cit. p. 1.

ideas, who pursue an absolutely strategic goal: to intimidate society so that it loses confidence in the state and influences the political status quo, forcing political changes in the direction they desire. This phenomenon is meaningless without social backing. Examples of this typology are, among others, groups such as Euskadi Ta Askatasuna (ETA), the Irish Republican Army (IRA), the Italian Red Brigades (BR) and the Red Army Faction (RAF).

- b. Religious terrorism: Has a large number of followers who are not organised into a clearly defined hierarchic structure²⁵; its backbone and moral justification for violence is religion, whose fundamental values it radicalises. To comply with the principles of this religion which it aims to spread, it executes hugely lethal, mass-scale, indiscriminate acts in which the number of victims lacks significance as their symbolic value lies in the place chosen for the attack, which embodies some aspect of the culture which, so they claim, threatens their way of life. They do not fear loss of social support and therefore carry out their attacks unhindered. The clearest example of this typology is the so-called Islamic or Islamist terrorism²⁶. However, we cannot ignore the fact that not only does this religious-inspired terrorism affect Islamic tradition but that the violence stemming from theocratic dogma has also developed from fundamentalist sectors of both Christian and Jewish origin, as also occurs with certain Asian religions. Certain extremist subcultures in US society as well as in Israel and Japan likewise justify the use of terrorism on religious grounds²⁷.
- Depending on its place of gestation²⁸ and the extent of its effects:
 - a. Endogenous or national terrorism: That which has emerged in Europe itself and whose consequences are limited to the geographical scope of the state whose population it seeks to terrorise and whose structures it aims to destabilise. Its equivalence to lay terrorism can be clearly appreciated if we consider that organisations such as ETA, the IRA, the BR and the RAF belong to this category.

25 See SANMARTIN, J., op. cit. p. 82 and GUNARATNA, R., *Al Qaeda, viaje al interior del terrorismo islamista*. Ed. Servidoc, Barcelona 2003 (Al Qaeda, a trip inside Islamic terrorism), REINARES NESTARES, F., *Una nueva era del terrorismo internacional*, Diario El País, 17 September 2001, p. 29 (A new age of international terrorism) and ¿Qué nos dice el 11-M sobre Al Qaeda?, Diario El País, 9 March 2005 (What said 11-M of Al Qaeda?) and MARRET, J.L., *Terrorismo y Comunicación*, 3 February 2005, <http://spanish.safe-democracy.org/causas/terrorismo-y-comunicación.html>, p. 1. (Terrorism and Communication).

26 This term is not without its critics, particularly those who, like Abdelkarim Carrasco, maintain that it is unfair and should even be illegal to speak of Islamic terrorism, because this expression demonises a whole group and a religion that prohibits acts of this kind. MINUTO DIGITAL, *Hablar de terrorismo islámico debería ser ilegal*, Minuto Digital, 10 February 2005. <http://www.minutodigital.com/noticias/censor2.htm>, (To talk about Islamic terrorism should be illegal).

27 REINARES NESTARES, F., op. cit. p. 29.

28 This classification has been used by doctrine on several occasions, one of its exponents being Juan Avilés. AVILÉS FARRÉ, J., (1) *La lucha antiterrorista en la Unión Europea* (Paper given at FAES on 9 July 2003), Grupo de Estudios Estratégicos GEES, Analysis no. 38, 9 July 2003. (The fight against terrorism in the European Union).

- b. Exogenous or international terrorism: This refers to terrorism that is gestated outside Europe, fundamentally in the Far East; is not linked to any specific local conflict²⁹; appears to be inspired by a global motivation; and is willing to attack any country, use unlimited violence and cause huge death tolls beyond the borders of its own territories. This type of terrorism is represented by Al Qaeda and the whole host of Islamist terrorist organisations related to it.

Apart from these typologies, there are other forms of terrorism, such as cyber-terrorism and NBCR (Nuclear, Biological, Chemical and Radiological) terrorism, which could be classified according to type of weapons used in the attacks. Although in my view these types of terrorism should not be considered independently from those described in the previous lines, as they are linked either to lay or religious motives or to the national or transnational effects sought, a distinction could be drawn between:

- Conventional terrorism: That which is characterised by use of widely employed traditional weapons, instruments and/or techniques to carry out actions such as hostage taking, sabotage, explosives and firearms, for example, even if the most modern models available on the market are used.
- Non-conventional terrorism: Uses combat mechanisms that are new or were previously limited to non-terrorist aims owing either to their apparent lack of dangerousness or excessive dangerousness. Such is the case of:
 - a. Cyber-terrorism: By this is understood the evolution resulting from weapons, bombs and missiles being replaced by a computer in the planning and carrying out of a terrorist attack. This is simply a new means of exercising violence using the Internet. A distinction can be drawn between two forms of cyber-terrorism³⁰. One is directed from computers at the computer networks that manage a country's essential systems such as technological and electricity supply centres, airport or railway services, satellite management centres and financial or emergency service centres, for example. The other consists of using the Internet, on the one hand, as a means of propaganda, as an economic instrument for sending encrypted emails through which data are exchanged on possible victims (address, habits, routes, photographs), tactics, threats, violent messages on the harm caused by their actions and, on the other, to carry out the logistic planning of the attacks, whether they entail traditional or new

29 AVILÉS FARRÉ, J., (2) Una amenaza compartida: la yihad global en Europa y el Magreb, Real Instituto Elcano, ARI no. 15-2005, of 1 February 2005, p. 1 (A shared threat: global jihad in Europe and Maghreb).

30 In this connection see GARCÍA, N., El ciberterrorismo expande las fronteras de la violencia, <http://www.delitosinformaticos.com/articulos/98061519696150.shtml>, 27 September 2001, p. 1 and CAMPOS-DUGONÉ, R., op. cit. p.1 (Cyber terrorism expands the border area of violence).

mechanisms. Whatever the type of attack, this almost always guarantees the survival of the terrorists involved, ensures their anonymity by covering up the criminal acts, and enables them to be more lethal and efficient. This is because in the current era world security depends on all countries' computer infrastructures and networks, so that a strategic attack on these systems would undoubtedly have devastating consequences for any country and its economy.

- b. NBCR terrorism, that which uses as its instruments of harm nuclear, biological, chemical and/or radiological weapons, all of which are capable of causing devastating effects wherever they are employed, effects that are not only material but also, in particular, psychological and political³¹. The most significant question that arises in connection with this manner of acting is which weapons could be acquired and used by terrorist organisations. The experts consider that:
 - i. Nuclear weapons are so complex to manufacture that it is highly unlikely that a terrorist group could do so; nor is it likely that a state would risk supplying them to terrorists owing to the risks to which it would expose itself. The concern that some terrorists may use fraudulent means to acquire nuclear material for possible military uses is the most real danger that international society faces.
 - ii. Whereas it is relatively easy to kill a few people in a biological attack, it is extraordinary difficult to kill many, as pathogenic germs can be cultivated in a small laboratory but it is not easy to obtain a suitable strain or to spread the germs so that they cause mass deaths. Therefore, the existing risk with respect to weapons of this kind³² is that terrorist groups may obtain them from some state, which would not run the risk of being identified as the supplier.
 - iii. It is relatively simple to stage an attack with chemical weapons³³. Therefore, although the technical difficulties of such a task are considerable, we should not rule out the possibility of well equipped and financed terrorist group, with or without state support, managing to prepare and execute such an attack.
 - iv. Acquisition of radiological materials such as caesium, iridium and cobalt, which are commonly used in hospitals and industrial centres that are scarcely monitored, is accessible to terrorists who do not fear the effects of radiation on their own

31 A good analysis of the history and potential of this type of terrorism can be found in AVILÉS FARRÉ, J., (3) Terrorismo y armas no convencionales: una evaluación de la amenaza, Grupo de Estudios Estratégicos GEES, Análisis no. 35 - 7 July 2003 (Terrorism and non-conventional weapons: an evaluation of the threat).

32 Some of the main biological weapons that exist today are anthrax, the plague, smallpox, botulism and ricin.

33 The main chemical weapons include chlorine, phosgene, mustard, hydrogen cyanide and nerve gases such as tabun, sarin, soman and VX.

bodies. This leads us to assume that it would not be at all difficult to activate a bomb of this kind which, despite causing a small number of deaths, would have a very significant psychological and political impact.

Given the many conceptual problems, characteristics and typologies of the terrorist phenomenon, as MADELEINE ALBRIGHT states,

*“It is a challenge to protect democratic societies from the current kind of terrorism partly because it is difficult to understand, but also because the breadth and scope of terrorism changes continually. But it continues to be by definition, a tool for forcing a specific political or religious ideology on society.”*³⁴

She goes on to point out that the difficulty does not lie in defining it, as it is enough to maintain that it is the deliberate slaughter of innocent people, but in explaining how terrorists are created³⁵.

2.4. A bird’s eye view of international terrorism

When dealing with international terrorism, the typology on which this paper will focus, particularly that which is attributable to Islamic fundamentalism, it is advisable to mention several more connotations, as in order to understand it a specific analysis is required of its ideological bases, the social circumstances that fuel it and its organisational structures.

According to some of the best analysts of Islamism and of the so-called global terrorism or *jihadist* terrorism, four main elements can be distinguished:

First, its ideology—*jihadist*³⁶—which is based on a *salafist* or literal reading of the Koran and its tradition (the *sunna*), according to which not only all the innovations springing from Western influence but the whole of the culture that the Muslims have shaped since the establishment of their religion are rejected. Its followers are guided by a religious fundamentalism whose appeal lies in its simplicity and in the fact that it is not linked to the cultural tradition of any particular country, which means that young Muslims uprooted from their original cultures, often as a result of emigration, are sympathetic towards it. This is because, on the one hand, it offers them

34 CLUB DE MADRID, op. cit (9 March 2005) p. 1.

35 HIGUERAS, G., op. cit. p. 5.

36 The term jihad refers to a religious fight or holy war. More specifically, jihad also denotes the struggle against the ego and the tendency to stray from God, as well as combat with the unholy enemy, the apostate, the infidel. Furthermore, the new Iranian religious reformers generally draw a distinction between:

- Yihad asgar, lesser jihad or war against the infidels, and

- Yihad akbar, greater jihad or believer’s inner fight against transgression from divine law.

SANMARTIN, J., op. cit. p. 212-213.

the opportunity to belong to the universal Muslim community (the *umma*) and, on the other, it appears to provide a univocal answer to all the moral dilemmas raised by life³⁷.

Second, the social circumstances of its spreading, which explain why this ideology's advocating of terror and death are so attractive. The fact is that many Muslim countries are a breeding ground for *jihadism* and contribute to its creation:

- Conflicts erupt much more frequently in developing countries than in developed countries. This is sometimes due to the youth bulge, tied to an overabundance of young people with difficulty finding jobs that match their aspirations and a place in adult society.
- In more than one instance the reasons why these young people feel rootless stem from the fact that they live in non-Muslim countries with traditions and cultures that differ from their own as they are Western or closer to those of the West, which leads them to radicalise their values.
- Some Arab media do not cease to convey the perception that Islam is under attack and, consequently, that Muslims are being persecuted. Although there are some grounds for this victimism, the other side of the coin also stems from Muslims' inability to assume their share of the responsibility both for their own problems and for the conflicts that bring them face to face with other communities.

In general, extreme poverty, social exclusion, lack of education and failed states are all factors that help breed terrorism in any of its manifestations and/or typologies.

Third, the formation of local, somewhat independent groups which have progressively embraced the *jihadist* ideology and implement attacks because at some point they have come into contact with the global network whose aims they attempt to help achieve.

Lastly, the existence of a network of networks of the global *jihad*, of which SAGEMAN³⁸ identifies four groups that are not defined by the geographic origin of their members but by the density of the ties that bind them. These are: the core structure of Al Qaeda, the Arab network of the Middle East, the Maghreb network and the Southeast Asian network³⁹. From another

37 According to Juan Avilés, Muslims can return to their origins in two ways: either through preaching dawa or through combat jihad which can be directed at the enemy close at hand (false Muslims), against which the Egyptian Farai fought, or at the distant enemy (the infidels), to whom Al Qaeda's leaders have given priority. Cf. AVILÉS FARRÉ, J.,(2) op. cit. p.3.

38 SAGEMAN, M., *Understanding Terror Networks*, University of Pennsylvania Press, Philadelphia, 2004 p. 46-50.

39 If we look at specific organisations, it could be said that the Al Qaeda network has succeeded in penetrating Europe and subsisting there mainly through three groups: Takfir wal Hijra (Anathema and Exile), the Salafist Group for Preaching and Combat (GSPC) and the Group of Islamic Combatants of Morocco (GICM).

perspective, irrespective of this structure of the network, it is held that another distinction can be drawn within international terrorism, between only two types⁴⁰:

- One is used as a direct instrument by certain state authorities as part of their foreign policy.
- The other is less dependent on a permanent decision-making centre in this respect and vaguer in its manifestations of virulent hostility towards the West. This type is largely driven by the movement of surplus activists from various armed conflicts seeking some holy war in which to participate.

Perhaps its structuring into several, partially independent tiers⁴¹ is the main hindrance to a global understanding of international *jihadism*, whose violence stems from many deep-rooted origins that will ensure its survival for years, if not decades. To these motives which underpin its resistance should be added:

- Its economic organisation, based on its ability to raise funds, which can be explained, among other circumstances, by the presence of American troops in Saudi Arabia and Iraq, the fate of the Palestinian people, the existence of a generational romanticism surrounding radical Islamism, the crises of Chechnya and Central Asia and religious-based separatism.
- Its structural organisation, based on perceptions of what the future of the Arab-Muslim societies could be, a future in which a balance is struck between tradition and modernity or in which national models are developed that clash with the absorbing Western liberal values.

By way of a summary, it might be affirmed that some of the most significant features of this form of international terrorism that is practiced by the global Al Qaeda network are, on the one hand, the transnational nature of its objectives, actors and organisation and, on the other, the asymmetry of the conflicting forces owing to the status of the players involved, who lack legal recognition and other means to engage in their fight⁴².

40 REINARES NESTARES, F., *op. cit.* p. 29.

41 There are said to be three basic tiers within the Al Qaeda organisation: a first tier, consisting of executive committees and regional chiefs of the network in the various geographical areas; a second tier made up of different terrorist organisations and groups such as the Group of Islamic Combatants of Morocco (GICM), the Salafist Group for Preaching and Combat (GSPC), the Algerian Islamic Groups (GIA), Anathema and Exile (Takfir wal Hijra) and Jamaat al Jihad; and a third tier comprised of the different cells that are distributed throughout the territories in which the Al Qaeda network operates, which provide logistic support (refuge, forged documents, rental of property, vehicles and material or illegal trafficking), financial support (legally incorporated enterprises as front companies for capital flows and money laundering or to provide jobs and legal status for the cell members) and operational support (in perpetrating the attacks).

42 THEIUX, L., La amenaza terrorista: ¿Un nuevo desafío para la seguridad europea?, Institut Universitari d'Estudis Europeus, Working Paper no. 55, January 2005, http://selene.uab/_es_iucee/catala/obs/Woeking%20Papers/wwp552004.pdf, (Terrorist threat: Is it a new challenge to European security?).

It should be pointed out that although Al Qaeda is simply the structure of opportunity, planning and financing around which this form of terrorism is developed, it has become a symbol, a label that is used in various ways, particularly the following: to justify security and even repressive policies; to justify certain highly coercive tactics (such as the case of Russia's action in Chechnya); to widely suppress any act by radical Islamists; to win the sympathies of Europe and the United States; and as a manner of simplifying the threat.

In view of the foregoing, if there is one idea that should be kept in mind at all times it is that perhaps the Western governments have recently managed to prevent some attacks using the classical secret services and police methods. However, both the characteristics linked intrinsically to any manifestation of terrorism and the features that define the types of action that have emerged over the past decade have shown both traditional security instruments, armies, and police and intelligence services⁴³, and strictly national legal provisions, to be inadequate means of addressing this threat.

3. WHAT CAN BE DONE?

On the basis that the opposite of fear is action, the answer to this question is easy, both for civil and political society, there are only two alternatives: attempt to go unnoticed and not protest in the hope of avoiding becoming a target for further terrorist action; or protest and call for an end to the climate of fear. However, this does not mean to say that addressing this phenomenon is simple, indeed it is not, as it requires a systematic and many-sided approach.

Some European states have been exposed to this dilemma for many years, whereas the United States did not come up against it until 2001. However, all the states and organisations belonging to international society have not hesitated to choose the second alternative: not to keep quiet and to fight. What happens is that the mechanisms available for fighting terrorism vary depending on whether we are dealing with the European environment or the international sphere, and on the basis of these frameworks each state shapes its own national policy for combating this evil.

⁴³ In the case of Spain it has been pointed out that... nor is it possible to face up to the new threats with the current police and intelligence resources. EDITORIAL COLUMN: 11-M, nuevo gobierno, Revista de Política Exterior no. 99, May-June 2004, p.6 (11/M, new government).

II. SPANISH POLICY TOWARDS TERRORISM

Fight against terrorism requires, under the empire of law and from a democratic view, some coherent and sustained government policies, an efficient police response, judicial intervention and the mobilization of the civil society. However, to face a phenomenon such extensively internationalized is crucial to develop an international cooperation. To prevent attacks, unrig the terrorist structures and to wreck their financials nets the international cooperation is essential.

These elements, which are considered crucial to shaping a true state policy for fighting terrorism, will be analysed in this part of the paper in order to describe Spanish policy in this field. The study will therefore focus:

First, on the rules that form the legal framework for developing the guidelines governing this battle; this framework combines international and European rules and conventions, as well as strictly national provisions.

Second, on the judicial and police institutions that play some role in fighting terrorism, as it is they which, each using its own mechanisms, must attempt: to prosecute, sanction, suppress and, if possible, prevent any act of terrorism.

Third, on the position of the armed forces in performing their tasks in an environment marked by international terrorism, basically bearing in mind the “power” vested in them by the new National Defence Directive and the Treaty establishing a Constitution for Europe.

Fourth, on the behaviour of public opinion, including the media, when brought face to face with the terrorist threat and its consequences.

Finally, on the current state of international cooperation, chiefly with the countries that can best help Spain to combat this ill, namely the United States and France.

1. REGULATORY FRAMEWORK OF THE FIGHT AGAINST INTERNATIONAL TERRORISM: LEGISLATIVE LIMITS

In a democratic state it is impossible to undertake a task like fighting international terrorism without a legal framework to justify such action. In the case of Spain, the legal framework that establishes the path to be followed by antiterrorist policy springs from three sources:

- The international sphere of which it is part and in which it has signed various conventions relating to terrorism, some sectorial, some general, some bilateral (the least relevant to this study) and several multilateral.
- The European framework, insofar as Spain's membership of the European Union since 1986 not only allows it but compels it to use and respect the agreements and rules that make up the *acquis* of this supranational organisation with such a special nature.
- The national environment in which it is progressively bolstering its national policy on antiterrorist issues, either exclusively on the basis of international or European guidelines or on its own initiative, or by combining aspects from both systems.

1.1. In the international environment

The first steps towards engaging in a fight against any manifestation of terrorism were taken by the United Nations. Therefore most national policies draw on its work. Since 1963 the organisation has adopted a dozen conventions and protocols aimed at preventing and suppressing various aspects of terrorism: the hijacking of aircraft, hostage taking, attacks on internationally protected people, the use of explosive devices and financing, among others.

In 1977 the Council of Europe laid the foundations for fighting terrorism as a whole, as a global phenomenon, with the European Convention for the Suppression of Terrorism⁴⁴, which was signed by Spain in 1978 (in force since 21st August 1980). Although, on the positive side, this convention made it possible to draw up a list of acts of terrorism for the first time, its suppressive role is limited to financing, and it is therefore insufficient to prevent and/or abolish its effects.

We cannot overlook the fact that these instruments coexist alongside state measures designed to regulate how society addresses this type of organised crime, measures which vary considerably from one state to another. Of these measures, one enjoys a long tradition in criminal law: extradition. Each state has signed several bilateral extradition treaties with others allowing the

⁴⁴ COUNCIL OF EUROPE: European Convention on the Suppression of Terrorism, adopted at Strasbourg on 21st January 1977.

mutual surrender of wanted persons, provided that the government gives its approval, meaning that the final decision on whether the wanted person should be surrendered is always political. Although these treaties are effective, the mechanism is very slow and only works if the offences committed by the people whose extradition is sought are considered offences in both states involved in each case, that is, if the requirements of the principle of double criminality are met.

Mention should be made of the stepping up of efforts in response to the attacks of 11/9 and 11/3 (or 11-M, as it is known in Spain):

- On one hand by NATO, in the double direction of military security and political cooperation that was tried and tested back in the nineties⁴⁵. A result of the foregoing is the adoption of a military concept of defence against terrorism based on two pillars at the Prague Summit in November 2002:
 - a. One, there are no longer any havens, proof of this being the ISAF's operation in Afghanistan. From another perspective, this could be explained by the fact that any country, even a medium-sized power like Spain, can greatly influence international events, either actively or passively⁴⁶.
 - b. Two, advance action is adopted as an alternative to the traditional action-reaction process. This is because changes in risks and perceptions are modifying states' traditional security model, forcing them to transform, rather than modernise, their policies in this field, an aspect that also extends to international politics.

With the initiatives raised at the June 2004 Istanbul Summit still pending consolidation, NATO, the organisation that has devoted the most hours to studying the fight against terrorism since 11/9⁴⁷, has sufficient capabilities to face up to this threat anywhere, with full possibilities of action (including preventive) and with the military assets required for the tasks it must take on.

- On the other, by the UN, within whose system the heads of government of all the states in international society have agreed on the need to give renewed impetus to work on establishing a general convention on terrorism to be signed at the earliest possible date.

45 PRAT COLL, J., La OTAN y la UE: una interacción necesaria, in *Política Exterior* no. 99, May-June 2004, p.114 (The NATO and the EU: a necessary interaction).

46 PALACIO, V. and RODRIGO, F., *Política exterior: la ilusión del consenso*, in *Política Exterior* no. 99, May-June 2004, p.94 (Foreign Policy: the consensus illusion).

47 TRILLO FIGUEROA, F., *Seguridad y lucha contra el terrorismo. Balance de la Presidencia Española*, in *Política Exterior* número especial, September 2002, p. 12 (Security and fight against terrorism. Spanish Presidency's Balance).

Although this proposal underlay Resolution 1373 (2001)⁴⁸, the final objective is still pending given the discrepancies arising from the conceptualisation of the offence that it is intended to define and classify.

1.2. Within the European Union

The European Union has reacted to terrorism by taking the baton in a process aimed at consolidating some counterterrorist mechanisms and shaping others that are more in consonance with the new social demands.

The competences of the European Union in terrorist matters grew considerably from the beginnings of the organisation to 11/9.

Although, owing to the sectorial nature of the founding treaties⁴⁹, fighting terrorism was not initially a field in which the European Community had the capacity to act, some actions began to be developed in areas linked to this phenomenon. Such is the case of the setting up of the Trevi Groups⁵⁰, particularly Trevi I—aimed at combating crime in general and terrorism in particular—which date back to 1975.

However, it was not until the Treaty of Maastricht, signed in 1992, that the terrorist phenomenon was included among the matters considered to be of common interest to all the European Union Member States⁵¹. Even so, during the nineties it became obvious that state interest in combating terrorist actions was only real in states that suffered from their consequences. Spain has always been among these, as have France, Ireland and Italy.

The first true steps taken to fight terrorism were glimpsed at the end of the nineties, when the Treaty of Amsterdam came into force (1999) and the first European Council devoted

48 UNITED NATIONS: Resolution 1373 (2001) adopted by the Security Council at its 4385th meeting, held on 28th September 2001.

49 We should recall that the first collaboration treaty between European countries forming a community on this continent was signed in 1951. This was the Treaty Establishing the European Coal and Steel Community, whose success led to the signing of two further sectorial agreements in 1957: the European Community Atomic Energy Treaty and the Treaty Establishing the European Economic Community. The name European Union was not coined until the Maastricht Treaty of 1992 unified the founding treaties and created a structure that was christened with the initials EU.

50 The purpose of the Trevi Group, which was named after the famous fountain located in the city that saw the emergence of this group and, according to Ramón Tamames, stands for Terrorism, Revolution and Violence and according to Bennefoi, for Terrorisme, Radicalisme, Extrémisme et Violence Internationale, was to hold periodic meetings in order to exchange information about the different terrorist groups, organised crime and vandalism in sport, as well as experience and techniques with respect to explosives. Such was its progress, driven by its effectiveness, that as cooperation in home affairs increased its meetings took place more frequently and different sectorial groups were set up: Trevi I, to address issues relating to terrorism, leading to training and ongoing specialisation in crime fighting; Trevi II, to analyse and discuss police services, enabling information to be exchanged by police officials of the European Community; Trevi III, to deal with drug-related matters; and Trevi IV, to examine the consequences of establishing one of the community freedoms, the free movement of people. Cf. TAMAMES, R. and LÓPEZ, M., *La Unión Europea*, Madrid, Alianza Editorial, 1999, p. 173 (*The European Union*) and BENNEFOI, S., *Europe et Sécurité Intérieure*, Paris, Encyclopédie Delmas pour la vie des affaires, 1995, p. 21-28.

51 Concern about terrorism was thus incorporated, albeit indirectly, into the sphere of the Union's competences, becoming part of the so-called Third Pillar of the EU (Title VI TEU: Provisions on Cooperation in the fields of Justice and Home Affairs).

exclusively to matters of justice and home affairs, the Tampere European Council, was held⁵². Both landmarks advocated the creation of a European Area of Freedom, Security and Justice in which police and criminal judicial cooperation would play a fundamental role.

The means envisaged for achieving the desired Area, which were later reaffirmed by the 2001 Treaty of Nice, are: the prevention and combating of crime, organised or otherwise, terrorism, trafficking in human beings, offences against children, illicit trafficking in drugs and arms, corruption and fraud. These form an operational framework in which a joint action by all the States, based on three instruments—police and customs cooperation, criminal judicial cooperation and harmonisation of legislation—facilitates progress. One result of this achievement is the setting in motion of Europol, an agency specifically centred on participating in police cooperation in criminal matters and developing a counterpart in the judicial field, Eurojust, aimed at fostering dialogue and cooperation between the judicial authorities of the Union's Member States.

The headway made towards the set goals and the development of Europol and Eurojust were not given a significant role until demand for the work of these organisations became properly established and the social circumstances following the attacks of 11th September 2001 called for action.

During the period between 11/9 and 11/3, the pace of regulatory work to design the European policy for fighting terrorism and, consequently, national policies, was stepped up.

At a special meeting⁵³ to analyse the situation the world would have to face following the terrorist attacks on the leading power, the Council concluded that immediate attention needed to be paid to two crucial issues: terrorism and a mechanism that, among other things, could help it to be properly prosecuted and punished, a European arrest warrant.

The legislators accordingly set to work and as a result of this, together with growing concern about this plague and existing instruments yet to be used, we now have several mechanisms for fighting terrorism:

- THE EUROPEAN CRIME PREVENTION NETWORK⁵⁴, whereby delegates of Member States exchange information and experience and seek new techniques for investigating and preventing crime.

52 Police and judicial cooperation in criminal matters is currently regulated by independent provisions which are also contained in Title VI of the TEU, now headed Provisions on Police and Judicial Cooperation in Criminal Matters.

53 EU COUNCIL: Extraordinary Council meeting on Justice, Home Affairs and Civil Protection, Brussels, 20 September 2001 (12019/01 Press. 327).

54 OJEC L 153 of 8 June 2001: Council Decision of 28th May 2001 setting up a European Crime Prevention Network.

- JOINT INVESTIGATION TEAMS⁵⁵ which can be set up, upon state request, for a specific purpose and for a limited period to carry out investigations requiring the coordinated action of states and resources in order to be understood and completed.
- FRAMEWORK DECISION ON THE FIGHT AGAINST TERRORISM⁵⁶ guaranteeing that terrorist offences are defined in a similar manner throughout the community. This decision applies to community rules regulating the elements that constitute such offences and the related penalties, both for individuals and for legal persons that commit or are responsible for terrorist offences by instigating, aiding and abetting, or attempt to commit offences.
- THE EUROPEAN ARREST WARRANT⁵⁷, whereby the judge of an EU Member State requests the authorities of any other state for assistance in searching, arresting, detaining and surrendering a person in order to conduct a criminal prosecution or execute a custodial sentence or detention order already imposed.

These achievements suggested that Europe had never been so prosperous, so secure or so free⁵⁸. However, the attacks of 11/3 proved that this was not the case, that Europe is both a target and a base for one of the most important challenges of the 21st century. And like any challenge, this must be addressed from new approaches that are established jointly by old and new members of European society and are beginning to take shape.

Therefore, since 11th March 2004, the counterterrorism efforts of the European Union's current twenty-five Member States have received fresh impetus, giving rise to three declarations⁵⁹:

- That establishing 11th March as European day for the victims of terrorism.
- That setting up a European counterterrorism coordinator who regularly assesses all the antiterrorist measures available in Europe, of which he has a comprehensive view. The appointment went to Gis M. de Vries, who, with the rank of secretary of state, acts under the orders of the Union's High Representative for Foreign and Security Policy, Javier Solana.

55 OJEC C 197 of 12th July 2000: Council Act of 29th May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and OJEC L 162 of 20 June 2002: Council Framework Decision of 13th June 2002 on joint investigation teams.

56 OJEC L 164 of 22nd June 2002: Council Framework Decision on 13th June 2002 on the fight against terrorism.

57 OJEC L 190 of 18th June 2002: Council Framework Decision of 13th June 2002 on the European arrest warrant and the surrender procedures between Member States.

58 EUROPEAN COUNCIL: A More Secure Europe in a Better World, European Security Strategy, 12th December 2003, <http://ue.eu.int/eudocs/cmsUpload/78367.pdf>.

59 Cf. Conclusions of the extraordinary Brussels European Council of 14th March 2004.

- The Declaration on Combating Terrorism⁶⁰ which, by way of a declaration of intentions and objectives, examines the current situation and establishes the fields in which both the Member States individually and the European as a whole must centre their future actions, which were later laid down in a (renewed) European Plan of Action on Combating Terrorism⁶¹.

Given the urgent need to address European security, the HAGUE PROGRAMME was presented at the end of 2004⁶². As provided in the Treaty establishing a Constitution for Europe⁶³, this programme for the time being completes the common judicial framework for fighting terrorism in the field of justice and home affairs, and its integration with other European Union policies. One of its specific guidelines is the need to consolidate European freedom, security and justice, and terrorism is among the issues relevant to achieving this objective. In this connection the Council reminds the states that they should strive to guarantee the security of the European Union as a whole, as well as their own security, for which it advises them to centre efforts on improving, among other things: their intelligence services; the exchange of information; surveillance in regard to terrorist threats; measures to combat the financing of activities of this kind; the security of the storage and transport of explosives; protection and assistance to victims of terrorism; mechanisms for addressing the factors that influence radicalisation and recruitment of terrorists; police and judicial cooperation in criminal matters; and mutual confidence between them and their police and justice systems.

The European Union states are currently striving to meet these requirements.

1.3. In the national environment

Judging by the European Union guidelines on terrorist matters, Spain is one of the fastest countries to adapt its regulations to the dictates of Brussels both quantitatively and qualitatively. However, Spain does not have a special antiterrorist law; rather, the provisions establishing the framework for Spain's policy in this area are found in different legal rules:

60 EUROPEAN COUNCIL: Declaration on Combating Terrorism, Brussels, 25th March 2004.

61 I refer to a renewed or a new European Union plan of action for combating terrorism because what the EU did was update a previous plan that had been adopted by the special European Council of 20th September 2001 following the attacks of the 11th. See EUROPEAN COUNCIL: Conclusions and Plan of Action of the Extraordinary European Council Meeting on 20th September 2001. Brussels, 21st September 2001 and EUROPEAN COUNCIL: EU Plan of Action on Combating Terrorism-Update, 14th December 2004.

62 EUROPEAN COUNCIL: The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, Annex I of the Presidency Conclusions, Brussels, 4th and 5th November 2004, p.11-42.

63 The Treaty establishing a Constitution for Europe, currently being ratified by the various Union Member States, was signed in Rome on 29th October 2004.

The OFFENCES are mainly regulated in:

- The Penal Code (Código Penal), which defines terrorist offences and establishes the penalties.
- The Code of Criminal Procedure (Ley de Enjuiciamiento Criminal), which establishes the powers of law enforcement and the judicial authorities with respect to investigating terrorist offences, while laying down the rights of those suspected of having committed an offence of this kind.

The *raison d'être* behind these rules is the fact that the only way of being able to prevent and suppress terrorism effectively involves, primarily, considering terrorism to be an offence in itself and a special criminal offence punishable by the state. Although up until 2002⁶⁴ the legislation of most of the European Union countries referred to terrorist motives only as an aggravating circumstance for the commission of a common offence, Spain was one of the six countries⁶⁵ that specifically defined terrorism as an offence. It does so in articles 571 to 580 of the Criminal Code, according to which:

- Terrorist offences are those committed with the objective, either of subverting the constitutional order or seriously disturbing public peace, or by contributing to such ends by terrorising the inhabitants of a population centre or the members of a social, political or professional group.
- The following acts, when committed intentionally, may be deemed to be terrorist offences⁶⁶: destruction or arson; attacks on people causing death or injury; kidnapping; unlawful detention; threat or coercion of individuals; the deposit, possession, manufacture, trafficking, supply, use or placing of weapons, ammunition or explosive, inflammable, incendiary or asphyxiating substances or devices or any of their components; attacks on property to raise funds for terrorist organisations or help achieve their ends or any other violation on the basis of such an ideology. The praising, justification or dissemination in any means of public expression of these acts or of those who participated in their execution and conduct entailing discredit, contempt or humiliation of the victims of such actions or of their relatives are also punishable.

64 It should be remembered that the European Union Framework Decision on Terrorism, whose articles had to be adapted to the national legislations of all the European Union Member States, was adopted on 13th June 2002 and advocated establishing terrorism as an offence, urging the States to adopt the minimum rules relative to the elements of the latter and its penalties. OJEC L 164 of 22nd June 2002.

65 The rest of the countries with provisions of this kind in their respective criminal legislation were the most sensitised towards this phenomenon, as they had suffered the effects of terrorism. They are France, Germany, United Kingdom, Portugal and Italy.

66 Acts constituting terrorist offences, although they can involve several offences, are categorised as follows: catastrophic risk (destruction and/or arson); attacks on life, freedom and/or integrity; deposit of weapons and/or ammunition; attacks on property for the purpose of raising money and a residual clause embracing diverse cases. LAMARCA PÉREZ, C. (Coord), *Derecho penal. Parte Especial*. Colex, Madrid 2004, p. 689-692 (Criminal Law).

- Those who belong to, act in the service of or aid and abet armed bands, organisations or groups that pursue the aforementioned objectives or, although not belonging to them, operate with the same intention, can be active agents of terrorism. In this connection it should be borne in mind that not only the authorship but also aiding and abetting or participating in offences of this kind is punishable⁶⁷.
- The objects of terrorist offences are not only the civil victims, including members of the central government, of the governing councils of the autonomous regions, of the Congress of Deputies, of the Senate, of the legislative assemblies of the autonomous regions, of the local corporations, of the General Council of the Judiciary and the judges of the Constitutional Court, but also the members of the armed forces, the state law enforcement agencies and the regional and local police forces.
- The penalties imposed for each of these acts⁶⁸ vary according to the act and its consequences. They are either custodial sentences ranging between one year (the shortest term of imprisonment given only for cases of praising of, or public support for, terrorists and terrorist offences and causing offence to victims) and 30 years (the longest, imposed when these actions cause human deaths) depending on the facts, or fines of between 18 and 24 months for accessories or participants.

PRISON POLICY, which has its own legislation, is also part of the strategy of cracking down on terrorist groups and organisations and must be implemented by ensuring that those convicted of terrorism are punished fully and severely, but without curtailing their fundamental rights and freedoms.

Provision is made for the possibility of rehabilitation for those who abandon the terrorist organisation and show unequivocal signs of repentance and a wish to be reintegrated into society. There are also specific prison regulations applicable to those responsible for terrorist acts, namely⁶⁹:

- On the one hand, an extension of the period a subject may be held in police custody before being brought before a judge. Whereas anyone who is arrested must be brought before a judge within 72 hours, this period is extended by a further 48 hours in the

67 Article 576 of the Criminal Code states that the following are constitute aiding and abetting the activities or aims of an armed band, organisation or terrorist group: informing or conducting surveillance on people, goods or premises; the construction, adaptation, lending or use of accommodation or storage facilities; the concealment or transfer of people linked to these bands, organisations or groups; the organisation of training practices or attendance thereof and any other form of cooperation, assistance or mediation (economic or otherwise) with such acts.

68 The establishment of the minimum and maximum prison sentences for the different types of crimes committed by terrorist groups or organisations or those in their service is dealt with in articles 572 to 579 of the Criminal Code.

69 Cf. HUMAN RIGHTS WATCH: Setting an example? Counter-terrorism measures in Spain, Human Rights Watch Report, January 2005, Vol. 17. No. 1, particularly p. 15-24, available from the website <http://hrw.org/reports/2005/spain0105/spain0105.pdf>.

case of people arrested in connection with allegedly belonging to or aiding and abetting terrorist groups, meaning that those suspected of terrorism may remain in police custody for 5 days before seeing a judge.

- On the other, the use of insolate detention. This may be ordered by a judge as a measure applicable to a subject during the period of police custody, between 3 and 5 days, plus a further 5 days for those charged with belonging to or aiding and abetting an armed band or with having committed an offence in conjunction with two or more people. In these cases solitary confinement can be re-imposed even after the maximum period of 10 days, but never for more than a further 3 days.

The PREVENTION AND FREEZING OF TERRORIST FUNDS is addressed in another rule, Law 12/2003 of 21st May⁷⁰, which is wholly aimed at attempting to prevent and stem financial flows that provide the funding for terrorist organisations, since a basic requirement for committing an act of terrorism is having sufficient funds. With this law, the Spanish government complies with the guidelines of United Nations Resolution 1373 (2001) and the European Plan of Action for fighting terrorism adopted that same year. The most noteworthy feature of its provisions is the setting up of a *committee for monitoring terrorist funding activities*, which is responsible for:

- Freezing the accounts, balances, financial positions, transactions and capital movements and related encashment, payment or transfer operations when the principal, issuer, holder, beneficiary or recipient is a person or institution linked to terrorist groups or organisations or where a transaction, movement or operation has been performed for the purpose of conducting terrorist activities or to contribute to the aims pursued by terrorists or terrorist groups.
- Banning the opening of new accounts with financial institutions or branches thereof operating in Spain whose authorised holders or representatives are terrorists or terrorist organisations.
- Agreeing to lift the freezing or ban when the actions or investigations carried out fail to prove that the assets in question are linked to the financing of terrorist activities.

The committee performs these tasks with the support of a series of people and institutions that, pursuant to article 4 of the Law, must compulsorily cooperate with it and carry out the measures necessary to implement the freezing and, according to article 8, to inform it of the

⁷⁰ BOE 122 of 22nd May 2003: Law 12/2003, of 21st May, on the prevention and freezing of terrorist funds, supplemented by Organic Law 4/2003, of 21st May supplementing the Law on the prevention and freezing of terrorist funds amending Organic Law 6/1985, of 2nd July, on the Judiciary, and Law 29/1998, of 13th July, regulating jurisdiction for suits under administrative law.

details of the people and organisations deemed to be linked to terrorism⁷¹. These are the public authorities, credit and insurance companies, investment funds and their fund management companies, foreign currency exchange establishments, institutions issuing electronic money and pension fund management companies, in the first case, and tax agencies, managing bodies and the General Treasury of the Social Security, the Bank of Spain, the National Securities Commission, the Directorate General for Insurance and Pension Funds and other bodies and organisations responsible for supervising financial matters, for the second.

The most human aspect of antiterrorist policy relates to the VICTIMS. *“The victims of terrorism are subjects of special concern, it is they who have suffered most directly the consequences of fanaticism and intolerance”*⁷². This has spurred Spain to take suitable measures to ensure that, although democracy will never be able to bring back what the victims and/or their families have lost, they receive recognition and care from the society it represents. Apart from specific commemorative actions designed to keep alive their memory—the most recent example is the inauguration of the “Bosque de los Ausentes” (“Forest of the Departed”) in Madrid’s Retiro park a year after the 11st March attacks—these include regulating economic compensation for them and/or their relatives. Although various regulations adopted over the years lay down these benefits, they all mention that the state shall be responsible for paying the compensation that the perpetrators and other parties responsible for terrorist offences, whether national or international, should provide to the victims of their actions.

The major advantages of having regulations to protect the victims of terrorism are:

- They can be compensated both for bodily harm (physical or psychological) and material damage caused as a result of terrorist offences.
- In general, beneficiaries of compensation are people not responsible for such acts who have sustained injuries or damage to their property (homes, vehicles, commercial premises...) and/or their successors in title, spouses, people who have lived with them and bodily heirs or relatives up to the second degree of kinship.
- The types of benefit vary in order to adapt as far as possible to each victim’s circumstances, just as the amounts of compensation and requirements of eligibility differ from case to case.

Lastly, it is essential to underline the options that have been made available for fighting terrorism, not only in Spain but throughout the European Union, by the inclusion of some of

71 As well as any people or institutions included on the terrorist lists either by international organisations or by the European Union, article 7 of the law lays down a set of criteria which, if met, allow the committee for monitoring terrorist funding activities to link people or groups to this phenomenon.

72 PP and PSOE: Pro-freedom and antiterrorism agreement. Ministerio del Interior, Madrid, 8th December 2002.

the community legal instruments in national law. In this connection Spain has been a pioneer in implementing two specific mechanisms.

On the one hand, the joint investigation teams, envisaged in Law 11/2003 of 21st May⁷³: these can be set up at the request of a state and through an agreement⁷⁴ to conduct a specific investigation of limited duration. In order for Spanish law to be applicable, the competent authority of this country must take part in the investigation⁷⁵ or the latter must be conducted on Spanish territory and its circumstances must require the coordinated action of two or more states and their resources in order to be understood and resolved. These teams are directed by the state where the investigation is to be carried out, which decides on their composition, purpose and duration. These teams are designed to facilitate the investigation of and fight against terrorism, drug trafficking and trafficking in human beings, among other things. The chief advantage of this system is that the current European Union Member States, candidate countries, third states, Europol and even police authorities of the United States of America can take part.

On the other, the European arrest warrant, which is dealt with in Law 3/2003 of 14th March⁷⁶: This is the name given to a judicial decision issued by a European Union Member State requesting the assistance of another state in the search, arrest, detention and surrender of a person (article 1). The reason for the warrant may be to conduct a criminal prosecution or to execute a custodial sentence or detention order previously imposed (article 5). In the case of Spain, it is appropriate to point out that the issuing authority is the judge or court hearing the case for which the warrant is requested and the executing authorities are the Juzgados Centrales de Instrucción (central pre-trial investigation courts) and the Criminal Division of the Audiencia Nacional (national criminal court). In cases where the intervention of a central authority is necessary, this will be the Ministry of Justice.

This warrant, which is based on mutual trust between European states, offers the following advantages:

- It is effective much sooner than the traditional extradition procedures in force in international relations (see the deadlines for executing the warrant in the provisions of chapter III of Law 3/2003).

73 BOE 122 of 22nd May 2003: Law 11/2003, of 21st May, regulating joint investigation teams in the sphere of the European Union, backed by Organic Law 3/2003, of 21st May, supplementing the Law regulating joint investigation teams in the sphere of the European Union, regulating the system of criminal liability of the members assigned to the aforementioned joint investigation teams when they operate in Spain.

74 The agreement required in order to set up a joint investigation team to operate in Spain is regulated by articles 4 and 5 of Law 11/2003, which establish, among other aspects, the minimum composition of the team.

75 Article 3 of Law 11/2003 establishes that the Audiencia Nacional, the Ministry of Justice and the Ministry of the Interior may be considered competent Spanish authorities for the purpose of setting up a joint investigation team.

76 BOE 65 of 17th March 2003: Law 3/2003 of 14th March, on the European arrest and surrender warrant, in addition to Organic Law 2/2003, of 14th March supplementing the Law on the European arrest and surrender warrant.

- For certain offences, including terrorism, it eliminates the requirement that they also be punishable both in the requesting and executing states, that is the principle of double criminality.
- It specifies the only grounds on which the state, in this case Spain, may refuse to execute the warrant that has been sent to it (article 12).

In addition to the foregoing, there is a host of declarations and agreements which, although designed to combat national terrorism, specifically that of ETA, could be considered to confirm Spain's keenness to crack down on this phenomenon; also, a few regional regulations⁷⁷ that bear hardly any direct relation to the fight against international terrorism and the provisions of the Organic Law on the Judiciary and the Code of Criminal Procedure that are applicable to the procedures for trying offences of terrorism complete the Spanish regulatory framework for preventing and suppressing any manifestation of terrorism.

2. ROLE OF THE STATE INSTITUTIONS THAT PARTICIPATE IN THE FIGHT AGAINST TERRORISM

Various institutions are involved in prosecuting terrorist attacks as acts to be suppressed and/or prevented in the national sphere. Each with its own particular competences, they cooperate in combating this phenomenon whose consequences are unforeseeable. The organisations with the greatest power in this field are, on the one hand, the courts and tribunals, which basically try cases of terrorist offences in accordance with the Penal Code and, if appropriate, establish the penalties for the offenders; and, on the other hand, the state law enforcement bodies or police authorities which either suppress crimes of this kind or thwart their commission.

2.1. Judicial institutions

Article 117 paragraph 3 of the Spanish Constitution⁷⁸ vests the exercise of judicial power, consisting of passing and enforcing judgments, in the judiciary. This apparently simple formula for conferring competences is not directly applied in practice, since the Spanish judiciary is comprised not of a single authority but of a host of bodies that vary greatly in their structure and powers, though they can all be summed up by the capacity to judge⁷⁹. This organisational

⁷⁷ See <http://www.guardiacivil.org/terrorismo/documentos/normativaautonoma.jsp>.

⁷⁸ Article 117.3 of the Spanish Constitution, included in Title VI, On the Judiciary, establishes that "The exercise of judicial authority in any kind of action, both in passing judgment and having judgments executed, lies exclusively within the competence of the Courts and Tribunals laid down by the law, in accordance with the rules of jurisdiction and procedure which may be established therein".

⁷⁹ ANDRÉS IBAÑEZ, P. and MOVILLA ÁLVAREZ, C., *El Poder Judicial*, Ed. Tecnos, Madrid 1986, p. 201 (The Judiciary).

structure stems from reasons of geography, the need to adapt justice to those who are judged, and of subject matter, given the varying nature of the conflicts on which judicial and procedural decisions can be issued, as these proceedings are divided into several compartments which can, and sometimes should, be dealt with by different judicial bodies.

These characteristics compel us to ask, first, what the role of the Spanish judiciary is in fighting terrorism and, second, which of the judicial bodies are involved in these cases.

In answer to the first question, the function of the judiciary in fighting terrorism is based on hearing cases which, in principle, constitute this criminal offence, assessing them and, if all they are found to display all the elements of the offence in question, deciding on the punishment imposed on the perpetrator, accomplice or participant, if applicable. In other words, courts and tribunals perform the judicial function conferred on them: they pass and enforce judgments.

In performing this task the principles enshrined in the Spanish judicial system must be respected, as it is they which determine which particular courts and tribunals can act in each case and allow us to answer the second question. These principles are:

- Geographical, bearing in mind the territorial scope of the jurisdiction of a certain judicial body.
- Material, based on the nature of the case to be heard by a judicial body, which is what determines the different existing areas of jurisdiction: civil, criminal, administrative, labour, social, commercial, etc.
- Hierarchic, establishing the bodies that review previous decisions issued by others or the attribution of the different parties to the same proceedings.

Generally speaking, in accordance with these principles, the Spanish courts and tribunals are competent to act in trials conducted on Spanish territory and in those where the perpetrators and victims of the offence are Spaniards, foreign nationals, or Spaniards and foreign nationals, and the specific court that hears each case is determined pursuant to the jurisdictional rules laid down in the Code of Criminal Procedure and the Organic Law on the Judiciary⁸⁰, which effectively confer the judicial function on the Spanish judicial bodies⁸¹.

These rules of conferral of competences, which require the property under dispute, the nationality of the litigators or injured parties and the type of offence committed in the relevant area of jurisdiction to be taken into account, do not apply to terrorist offences, which, as special

80 Title II of Book I of the Code of Criminal Procedure and Title IV of Book II of Organic Law 6/1985, of 1st July, on the Judiciary.

81 LORCA NAVARRETE, A.M., *El proceso penal de la Ley de Enjuiciamiento Criminal: una propuesta para preterir el modelo inquisitivo de la Ley de Enjuiciamiento Criminal*, Dykinson, Madrid, 1997, pp. 37-43 (*The Criminal procedure of the Spanish Criminal Procedure Act: a proposal to save the inquisitive procedure*).

criminal offences, can be prosecuted by Spanish courts irrespective of the nationality of the person who committed them and the place where they were committed.

This explains why, since 1977, when the so-called tribunal and courts of public order were abolished and new pre-trial investigation courts were established in Madrid⁸², the Audiencia Nacional and the Juzgados Centrales de Instrucción have been responsible for hearing cases of terrorist offences.

The rules that provide the legal basis for this conferral of competences have varied over the years owing to the normal functioning of the legislative process. As a result, depending on the period in question, the jurisdictional powers of the Audiencia Nacional and of the Juzgados Centrales de Instrucción in terrorist matters were based on a specific rule of the judicial bodies in question⁸³ or regulating these offences⁸⁴, on the Organic Law on the Judiciary and/or on the Code of Criminal Procedure.

The distribution of competences between these two bodies, which enjoy jurisdiction throughout Spain and are based in Madrid, stems from three rules:

- Article one of Royal Decree-Law 3/1977, of 4th January, on jurisdictional competence in terrorist matters⁸⁵.
- Title II of Book I of the Code of Criminal Procedure, headed Concerning the competence of judges and tribunals in criminal matters.
- Title IV of Book II of the Organic Law on the Judiciary, which deals with the composition and powers of the judicial bodies.

82 Cf. BOE 4 of 5th January 1977: Royal Decree Law 2/1977, of 4th January, abolishing the Tribunal and Courts of Public Order and establishing two new pre-trial investigation courts.

83 BOE 4 of 5th January 1977: Royal Decree Law 1/1977, of 4th January, establishing the Audiencia Nacional and BOE 283 of 26th November 1983: Organic Law 12/1983, of 16th November, modifying the competences of the Audiencia Nacional repealed by the Organic Law on the Judiciary of 1985.

84 BOE 156 of 1st July 1978: Royal Decree Law 21/1978, of 30th June, on measures relating to offences committed by armed groups and bands, article 2, repealed by Law 56/1978; BOE 293 of 8th December 1978: Law 56/1978, of 4th December, on measures relating to offences committed by organised and armed groups, article 5, which ceased to be in force in en 1980, after being extended by Royal Decree Law 19/1979, at which point it was replaced by Law 11/1980; BOE 289 of 3rd December 1979: Royal Decree Law 19/1979, of 23rd November, modifying Royal Decree Law of 4th January 1977, establishing the Audiencia Nacional and extending the validity of the Law of 4th December 1978, on measures relating to offences committed by organised and armed groups; BOE 289 of 2nd December 1980: Organic Law 11/1980, of 1st December, suspending constitutional rights owing to alleged commission, prior to prosecution, article 6, repealed by Law 9/1984; BOE 3 of 3rd January 1985: Law 9/1984, of 26th December, on measures against the action of armed bands and rebel or terrorist activities, article 11, repealed by Law 3/1988; BOE 126 of 26th May 1988: Organic Law 3/1988, of 25th May, amending the Penal Code in matters of offences related to the activity of armed bands or terrorist or rebel elements, repealed by Law 10/1995, but failing to establish new rules in this respect.

85 Although this Royal Decree-Law was repealed by Organic Law 9/1984, of 26th December, on measures against the action of armed bands and terrorist or rebel activities, it remains in force since the latter was in turn repealed by Organic Law 3/1988, of 25th May, amending the Penal Code in matters of criminal offences related to the activity of armed bands or terrorist or rebel elements. Cf. BOE 4 of 5th January 1977: Royal Decree Law 3/1977, of 4th January, on jurisdictional competence in terrorist matters.

These rules make up a system according to which it is the responsibility of:

- the Juzgados Centrales de Instrucción:
 - a. To examine terrorist cases that go on to be tried by the Criminal Division of the Audiencia Nacional.
 - b. To initiate the procedure for executing the European arrest and surrender warrants, and to decide on the surrender if the wanted person gives his or her consent and if the public prosecutor's office finds no reason to refuse or qualify the surrender.
 - c. To handle passive extradition proceedings in general and, consequently, those involving terrorists or people belonging or linked to organisations or groups of this kind.
- and of the Criminal Division of the Audiencia Nacional:
 - a. To try cases involving particularly serious offences, including acts of terrorism affecting more than one autonomous region or directed against the King, Queen, Prince or high authorities of the nation or government, as well as those committed outside Spain.
 - b. To conduct criminal proceedings based on offences of this kind initiated abroad; to enforce judicial decisions issued in these proceedings or custodial sentences imposed by these courts where there is an international convention conferring these competences on Spain.
 - c. To decide whether or not to surrender people against whom European arrest and surrender warrants are issued if the wanted person does not agree to his or her surrender or if the public prosecutor's office finds cause for refusing or qualifying the surrender.
 - d. To hear certain appeals, specifically those lodged against the decisions of the Juzgados Centrales de lo Penal (Central Criminal Courts) and Juzgados Centrales de Instrucción.

Both bodies can also hear cases involving offences related to those which they are expressly competent to try. Article 17 of the Code of Criminal Procedure lists the following as related offences:

- Those committed simultaneously by two or more persons together, provided that the latter fall under the jurisdiction of various several ordinary or special judges or tribunals, or could fall under their jurisdiction given the type of the offence.

- Those committed by two or more people in different places or at different times where there was a prior arrangement for their commission.
- Those committed as a means of perpetrating others or facilitating their execution.
- Those committed in order to secure the impunity of other offences.
- The various offences with which a person is charged when proceedings are brought against this person in connection with any of these offences if, in the opinion of the court, they are similar or related and no judgment has previously been delivered on them.

The Supreme Court may also take part in fighting terrorism, specifically its second chamber that is devoted to criminal cases, as a judicial body that is hierarchically superior to the rest of the Spanish courts and tribunals because it is empowered to:

- Investigate and rule on cases involving terrorist offences directed at people holding particularly important public positions, such as: president of the Government, presidents of Congress and the Senate, president of the Supreme Court and of the General Council of the Judiciary (the same person), president of the Constitutional Court, members of Government, congressmen and senators, members of the General Council of the Judiciary, judges of the Constitutional Court and Supreme Court, presidents of the Audiencia Nacional and any of its divisions and of the regional Superior Courts of Justice, the attorney general, court prosecutors of the Supreme Court, president and members of the Court of Auditors, president and members of the Council of State, the Ombudsman and judges of the Audiencia Nacional or Superior Courts of Justice.
- Settle any appeal for annulment, for judicial review or other extraordinary appeals in criminal matters, including those filed against decisions based on terrorist offences.

Despite the foregoing, it may occur that courts and tribunals of a lower rank than those mentioned above⁸⁶ begin to hear a case in accordance with the usual criteria of conferral of competences and that, during the investigative stage, terrorist motivation is identified. In such cases, the rules of the Code of Criminal Procedure⁸⁷ and Organic Law on the Judiciary⁸⁸

86 These courts and tribunals of a different rank to the two mentioned complete the Spanish judicial system and could erroneously begin to hear cases involving terrorist offences on the basis of the general rules of competence are, in accordance with Spain's territorial distribution:

- In the municipal sphere, the Juzgados de Instrucción (courts of pre-trial investigation).
- At the provincial level, the Juzgados de lo Penal (criminal courts) or the Audiencia Provincial (provincial court).
- Within the autonomous communities, the Tribunales Superiores de Justicia (superior courts of justice)
- Throughout the country, the Juzgados Centrales de lo Penal (central criminal courts).

87 Cf. Chapter II Concerning questions of competence between ordinary judges and tribunals, Title II, Book I of the Code of Criminal Procedure.

88 Cf. Chapter II Concerning conflicts of competence, Title III, Book I of the Organic Law on the Judiciary.

regulating conflicts of competence would be applicable, the result being that the investigative stage of the case could be conducted by judicial bodies other than the Juzgados Centrales de Instrucción, but the judgment would always be passed by the courts of the second chamber of the Audiencia Nacional.

Apart from these state institutions, it is appropriate to outline the role played by other particularly important figures or organisations in Spanish court proceedings, such as:

First, the public prosecutor's office, whose main role is to promote the action of justice in defence of legality, citizens' rights and public interest protected by law, either *ex officio* or *ex parte*, and to ensure the independence of the courts and tribunals and strive to satisfy social interests before the latter.

Second, the Ministry of Justice, which is responsible for preparing, directing and implementing Spanish government policy in general and, as a part of the latter, Spanish policy towards international terrorism. In this connection it deals with government relations with the administration of justice, the General Council of the Judiciary and the public prosecutor's office, the promotion of legislation on criminal matters and international judicial cooperation with other states and international organisations. It is furthermore designated by the Spanish law on the European Arrest and Surrender Warrant as Central Authority⁸⁹ in charge of assisting the competent judicial authorities, facilitating the exchange of information between the states and providing translation, administrative and practical services.

Lastly, a European Union body which has its own legal personality and, on account of its characteristics and functions, acts as an instrument of judicial cooperation aimed at achieving a high degree of security in a true Area of Freedom, Security and Justice. This is Eurojust⁹⁰, a unit comprised of national prosecutors, magistrates or police officers with equivalent competence who are temporarily lent by each Member State, according to national law, for the purpose of strengthening the fight against serious crime, organised or otherwise, including terrorism and of which terrorism is a main reflection. To achieve this aim, Eurojust is entrusted with the task of facilitating appropriate coordination and cooperation between national authorities and therefore performs judicial work consisting chiefly in providing advice both to Europol, its counterpart police agency, and to national and community authorities, for example by supplying information on the practical application of international conventions on judicial assistance, extradition and recognition of foreign criminal judgments, among other things⁹¹.

⁸⁹ Article 2.3 of Law 3/2003.

⁹⁰ OJEC L 63 of 6th March 2002: Council Decision of 28th February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime.

⁹¹ TIRADO ROBLES, C., Eurojust: La coordinación de la cooperación judicial penal en la Unión Europea. Ed. Real Instituto de Estudios Europeos, Monografías no. 4-2002. Zaragoza p.52 (Eurojust: The coordination of the EU judicial cooperation in criminal matters)

Its role in combating terrorism therefore stems from the fact that it is conceived as a place for the exchange of information and a centre for coordinating community judicial cooperation in criminal matters. The fact that it is comprised of officials of the Member States rather than European officials makes it effective in the Member States.

With respect to the regulation of terrorist offences and the judicial bodies involved in investigating and prosecuting them, it is necessary to point out that:

- Organic Law 4/1988 amending the Code of Criminal Procedure only makes express reference to the competence of the Audiencia Nacional and Juzgados Centrales de Instrucción in terrorist matters in a transitional provision and not in its articles, while the Code of Criminal Procedure makes no mention of terrorist offences.
- Nor does Organic Law 6/1985 on the Judiciary explicitly state that terrorist offences fall within the competence of the criminal division of the Audiencia Nacional (article 65). These offences must be understood to be included among the competences of this court on the basis of paragraph 7 of that same provision, which states that the court “*shall hear cases involving any other matter conferred upon it by law*”.

It is worth underlining these absences, particularly since it is impossible to ignore Spain’s long history of terrorism and the importance of clear and precise regulations establishing the system of conferral of competences in this matter. Especially when the vast majority of doctrine is of the opinion that “*it is not unwarranted to believe that the true reason for the creation of the Audiencia Nacional and Juzgados Centrales was to confer on them the responsibility for investigating and passing judgment in terrorist trials*”⁹².

2.2. Police institutions

The agencies commonly known by society as a whole as police authorities are the second type of bodies with sufficient capacity to intervene efficiently in the 21st century war on international terrorism. They do so within their scope of action, by investigating and prosecuting terrorist offences defined by law with a view to either suppressing or preventing the effects of this type of organised crime.

The term “police authorities” actually refers to the law enforcement agencies (called “security forces and corps” in Spain), including those that are statewide—the National Police Force⁹³

⁹² ANDRÉS IBAÑEZ, P. and MOVILLA ÁLVAREZ, C., op. cit p. 219.

⁹³ Organic Law 2/1986 merged the former forces, the Higher Police Corps and National Police, into one, the current National Police Corps. In practice, this force continues to be referred to incorrectly as the National Police.

and Civil Guard—and the regional and local police forces.

To carry out these tasks, the state law enforcement agencies, which are accountable to the government, are entrusted by the Spanish Constitution (article 104) with two basic missions: to protect the free exercise of rights and freedoms and to guarantee the safety of citizens by performing the following tasks⁹⁴:

- a. To ensure compliance with laws and general provisions by executing orders received from the authorities, within the scope of their respective competences.
- b. To assist and protect people and ensure the conservation and custody of property that is endangered for any reason.
- c. To carry out surveillance on, and protect, buildings and public facilities that so require.
- d. To ensure the protection and security of high-ranking personalities.
- e. To maintain and, if necessary, re-establish order and public safety.
- f. To prevent the commission of crime.
- g. To investigate offences in order to discover and arrest those allegedly guilty, ensure the instruments, effects and evidence of the offence, placing them at the disposal of the competent judge or court and to draw up the relevant technical and forensic reports.
- h. To gather, receive and analyse any data relevant to order and public safety and to study, plan and implement crime-prevention methods and techniques.
- i. To cooperate with the civil protection services in cases of serious risk, disaster or public calamity under the terms established in the legislation on civil protection.

It is obvious that the state law enforcement agencies can perform any of these tasks in order to combat international terrorism, as not only are terrorist acts criminal offences in themselves which, as breaches of criminal law, allow these agencies to act on the basis of the competences laid down in a), f), g), h) and i), but in most cases their effects call for action that also requires the capabilities listed in sections b), c), d) and e).

These agencies, whose functions, statutes and basic principles of action are laid down in Organic Law 2/1986 of 13th March (on Security Forces and Corps), are made up of professionals who perform the aforementioned tasks across the country and comprise:

The National Police Corps (Cuerpo Nacional de Policía, CNP), a civil force of armed officers, whose current structure and name originate from the Spanish Constitution of 1978⁹⁵, is under

⁹⁴ BOE 63, of 14th March 1986: Organic Law 2/1986, of 13th March, on the Security Forces and Corps (article 11).

⁹⁵ Article 104 of the Spanish Constitution of 1978 is the first legal provision to refer to the system and composition of the current law

the direction of the Minister of the Interior and operates in the provincial capitals and urban centres determined by the central government⁹⁶. The distribution of the territory between the National Police Corps and Civil Guard (the second agency which will be dealt with below) is generally done on the basis of number of inhabitants of each town/city. The National Police Corps is also entrusted with certain tasks (article 12, Organic Law 2/1986) that can be linked to the fight against terrorism:

- Monitoring the entry into and departure from Spain of Spanish and foreign nationals.
- Those laid down in the legislation on aliens, refuge and asylum, extradition, expulsion, emigration and immigration.
- Cooperating with and providing assistance to police from other countries, pursuant to treaties or international agreements on laws, under the direction of the Ministry of the Interior.

It should be pointed out that the National Police Corps has a number of special units trained to carry out very specific functions. Of these, the following are particularly significant on account of their contribution to the fight against international terrorism and its effects:

- The NBC unit, a task force that is in turn made up of various special units. In this respect Spain is one of several countries—the United States, France, Germany, Israel and Japan—that are pioneers in setting up expert police groups designed to intervene in incidents caused by non-convention aggressions, in other words technological risks, be they radiological, biological or chemical. This measure is clearly intended to provide a response to the new types of crime arising from this technology, namely NBCR terrorist offences.
- The TEDAX unit, a task force responsible for deactivating explosives that is particularly useful in preventing and thwarting terrorist acts involving explosive devices, which are widely used not only by nationalist terrorist groups in Spain but also, and especially, by international terrorists.
- Police intervention units, which are prepared to act in cases of prevention and imminent danger or serious disturbances to public security, as occurs when there is a warning of a possible terrorist attack or when an attack has been carried out.

enforcement agencies, as it states: The Security Forces and Corps serving under the Government shall have as their mission the protection of the free exercise of rights and liberties and the guaranteeing of the safety of citizens. An organic law shall determine the duties, basic principles of action and statutes of the Security Forces and Corps.

⁹⁶ An exception to this general rule of territorial demarcation is found in article 11.3 of Organic Law 2/1986, according to which the National Police Corps may perform the tasks of investigation and information gathering referred to in subparagraphs g) and h) throughout the country. The Civil Guard may also operate outside its territorial limits under the order of a court or prosecutor, or, in exceptional circumstances, when efficiency so requires, in which case the government representative or delegate must be informed by the commanders of the Corps.

- The judicial police units referred to in article 126 of the Spanish Constitution⁹⁷, which are set up by the Ministry of the Interior on the basis of law enforcement officials with suitable specialised training. The officials belonging to these units perform this work exclusively, although they may also conduct crime-prevention tasks or other law enforcement missions entrusted to them if circumstances require it. These units have a number of special features:
 - a. On the one hand, their members are organisationally under the direction of the Ministry of the Interior and in operational matters are accountable to the judges, courts or prosecutors examining the case to which they are assigned.
 - b. On the other, in order to ensure the proper performance of their tasks, their members cannot be removed from the specific investigation they are carrying out until it is completed or until the stage in the proceedings that gives rise to it ends unless it is on the decision or authorisation of the relevant judge or prosecutor. In investigations or procedures carried out on the instructions and under the supervision of criminal judges, courts or prosecutors, they act as delegates of these judges, courts and prosecutors and may require assistance from the central authorities and, if necessary, from individuals.

The **Civil Guard (Guardia Civil, GC)**, a military institute of armed officers—established by the Duke of Ahumada in 1844 during the reign of Isabella II—is accountable to the Minister of the Interior in respect of the performance of the functions conferred on it under the law, and to the Minister of Defence in respect of the performance of military missions entrusted to it by the latter or by the government. It operates in the rest of Spain and its territorial waters, though if necessary it can also do so in areas covered by the National Police Corps provided that it informs the latter of this. It can operate outside its territory on the orders of a court or prosecutor or, under exceptional circumstances, when required by the needs of the service. Other activities the Civil Guard may perform with a view to monitoring, preventing and suppressing actions that may be related to terrorist offences are laid down in current legislation on: weapons and explosives; surveillance of traffic, transit and transport on public highways; the safeguarding of road networks, coasts, borders, ports, airports and centres and facilities that so require; and escorting prisoners and detainees between towns or cities.

In order to perform these tasks, throughout its over 150 years of existence the Civil Guard has progressively set up a number of specialist operational and support units. The most noteworthy are the Traffic, Air, Maritime, Mountain, Cytology, Information and Judicial Police services

⁹⁷ Article 126 of the Spanish Constitution states: The police of the judiciary are accountable to the judges, the Courts and the Public Prosecutor when discharging their duties of crime detection and the discovery and apprehension of criminals, under the terms to be laid down by the law.

and units such as the Special Intervention Unit, the Explosives Deactivation Unit, the Rural Action Unit and the Rural Security Unit, among others. All these units and services work in parallel but in coordination with the territorial units deployed across Spain, through the very well known Civil Guard posts.

All these factors make the Civil Guard Corps Spain's main law enforcement agency⁹⁸ with a very significant role in combating emerging dangers, particularly terrorism, that undermine not only the internal security of our democratic system but also international stability and peace. The action of this agency, which has extensive experience in ETA terrorism, in the broader framework of fighting the terrorist phenomenon in general, consists of arresting alleged terrorists and a further three types of activities: investigation and intelligence⁹⁹, prevention, and antiterrorist operations.

- "Information" in the sense of the gathering of all kinds of information in order to obtain deeper knowledge of terrorist organisations is, in Spain's experience, the most effective means of combating this type of crime, as it makes it possible to fight against its tactical and strategic initiatives. In this connection, the Civil Guard has its own internal information service¹⁰⁰ that is furthermore divided into territorial units deployed in each province, which are in charge of general affairs, in specialised units.

The purpose of the Information Service is to organise, direct and manage the gathering, reception, processing and development of information relevant to public order and security within the scope of the functions assigned to the Civil Guard and the operational use of this information, especially in antiterrorist matters, and the establishment and maintenance of operational liaisons, coordination and collaboration with other national and international information services.

The functions of these special units, which underwent changes following the attacks of 11 March 2004¹⁰¹, are distributed as follows:

- a. The first special central unit (UCE-1), which has traditionally been responsible for gathering and analysing information related to ETA terrorism, is in charge of combating the most serious terrorist threats to Spain's internal security.

98 COSIDÓ, I., (1) Spanish Policy Against Terrorism: The Guardia Civil and ETA, Grupo de Estudios Estratégicos GEES, Analysis no. 28 of 23 October 2002, p. 6.

99 In the police environment, intelligence a word inherited from the military units are known as information units.

100 Strictly speaking, an intelligence/information service is a state organisation responsible for obtaining knowledge and informing the government about anything that may affect a state's security, stability and defence, in both the external and internal aspects, in order to assist the political leaders in making the most appropriate decisions in these fields. A Civil Guard service of this kind only differs from the state service in that it informs the high commands of this police corps.

101 RODRÍGUEZ, J. A., La Guardia Civil unifica el contraespionaje y la lucha contra el terrorismo islamista, Diario El País, 12 August 2004 (The Guardia Civil unifies counterespionage and the fight against Islamic terrorism).

- b. The second of these units (UCE-2) is charged with performing the same task in relation to other manifestations of terrorism both nationally and internationally and is specialised very particularly in terrorism of a religious nature such as Islamist terrorism. In addition, since the restructuring was carried out, it has dealt with organised criminal groups with the potential to destabilise and organisations dealing in illegal immigration, which are sometimes also linked to the potential perpetrators of offences motivated by terrorism.
 - c. The third unit (UCE-3) is assigned with the tasks of gathering information on and monitoring and combating socially dangerous groups such as sects, racist, xenophobic and anti-Semitic groups and urban tribes, in addition to counterintelligence and security of the corps, cyber-terrorism and information technologies.
 - d. These units are backed by an Operational Support Group (GAO), which is specialised in implementing operations designed to obtain this information. Specifically, they specialise in tracking and are equipped with cutting-edge police investigation technology.
- Prevention encompasses any type of action designed to prevent the execution of terrorist activities, particularly monitoring and safeguarding security at national airports and key state buildings and the security of high dignitaries of Spain or present in the country. All the members of the Civil Guard take part in this task, particularly those belonging to the Public Security Units.
 - Antiterrorist operations are the responsibility of Civil Guard units specially designed and trained to combat terrorism, specifically:
 - a. The Special Intervention Unit (UEI), which is prepared to perform high-risk missions in cases of hostage taking, kidnappings, the arrest of dangerous criminals, the immediate protection of authorities facing imminent threats, and other tasks requiring specialist qualifications. With some 100 men, it is considered a small unit but is trained to the highest level and possesses the most sophisticated equipment. It is based in Valdemoro (Madrid).
 - b. The Rapid Action Unit (UAR), which was specially set up and trained to carry out either antiterrorist actions or missions requiring rapid intervention owing to their risk levels. It also takes part in particularly dangerous international operations. The unit is comprised of approximately 600 men and consists of a Rapid Action Group (GAR) with four companies, whose geographical area of responsibility is limited to the Basque provinces and Navarre, and a Special Training Centre which trains not

only this unit but also other agencies requiring specific skills to take part in special operations. The Headquarters is in Logroño (La Rioja), but the force is deployed throughout the three Basque provinces and Navarre.

- c. The Explosives Deactivation Services (SEDEX) are an essential complement in fighting terrorism at all levels. These services are made up of around 250 specialists divided into 40 teams distributed across the country. Terrorist organisations' use of non-conventional weapons nowadays requires these services to continue to develop their capabilities in order to address this asymmetrical war.
- d. Other services such as Cytology, the Subsoil Reconnaissance Unit and the Rural Security Group also contribute to antiterrorist operations.

Finally, it is essential to the fight against terrorism for the Civil Guard to continue to be capable of playing a role beyond the national environment by extending its competences to the European Union sphere. In this environment its members have taken part:

- In the field of the so-called First Pillar or community pillar, in fighting fraud, participating in the European Anti-Fraud Office (OLAF), in development cooperation matters by appointing an official as a national expert in the “Europe-Aid” Co-operation Office and in strengthening the Union's external borders by organising its coordination centre for sea borders, to cite a few examples.
- In relation to the Common Foreign and Security Policy, the Second Pillar, this force takes part in civil crisis-management missions—some of these crises can be triggered by large-scale terrorist attacks—and has members in the police planning unit at the Council Secretariat General, in Spain's Permanent Representation to the EU (COREPER) and in the Situation Centre or SITCEN, which controls all the European Union police missions.
- With respect to the current Third Pillar, Police and Judicial Cooperation in criminal matters, which requires the greatest efforts in order to confront the terrorist threat, the Civil Guard attends the meetings of the Police Chief Task Force and working groups to discuss and find new police cooperation procedures that are more effective than those used so far and, above all, appoints some of its members to the headquarters of the European Police Office (Europol) in The Hague to perform their counterterrorist tasks, which are increasingly necessary.

In addition to these actions, it should be stressed that the Civil Guard has taken steps in the European sphere to enable two further bodies to be set up:

- An *External Projection Unit* with suitable human and material resources and therefore better equipped to act in crisis scenarios requiring its intervention.
- The so-called *European Gendarmerie* which, based on the initial commitment of five countries with police forces with a military status (France, Italy, Netherlands and Portugal, apart from Spain)¹⁰², should become fully operational during 2005. It was set up to provide Europe with the necessary capability to conduct all types of police missions during crisis-management operations.

In addition to the National Police Corps and the Civil Guard, the state law enforcement agencies through which the government maintains public security—the exclusive responsibility of the state—other authorities also participate in maintaining order and protecting the state. These are the autonomous regions and local authorities. They do so by regulating their respective police forces in their Statutes of Autonomy, Local Laws and Organic Law 2/1986.

There are therefore another two agencies which, each operating within the territorial area for which they were established, perform functions that are similar and/or complementary to those performed by the state law enforcement agencies. These are the **regional police forces** and **local police forces**.

- The regional police forces, whose establishment was made possible by Organic Law 2/1986 (articles 37-44) though it was also provided for in the respective Statutes of Autonomy, perform investigative and surveillance tasks in their respective territories, either independently or in conjunction with the state law enforcement agencies¹⁰³. At present only three autonomous regions have developed the possibility of setting up their own police corps. These are: the Catalan corps, called Mossos d'Esquadra; the Basque police, known as the Ertzaintza; and the regional police corps of Navarre, known as Policía Foral.
- The local police forces referred to in Title V (articles 51-54) of Organic Law 2/1986 are generally empowered to operate only within the territorial area of the municipality to which they belong. The number of municipal police corps in Spain is much higher than that of regional police forces, since most Spanish municipalities have set up their

respective law enforcement agencies. There are currently some 50,000 local police officers throughout the country.

102 ESQUIVEL LALINDE, E., La nueva Fuerza de Gendarmería Europea (FGE), Real Instituto Elcano de Estudios Internacionales y Estratégicos, Analysis of 13 April 2005 (The new European Gendarmerie Force).

103 Cf. Article 42 of Organic Law 2/1986, introduced by the amendment made by Organic Law 1/2003, of 10th March, for the guaranteeing of democracy in Councils and the Security of Councillors.

The following diagram shows the structure, breakdown and number of officers for Spain's law enforcement agencies.



In addition to these law enforcement agencies, in Spain there are two organisations which, on account of their responsibilities, are intended to provide fundamental support to ensure that the police authorities have reliable information when acting in respect of terrorists and acts of terrorism.

The **National Intelligence Centre (Centro Nacional de Inteligencia¹⁰⁴, CNI)**, as the Spanish intelligence service, is the public organisation responsible for supplying the president of the government and the government of the nation with information, analyses, studies or proposals that enable any danger, threat or aggression against Spain's independence or territorial integrity, national interests or stability to be prevented and avoided. It can be inferred that one of the specific areas of responsibility of the CNI today is precisely the threat of international terrorism. This phenomenon requires the Spanish secret service, which has approximately 2,000 agents¹⁰⁵,

104 The National Intelligence Centre replaced the former Higher Centre for Defence Information (CESID) in 2001. Since 2002 the Spanish intelligence service has been governed by regulations with the status of laws, whereas previously its rules had only the status of regulations. See BOE 109, of 7th May 2002:

- Law 11/2002, of 6th May, on the National Intelligence Centre, Royal Decree 436/2002, of 10th May, establishing its organisational structure and Royal Decree 593/2002, of 28th June, on the budgetary system.

- Organic law 2/2002, of 6th May, regulating the prior judicial control of the National Intelligence Centre.

105 AYLLÓN, L., Dos mil agentes para prevenir las amenazas contra España, ABC Periódico electrónico, 30th March 2003 (Two thousand agents to prevent threats against Spain).

to extend its functions beyond the strict needs or interests of national defence and the armed forces. It is significant that experts in fighting terrorism agree that terrorism is the most serious threat to security and freedom in all democratic States¹⁰⁶.

The current relationship and coordination between the CNI and other state law enforcement agencies can be understood by analysing how it operates. Once the Centre, using its own means and procedures, has obtained information (which does generally not circulate through conventional channels) on facts that require an immediate response or constitute an offence, as in the case of terrorism, it conveys this, depending on its nature:

- To the Executive, to back or supplement its decisions.
- To the law enforcement agencies so that they take appropriate measures.

Actually, much of the work of the members of the CNI is not conducted on the “battlefield” but in the office, which is where they collect and analyse the information that will subsequently enable either the National Police Corps or Civil Guard to perform missions on the ground.

The **National Centre for Antiterrorist Coordination (Centro Nacional de Coordinación Antiterrorista, CNCA)** was set up in Spain in response to the attacks of 11th March 2004¹⁰⁷ as one of several measures to confront the real and immediate threat of international terrorism. This Centre is comprised of 36 members, 18 of whom belong to the National Police Corps, a further 18 to the Civil Guard and 5 to the National Intelligence Centre, while 6 are civil servants, 5 official translators and 2 porters. It is designed as a professional, non-political structure¹⁰⁸ that is organisationally under the direction of the Secretariat of State for Security and accountable to the Executive Committee for Unified Command as regards operational matters. Its basic aim is to receive, process and assess the strategic information held by the information services of the police, Civil Guard, CNI, the police of other countries and international agencies on the types of terrorism that constitute a risk for Spain, in order to be able to:

- Have a permanently up-to-date assessment of the terrorist threat.
- Maintain the initiative in the antiterrorist fight.
- Identify the possible scenarios for intervention.
- Plan a response to such events.

106 COSIDÓ, I., (2) An Atlantic Intelligence Community (Presentation held at the NATO Advanced Research Workshop Intelligence Corporation and Exchange, Vilémov Castle, Czech Republic, May 7-10, 2004), Grupo de Estudios Estratégicos GEES, Analysis no. 64, May 8, 2004, p. 1.

107 The establishment of this body was agreed on at the meeting of the Council of Ministers on 28th May 2004.

108 EFE, El Gobierno crea el Centro Nacional de Cooperación Antiterrorista, Diario El Mundo, 28th May 2004 (Spanish Government creates the National Centre for Antiterrorist Cooperation).

The operational missions stemming from the work of this Centre will thus be performed by the state law enforcement agencies. That is to say that the CNCA, currently directed by Miguel Valverde, will in no way be a sort of third law enforcement agency but a coordination structure, the second of its kind after its British counterpart¹⁰⁹ and with an operations room that is active 24 hours a day, which aims to ensure that the information handled by the Spanish law enforcement agencies and intelligence services is complementary and shared in order to improve the fight against this phenomenon and leave no loose ends in the prevention of potential future attacks.

Lastly, it cannot be forgotten that there is one agency that is not Spanish but European and which also participates in fighting terrorist activities irrespective of whether they are carried out at European level or nationally. This is the **European Police Office**¹¹⁰, more commonly known by its shortened form, Europol. It is an intergovernmental criminal police office based in The Hague and is responsible, on the one hand, for gathering and analysing information, particularly with respect to people considered to be actual or potential members of criminal organisations operating on an international scale and, on the other, for fostering the exchange of such information among the law enforcement agencies of the various European Union Member States. In other words, it is an organisation that collaborates in combating the criminal organisations that attempt to exploit the freedoms of the global European market and enhances and improves the efficiency of relations and cooperation “*among the police of Member States*”¹¹¹.

However, its capacity to work towards preventing and fighting crime is not unlimited but restricted to a specified number of crimes, including terrorism, which are set out in the Convention establishing it. Two requirements must furthermore be met: there must be evidence of an organised criminal structure and two or more states must be affected by the criminal conduct in question. To address this threat in particular, it has a specific unit—the counterterrorism unit—which has been operating, albeit with interruptions, since 2001, after the attacks of 11/9.

Europol is therefore the leading European organisation—cooperation agency to use strict European terminology—that has been set up on the basis of the Third Pillar of the European

109 The Joint Terrorism Analysis Centre in the United Kingdom has very similar functions to those of the CNCA, since the latter was partly based on the British model Cf. RODRÍGUEZ, J.A., cit. and ALTUNA, M., España/Reino Unido: Camacho anuncia en Londres que el CNCA podrá empezar a desarrollar su tarea en otoño, Europa Press, 15th July 2004, in <http://www.lukor.com/not-esp/nacional/0407/15195636.htm>, (Spain and United Kingdom: Camacho announces in London CNCA's beginning of functions in autumn).

110 The European Police Office, set up by a Convention signed on 26th July 1995, did not become operational until 1st July 1999. OJEC C 316 of 27th November 1995: Convention on the Establishment of a European Police Office (Europol Convention).

111 FUENTES i GASÓ, J.R.: Alemania, un modelo de policía y seguridad para Europa. Ed. Cedecs, Serie de Derecho Administrativo. Barcelona, 2002, p. 518 (Germany, a police and security model for Europe).

Union in recognition of the fact that crimes do not stop at international borders, whereas legal jurisdictions do. It performs its tasks through:

- National units, which liaise between Europol and the competent law enforcement agencies of the Member States. Since May 2004 these have numbered 25, one for each European Union State. They abide by national law when liaising with the agencies competent in these matters in their respective states. In Spain the role of national unit is assigned to the Police Directorate General, which operates through the Criminal-Europol national intelligence service of the Judicial Police Commissariat General.
- Liaison officers. Each European Union country assigns to Europol at least one representative who, according to the respective national laws, must: be a civil servant belonging to the services in charge of preventing and combating the crimes that fall within Europol's competences; know at least two official EU languages; and be suitable for the post, having the right capabilities and skills. It is their job to facilitate contacts between the National Units and the Central Unit, defend the interests of the National Units within the Office and support the exchange of information at all levels, as well as performing any tasks entrusted to them by the Management Board. Spain has appointed members of both the National Police Corps and the Civil Guard to Europol to perform the task of liaison officers.

3. POSITION OF THE ARMED FORCES IN THE FIGHT AGAINST TERRORISM

3.1. The armed forces-security-defence triangle

The position of the Armed Forces in fighting terrorism can only be understood on the basis of the idea that these are the military forces of a state, divided into army, navy and air force, and that their purpose is to facilitate the implementation of the foreign policy of the diplomatic corps for which they make use of armed force. In a modern country like Spain, the armed forces are a bureaucratic organisation in that they are formed by professionals, adopt a highly regulated organisational structure and render a service to the community with a high degree of motivation. Furthermore, enjoying a certain amount of corporate autonomy and as part of the bureaucratic state whose ultimate justification is to satisfy citizens' needs, the armed forces are an instrument for providing an essential public service and should create and maintain security.

The armed forces can therefore be considered an organisational system with legitimate authority to act given its permanent, state-dependent, bureaucratic, professional and civilly controlled

nature. Two fundamental concepts come into play when preparing a strategy to combat terrorism, whose scope needs to be defined: security and defence.

There are many definitions of the notion of SECURITY, though if features of all are added together, the result is simple: “*security consists of a low probability of suffering an aggression*”¹¹². However, according to this concept, to affirm that a state is secure does not depend on objective data but on a subjective analysis of what each individual considers to be a risk or threat. Therefore, the meaning of national security is ambiguous and flexible, even though there is an agreement¹¹³ on the diversity of the aspects that influence its shaping. These aspects can be summed up in the so-called five dimensions of security¹¹⁴:

- Military, the core aspect of concern for national security, which embraces both states’ military capabilities and the perception of threat they have of each other.
- Political, consisting of threats against the organisational stability of states, that is, against their system of government and the internal foundations of its legitimacy, including the idea of the state itself and its national identity.
- Economic, the risk of which, in the sense of capacity of access to the resources, finances and markets that enable acceptable levels of well-being for the population as a whole to be maintained, seem the most difficult to guarantee.
- Social or societies’ capacity to face up to the diverse threats that affect both identity and national culture and are usually generated and develop within states’ own borders.
- Environmental, which calls for a security system focused on all threats deriving from natural disasters that affect each state’s local biosphere insofar as the latter is the physical cornerstone of the development of human activity in states.

The main objectives of a security policy should therefore be to prevent conflicts and wars; to preserve environmental integrity; to eliminate economic and social conditions that pose a threat to the life and security of people and states; and to anticipate and manage crises before they degenerate into armed conflicts.

112 AVILÉS FARRÉ, J., (4) Por un concepto amplio de Seguridad, published in Monografías del CESEDEN no. 55, available at <http://www.iugm.uned.es/img/publicaciones/papeles/papeles-estudiar/seguridad%20internacional/aviles-segint01.doc> (In favour of a broad concept of security).

113 This agreement is the result of the work performed by the United Nations General Assembly, which adopted a number of resolutions for this purpose: Resolution 2734 (1970) of 16th December, approving the Declaration on the Strengthening of International Security, Resolution 2993 (1972) of 15th December, on the Implementation of the Declaration on the Strengthening of International Security and Resolution 3185 (1973) of 18th December, Implementation of the Declaration on the Strengthening of International Security (A/9448).

114 BUZAN, B., *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, New York-London: Harvester Wheatsheaf, Lynne Rienner Publishers, 1991. p. 116-134.

DEFENCE is a term that is inseparably linked to the requirement to preserve the subject to which it refers, be it an individual, a group, a state or other body. If the subject to be protected is the state, defence involves a set of measures directed at guaranteeing the essential values enshrined in the concept of security, the highest value protected by law. Although the conservation of the state can be guaranteed by diverse methods and instruments, the general tendency is to do so according to the different meanings of the term “defence”¹¹⁵:

- Organisational, namely the organisation of the armed forces.
- Functional, involving the establishment of a relationship between defence and armed action in response to an external aggression.

Therefore, the link between defence and the action of the armed forces, and between both and the guarantee of state security is undeniable. This is despite the fact that the two terms, security and defence, have evolved progressively since the so-called “Cold War” to the present and are currently used in different contexts to those in which they had traditionally been employed¹¹⁶.

In the external projection of security and defence, particularly with a view to shaping a European policy, these concepts will be what states make of them, for as JAVIER SOLANA pointed out, it is only possible “*to give shape to the future if there is a community of ideals and means and solidarity to make it a reality*”¹¹⁷.

With respect to the objective examined in this section of the paper, security and defence policy needs to take into account the evolution and current threat of international terrorism when laying down the guidelines for the action of the armed forces. The guidelines established for the Spanish armed forces stem from a combination of two security and defence policies: on the one hand European policy; and on the other Spanish policy strictly speaking, plus the guidelines issued by international organisations such as NATO and the UN.

All these levels of action, which are exposed to the same changes occurring in their strategic environment, share similar security conditions. This has led them even to share a strategic defence review procedure. Indeed, the first organisation that set about drawing up a

115 ALVAREZ VEDUGO, M., *La Política de Seguridad y Defensa en la Unión Europea*, Dykinson, Madrid, 2004, p. 50-51 (European security and defence policy).

116 According to the Spanish Ministry of Defence, few things have changed as much in the past decade as the environment and conditions of security and defence. As the Defence White Paper of 2000 clearly showed, the change in the strategic landscape during the 90's was spectacular. Although in the last decade the disappearance of the traditional enemy came as a great relief in terms of military availability, it has nonetheless not ended up shaping a new order that is free from risks and threats to international stability and peace. MINISTRY OF DEFENCE, *Revisión estratégica de la Defensa*, Ministerio de Defensa, Spain 2003, p. 37 and ff. <http://www.mde.es/descarga/red.pdf> (Strategic Defence Review).

117 SOLANA, J., *La Otan y el futuro de la seguridad europea*, *Revista de Política Exterior* no. 72, November-December 1999, p. 61.

“New Strategic Concept” was NATO, who adopted it at the Washington Summit in 1990 commemorating the 50th anniversary of the establishment of the Alliance. It was subsequently perfected at the Prague Summit in 2002 by bringing the military dimension to the fight against terrorism¹¹⁸.

The European Security and Defence Policy (ESDP), an essential element of the Union’s Common Foreign and Security Policy (CFSP) that is regulated in Title V of the Treaty on European Union¹¹⁹, is based not only on the rules laid down in the treaty itself but also on a host of legal instruments that make up the related European Union secondary legislation. Notable among these on account of its influence on the fight against international terrorism is the European Security Strategy¹²⁰, which defines the European Union as a genuine strategic player that, if necessary, could develop its own missions independently.

Spain’s policy in this area has received impetus from the National Defence Directive (DDN) adopted by the previous Popular Party government, no. 1/2000¹²¹, which recommended carrying out a Strategic Defence Review. The redefinition that was sought consisted primarily in integrating defence into the broader framework of security shared with partners and allies and, secondly, in determining the military capabilities needed to meet the requirements stemming from the risks faced by today’s society. The idea is for a national security policy that has at its disposal instruments such as deterrence, cooperation, prevention, the ability to project stability, and response or reaction.

3.2. General competences of the armed forces in the fight against terrorism

On the basis of the Strategic Defence Review and the changes it has spurred, it is currently National Defence Directive 1/2004¹²², replacing the previous one, which defines Spanish defence objectives at the national and military levels and lays down the most appropriate general guidelines for achieving them. Insofar as the national and military defence of Spain is a task which, in accordance with our country’s Constitution, falls to the Spanish armed forces, both rules inspire the action of our armies.

118 Cf. SÁNCHEZ-BARRIGA FERNÁNDEZ, R., *Análisis Estratégico del Terrorismo: Presentación*, Revista Ejército de tierra español no. 767, March 2005, p. 29 (A strategic analysis of terrorism).

119 Article 17 of Title V of the TEU regulates the common European defence policy by establishing that “The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy, which might lead to a common defence, should the European Council so decide”.

120 SOLANA, J.: *A Secure Europe in a Better World*, European Security Strategy. Brussels, 12th December 2003.

121 SPANISH GOVERNMENT: National Defence Directive 1/2000, of 1st December.

122 SPANISH GOVERNMENT: National Defence Directive 1/2004, of 30th December.

Although the ultimate purpose of the army, navy and air force is to guarantee national security in the face of any risk that may endanger it, the defence function can and should be broken down into more specific tasks. Therefore, the general tasks of the armed forces are in turn reflected in secondary tasks.

Within the general framework, three types of tasks are assigned to the armed forces:

- Defence tasks which involve guaranteeing the sovereignty and independence of Spain, defending its territorial integrity, air space, waters and constitutional order by preventing any type of aggression and responding to it if necessary. In order to perform these tasks, the armed forces are organised in such a way as to be able to project their deterrence capabilities against their potential aggressors and, should this fail, are equipped with sufficient means to repel them before they cause irreparable damage. Within this general scheme, military intelligence is particularly important as it is an essential element both for shaping an effective preventive policy and for the possible implementation of action in legitimate defence.
- Tasks related to international cooperation, as it is the responsibility of the armed forces to contribute militarily to peacekeeping, stability and humanitarian assistance within the framework of the international organisations to which Spain belongs.
- Tasks that support the civil authorities of the State, by providing military resources to preserve the security and well-being of citizens, but without using force. In fulfilling this duty the armed forces perform, for example, missions to evacuate Spanish nationals abroad when their lives or interests are jeopardised by circumstances of serious instability; missions to control borders or protect communication lines; missions to capture vessels suspected of carrying drugs and dangerous substances and/or pollutants; emergency airlift missions and assistance in fire fighting missions, even in cooperation with regional authorities.

It should be pointed out that this NDD confers a further competence on the armed forces as, for the first time in Spain, it empowers them to take part in combating terrorism. This task entails contributing, along with other state and government institutions, to preserving the security and well-being of Spanish citizens in the face of what is considered a new threat with the ability to inflict damage indiscriminately—transnational terrorism that is global in its scope—specifically by providing support to the state law enforcement agencies.

When considering how this objective can be met, we find disparate strategies that can be used in combating terrorism and different roles the armed forces can play. Although the choice of the most appropriate strategy is determined by the characteristics of the conflict and by the

strategy adopted by the terrorists, two strategic antiterrorist models have traditionally been discussed¹²³:

- The Anglo-Saxon model, which dates from the nineties and conceives terrorism as a low-intensity armed conflict and the armed forces as are the main instrument for addressing it.
- The continental model, which is employed by countries like Spain and regards terrorism as a type of qualified crime that is combated exclusively by the state law enforcement agencies.

However, at the beginning of the 21st century these views have become outdated. The emergence of new players on the social scene has, on the one hand, blurred the dividing line between a state's external and internal risks and, on the other, has made it necessary to extend the scope of action of the armed forces in combating terrorism in such a way that it is no longer limited exclusively to the international framework of the Atlantic Alliance and European Union Foreign Security and Defence Policy.

As a result of the foregoing, it is now considered that in peace time the armed forces can and should contribute along with the state law enforcement agencies to stemming the terrorist threat in the following circumstances¹²⁴:

- As soon as an imminent danger to the nation is detected.

Reports of a "renegade", that is a civil aircraft being conducted in a manner that raises suspicions it is being used to carry out a terrorist attack would, for example, be a situation that required the action of the armed forces on account of the imminent potential danger. In the case of a renegade, the first people to detect the strange conduct of an aircraft would be the civil air traffic controllers, who would contact the military chain of command at the tactical level and the relevant NATO and state authorities would be informed simultaneously. Depending on how the situation evolved, the CAOC might issue a scramble order to the ground alert aircraft and would transfer these resources to the national authorities so that they would take over the decision making process, which could end with an order to bring it down.

- In preventive security functions.

The great majority of the actions carried out by the armed forces in collaboration with the state law enforcement agencies, the National Police Corps and Civil Guard, in combating

123 MORENO GONZÁLEZ-ALLER, J., *Terrorismo y Fuerzas Armadas*, Revista Ejército de tierra español no. 767, March 2005, p. 75 (Terrorism and Armed Forces).

124 MORENO GONZÁLEZ-ALLER, J., *op. cit.* p. 76-77.

terrorism probably fall under this category. This has led to regular coordination between them to protect vital infrastructures and facilities (electric power plants, reservoirs and communication networks), control land, air and sea borders, and provide suitable means of defence from possible nuclear, biological and chemical aggressions.

Examples of this collaboration are the support missions carried out in 1992 during the Barcelona Olympic Games and the Seville Universal Exhibition, in which the armed forces protected railway lines and television and radio facilities, among others; and the antiterrorist measures implemented following the attacks of 11th March and after the finding of 12 kg of explosives on the AVE high-speed railway line linking Madrid and Seville.

Another prominent example of preventive action carried out by the armed forces is the French Vigipirate system which enables human, material, civil and military resources to be mobilised in crowded places or around sensitive buildings and premises. In these cases, the members of the army, in order to free as many police officers as possible from non-specialist tasks, such as patrols and surveillance of premises, may collaborate in identifying and searching people, reinforcing checked-in luggage checks and aircraft surveillance.

- In either of the following situations:
 - a. When the law enforcement agencies are overwhelmed by the threat of terrorist groups; when they are incompetent, corrupt or fail to inspire confidence—a case which, although surprising in democratic countries like Spain, makes sense in Third World countries where these circumstances are relatively common and require the armed forces to take over tasks that are the responsibility of the police—or lack suitable capabilities for combating terrorist groups as defending society from these threats calls for specific military capabilities.
 - b. When the terrorist threat is identified beyond the borders of the state and it is necessary to seal the borders or act beyond them. The best known example of action of the armed forces in response to these circumstances is perhaps Operation Alazán in which the border between Spain and France was sealed off by the army mountain units in the eighties to prevent commandos of the ETA terrorist organisation from entering Spain clandestinely.

3.3. Specific missions of the armed forces: Petersberg and Romeo-Mike

Examples of Spanish armed forces missions stemming from the general competences conferred on them include the Petersberg missions and the Romeo-Mike mission, which are conducted in different environments and for different purposes, as whereas the former are implemented in response to specifically assessed motives under the aegis of the European Union, the latter is designed to protect possible terrorist targets and carried out on the strict orders of the Spanish government.

The term **Petersberg missions** was established in 1992 within the framework of the Western European Union (WEU) and NATO¹²⁵, to designate part of the elements (management of military crises and management of civil crises, omitting the third element, conflict prevention) that would constitute the capabilities and structures intended for the European Security and Defence Policy established in the Treaty on European Union. As European integration has progressed, these capabilities have grown and, accordingly, so have the missions attributed to the military forces. As a result, according to Title V of Amsterdam and Nice versions of the TEU, this term now encompasses:

- Humanitarian and rescue tasks.
- Peacekeeping tasks.
- The management of crises, both civil and military, including peacemaking and peace enforcement.

Article J.7 of the Treaty of Amsterdam codifies for the first time the notion of “peacekeeping” and “peacemaking” tasks in the treaty establishing an international organisation, which marks significant progress in the EU’s Common Foreign and Security Policy. However, this legal framework placed two limitations on the Union’s action: on the one hand, peace enforcement measures were excluded from the list of Petersberg tasks and, on the other, the restrictions that international law imposes on the use of force in peace operations. In contrast, no geographical limitations of any kind were imposed that could restrict the action of the European Union in conducting any type of Petersberg mission. It was the version of the Treaty of Nice of December 2000 that ventured further by overcoming the first of the aforementioned obstacles as it even allows peace enforcement operations using combat forces if necessary.

It was not until after the attacks of 11th September that the idea of including the fight against terrorism in the Treaty on European Union, together with the rest of the Petersberg missions,

¹²⁵ WEU: Petersberg Declaration, Bonn, 19th June 1992.

was raised on Spain's initiative¹²⁶. However, either for practical reasons or on legal grounds, this possibility was ruled out and replaced by the adoption of a solemn declaration for similar purposes at the Seville European Council in June 2002. This declaration states the European Union's determination to fight against this scourge both by using the mechanisms of the Common Foreign and Security Policy and the instruments of the Area of Freedom, Security and Justice, which was the first step towards redefining this type of operation.

The success of these crisis-management missions, which must be conducted with voluntary contributions from the EU Member States in accordance with the Charter of the United Nations, provided that the Atlantic Alliance is not involved, and in collaboration with NATO, depends on the strategic partnership between two components:

- The military component, which includes the 60,000 strong Rapid Reaction Force that is capable of deploying within 60 days and for at least one year; the Political and Security Committee (PSC), which is in charge of analysing international developments, helping define strategies and monitoring the implementation of the policies adopted; the committee's political-military working group which assists it; the Military Committee (EUMC), which advises the PSC and High Representative for the Common Foreign and Security Policy; and the Military Staff (EUMS), which is responsible for early warning, strategic planning and situation assessment.
- The civilian component, which became essential following the disappearance of the Soviet Union and after the outbreak of bloody conflicts proved that armed forces alone are insufficient to re-establish peace in a war zone and ensure the reconstruction of the societies in question. In this connection there is a need for additional instruments capable of deploying to stabilise the situation following a period of hostilities by re-establishing public order. These instruments include police cooperation, techniques for strengthening the rule of law, civilian administration and civil protection.

There are several examples of Petersberg operations and members of the Spanish armed forces have taken part in most of them. They include, among others¹²⁷:

- The *European Union Police Mission* in Bosnia-Herzegovina (EUPM).

126 ORTEGA, M., Petersberg tasks and missions for the EU military forces, Institute for Security Studies, February 2005, at <http://www.iss-eu.org/esdp/04-mo.pdf>.

127 See LINDSTROM, G., On the ground: ESDP operations, in GNESOTTO, N. (Ed), EU Security and Defense Policy. The first five years (1999-2004), European Union Institute for Security Studies, Paris, 2004, p. 111-130 and CARRIÓN RAMÍREZ, B., Tres operaciones PESD: Bosnia y Herzegovina, Macedonia y República Democrática del Congo, Documento de Trabajo del Instituto de Estudios Europeos de la Universidad San Pablo-CEU no. 3-2004, Madrid, 2004 available at http://www.idee.ceu.es/access.php?file=/secure/docs/publicaciones/DocumentosTrabajo/carrion_3_04.pdf (Three ESDP operations: Bosnia and Herzegovina, Macedonia and the Democratic Republic of Congo).

- *Operation Concordia* for the Former Yugoslav Republic of Macedonia, a military crisis-management mission that is now over.
- *Operation Artemis* for the Democratic Republic of the Congo, intervention in a military crisis-management process, now completed.
- *Operation Proxima*, the name given to the European Union police operation in the Former Yugoslav Republic of Macedonia.
- *Operation Althea*, a military mission of the European Union in Bosnia-Herzegovina.
- *Operation Eujust Themis*, the name of a European Union rule of law mission in Georgia.
- *Operation Eupol-Kinshasa*, a police mission conducted in the Democratic Republic of the Congo to provide assistance in setting up the Integrated Police Unit (IPU).
- *Operation Eujust Lex*, an EU integrated mission launched in March 2005 aimed at establishing the rule of law in Iraq.

Operation **Romeo-Mike** involves the surveillance of railways and strategic points that are potential targets of terrorist attacks, such as nuclear power plants, electric power stations, reservoirs, petrochemical complexes or explosives factories, and is carried out by Spanish army units. It was first launched in April 2004 on the basis of the competences that Spanish legislation confers on the armed forces. Its establishment was triggered on the one hand by the terrorist massacre of the previous month, the attacks of March 11, and by the thwarted attack on the AVE high-speed railway line that Easter.

This antiterrorist operation was reactivated in December 2004 and nearly 5,000 military were mobilised and entrusted with the task of protecting the most significant and busiest railway stations and airports during the Christmas holiday period that year¹²⁸. It was extended until 22nd February 2005, at which point it was temporarily suspended.

Romeo-Mike became operational again in 2005¹²⁹, on the occasion of the International Summit on Terrorism, Democracy and Security in Madrid from 8th to 11th March, which was attended by hundreds of international leaders. The collaboration of the armed forces was requested to protect the state from terrorist attacks. For this purpose they were given the task of:

128 GONZÁLEZ, M., op. cit. and HERNÁNDEZ, V., El Rey destaca el Espíritu integrador de la Constitución, Revista Española de Defensa no. 203, January 2005, p. 23 (The King emphasized the spirit of integration of the Constitution).

129 DÍAZ-RIPOLL, M., (1) Los militares muestran su cara más humana en la operación 'Romeo-Mike', Tierra. Boletín Informativo del Ejército Español, no. 117, 6th April 2005, p. 8-9 (The Militaries show their most human character in Romeo-Mike operation).

- Covering the Spanish capital's air space, which was reinforced for three days using the anti air defence system deployed by the Anti Air Artillery Command.
- Cooperating in the setting up of liaison detachments.
- Carrying out surveillance on nuclear power stations. This task was given to the Guadarrama XII Armoured Brigade, which was in charge of protecting an electric substation and two nuclear plants located near Madrid and Guadalajara, respectively.

This operation, in which over 20,000 military and 3,000 vehicles from almost all the units on the Spanish mainland took part¹³⁰, ended on 12th March, a day after the "Madrid Agenda" was presented¹³¹. Although it is currently inactive, it can be convened and activated at any time.

Although the long hours of surveillance endured by the human resources who perform this operation to prevent another terrorist attack from rocking our society are often not recognised, the figures¹³² for Romeo-Mike speak for themselves and prove that their work is fundamental.

3.4. New European perspectives:

Battle groups and solidarity clause in the Constitutional Treaty

To complete the analysis of the tasks performed by the armed forces in combating terrorism, a brief mention should be made of two instruments that open up new perspectives for stepping up the European Union's efforts in this field: the battle groups and the so-called "solidarity clause" in the Constitutional Treaty.

In November 2004, the Defence Ministers of the 25 European Union Member States¹³³ adopted a twofold decision: to set up thirteen battle groups capable of intervening in crisis situations anywhere in the world and to strengthen the functioning of the European Defence Agency. These agreements have given definitive impetus to the EU Headline Goal 2010, the document laying down the military capabilities with which the EU of 25 needs to equip itself between now and 2010.

130 DÍAZ-RIPOLL, M., (2) Más de 20.000 militares y 3.000 vehículos han participado en la operación 'Romeo-Mike', Tierra. Boletín Informativo del Ejército Español, no. 117, 6th April 2005, p. 1 (More than 20.000 soldiers and 30.000 vehicles have taken part in Romeo-Mike operation).

131 CLUB DE MADRID: Agenda de Madrid, 11th March 2005, <http://spanish.safe-democracy.org/> (Madrid Agenda).

132 DÍAZ-RIPOLL, M. (1), op. cit p. 9, supplies figures for this operation showing the magnitude of the army deployment. For railway lines, 25 rotations were carried out involving 18,207 people and 2,620 vehicles; 204,600 km of the AVE high-speed line were covered and 248,300 points were kept under surveillance, with 475 helicopter departures and 1,643 hours of flight time. At the most sensitive points 38 rotations were carried out with 2,519 people and 572 vehicles.

133 EU COUNCIL: Session no. 2662 of the General Affairs and External Relations Council, Brussels, 22nd and 23rd November 2004 (Press. 325 Nr.14724/04).

The *Battle Groups* are designed as battalions of 1,500 people capable of deploying in less than fifteen days to any scenario where their presence should be needed to stem conflicts over the next few years. It can be assumed that they will be able to act in combating terrorism, since an attack of this kind may trigger a crisis situation requiring their intervention. These groups, which must be operational within four years' time, specifically by 2007, will be divided into different types:

- Four will be national, as 80 percent of each will consist of units from one country, specifically personnel from Spain, France, the United Kingdom and Italy, the states in charge of organising these battalions.
- A further four will be built on existing multinational forces. Units from Germany, Belgium, Spain, France and Luxembourg will join the Franco-German Brigade; forces from Germany, the Netherlands and Finland will take part in the German-Dutch Corps; Greece and Portugal will join the Spanish-Italian Amphibious Force (SIAF); and the United Kingdom and the Netherlands will take part in the Anglo-Dutch Amphibious Force.
- The other five battle groups will be comprised of units from different countries: France and Belgium; Germany, Austria and the Czech Republic; Italy, Hungary and Slovenia; Poland, Germany, Slovakia, Lithuania and Latvia; and Sweden, Finland and Norway.

The setting up of these battle groups, already underway, on the basis of existing multinational forces is expected to provide very great advantages for the defence and security both of Europe and of the states that make up the Union.

Although it was signed on 29th October 2004, the **Treaty establishing a Constitution for Europe** is currently being ratified by the Member States before it can enter into force. It will mark a new stage as a result of the firm will of the European States to continue progressing together to equip the Union with a genuine common defence policy. Although this text signifies many developments in the field of the Security and Defence Policy, we will merely underline those that are directly related to the task of combating terrorism, namely:

- The solidarity or mutual assistance clause¹³⁴ incorporated into article I-43 of the Treaty, whose early implementation had been approved at the Brussels European Council of 17th and 18th June 2004 in response to the attacks of 11th March. The novel feature of this clause lies in the fact that its adoption enables all European Union resources

¹³⁴ This provision has a very similar wording to the mutual assistance clause laid down in article 5 of the North Atlantic Treaty, as it states that: "If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter."

to be mobilised, including military, to prevent the terrorist threat in the territory of the Member States, to protect the democratic institutions and civilian population from possible terrorist attacks and to assist a Member State or acceding state in its territory at the request of its political authorities in the event of an attack. In this task each state may choose the most suitable means of meeting the commitment of solidarity with the state in question. This clause, which is designed to complement the common defence policy, means that the Union can act outside its borders to fight against this evil. It can therefore be said that this article is not only a reactive instrument but also one that plays an important preventive role. In the view of many, it reinforces the European Union's nature of a political organisation from a twofold perspective:

- a. It strengthens the political ties of solidarity between the members of the Union.
- b. It provides defence policy with an important means of addressing new threats both in the international environment and on the home front.

This clause is based on the obligation of the European Union, its institutions and all its Member States to act quickly and with a spirit of solidarity to provide the greatest possible support and assistance to the Member States that have suffered terrorist attacks, not only by investigating the events but also by bringing the guilty parties to justice. This token of solidarity with the victims of terrorism conveys a clear message: *“Europe and, accordingly, its Member States, will not tolerate terrorism or its perpetrators”*.

Symbolic-political reflections of this solidarity were the demonstration staged in Madrid following the March 2004 attacks, in which representatives of the European institutions and members of the regional governments took part, the messages of condemnation from the main European cities, and the massive protest across Europe in solidarity with the victims of 11/3.

- The codification of the incorporation of counterterrorism into the objectives of the crisis-management operations, that is, the Petersberg Missions set forth in article I-41 of the Treaty. This provision establishes the range of actions in which the Union may engage under this umbrella, stating that its operational capacity, drawing on civil and military assets, may be used for *“peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter”*. To these traditional missions are now added *“joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation”*.

The development of article 41 in article III-309 reflects the possibility of performing any of these actions to combat the terrorist phenomenon of the past decades, since the latter states that *“All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories”*. This measure allows the Union, through the ESDP, to address the task of combating the terrorist threat ad extra, that is, beyond its borders.

The foregoing, together with the commitment of the European states to improve their military capabilities progressively and to allow those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments with a view to the most demanding missions to establish permanent structured cooperation¹³⁵ within the Union framework, are the mechanisms designed to pave the way for achieving a true Common Defence Policy for the European Union¹³⁶, in which the contribution of the European Defence Agency¹³⁷ will be crucial.

3.5. Recapitulation

In short, the most usual action of the armed forces in fighting international terrorism and backing the state law enforcement agencies is the protection of infrastructures, the use of special resources and the use of military intelligence measures such as satellites and signal intelligence, as well as in cooperation with the civil authorities in managing the consequences of large-scale attacks, particularly if they involve weapons of mass destruction.

In view of the foregoing, it is clear to many military experts that in order to be able to fight terrorism the armed forces need to be designed with capabilities adapted to this type of low-intensity conflict, which requires light and flexible forces¹³⁸. Therefore, as recommended by the Strategic Defence Review of 2003, the armed forces of the 21st century require:

135 Structured cooperation is a mechanism that allows a group of states who are able and willing to progress at a faster pace than their partners in establishing instruments for shaping a true European common defence policy. It is regulated in article I-41 of the Constitutional Treaty and developed in one of the Protocols annexed thereto. EU CONSTITUTIONAL TREATY: Protocol 23 on permanent structured cooperation established by article I-41 (6) of the Constitution.

136 Cf. COSIDÓ, I., (3) El futuro de la Defensa Europea, Grupo de Estudios Estratégicos-GEES, En letra impresa no. 307, of 11th December 2004, also published in Cuadernos de Estrategia no. 129, Instituto Español de Estudios Estratégicos, November 2004 (The future of the European Defence).

137 Since the European Defence Agency will not be discussed at length in this article, for an idea of what it is and how it functions, see SÁNCHEZ, L., En marcha la Agencia Europea de Defensa, Revista Española de Defensa no. 202, December 2004, p. 60-61 (The European Defence Agency is in motion).

138 This is the opinion, among others, of the experts of Working Group no. 8 of the Madrid Summit on Democracy, Terrorism and Security, which was in charge of analysing Military responses to terrorism. BALLESTEROS MARTÍN, M.A., (1) Las respuestas de la Cumbre de Madrid, in 11-M: Juntos contra el terrorismo, Revista Española de Defensa no. 205, March 2005, p. 39 (the Madrid Summit answers).

- Tactical and strategic mobility and the capacity to deploy and insert within a short time at a considerable distance.
- Sustainability and supply capacity.
- Availability, in the sense of having a sufficient “pool” to draw from.
- Superiority in combat to ensure victory.
- Protection, given the proliferation of weapons of mass destruction and the use of highly pollutant materials in the emerging asymmetrical wars.
- Integrated command and control in order to ensure the permanent and real-time connection of the links in the chain of decision making: command, control, communications, computers, surveillance, reconnaissance and intelligence.
- Emphasis on intelligence, surveillance, target acquisition and reconnaissance, as keeping apprised of information when faced with an evasive enemy can prove crucial.
- Interoperability of the forces enabling them to be rebuilt and, if necessary, operate as combined joint operational forces.
- Joint actions using specific forces under a single command, with unified procedures and mutual support criteria.
- Special forces in which mobility, dispersion and invisibility are key factors, in addition to proper training.
- Ability to operate in a network.

The coordination and, in some cases, integration of these armed forces with the security groups, bodies, agencies and mechanisms set up within the European Union framework will be essential to the future of the Spanish defence policy and state security. This policy will undoubtedly be marked both by the Common Foreign and Security Policy and the Common Defence Policy of the European Union, for which the Constitutional Treaty has opened up possibilities—on paper—that were hitherto unimaginable but require two factors in order to be put into practice: the Member States need to show political will and to equip themselves with military capabilities to match the threats they face, one of which is international terrorism.

4. PUBLIC OPINION AND MEDIA VIS-À-VIS THE TERRORIST PHENOMENON

In recent years the knowledge society has faced global threats such as international terrorism that put its survival to the test, cause society to feel more vulnerable and increase citizens’

demand for security. In other words, the terrorist phenomenon leaves no sector of society indifferent, except for the terrorists themselves. Therefore, we should analyse the reaction this threat triggers in two specific social environments: the media and public opinion.

In the course of their duty to inform, the media come into contact with the terrorist phenomenon and the relationship established between them justifies statements such as “*terrorism would never exist without the collaboration of the media*”¹³⁹. Whether or not this is exactly the case, the relationship between journalists and terrorists is neither simple nor lacking in criticism. In a world threatened by terrorism the media have to be truthful when providing information and must do so rigorously to avoid the risk of becoming a sounding board for terrorists.

In Spanish society the media, accustomed to covering terrorist attacks, are aware of their role and of the importance of self-censorship when reporting on these attacks to avoid clashing with the right to information, one of the pillars of democratic states¹⁴⁰. However, the application of this self-censorship is not well received, as the traditional media compete with the transmission of information over the Internet, a very powerful tool for reaching societies and achieving international fame which, on account of its technology, is difficult to control and, owing to its transnational nature, escapes national legislation.

Reducing or eliminating news coverage of terrorist acts would not appear to be the answer, as neither would communicators be able to report the social situation nor would terrorists, national or international, stop killing just because they received less publicity from the media, not to mention the limits on the right to inform and be informed that such a measure would entail. Therefore, the most suitable means of response should attempt to strike an Aristotelian balance between the publication of truthful, verified, reliable and non-speculative information on the one hand and, on the other, collaboration with the state law enforcement agencies.

From the point of view of public opinion, events like those of 11th September 2001, 11th March 2004 and 7th July 2005 are symbols that trigger a feeling of widespread insecurity all over the world. However, their influence in practice is difficult to gauge, as an isolated terrorist attack, if it is not combined with other social events, may not mean anything, but if we add together the terrorising power itself of an attack, its consequences and other circumstances or actions occurring at the time, the result is that acts of terrorism have a much greater influence on society than ever had been imagined.

139 In the 80's the British Prime Minister Margaret Thatcher claimed that the media supplied terrorists with the oxygen of publicity. Umberto Eco expressed a similar opinion in an article published by *Diario El País* on 14 February 1978. These testimonies are published by GARCÍA LUENGO, O., op. cit. p. 4 and 6.

140 BALLESTEROS MARTÍN, M. A., (2) *Análisis Estratégico del Terrorismo: La estrategia de los terroristas*, *Revista Ejército de tierra español* no. 767, March 2005, p. 45 (Strategic analysis of the Terrorism: The terrorists' strategy).

This situation raises the question of how society ought respond to terrorist attacks. Spain's experience of how public opinion acts towards this phenomenon points to two elements:

- First of all, fear. Fear is a normal reaction that any citizen shows and should continue to show in the event of terrorist attacks. If this were not so, the situation would be worrying as it would imply that people had become so desensitised to terrorist acts that they were no longer affected by them.
- Secondly, reaction. A response to attacks is required, but it should not be carried out by each individual independently; rather, it should translate into a collective response to the state's appeal for collaboration in the campaign to ensure peace, freedom and democracy.

Everything therefore points to the need to engage society in fighting this phenomenon, so that everyone and every society participates in the debate on how to address the terrorist threat, under what conditions this phenomenon thrives and how to influence its various manifestations, among other issues. For only coordinated action backed by international public opinion has sufficient power to win this 21st century war in collaboration with the police and judicial, state, European and international authorities.

5. COOPERATION WITH OTHER COUNTRIES IN THE INTERNATIONAL SPHERE

The magnitude of the terrorist phenomenon is currently such that no state can address it autonomously and independently; rather, it requires multilateral action through cooperation with all its counterparts. Not only the countries which have suffered terrorist attacks in recent years, such as United Kingdom, Spain and the United States, but also today's international organisations are aware of this fact. Therefore, the work begun by the United Nations and the European Union to foster transnational cooperation following 11th September and increased after 11th March and 7th July is essential, even though the manner varies from one environment to another, as international action involves mechanisms that differ from those of Europe, even though all the parties pursue the same aim: to combat terrorism.

On a downward note, it might be stressed that although the desired international cooperation should be framed around the countries that belong to the UN, the organisation that groups together the most states, this is far from becoming a reality. It is undeniable that the United Nations has the right intentions, but in practice it is far from achieving the goals. It currently

lacks the means to guide and regulate such cooperation, for unless a common definition is established for the terrorist offences for whose suppression the assistance of all the states belonging to this organisation is sought, the resolutions of its Security Council cannot come to fruition.

More concrete progress has been taken in the European Union. To the actual and potential achievements of the cooperation that is becoming established between the twenty-five Member States should be added the relationships that this *unidentified political object* has struck up with third countries. Inasmuch as this progress is part of the advantages that Spain, as an EU Member State, enjoys, mention should also be made, owing to its special significance, of some of the commitments into which it has entered with:

- The United States: 11th September laid suitable foundations for according cooperation in counterterrorism unparalleled importance in the Transatlantic Dialogue. The fruit of this is the agreements signed between the European Union and the United States in recent years, particularly specific treaties such as those on mutual assistance and extradition, both concluded in June 2003¹⁴¹. The current and future relationship established between the European Counterterrorism Coordinator, Gijs de Vries, and his American counterpart, the Acting Coordinator for Counterterrorism, William P. Pope, also play an essential role in curtailing and preventing this phenomenon.
- Russia, which presented a *Joint Statement on the fight against terrorism* on 11th November 2002¹⁴².
- Africa, which issued a *Communiqué and Joint declaration on terrorism* on 11th October 2001¹⁴³.
- ASEAN (Association of South East Asian Nations) which presented a *Joint declaration on co-operation to combat terrorism* in January 2003¹⁴⁴.

The consideration that international terrorism is one of the three threats to be taken into account when designing the European Security Strategy justifies the inclusion of antiterrorist clauses in all the negotiation and accession agreements concluded with new EU Member States. Whether or not these clauses will be effective remains to be seen and will depend on how terrorism itself and relations between the EU and candidate countries evolve.

141 EU-US Summit: Fact sheet: The fight against Terrorism, Washington, 25th June 2003.

142 EU-Russia Summit: Joint Statement on the Fight against Terrorism, Brussels, 11th November 2002.

143 Presse 361-12794/01: Communiqué and Joint Declaration on Terrorism, 11th October 2001. Africa-Europe Ministerial Conference. Brussels, 12th October 2001.

144 Presse 19- 5811/03: Joint Declaration on Co-Operation To Combat Terrorism, 14th EU-ASEAN Ministerial Meeting, Brussels 27th - 28th January 2003.

For its part Spain, individually and on a strictly national level, has always been at the forefront of the group of countries keen to collaborate with others in refusing to yield to this plague that is beginning to spread across Europe. The occasions and cases in which Spain's interior, justice and/or defence ministers, and/or law enforcement agencies have cooperated with the equivalent authorities of other countries are too numerous to list. Needless to say, most of this information is rarely disclosed and if it does become known it is simply because its effects are evident.

However, for many reasons there is one country on which Spain has always relied in the arduous task of combating the terrorist phenomenon: France. Although, admittedly, this collaboration has focused on prosecuting members or actions of the ETA terrorist organisation, so many successes have been reaped that there is nothing to suggest that the French authorities will prove reluctant to continue cooperating with their Spanish counterparts when it comes to prosecuting international terrorism instead of the homegrown variety. An example of these countries' determination to continue to provide mutual support in criminal matters, specifically combating terrorism, is the fact that they were the first to make use of the counterterrorism mechanisms that arose from the 11th September attacks. Spain and France were pioneers in setting up a joint investigation team in September 2004 whose chief purpose, as can be imagined, was none other than collaboration to weaken ETA terrorism¹⁴⁵.

¹⁴⁵ In September 2004 the justice ministers of both countries announced the setting up of the first joint investigation team pursuant to the European Union Council Decision and the model established for this. See COMMUNIQUE DE PRESSE: Application de la loi Perben II à l'international: création de la 1ère équipe commune d'enquête franco-espagnole, Paris, 9th September 2004, in La Carta Robert Schuman no. 180, 20th September 2004.

III. SLOVAK POLICY TOWARDS TERRORISM

The increased significance of new threats to security after the end of the Cold War (terrorism, illicit drug trafficking, organized crime, illegal migration, etc.), forces us to concentrate our attention on analyzing the international players. At the end of last century, terrorism and wars with “enemies without borders” started to be regularly regarded as threats to international order. However, terrorism still does not cause any big alarm. It has existed for almost 200 years, and has not been able to influence world development. Terrorism was considered a part of the social-political sphere in individual discontented countries and regions. The events of September 2001 forced us to speak about international terrorism, the change of extent and focus of terrorist acts. Consequently there has been a change in the reasoning of politicians and specialists as well as in the current strategic reasoning. After September 11, intelligence services all around the world have been reorganized, and the need for exchange of intelligence information has boomed.

After the terrorist attacks of September 2001, discussions about the so-called “Global War On Terror” have become topical. The substance and contents remain vague for us. Most political leaders in the world daily use the term “war” as a metaphor for all types of domestic and foreign animosities. They often declare war on poverty, illiteracy, crime, drugs, and nowadays also terrorism. This attitude is especially obvious for American politics. Traditionally, war is perceived as a battle of military powers, and can be regular (governmental), or irregular (non-governmental) in nature. Terrorist organizations in this approach are not considered to be such military powers. For example, al-Qaida (and its partners) operates in many states around the world having no territorial boundaries. The key to defeating this organization is the cooperation of intelligence services and police with the military forces playing a supportive role. Afghanistan and Iraq both witnessed such extensive supportive campaigns. They were part of a much larger combating strategy where all parts of national power as well as the services of many countries were mobilized. After the terrorist attacks in Madrid in March 2004, there has been a lot done in the perception of the integrated combat against terrorism in Europe, mainly in Spain, but also in France, Italy, Germany, Greece and Turkey.

The Slovak Republic also has to face the threat of international terrorism. This is being pursued

on the domestic as well as the international level. Slovakia joined the Counter-Terrorism Coalition in 2001, under the leadership of the United States of America, and was engaged in the operation “Enduring Freedom” in Afghanistan. The members of the Armed Forces of the Slovak Republic (Corps of Engineers) have been operating in Afghanistan until today. There are clear visible attempts to improve the quality of legislation, special services and units having relationships to the counter-terrorism fight on the domestic level.

These actions help Slovakia prove that it does not want to be only a passive security recipient “hiding” behind the guarantee of the collective security of the North Atlantic Treaty Organization. Therefore, the country actively wants to contribute to the assurance of peace and security all over the world. These are the main reasons Slovakia became a member of the Counter-Terrorism Coalition:

- Since Slovakia’s independence, it has declared its focus on the democratic values shared among the Euroatlantic structures. Because of this, we realize that together with other countries we are becoming a potential target for terrorist attacks, which means we are threatened.
- The Slovak Republic understands that these democratic values not only have to be declared but also protected, if necessary. Due to our opinion that no country in the world is able to face terrorism alone (the terrorist attacks of September 11 clearly pointing this out), Slovakia has decided to participate in this combat against terrorism within the Counter-Terrorism Coalition.

The fight against terrorism consists of two main parts – counter-terrorism and anti-terrorism. Counter-terrorism is defined as the use of people and resources for preemption, discontinuation or destroying of terrorists or other supporting networks. Counter – emphasizes the proactive and offensive attitude. On the other hand, anti-terrorism is rather reactive and defensive – it reacts to terrorism, it tries to eliminate its reasons, it anticipates the performance of terrorist acts by various security precautions (metal detectors, various barriers, etc.). The best measure to fight against terrorism seems to be diplomacy and good intelligence operations. A combination of these two tools at the state’s disposal can avert the usage of armed forces, this being the ultimate solution of any situation.

The purpose of this part of the publication is the attempt to illustrate the issue of terrorism from the Slovak point of view. The publication maps the international, as well as the internal or domestic aspects of the counter-terrorism fight. It characterizes the status of individual institutions in charge of counter-terrorism combat

1. PERCEPTION OF TERRORISM

1.1. Issues of Defining Terrorism

From our point of view¹⁴⁶, we assume it to be a paradox that despite numerous attempts to define terrorism, there is no generally accepted definition. Despite the attempts to define terrorism relevantly, no compliance has been achieved at the UN, or in the International Court of Justice in The Hague. This Court of Justice assumed competences in the decision making about the issues of war crimes and crimes against humanity. What seems to be a definite and simple phenomenon of terrorism at first sight has an extraordinarily complex division of philosophical, epistemological, historical, social-political, religious, social-demographic, national and ethnic aspects, which make the definition of terrorism as an historical and social phenomenon extremely complicated.

Over the last years, various (several tens of) definitions of terrorism have appeared worldwide. As a rule they are very general and originate mainly from terrorism involving violence and threat to use violence. Many definitions emphasize terrorism as a non-state phenomenon directed against the state and society, this being politically motivated violence against non-combatant targets by groups or secret agents. Terrorism is also considered by others to be a weapon of the poor against the conventional opponent, since no political solution of the status exists. In connection to this, the moral deliberations go as far as that one person can basically be a terrorist for one group of people, but for another group a sole freedom fighter. The following remains unsettled in the definitions of terrorism:

- The boundary between terrorism and other forms of political violence,
- Whether government terrorism and terrorism resistance are parts of the same phenomenon,
- The separation of terrorism from simple criminal acts, from open war between informal groups, and from acts which are clearly derived from mental illness,
- Is terrorism a sub-category of constraint, violence, power or influence?
- Can terrorism be legitimate?
- The relationship between guerilla warfare and terrorism,
- The relationships between crime, terrorism, and others.¹⁴⁷

¹⁴⁶ We consider it important to emphasise that the opinion of the publication authors may not correspond with that of the Ministry of Defence of the Slovak Republic.

¹⁴⁷ Schmidt, Alex P - Youngman, Albert I.: Political Terrorism. Transaction Books: Amsterdam 1988, p. 29-30.

There are conceptual and syntactic ambiguities. Therefore, it is not surprising that for instance, the activities of guerilla movements, underground movements, and national liberating movements are often described and characterized as those of terrorist organizations in connection with the tactics that they use.¹⁴⁸ These are generally biased attitudes towards their assessment which is partially based on a political point of view. The definition should contain the fact that terrorism is the use or the threat of violence against civilians or civilian objects in order to achieve political goals, and the majority of definitions do contain that fact. The ideal definition should be based on three important elements:

- Basis of activity – using violence or threat of using violence,
- The activity is always targeted politically,
- It is targeted against civilians and civilian objects.

The latest attempts to define terrorism were made by UN with the report; *A More Secure World: Our Shared Responsibility*, where terrorism is defined as:

*“any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council Resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.”*¹⁴⁹

In October 2004, Russia submitted UN Security Council Resolution 1566, where terrorism is defined as the following:

*“Security Council... Recalls that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature.”*¹⁵⁰

148 Attacks on military targets are not classified as terrorist ones but rather as those of guerrilla. (Political Terrorism, p. 42). Russia is an exception because the Ministry of Interior of the Russian Federation considers a terrorist attack to be also an attack against the military targets. (Statistics of the Ministry of Interior, <http://www.mvdinform.ru/index.php?docid=11>, April 25, 2005.)

149 A More Secure World: Our Shared Responsibility, <http://www.un.org/secureworld/>, June 6, 2005.

150 Resolution 1566 (2004), <http://daccessdds.un.org/doc/UNDOC/GEN/N04/542/82/PDF/N0454282.pdf?OpenElement>, August 17, 2005.

However, all definitions are only part of more elaborate documents, being their reference framework. What we need is a consensual version that would be acceptable worldwide and generally applied.

1.2. Necessity of Defining Terrorism

Defining terrorism is not only theoretical issue, but primarily an operational interest. Terrorism is not a local problem of specific countries but it includes a wide range of international aspects.

The emergence of the phenomenon of international terrorism is directly related to the globalization process. Until recently, there has been a dominant opinion that international terrorism is a consequence of archaic and asymmetric reaction to the globalization of the world outsiders who are not able to act under the new conditions. Such a situation is described by the Western understanding as a clash of globalizing political and social-economic processes and new institutions with mutated traditional ideologies. These analyses are constantly referring to the “clash of civilizations”. International terrorism is presented as a denial of everything that is Western.

The second alternative to the explanation of international terrorism is based on the analysis of a special role that was played by US policy in the Middle East. The support of authoritarian Arabic regimes (from Egypt to Saudi Arabia) and pro-Israeli Washington policy elicited anger of the groups of Arabic ultra-traditionalists against the Western elites – primarily against that of the US. The attempt to cause the biggest opposition to globalization possible is thus a side-effect of international conflicts in the Middle East. According to detailed interpretation, the victory of nationally oriented powers in the Arabic countries is achievable only after the Western support discontinues. The goal of the patriots must be the achievement of such a condition for the West to discontinue the support of these regimes. Terror is the measure that the patriots take to achieve this goal.

Despite differences in similar interpretations, the interconnection of international terrorism and globalization processes are clearly visible. The so-called “new” terrorist organizations adapted easily to the changing world with penetrable boundaries and disputable state sovereignty. They assumed new organizational methods and adapted to the rapid development of communication and information technologies. From this point of view, they are not at all archaic; moreover, they look like pioneers of new organization principles in world politics – the so-called network principle. New international organizations managed to gain their current influence only under the condition of penetrable boundaries and deteriorating sovereignty, the result of globalization.

In this way the present terrorists accepted the main principles of efficient organization when creating unique transnational network organizations.

Terrorist organizations nowadays are capable of attacks in various countries. Various nations can be their victims. Agencies, headquarters and training camps of terrorist organizations operate in various countries. Terrorist organizations receive direct and indirect help from various countries and the support of various ethnic communities around the world. Since terrorism has been an international phenomenon recently, the reaction to it must also be of an international extent, as well. Development of efficient international strategy requires an exact agreement on what we are dealing with, i.e. what the word terrorism means - we need a definition of terrorism. Without this definition, it is impossible to formulate international agreements on the counter-terrorism fight. If we wish to have the definition of terrorism at our disposal acting as one means of fighting against terrorism, it is necessary to express mainly:

- The laws and rules enacted by security forces as a means of fighting against terrorism,
- International cooperation,
- The state sponsoring of terrorism,
- The attack actions against terrorism,
- Reasons why the population supports terrorism,
- Public relations.

A definition based on the above-mentioned points could be the basis and operational tools for extending the ability of the international community to fight against terrorism. It will be achieved by legislation and specific punishments against terrorism actors as well as sponsors, and it allows the formulation of a code of laws and international conventions against terrorism, terrorist organizations, states supporting terrorism, and companies doing business with terrorists. At the same time the definition will also be the basis for preventing the terrorist organizations attempts of gaining public legitimacy and, it will erode support between those parts of the population willing to assist. The fight for defining terrorism can sometimes seem as difficult as the fight against terrorism itself. Unless we achieve a consensus in the definition of terrorism, it will be difficult to conduct counter-terrorist operations. Although we know the act of terrorism when looking at it, and we know, for instance, that al-Qaida is an enemy, the lack of consensus in its definition prevents us from studying terrorism, which is an obligatory element for dealing with this phenomenon. In the fight against terrorism the issue of definition is the key element for the attempts to coordinate international cooperation based on acceptable rules of traditional war.

1.3. Our Definition of Terrorism

The only codified definition of terrorism is from the Ministry of Justice. It was mentioned in the proposal of the new Penal Code in §419: the offender of the act of terrorism is

“Any party with intent to seriously threaten the population, seriously destabilize or impair the constitutional, political, economic or social state order or international organization structure, or force a country’s government or an international organization to act or refrain from acting, using threats of committing, or committing a criminal act endangering life, person’s health, their personal freedom or possessions, or wrongfully manufactures, obtains, owns, possesses, transports, delivers or otherwise uses explosive, nuclear, biological or chemical weapons, or performs unauthorized research and development of such weapons or weapons forbidden by the law or international convention.” (unofficial translation)

This definition does not include one significant type of terrorism, which is state terrorism, due to obvious reasons.

State terrorism inverted into society, either in the form of an autocratic dictatorship regime or a totalitarian dictatorship, threatens the whole society. In order to maintain credibility and the efficiency of threat, it is important to constantly create the feeling of danger, either from within the society or from outside the state borders. Under these conditions the dictatorship stability could be optimized. Examples can be seen in Mao’s China, or Stalin’s Soviet Union.

2. SLOVAK COUNTER-TERRORIST POLICY

2.1. Development of Security Policy of the Slovak Republic and Approach to Terrorism

The approach of the Slovak Republic to the threat of terrorism is related to the noticeable development of the traditional way of dealing with security issues, changes in the security policy, and defining the national interests. The security policy of the Slovak Republic was influenced by strategic security documents, which were reflected in the development and preparation of legislation acts, and also in practical measures that have impacted the security and protection of the Slovak Republic, as well as creation of competences for facing terrorism.

Slovakia, as a newly-found state since 1993 has had to deal with several primary issues. These include forming and ensuring statehood starting from constitution preparation, forming of security and defense structures, up to the practical measures in the area of security and defense. In the period 1993 – 2005 Slovakia adopted five conceptual security documents. “Defense Doctrine of the Slovak Republic 1994” (void since May 25, 2001), “Basic Principles and Aims of

National Security of the Slovak Republic 1996” (void since March 2, 2001), Security Strategy of the Slovak Republic 2001, Defense Strategy of the Slovak Republic 2001 and Military Strategy of the Slovak Republic 2001. (These documents were replaced by Security Strategy of the Slovak Republic 2005 and Defence Strategy of the Slovak Republic 2005 during preparation of this publication.)

In order to understand development of security thinking, we present a short analysis that defines the security of the Slovak Republic, national interests and terrorism in the context of security threats.

The Defense Doctrine of the Slovak Republic 1994 defined relatively generally the relationship of the Slovak Republic to the integration processes into EU and NATO. The PfP programme was considered the tool for approaching NATO. The major part of the document dealt with theoretical knowledge in the area of security. It stressed too much the principle of necessity to gain security guarantees without expressing the knowledge of obligations resulting from such guarantees.¹⁵¹ The threats are not exactly defined in the assessment of security environment; therefore neither is terrorism defined in the document. Only *“decreasing danger of global war during the existence of war conflicts of various intensity”* is assessed.¹⁵² As the main *“national and security interest”* it mentions *“ensuring the existence and development of a free, sovereign and democratic state”*.¹⁵³

The document “Basic Principles and Aims of National Security of the Slovak Republic 1996” pays a lot of attention to defining and to the expression of national interest of the Slovak Republic. Due to absence of political consent on defining national interests, when defining it, the substitution method was used. This means that the interest was defined indirectly, with the help of analysis of external and internal factors, and with the help of principles for use of measures for ensuring national interest.¹⁵⁴ This document had some threats already defined, where terrorism was “mentioned” in the context, with other factors influencing the national interest of the Slovak Republic. State border violations in connection to increased migration, growth of international forms of crime, including terrorism have been ranked among these factors.¹⁵⁵

151 Conceptual Security Documents of the Slovak Republic, In: NATO Transformation and NATO Security and Defence Policy, CSS Bratislava 2005.

152 The Defence Doctrine of the Slovak Republic 1994, Chapter III.

153 The Defence Doctrine of the Slovak Republic 1994, Chapter II.

154 Conceptual Security Documents of the Slovak Republic, In: NATO Transformation and NATO Security and Defence Policy, CSS Bratislava 2005.

155 Basic Principles and Aims of National Security of the Slovak Republic 1996, article 2: The Factors Influencing the Implementation of the National Interests of the Slovak Republic.

The acceptance of three new security documents in 2001 – Security Strategy, Defense Strategy and Military Strategy – marked a qualitative move in shaping the security and defense policy of the Slovak Republic. The Security Strategy of the Slovak Republic 2001 marked a move in defining national interest, this being defined by life interests and important interests. For the first time, it officially defines the security policy of the Slovak Republic, the security system and it characterizes the security environment. In relation to international security environment, it puts emphasis on a more active approach.¹⁵⁶ The standpoint to terrorism is taken in article 21:

*“International organized crime and terrorism are security risks and in view of their wide scope and consequences, they are at present already growing into a threat to the vital interests of the Slovak Republic. There is an increase of activities such as illicit trafficking of weapons and drugs, dualuse materials, trafficking of children and women, and money laundering. There exists the risk of their interconnection with state organs and local governmental organs, as well as with economic entities. The extent and danger of the influence of international terrorism is growing.”*¹⁵⁷

This document was prepared before September 11, 2001. Further Security Strategy relating documents are Defense Strategy and Military Strategy. Defense Strategy 2001 specifies the military-political aspects of security environment of the Slovak Republic and the classification of threats. The Defense Strategy of the Slovak Republic 2001 classified terrorism among “non-military risks and threats”. There was an on-going discussion on classifying the division of threats into military and non-military ones, but later this attitude was proved as too “rigid”. One of the reasons of discussion was also the fact that it was necessary to consider the goals and tasks of defense policy and possible missions of the armed forces. For illustration we refer to the whole Article 17:

“Non-military risks and threats to the Slovak Republic are being represented by those in which non-military forces and means are predominantly used. These non-military risks and threats include:

- *Massive, illegal migration through the territory of the Slovak Republic caused by ethnic, religious, social tensions, disputes and conflicts, which may even lead to a failure of the state structures and socioeconomic collapse in the unstable states of Southeast and Eastern Europe as well;*

156 Conceptual security documents of the Slovak Republic, In: NATO transformation and NATO security and defence policy, CSS Bratislava 2005.

157 Security strategy of the Slovak Republic 2001, Article 21, http://www.mosr.sk/dokumenty/bezp_stategia.pdf.

- *International terrorism and organized crime enforced by massive growth of their activities and forms, which represent a serious supranational threat to state security, including the areas and activities that are vital for the functioning and the defense of the State;*
- *Natural disasters and industrial catastrophes, which, according to their nature, extent and consequences can seriously endanger the environment, life and health of inhabitants, and property on a large scale including human and material resources for the defense of the Slovak Republic. A shortage of basic foodstuffs can trigger a crisis situation which could considerably endanger state security;*
- *An undermining of a State's stability by activities conducted by domestic and also foreign entities and special services aimed against the democratic foundations of the State, the patriotic sentiments of its citizens, and the political-social stability in the society, and national and racial tolerance that indirectly negatively affects the determination of the State and its citizens to secure the needs for State defense;*
- *An illegal proliferation of biological, chemical and nuclear weapons, including components for their production, being transited through the territory of the Slovak Republic or their use in a terrorist act;*
- *Activities and processes that directly or indirectly negatively affect the readiness and functionality of the Defense System of the Slovak Republic and the level of readiness and operational capabilities of the Armed Forces (psychological effects, information-intelligence activities, long-term underfunding of defense requirements, but also an ineffective use of resources allocated for defense)."¹⁵⁸*

The discussion on the analysis and classification of risk was related to defining the extent and characteristics of accepted measures, including the place of armed forces. Based on this discussion the following conclusion was made in defense strategy:

"For the resolution and elimination of non-military risks and threats to the Slovak Republic, non-military forces and means will be used first. In its various stages of development, when the extent and character being achieved by these threats would lead to imperiling the vital and important interests of the Slovak Republic, the Armed Forces and all means, in accordance with the principles of the use of the Armed Forces, will be used to eliminate them. These specific types of non-military threats to the defense of the Slovak Republic especially include massive uncontrolled illegal migration through our territory, ecological disasters endangering the environment on a large scale, international terrorism and organized crime, natural disasters, industrial disasters (including emergencies at nuclear power plants), and disruption of state stability by both domestic and foreign entities."¹⁵⁹

158 Defense strategy of the Slovak Republic, Article 17, http://www.mosr.sk/dokumenty/obr_strategsr.pdf.

159 Defense strategy of the Slovak Republic, Part II Article 30, http://www.mosr.sk/dokumenty/obr_strategsr.pdf.

Based on the defense strategy, the Military strategy SR 2001 defines ways how the Armed Forces will be organized, controlled and used in the interest of the completion stated in the above-mentioned strategic documents. At the same time it creates a basis for elaboration of doctrines and generally binding legal regulations within the Armed Forces. In connection to the analysis of secure environment based on these documents, the military strategy considers the probability of threat occurrence and expected impact of the corresponding threat to the vital interests of the Slovak Republic. This comparison results in high probability of general non-military threat occurrence (terrorism is also included in them), with medium or low impact on vital interests of the Slovak Republic. However, the Armed Forces are only considered as supportive when solving this type of threat. As compared to defense strategy, terrorism is analyzed in more detail:

“General non-military threats include emergencies other than armed conflict, such as:

- *terrorist activities,*
- *illegal weapons transfer including nuclear, biological and chemical weapons,*
- *international organized crime,*
- *uncontrolled migration or massive refugee flow,*
- *religious or ethnic extremism and rivalries,*
- *social unrest and a number of other activities that may lead to armed conflicts, if unresolved. Of particular importance to the security of the state is the non-military threat posed by international terrorism. Given the rise in frequency and the magnitude of recent international terrorist operations, the military must be prepared to provide military-unique support to the appropriate civilian agencies in response to such incidents. Counterterrorism capabilities must be developed and maintained within the Armed Forces to ensure rapid response times for such support operations. Specifically, the Armed Forces must emphasize enhancements of counterterrorism training and equipment for Special Forces and intelligence organizations.”*¹⁶⁰

In comparison with previous strategic documents there is a progress in reaction to terrorism being already defined as one of the Armed Forces tasks: *“Be prepared to rapidly provide Special Forces and intelligence assets to assist other agencies in the conduct of counterterrorism operations. Such support will require enhancements of current training and equipment requirement.”*¹⁶¹

Such a development in the security and defense policy in theoretical and as well as the practical level demanded change in traditional security reasoning. It was reflected in the Doctrine of the

¹⁶⁰ Military Strategy of the Slovak Republic, Chapter II- Security Threats of the Slovak Republic, Article II/2: Non-military threats, http://www.mosr.sk/dokumenty/voj_strategsr.pdf.

¹⁶¹ Military Strategy of the Slovak Republic, Chapter IV- The Roles, Missions and Tasks of the Armed Forces, Article 2.2.8, http://www.mosr.sk/dokumenty/voj_strategsr.pdf.

Armed Forces of the Slovak Republic¹⁶² issued on March 31, 2005 (which is a substitute for the doctrine of 2002), which responds to the measures in fight against terrorism in a more specific way.

5.11 The increase of terrorist activities in international environment represents an important phenomenon influencing the further development in the security environment of the Slovak Republic. The armed forces must be prepared and able to counter terrorism. This requires training of special counter terrorism units and intelligence elements.

5.12 Engagement of the Armed Forces of the Slovak Republic within antiterrorist measures and the use of this doctrine for operational purposes are based on this definition of terrorism: "Terrorism is well-thought-out and premeditated using of violence or threat of unlawful violence to spread fear intended to coerce or intimidate governments or whole societies by attacking civil targets in the pursuit of goals that are generally political." Terrorism is based on using of violence against civilians and civil objects aiming to achieve political objectives.

5.13 Within counter terrorism, it is possible to use the armed forces in two types of operations:

- 1. Defensive counter-terrorist measures, which are based on collection of intelligence information, revealing, prevention and elimination of terrorist plans to attack, and include measures to decrease vulnerability of individuals and various facilities to terrorist attacks;*
- 2. Offensive counter-terrorist measures, which include prevention, discourage and response to terrorist attacks or planned attacks, and also include collection of intelligence information and analysis of possible threats.*

Significant change in the threat perception of terrorism is in the new Security Strategy 2005 and consequently in Defense Strategy 2005. Terrorism is seen as the biggest threat with potential most serious consequences for Slovak Republic and her allies in connection with WMDs in hands of terrorists or failing states. Security Strategy designates the terrorism as a "strategic global threat".

2.2. Danger of Terrorism in the Slovak Republic

As prevention against terrorist attacks we urgently need to investigate the motives and possibilities of potential terrorists. If we want to comprehend motives of potential terrorists in Slovakia, we place ourselves in a very difficult situation. In many cases it is almost impossible to see the reasons leading to terrorist act committment. The reasons could be either various

¹⁶² Doctrine of the Armed Forces of the Slovak Republic, Bratislava 2005, Chapter 5: Commitment of the Armed Forces of the Slovak Republic in Military Operations other than War, <http://www.mosr.sk/dokumenty/doktrina1.pdf>, April 20, 2005.

historic injustices, or current political, economic or ideological disputes. Despite all kinds of counter-terrorist measures, the motivated individual can find a way how to perform an act of terror. Slovakia has no imperial history, which could be perceived as a source of problems, nor does it have any significant symbolic targets on its territory that could become potential targets of terrorists. There are much more symbolic targets around the world and in Europe that could become more probable targets. It is necessary to mention that possible successful counter-terrorist measures in more threatened countries, such as the USA, Great Britain, etc. can cause the terrorists to seek secondary targets. In the territory of Slovakia, as well as in other countries, the various political, economic, cultural and other interests are promoted in various forms. These are presented by diplomatic missions of other countries, international institutions, commercial, industrial and financial organizations belonging to the most sought-after targets of terrorist attacks. These objects are exactly what the terrorists perceive as symbols personalizing the adversary.

The Slovak Republic is becoming more vulnerable mainly due to the development of globalization. As most of us are aware, globalization not only brings the world a complex of wide and acute threats to security, but it makes the world more vulnerable against such threats. Globalization increases mutual dependence – which means the fragility and vulnerability of national and international infrastructures. Therefore, a successful attack against one of their elements in one country can have a negative impact on other elements around the world. What is more, globalization eases the access for extremists to highly-efficient methods of attack.

Besides this, each intelligence component of a terrorist organization concurrently investigates and analyzes places where security situation is most volatile, and where the “terrain” for terrorist attacks is the most suitable. Prediction of what kind of “terrain” Slovakia is for such attacks belongs to the priorities of the prevention.

The status of Slovakia is being changed, on principle, step by step, by means of its gradual completion of integration into the NATO alliance and the European Union, as well as its military activities in foreign missions. Slovakia has become an integral part of a probable target of terrorist attacks. The region of Central Europe and specifically Slovakia are the most threatened areas by violent revenges of the Islamist terrorists.

Since its establishment in 1993, the Slovak Republic has declared its support to civilization values, which are by the Muslim terrorist organizations perceived as general evil. For example, democracy is considered by al-Zarqawi as heretic religion that stands above the Law of God itself.¹⁶³ The movement of the Muslim brotherhood, although not terrorist organization

163 Zarqawi and other Islamists to the Iraqi People: Elections and Democracy are Heresy, <http://memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP85605>, April 25, 2005.

itself, opposes the separation of the state and church, in other words, politics from religion¹⁶⁴, Bin Laden, stands also up against parliamentarism.¹⁶⁵ Since Slovakia belongs to the western community of countries, it has also formally been declared global war on “Crusaders and Jews”.¹⁶⁶

In this connection it is also necessary to take into consideration the Muslim minority in Slovakia currently displaying no signs of threat but theoretically may cooperate with terrorists from abroad. Muslim communities in Europe represent a wide ethnic, linguistic and cultural mosaic with bonding to the extra-European regions of the Muslim world. As immigrants, the Muslims sometimes find themselves in a strange and hostile environment from the point of view of belief and lifestyle. The majority community confronted with an Islamic minority is forced to enter into a dialogue with this minority, and in some cases, this grows into conflicts. Muslim immigrants in contact with this strange environment naturally reassess their own perception of the world, religious values and practice.

On estimate, there are between 500 and 5 000 Muslims living in Slovakia¹⁶⁷. The majority of them study here, but some of them are working or are immigrants. Despite current attempts, they do not have a mosque built in Slovakia; they only have two chapels at their disposal in Martin and Košice. Their attempt to build an Islamic cultural center in the Bratislava inner city is reasoned by the fact that there are no conditions created in the Slovak Republic for official acknowledgement of the Muslim belief by the state¹⁶⁸ (pursuant to Act No. 192/1992 Coll. on registration of churches and religious communities, the church or religious community has to prove the declaration of support of at least 20 000 adult people who have permanent residence status in the territory of the Slovak Republic). The Ministry of Interior of the Slovak Republic registered on July 15, 2004, a civil association called the Slovak Islamic Movement, which was meant to be transformed into a political party. Based on the words of the member of the Slovak Arabic Community Souheil Ghannam, the Arabic community in Slovakia disavows from all activities leading towards the foundation of a religious political party. We have to mention that shortly before their registration, the Slovak Islamic Movement omitted the word Hizballah in its name since the Lebanon movement Hizballah in on the list of terrorist organizations.¹⁶⁹¹⁷⁰

164 Analysis: The roots of jihad, http://news.bbc.co.uk/1/hi/world/middle_east/1603178.stm, April 25, 2005.

165 Bin Laden's "State of Jihad" Address, <http://www.frontpagemag.com/Articles/ReadArticle.asp?ID=10411>, April 25, 2005.

166 Jihad Against Jews and Crusaders, <http://www.fas.org/irp/world/para/docs/980223-fatwa.htm>, April 25, 2005.

167 International Report on the Freedom of Religion, 2004 Slovak Republic, <http://bratislava.usembassy.gov/cis/sk050.html>, April 20, 2005.

168 Ibidem.

169 The Islamic Party is about to be Established in Slovakia, <http://www.czsk.net/svet/clanky/sr/islamstrana.html>, April 21, 2005.

170 Jozefčiaková, S.: Potential of Islamic Radicalization in the Countries of Western Europe. Implications for Slovakia. In: Collective of authors: Terrorism - Current Challenge for the 21st Century (...connections to Islam), IBOŠ MOSR Bratislava 2005, p. 102.

Marginalization of minorities (also Muslims) and their ostracism by the society can lead to the minority members taking refuge to those who proclaim hatred. Even though the politics and law of the state might be perfect in all aspects, still they are not sufficient to ensure harmonic coexistence of minorities with the majority population. A change of way of thinking is necessary here. Every population majority is vulnerable to treating the minorities suspiciously. The more homogeneous the majority society is, the more this is true. Any criminal offenses of minorities put a bad light on the perception from the majority in the society. Many European countries perceive the question of immigration very sensitively, and some political parties, having immigration issues in their agenda, report of success (Austrian People's Party, Lijst Pim Fortuyn in the Netherlands...). And this is where the spiral of misunderstanding and violence is born. Any offense on the side of the minority leads to some precautions on the side of the majority. Counter-measures of the majority lead to even greater alienation of the minority. It is essential to avoid the escalation of such situations and provide suitable conditions for integration as well as good relations among ethnic groups.

At present there is no well-grounded reason in Slovakia to be afraid of violence inspired by Islam. However, it is essential not to overlook the danger of Islamic violence which is happening in other countries as something that might not happen in Slovakia. The question remains whether this situation will change or not. If so, then when, and why?

2.3. Legislation Framework of the Fight against Terrorism

In the fight against terrorism it is inevitable for each subject to have their rights and obligations in compliance with the law. Therefore, we consider it important to focus on the legislative framework of the fight against terrorism in the area of the Slovak Republic.

In the conditions of internationalization in various forms and expressions of terrorism, the Slovak Republic does not stand outside the international dimension of the fight against this demoralizing phenomenon that gathered dimensions of serious threat for the world of the 21st century. Accepting this challenge, the Slovak Republic actively joined practically all international agreements and conventions relating to the fight against terrorism. It also takes part in their implementation to a certain extent. The Government of the Slovak Republic on its session on December 6, 2001, in the Decree of the Government of the Slovak Republic No. 1137, declared its active attitude towards the Report on the elaboration of the set of measures resulting from the Action Plan to Combat Terrorism in the European Union¹⁷¹, the

171 List of Decrees dated December 6, 2001, <http://www.rokovania.sk/appl/material.nsf/UznesenieDatum?OpenView&06-12-2001>, April 20, 2005.

Resolution of the UN Security Council No. 1373 (2001) and further relevant documents in the conditions of the Slovak Republic. Subsequently the proposal for the National Action Plan to Combat Terrorism was elaborated in 2004 in Slovakia, in which the Government of the Slovak Republic and all competent subjects of the security system of the Slovak Republic consider the fight against terrorism as one of their main priorities. The Government of the Slovak Republic discussed and approved the *National Action Plan to Combat Terrorism*¹⁷² by Decree No. 369 on its session on May 10, 2005. This plan represents a complex, strategic, and program document focused on all aspects of the fight against terrorism in the territory of the Slovak Republic, this means legislative, institutional and executive aspects. This is a document of a long-term validity, determining the tasks for individual key subjects, as well as the tasks that the subjects will be completing within the cooperation. The document also contains some tasks and measures resulting from the European Action Plan to Combat Terrorism as tasks for the Slovak Republic. The main target resulting from the above-mentioned documents is to enhance the international consensus and increase international efforts in the fight against terrorism, to restrict access of the terrorists to financial and economic resources, to multiply the abilities of the member states in research, investigation and prosecution of perpetrators of criminal acts, as well as prevention of such acts. Among the other tasks belong the assurances of secure international transportation, a system of efficient performance of border control, increasing capabilities of solving crisis situations, elimination and moderation of terrorist attacks' effects, as well as the restriction of factors contributing to the support and recruitment of persons (terrorists) for committing the criminal acts of terrorism.

2.3.1 International Agreements

Slovakia is the signatory of various international agreements, either the agreements within the UN, NATO, EU or the international ones. In the following chapter we are looking at a brief summary of these international agreements, which bind the Slovak Republic to the fight against terrorism.

United Nations and the fight against terrorism¹⁷³

The international community has dealt with terrorism since 1937, when the League of Nations finalized an Agreement on the prevention and punishment of terrorism. Since 1963, the international community, under the patronage of the United Nations, has elaborated 13

172 Materials from the sessions of the Government of the Slovak Republic, <http://www.rokovania.sk/AppI/material.nsf/0/E057901E69F74322C1256FF80041355E?OpenDocument>, May 12, 2005.

173 National Action Plan to Combat Terrorism, [http://www.rokovania.sk/appI/material.nsf/0/84EDDC5FBF21FB29C1256F55003ADDA5/\\$FILE/Zdroj.html](http://www.rokovania.sk/appI/material.nsf/0/84EDDC5FBF21FB29C1256F55003ADDA5/$FILE/Zdroj.html), April 20, 2005.

universal legal instruments relating to the prevention and suppression of international terrorism. These conventions are focused on specific problems, such as hijacking or kidnapping, but not on the issue of terrorism per se. This is due to failure of the UN to decide upon a definition of terrorism over the decades that would be acceptable for all member states.

Conventions to which the Slovak Republic is a contractual party:

1. Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo, 1963, (Regulation No. 102/1984 Coll.)
2. Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 1970, (Regulation No. 96/1974 Coll.)
3. Convention for the Suppression of Unlawful Acts Against Safety of Civil Aviation, Montreal, 1971, (Regulation No. 16/1974 Coll.)
4. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agent, New York, 1973, (Regulation No. 131/1978 Coll.)
5. International Convention Against Taking of Hostages, New York, 1979, (Regulation No. 36/1988 Coll.)
6. Convention on the Physical Protection of Nuclear Material, Vienna, 1981, (Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 329/2001 Coll.)
7. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, dated in 1971, Montreal, 1988, (Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 346/2000 Coll.)
8. Convention for the Suppression of Unlawful Acts Against Safety of the Maritime Navigation, Rome, 1988 – the Slovak Republic has been the contractual party since March 8, 2001, (Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 175/2001 Coll.)
9. Protocol on Suppression of Unlawful Acts Against the Security of Firm Platforms Placed on the Continental Shelf, Rome, 1988 (Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 174/2001 Coll.)
10. Convention on the Marking of Plastic Explosives for the Purpose of Detection Montreal, 1991

11. International Conventions for the Suppression of Terrorist Bombing, New York, 1997 (Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 382/2001 Coll.).
12. International Convention on the Suppression of the Financing of Terrorism, New York, 1999 (Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 593/2002 Coll.)

The newest counter-terrorist contractual document is the International Convention for the Suppression of Acts of Nuclear Terrorism elaborated by the ad hoc committee of the General Assembly of the UN for terrorism. It was approved by the Resolution of the General Assembly No. 59/290 dated April 15, 2005. This document is open for signature from September 14, 2005 to December 31, 2006. It is in the interest of the Slovak Republic for the convention to be signed on the top level during the UN Summit that takes place from September 14 to September 16, 2005 in New York.

The General Assembly of the UN and the Security Council of the UN have passed several resolutions on terrorism. From the fight against terrorism point of view, the most significant is the Resolution of the Security Council No. 1373 (2001) dated September 28, 2001, declaring that acts, methods and practices of terrorism are incompatible with the goals and principles of the UN.

The UN therefore appealed to the member states to become contractual parties of the corresponding international conventions and protocols as soon as possible in order to intensify cooperation and fully implement the corresponding international conventions and protocols. The Slovak Republic has fully implemented the particular resolution to the conditions in the Slovak Republic. In its three reports, the Slovak Republic informed the Counter-Terrorism Committee of the UN Security Council (CTC) of the measures adopted in connection with implementation. The European Convention for the Suppression of Terrorism (Strasbourg, 1977) is a significant convention, on the regional level, in the fight against terrorism, also binding for the Slovak Republic.

Cooperation of the EU Member States in the Area of Fight Against Terrorism

(Declaration on Combating Terrorism and Action Plan to Combat Terrorism)

The goal that the Amsterdam Treaty placed in front the European Union was to create space for freedom, security and law. In October 1999 the European Council in Tampere, Finland, adopted a demanding program with practical aims and deadlines for their achievement. In this connection, on March 25, 2004 the European Council adopted a Declaration on Combating Terrorism as an answer to the terrorist attacks in Madrid dated March 11, 2004. Recognizing the terrorist acts to be attacks against the values which the Union is founded on, the Declaration

emphasized the obligation of the Union and its member states to perform everything that is in their power in the fight against all forms of terrorism. This is mainly to support the exchange of information among national intelligence information systems, and further to monitor and support the correct implementation of existing legal instruments (for example the agreement on Europol and the agreement on Eurojust). In the Resolution No. 403/2004 the Government of the Slovak Republic is obliged to implement measures and international obligations in connection with the adoption of the Declaration on Combating Terrorism.

The declaration on Combating Terrorism provided also the mandate for the preparation of the revised Action Plan to Combat Terrorism (AP). The revised AP is based on the strategic goals of the fight against terrorism related to enhancing the international consensus and strengthening the international attempt in the area of the fight against terrorism. This restricts the terrorist's access to the financial and other economic resources, maximizing the capacity within the EU authorities and the member states for research, investigation and criminal prosecution of the terrorists for the purpose of terrorist attacks' prevention. Further, it ensures protection and security of international transportation, and assurance of the efficient system of border control, improvement in the abilities of the EU and the member states to deal with consequences of the terrorist attacks. Finally it defines factors contributing to the terrorist support and recruitment to terrorism, and determines areas for improvement of the fight against terrorism in relation to the third countries.¹⁷⁴

The Protocol amending and supplementing the European Convention on Combating Terrorism was signed by the Minister of Justice of the Slovak Republic on April 7, 2005 in Helsinki. The protocol specifies, enlarges and increases the efficiency, in detail, of the judicial cooperation in the area of the fight against terrorism and other serious criminal offences. The protocol determines the Conference of the contractual states against terrorism being responsible for the efficient application of the convention and exchange of information in the area of the fight against terrorism.

NATO and the Fight Against Terrorism¹⁷⁵

(Partnership Action Plan to Combat Terrorism, NATO Military Conception and Working Program of Defense Against Terrorism)

The terrorist attacks of September 11, 2001 were the impulses for ranking the fight against terrorism among the main priorities of the Alliance Agenda. NATO actively pursues the fight against this phenomenon. At the Prague Summit, the Alliance adopted the Partnership

¹⁷⁴ Ibidem.

¹⁷⁵ NationalActionPlanforCombatingTerrorism, [http://www.rokovania.sk/appl/material.nsf/0/84EDDC5FBF21FB29C1256F55003ADDA5/\\$FILE/Zdroj.html](http://www.rokovania.sk/appl/material.nsf/0/84EDDC5FBF21FB29C1256F55003ADDA5/$FILE/Zdroj.html), April 20, 2005.

Action Plan for Combating Terrorism and a new military conception for the protection against terrorism. The new NATO military conception determines the areas of use of military force as preventive mechanism for the purpose of decreasing vulnerability of the armed forces, population and property, and use of military forces when dealing with terrorist attacks, and direct military attack action for decreasing terrorists' capability of an attack. In the area of mutual military cooperation, the Istanbul Summit took measures to improve the mechanisms of handing over intelligence information with the use of the Terrorist Threat Intelligence Unit with its base in NATO Headquarters in Brussels. At the same time, it passed the document *Working Program of Defense Against Terrorism* consisting of various projects that should help to increase alliance capabilities when protecting its populations and units against terrorist attacks. One of these projects is the explosive ordnance disposal and the management of consequences in which the Slovak Republic took a leading role within the NATO Alliance.

International Agreements

The Slovak Republic, as one of the two successor states of the Czechoslovak Republic, automatically assumed all agreements of the former Czechoslovakia. Some agreements were cancelled, some were amended, and some have been valid up to the present. The Slovak Republic has signed a number of bilateral agreements. These agreements are divided according to their focus (status as of May 2005). They deal with areas such as:

- Police cooperation: Belgium, Bulgaria, France, the Netherlands, Austria (has not become effective yet), Serbia and Monte Negro.
- Cooperation at the Interior Level: Bavaria, France, Hungary, Russia, Ukraine.
- Fight against terrorism, narcotics smuggling and organized crime: Belarus, Cyprus (has not become effective yet), Latvia, Hungary, Romania. Slovenia, Italy, Turkey, Turkmenistan, Great Britain;
- Fight against organized crime: Czech Republic, Egypt, Croatia, Malta, Germany, Poland (has not become effective yet), Spain, Ukraine, Uzbekistan;
- Fight against criminal activity, public order protection and state border protection: Czech Republic (has not become effective yet).¹⁷⁶

2.3.2 Domestic framework

Already in 1997, the Slovak Republic increased its attention to the phenomenon of terrorism. The Government of the Slovak Republic in its Resolution No. 493/1997 adopted a set of

¹⁷⁶ Internal Document of the Department of the Fight against Terrorism at the Presidium of the Police Corps of the Slovak Republic.

preventive measures in the fight against terrorism in the territory of the Slovak Republic. The quoted document was elaborated, and is assessed and updated annually. The assessment report on task completion is submitted to the sessions of the Government of the Slovak Republic annually at the end of the year.

Within the Slovak Republic, mainly the force departments are responsible for the fight against terrorism. The guarantors of the fight against terrorism in the Slovak Republic are the Ministry of the Interior, the Ministry of Foreign Affairs, with the Ministry of Defense starting to play an even more important role. Besides these departments, the Intelligence Services (Slovak Information Service SIS, Military Defence Intelligence VOS, and Military Intelligence Service VSS) and the Ministry the Justice are also involved in the fight against terrorism.

Ministry of the Interior of the Slovak Republic

The Ministry of the Interior of the Slovak Republic is the main guarantor of the fight against terrorism in the territory of Slovakia. For this purpose, there are special police units trained to fight organized crime and terrorism under its authority. Since January 1, 2004 a specialized division dealing with the questions and issues of terrorism and the fight against it has operated at the Police Force Headquarters under the leadership of the President of the Police Force. This division plans to extend its authority to regional police headquarters (KR PZ) around Slovakia.¹⁷⁷

Due to the transnational dimension of terrorism, the Slovak Republic actively cooperates internationally in the fight against terrorism. This cooperation by the Ministry of the Interior is active mainly through the Police Working Group on Terrorism (PWGT) and the Working Group on Terrorism of the Council of the European Union (WGT). Besides the prioritized European region, the Police Corps members cooperate with international police groups within the projects initiated by Interpol, in close cooperation with the UN and the International Criminal Tribunal for the former Yugoslavia (Fusion Task Force). The purpose of these projects is mainly to cooperate (exchange of information and knowledge relating to this phenomenon) in the area of monitoring the movement and residence of persons suspicious of participation in terrorist activities. Within PWGT and WGT the parties involved exchange information and make requests of cooperation for specific cases or checking on the interest groups. These requests, up to the level of confidentiality of “classified,” are sent via encrypted Elcrodac (PWGT) and BdL (WGT).

The Ministry of the Interior of the Slovak Republic became the coordinator of the bodies of the Crisis Management within the extent determined by the government of the Slovak

¹⁷⁷ Police in the Fight against Terrorism, <http://www.minv.sk/ter/pzter.htm>, April 21, 2005.

Republic¹⁷⁸. The Minister of the Interior became the Chairman of the Central Crisis Staff, and is a member of the Security Council of the Slovak Republic. The specific tasks of the Ministry of the Interior are to provide a support to Central Crisis Staff and its coordination, cooperation with entrepreneurs and legal entities at civil emergency planning, organization and management of state administration bodies and self-government in crisis situations, and oversight of their activities in this area.

Ministry of the Foreign Affairs of the Slovak Republic

The Ministry of the Foreign Affairs of the Slovak Republic, as a participating department (NAP 2004)¹⁷⁹ is to become the main coordinator (NAP 2005) in the fight against terrorism. In accordance with the NAP proposal, an Interdepartmental Coordination Committee for the Fight against Terrorism will be established in 2005. Its members will be from the Ministry of Foreign Affairs and representatives of other concerned departments.

The following tasks are from NAP for the Ministry of the Foreign Affairs:

- To strengthen the mechanism for identification, control and dissolution of illegal trade in weapons of mass destruction.
- To provide for coordination, cooperation and collaboration among intelligence services, police, the armed forces, customs authorities and other relevant state agencies of the Slovak Republic by creating appropriate mechanisms for identification, investigation and criminal prosecution of persons suspected of criminal acts of terrorism, as well as their prevention.
- To standardize the information flow among participating agencies (SIS, MoI SR, MoD SR, MoF SR, MFA SR) and provide information exchange relevant to the fight against terrorism in the widest extent possible.
- To elaborate the common strategic analysis and assessments of terrorist threats and to contribute to the international cooperation and exchange of criminal and intelligence information within the EU (SitCen - Crisis Management and Operations Directorate Situation Centre) and NATO (NATO Office of Security - NOS).

The Ministry of the Foreign Affairs of the Slovak Republic shall act mainly as the contact point for foreign security policy in connection with implementation of international conventions and

¹⁷⁸ Act No. 387/2002.

¹⁷⁹ National Action Plan to Combat Terrorism, [http://www.rokovania.sk/appl/material.nsf/0/84EDDC5FBF21FB29C1256F55003ADDA5/\\$FILE/Zdroj.html](http://www.rokovania.sk/appl/material.nsf/0/84EDDC5FBF21FB29C1256F55003ADDA5/$FILE/Zdroj.html), April 20, 2005.

obligations relating to the Slovak Republic. Its task is to record, centralize, update and distribute international documents relating to the resolutions of the UN Security Council, regulations of the EU institutions and authorities, and other decrees of international institutions, as well as countries which declare sanctions against persons and groups suspicious of terrorism. It also provides support to the security sections of the Slovak Republic.

Representatives of the Ministry of the Foreign Affairs of the Slovak Republic regularly participate in the Working Group Activity (WG) of the Council of the EU in the area of terrorism (mainly WG for international aspects of terrorism within the second 2nd pillar of EU COTER and WG on terrorism - Clearing House). Information and knowledge acquired in connection with this participation creates the basis for proper implementation of the Action Plan of the EU in the fight against terrorism in the Slovak Republic.

Slovak diplomatic missions around the world regularly provide information on situation development in various countries. They monitor current levels of regional security and its impact on the domestic security of the Slovak Republic. This information gathered by the Ministry of Foreign Affairs is then given to the relevant departments. Information regarding political and security situations abroad is received via cooperation with representative offices of foreign countries in the Slovak Republic.

The Ministry of the Foreign Affairs continuously consults the possible impacts of negative security developments on the Slovak domestic security and the possibility of their resolution with corresponding intelligence services and other departments and central state administration authorities.

Pursuant to Act No. 387/2002 Coll. the Minister of Foreign Affairs is a member of the Security Council of the Slovak Republic.

The Ministry of Foreign Affairs of the Slovak Republic established a Division for Disarmament, OECD and the Fight against Terrorism, the tasks of which are the gathering of all information on the fight against terrorism from the Ministry of Foreign Affairs divisions, as well as outside the Department, and providing the individual outputs to them. It also elaborates conceptions on the foreign policy development of the Slovak Republic, provides analysis and documents in the fight against terrorism, and coordinates implementation of obligations arising from agreements and conventions. At the time of creating this publication, the Division of Disarmament was relatively new; therefore, not all tasks under its authority are being performed at present.

Ministry of Defense of the Slovak Republic

The role of the Ministry of Defense of the Slovak Republic in the fight against terrorism arises from its status as the central state administration authority. Its tasks are stated in Act No.

575/2001 Coll. on organizing activities of the Government and central state administration agencies as amended (hereinafter referred to as Act of Jurisdiction). Further tasks of the Ministry of Defense are stated in Acts amending the issues of the defense and protection of the Slovak Republic. Act No. 321/2002 Coll. on the Armed Forces sets tasks for the Armed Forces of the Slovak Republic. Also Act No.198/1994 on military intelligence is relevant. The preparation of Act on Intelligence Services has been finished and submitted to the Committee on Defense and Security of the National Council of the Slovak Republic.

The Ministry of Defense of the Slovak Republic contributes to the fight against terrorism mainly with use of their intelligence services (Military Intelligence Service, Military Defense Intelligence) and Military Police. The Armed Forces of the Slovak Republic itself mainly have a supporting role in the fight against terrorism. Apart from that, they perform tasks resulting from Armed Forces service in the fight against terrorism abroad only after a decision of the relevant authorities in accordance with international law.

Within Slovakia, the Armed Forces participate in the maintenance of public order and state security, its sovereignty, territorial integrity and state border inviolability, and assist in times of state of emergencies in which lives and people's health or property are endangered. The Armed Forces also aid in the elimination of consequences, state border protection and defense and protection of structures and buildings. They can also be utilized in the state of emergency and fight against terrorism.¹⁸⁰

The Armed Forces of the Slovak Republic also cooperate with the Ministry of the Interior of the Slovak Republic in the protection of objects of individual importance and other important objects (critical infrastructure), protection of diplomatic missions, strengthening of the state border protection, and allocating forces and means for creation of shields and blockades against terrorist groups. They implement measures of dosimetric control and hygienic cleaning of civilians in endangered areas.¹⁸¹

Within the Armed Forces there is an ongoing preparation of special units for the fight against terrorism.

The military police perform the tasks of a repressive body in the fight against crime within the armed forces. Pertaining to terrorism, they provide protection to people and property with the use of armed forces. They prevent military technology, weapons, ammunition and explosives from theft and consequent use for terrorist attack. They also perform research of information on terrorist attack preparations and evaluate the state of important objects.¹⁸²

180 National Action Plan to Combat Terrorism, [http://www.rokovania.sk/appl/material.nsf/0/84EDDC5FBF21FB29C1256F55003ADDA5/\\$FILE/vlastnymat.rtf](http://www.rokovania.sk/appl/material.nsf/0/84EDDC5FBF21FB29C1256F55003ADDA5/$FILE/vlastnymat.rtf), April 10, 2005.

181 Act No. 321/2002 on the Armed Forces of the Slovak Republic.

182 National Action Plan to Combat Terrorism, <http://www.rokovania.sk/appl/material.nsf/0/84EDDC5FBF21FB29C1256F55003ADDA5/>

Secret Services

Intelligence services, with their technologies for telephone-tapping and disconnection, are able to acquire valuable information on what is happening within the terrorist organization, or provide information regarding their plans for the future. The acquired information is/could be impaired by at least two factors. Firstly, insufficient exchange of intelligence information in real time. Secondly, possible misinterpretation of acquired information. The first problem can be eliminated by improving the quality of mutual exchange, possibly by centralizing intelligence services management, as in the USA. Certain critics say that international cooperation of intelligence services is an oxymoron, since not being keen to communicate with others and the confidentiality of their sources of information is typical of intelligence services. The second problem could be eliminated by not relying solely on technology, but by developing HUMINT (human intelligence). The work of intelligence services is very complicated without “eyes and ears” on the ground. Deficiencies in HUMINT are an evident weakness in the present campaign in Iraq.

At present there are three intelligence agencies operating in Slovakia - Slovak Information Services (SIS), Military Intelligence Service (MIS) and Military Defense Intelligence (MDI). The latter two agencies belong to the organization of the Ministry of Defense. Their tasks include the prevention of terrorist attacks.

The activities of SIS are regulated by the Act on Slovak Information Service No. 198/1994 Coll. The § 2 (“Tasks of Information Service”) states that within its range of competence SIS shall acquire, accumulate and assess information on the following:

- activity threatening the constitutional system, territorial integrity and sovereignty of the Slovak Republic;
- activities directed against the security of the Slovak Republic;
- activity of foreign intelligence services;
- organized criminal activity and terrorism;
- facts capable of seriously threatening or damaging the economic interests of the Slovak Republic
- threat or leakage of information and protected items pursuant to a specific regulation or international agreement or international protocols.¹⁸³

\$FILE/vlastnymat.rtf, April 10, 2005.

183 Act of the National Council of the Slovak Republic dated January 21, 1993 on Slovak Information Service, <http://www.sis.gov.sk/zakonsis.html>, April 12, 2005.

When completing the tasks resulting from the Act, SIS is entitled to use special means, specifically information and operation means (shadowing of persons, legalization documents and the use of persons acting in favour of information service) and information and technical means (record).

The activity of the Military Intelligence (both MIS and MDI) is stipulated by the Act on Military Intelligence No. 198/1994. The § 2 (“Tasks of the Military Intelligence”) states that “within its preview, Military Intelligence shall acquire, accumulate and assess information essential for securing the defense of the Slovak Republic, including information on:

- activity threatening the constitutional system, territorial integrity and sovereignty of the Slovak Republic;
- activities of foreign intelligence services;
- terrorism;
- facts capable of seriously threatening or damaging the military and economic interests of the Slovak Republic;
- threat or leakage of information containing facts constituting the subject of state and service secret.¹⁸⁴

When completing the tasks resulting from the act, the Military Intelligence is entitled to use special means, specifically information and operation means (shadowing of persons, legalization documents and the use of persons acting in favour of information service) and information and technical means (record).

In May 2005 the Committee on Defense and Security of the National Council of the Slovak Republic was submitted the Proposal of the Act on Slovak Information Service, Military Defense Intelligence and Military Counter-Intelligence as amended. This act shall substitute for the effective act on SIS and Act on Military Intelligence Service.

The proposal of the act arises from the fact that current Acts on secret service are outdated, and do not take into account the fact that the Slovak Republic had become part of a collective defense system. It is inevitable to create corresponding legal assumption of intelligence operation of special state authorities of the Slovak Republic in order to fully join the integrated system of intelligence sections of the NATO member states.

The proposal of the act clearly regulates authority and tasks of the intelligence services in the Slovak Republic when performing intelligence services. It also arises from the Program declaration of the Government of the Slovak Republic and in this way reacts to the necessity

184 Act No. 198 dated June 30, 1994 on Military Intelligence, <http://www.vssmosr.sk/pages/z198.htm>, April 12, 2005.

to increase the proportion of intelligence services in the fight against organized crime and terrorism. The Proposal also provides effective tools for intelligence in the fight against international terrorism.

The Ministry of Justice of the Slovak Republic

The process of harmonizing the Slovak Penal Code has brought many legislative amendments and changes, mainly in the area of criminal acts of terrorism, human trafficking, harming the financial interests of the European Community, and corruption. The main goal of the legislative changes is to provide a high degree of citizen protection against the perpetrators of the criminal acts within the territory of the EU. The Slovak Republic is prepared to provide such protection. The EU legislation extended the criminal liability onto the legal entities, which allows prosecuting crimes on a wider range of subjects.¹⁸⁵

The Ministry of Justice defines terrorism in its Penal Code. The definition of terrorism and its punishment was incorporated into the Penal Code No. 140/1961 Coll. in a form of Penal Code amendment No. 421/2002 Coll. dated September 19, 2002. Moreover, the punishment for the establishment, plotting and support of criminal groups was added into §185. The regulation of §185b stipulates effective repentance of the informer, and §185c stipulates the agent participation in the terrorist group. The previous definition of terrorism was as follows:

§ 94 Terrorism

1. Whoever with intent to seriously threaten the population, seriously destabilize or impair the constitutional, political, economic or social state order or international organization structure, or force the country's government or international organization to act or refrain from an action, threatens by committing or commits intentionally a particularly serious criminal act (§ 41 section 2) endangering life, person's health, their personal freedom or possession, or wrongfully manufactures, obtains, owns, possesses, transports, delivers or otherwise uses explosive, nuclear, biological or chemical weapons, or performs unauthorized research and development of such weapons or weapons forbidden by the law or international convention shall be sentenced to a term of imprisonment of between twelve to fifteen years or an exceptional punishment and forfeiture of property.
2. The offender shall be sentenced to an exceptional punishment and forfeiture of property,
 - a. if he commits an act under subsection 1 as a member of the terrorist group,
 - b. if he commits an act in a particularly brutal manner,

¹⁸⁵ Justice and Internal Affairs - Chapter 24, <http://www.euroinfo.gov.sk/index/go.php?id=281>, April 21, 2005.

- c. if he inflicts a serious bodily injury or causes death of more persons,
- d. if he commits an act against constitutional officials, persons protected by international law, armed forces, armed security unit or armed unit.

The Ministry of Justice has prepared a re-enactment of the Penal Code. The Penal Code shall bring numerous changes. One of them is also a higher punishment for criminal acts against life and health. Terrorism is one of them. The re-enactment of the Penal Code on terrorism is stipulated as follows:

§ 419 Terrorism

1. Whoever with intent to seriously threaten the population, seriously destabilize or impair the constitutional, political, economic or social state order or international organization structure, or force the country's government or international organization to act or refrain from an action, threatens by committing, or commits a criminal act endangering life, person's health, their personal freedom or possession, or wrongfully manufactures, obtains, owns, possesses, transports, delivers or otherwise uses explosive, nuclear, biological or chemical weapons, or performs unauthorized research and development of such weapons or weapons forbidden by the law or international convention shall be sentenced to a term of imprisonment of between twenty to twenty-five years or life imprisonment
2. An offender shall be sentenced to life imprisonment if he commits an act under subsection 1
 - a. and causes serious bodily injury to more persons or he causes somebody's death,
 - b. on a protected person,
 - c. against the armed forces or armed corps,
 - d. as a member of dangerous association, or
 - e. during a crisis situation.

In accordance with Act 141/1961 as amended, in the case of a terrorist act, the offender(s) shall be judged by a Special Court (§ 15 section 2.): Persons prosecuted for criminal acts of establishment, plotting and support of a criminal group or terrorist group, and persons prosecuted for particularly serious criminal acts committed in connection with an organized group or terrorist group operating in many countries, with criminal group or terrorist group, shall be liable to the authority of the Special Court.

2.4. Forces for the Fight against Terrorism

The fight against terrorism is a long-term process by which a society protects itself against the destabilizing effects of terrorist attacks. This is not a problem of individual countries, it is an international problem. The countries are forming coalitions and establishing mutual security systems for the purpose of finding solutions. The fights effectiveness depends on the ability of security units to act in prevention and intervention against terrorist offenders and then also to eliminate their consequences.

Slovakia has not had any experience with terrorism on its soil; therefore, it will utilize the knowledge of other countries. These confirm that the prerequisite for success is the acceptance of complex measures using unified security systems of a long-term and operative nature.

Effective forces and means for the fight against terrorism are represented by state institutions, special services and their executive counter-terrorist divisions and other emergency squads, including police department services, civil defense units, fire departments and many others. As is the practice in many countries, various parts of the Slovak Armed Forces are an integral part of these forces. The effectiveness of the forces and means of fighting against terrorism depend on optimal organizational structure, choice and universal preparedness of staff, their armament and general equipment as well as motivation and efficient management in peaceful and crisis times.

What we have in mind in terms of forces for fighting against terrorism are integral formation and organized units which would be prepared, trained, armed and equipped for the purpose of fighting identified forms and demonstrations of terrorism. The methods vary depending on the country, and are governed by legislation, specific situation and the characteristics of terrorist threat, as well as certain traditions and the historical status of police units and armed forces in the society structure.

2.4.1 Secret Services

The Slovak Information Service (hereinafter SIS) is the provider of information in the fight against terrorism and has a key position among intelligence services in the Slovak Republic. Moreover, SIS also performs analytical and informative activity, systematically evaluates uncovered sources, closely cooperates with other state agencies within the Slovak Republic, and exchanges information with foreign partner intelligence services.

The Military Defense Intelligence performs the tasks of fighting against terrorism at all levels

of its organization and under its authority. It discloses and eliminates illegal trade of weapons and explosives, military material, controlled substances and dual use technologies, weapons of mass destruction, and substances used for their production. It acquires, accumulates and evaluates information primarily focused on the preparation of terrorist attacks on the department of defense area, persons and objects of other countries within the territory of the Slovak Republic, with special emphasis on protection of military diplomatic corps, and official foreign visitors of the Minister of Defense and NATO expert and working groups.

The Military Intelligence Service obtains knowledge concerning terrorist groups and their activities abroad, through connections to the Slovak Republic, established networks and financial flows for the support of terrorist activities.

Intelligence services perform the following tasks in the fight against terrorism:

- cover mainly dangerous communities, at the intelligence level, which are created by radical persons from active terrorist and crisis regions, or from organized crime groups and extremism;
- cooperate with partner foreign intelligence services to exchange operative and analytic information, expert negotiations and common intelligence operations;
- obtain information concerning terrorist activity threats which are aimed against the population, institutions and objects in the Slovak Republic and abroad, or that endanger the foreign political interests of the Slovak Republic or that of their partner countries within the international relations.
- monitor and analyze the security situation in the homeland and in high-risk countries and regions;
- monitor subjects that could be potential sources, carriers or terrorist activity supporters;
- participate in intelligence protection of embassies and representatives of other countries acting in the Slovak Republic, with emphasis on threats to objects of countries committed in the global fight against terrorism;
- monitor the environment of illegal migrants and organizers of migration from abroad for the purpose of discovering transiting terrorists and their sympathizers even before their arrival in the territory of the Slovak Republic;
- obtain information concerning the proliferation of weapons of mass destruction and their means of delivery in the Slovak Republic and abroad;

- discover misuse of any key governmental and public information systems, and notify of potential insufficiencies in protection of these systems against cyberterrorist attacks.¹⁸⁶

2.4.2 Police Units

Police units are the main players of repressive state machinery in the fight against terrorism. Special police force units dedicated to the fight against terrorism are allocated in order to be able to act simultaneously by districts, regions, and higher territorial units, as well as in the whole of Slovakia. At the beginning, these forces were created primarily to fight against dangerous forms of organized crime. With the increasing threat of terrorism, the authority of these forces was extended to fight against various forms of possible terrorist activities mainly within the territory of the Slovak Republic. These forces are specially prepared, trained, armed and equipped with material especially for this purpose. Their staff has special selective criteria as well as special courses of duty.

The main tasks of the special counter-terrorist police forces are operative interventions against especially serious and dangerous criminals and other organized criminal activities, e.g. against smugglers and arms dealers, sensitive and dangerous technologies and drugs trade, as well as preventive actions against such activities. Furthermore, it includes capturing or pacifying particularly dangerous criminal individuals or groups, rescuing hostages or performing risky rescue operations and also protecting important persons and constitutional officials, mainly when they are operating in urban settings or in open spaces. Operative actions against particular terrorist activities are at the top of the task hierarchy. In all cases, these units can act independently or in cooperation with other units of the police force, including selected units of the armed forces.

2.4.3 Units of Armed Forces

The armed forces are also increasingly drawn into the fight against terrorism as the various forms of terrorist activity frequently overlap into asymmetric forms of unconventional combat activity. This is the reality in surrounding countries and also in Slovakia. In the past, the units and the troops of the army infrastructure were many times deployed in support of preventive counter-terrorist operations. For example, their staff participated in the strengthening of strategic and sensitive (from the security point of view) objects of critical infrastructure of the Slovak Republic. After terrorist attacks on targets in the United States of America, for the purpose of strengthening security measures, the armed forces members assisted in increased protection of the eastern state border, which seems to be, in the near future, the most problematic from the

¹⁸⁶ National Action Plan to Combat Terrorism.

security point of view. In connection with these measures, reconnaissance operational groups performed other special tasks on the state border and demonstrated their ability to act on it. Lastly, members of the units of the armed forces contributed to stabilization of a crisis situation, which had escalated into vandalism and looting, in eastern and southeastern Slovakia. The offenders were from the Roma ethnic minority and were socially and emotionally motivated.

There are various opinions at the Slovak Ministry of Defense and within the General Staff of the Armed Forces concerning the position and function of the armed forces in the fight against terrorism. Extreme opinions on one side do not believe the fight against terrorism to be the function of the armed forces. Opinions on the other side hold that the fight against terrorism is the most important task of the armed forces; therefore all units of the armed forces should be prepared to be deployed for action against terrorism. As usual, the truth lies somewhere in-between.

The position and function of the Armed Forces of the Slovak Republic in a counter-terrorist fight is limited not only by effective national strategies, legal regulations, and international agreements, but also by the abilities of the armed forces.

The armed forces are used to fight against enemies with strength and firepower for the purpose of enforcement of the political and state interests and objectives. The armed forces achieve political objectives by fulfilling military strategy and operational art and tactics. If the major military forces fight each other, they use methods of eliminations of the big and strong military operational formations.

Terrorism is, however, another type of enemy and fights with the use of dissimilar forces, with a small number of involved persons or forces, using unconventional and maneuvered tactics, which generally has a major political and material impact compared to the level of force used.

The armed forces in standard structures have limited opportunities of effective impact against terrorism. The above-mentioned problem is not a new one and is not solved only in Slovakia. If we admit that terrorism is a dominant threat in the process of globalization, then the position and function of the armed forces in the fight against terrorism is in providing protection, counter-measures and measures for decreasing the impacts and removing the consequences of terrorist acts.

We list three basic types of measures according to content and focus:

- defensive terrorist countermeasures aimed at protection and prevention against terrorism. Of importance are data collection, intelligence information analysis, and disposal of terrorist plans. It also includes measures for decreasing the vulnerability of individuals and objects influenced by terrorist attacks.

- offensive counterterrorist measures are of a preventive or reactive nature, not excluding the elimination of terrorists and their facilities.
- measures for resolution of terrorist acts, the objective of which is to perform a series of particular steps for minimizing damage and loss and restoration of pre-attack status.

The armed forces may fulfill the above-mentioned measures independently, or in most cases, in cooperation with other elements of the state (crisis) security system. It is obvious that the function of the Slovak Armed Forces in the counter-terrorist fight is specific and irreplaceable. It is mainly intelligence cooperation, preparation of assistance and support units, and protection of persons and objects of critical infrastructure.

It is necessary for the preparation to use all methods and forms of preparation and training of military professionals for increasing their mental resistance and specialized skills to react to the threat of terrorist attacks.

Within the armed forces structure the main participant in the fight with organized crime and terrorism should be units of the Military Police, which are trained and partly armed, and materially equipped, for this purpose. The place, tasks and legal status including measures for the protection of public officials of the units and personell of the Military Police are legally handled by special legislation, which does not apply to other members of the military forces.

In the period between 2000 and 2005, the General Staff and operational echelon of the armed forces command obtained much knowledge and experience in the area of planning, organizing and management of measures relating to providing of security and the fight against terrorism. These echelons of command participated in model exercises managed by the National Crisis Staff. On their own echelons they also performed some strategic and operational command-staff exercises with a scenario where escalation of various terrorist activities led to a crisis situation escalated into a regional low-intensity conflict, which had to be solved by the use of force. A two stage command-staff exercise in the field, code-named "JAVORINA", which took place in October 2002 was a representative example. During this exercise the military force measures of the fight against terrorism were brought to tactical command level of brigades and battalions. But the obtained knowledge and experience shows that if the units of the armed forces are also to be an effective alternative in the fight against terrorism, then it has to resolve seriously more scenarios and current tasks. These are mainly the clear determination in which situations and under what conditions are the armed forces to be used. The current legislation states this in the constitutional law concerning the state security in times of war, state of war, and state of emergency, passed by the National Council of the Slovak Republic on April 11, 2002 (Act No. 227/2002 Coll.). In the past, there were situations when the staff of the armed forces units were demonstratively used outside the scope of the law, based on a

Government Resolution, even though only in support of police forces. We are of the opinion that in such cases, the use of military staff should be treated in the same legal manner as the use of police staff. It relates mainly to their legal status and protection of persons, the use of compulsory means, including the use of weapons and self-defense measures in cases of health and life threats.

In the future it is necessary to create a framework of threat levels in which the military staff should be used, and with what strength and means the army structures should participate in counter-terrorist measures and operations. A solution covering the whole area of the problem might be of little effect. The Armed Forces of the Slovak Republic are made up of formations and units which are able to be called up for fulfillment of tasks in counterterrorist operations quite easily and quickly. The 5th special regiment under the authority of the General Staff, a reconnaissance battalion, reconnaissance units of the ground forces and selected units of a ground forces light brigade are closest to such activity with their composition, motivation and fitness of staff, type of training, equipment and partly predetermination for such work as well.

To be successful in the deployment of the armed forces in counter-terrorist operations, it is important to specify optimal tasks which are the most appropriate for the armed forces in order for their completion to efficiently influence the successful fulfillment of counter-terrorist measures and operations. Besides general support in the territory, these can also be some special intelligence and reconnaissance tasks, fulfillment of which creates the most appropriate conditions possible for successful action of an executive unit.

These tasks are searching for the dislocation of operating terrorist groups, discovering their managing bodies and organizational structures, sources of help and supply, obtaining information concerning their leaders, arms and equipment, material provision and intended activity. It can be the fulfillment of reconnaissance tasks in areas that are either remote or difficult to access and navigation of counter-terrorist forces on identified and localized targets. Reconnaissance would include detection of bases and training camps, channels of supply and many other tasks fulfillment of which would require avoiding direct confrontation with terrorists. A liquidating confrontation with terrorists, if avoidable, should be in the competence of a special counter-terrorist unit.

One of the decisive rules is the rule of qualification and competence that closely relates to professionalism. Not only to professionalism of personnel, but also a professional approach and handling of problems. The selection and training of personnel is aimed at high standards, especially in formations and units where special military activities are sure to include measures against terrorism. They should be a combination of intellectual level, mental and emotional

stability, general knowledge and professional ability, personality, high ethics and will, medical and physical ability and performance, positive motivation, integrity and loyalty to the homeland and the mission itself. Henceforth, these dispositions should be developed purposefully in the process of preparation and in course of the duty.

Practically, this means that members of these units, be they policemen or soldiers, should be intellectually, mentally, physically and expertly versatile individuals, highly motivated and trained, with a clear collective perception of their mission, prepared to complete highly difficult tasks in a wide range of dynamically changing situations and often under extreme physical and mental stress and risks.

In the professional area it means to be a versatile specialist, operative intelligencer, specialist in action techniques in various model situations, specialist in weapon systems and explosive mechanisms, communication systems and informatics, paratrooper, alpinist and diver, and even a psychologist and medical specialist, sniper and many others.

Of course, the achievement of versatility on the same highly qualitative level is practically impossible. It is legitimate to require a certain level of mutual substitutability within the teamwork of operating units. The whole system of long-term specialized training leads towards this. Except for standard training, there are some specific special disciplines dominating in it and without handling it, the operating unit cannot be sufficiently operational.

2.5 The Centre for the Special Unit Preparation

In order to secure special training of executive special units of the Slovak security system (hereinafter referred to as special units), in its Resolution No. 998 dated October 22, 2003 the Government of the Slovak Republic agreed to create a centre for special unit training and medical security in the Military Territory Lešť by means of the Institute of Special Healthcare and Training (Ústav špeciálneho zdravotníctva a výcviku) of the Ministry of the Defense of the Slovak Republic in Lešť (hereinafter referred to as ÚŠZV Lešť). After completion this facility shall be similar to a combination of the French training facility in Saint Aster and the Spanish infantry training base.

Members of special groups trained in the fight against terrorism and organized crime are selected in a special way. The emphasis is put on (except for genetic and physical assumptions) psychological, aggressive and decisive ability to independently solve the changing situation. At the same time they have to have a sense of teamwork and subordination to the interests of the whole. During 2004 the selection of applicants from the unit of the Military Police started by course of the Resolution of the Government of the Slovak Republic No. 943/2000 to

complete the tasks within the united European security and defense policy. New, non-standard procedures, elaborated by experts from ÚŠZV Lešť, were used during the selections. Members of these special groups pass drills of extraordinary intensity, in which they encounter all types of combat skills, for the activity inside buildings, as well as in natural conditions. In this facility members of special groups trained in the fight against terrorism pass special-purpose drills on captivity and have to handle psychological practices of negotiations and reversal of crisis situations to their benefit.

The contribution of ÚŠZV Lešť is merging the two program systems – health and training services into one unit. This fact was confirmed during training courses in 2004 on a full scale. Timely and useful regeneration, which was set on specific persons and dynamic activities, enabled to increase the drill intensity by up to 30 %. Achieved results in general, as well as special training, are incomparably higher than those achieved by a standard approach.

In 2004, courses in special physical preparation also took place in ÚŠZV Lešť. Altogether there were 37 courses with a total of 599 attendees. From this total number, 490 participants were from the Armed Forces of the Slovak Republic and 109 participants were from other contractual departments. 23 participants passed the examination at the level of “instructor” and 37 participants gained the special level of “trainee”, 142 participants did not finish the course due to failure to perform the obligations or were eliminated due to absences. Hence, 397 participants were successful graduates of the following courses:

- close combat level “trainee” and “instructor”,
- course on survival – summer and winter part,
- course on captivity,
- course on combat shooting,
- course on protection of persons,
- course on training in mountains,
- course on tactical shooting,
- course on combined training for customs units determined to action.

In 2005 the main emphasis already is, and will be in the area of training directed towards specialized courses, which requires activity in foreign missions and military operations. It concerns mainly courses in protection of humanitarian convoys, protection and rescue of important persons, activity in atypical conditions connected with combat performance tactics in settled areas, alpine environments and also underwater. This will lead to better cooperation

with the intervention units of other departments, in the area of so-called instruction-methodological jobs. ÚŠZV Lešť should become the coordinator in the area of procedure standardization of special activities and the exchange of practical experiences. It is necessary to finish a personal tunnel shooting range for special training and earmark sufficient finances for external teachers from other departments and from abroad who can influence the special training level considerably and, at the same time, promote the institute abroad.

Special units for area of specialized training raised requirements to use existing objects in the Military Territory Lešť which are not used in full and would be ideal for combat training in built-up areas and training in the rescue of captured persons. To simply build a place, where it is possible to perform the tactical-specialized training of special military and police units in the urban environment outside the urban wholes in fully-realistic conditions. The housing area of “Sídliisko DRUŽBA”, that has not been used since the departure of the Soviet Army, should create conditions and training areas for urban combat. A part of the training areas should have a complex of fully-covered, half-covered and open shooting ranges within effective striking distance of individually used firearms.

For the time being, the use of the international training centers is limited by capacity and finance. These centers mainly prepare their own members, and on a space available capacity, they offer participation in their courses to other countries.

It is obvious from the above-mentioned facts that the differences between special counter-terrorist units and units of armed forces selected to participate in counterterrorist operations are considerable. It is not only a matter of legislation and priorities of predetermination. It is also a result of different methods of command and management, the whole preparation and special training, armament and the equipment of these units. But this fact does not exclude military units of armed forces from participating in the fight against terrorism campaign. However, the knowledge from abroad as well as the home environment, points out that the effectiveness of the military units use in counter-terrorist operations depends on many factors already dealt with in this chapter. As emphasized before, the determining factors in conditions of the Slovak Republic are mainly legislation, exactness of responsibility and competence of power departments of the Government and coordination of their efforts, together with optimal choice of specified formations and units appropriate for this activity. Furthermore, effectiveness is also the determination of their performance areas and the need to adapt the special preparation and training, armament and the overall equipment.

2.6. Cooperation with Other Countries

The Slovak Republic participates in operation “Enduring Freedom” in Afghanistan as part of the Counter-Terrorist Coalition under the command of the USA (transformed to NATO-led operation ISAF later). This operation started in the year 2001, closely after the terrorist attacks in the USA on September 11. Based on the Resolution of the National Council of the Slovak Republic No. 2266/2002, the Slovak contingent was sent to Afghanistan in August 2002. This deployment was a result of an agreement between the Slovak Republic and the United States of America. A Slovak Engineering Unit with 40 members operates at the base in Bagram. Its task is to ensure the runway adjustment of the airport in Bagram, in which the logistics base of the Counter-Terrorist Coalition is built. The operation of the unit was prolonged after August 31, 2003 by the Resolution of the National Council of the Slovak Republic dated July 4, 2003. In order to increase the operational share under the NATO command, an Engineer Mine Clearing Unit of 16 members, required military technique and material were sent to the operation ISAF in Afghanistan during April and May 2004, and one officer was sent to the headquarters of multinational brigade ISAF located in the area of the capital city Kabul.

International cooperation in the fight against terrorism is performed mainly through PWGT at the European Council and WGT at the Council of the European Union. As part of this cooperation, representatives of the Slovak Republic, who are policemen from the section of the fight against terrorism, participate in regular meetings where the information on recent events is exchanged. Request for cooperation in specific cases or checks on persons of interest are dispatched within the mentioned working groups.

In the Working Group for Terrorism in the Council of the European Union the representatives of the Slovak Republic participate also in the creation of international ad hoc teams. This project is a reaction to the expected worsening of the international political situation characterized by conflicts connected with relevant ethnic, religious, cultural and economic problems, these being the good soil for terrorism. The serious impact on the European Union in the form of terrorist attacks is understood. One of the proposed measures in the fight against terrorism is the creation of multinational ad hoc teams for fighting terrorism. Establishment of the teams was approved by the Council of Ministers for the area of Justice and the Interior on a session in Luxembourg between April 25 and 26, 2002, during the Spanish chairmanship of the European Union.

The international police cooperation is also carried out by means of national central bureaus of Interpol and Europol. In case an operational solution is needed for information flow, it comes to a direct contact with foreign partners through liaison officers, police attaches, or the “border meetings” with partner services members from neighbouring states. The most

important benefit of the work in the fight against terrorism is the involvement of the division of the Police Presidium of the Slovak Republic in the work within analytical working file of Europol's Islamic terrorism (AWF 99-008). The international cooperation also exists based on bilateral and multilateral agreements accepted among individual countries. The cooperation happens through police attaches and liaison officers of the Slovak Republic abroad or through foreign embassies in the Slovak Republic. National experts of the Ministry of the Interior of the Slovak Republic are represented in working groups and committees of the Council of the European Union, such as *65M228 Global terrorism and organized crime, C 19 Working Party on Terrorism (International Aspects), E 12 Working Party on Terrorism* and we are represented also by the National counter terrorism coordinator (*Counter terrorism coordinator*).¹⁸⁷

3. CONCLUSION

Terrorism is not a "new" threat for Europe having occurred only recently. Terrorism has become a new the greatest threat that not only Europe but also the whole world has to face. The attacks in the USA, Madrid, Beslan, and London and in all inhabited continents on the Earth leave sad memories. These attacks point out the bestiality of terrorists who are willing to sacrifice hundreds of innocent human lives for the fulfillment of their objectives.

It is in the interests of the all governments, not only in western societies, to prevent such killings. The Slovak Republic also understands this, even though its only exposure has been a terrorist attack aimed at its embassy in Iraq, but the potential risk still exists. Given the fact that Slovakia is geographically and geopolitically integrated into western society, terrorist activity in its territory or the threat of terrorist attack cannot be underestimated. A terrorist attack in the Slovak Republic is only a matter of of time. Not knowing when, it will definitely happen. Slovakia has to be prepared for this contingency and therefore there are many existing tasks and competences, which individuals involved in the security community in Slovakia hold, whether it is the Ministry of the Interior, the Ministry of Defense, Slovak Information Service, Military Intelligence, the Ministry of Foreign Affairs or other public authorities and municipalities. There is never enough prevention, and therefore, every measure in the fight against terrorism is meaningful.

Slovakia condemns all forms of terrorism and wants to be an active, participating member of the world Counter-Terrorist Coalition. There is a large network of existing terrorist groups, but perhaps even a larger network of persons involved in the fight against terrorism. It is in the

¹⁸⁷ Document provided to the author by JUDr. Martin Kubík, director of the Department for the Fight against Terrorism of the Presidium of the Police Corps of the Slovak Republic.

interest of all countries to be effective and purposeful in the fight against terrorism. Given the fact that terrorism is neither a new nor unknown phenomenon, the problem of living with it is put forward. Society has to get used to living with the terrorism threat and has to actively face it. It is inevitable to limit terrorism to such an extent that it is possible to live with it, since it is not possible to exterminate it. The war against terrorism, in its larger sense, never ends. Therefore, we have to be prepared for any development in this area. As the old proverb says: "It is better to be afraid than to get frightened".

IV. CONCLUSIONS

The fact is that the terrorism threatening Europe today is underpinned by a theological rather than political imperative; is driven by exasperation and resentment instead of a desire for emancipation; is prepared to practice unlimited violence as opposed to the limited violence used until recently; and is structured as a flexible and complex network that has updated its traditional *modus operandi*.

It should therefore be clear that the current international terrorism is a global phenomenon that requires a global response, particularly following the three attacks carried out against Western society in recent years: 11/9, 11/3 and 7/7.

This response needs to be inspired by some of the basic characteristics of this evil: the victims are always innocent; the means are always disproportionate and premeditatedly directed against lives, community's fundamental rights and essential assets; and the cause that is invoked—which has always a political component—can never justify the savageness of these acts. The so-called “Madrid consensus”¹⁸⁸ therefore proposed combating terrorism using a system based on three axes:

- The disapproval of the killing of innocent people in acts that pursue political objectives.
- The need to back human rights when confronting terrorism.
- The imperative to foster democracy in order to undermine support for terrorists.

In going about this task, the international community should forge a political consensus as soon as possible, in order to put differences aside and analyse the terrorist phenomenon in its full complexity by tackling it in every dimension: security, political, economic, social and cultural. Why? Because if, as JOHN HUME states¹⁸⁹, all conflicts are fed by differences, this is the best way to put into practice his recipe for doing away with terrorism, namely: by respecting differences in race, religion and nationality; by setting up institutions that represent

188 This name is the fruit of the imagination of the financier George Soros. ORTEGA, A., *op. cit.* p. 4.

189 CLUB DE MADRID: *From Conflict to Peace: Lessons from the Frontline Debate*, Madrid International Summit on Terrorism, Democracy and Security, 9th March 2005, available at <http://spanish.safe-democracy.org/conferencias/del-conflicto-a-la-paz-lecciones-aprendidas-en-primera-linea-de-fuego.htm>.

these differences; and by encouraging economic development in order to close the existing gap between the world's richest and poorest regions.

The United Nations advocates a global strategy, on the one hand for defining terrorism and, on the other, for engaging in a determined, united fight to combat it, whatever its origin. This strategy should be underpinned by five elements, KOFI ANNAN's "five Ds"¹⁹⁰:

- Dissuade disaffected groups from choosing terrorism as a tactic to achieve their goals;
- Deny terrorists the means to carry out their attacks;
- Deter States from supporting terrorists;
- Develop State capacity to prevent terrorism;
- Defend human rights in the struggle against terrorism.

If greater benefits are to be achieved within the European Union sphere, the fight against terrorism needs to be waged in two dimensions:

1. Internally, from the EU's borders inwards, by engaging in a Counterterrorist fight.

In the future of what could be termed a European counterterrorism policy, firstly it will be essential to combine the Area of Freedom, Security and Justice, in which the European Union has deployed its counterterrorism efforts in the past, with the Foreign Security and Defence Policy and the Common Defence Policy, which are still being shaped. Their interaction has made it possible to draw up joint lists of terrorists and terrorist organisations that were initially updated independently but now feature in a single consensus document.

Secondly, in the medium- and long-term future, the Treaty Establishing a Constitution for Europe will be the document of reference for this policy. The Convention entrusted with the task of drafting the Constitutional Treaty chose not to treat terrorist matters systematically and merely allowed the entrance for the various guidelines followed in practice in the building of Europe, by redefining the approach. As a result, counterterrorism is now addressed from a threefold perspective: through police and judicial cooperation; by cracking down on the financing of terrorism; and by coordinating a comprehensive response to terrorist phenomena by integrating counterterrorist action into the CFSP. Therefore, when the Treaty comes into force, all the Union's Member

190 ANNAN, K.: A Global Strategy for Fighting Terrorism, address to the Closing Plenary of the International Summit on Democracy, Terrorism and Security. 10th March 2005. <http://spanish.safe-democracy.org/conferencias/una-estrategia-mundial-de-lucha-contra-el-terrorismo.html> and CEMBRERO, I., (1) La Cumbre de Madrid reclama unidad y cooperación para evitar otro 11-M, *Diario El País*, 11th March 2005, p.1 and (2) op. cit. p. 2 (Madrid Summit claims for unity and cooperation to avoid another 11/M).

States and, accordingly, Spain and Slovakia, will fight against terrorism on three fronts: market, justice and security.

2. Externally, from the European borders outwards, by engaging in a fight that is ANTITERRORIST in nature.

This external fight is spurred not only by the development of certain legal instruments but also by cooperation and political dialogue with third countries and international organisations instruments that serve as means for bolstering internal security, both national and European, internationally. Collaboration with third countries is carried out by including standard antiterrorist clauses in bilateral treaties, by offering technical assistance to countries affected by terrorism or new European Union Members, and through joint declarations, agreements for the exchange of data, judicial assistance provided to third countries and extradition agreements. Diplomatic cooperation is also beginning to show a concern with broadening the scope of action of the fight against the financing of international terrorism and, evidently, with international conventions aimed at shaping an universal framework for cooperation.

In this sphere of action, the two major powers affected by international terrorism, the United States and Europe, are set to become allies; as paradoxical as it may seem, the worldwide campaign to combat terrorism is providing fresh opportunities for Euro-Atlantic cooperation ranging from cooperation between intelligence services to the exchange of information in order to minimise not only its devastating human and social impact, but even its economic effects.

In the Spanish political sphere, the head of state, KING JUAN CARLOS I, has called for *“unity, determination and cooperation to put an end to this bloodthirsty and abhorrent, totalitarian and always unjustifiable madness”*¹⁹¹ that is terrorism, to which free societies cannot give in or yield. For his part, the head of government¹⁹², JOSÉ LUIS RODRÍGUEZ ZAPATERO, maintains that fighting terrorism requires the development of a moral, intellectual, legal and police framework to strengthen the legitimacy of the efforts deployed by the State in going about this task. In order to achieve these goals, the Spanish Government, whichever parliamentary group is in power, needs society to be totally united with respect to the terrorist issue.

On the legal front, the maintenance of an inflexible attitude is advocated when judging and punishing the authors, accomplices, participants and other people who collaborate in preparing,

191 AGENCIAS, El Rey pide unidad, determinación y cooperación para combatir el terrorismo, Diario El País, 10th March 2005 (The King ask for unity, resolution and cooperation to fight against terrorism).

192 EGURBIDE, P., Zapatero: No podemos aspirar a la paz y a la seguridad en un mar de injusticias universales, Diario El País, 11th March 2005, p. 3 (Zapatero means that we can not aspire to manage peace and security in a world characterised by universal injustices).

developing and implementing terrorist acts. In this area it is necessary to consolidate the judicial assistance given to other countries, not only in Europe but worldwide, putting into practice all the advantages of:

- On the one hand, the existing judicial cooperation mechanisms in the EU, such as the European arrest and surrender warrant, the joint investigation teams, the European judicial network, Eurojust and the convention on judicial assistance in criminal matters, which is pending ratification.
- On the other hand, the conventions on assistance, mutual aid and extradition that Spain has signed with other non-European countries with which it is vital to maintain relations in the fight against terrorism in order to uphold democratic States and the rule of law.

The prosecutor of Spain's Audiencia Nacional (high court), IGNACIO GORDILLO¹⁹³, has pointed out, as an institutional response to terrorism, the need to bolster the rule of law with proposals for what could be shaped as an International Public Prosecutor's office based on three elements: no time bars on prosecuting terrorist crimes; the subsidiary civil liability of the State towards the victims of terrorism; and the legal impossibility of dialogue or negotiation with the victims.

As for police matters, it was the terrorist attacks of 11/9 and 11/3 that set alarm bells ringing, leading the affected nations, like Spain, to:

- Set up organisations and develop specific instruments to confront this threat, not only by transferring existing ones into the international and European sphere but also by establishing some of its own, such as the Centro de Cooperación Antiterrorista (Centre for Antiterrorist Cooperation).
- Reorganise and/or strengthen certain units of the State law enforcement and security bodies, as in the case of the greater importance attached to the responsibilities of the Civil Guard UCE-2 and the human, material and technical resources provided to develop their capabilities to improve their functioning and results. The increase in the number of officers, together with the organisational and operational improvements, has also been extended to the Spanish intelligence services, whose efficiency and reputation were negatively affected by the 11/3 attacks, just as their American counterparts were.
- Modify the strategic concepts of Defence, from which stem: the broad competences vested in the Armed Forces; the intention to work towards perfecting their capabilities; and the possibility of their intervening in the fight against international terrorism in collaboration with the State law enforcement and security bodies.

¹⁹³ See BANQUERI, R., *Respuesta institucional frente al terrorismo islamista*, Otrósí. Publicación informativa del Colegio de Abogados de Madrid no. 64, February 2005, p. 12 (Institutional answer face to Islamic terrorism).

The following idea, expressed by the Police Director General¹⁹⁴, illustrates the current state of police activity meaning that of the Spanish law enforcement and security bodies and armed forces:

“When Robert Schuman stated on 9th May 1950, that Europe will not be made all at once, or according to a single plan: It will be built through concrete achievements which first create a de facto solidarity, he was describing, in premonitory fashion, the future of European, and accordingly Spanish, police cooperation. This cooperation has only developed insofar as factual requirements have created solidarities to which political will has given a legal and institutional form. All this has generated dynamics capable of facing the challenges of each moment, anticipating future threats and mustering responses to them.”

Lastly, the need to prevent the propagation of terror cannot be overlooked. When a terrorist attack occurs, the media cannot nor should hush it up; rather, they should present it as a criminal deed directed at the whole of society, which should be encouraged to confront it by joining forces and showing solidarity towards victims, thereby avoiding discussions on the causes of the phenomenon and excuses cited by the terrorists to justify their acts.

Whatever the case, the permanent eradication of terrorist violence is a task that requires the active commitment of everyone international, European and Spanish organisations, institutions, governments, citizens and media in constantly asserting civic and democratic values. According to JAVIER SOLANA¹⁹⁵, European Union High Representative for Foreign Policy, *“the only means of defeating terrorism are cooperation and multilateralism”*, as terrorism will not be defeated by weapons but by other initiatives such as exchange of information among all countries, excluding none, for which a climate of mutual confidence is essential.

Ideally, international terrorism should be addressed from a coordinated and proportional multidimensional approach combining military, policy, legal, intelligence and financial control measures in addition to a clear view and determination to combat the ideology and favourable environment conducive to support for terrorist networks. And all this should be carried out in the right measure since, to cite Aristotle, virtue lies in the mean, and both overreaction and under-reaction could have devastating consequences in this fight.

The achievement of this task in the long-term future is far from being a utopia, as, according to the air force lieutenant colonel AGUSTÍN ARIAS GONZÁLEZ¹⁹⁶, *“when a democracy has*

194 DÍAZ DE MERA Y GARCÍA CONSUEGRA, A., *Hacia una Policía Europea*, Lecture given by the Police Director General at the Law Faculty of the University of Salamanca. *Polici@ Hoy*. Revista digital del Cuerpo Nacional de Policía, available at the website of the CNP. Cf. http://www.policia.es/policiahoy/activi_20_texto_conf.htm, (Towards an European Police).

195 RUIZ, R., op. cit. p.37.

196 ARIAS GONZÁLEZ, A., op. cit. p. 37.

been capable of shedding the fear of expressing its opposition to terrorism, as the democracy of the European States has done, the end of the violent begins". This is particularly true bearing in mind that, as far as destructive power is concerned, terrorists are much weaker than the States against which they fight, and this is what leads them to use non-conventional means, to disregard the moral rules that could inhibit their acts and to take advantage of the limitations that the rule of law imposes on the State.

In conclusion, we hope that readers have shaped their own idea of what terrorism is and how it can be combated. We have come to terms with the fact that perhaps these mechanisms will be more effective than they are now in the short-term future, but continue to ask ourselves what ordinary citizens can do, daily, to fight against this plague. Our only option is not to give up, never to yield to this enemy, because tomorrow 180,000 children will be born throughout the world and we must not think only of ourselves but also, and above all, of them, for it is they whom we will be able to offer a better future.

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