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Is there a European strategy against terrorism?

A brief assessment of supra-national and national responses

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A brief assessment of supra-national and national responses[*]

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INTRODUCTION

It is only after the September 11th attacks that the "fight against terrorism" has become a priority for European institutions within the area of security policy.

Even during the last century, in the 1970s, a wave of terrorist actions, originating in the Middle East, in particular in Palestine, acted as a catalyst for cooperation among European States –and, more in general, western ones– with regard to this issue.[1] It is worth pointing out how, even then, a conflict in the Middle East, the Yom Kippur/Ramadan war in October 1973, contributed to inflaming the internal situation.

However, as far as the consequences of international terrorism on the dynamics of European cooperation are concerned, it must be said that, at the time, we witnessed the strengthening of a strictly intergovernmental cooperation which was informal (if not secret) and focused on the operational dimension.

Nowadays, in a different way compared to thirty years ago, the declared emergency of transnational terrorism stems within a *cycle of progressive institutionalisation* of European cooperation with regard to internal security, started up experimentally half way through the 1980s with the Schengen Treaty, timidly followed up in Maastricht with the establishment of the third pillar (1992) and strengthened by the new institutional, regulatory and political framework emerged from the Amsterdam Treaty (1997). At present, this cycle of institutionalisation is nearing completion, which will be marked by the ratification of the Constitutional Treaty, which decrees the overcoming of the traditional "multi-pillar" structure and brings internal security policy –if through compromise and with limits– into the Community framework.

Within this context –which the enlargement process contributes to transforming radically compared even to the recent past– the evolution of the European policy concerning terrorism offers an interesting perspective. The way in which Europe, its institutions and Member States, perceive and define the threat of terrorism; the ways of developing a response to the threat itself and its technical content; the relationship between specific measures (both preventive and repressive) and the more general choices which concern the internal political organisation of the European policy and the basic guidelines of its external action: by

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[1] For an analysis of the first European reactions to the 2001 terrorist attacks, refer to our previous report *L'Europa della sicurezza interna. Sviluppi e problemi*, in G. Vacca, "L'unità dell'Europa. Rapporto 2003 sull'integrazione europea", Dedalo, Bari, 2003, p. 235-250.

analysing these aspects, it appears possible to cast a light on the overall progress of the integration process during such an intricate and uncertain historical phase.

In the introduction of this section, Ferruccio Pastore describes some elements for a general analysis of the European counter-terrorism strategy; the focus is not on the technical aspects of the different measures that have been introduced, but rather on the determining factors and the political and strategic implications of the line of action undertaken as a whole. In the following two sections the focus is on the national level, examining the significant differences in the approaches chosen by three important Member States (Germany, the United Kingdom and Italy) in reaction to the challenge of September 11, 2001, raised again on March 11, 2004, in Madrid. In these two sections, respectively by Jörg Friedrichs and Alessandro Politi, the attention is on the European dimension of the counter-terrorism policies of these three countries, highlighting the significant asymmetries in their inclination towards international cooperation and the waiving of national sovereignty.[2]

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[2] The heterogeneity of approaches taken by European states in the field of internal security can be observed well beyond the specific area of the fight against international terrorism; for an overview on these issues, see V. Mitsilegas, J. Monar, W. Rees, *European Union and Internal Security. Guardian of the People?*, Palgrave, Basingstoke, 2003, compare Chapter 1 in particular (*The Development of the EU as an Internal Security Actor*), p. 6-41.

1. THE EUROPEAN UNION AND THE FIGHT AGAINST TERRORISM

by Ferruccio Pastore

1.1. The European response, between inertia and the refusal of exceptional measures

11 April 2002, Djerba, Tunisia, 21 dead; 16 May 2003, Casablanca, Morocco, 45 dead; 15-20 November 2003, Istanbul, Turkey, 63 dead. This appalling chain of attacks may be interpreted as international Islamic terrorism's march to move in on Europe, which climaxed tragically with the bombings in Madrid (11 March 2004, 191 dead). In the two years following September 11, as the European Union did not always show a compact and firm reaction to the terrorist threat, it could have been assumed that only a direct aggression on its own territory and to European societies themselves could have triggered a sharp shift of gears.[3] Actually, almost a year after the bombings on the Spanish trains, this has not happened. On a rhetorical and symbolic level, the mobilisation has been significant. It led to an immediate and emphatic declaration of solidarity[4], which translated into a clause of mutual assistance, inserted in the Constitutional Treaty signed in Rome in the autumn of 2004:

> Article I-42: Solidarity clause
> 1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the victim of terrorist attack or natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States,
> to:
> (a) – prevent the terrorist threat in the territory of the Member States;
> – protect democratic institutions and the civilian population from any terrorist attack;
> – assist a Member State in its territory at the request of its political authorities in the event of a terrorist attack;
> (b) – assist a Member State in its territory at the request of its political authorities in the event of a natural or man-made disaster.
> 2. The detailed arrangements for implementing this Article are at Article III-231.

Beyond these statements, which are, however, important both from a symbolic and a regulatory point of view, the actual development of policy-making within the sphere of internal security and, in particular, of counter-terrorism, has not stepped up significantly. The European Commission is well aware of this and, when reviewing the progress made in the JHA area five years after the approval of the Amsterdam Treaty, declares that "the successes that have been achieved are considerable" but admits that

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[3] We put this hypothesis forward in F. Pastore, *Lo spazio di libertà, sicurezza e giustizia tra allargamento e costituzionalizzazione*, in G. Vacca, edited by, "Il dilemma euroatlantico. Rapporto 2004 della Fondazione Istituto Gramsci sull'integrazione europea", Dedalo, Bari, 2004, p. 238-239. For an assessment of developments occurred in 2003, see also J. Monar (*Justice and Home Affairs*, in "Journal of Common Market Studies", vol. 42, 2004, *Annual Review*) who highlights, in general, that "[after] the progress made in 2002 with the adoption of various measures to combat crime, 2003 has been essentially a year devoted to transposing and implementing these measures".

[4] "The threat of terrorism affects us all. A terrorist act against one country concerns the international community as a whole. There will be neither weakness nor compromise of any kind when dealing with terrorists. No country in the world can consider itself immune. Terrorism will only be defeated by solidarity and collective action" (*Declaration on Combating Terrorism*, approved by the Heads of State of the 25 Member States of the European Union on the occasion of the European Council held on 25 and 26 March 2004, p. 1).

the original ambition was limited by institutional constraints, and sometimes also by a lack of sufficient political consensus. The step by step approach was often the only possible way of moving forward.[5]

It is important that the Commission recognizes that the down-scaling of its goals did not depend exclusively on institutional factors –the rigid unanimity rule of the old third pillar, which the new Treaty should finally bring to an end– but also on the lack of political will. These delays, and the underlying political hesitation, have been particularly obvious with regard to the specific area of counter-terrorism. Implementation of the complex Plan of Action with its deadlines, approved by the European Council on 25- 26 March[6], is heavily behind schedule.[7]

The cautious development of European policy-making with regard to terrorism, calls for an attempt to pinpoint its causes. In part, and the same applies to JHA cooperation in general, it is due to delays and inaction caused by the complexity and slowness of decision-making mechanisms. On the other hand, however, the causes are also strongly political and they can be traced back to two different types of attitude.

On one side, an analysis of European decision-making processes in this field confirms a choice of principle which could even be defined as "identitarian", which consists in an *a priori, principle-based refusal to adopt exceptional, ad hoc political and judicial measures*, which, instead, characterise the counter-terrorism policies implemented by the Bush administration and, partly, also by the Blair government. This radical scepticism towards the use of extraordinary instruments, of military ones in particular, and the tendency to endorse a gradual strategy based on the use of investigative, judicial and intelligence tools, has clearly been expressed, among others, by the High Representative for CFSP, Javier Solana:

> The great battle against international terrorism is not centred on armed struggle or war or military action either. The centre of gravity is the exchange of information and the mutual confidence among the countries which exchange this information. Otherwise we shall not prevail in this battle.[8]

It is natural for a strategy centred on structured cooperation among national administrations, on the gathering and exchange of specific information, on the joint construction of an investigative and judiciary "truth" as a preliminary requirement for repressive action, to require a long process. The obstacles which are inevitably encountered along this road are well-known beforehand: from the lack of mutual trust among the different bodies (the main reason for the limited, although increasing, effectiveness of Europol) to the difficulties encountered in creating efficient coordination structures (which can be seen, for example, in the modest significance, at least so far, of the new EU position of Counter-Terrorism Coordinator, established by the European Council in March 2004).

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[5] Commission of the European Communities, Communication from the Commission to the Council and the European Parliament, *Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations*, COM(2004) 401, 2 June 2004, p. 5.

[6] *Declaration on Combating Terrorism*, quoted, p. 4.

[7] An on-line archive of the normative framework on terrorism is to be found on the Commission website: http://www.europa.eu.int/comm/justice_home/doc_centre/criminal/terrorism/doc_criminal_terrorism_en.htm. For a selection of key official documents, see also http://ue.eu.int/showPage.asp?id=631&lang=en&mode=g. An overview of the first post-Madrid developments was carried out by the Council in the *Report to the European Council on the implementation of the Declaration on combating terrorism* (doc. 10009/3/04 REV 3, Brussels, 11 June 2004). The last update of the EU Council's Plan of Action on Combating Terrorism is doc. 14330/1/04 REV 1, 29 November 2004. An updated agenda of the principal upcoming deadlines can be found at http://www.statewatch.org/news/2004/dec/jha-agenda-dec2004.pdf.

[8] C. Yarnoz, *L'Europa come potenza mondiale questa è la sfida della nuova Ue*, interview with Javier Solana, "La Repubblica" (copyright "El País"), 18 July 2004, p. 16.

However, alongside this "noble" and structural reason, the slowness with which the European agenda is evolving is also explained by a specific lack of political will which lays its roots in the widespread temptation to privilege the Member State level in the fight against terrorism. For example, such an attitude appears to inspire proposals like the one made a few months ago by the Italian Interior Minister, Giuseppe Pisanu, to strip expenditure destined to internal security from national budgets when calculating deficit for the purposes of the Growth and Stability Pact. The explanation offered for such a request reveals, perhaps unwillingly, a basic distrust in the potential of European instruments in this field:

> … by moving in this direction […] the Union would probably contribute to the security of each country individually and of the Continent as a whole more than it has done so far with the instruments at its disposal.[9]

An overview of the European action as far as terrorism is concerned, alongside a formal assessment of the decisions made and the Acts which have been adopted, would obviously be useful and interesting. Unfortunately, as recently highlighted by one of the most prominent European experts on internal security policy, the lack of specialized researches and public information (that is to say *not confidential*) makes it impossible to "say anything about the effectiveness of police cooperation [in the area of terrorism]".[10]

1.2. The debate on the security-freedom trade-off

In reply to Javier Solana's interview mentioned in the previous paragraph, Stefano Rodotà recognised the political importance of the statement of the future European "Minister of Foreign Affairs" (the firm refusal of "preventive war" as an instrument to fight terrorism), but also insisted on the fact that

> …the transition from war policy to information policy does not signify we are entering an area within which there is no longer the need to worry about anything. It poses new problems, which are also serious, and cannot be discussed and solved solely by security bodies, with technological solutions, in the course of "technical" summits among Ministers of Justice and Internal Affairs.[11]

These words have a particular significance because their author, as well as having been committed for decades to the study of the relations between technology and rights[12], was President of the European Union's Data Protection Working Party between March 2000 and March 2004 and has been, since 2001, the President of the Italian Authority for personal data protection, the independent watchdog established by the Italian law on privacy (675/1996) to ensure the safeguard of fundamental rights and freedoms of the individual and the respect of dignity as far as the processing of personal data is concerned.
Stefano Rodotà is one of the few people in Italy to take part in this debate which is extensive and lively in other European countries. The question is if, and to what extent, effective prevention of and the fight against international terrorism imply, or even require, derogations

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[9] G. Pisanu, *Antiterrorismo, l'Europa escluda i costi dal Patto*, "Il Sole 24 Ore", 12 September 2004, p. 5.

[10] C. Fijnaut, *Police Co-operation and the Area of Freedom, Security and Justice*, in N. Walker, ed., *Europe's Area of Freedom, Security, and Justice*, Oxford University Press, Oxford, 2004, p. 273.

[11] S. Rodotà, *L'impero della paura estende le sue ombre*, "La Repubblica", 7 August 2004, p. 1 and 15.

[12] See the recently enlarged edition of *Tecnopolitica. La democrazia e le nuove tecnologie della comunicazione*, Laterza, Rome-Bari, 2004.

and limits to the freedoms of individuals, including the relatively recent form of negative freedom which we define as the right to *privacy*. The answer given by an independent technical body like the mentioned European Data Protection Working Party is very clear:

> Measures against terrorism should not and need not reduce standards of protection of fundamental rights which characterise democratic societies. A key element of the fight against terrorism involves ensuring that we preserve the fundamental values which are the basis of our democratic societies and the very values that those advocating the use of violence seek to destroy.[13]

However, recent developments give reason to doubt that it is really possible to reconcile the fight against terrorism with civil liberties or, at least, that this is one of the priorities of European decision-makers. According to a research carried out by Statewatch, a UK-based organisation which is among the most active with regard to critical monitoring of European policies in this field, only 27 out of the 57 proposals under consideration at the European Summit in March 2004 are directly relevant to countering terrorism. The rest is deemed to pursue general objectives of criminal policy through methods which would lead to

> "the wholesale surveillance of everyone in Europe and could potentially be used for social and political control through: a) logging *all* telecommunications (e-mails, phone-calls, mobile-calls, faxes and internet usage); b) tracking *all* air travel in and out and within the EU […]; c) the fingerprinting of nearly *everyone* in the EU by the introduction of biometric passports and ID cards for citizens and the same for resident third country nationals" (italics added by author).[14]

Such evaluations are, naturally, debatable. Partly, they reflect a political culture which is traditionally more rooted in Anglo-Saxon countries, based on the basic distrust for any form of systematic and generalized surveillance of individuals by the State. It is not a coincidence that the authoritative researchers at Statewatch are in favour of intensifying operational cooperation among European police forces, which should also translate into a more "targeted and sustained surveillance of certain individuals or groups".[15] It is true, on the other hand, that, partly due to the intense media coverage of the terrorist "threat", the European public opinion appears to be generally in favour of the enforcement of European action in this field.[16] However, it is undeniable that we are facing a real revolution in the structure and functioning of computer-based tools for the control of individuals within the Union.[17] It is highly unlikely that this deep structural transformation will at this stage slow down, and even less that it will

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[13] Data Protection Working Party, *Opinion 10/2001on the need for a balanced approach in the fight against terrorism*, 14 December 2001, 0901/02/EN/Final, WP 53, which can be viewed at the following web address http://europa.eu.int/comm/internal_market/privacy/docs/wpdocs/2001/wp53en.pdf

[14] B. Hayes, S. Peers, T. Bunyan, *"Scoreboard" on post-Madrid counter-terrorism plans*, Statewatch, 23 March 2004, available at http://www.statewatch.org/news/2004/mar/swscoreboard.pdf, p. 1.

[15] *Ibidem*, p. 3.

[16] A recent survey conducted by the Eurobarometer for the European Commission revealed a generally high level of consensus among citizens of the 15 pre-enlargement Member States in support of the enforcement of cooperation in the field of Justice and Home Affairs. Although in favour of a more incisive role of European institutions in the fight against crime, European citizens also prove to be careful with regard to the level of safeguard of individual rights. For instance, 90% agrees with the statement "An accused should have the same rights of defence in all Member States of the European Union" (European Commission, Flash Eurobarometer, *Justice and Home Affairs*, March 2004, p. 8, that can be consulted at http://europa.eu.int/comm/justice_home/news/intro/doc/080304_analytical_report_en.pdf). However, similar abstract stances can hide various degrees of actual awareness of the problems and of the willingness towards active mobilisation.

[17] For an analysis of the evolution of the European databank system with particular focus on migration control, refer to F. Pastore, *Formation, Structure and Current Evolution of the EU Entry Control System*, in N. Walker, ed., *Europe's Area of Freedom, Security, and Justice*, Oxford University Press, Oxford, 2004, in particular p. 117-119.

come to a halt, also for economic motives.[18] In this scenario, the level of political and scientific attention and consequently of civic awareness which is to be observed in most European countries, particularly in Southern Europe and in new Member States, appears to be dramatically low and inadequate.

1.3. Counter-terrorism in multicultural societies

Western Europe has had –and probably still has– an important role in the functioning of terrorist networks connected to Al Qa'ida: the two fake journalists who, on September 9, 2001, assassinated the Afghan commander Mas'ud were Tunisians resident in Belgium; the main cell responsible for planning the 9/11 attacks was based in Hamburg; among the so-called "foreign enemy combatants" arrested by US troops in Afghanistan and held in custody (illegally, from the point of view of the international right) in Guantanamo, there are a few dozen Europeans of foreign origin; in March 2004, an explosives depot was discovered in the outskirts of London: investigation led to several arrests within the Pakistani community; the terrorists that carried out the attacks on March 11, 2004 were young workers and students who were apparently well integrated in everyday life in the Spanish capital city.

Taking these and other similar facts into account, Europe appears not only to be a recruiting basin for guerrilla activities against western society or against "corrupt" Islamic regimes, from Bosnia to Kashmir, from Afghanistan to Iraq; at the beginning of the 21st century, Europe also comes across as a logistics base for attacks to be carried out beyond its borders; and finally as a target for terrorist actions conceived within it.

These facts could only generate deep unease in a continent in which more than ten million Muslims already live (or, more precisely, people coming from countries where the majority of the population is Muslim), and belong mainly to underprivileged and economically disadvantaged social classes. Nowadays, facing internal terrorist risks efficiently, without damaging or stigmatising the members of these communities, is a significant challenge for European institutions and populations.

The first step is, obviously, to develop an adequate, detailed and constantly updated knowledge of the composition and internal dynamics of European Muslim minorities. Such knowledge –which requires relevant investments in targeted research and investigation, but also has to be based, first of all, on widespread intercultural dialogue– is necessary in order to discern the real risks and eradicate prejudice.

As one of the first and most perceptive European scholars of political islam recently declared,

> Extremist messages can produce an impact on very slender minorities, convinced that western societies exclude, oppress, and 'racialize' them. These minorities tend to give a religious content to their denunciation of racism and to undergo a radicalisation process.[19]

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[18] The industry of surveillance, personal identification and remote sensing technologies is vast and growing steadily. (M. Huband, *Fight against terror spawns a new industry*, in "Financial Times", *Special Report* in *Worldwide Security*, 3 December 2003, p. 1). According to some estimates, this market may reach a total turnover of 7 billion dollars by 2007 (F. Williams, *Homeland security is in the eye of the passport holder*, in "The Financial Times", 15 October 2004, p. 14). A market this size seems likely to have a direct influence on policy-making through the production of specialised analysis which can influence the political agenda and through lobbying activities which may affect the specific content of political decisions.

[19] G. Kepel, in *L'état de la «menace islamiste» trois ans après le 11-septembre*, vast debate among Alain Gresh, Farhad Khosrokhavar and Gilles Kepel, included in the excellent *dossier* on *Islam Islamismes Occident*, "Le Monde", 11 September 2004, p. IV-V.

Only for those who belong to these minority fringes, contact with networks which deal with secret recruitment, can provoke –in a limited number of cases which often involve individuals with particularly fragile personalities– the shift from a radical attitude to overt Jihadist-Salafism.[20]

In the wake of September 11, European Governments generally succeeded in avoiding the political error committed by the American Administration, whose investigative, preventive and repressive internal strategies were perceived from the beginning as being biased by an anti-Islamic attitude.[21] However, even in Europe, the terrorist offensive and the series of "preventive" conflicts which sparked off in reply to it, triggered a psychological and political "contagion", in the form of a rekindling of xenophobia and Islamophobia[22] among the autochthonous population, as well as of anti-Semitism[23] among fringes of the European and immigrant population.

Such degeneration in intercultural relations within European societies is probably one of Al Qa'ida's strategic goals but it is not inevitable. The recent intensifying of efforts and experimentation aimed at establishing institutional channels for a dialogue with moderate Islam, in France, Italy, Spain and other European countries is an important evolution, which must be followed up. Unprecedented and encouraging signals are coming from within Islamic communities too, like the courageous mobilisation of associations and organisations, both non-clerical and religious, which we witnessed in the course of 2004 in France, Great Britain and Italy, in favour of the release of numerous European citizens being held hostage in Iraq. Only if all this will be accompanied by solid integration policies, a campaign against discrimination and the extension of citizenship rights, terrorism can be beaten without undermining the foundations of the *de facto* dawning, yet still very fragile, European multicultural *polis*.[24]

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[20] On the issue of the spreading of a tendency towards Salafism within European Muslim communities, see G. Kepel, *Fitna. Guerre au coeur de l'Islam*, Gallimard, Paris, 2004, in particular Chapter VI. Kepel insists particularly on the distinction between Pietist and non-violent Salafism and its openly Jihadist form. An "inter-pillar" research (that is to say, based on material produced by bodies operating within the three "pillars" of the European Union) on terrorism's recruitment channels, within and outside EU territory, was recently announced by the Council but its results have not been made public (see European Council, *Report to the European Council on the implementation of the Declaration on combating terrorism*, doc. 10009/3/04 REV 3, Brussels, 11 June 2004, p. 3).

[21] For an in-depth and strongly critical analysis of American policy from this point of view, see M. Chisti et al., *America's Challenge: Domestic Security, Civil Liberties and National Unity after September 11*, Report by the Migration Policy Institute, Washington D.C., 2003.

[22] In particular, see the reports by the European Monitoring Centre on Racism and Xenophobia on «Anti-Islamic reactions within the European Union after the acts of terror against the USA», which can be viewed on the following web page

http://www.eumc.eu.int/eumc/index.php?fuseaction=content.dsp_cat_content&catid=3fb38ad3e22bb&contentid=3fb4f8d82d72a.

[23] Compare European Monitoring Centre on Racism and Xenophobia, *Manifestations of Antisemitism in the EU 2002-2003*, which can be viewed at http://eumc.eu.int/eumc/as/PDF04/AS-Main-report-PDF04.pdf.

[24] The emphasis with which the Ministers of Internal Affairs of the five most influent Member States insisted on the deportation of foreign citizens suspected of being involved in terrorist activities as a "form of preventive defence against the threat of international terrorism" does not seem to point towards a promising path, neither from an investigative and judicial point of view nor from the more general one of preventing terrorist violence through the strengthening of institutional dialogue and social integration mechanisms (compare the final Communication from the Summit among the Ministers of Internal Affairs of France, Germany, Italy, the United Kingdom and Spain held in Florence on 17 and 18 October 2004, at http://www.mininterno.it/news/pages/2004/200410/news_000020078.htm).

2. NATIONAL POLICIES IN COMPARISON: GERMANY AND THE UNITED KINGDOM[*]

by Jörg Friedrichs

According to a well-known stereotype, the United Kingdom is the autonomist and "Euro-sceptical" nation *par excellence*. In the first place, British decision makers frequently insist on the insular sovereignty of their country *vis-à-vis* the European continent. In the second place, there is a widespread belief that the United Kingdom enjoys a privileged or "special" relationship with the USA. Germany, by contrast, tends to be framed in the opposite way. The country is often seen as the exemplar of a "multilateralist" and "Euro-enthusiastic" nation.[25] To anyone keeping up to date with what is reported in the news, it may seem obvious that there is a kernel of truth in these stereotypes; at the same time, however, one is beset by the feeling that there is a risk of oversimplification. In line with these considerations, it will be interesting to find out to what degree the mentioned stereotypes are applicable, and to what degree they must be reconsidered. To answer this question, I will explore three qualitative case studies and, based on a careful comparison of the empirical record, reach some fairly surprising conclusions at the end of the essay. [26]

The core of the analysis is a comparison between the different approaches of Britain and Germany towards the fight against international terrorism. Accordingly, I have selected three case studies that all concern projects of international cooperation against terrorism: the attempt to find a legal definition of the phenomenon, the exchange of anti-terrorist intelligence, and the European arrest warrant. In order make the case studies comparable to one another, I present them each according to the following three criteria: substantive scope, geographical range, and institutional depth. Substantive scope measures how many issues shall be regulated by an international regime. The geographical range of application corresponds to the number of participating states. Finally, institutional depth measures the degree of formal commitment a state is ready to undergo. Together, the preferences of a state on these three criteria give a fair representation of its position with regard to a particular project of international cooperation.

Let me briefly explain why I have chosen the international response to terrorism as the object of analysis. The reason is that, apart from its paramount relevance, the response to terrorism is particularly suitable for assessing a state's willingness to cooperate with other states. Within a context that is so critical for national security, according to the stereotypes mentioned above one would expect to observe a particularly autonomist and "Euro-sceptical" attitude on the part of the British, and a particularly multilateralist and Europeanist one among the Germans. Let us try to find out, in the following paragraphs, whether and to what extent these expectations are, or are not, fulfilled.

[25] Stephen George (1998) *An Awkward Partner: Britain in the European Community*, Oxford: Oxford University Press, 3rd edn; Peter J. Katzenstein (ed.) (1997) *Tamed Power: Germany in Europe*, Ithaca and London: Cornell University Press.

[26] On the comparative case study method applied in this paper see Alexander George (1979) 'Case studies and theory development: the method of structured, focused comparison'. In: Paul Gordon Lauren (ed.) *Diplomacy: New Approaches in History, Theory and Policy*, New York: Free Press, p. 43-68.

2.1. Defining Terrorism

Ever since the terrorist attack on the Olympic village in Munich in 1972, when the United Nations Secretary General placed terrorism on the agenda of the General Assembly, the UN has been a privileged source of legitimacy for the international fight against terrorism. However, at the time, there was no consensus among Western states and Third World countries to endorse a truly global approach.[27] In order to fill the void left in the 1970s by the failed attempt to find a common approach to counter terrorism, the UN Member States have approved a long series of conventions against various forms of terrorist action at the international level. Suffice it to mention the conventions adopted to suppress attacks against civil aviation and maritime navigation, the taking of civilian and diplomatic hostages, the financing of terrorism or, finally, terrorist bombings.[28] Despite the considerable number of issue-specific conventions in this field, there is still no comprehensive convention to define the phenomenon and set out in general terms the measures that may be adopted to fight terrorism. After the initial failure to reach an agreement in the late 1970s, it has taken more than two decades for the project of a comprehensive convention on international terrorism to return on the agenda of the United Nations.[29]

It is certainly not a mere coincidence that the debate on a comprehensive convention has gained momentum after the terrorist attacks of September 11th, although discussions had already started a year before on the basis of a draft proposed by India in 1996.[30] The endeavour is important because such a convention would act as an important source of legitimacy for the fight against terrorism and, at the same time, limit the freedom of the hegemonic states (notably the US) to use this fight as an instrument to achieve other goals.

Officially the EU Member States are all in favour of the project. For example, in October 2003 Italy declared on behalf of the European Union: "With regard, in particular, to the draft comprehensive Convention on international terrorism, submitted by India, we reiterate that its scope should be to provide added value in relation to pre-existing specific Conventions by filling the gaps of unregulated issues".[31] Nevertheless, one should not be lured by the apparent unanimity of this type of statements. Indeed, EU presidency statements are usually limited to the opinions shared by all Member States. In order to taste the real political flavour of the debate, it is much more revealing to analyse the stance taken by each state individually. As a matter of fact, the EU Member States have always retained the freedom to express their political considerations regardless of the compromise formulae used in presidency statements. Indeed, an in-depth analysis of these considerations reveals that Britain and Germany hold diametrically opposed views with regard to the idea of adopting a comprehensive convention on international terrorism.

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[27] Luigi Migliorino (1979) 'Il terrorismo internazionale nei dibattiti alle Nazioni Unite'. In: Luigi Bonanate (ed.) *Dimensioni del Terrorismo Politico: Aspetti Interni e Internazionali, Politici e Giuridici*, Milan: Franco Angeli, p. 255-282; Jörg Friedrichs and Raphael Muturi (2004) 'Anything new under the sun? The political struggle behind the legal debate on international terrorism'. In: Wybo P. Heere (ed.) *From Government to Governance: Procedings of the Sixth Hague Joint Conference on International Law*, The Hague: Asser, p. 463-471.

[28] M. Cherif Bassiouni (2001) *International Terrorism: Multilateral Conventions (1937-2001)*, New York: Transnational Publishers.

[29] Bibi T. van Ginkel (2003) 'The United Nations: towards a comprehensive Convention on combating terrorism'. In: Marianne van Leeuwen (ed.) *Confronting Terrorism: European Experiences, Threat Perceptions and Policies*, The Hague: Kluwer Law International, p. 207-225.

[30] UN doc. A/C.6/51/6, 11.11.1996; A/C.6/55/1, 28.08.2000; A/C.6/55/L.2, 19.10.2000.

[31] EU Presidency Statement 'Measures to eliminate international terrorism', Sixth Commission of the UN General Assembly, 15.10.2003 (http://www.europa-eu-un.org, viewed 30 July 2004).

The UK is firmly opposed to a definition of terrorism within the United Nations. In October 2001, the permanent representative of the United Kingdom to the UN, Sir Jeremy Greenstock, stated: "There is common ground among all of us on what constitutes terrorism. What looks, smells and kills like terrorism is terrorism"[32]. Since the terrorist attacks on September 11th, Britain has two options as far as initiatives in the field of terrorism are concerned: on the one hand, there is the General Assembly with its Sixth Committee (dealing with international law); on the other hand, the UK can use its permanent seat within the Security Council and its Counter Terrorism Committee.[33] Between these two institutional options, London definitely prefers the pragmatic approach of the Security Council to the legalist approach of the General Assembly. In 2002 Sir Jeremy Greenstock, who was at the time President of the Counter Terrorism Committee, said: "The General Assembly is 189 equal voices and votes, with no party discipline and no particular leadership, and it is chaos most of the time in terms of getting collective answers".[34]

On the contrary, the German position is characterized by an explicit insistence on the necessity of adopting, at the United Nations, a global approach to counter-terrorism.[35] Germany is convinced that a "universal coalition" is necessary and that the UN is the only forum that can "give international legitimacy to the response to terrorism".[36] In particular, Berlin highlights the need to "analyse the full range of causes and circumstances that permit such hatred and violence to grow".[37] In this perspective, the German Ministry of Foreign Affairs is working to reach a comprehensive convention on international terrorism including a universally binding legal definition of the phenomenon.[38] However, it is rather questionable whether and to what extent Germany would really wish this convention to be binding. One can conclude that, while the UK definitely favours concrete measures and is firmly opposed to a comprehensive convention on international terrorism, Germany would prefer a more global approach and is, basically, in favour of such a convention. At the same time, however, it must be acknowledged that the German position is not clearly defined and does not stretch very far beyond embracing the principle.

2.2. Exchanging Anti-Terrorist Intelligence

The exchange of intelligence is one of most important methods for fighting international terrorism. On the one hand, the transnational nature of present-day terrorism creates a strong incentive for states to exchange intelligence in order to prosecute terrorists and to prevent terrorist attacks. On the other hand the exchange of anti-terrorist intelligence is often difficult, especially insofar as national security is directly at stake. Both among police forces and among secret services, the exchange of anti-terrorist intelligence therefore implies a significant level of mutual trust. Unfortunately, however, distrust is itself part of the professional culture of the secret services and other elements of the national security apparatus. This lack of mutual trust, combined with "natural" difficulties for police forces and

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[32] Sir Jeremy Greenstock in A/56/PV.12, 01.10.2001, p. 18.

[33] The "Counter Terrorism Committee" (CTC) is a sub-committee of the UN Security Council.

[34] Merill House conversation, 27.02.2002, Carnegie Council on Ethics and International Affairs (http://www.cceia.org/, viewed 02.08.2004).

[35] Cf. UN doc. A/56/PV.15, 02.10.2001, p. 11; S/PV.4688, 20.01.2003, p. 6.

[36] These are the words used by the German Minister of Foreign Affairs Joseph Fischer to address the UN General Assembly (UN doc. A/56/PV.48, 12.11.2001).

[37] ibid.

[38] Personal Communication from a diplomat of the German Ministry of Foreign Affairs.

secret services to liaise with each other, can constitute an important impediment to international cooperation. That is nicely illustrated by the British and German cases.

As far as the substantive scope of cooperation is concerned, Germany is very much in favour of creating a network among existing databases at the European level, with the exception of the databases concerning Islamic fundamentalists; in this particular case Germany favours the idea of linking up the databases of the different Member States, without, however, establishing a network at the European level. Compared to the Germans, the British hold a more uncertain position with concern to database network systems.[39] Berlin and London agree that a more strongly institutionalised cooperation among secret services is needed; but while Berlin would be willing to oblige secret services to exchange their information with the police forces, London believes that improving the state of cooperation between these two parties would already be an important step forward.[40] Another important topic is the introduction of European standards for the retention of mobile phone and Internet communications data. Mobile phone data are particularly interesting because they make it possible to pinpoint the position of a phone within a radius of a few hundred metres. In the United Kingdom a national law on the matter was adopted in 2003, and subsequently Britain has been trying to make a similar proposal at European level; but although the German Minister of Interior seemed to be in favour of this project, due to reasons of data protection the German Bundestag prevented him from pursuing it further.[41]

With regard to the geographical range of international cooperation, Germany has a clear preference for cooperation among the police forces and secret services of the various EU Member States; this cooperation should preferably take place within Europol, which seems to be also Germany's preferred context for cooperation with the US.[42] Not so for Britain. Since the early days of the Cold War, the British secret services have a very "special" relationship with their counterparts in the US and the other Anglo-Saxon countries that signed the 1947 UK-USA agreement (Australia, Canada, New Zealand). Cooperation is now made even easier by the fact that all these countries are engaged in the US-led campaign against international terrorism.[43] At least to a certain extent, this privileged level of cooperation does also extend to the "directorate" of the five largest EU Members and to the G7/G8, *i.e.* two international forums within which the UK is working together with the most influential western States.[44] By contrast, Britain is certainly not among the most enthusiastic supporters of a European-wide exchange of intelligence, despite the fact that in 1995 the country has willy-nilly accepted the inclusion of terrorism into the institutional remit of Europol.[45]

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[39] Frankfurter Allgemeine Zeitung, 20.03.2004, 'Die EU schafft einen Sicherheitskoordinator'; Süddeutsche Zeitung, 22.03.2004, 'Der Anschlag von Madrid und die Folgen'; Frankfurter Allgemeine Zeitung, 12.07.2004, 'Schily lehnt Zentraldatei für Islamisten ab'; Guardian, 06.07.2004, 'Blunkett calls for terror database'.

[40] Home Office, press release, 127/2004, 19.03.2004, 'Government steps up its fight against terrorism with £15M cash boost for Special Branch policing'; Süddeutsche Zeitung, 22.03.2004, cit.

[41] *Retention of Communications Data Order 2003*; European Council, doc. 14107/02, 20.11.2002 (draft framework decision); Frankfurter Rundschau, 11.05.2004, 'Daten auf Vorrat'; 18.05.2004, 'Zankapfel Datenschutz'.

[42] Tiscali Europa, 17 February 2004, 'EU-5 gegen Terrorismus und organisierte Kriminalität'; Frankfurter Rundschau, 09.06.2004, 'EU will Nachrichtendienste enger zusammenbinden'.

[43] Cabinet Office (2002) *The United Kingdom and the Campaign against International Terrorism* (www.fco.gov.uk, viewed 02.07.2004); James Bamford (2002) *Body of Secrets: Anatomy of the Ultra-Secret National Security Agency*, New York: Anchor Books; cf. Financial Times, 06.07.2004, 'A special relationship?'; Home Office, press release 100/2003, 01.04.2003, 'Unprecedented co-operation between UK/US Governments fighting terrorism'; 190/2003, 03.07.2003, 'UK leads the way in counter-terrorist exercise planning'.

[44] Speech by the British Home Officer Jack Straw at the House of Commons, 04.10.2001; cf. Home Office, press release 176/2004, 12.05.2004, 'International co-operation strengthened in the fight against terrorism'; 221/2004, 06.07.2004, 'European co-operation to secure borders, ensure effective policing and implement tough counter-terrorism measures'.

[45] House of Lords Select Committee on the European Communities (1995) *Europol*, London: HMSO, p. E5; cf. p. E49, E90.

As far as institutional commitment is concerned, London and Berlin seem to agree on only one issue: they are both opposed to the idea of establishing a European equivalent of the American CIA.[46] For all the rest, their points of view go by different routes. Given the fact that in the UK the lead responsibility for counter-terrorism investigations is assigned not to the police but to the secret services, Britain is generally reluctant to accept any binding institutional framework for the exchange of intelligence. The British are in favour of the establishment of a European intelligence centre that should provide strategic material, but they have a strong preference for the informal exchange of information among secret services rather than formal cooperation among police forces.[47] On the contrary, Germany is pushing for "all relevant data concerning terrorism", no matter how secret or confidential, to be shared with Europol.[48] This attitude seems to be due to the fact that, in Germany, the police (and not the secret services) are endowed with the lead responsibility for counter-terrorist investigations. Finally, there is another indicator for the different institutional commitment of the two countries. In line with London's general position that the "third pillar" of the European Union should remain intergovernmental, the British were opposed to a proposal by the European Commission to fund certain structures for facilitating intelligence exchange from the Community budget. Germany, by contrast, has taken no official stance on this issue.[49]

In conclusion it can be said that, as far as the substance of intelligence cooperation is concerned, the British position is very similar to the German one, but geographically the UK is less willing than Germany to afford its European partners preferential treatment, and absolutely opposed to accepting binding institutional commitments.

2.3. The European Arrest Warrant

At the executive level, extradition for terrorist offences has always been a major challenge to international cooperation among states. To give just one example: France and Britain have granted, and are in part still granting, sanctuary to Italian and Spanish terrorists. In the 1970s, the Council of Europe made an attempt to resolve this problem via the European Convention for the Suppression of Terrorism, which however turned out to be a failure.

After a series of further failures at the Community level, in the mid-1990s ETA-plagued Spain started to demand that the legal institution of extradition be replaced by the principle of mutual recognition of criminal rulings, at least as far as cases of particularly serious crime were concerned. In this spirit, in October 1999 at the Tampere Summit of the European Council, Spain and the UK worked at promoting an agreement among the European Heads of State, according to which extradition "should be abolished among the Member States as far as

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[46] Guardian, 09.06.2004, 'Greece and Italy failing in security'; BBC News, 19.03.2004, 'Blunkett praises terrorism talks'; AP German Worldstream, 19.03.2004, 'Schily will EU-Informationsaustausch verbessern'.

[47] Home Office, press release 127/2004, 19.03.2004, 'Government steps up its fight against terrorism'; cf. Guardian, 19.03.2004, 'Britain urges EU to tighten security intelligence'.

[48] Spiegel Online, 25.09.2001, 'Europa rüstet sich'; AP German Worldstream, 19.03.2004, cit.; Frankfurter Allgemeine Zeitung, 20.03.2004, cit.

[49] Home Office (2004) *Thirty-Ninth Report of the Select Committee on European Scrutiny: no. 7 of the documents not cleared*, (http://www.publications.parliament.uk/, viewed 15.10.2004).

persons are concerned who are fleeing from justice after having been finally sentenced, and replaced by a simple transfer of such persons".[50]

One year later, Spain and Italy signed a bilateral treaty on simplified extradition for a series of particularly serious offences (especially terrorism).[51] In 2001, Spain attempted to reach similar agreements with France, Germany and the United Kingdom.[52] Such an agreement was indeed reached with the UK in November 2001.[53] In other words, by late 2001 the five largest EU Member States were favourably disposed towards simplified extradition. As the British and German cases show, however, considerable differences were emerging in the bargaining process. The framework decision on the European arrest warrant, which is supposed to replace the legal institution of extradition among the EU Member States, was elaborated by the European Commission in the course of 2001 and was proposed immediately after the terrorist attacks of 11 September 2001.

The main institutional challenge posed by the new legal instrument was the so-called principle of "double criminality", according to which, traditionally, extradition could be denied if the offence in question was not a criminal offence in the executing state. London demanded the complete abolition of this principle, whereas the German Minister of Justice maintained that double criminality should be safeguarded as far as possible. It took an energetic intervention by Chancellor Schröder to break, at least in part, the resistance of the Ministry.[54] Moreover, it was an open question whether to embark on an "enhanced cooperation" in the case that Italy, which was strongly critical about the European arrest warrant, should not be willing to accept the terms of the framework decision.[55] Britain was careful on the diplomatic front, but nevertheless considered proceeding without Italy as a sort of *ultima ratio*.[56] The German Minister of Interior, by contrast, while using a very strong lingo in his condemnation of the Italian position, recognised that Italy *did* have a *de facto* right of veto.[57] Another significant indicator is the date by which the Member States undertook to ratify the European arrest warrant, and the date when it actually went into force. Both London and Berlin undertook to apply the European arrest warrant at least six months before the deadline, *i.e.* in the first half of 2003.[58] Actually, however, the arrest warrant entered into force in the UK precisely on the day foreseen by the Council of Europe, on 1 January 2004, and in Germany not until 23 August 2004, *i.e.* with almost nine months of delay.[59]

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[50] Article 35 and 37 of the *Presidency Conclusions to the Tampere European Council, 15 and 16 October 1999* (http://www.europarl.eu.int/summits/tam_en.htm, viewed 22.01.2005); cf. Observer 10.10.1999, 'Europewide arrest power planned'; Il Sole 24 Ore, 13.10.1999, 'Allarme inglese sul crimine'; 15.10.1999, 'A Tampere difficile vertice UE su criminalità e immigrati'.

[51] *Trattato bilaterale tra la Repubblica italiana e il Regno di Spagna per il perseguimento di gravi reati attraverso il superamento dell'estradizione in uno spazio giudiziario comune*, signed 28.11.2000.

[52] http://www.mju.es/prensa/espacio_europeo.htm (visto 15.09.2004); Agence Europe, 9.2.2001, 'Commission announces definition of terrorist crime'.

[53] *Tratado entre el Reino de España y el Reino Unido de Gran Bretaña e Irlanda del Norte relativo a la entrega judicial acelerada para delitos graves en un espacio común de Justicia*, signed 23.11.2001.

[54] Agence Europe, 21.09.2001, 'EU favours Commission proposals but agreement on European arrest warrant will be close-run'; 17.10.2001, 'France proposes compromise on European arrest warrant'; 18.10.2001, 'Detailed discussion but little result'; 21.10.2001, 'Summit adopts a 79-point action plan'; 07.11.2001, 'United Kingdom: What the Permanent Representative Nigel Sheinwald is expecting from the Laeken Summit'.

[55] On the Italian position see Ferruccio Pastore (2003) 'L'Europa della sicurezza interna', in G. Vacca (ed.) *L'unità dell'Europa: Rapporto 2003 sull'integrazione europea*, Bari: Dedalo, p. 233-250.

[56] Parliamentary Under-Secretary of State for the Home Department, Mr. Bob Ainsworth, to the European Standing Committee B, 10.12.2001.

[57] Corriere della Sera, 08.12.2001, 'Schily: una scelta inacettabile, Roma mette in pericolo il suo ruolo nella UE'.

[58] Agence Europe, 15.02.2002, 'Six countries decide to jump the gun on entry into force of European Arrest Warrant'; 16.02.2002, 'Controversy over arrest warrant'.

[59] Financial Times, 23.03.2004, 'Germany calls for delay on anti-terror measures'; Frankfurter Rundschau, 09.06.2004, 'EU will Nachrichtendienste enger zusammenbinden'; Süddeutsche Zeitung, 31.08.2004, 'Erste Auslieferung eines Deutschen ins

As far as the geographical range of application is concerned, German law conceives the European arrest warrant as a derogation from the normal extradition procedure exclusively meant for the Member States of the European Union and of the Schengen area who have endorsed the European arrest warrant; this explicitly includes the new EU Member States.[60] The UK, by contrast, has gone beyond its obligations by radically reforming its extradition law. The new *Extradition Act 2003* draws a neat distinction between two categories of states. The procedure for the countries of the first category is modelled on the European arrest warrant and, for the time being, is applied to all those EU States that have ratified the framework decision. The second category comprises all the rest of the world. In principle, nothing would prevent the transfer of a country from the second category into the first, even if the country is not a member of the European Union. Indeed, already in March 2001 the British Home Office declared that the European arrest warrant should be extended not only to the new EU Members and the members of the Schengen area, but also to other countries, for example to "a trusted Commonwealth or bilateral treaty partner".[61]

Concerning the content of the new legal instrument, the most contested issue was the delimitation of those offences to which the European arrest warrant should be applied. Both the British and the German delegation were initially supportive of the full application to all offences not explicitly mentioned in a specially conceived list (negative list). However, due to the initiative of other Member States, it was finally decided to adopt a list of 32 offences for which the principle of double criminality was not to be applied (positive list). Despite the considerable length of this list, the UK was disappointed by this solution, whereas the German delegation declared itself substantially satisfied and asked, if not for a shorter list, at least for a more precise definition of the offences on the list.[62] The same controversy has been repeated more recently in connection with the mutual recognition of fines, when Britain aimed at the complete abolition of double criminality and wanted to use the same list of offences as in the European arrest warrant for this purpose, whereas Germany called for a more restrictive list and wanted to keep as much of double criminality as possible.[63] Another bone of contention was the question of the retrospective application of the European arrest warrant. Initially, Germany wanted to apply the arrest warrant only to offences committed after the entry into force of the Maastricht Treaty in 1993, but finally accepted retroactive application without any limit. Right from the start, by contrast, the UK did not pose any restrictions to the retroactive application of the European arrest warrant.[64] Moreover, Britain deliberately went beyond the commitments undergone, applying the arrest warrant to all offences punished with a penalty of 12 months or more in prison. Even Germany, which in 2001 apparently had still

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Ausland'. Bavaria had blocked ratification in the *Bundesrat* with reference to a small detail in the ratification law, namely the extension to resident aliens of the right to serve their sentence in Germany. The real reason was probably due to an attempt by the conservative opposition to obstruct the Government.

[60] Federal Ministry of the Interior, press release, 19.03.2004, 'Ute Vogt: Europea muss seine Chancen nutzen'.

[61] Home Office (2001) *Extradition: A Review*, London: Home Office, p. 5. Cf. also Home Office (2002) *Extradition Bill: Explanatory Notes*, London: Home Office, p. 3; UK Government (2003) *Government Response to the First Report from the Home Affairs Select Committee, Session 2002-2003: Extradition Bill*. This position is partly explained by the fact that, ever since 1965, the UK has made positive experiences with the *Backing of Warrants (Republic of Ireland) Act*, an agreement that prefigures at least in part the European arrest warrant.

[62] Agence Europe, 17.10.2001, 'France proposes compromise on European arrest warrant'; 17.11.2001, 'Tricky negotiations over the European arrest warrant'.

[63] Agence Europe, 24.01.2003, 'Greek Presidency and Commission programmes'; 04.03.2003, 'Greek minister Philippos Petsalnikos has confirmed that there is still disagreement'.

[64] Agence Europe, 07.12.2001, 'Deadlock in talks over European arrest warrant due to block by Italy'; cf. *Europäisches Haftbefehlsgesetz*, 21.07.2004; *Extradition Act 2003*.

wanted to limit the application of the European arrest warrant to offences punishable with at least 48 months in prison, accepted a twelve-month limit in the 2004 ratification law.[65]

All in all, the British stance was more positive and more ambitious than the German one as far as all three aspects examined are concerned: institutional depth, geographical range, and substantive scope. It is truly remarkable that the United Kingdom has demonstrated greater support than Germany for such an extraordinarily "European" instrument as the European arrest warrant.

2.4. Final remarks

In conclusion, it seems useful to stress that the three case studies were not so much selected for their importance in connection to European integration, but rather for their relevance with regard to the fight against terrorism.[66] Each case study is on a different analytical level: (1) The issue of defining terrorism concerns the general *principles* of legitimacy for the fight against international terrorism. (2) The exchange of intelligence among police forces and secret services represents a *method* for the repression and prevention of terrorism. (3) The European arrest warrant is destined to provide an operational procedure for the *execution* of court sentences and penal decisions.

It is interesting to observe how the first case study "took place" in the United Nations, the second one partly among EU Member States and partly elsewhere, and only the third one mainly within the European Union. This seems to suggest that, as far as the legitimisation of the international fight against terrorism is concerned, the UN continues to be the most important forum. As far as methods are concerned, cooperation between police forces and secret services tends to follow the needs perceived by practitioners, with only limited monitoring from the part of political leaders. And only in the case of immediate intervention on the physical liberty of criminal suspects or sentenced persons, the EU is fully imposing itself as the privileged forum for international cooperation.

Let us now turn to the question of what the results attained signify in relation to the initial question. Can we continue to oppose a "Euro-sceptical" and "autonomist" United Kingdom to a "Euro-enthusiastic" and "multilateralist" Germany?

(1) In the case of the definition of terrorism, the response is affirmative: The UK is, in fact, reluctant towards cooperation whereas Germany is favourable.

(2) On the exchange of anti-terrorist intelligence, the answer is more complex: as far as the substance of cooperation is concerned, the British position is similar to the German one, but the UK is less willing than Germany to adopt a preferential treatment of its European partners, and absolutely opposed to accepting binding institutional commitments.

(3) In the case of the European arrest warrant, the answer is negative: the British position is even more "Europeanist" than the German one.

The analysis of the three case studies leads to the hypothesis, still to be confirmed by future research, that Germany is more "Europeanist" than the UK only insofar as general principles are concerned. In relation to more operational issues, however, the roles are inverted.

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[65] Agence Europe, 17.11.2001, cit.; UK Government (2003) *Government Response*, cit.; cf. *Europäisches Haftbefehlsgesetz*, 21.07.2004; *Extradition Act 2003*.

[66] After a series of consultations with experts and political representatives, I got confirmation that the cases which have been selected may indeed be considered the most relevant ones in relation to each of the three levels analysed.

Furthermore Germany tends to favour institutional commitments, an attitude not always matched by an equally firm position with regard to the substance of cooperation. The UK, by contrast, seems to abhor institutional commitments but is very open on substantive issues.

While the stereotype of "Euro-sceptical Britain" versus "Euro-enthusiastic Germany" does not seem to explain much of the empirical evidence, "autonomist" Britain versus "multilateralist" Germany fares only slightly better. However, it is interesting to observe that the results are in line with another, more philosophical distinction: that of "German idealism" as opposed to "British pragmatism".

3. ITALIAN POLICIES IN THE EUROPEAN AND INTERNATIONAL CONTEXT

by Alessandro Politi

3.1. Italy: from old to new forms of terrorism. What has changed?

On 20 May 1999 the murder of Massimo D'Antona (a Labour Ministry advisor) was committed, and almost three years later (19 March 2002), another advisor, this time of the new Ministry of Welfare, Marco Biagi, was assassinated exactly in the same way. These two dates, along with the fear of acts of terrorism being committed before the explosion of the riots on the occasion of the G8 Summit in Genoa (19-22 July 2001) and with several minor attacks, carried out by different groups of various origin, marked the comeback of domestic terrorism, after the seasons of fascist terrorist bombings and of the Communist Red Brigades had practically closed with the end of the Cold War (1989).

Between these two dates, in a state of alert which was subtle for the public opinion but increasingly serious for the political *élites*, as proved by the impressive security measures put in place for the G8 Summit and the documents by the *National Commission on Terrorist Attacks Upon the United States*,[67] the 9/11 tragedy took place and decreed the arrival of Jihadist terrorism on the global strategic scene, partly changing the perception of risk in Italy.

Italy's initial reaction to the possible resurgence of Red Brigades terrorism, from which the new BR-PCC (Red Brigades-Communist Combatant Party) claimed descent as well as self-proclaiming themselves new leaders of a "long-term civil war", was very restrained in terms of quality of the political and operational response. Politically, beyond the predictable disdain for a terrorist assassination, there was nothing that stretched further than statements to the media and that resembled the mobilisation that, in the end, stood up to Red Brigades terrorism during the Cold War. It must also be stressed that the overall situation was not comparable because the cultural background and social tensions which had played their part in developing widespread collusion with Communist terrorism two decades before were missing. At an operational level, investigations quickly came to a dead end so, apart from extending police escort to a series of potential targets, nothing could be done except wait for a turning point in the investigations or another move by the terrorists. After the failed arrest of a suspect BR-PCC phone operator (17 May 2000) because of an information leak which was defined "institutional" by the prosecuting magistrates, there were no further leads to follow for almost two more years.

In April 2001, the right-centrist wing coalition led by Silvio Berlusconi won the elections with an unprecedented majority in Parliament. The new Government's first impact with the reality of social discontent, contained and curbed by previous Governments, and violent fringes of youth movements, was during the previously mentioned G8 Summit. On that occasion, the preparation of intelligence and investigation and the political management of the event came apart. According to the experts who worked at the informative preparation in view of the Summit, a fatal accident during the course of the disorders was foreseeable at least a month in advance (in equal likelihood among the demonstrators and the police forces), due to the growing tension fomented by groups of violent protesters migrating from one international event to the other. The Government could have proceeded to a series of arrests and searches during the month which led to the Summit, in order to dismantle the logistics networks and

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[67] For the first time, and with scepticism among the experts, the air space over a city was closed down and anti-aircraft missile defence measures (naval and land surface-to-air) were put in place in anticipation of possible attacks carried out with remote-controlled miniature aeroplanes carrying explosives. Compare the documents by the US bipartisan Committee, established on 27 November 2002.

root out the groups of demonstrators infiltrated beforehand, but avoided doing it so as not to appear liberticidal. The result was disastrous both in terms of failed containment of organized groups of rioters outside the Red Zone and of the respect of legality by too many elements in the police forces and also in terms of image. The only achievement, from an operational point of view, was the safeguard of the so-called Red Zone, with techniques which were to be considered a model for the organisers of future Summits.

Despite the succession of Giuseppe Pisanu in Claudio Scajola's position as Minister of Interior, the difficult quest for a balance among public image, operational efficiency and political caution remain constant features, with results which are not always positive.

Apart from the heated political debate, the G8 case contributed to increasing the attention towards the multi-faceted universe of the anti-global protest within which connections with left wing then with Jihadist terrorism have, in turn, been searched for, however, with no relevant results.[68]

Despite the deadliness and dangerousness of some attacks, terrorist activity by the New Red Brigades and its splinter factions (NIPR, NPC, NPR etc.), did not truly have any credible perspective of political growth, not even in the so-called area of dissent.[69] This explains, in substance, the slowness of the reaction which led to the avoidable assassination of the jurist Marco Biagi.

The anarcho-insurrectionist factions in mainland Italy or the ones that constitute the complex reality of the subversive area in Sardinia posed, in actual fact, an even lower degree of danger. On the other hand, the Minister of Interior, Giuseppe Pisanu, has, more than once, energetically highlighted the risk that these terrorist organisations pose mostly in the form of small-scale bombing attacks.[70]

A completely new element of risk in the Italian counter-terrorism experience is that of Jihadist terrorism. During the second war in Algeria (1992-2002) and during the dissolution wars in Yugoslavia, Salafist and Jihadist cells were active, but they were exclusively assigned to tasks of logistic support for armed combatants in their respective theatres of operations.

With the dispatching of the Nibbio Task Force to Afghanistan (15 March 2003) and the ensuing release of two videotaped threats, made by Osama bin Laden in person, Italy becomes a definite target for Al Qa'ida and the Jihadist movements that draw inspiration from it. The possibility that cells assigned specifically to attack were already in Italy or could be infiltrated was, by then, to be considered a concrete operational hypothesis.

Until the end of January 2005, Italy has not suffered attacks on its own territory, whereas on the Iraqi front and in Saudi Arabia local terrorist groups have inflicted painful losses: 26 among civilians (citizens and foreign residents of Italy), security staff and soldiers, to which 40 Italians killed in the World Trade Center attack must be added.

Understandably, even without taking into account the extreme hypotheses of the use of mass destruction weapons or of mass disruption ones (radiological devices), Jihadist terrorism is considered an overriding threat and is at the top of the list of intelligence targets for the SISMI (foreign intelligence services) and of the RIS (military intelligence) in the area of operations.

However, even this form of terrorism, which has a much wider recruitment basin of dissatisfied potential affiliates and ideological roots which go back more than two decades, actually has a rather weak impact on Italy's main structures. Even when considering the

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[68] One of the most glaring cases was that of the "*10 Euro for Iraqi Resistance*" campaign, promoted by the Anti-Imperialist Camp in favour of the tiny movement led by the Iraqi exile Abdel Jabbar al Kubaysi (National Iraqi Coalition). Later on, with different charges and in different circumstances, some arrests were carried out both in Italy (against members of the Anti-Imperialist Camp) and in Iraq (against Kubaysi himself) without any further news concerning the worsening of the criminal position of those under arrest.

[69] The mentioned factions (*Nucleo di Iniziativa Proletaria Rivoluzionaria, Nucleo Proletario Rivoluzionario, Nucleo Proletario Combattente*) were created directly by the BR-PCC with the goal of simulating a varied revolutionary front, whereas the *Nuclei Territoriali Antimperialisti* (Anti-Imperialist Territorial Nuclei) were founded by a single independent activist. Cf. *Lo stato della sicurezza in Italia,* 15 August 2004, Ministry of Interior, same date, Rome.

[70] Cf. *Lotta al terrorismo: informativa del Ministro Pisanu alla Camera,* 07 April 2004.

economic impact of 9/11 on global and Italian economy, it is important to take into account that the political and economic decline of Italy on the international scene *is due to much more incisive remote and recent causes* (the end of the stock market speculations of the 1990s, the lack of leading innovation, the weakness of the internal stock market and credit system). With regard to national security, in actual fact, Jihadist terrorism is considered *more as a serious risk than as an existential threat,* despite the frequent statements released by high-ranking politicians and opinion-leaders on the fact that we are involved in the Fourth World War, after the Cold War.

3.2. Politics, police forces and the judiciary: synergies and inconsistencies

On close examination, the different positions taken by the political forces in the Government and in the opposition pose no new elements in the approach to the issue. Traditionally the right wing tends to adopt a more belligerent attitude centred on a response based on security systems, whereas the left wing tends to consider the causes of terrorism more attentively. This empirical distinction emerged in Italy too, with two further shades after the 9/11 watershed.

After having released statements of unconditional solidarity and after having encouraged demonstrations of support to the US and Israel, the Berlusconi Government made various attempts to avoid being dragged into the dynamics of the "global war against terrorism", chosen as a contrast measure by the Bush Administration. Not until a year after the beginning of operation "Enduring Freedom" in Afghanistan and consequently to pressure by the US Administration, did the Italian Government dispatch troops –and only for six months (15 March-15 September 2003)– which were not part of the UN forces. On the occasion of the NATO Summit in Prague (November 2002), the Government openly declared that it would not take part in the war in Iraq, explaining this decision with the lack of a request by the United States. In exchange it promised its contribution to rebuilding Iraq. This way, the risks of sparking up a contrast with the Muslim and Arab communities, with which Italy still had relations, would have been reduced, at the same time obtaining the maximum political advantage of a privileged relationship with the great ally in a post-war phase which was expected to be less dangerous.

It was a mistake. The first terrorist threats arrived during the deployment of troops in Afghanistan and the carnage in an-Nassiryya (12 November 2003, 19 dead), carried out by members of the Jihadist universe, definitively proved the fallacy of the political theory behind the choices made: Italy had de facto become a logical target for terrorists.

From the point of view of the deployment of military forces against the risk of terrorism, Italy dispatched 4,915 soldiers, out of 9,595 posted abroad (51.2% of the total), to the various theatres of operations (the naval one of "Enduring Freedom", Greece, Hebron, Afghanistan and Iraq) whereas 4,000 soldiers have been assigned to the domestic security operation "Domino". Out of a total of 13,595 soldiers engaged in specific operations, 65.5% contribute, more or less directly, to contrasting Jihadist terrorism, without counting the Carabinieri's specialised action outside the MSUs (*Multinational Specialised Unit*). As well as these troops, there are 19,245 members of the police forces assigned to protecting 13,421 sensitive targets on metropolitan territories.[71]

The same cautious attitude, already witnessed in the case of "war against terrorism", was adopted and maintained with concern to the issue of Jihadist terrorism in Italy. On one hand the extremist elements of the Government coalition spoke about a clash among civilisations

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[71] Cf. *Missioni/operazioni in corso al 27 settembre 2004*, Ministry of Defence, same date, Rome; it is a periodical up-date bulletin on Italy's police forces' missions and operations. Figures are own elaboration of official data. Cf. *op. cit. Lo stato della sicurezza.*

and a war under way, on the other hand the Minister of Interior, Pisanu, made a positive effort to handle the emergency by listening to and coordinating the experts of his Ministry and of the SISDE (internal security services), by opening channels for institutional consultation with the Muslim community, making a clear distinction between ordinary religious preachers and the ones belonging to intolerant and extremist movements.

By observing the various operations carried out against Jihadist terrorist cells in Turin, Milan, Florence, Rome and Naples, it emerges that the main political priority is to prevent, at all costs and early on, the possibility itself of an attack, even if during court trials the most serious accusations cannot be proved. At the same time, there is a commitment towards communication with the public in order to avoid both pointless alarm and the concrete involvement of citizens in a participative and cooperative management of security, which, on the contrary, was done in the UK.

Furthermore, even if the management of the emergency is at a good level, the political vision necessary for promptly intercepting new terrorism orientations in order to prevent future action is, unfortunately, completely lacking.

From an operational point of view, the single most efficient response to the rise of the terrorist phenomenon was the transfer of a team of high-ranking professionals from the fight against organised crime to counter-terrorism (*i.e.* the transfer of Francesco Gratteri from SCO to Prevention Police), pending further investments on existing experts in the field.[72] This was the response of the Department of Public Security (belonging to the Ministry of Interior), substantially without any further initiative neither by Claudio Scajola nor by his successor at the Ministry of Interior from 2002, Giuseppe Pisanu. The technique for handling the New BR-PCC terrorists who have turned state's evidence, which, for the time being, has led to the collaboration of member Cinzia Banelli, is modelled on the one used for Mafia "repentants" (*pentiti*), due to the fact that repentance is not ideological (as, instead, was the case with the first BR member turned state's evidence, Patrizio Peci), but based on the instrumental use of personal interests for the sake of the state's interests. Counter-terrorism being a rather restricted field, there are no obvious shortcomings or coordination problems, as is the case in the fight against organised crime.

On a judiciary level, the primary responsibility in the case of acts of terrorism falls on the Chief prosecutor of each judicial district and its counter-terrorism section, after the arrest has been decided by the investigative police and the prosecuting magistrate and confirmed by the Investigating Magistrate (*Giudice per le indagini preliminari*).[73] There is no institutional memory of the legal proceedings based on "Calogero's theorem" (*teorema Calogero*),[74] which, during the 1970s, made it possible to undermine intellectual consensus towards the Red Brigades through a series of expeditious judiciary measures. The disappointing outcome of several trials against Jihadist cells is basically due to: the arrests being carried out when the cell is still in an initial and very ambiguous stage; the accounting criteria applied to assess the efficiency of public prosecutor offices and, in some cases, the magistrate's exhibitionist desire

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[72] Expert migration is a recurring phenomenon in the management of national emergencies: after the Red Brigades were rooted out, many specialists transferred their knowledge and skills to the fight against Mafia phenomena; this trend began to invert two years ago.

[73] In some specific cases, it may be the DDA (*Direzione Distrettuale Antimafia* – District Anti-Mafia Department) that intervenes. The issue of competence in connection to terrorist offences still has to be discussed in Parliament; one of the proposals under consideration is to centralize competence to the National Anti-Mafia Department.

[74] The so-called "teorema Calogero" is named after the deputy prosecutor Pietro Calogero who, with a series of arrests carried out on 7 April 1979, believed he could accuse members of Potere Operaio and Autonomia Operaia with such charges as "establishment of armed faction" (the Red Brigades), "subversive association" (*Autonomia Operaia Organizzata*), "fomenting of armed insurrection" and "civil war". The essence of the theorem, which was at the time harshly contested on a political and judiciary level, criticised from a legal point of view by Amnesty International and very strongly downscaled by the following judiciary results, was that affiliation to organisations such as *Autonomia Operaia* and *Potere Operaio* had set the foundations for and promoted the birth of the Red Brigades. Government and counter-terrorism experts argue that, if debatable from a legal and technical point of view, Calogero's theorem helped to curb tolerance for terrorist movements and more broadly for organized illegal mass behaviour.

to attract the media's attention. In most cases, charges are dropped or are drastically downscaled not only because of procedural guarantees but actually in connection to the type of offence the defendant is charged with. For the record, till the end of January 2005, not a single terrorist was condemned in Italy on the basis of article 270-bis of the Penal Code, which specifies the crime of international terrorism. This has happened due to the difficulty of transforming intelligence information into judiciary evidence, to some legal loopholes and, in some cases, for the difficulty in establishing if the activities of some cells are supporting terrorist operations or a legitimate resistance against occupying troops.

From the point of view of organisation, the 26 district public prosecutor offices of the country have requested funds from the Ministry of Justice in order to harmonise the databases of each public prosecutor's office and access to the DNA's database (National Anti-Mafia Department) which could act as a central junction for the exchange of data. The unofficial response from the Ministry was that there are no funds, so the magistrates will have to continue exchanging information with *ad hoc* agreements, often through unprotected channels and using traditional and slow transmission methods.[75]

3.3. Italy's role in Europe and in the Mediterranean

During the June-December 2003 semester Italy held the Presidency of the European Union and in the third pillar the priority was the fight against terrorism which led, among other things, to the definition of requirements for the establishment of multinational specialist teams in charge of exchanging information on terrorists, and to the creation of a team for the prevention of terrorist threats to the Olympic Games in Athens. On 6-7 October 2003 a meeting of the Task Force composed by Chiefs of police forces of the EU was held in Rome. In the course of the meeting, the reinforcement of Europol and preparation in view of the 2004 Olympics were also discussed. Previously (13-15 February 2003) the first plenary session of the Rome Group (police forces and intelligence services for counter-terrorism) was held in Washington to discuss new projects concerning the issues of safety of civil aviation and of travel/identity documents, and established the new SAFTI Working Party (Secure and Facilitated Travel Initiative).

Even within OSCE, substantial progress was made: on 7 November 2003, the *Counter-Terrorism Network* was established and national contacts have already been arranged. On 23 January 2003, a meeting among experts was held in Vienna to discuss the issue of the threat to civil aviation posed by the so-called man-portable anti-aircraft missiles (SA-7 Strelà or FIM-92A Stinger types).

Within Interpol, the 4th regional meeting of the Fusion Task Force project (Mediterranean area) was held in Rome (6-7 April 2004). The work was focused on the involvement of organised crime in terrorist activities and on terrorist training camps, in order to encourage Mediterranean countries to have an active role. The Task Force's aim is to carry out an analysis of the information provided by the 181 members and draw up assessments which pinpoint the funding sources and the financial flows of non-governmental organisations associated with terrorists.

Alongside these institutional initiatives, cooperation with the intelligence services of the Mediterranean and Middle-East areas became particularly relevant in connection to four dissimilar cases of taking of hostages in Iraq (in sequence, the cases of Quattrocchi, Baldoni, Wali, and "*Un ponte per...*"). From a strictly numerical point of view, the ratio between saved hostages and killed hostages is 7 to 4 (including the cook Antonio Amato, killed in Khobar on

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[75] Cf. Claudia Fusani, *La denuncia di Spataro: niente soldi per l'antiterrorismo*, "La Repubblica", 17 October 2004, p. 2.

30/5/2004), whereas from a political-operational point of view, between the lines with respect to the numerous statements of high esteem from several official, unofficial and civilian components of the Arab community, other aspects emerged: on one hand the repayment of old debts going back to the second Gulf War (1991), on the other, the concrete erosion of Italian influence in the area as a consequence of the new Pro-Israeli orientations of regional foreign policy and of the levelling out of negotiation lines on Washington's positions.

On a more European level, the representation of Italy within cooperation bodies still remains weak, despite the fact that national police forces are professionally recognised. This derives both from a general weakness of the state's equipment as far as joint investigations are concerned (beyond the contacts of each single investigator) and from the controversial and negative inheritance with regard to issues concerning the European Arrest Warrant, Eurojust and the failed ratification of the Palermo Convention on Organized Crime.