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Police cooperation in the field of the counter-terrorism: the continuity of a bottom-up approach

Number 11

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Introduction¹

Terrorism is currently one of the key concerns for the European Union. This has not always been the case, as illustrated by the lack of interest Spain faced for years to advance at the European level its agenda vis-à-vis the terrorist group ETA. However, the trend begun by the terrorist attacks of September 11 2001 and followed, on European soil, by March 11 2004 in Madrid and July 7 2005 in London, in addition to the disrupted attempts in Germany and the UK in the summer of 2006, have radically changed the picture. Indeed, the EU is increasingly aware of the vulnerability of its societies to this security threat. Spain has adequately exploited this change in attitude to become a key developer of the Union's counter-terrorist policy.

This article will provide an account of how the government of José Luis Rodríguez Zapatero, in power since 2004, has built on Spain's achievements to influence the European counter-terrorist agenda. The argument will focus on Zapatero's goals and accomplishments in the area of police cooperation for counter-terrorist matters and, where possible, on related measures in the areas of judicial cooperation, asylum and extradition. Measures in these other fields of law-enforcement are crucial for effective police cooperation as a successful fight against terrorism depends on developing a coherent, comprehensive strategy that can respond effectively to the multifaceted nature of this security problem.

The EU and the Fight against Terrorism

The Treaty of the European Union mentions in Article 29 the need to combat terrorism. However, the real turning point came as a reaction to September 11 and the Union's changed understanding of its security and vulnerability, a transformation that accelerated following the Madrid and London bombings in 2004 and 2005 respectively. In September 2001 the European Council adopted an action plan to fight terrorism that has gradually led to the introduction of a variety of measures, including the formulation of the EU Counter-Terrorism Strategy of December 2005 and the creation of a specific budget to finance activities in this field. The 2005 strategy commits the Union to combating terrorism globally while respecting human rights, with the ultimate goal of ensuring that citizens can live in an area of freedom, security and justice. There are four strands to this strategy: Prevention, Protection, Pursuit and Response. Within this context, police cooperation has been identified as an area in need of improvement. The EU has sought to strengthen national capabilities, facilitate European cooperation, develop collective capability and promote international partnerships².

There are two major dilemmas in the EU's fight against terrorism. First, it remains an inter-governmental area and thus, although Member States want more collaboration at the EU level, they also represent the major obstacle to greater progress (Keohane,

2005: 3). This limitation was clearly felt during the negotiations leading to the 2007 Lisbon Treaty that resulted in a disproportionate approach, with more progress achieved in criminal justice than on police cooperation. The end result was hesitant reforms to provide Europol with more powers while ensuring that the executive aspects of policing remain under the prerogative of Member States. In other words, the EU is still far from having its own FBI. Nevertheless, the treaty did help clarify the existing 'jungle' of bilateral agreements on issues such as the powers afforded to police when operating in a different EU Member State³.

The second dilemma relates to the EU's balance between freedom and security. According to Franco Frattini, European Commissioner for Justice, Freedom and Security, "the fight against terrorism must go alongside the protection and promotion of fundamental rights [...] the two must go hand in hand"⁴. However, many Member States have been criticised for using the terrorist attacks in the US and Europe since September 11 as an excuse to improve security at the expense of civil liberties. In this regard, Spain is increasingly an exception due to its strong commitment to the rule of law. In what follows the argument will evaluate to what extent the same positive conclusion is applicable to Spain's contribution to the progress achieved so far in terms of police cooperation in the fight against terrorism at the European level.

Overview of Spain's Contribution to EU Counter-Terrorism Policy

Multilateral and bilateral cooperation have always been important for Spain to defeat ETA terrorism. This domestic need explains its longstanding advocacy for the creation of a European police force, a common definition of terrorism, and the expansion of the coordination and competences falling under the domain of the TREVI group, created in 1976 to cooperate on issues of terrorism, drug trafficking and public order.

The main problem Spain has encountered in its fight against terrorism is gaining the support of other EU Member States - through bilateral meetings and agreements - to introduce its national fight against endogenous terrorism into the European agenda. Nevertheless, Spain has gradually achieved its objective by insisting that terrorism be added to Europol's competences in 1995, followed two months later by its membership to the first group of countries that came together for higher exchanges of information and intelligence. Moreover, as argued by Leticia Delgado (2007: 308-309), Spain's insistence in including the fight against terrorism in the formal agenda of the 1996 Intergovernmental Conference led to its explicit mention in the Treaty of Amsterdam. However, this active role has come at times through the use of forceful actions, such as Carlos Westendorp's threat at the 1996 Intergovernmental Conference to use the veto unless the issue of judicial and police cooperation was dealt with through changes in the asylum policy.

Spain held the Presidency of the European Union in the first half of 2002, just after the September 11 terrorist attacks in New York and Washington DC to which the EU reacted by endorsing a number of initiatives. These include the common definition on terrorism, a system of automatic detention and extradition within the EU ("Euro-Order"), and a coordinating body in judicial instruction (Euro Justice). Against a complex international and domestic scenario, the government headed by José María Aznar opted for a more definite strategy to give meaning to proposals in the fight against terrorism that Spain had long supported, particularly since the formulation of the Tampere programme in 1999. In doing so it became a key actor in pushing forward the initiatives that were developed at the EU level around that time and that reinforced the recently endorsed reforms listed above (Fernández Pasarín, 2007; Barbé, 2002). The application of the

Euro-Order to 32 types of crime (including terrorism) began a year earlier in seven countries (counting Spain). Similarly, greater judicial and police cooperation was identified as a priority area, which led to Aznar's government support for a strengthened Europol and the development of the Schengen II information system (SIS II) that contains the police information shared among all Schengen countries.

Aznar's government successfully managed to introduce the fight against terrorism into the EU's second pillar, leading to the often cited passages on this subject matter in the 2003 *European Security Strategy*, and the progressive merge of internal and external security mechanisms to deal with at least some of the security threats identified in that document. Moving closer to the British and Italian governments, with whom it shared more ground on issues of terrorism than with the Franco-German alliance, the Spanish government at the time also developed a close relationship with the US. It extended beyond cooperation in the police and judicial spheres to embrace the Iraq war, which produced serious tensions within the EU.

The Socialist Government's Approach to Counter-Terrorism: A Balance between Continuity and Change

Zapatero's government came to power in the aftermath of the worst terrorist attack in Spain's recent history. On the occasion of his investiture as President of the Government he vowed to wage a relentless war against terrorism: "The top priority of my Government will always be to fight terrorism, to give no quarter to terrorism, to wage an unswerving battle against any and all forms of terrorism"⁵. And here lies what some analysts see as a key difference compared with Aznar's period. The previous government's fight against terrorism was foremost about defeating ETA, notwithstanding Aznar's relationship with President George W. Bush that resulted in Spain's full engagement in the global "War on Terror". Nevertheless, at the time the country did not seem directly threatened by Al Qaeda terrorism. By the same token, although there were a couple of references to the globalisation of this threat, Zapatero's electoral programme was fundamentally geared towards the fight against ETA terrorism.⁶ Three days before the general election he had to add this new dimension. His government has since approached this new type of terrorism in the same way it has fought ETA, through a clear and coherent strategy based on two main elements: (1) the primacy of the rule of law, which was overshadowed for a while by the "secret CIA flights" controversy; and (2) bilateral and multilateral cooperation, first and foremost with its European partners but also within other settings, as exemplified by the priorities of the 2007 Spanish Presidency of the OSCE.

Ever since the March 2004 terrorist attacks in Madrid, Spain is increasingly vulnerable as a target but also as a suspected breeding ground. Zapatero's main challenge has been, as some analysts would claim, the need to re-focus its capabilities to deal with this new type of terrorism while maintaining an effective front against ETA. Leaving aside the reforms that have taken place domestically, in this new context Spain has become even more dependent on multilateral and bilateral cooperation. Zapatero opted from the very beginning of his mandate, as mentioned repeatedly during his electoral campaign, to prioritise the "European outlook" in Spain's foreign policy while maintaining a friendly partnership with the United States, which became less intense than what Aznar had fostered with the Bush administration, particularly after Spain withdrew from Iraq.

Spain has reinforced the bilateral relationships (France and Germany) that were damaged by the Atlanticist approach adopted by the previous government. Some of the

most recent examples of progress achieved in this front include the new police team created with France in January 2008 to fight ETA terrorism, and the Spanish-German summit held in Palma de Mallorca at the end of January 2008. The need for further collaboration in the fight against international terrorism was one of the conclusions of this high-level meeting. Moreover, Spain has continued to play a leading role in the development of the EU's policy to fight terrorism which, in turn, has translated into more EU support for its own fight against ETA. The European Parliament fully supported the negotiation process initiated by the Spanish government during the last ceasefire.

Spain saw the Reform Treaty as an ideal opportunity to advance with other European Member States in a number of spheres, including justice and interior matters and police cooperation. It was in favour of the creation of a European border police force and measures related to the controversial EU-US (air) Passenger Name Record (PNR) Agreement. In fact, it was the first Member State to implement the EU 2004 directive that obliges air carriers to supply Advanced Passenger Information (API) for flights coming into the Union⁷. Moreover, Spain has pushed in this period for the development of the so-called European image archiving system (FADO) that should facilitate the exchange between Member States of information concerning genuine and false documents.

These internal measures have been complemented, on the external side, with an ongoing Spanish commitment to tackle the root causes of terrorism. It has continued to participate in ESDP civilian missions (with police contingents) and other aid programmes in the areas of rule of law and good governance, as well as in a variety of initiatives to build up the police resources (particularly gendarmerie-type forces) at the disposal of the EU for its crisis management operations.

Spain's importance for future cross-border cooperation in the field of crime prevention was clearly illustrated when invited, together with France, to sign the Schengen III Treaty (or Prüm Treaty) in May 2005. This initiative, at the time counting only with seven countries, was created to provide for:

Further development of European cooperation, to play a pioneering role in establishing the highest possible standard of cooperation especially by means of exchange of information, particularly in combating terrorism, cross-border crime and illegal migration, while leaving participation in such cooperation open to all other Member States of the European Union (Preamble to the Prüm Treaty, cited in Balzacq et. al., 2006: 1).

This highest standard of cooperation in regard to judicial and police matters included equal and automated access by law enforcement agencies to DNA, fingerprints and vehicle registration data; cross-border police cooperation, police cooperation in major public order incidents and protests; and the introduction of armed "sky marshals" on flights and joint deportation flights. Although Spain was not among the founding members of this initiative (Belgium, the Netherlands, Luxembourg, Germany and Austria), since joining it has positively contributed by heading the working group on terrorist experts. Despite criticisms that the Prüm Treaty weakens the coherence of EU actions in those fields, undermines trust levels within the Union and challenges the principle of transparency (Balzacq et. al., 2006), in 2007 Member States reached political agreement to incorporate this treaty into EU legislation.

Conclusion

The fight against terrorism has been a constant in Spain's agenda towards the EU. Originally conceived as a matter of democratic consolidation, successive governments have tried to win over the support of other Member States in order to externalise to the European level this vital area of Spanish politics. This "bottom-up" approach – to use Ana Mar Fernández Pasarín's description of Spain's counter-terrorist policy in the EU context (2007) - was greatly strengthened by September 11 and subsequent terrorist attacks in European soil, which single-handedly convinced the EU of the need to incorporate this security threat into its agenda (Delgado, 2007: 310).

Zapatero's achievement has been to consolidate Spain's successes in this area while pushing the agenda further, bringing Spain back to a clear and firm commitment to the European road after the negative effects that the previous government's policy on the global "War on Terror" seemed to have had for the country's interests within the EU. The decisions taken by Zapatero's government since 2004 have clearly illustrated Spain's commitment to the full development of the EU counter-terrorist agenda by supporting initiatives that aim to limit the main obstacles (related to the exchange of information and actual cross-border police cooperation) generated by a field of action still dominated by inter-governmental interactions.

Notes

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² Council of the European Union, *The European Union Counter-Terrorism Strategy*, Document no. 14469/4/05 REV 4, Brussels, 30 November 2005, pp. 3-4.

³ Jörg Monar, *The Treaty of Lisbon and its Implications for EU Justice and Interior Affairs*, Speech given at CIDOB Foundation, Barcelona, 11 December 2007.

⁴ Franco Frattini, *The External Dimension of Security, in particular the Fight Against Terrorism*, Speech given at the Security and Defence Agenda conference "Defining a European Security Strategy", Brussels, 18 October 2007.

⁵ *Speech by José Luis Rodríguez Zapatero on the Occasion of his Investiture as President of the Government*, Congress of Deputies, Madrid, 15 April 2004.

⁶ See, for example, pp. 46-47, 49-51 in Partido Socialista Obrero Español, *Merecemos una España Mejor*, Programa electoral para las elecciones generales de 2004.

⁷ *Comparecencia del Ministro del Interior, José Antonio Alonso, en la Comisión del Interior del Congreso de los Diputados para Informar de las Actuaciones llevadas a cabo en relación con la Implementación de las Recomendaciones contenidas en el dictamen de la Comisión de Investigación sobre el 11-M*, Congress of Deputies, Madrid, 27th October 2005.

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