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ANNEX

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NOTE

from: General Secretariat

to: Working Party on Terrorism

Subject : Evaluation of National Anti-Terrorist Arrangements
Report about the Evaluation of Spain, 15-17 September 2003

Evaluation of Spain, 15 to 17 September 2003

SUMMARY

1. Terrorist Situation	4
1.1 Introduction	4
2. Structures of authorities	9
2.1. General structures	9
2.2. Aspects of fight against terrorism	11
2.3. Other relevant structures	13
3. Summary of the evaluation	13
3.1. At national level	13
3.2. Fight against terrorism at diplomatic level	15
4. Conclusion and recommendations	16
4.1. At national level	17
4.2. Proposals at EU level	26

1. Terrorist situation

1.1. Introduction

1.1.1. Terrorism is an omnipresent reality, which severely affects security of citizens, the Spanish democracy and society. In response to this situation, fighting terrorism is a national and permanent absolute governmental priority based on a political and social¹ consensus. It is a day to day task that fully involves all relevant political levels and all ministerial departments in their respective fields of competence.

1.1.2. The Spanish counter terrorism policy can be basically summarised as follows:

- (i) There is no excuse for terrorism and the most relevant attitude is "zero tolerance"
- (ii) Fight against terrorism is based on
 - a wide range of legal provisions targeting all forms of terrorist acts and supports to terrorism including fight against the financing of terrorism and apology of terrorism
 - the involvement of the Audiencia Nacional/National Court
 - a permanent, experienced and powerful law enforcement and intelligence machinery dedicated to combating terrorism²
- (iii) Terrorism is a transnational phenomenon in essence and counter terrorism has to be based on national and international legal frameworks and requests close co-operation at international level. This means
 - a coherent political role abroad including in depth bilateral partnerships when needed and the leadership of the UN,
 - a full involvement in all relevant local, regional, European and international fora
 - an appropriate police and justice co-operation with foreign countries in order to deny safe havens to terrorists anywhere in the world and this guideline permanently structures the Spanish political antiterrorism policy abroad.

¹ Blue Ribbon

² "On a personal note, President Bush and all of us in his Cabinet greatly value the personal and professional relationships we have with our investigative and security counterparts here in Spain" (Tom Ridge, November 2003).

1.1.3. Invited to comment the state of play concerning the fight against ETA by the end of 2003, the Spanish Minister of Interior stated that "the total and definitive defeat of ETA will come through police action, the rule of law, the co-operation of democrats against terrorism, and through international co-operation". This statement fully describes the basis of counter terrorism in Spain and obviously applies to the fight against all forms of terrorism both internally and internationally including in particular the fight against Islamic extremist activities/terrorist activities and the fight against the financing of terrorism.

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2. Structures of authorities

2.1. General structures

2.1.1. Political regime.

Article 1 of the Spanish Constitution³, which was unanimously approved by Parliament and voted by 87.8% of the citizens in a referendum held on 6 December 1978, provides for a Parliamentary Monarchy⁴, with certain peculiarities to take into account the Spanish situation.

Sovereign power is held by a two-chamber Parliament, which comprises two Houses: the Congress of Deputies and the Senate (bicameral parliamentary system).

The Government is collectively responsible for its political actions to the Congress of Deputies.

The structuring of the Spanish State into Autonomous Communities is one of the most important points of the Constitution. Article 2 states that the right to autonomy of the nationalities and regions of which it is composed is recognised and guaranteed. This provision is based on the premise of the indissoluble unity of the Spanish nation, the common fatherland of all Spaniards. The Constitution sets out the powers which the Autonomous Communities may assume and those which are vested solely in the State.

³ "The political form of the Spanish State is that of a Parliamentary Monarchy". The "Fathers of the Constitution" were Gabriel Cisneros, Manuel Fraga, Miguel Herrero y Rodríguez de Miñón, Gregorio Peces-Barba, José Pérez Llorca, Miguel Roca and Jordi Solé Tura. Article 56 of the Constitution states as follows: "The King is the Head of State, the symbol of its unity and permanence. He arbitrates and moderates the regular working of the institutions, assumes the highest representation of the Spanish State in international relations, especially with those nations belonging to the same historic community, and performs the functions expressly conferred on him by the Constitution and the law". In addition, "The person of the King is inviolable and shall not be held accountable. His acts shall always be countersigned in the manner established in Article 64. Without such countersignature they shall not be valid, except as provided for under Article 65.2".

⁴ Separation between legislative, executive and judiciary and the Constitution gives institutional backing to the King as Head of State and supreme head of the Armed Forces.

After the ratification of the Constitution, and as a result of the implementation of the principles contained in Title VIII the process of setting up the autonomous communities has been completed in the course of just under three years, and their Statutes approved. They have also been provided with their own organ of government and representative institutions⁵.

The division of powers between the autonomous regions and the central government⁶ is outlined in Article 148 and Article 149 of the Constitution.

2.1.2. The Judiciary.

Justice is administered on behalf of the King by the judges and magistrates of the Judiciary. They are independent, irremovable, accountable and subject to the rule of law. The exercise of jurisdictional power in all kinds of trials, judgement and execution of judgement is the exclusive prerogative of the Courts and Tribunals specified by the law according to rules of jurisdiction and procedure.

The Supreme Court of Justice⁷ is the highest jurisdictional body of the State and the governing body of the Judiciary, except in matters relating to constitutional contents, which are incumbent on the Constitutional Court. The Organic Law of the Judiciary, of 1 July 1985 establishes the setting up, operation and control of Courts and Tribunals.

⁵ "The Basque People or Euskal-Herria, as an expression of their nationality, constitute an Autonomous Region within the Spanish State under the denomination Euskadi or Basque Country, in accordance with the Constitution and this Statute, which provides its basic institutional regulations" (opening statement of the Statute of Autonomy of Euskadi - known as the Statute of Guernica - which was approved by Organic Law on 18 December 1979. In accordance with this Organic Law, the Autonomous Region is made up of the Historical Territories of Alava, Guipúzcoa and Vizcaya. Its own language, Euskera, holds the same official status as Spanish).

⁶ The areas enumerated as belonging under the exclusive jurisdiction of the national government in particular include international affairs, defence, justice, criminal, and legislation and public safety. The Constitution permits the government to intervene if an autonomous community fails to carry out its constitutional obligations or acts against the general interests of the nation.

⁷ The King on the proposal of the General Council of the Judiciary appoints the president of the Court. The Council of the Judiciary consists of the president of the Supreme Court, who chairs, and twenty members appointed by the King for a five-year period. The Congress of Deputies and the Senate nominates the members.

The State Prosecutor is appointed by the King, upon nomination by the Government after consultation with the General Council of the Judiciary. The Office of the Public Prosecutor is responsible for promoting the action of Justice in defence of the legitimate rights of the citizens and public interest protected by the laws.

2.2. Political and security aspects of fight against terrorism.

2.2.1. Fighting terrorist acts and terrorist groups/organisations and networks is under the jurisdiction of central authorities. The overall responsibility lies with the Prime Minister, permanently on the frontline due to political aspects related to terrorism, and fight against terrorism involves all ministers and ministries in their respective fields of competence.

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With reference to the co-ordination of law enforcement bodies' operational counter terrorism and to the interface with the intelligence dimension including partnership with the National Intelligence Centre, this machinery that could work as such is directly handled by a State Secretary for Security whose role is crucial at all levels. He is subordinate to the minister of interior.

2221. In general terms, a law of 1986 set out a functional division of responsibilities between the Civil Guard and the National Police Corps but both are engaged against Basque extremists and other terrorist activities⁸ et both have special units with intelligence competence for that purpose.

⁸ Locally controlled municipal police and regional police forces supplement them.

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2.2.3. In addition, the Audiencia Nacional/National Court, which is an independent body, is the relevant Court dealing with terrorism. Based in Madrid, the Audiencia Nacional exercises jurisdiction over all the Spanish territory.

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3. Summary of the evaluation.

3.1. At national level.

3.1.1. Political dimension.

Fighting terrorism and in particular ETA falls within the constitutional, political and administrative organisation of the State with a dividing line between on the one hand the central State and authorities, and on the other hand the Autonomous Communities and their authorities. Fighting terrorism permanently include political aspects as recently demonstrated⁹. Among other examples, the 2000 agreement on terrorism and its implementation at all levels underlines how fighting terrorism is a political and social issue that involves the highest political level including the Prime Minister at the frontline¹⁰. There is no room for politicians: they fully support the fight against terrorism or are accused to support "soft terrorism".

⁹ Secret meeting involving Josep-Lluís Carod-Rovira, the second ranking official in the Catalonia regional government, and ETA.

¹⁰ In 1995, an ETA car bomb almost killed Jose Maria Aznar, then leader of the Popular Party.

3.1.2. Legal basis.

The legal basis related to terrorist acts is a key factor with a particular reference to the Spanish Penal Code and to the constant updating of legal provision. This includes appropriate laws aiming at preventing/combating terrorist acts, financing of terrorism and laws targeting political/social dimensions of fight against terrorism.

3.1.3. The Audiencia Nacional.

The Audiencia Nacional is a key player and the existence of only one Court dealing with major terrorist acts and groups is undoubtedly a very efficient tool. Each judicial and police investigation consequently means an increasing expertise and an in depth common counter terrorism culture.

3.1.4. The ministry of interior.

The two national law enforcement bodies focus on terrorism on a day to day basis and both have special intervention, investigation and intelligence units. They act under the authority of only one "person" responsible, the ministry of interior and in particular at policy and practical level under the direction of the State Secretary for Security who is personally and permanently involved in fighting terrorism on a daily basis. He directs and co-ordinates the counter terrorism activities of the Guardia Civil¹¹ and the Cuerpo Nacional de Policia/National Police Corps, including exchange of information/intelligence.

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¹¹ In rural areas.

3.2. Fight against terrorism at diplomatic level.

3.2.1. The special Ambassador.

The appointment of an Ambassador at large whose responsibility is to handle terrorism issues from a diplomatic perspective is an added value to the global Spanish counter terrorism machinery/policy¹². He will ensure a better co-ordination of internal and external aspects of the Spanish counter terrorism policy in particular in the following areas: political dimensions of terrorism, reinforcement of international co-operation, improvement on going works in bi and multilateral fora including the EU in terms of common II and III Pillar EU approach, etc. He will fully contribute to the diplomatic policy aiming at denying sanctuaries to terrorists on the run and to list terrorists and terrorist groups.

¹² This interministerial department is still to be developed and representatives of law enforcement bodies (ministry of Interior) and intelligence (ministry of Defence/National Intelligence Centre) agency will joined this new structure.

4. Conclusion and recommendations.

Considering the field for evaluation, the experts' comments focus on sharing of intelligence and co-ordination/co-operation. As said by highest political authorities, intelligence gathering, intelligence sharing and co-ordination/co-operation are crucial to the fight against terrorism and to eradicate it (in Spain and abroad).

4.1. At national level.

4.1.1. Ministry of Interior/law enforcement bodies.

- The existence of two powerful national law enforcement bodies with comparable internal organisation/structures and responsibility/competence dedicated to counter terrorism is likely to objectively lead to overlapping including operational one due to the permanent pressure caused by the need to prevent and investigate indiscriminate terrorist activities on a daily basis. This applies to both intelligence to be collected and investigations. In order to avoid such situations and to prevent overlap and potential conflicts, and aware of the risk, Spanish authorities decided to clearly enshrine the principle of permanent co-ordination in the Law. Article 12 al 2 of the Organisational Law N° 2 of 13 March 1986 on Security Forces and Bodies¹³ states as follows: " The State Security Forces and Bodies shall be required to co-operate with each other in the discharge of their respective responsibilities".
- The Guardia Civil is part of the Ministry of Interior and acts as a police body. It was previously subordinate to the Ministry of Defence and one of the reasons to attach the Guardia Civil to the Ministry of Interior obviously was to improve co-ordination and co-operation with the National Police Corps.
- This "administrative status" of the Guardia Civil is a considerable facilitating factor in terms of co-ordination of law enforcement bodies within the ministry of interior. This would have been able to lead to a full internal co-ordinating system/mechanism at technical level in the field of exchange of intelligence/information and in terms of operational co-ordination.

¹³ Article 11 refers to the common functions attributed to the National Police Corps and the Guardia Civil and Article 12 al 1 specifies the respective responsibilities of the two law enforcement.

Current co-ordination is made as follow.

- Part of co-ordination is based on the use of complementary aspects/dimensions and respective know how/competence of the National Police Corps and Guardia Civil¹⁴ for the purpose to avoid overlapping.
- Co-ordination between law enforcement bodies takes place in ad hoc meetings at operational level in addition to personal contacts.
- However, in practice, co-ordination including intelligence sharing is most of time decided and made by the State Secretary for Security due to the political importance of counter terrorism. In particular he decides if both the Guardia Civil and the Police have to be tasked or if only one is mandated.

¹⁴ See the National Police Corps and Guardia Civil respective competence in Law N° 2 of 13 March 1986 on Security Forces and Bodies.

The State Secretary for Security is the key person in the fields of intelligence sharing, co-ordination and co-operation of law enforcement bodies in addition to his role regarding the interface with the national intelligence agency.

In general terms, the State Secretary for Security personally streamlines co-ordination/co-operation and he refers to the use of respective abilities to reach the objective on an appropriate manner as well as exchange/sharing of intelligence related to terrorist activities. In other words, he acts as a governmental clearinghouse for terrorist threats internally with the support at his level of the National Intelligence Centre.

The other aspects of the State Secretary for Security's responsibility are co-ordination with the police forces of Autonomous Communities when needed and co-ordination between hand law enforcement bodies and the intelligence agency¹⁵. This does not exclude ad hoc/appropriate operational contacts at intelligence level on a bilateral basis between heads of intelligence of law enforcement bodies and intelligence agency. However it is unclear to really assess the importance of this kind of co-ordination and in particular its importance in comparison with the co-ordination made by the State Secretary for Security.

Co-ordination is not an easy task and requires a permanent attention as expressed by the State Secretary for Security. It is clear that the most important pieces of intelligence are shared at his level. In other words, he personifies co-ordination, co-operation and intelligence sharing and this role is reinforced due to the interface he "is" with the National Intelligence Centre.

¹⁵ The criteria used by the National Intelligence Centre for transferring intelligence to one of the two law enforcement bodies has not been detailed.

Pages 19 through 24: NOT DECLASSIFIED

4.2. Proposals at EU level.

4.2.1. Identification of persons and freezing of funds.

In order to solve problem related to the exact identification of persons¹⁶, whose funds/assets have to be blocked/frozen under UN, EC and national regulations, it is proposed to create an EU network of representatives of intelligence agencies (and/or representatives of intelligence units of law enforcement). This network could provide information available to the requesting MS and each MS would be informed on the action undertaken in the requesting MS. In order to be coherent at EU level, Spain suggests a EU approach in this area: when a EU MS decided to block/freeze funds other US MS could decide to do so¹⁷.

4.2.2. Crisis management.

Apart from an appropriate response to CBRN threat¹⁸, there is no emergency plan¹⁹ dedicated to the terrorist threat as such. In the light of 11 September 2001 terrorist attacks the proposal by the experts is to create an ad hoc response to major terrorist attacks at national level and EU level (cf the existing French Vigipirate plan and the assessment report on France).

4.2.3. Intelligence at EU level.

Spain contributes to various current threats assessments at EU level but NIC expressed that a co-ordination mechanism would be an appropriate tool in order to co-operate better at EU level²⁰. This mechanism would not be a new structure **NOT DECLASSIFIED**.

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(page 26)

¹⁶ This point was underlined by the Ambassador at large responsible for the fight against terrorism. See also Spanish reports to the UN CTC and to the UN monitoring group regarding UN sanctions.

¹⁷ See the "clearing house" mechanism.

¹⁸ Mainly based on annual exercises and on the use of the Police and Guardia Civil specialised means.

¹⁹ Including warning system and management of civil/military means, etc.

²⁰ This means that Europol is not considered as part of "intelligence community" and that the Sitcen is not considered as the right place to handle operational information.