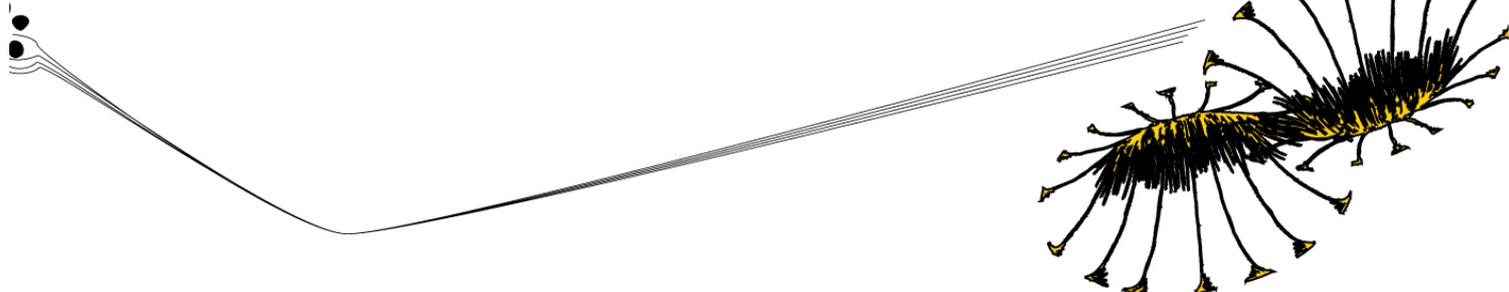


Bachelor Thesis



***The European Arrest Warrant and Joint Investigation Teams in Practice
- A Single-Case Study of Euskadi Ta Askatasuna (ETA) -***

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August 18th, 2012



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Abstract

Academic literature dealing with the European Union's impact on the Basque terrorist group Euskadi Ta Askatasuna (ETA) is rather scarce, and so are works assessing EU counter-terrorism policies. Combining these two issues, and thereby contributing to closing the gap in the literature, in this thesis two key EU initiatives adopted since the introduction of the Treaty of Amsterdam are analysed, their effectiveness as to fighting and eliminating the Basque ETA being evaluated. These initiatives are the European Arrest Warrant (EAW) and Joint Investigation Teams (JITs), which are frequently praised as fundamental instruments of cooperation with regard to fighting cross-border crime and terrorism. Hence, the research question is formulated as follows: *To what extent did new European judicial tools like the European Arrest Warrant and Joint Investigation Teams contribute to the decline in ETA terrorist activities during the period 1999-2011?* Within the framework of a single-case study design, this central research question is approached via some long-established indicators, namely the number of attacks, the number of arrests, and the number of victims of ETA-terrorism. Next to these purely quantitative data, some relevant academic and newspaper articles are consulted so as to provide a more comprehensive picture of whether the EU instruments might have resulted in decreasing ETA terrorist activity. The findings suggest that the policies have had a positive impact, as the number of attacks and victims went down, while the number of arrests went up. Nevertheless, the existence of third factors that cannot easily be controlled for somewhat limits the validity of these findings, making future research on the topic necessary.

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List of Abbreviations

AFSJ	Area of Freedom, Security and Justice
BAC	Basque Autonomous Community
CEPOL	European Police College
CoE	Council of Europe
EAW	European Arrest Warrant
EC	European Community
ECST	European Convention on the Suppression of Terrorism
ETA	Euskadi Ta Askatasuna ('Basque Freedom and Liberty')
EU	European Union
EUROJUST	European Judicial Cooperation Union
EUROPOL	European Police Office
FLNC	Fronte di Liberazione Naziunale Corsu ('National Liberation Front of Corsica')
GAL	Grupos Antiterroristas de Liberación ('Antiterrorist liberation groups')
GDP	Gross Domestic Product
GTD	Global Terrorism Database
IRA	Irish Republican Army
ITERATE	International Terrorism: Attributes of Terrorist Events Database
JHA	Justice and Home Affairs (3 rd pillar EU)
JITs	Joint Investigation Teams
LTTE	Liberation Tigers Of Tamil Eelam
PJCCM	Police and Judicial Cooperation in Criminal Matters
PKK	Kurdistan Workers' Party
PLO	Palestine Liberation Organization
PNV	Partido Nacionalista Vasco (Basque Nationalist Party)
PP	Partido Popular (Popular Party)
PWGOT	Police Working Group on Terrorism
RAF	Red Army Faction
TE-SAT	Terrorism Situation and Trend Report
TFPC	European Police Chiefs Operational Task Force
TREVI	Terrorism, Radicalism, Extremism and International Violence group
USA/U.S	United States of America
WMD	Weapons of Mass Destruction

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1. Introduction

Ever since September 11, 2001, terrorism is a big topic in the European Union (EU). The terrorist attacks in the United States (USA), killing approximately 3000 people, have frightened and sensitized many Europeans, and made the fight against terrorism a top priority on the European political agenda. The attacks in Spain (11 March, 2004) and Great Britain (7 July, 2005) made it even more clear that terrorism was not just going to stop at European borders and had become a serious threat to the lives of European citizens as well. In the wake of these horrible events, religious terrorism, and Al Qaeda in particular, quickly emerged as the public's enemy number one. The academic world witnessed a drastic increase in articles dealing with the topic, and so did the media. The European Union reacted by hastily adopting and implementing in its Member States numerous policies and instruments with the aim of combating terrorism, and thereby trying to prevent further attacks from taking place on its soil.

Contrary to what one would expect then, the European Police Offices' (Europol) most recent Terrorism Situation and Trend Report (TE-SAT) indicates that the vast majority of terrorist attacks in the EU are not committed by religious' terrorists, but are in fact planned and carried out by ethno-nationalist/separatist terrorist groups (European Police Office, 2012a)¹. These groups use violence in order to reach their nationalist goals, which can range from seeking to obtain more political autonomy to forming an own independent, sovereign and internationally recognized state. The Basque Euskadi Ta Askatasuna ('Basque Homeland and Freedom'), or ETA, is one such group. Founded in 1959 with the aim of creating an independent Basque state in parts of Northern Spain and South-western France, ETA in 1968 resorted to violence, and is since then being held responsible for 829 deaths, some 2.300 casualties and more than 2000 attacks (Spanish Interior Ministry, 2012a). In addition to being one of the world's oldest active terrorist organizations, it is considered Europe's most lethal group as well. Nevertheless, as Europeans we often tend to ignore ETA's existence, persistence and dangerousness, focusing most of our attention on Al Qaeda and religious terrorism. This, however, is fatal. Clearly, ETA's most violent period occurred in the late 1970s, early 1980s, and the amount of attacks and casualties caused since then has decreased significantly. Especially over the last decade have the Basque terrorists lost influence and public support, and have been severely weakened by the arrests of several of its leading members. The announcement of the group's latest ceasefire in October 2011 then came as no surprise, and was welcomed by many people who hope to finally see an end to violence in the Basque Country. Yet, given that ceasefires announced in the past were frequently followed by new cycles of violence, the most recent truce is to be viewed with scepticism and caution. ETA has not ceased to exist nor has it agreed to full disarmament, and should therefore still be

¹ For example, in 2011, 110 failed, foiled, or completed attacks in the EU could be attributed to ethno-nationalist/separatist terrorist groups, whereas none were linked to religiously-inspired terrorism (European Police Office, 2012a)

considered a threat not only to the well-being of the Spanish, Basque and French people, but also to the larger region's stability, the tourist sector and hence the local economies.

Spain is a member of the EU since 1986, an organization that with the introduction of the Treaty of Amsterdam in 1999 committed itself to becoming an 'Area of Freedom, Security and Justice' (AFSJ). The question might then arise as to how the latter organization has contributed to weakening and combating ETA. According to Bourne (2003), this topic is largely unexplored. Literature about the effects the EU has had on the Basque conflict and ETA can hardly be found, which heavily contrasts "*with the large and sophisticated literature that studies the EU's impact on other conflict 'hotspots' like Northern Ireland and Cyprus*" (Bourne, 2003, p. 392), or with the amount of works published on the organization's influence on international/religious terrorism (e.g. Wilkinson, 2005; Reinisch, 2004; Mahncke & Monar, 2006). Sánchez-Cuenca (2010) adds that in general, only few articles dealing with ETA have been published in the English language, and those available "*tended to focus on the nationalist conflict and the social movements*" (p. 2). Additional studies have placed emphasis on Spanish counter-terrorism policies (Perkoski & Chenoweth, 2010; Gil-Alana & Barros, 2010), ETA's influence on the Spanish economy (Abadie & Gardeazabal, 2003), its similarity to the Irish Republican Army (IRA) (Hogan, 2010), and its persistence despite Spain's transformation into a democracy (Sánchez-Cuenca, 2010; Shabad & Llera Ramo, 1995), amongst others. Yet, there seems to be a gap in the literature as to the relation between the EU and ETA, and more specifically, regarding the former's actual impact on combating the Basque terrorist group - a gap the proposed thesis seeks to (at least partially) fill.

As has been previously mentioned, a wide range of legislative measures, policies, activities and instruments have been adopted to counter terrorism in the European Union since the introduction of the Treaty of Amsterdam, and the subsequent attacks in the USA (2001), Spain (2004) and Great Britain (2005). These include the 2002 Framework Decisions on combating Terrorism, on the European Arrest Warrant (EAW) and on Joint Investigation Teams (JITs); Regulation 2580/2001 on the freezing of funds of suspected terrorists; the establishment of Eurojust in 2002; the creation of the Office of a European Counter-Terrorism Coordinator in 2004 as well as the 2001 Action Plan on Combating Terrorism, and the 2005 EU Counter-Terrorism Strategy, to mention but a few. Not directed against specific types of terrorism, such as left wing or religious terrorism, but against terrorism in general, these EU policies and instruments intend to make the European Union a safer place. Yet, whether they have actually achieved this goal, and have resulted in greater security for Europe, remains unclear, as EU counter-terrorism policies have not been thoroughly reviewed so far (Alliance of Liberals and Democrats for Europe, 2011).

1.1 Aim of the Study

As has just been indicated, academic literature dealing with the European Union's impact on ETA is rather scarce, and so are works assessing EU counter-terrorism policies. Combining these two issues and thereby contributing to closing the gap in the literature, the aim of the study is to analyse two key EU initiatives adopted since the introduction of the Treaty of Amsterdam, and to evaluate whether they might have had an impact on declining ETA terrorist activity, and therefore on fighting the Basque terrorists. These initiatives are the European Arrest Warrant and Joint Investigation Teams, which are frequently praised as fundamental instruments of cooperation, especially with regard to fighting cross-border crime and terrorism (Long, 2009).

The thesis will describe each of these instruments and will attempt to assess their impact on ETA terrorist activity in the period 1999-2011 with the help of three indicators. These are the number of arrests, the number of attacks and the number of victims. In doing so, the study seeks to provide first insights into the EU's presumed influence on ETA's debilitation, and thereby attempts to stimulate further research on this specific subject.

1.2 Research Question

The research question to be addressed in this thesis is the following:

To what extent did new European judicial tools like the European Arrest Warrant and Joint Investigation Teams contribute to the decline in ETA terrorist activities during the period 1999-2011?

Several sub-questions are formulated in order to answer the research question:

1. *What are the main features of the European Arrest Warrant and of the Joint Investigation Teams?*
2. *Were these instruments used in combating ETA terrorism in this period?*
3. *Were more ETA-terrorists arrested during this period?*
4. *Did the amount of terrorist attacks and victims decline during this period?*

1.3 Structure of the Thesis

Having introduced the topic and clarified the research question (and sub-questions) as well as the aim of the study, Chapter 2 provides an overview of the literature relevant to the topic of terrorism and the evaluation of counter-terrorism policies. In Chapter 3, the main methodological choices involved are outlined. Chapter 4 then serves to introduce the Basque ETA, providing information as to the group's historical background and organization. Chapter 5 gives a short overview of the EU's fight against terrorism and thereafter focuses on the EAW and JITs, providing an answer to sub-question 1. Chapter 6 evaluates the long-term development of the chosen indicators and thereby provides the context for the analysis to follow in Chapter 7, which deals with ETA terrorist activity from 1999-2011, and answers sub-questions 2, 3 and 4 by linking the policies to the indicators. In Chapter 8, the findings of this research are presented, and an answer to the research question will be given. Moreover, this section makes suggestions for further research and elaborates on the study's limitations.

2. Literature Review

2.1 The Difficulty of Defining Terrorism

Bruce Hoffman (2006), one of the world's leading experts on terrorism, once said:

“Virtually any especially abhorrent act of violence that is perceived as directed against society -- whether it involves the activities of anti-government dissidents or governments themselves, organized crime syndicates or common criminals, rioting mobs or persons engaged in militant protest, individual psychotics or lone extortionists -- is often labelled ‘terrorism’” (p.1)

This sentence perfectly illustrates the problem existent with the word ‘terrorism’- the lack of a precise and consistent definition. Although we have been using it in our day-to-day vocabulary for quite some time already, and although most people have an idea of what it encompasses, reaching a consensus on the term's exact meaning and scope has proven difficult not only within the academic world, but likewise within and among governments, organizations, institutions, legal systems, societies, cultures and the media. Alex P. Schmid, a renowned scholar in terrorism studies, perfectly describes the problem by stating that *“authors have spilled almost as much ink [in finding a universally accepted definition of what terrorism precisely is] as the actors of terrorism have spilled blood”* (Schmid & Jongman, 1988, p. xiii.). Finding a consistent and legally binding definition of terrorism is, however, of utmost importance, as without it, the uniform collection and analysis of relevant data is hindered, and any international collaboration to defeat the problem is weakened, if not bound to fail.

But why is it so difficult to find a definition of terrorism everyone agrees with? According to Laqueur (1977), part of the problem is that *“terrorism had appeared in so many different forms and under so many different circumstances that a comprehensive definition was [and still is] impossible to find”* (p. 5). The term ‘terror’ initially became popular during the time of the French Revolution, when it was specifically associated with an era named the Reign of Terror (1793-1794) – state terrorism exerted by the French Revolutionary Government against internal opposition, the so-called ‘enemies of the revolution’. Terrorism was thus originally associated with oppression, violence and torture carried out by, or on behalf of, the state (Hoffman, 2006). Only a century later, the meaning of the term drastically evolved. Terrorism was now employed *against* the state and its leaders. During the 1880s, Russian revolutionary/anarchist groups such as the Narodnaya Volya (the ‘People’s Freedom’) made use of it in an attempt to overthrow the czarist regime, and bring about widespread political and social change. At the beginning of the 20th century, however, the term *“regained its former connotations of abuse of power by governments, and was applied specifically to the authoritarian regimes that had come to power in Fascist Italy, Nazi Germany and Stalinist Russia”* (Hoffman, 2006, p. 14). The emergence of anti-colonialist movements following the Second World War, as well as of

ethno-nationalist/separatist and ideologically-motivated groups a few decades later, contributed to terrorism being linked once again to the revolutionary context, in particular to the violent struggles for national liberation, independence and self-determination. Nowadays, terrorism is frequently put on a level with religious violence against civilians, and is specifically equated with Islamic extremism in the form of Al Qaeda since 9/11. As Cronin (2003) put it, “*terrorism is a dynamic concept, from the outset dependent to some degree on the political and historical context within which it has been employed*” (p. 34). The contemporary meaning and adaptability of terrorism is therefore not likely to endure. It is expected to undergo yet some other changes in the future, which will add to the complexity of finding an all-encompassing and consistent definition of terrorism everyone agrees with.

An additional obstacle to formulating a precise and widely-accepted definition of terrorism becomes apparent when one focuses on the famous phrase ‘one man’s terrorist is another man’s freedom fighter’. In other words, what is called terrorism, or who is labelled a terrorist, depends entirely upon the definer’s point of view and more particularly, on his/her political orientation (Jenkins, 1980). According to Hoffman (2006), “*If one identifies with the victim of the violence, for example, then the act is terrorism. If, however, one identifies with the perpetrator, the violent act is regarded in a more sympathetic, if not positive [...] light; and it is not terrorism*” (p. 23). Terrorism can thus apparently mean different things to different people. In this regard, the process of defining the term is further complicated as it obviously implies a moral judgement, and can hence seldom be objective, or value-free (Laqueur, 1987; Spencer, 2006a). However, to overcome possible bias, a good working definition would in any case *have* to be as neutral as possible. Governments, too, have different perspectives on who exactly is a terrorist and on what precisely constitutes an act of terrorism, and frequently “*make definitions fit their own needs*” (Lutz & Lutz, 2004, p. 9). Enemies are more often than not stigmatized as terrorists whereas “*irregular allies of the government fail to meet the definitional standards as terrorists*” (Lutz & Lutz, 2004, p.9). Hence, the concept of terrorism is strongly intertwined with the sensitive issues of sovereignty and geopolitics, and is very much emotionally and politically charged. This makes the search for a universally accepted definition even harder.

Moreover, “*definitions to be useful need to exclude as well as include different kinds of violence*” (Lutz & Lutz, 2004, p. 9). In other words, a proper definition requires the differentiation and isolation of terrorism from other forms of violence. This is of utmost importance, not only to scholars in their analyses of terrorism, but likewise to the international community dealing with the threat, and in particular to the various legal systems concerned with the modalities of prosecution and extradition. The main problem is that many proposed definitions of terrorism are simply too broad to be operationally useful, leaving plenty of room for varying interpretations and thereby bearing the risk of wrongly including other types of (political) violence and crime, that are actually not terrorist in

nature. On the other hand, definitions can also be too narrow to be analytically significant and might for whatever reasons “*fail to include acts of violence that clearly should be considered terrorism*” (Neumann, 2009, p. 7). These definitions, for instance, often ignore terrorist activities committed by, or on behalf of, a state.

2.1.1 Core Characteristics of Terrorism

The previous section demonstrated that although terrorism is such an old phenomenon, confusion still prevails with regard to its exact nature, and an all-encompassing and unassailable definition is yet to be formulated. Nevertheless, there seems to be a growing consensus among scholars about the term’s core definitional elements nowadays.

Terrorism, as is now agreed on by many, is violence carried out for political reasons. Terrorists primarily aim for attaining political objectives, such as fundamentally changing the form of government, exchanging the people in power, amending certain social, political or economic policies/conditions, or even shifting national boundaries (Ganor, 2002). According to the latter author, “*in the absence of a political aim, the activity in question will not be defined as terrorism*” (2002, p. 294). The political nature of the act is thus considered a key element separating terrorist acts from other forms of violence undertaken for e.g. financial or personal reasons (Lutz & Lutz, 2004). Furthermore, terrorism requires the deliberate and systematic use of violence, or a credible threat thereof. There is widespread agreement that “*an activity that does not involve violence or a threat of violence will not be defined as terrorism*” (Ganor, 2002, p. 294). Notwithstanding their potential to greatly disconcert a government, demonstrations, strikes, petitions and other kinds of non-violent protest do thus not qualify as terrorism. Moreover, for any action to be considered ‘terrorist’, a target audience beyond the immediate victims must be affected. Usually, acts of violence (e.g. murder) involve two parties only, the perpetrator(s) and the victim(s). Terrorism, however, goes further than that. The immediate victim of an attack is oftentimes not the main target, but rather serves as a means to influence, intimidate or manipulate a much wider audience, “*as part of the attempt to gain the political objectives of the organization*” (Lutz & Lutz, 2004, p. 11). Placing a car bomb in a densely populated area, or blowing up a building or public transport systems, for example, are terrorist tactics frequently used to direct the public’s attention to a terrorist group’s cause, and more particularly, to prove to the former that they are vulnerable. The resulting atmosphere of fear among the public might exert pressure on the government to give in to the terrorist’s demands (Lutz & Lutz, 2004). This is what many terrorist organizations hope for, at least. Terrorism, then, “*is a form of psychological warfare that intends to influence governments and general publics*” (Chalk, 1996, as cited in Lutz & Lutz, 2004, p. 11). In addition, several scholars (e.g. Ganor, 2002; Wilkinson, 2005) have proposed to include the deliberate targeting of civilians in any definition of terrorism. The proponents of this approach are convinced that in contrast to guerrilla groups, who usually target military or security personell, the actions of terrorists are primarily and intentionally directed against civilians and/or non-

combatants. Although it seems reasonable to add this element to any definition of terrorism, it can be problematic. It might, for example, “*be difficult to identify a target as civilian, to prove that civilians were intentionally targeted or to distinguish between combatants and non-combatants in a conflict area*” (Stepanova, 2008, p. 13). What if, for instance, an attack killed civilians *and* military forces? Should it then be considered terrorism, and dealt with as a crime? Or should it be regarded as an act of war, the possible consequence of which would be a military retaliation against the perpetrators? Lastly, many definitions have in common that terrorism is political violence perpetrated exclusively by non-state or subnational actors. A state practicing terrorism against its own people is thereby a priori excluded. This is, of course, highly controversial, but comes as no surprise knowing that the majority of definitions applied are usually formulated by agencies that are close to government. Refusing to include state terrorism in any definition of terrorism is clearly in a government’s best interest, as thereby it might successfully disregard or downplay not only its own dubious actions, but also those carried out by allied states. Many governments and scholars further justify the exclusion of state terrorism by referring to the fact that certain areas of international law² “*already regulate what states can and cannot do*” (Saul, 2007, p. 4). On the other hand, some scholars (Jenkins, 1980; Wilkinson, 2006) demand the inclusion of state terrorism in any definition of terrorism. They are concerned that by removing states from the equation, governments might feel permitted to use whatever means they deem necessary to realize their political and societal ambitions.

2.2 Categories & Typologies

Despite the problems involved with formulating a precise definition, the term terrorism “*is still a broad enough concept to encompass a wide variety of different types of applications*” (Wilkinson, 2005, p. 10) and to bring about a great deal of categories and typologies, the most important of which will be shortly presented in the following.

2.2.1 International vs. Domestic Terrorism

A significant differentiation in the academic literature is made between international/transnational and domestic terrorism.

International/transnational terrorism is an “*export of this form of violence across international frontiers or against foreign targets in the terrorists’ state of origin*” (Wilkinson, 2005, p. 11). One could say that it is an act of terrorism that comprises victims, perpetrators, targets, or institutions of a country other than the alleged terrorist’s home country (Li & Schaub, 2004). It thus usually affects two or more nationalities. The 9/11 terrorist attacks in the United States are considered an act of international/transnational terrorism. Domestic terrorism, on the contrary, “*is confined to one specific locality or region within the frontiers of a single state*” (Wilkinson, 2005, p. 11). It is often described

² These areas are, for example, international humanitarian law, international criminal law, the law of war and the law on the use of force

as terrorism practised in the terrorists' own country, mainly against his or her own people, and is therefore said to be limited to one nationality only. No matter how unambiguous this definition might appear, classifying a terrorist act as a domestic terrorism incident is not always that straightforward, as - due to the globalizing world we live in - very often some elements of internationalism are existent. These include the cross-border movement of terrorists, funds, trainings, weapons and explosives, as well as the desire to attract the international media's attention and to influence foreign administrations and opinion (Wilkinson, 2005). Notwithstanding, the 1995 bombing of a Federal building in Oklahoma City, an attack planned and carried out by U.S. Citizen Timothy McVeigh and resulting in the deaths of 168 Americans, is a frequently mentioned example of a domestic terrorism incident.

2.2.2 Old vs. New Terrorism

Another contested distinction in the literature is frequently made between 'old' and 'new' terrorism.

'Old', or traditional, terrorism is said to be the type of terrorism people have been familiar with for decades. The goals pursued by 'old' terrorist groups have generally been "*negotiable and limited*" (Crenshaw, 2008, p. 123), being more often than not linked to issues of nationalism and territorial autonomy. According to Giddens (2004), the ambitions and demands of these terrorist groups were thus essentially local/provincial and territorially-bound, and usually left the respective state(s) in a bargaining position and hence a possibility to resolve the conflict. Another basic feature of traditional terrorism is the discriminate selection of targets and victims (Hoffman, 2006; Spencer, 2006a). The aim of killing was to attract the media's attention, and to increase the public's support for the specific terrorist group's cause, leading the latter to primarily select highly symbolic targets such as "*kings and queens, government ministers, generals, and other leading political figures and officials*" (Laqueur, 2003, p. 9). This so-called 'propaganda by the deed' - method has been one frequently deployed by traditional terrorists, who have generally been hesitant to engage in mass killings as they feared backlashes³ and "*knew that excessive brutality would deny them the place they sought at the bargaining table*" (Benjamin & Simon, 2000, p. 2). "[*Traditional*] terrorists", Brian Jenkins (1975) aptly formulated, "*want[ed] a lot of people watching, and a lot of people listening, not a lot of people dead*" (p. 15). To them, the violent destruction of a building, or the murder of a person, reflected nothing more than a means to a politically desired end. Furthermore, it is often stressed that traditional terrorist organizations were rather small, and had a clear hierarchical or cellular structure with well-defined, top-down chains of command and control (Hoffman, 2006; Neumann, 2009; Spencer, 2006a). According to Fraser, one should think of these groups' organization as a pyramid, "*with the leadership, who decide on the overall policy and plans, at the top*" (as cited in Spencer, 2006a, p. 8). Then comes the so-called active cadre, those few people responsible for carrying out the

³ They basically feared a loss of legitimacy and the alienation from the supporters of their cause, which would have been contrary to the aim of inciting a popular uprising

actual attacks, followed by the third layer which is made up of a group's active supporters, providing intelligence, weaponry or safe houses. The last layer consists of passive supporters - those people who largely agree with an organization's overall goals and help spreading the message, but who do not readily form part of a terrorist group (Spencer, 2006a). Typical examples are ETA, the IRA, the Red Army Faction (RAF), or the Palestine Liberation Organization (PLO).

'New' or modern terrorism assumedly emerged in the mid 1990s. One of its key characteristics is the importance of religion, predominantly in the form of radical Islam. 'Religious terrorism', as it is therefore often called, is reputed to be unlimited and "*more violent, more destructive, and more murderous [than traditional terrorism] due to the fact that religious terrorists are not seeking the appeal of constituencies*" (Brown, 2007, p. 32). "*Aiming not at clearly defined political demands but at the destruction of society and the elimination of large sections of the population*" (Laqueur, 1999, p. 81), these terrorists are said to have no concern for public support whatsoever, and seldom show any interest in negotiation or dialogue in the familiar ways. Their only goals seem to be the complete eradication of Western (particularly American) "*values, culture, civilization, and existence*" (Crenshaw, 2008, p. 122), and the simultaneous imposition of their own ideology on the world. As Spencer (2006a) put it, 'new' terrorism is often referred to as terrorism "*which rejects all other ways and promotes an uncompromising view of the world in accordance with the belief of the religion*" (p. 9). 'New' terrorists regard lethality and destruction as ends in themselves, rather than means to an end; they "*don't want a seat at the table, they want to destroy the table and everyone sitting at it*" (R. James Woolsey as cited in National Commission on Terrorism, 2000). Hence the widespread claim that modern terrorists are increasingly willing to make use of indiscriminate and excessive violence. These terrorist groups are further described as loosely-knit networks, who have a rather decentralized and non-hierarchical, even horizontal, command structure, and mostly lack any central authority (Crenshaw, 2008; Tucker, 2001). The networks are comprised of "*more or less autonomous, dispersed entities, linked by advanced communications and perhaps nothing more than a common purpose*" (Tucker, 2001, p. 1). Al Qaeda and Aum Shinrikyo are the terrorist groups most commonly associated with 'new' terrorism.

However, some scholars (Crenshaw, 2008; Tucker, 2001; Spencer, 2006a) doubt the existence of a 'new' terrorism. Crenshaw (2008), for example, is convinced that there are in fact more similarities than there are differences between 'old' and 'new' terrorism, and does therefore not see the need to consider the latter as something thoroughly new (p. 136). "*Much of what we see now is familiar, and the differences are of degree rather than kind*" (Crenshaw, 2008, p. 120). Some of these scholars therefore regard 'new' terrorism as a 'manufactured conception', a "*particularly American way of framing the threat*" (Copeland, 2001, p. 18), with the sole aim of mobilizing public support for major policy interventions (Crenshaw, 2008).

2.2.3 Classifying Terrorist Groups

Besides making a distinction between international and domestic, as well as ‘old’ and ‘new’ terrorism, the literature further classifies non-state terrorist groups according to their prevalent ideologies and primary motivations. Scholars typically distinguish between four main categories of terrorism: left-wing, right-wing, ethno-nationalist/separatist and religious terrorism (Cronin, 2003; Hoffman, 2006). While a fifth category, so-called ‘single-issue terrorism’, is recognized by some, other academics highly contest it. Nevertheless, these categories are by no means mutually exclusive. According to Cronin (2003), various groups have a “*mix of motivating ideologies*” (p.39), although most of the time, one specific motivation or ideology prevails. Rapoport (2004) agrees to this by describing international terrorism since the 1880s as a set of four consecutive, overlapping waves. Each of these waves is characterized by, and named after, the dominant political/ideological movement of that era, and each is equipped with a different set of purposes, tactics and organization. The waves are called the Anarchist wave (1880 ~ 1920), the Anti-Colonial wave (1920 ~ 1960), the New Left wave (1960 ~ 1990) and the Religious wave (1979 ~ present), respectively, and bear some resemblance to the categories that will be elaborated on below. According to Rapoport (2004), a typical wave lasts about a generation (approximately 30-40 years) before gradually fading and giving way to a succeeding wave in the process of which a certain degree of overlap (in terms of ideologies/motivations/tactics/organization etc.) is very likely to occur. Hence, drawing a clear distinction between waves is virtually impossible. The same goes for the aforementioned categories. They frequently intermingle, and ought therefore not to be regarded as completely detached and distinct from one another.

Left-wing terrorism

Left-wing terrorism, also referred to as Anarchist, Communist, or Revolutionary terrorism, emerged in the late 1960s, and primarily aims at overthrowing Western regimes that are based on a capitalist economic and social order. Regarding these regimes as causing social evils, as being exploitative and authoritarian, Left-wing terrorists seek to replace them with Marxist/Leninist, or socialist, governments, believing that these will enable their long-standing desire for a classless society to finally become fulfilled. These terrorists are thus essentially dissatisfied with existent political structures, and have decided to commit violence against the ruling elite. Terrorist groups commonly associated with Left-wing terrorism in Europe include the German RAF, the Italian Red Brigades and the French Action Directe.

Right-wing terrorism

(European) Right-wing terrorism, ideologically rooted in Fascism and National Socialism, arose in Western Europe during the 1980s, and began to appear in Eastern Europe shortly after the collapse of Communism. Right-wing terrorists mostly operate domestically and basically aim at achieving

widespread political, economic and social change. They perceive their national territories as being endangered, and seek to preserve the dominance and supremacy of a threatened (mostly white) ethnic majority. Right-wing terrorism is typically directed against ethnic, religious and racial minorities, immigrants, asylum-seekers and refugees, and hence is often associated with ideologies of intolerance, racism, xenophobia and anti-Semitism. Terrorist groups frequently connected to Right-wing terrorism include the Ku-Klux Klan, the Jewish Defence League, and the National Socialist Underground (German: Nationalsozialistischer Untergrund).

Single-issue terrorism

Unlike most Left-wing or Right-wing terrorist groups, single-issue, or special-interest, terrorists do not have the primary intention to achieve widespread political change, or to overthrow the government and replace it with another authority. Rather, they commit violence with “*the desire to change a specific policy or practice within a target society*” (European Police Office, 2011, p. 31). Single-issue terrorism is often connected to groups such as animal-rights advocates, supporters of environmental issues, anti-abortion extremists and anti-nuclear activists.

Religious terrorism

Religious terrorism can largely be put on a level with ‘new’ terrorism mentioned in section 2.2.2.

Ethno-nationalist/separatist terrorism

Ethno-nationalist or separatist terrorism, the type of terrorism ETA is most commonly associated with, is violence deliberately used by ethnic groups and particularly ethnic minorities, in order to achieve self-determination for their ethnic group. The degree of self-determination sought varies from group to group, and can range from obtaining greater political or cultural autonomy to forming an own independent, sovereign and internationally recognized state (separatism⁴). This type of terrorism emerged during what Rapoport referred to as the ‘New Left’ wave, a phase characterized by anti-colonial struggles following the Second World War and the promulgation of the United Nations Charter⁵ in 1945.

An ethnic or ethno-nationalist group⁶ is defined by Byman (1998) as a “*group of people bound together by a belief of common heritage and group distinctiveness, often reinforced by religion, perceived kinship ties, language, and history*” (p. 166). Thus, these peoples see themselves as different from the general population or other groups in a state on grounds of a common ancestry, culture, language, race, custom and/or religion. Though this perceived distinct ethnic identity, or

⁴ Zariski (1989) defines separatism as: “*a movement that has a clearly articulated ultimate goal of independence and sovereignty*” (p. 256)

⁵ The United Nations Charter recognized and incorporated the principle of self-determination as a right of all peoples

⁶ The terms ethnic and ethno-nationalist will be used interchangeably

'otherness', is not always visible to outsiders, it is what unites an ethnic group or minority, and what forms the basis of their claim to nationhood (Taylor, 2002). Nevertheless, not all ethnic groups or minorities seek the ultimate separation from the state in which they reside, and only some of them have turned to terrorism⁷ to actually achieve their nationalist goals. According to Zariski (1989), several factors assumedly contribute to the intensification of an ethnic group's separatist and/or extremist tendencies. These are closely intertwined with the experience of economic, political and cultural discrimination, and "*range from [a] history of past violence and repression through economic intrusion to cultural isolation and submergence*" (Alexieva, 2006)⁸. According to Lefebvre (2003), ethnic groups or minorities may further opt to resort to violence "*when dissatisfied with the results of the political strategies pursued [to achieve their ethno-territorial demands]*" (p. 3). Lastly, Byman (1998) is convinced that segments of an ethnic community might decide to choose the violent path for the sake of raising publicity and drawing attention to their group's cause among the wider population, thereby hoping to increase support and foster ethnic mobilization.

2.3 Evaluating Counter-Terrorism Policies

To date, only very little research has been conducted with regard to evaluating counter-terrorism measures. In a recently published study, Lum, Kennedy and Sherley (2006) identified approximately 20.000 articles on terrorism, and discovered that only seven articles specifically dealt with counter-terrorism policies and their effectiveness. The authors accordingly concluded that "*there has been a proliferation of anti-terrorism programs and policies as well as massive increases in expenditures toward combating terrorism. Yet, we know almost nothing about the effectiveness of any of these programs*" (Lum et al., 2006, p. 33). According to Van Um and Pisoiu (2011a), one of the problems is that "*a generally accepted definition or framework of [counter-terrorism] effectiveness does not exist in the literature to date*" (p. 3), which leads to a variety of different approaches, methods and indicators being used among governments and the academic world to evaluate counter-terrorism policies and instruments.

In this regard, a quite common approach to indicate success seems to be the analysis of the number of terrorist attacks before and after the introduction of a specific counter-terrorism policy (Perkoski, 2010). Studies employing this method consider a counter-terrorism policy effective when there is evidence that the frequency of terrorist attacks has significantly decreased in the aftermath of its initiation. Several scholars have made use of this method (e.g. Frisch, 2006; LaFree, 2006). Another statistical measure that has been used to indicate effectiveness is the number of victims or casualties. Scholars such as Alexander (2002) and Morag (2005) have analysed such numbers in order to judge the success of counter-terrorism initiatives. Furthermore, Della Porta is convinced that "*the*

⁷ For example, ETA, IRA, the National Liberation Front of Corsica (FLNC), the Palestine Liberation Organization (PLO), the Liberation Tigers Of Tamil Eelam (LTTE) or the Kurdistan Workers' Party (PKK)

⁸ For a detailed description of the factors, see Zariski (1989)

number of terrorist [...] arrests [can be taken] as an indicator of success” (as cited in Van Um & PISOIU, 2011a, p. 9). This latter approach is frequently employed by governments, who more often than not point to the amount of terrorists arrested when stating that the respective country is succeeding in its fight against terrorism, or when describing a certain counter-terrorism policy as ‘effective’. Stevenson (2004) affirms the use of this indicator by stating that the success of counter-terrorism initiatives “*is likely to reveal itself over time as a negative - the relative absence of terrorism - gradually confirmed by an increase in arrests and convictions*” (p. 92). Given that the ultimate objective of all counter-terrorism efforts is the eradication of terrorism, and hence the prevention of terrorist attacks and resulting casualties, the quantitative indicators just mentioned seem a logical choice when one is faced with the task of evaluating existing counter-terrorism policies and initiatives. However, using these statistics can be deceptive.

For example, when referring to the number of terrorist attacks, it remains unclear “*what decreases and increases say about the state of the terrorist organization committing the attacks*” (Van Dongen, 2009, pp. 2-3). A terrorist group might for instance decide to launch a series of attacks to demonstrate to its members, adherents, and the wider population that it is still out there, when, in fact, it has already been severely weakened (Spencer, 2006b). Yet, one would be tempted to wrongly interpret the increase in attacks as a sign that a counter-terrorism strategy is ineffective. On the other hand, a decrease in terrorist attacks need not necessarily be the result of a specific counter-terrorism policy, nor a sign that a terrorist group is in decline. According to Van Dongen (2009), “*terrorist organisations [might consciously] decide to lower the frequency of their attacks to save resources for bigger, more advanced attacks*” (p. 3). Using the number of victims/casualties as an indicator of success is equally ambiguous. The number might, for instance, increase due to what is called a substitution effect. When attacking a hard target (e.g. embassy, military base) is not an option due to e.g. increased security measures, a terrorist group might decide to strike at softer, easier targets (schools, shopping malls etc.), which would probably result in higher numbers of victims. Researchers might consequently interpret those numbers as proof that the organization in question is becoming more active, and that counter-terrorism policies have failed. Attacking soft targets can, however, be counterproductive, as the public might be “*outraged over the deaths [of] innocent victims and withdraw their support to the terrorists*” (Van Dongen, 2009, p. 4). This, in turn, could be regarded as a success, albeit one that would be ignored when merely focusing on the number of victims/casualties as an indicator of effectiveness. Difficulties can also arise when relying on the number of arrests. According to Spencer (2006b), “*one has to keep in mind that the overall size of a terrorist group is often unknown and many of those captured or killed are low-level recruits who can be replaced easily*” (p. 186). Especially when used with regard to large and popular terrorist organizations (e.g. Al Qaeda), which usually rely on a huge pool of potential successors, this indicator might thus yield misleading results of success (Van Dongen, 2009). Arrests can sometimes even lead

to an increase in a terrorist group's overall size (Spencer, 2006b). People who perceive that family and friends are being mistreated or wrongfully arrested by the state authorities may decide to take sides with, or even join, the terrorist organization in question. These unintended consequences would, however, be disregarded when solely relying on arrest numbers as indicators of effectiveness. A counter-terrorism policy might then wrongfully be regarded as a success, when, in fact, quite the opposite is true.

Given the problems just mentioned, researchers have come up with some other, rather indirect indicators, to measure the effectiveness of counter-terrorism policies. Spencer (2006b), for instance, regards a counter-terrorism policy as a success if it manages to reduce the fear of terrorism among the general population. As the creation and spreading of fear is one of terrorism's main objectives, this seems like a reasonable approach. However, the question as to how exactly one wants to measure 'fear' in a society remains unanswered. Moreover, Perkoski (2010) proposes to look at the strength of terrorist organizations as an indicator of a policy's success. According to him, "*measurements of group numbers or recruiting would certainly be helpful*" (p. 20). He acknowledges, however, that obtaining reliable data on this issue is a very difficult task. Zussman and Zussman (2006), on the other hand, have turned to the functioning of the economy to evaluate a counter-terrorism policies' success. By analysing the fluctuations of the Israeli stock market, they attempted to assess the effectiveness of assassinations as a counter-terrorism policy. A problem with this approach is that fluctuations in the economy are most likely explained by factors other than terrorism. The major 9/11 terrorist attacks in New York, for example, have only had a minor impact on the American economy as a whole, which raises doubts as to whether the economy "*is (...) the right place to look for the effectiveness of counterterrorism measures*" (Van Dongen, 2009, p. 6).

The previous discussion made clear that the evaluation of counter-terrorism policies is a challenge. A major problem stems from the fact that reliable and comprehensive data cannot easily be gathered (Spencer, 2006b; Van Um & PISOIU, 2011a). Information is either classified due to security concerns, or is almost impossible to collect given that terrorists are usually not very talkative. Furthermore, data provided by governments can be biased "*as they count incidents using a definition of terrorism which reflect(s) their political ideals and policy concerns*" (Spencer, 2006b, p. 186), whereas available online-sets, such as the International Terrorism: Attributes of Terrorist Events (ITERATE) and Global Terrorism database (GTD), often face claims of incompleteness. In an attempt to minimize some of the difficulties, "*researchers have regularly tried to supplement and combine existing data-sets*" (Van Um & PISOIU, 2011a, p. 11). Still, it remains questionable whether the problems related to data reliability and data sufficiency will ever be entirely solved. Another, more significant problem occurring in counter-terrorism policy evaluation has got to do with establishing causality. How can one be sure that an observed effect, such as a decrease in terrorist attacks, is actually the result of a counter-terrorism measure? The answer is: one cannot. The reason is that there are simply too many

other possible factors that may have caused the observed effect(s) (Spencer, 2006b; Van Dongen, 2009). As previously mentioned, the number of terrorist attacks might decrease not because of the initiation of a certain counter-terrorism policy, but instead due to a group's decision to save resources for a more devastating attack, or as a result of internal rivalries (Van Um & PISOIU, 2011a). Because of the potential impacts of other factors, "*the effect of a policy measure remains probabilistic*" (Van Um & PISOIU, 2011b, p. 2), and hence cannot be determined with certainty. The difficulty of establishing a causal link between a particular intervention (e.g. a policy, a programme) and the outcomes/effects observed, which is commonly referred to as the 'attribution problem', has plagued researchers, particularly those involved with impact assessment and policy evaluation, for quite some time already. The use of counterfactuals has been proposed as a solution to the problem. This method implies "*a comparison between what actually happened and what would have happened in the absence of the intervention*" (White, 2006). Applying counterfactuals to the field of counter-terrorism, "*one would have to set up two worlds, one in which nothing is done to combat terrorism and one where measures against it have been implemented*" (Spencer, 2006b, p. 188). Obviously, this is hardly possible, and thus studies drawing on counterfactuals are almost non-existent. According to Van Um & PISOIU (2011a), some additional solutions to the attribution problem have been suggested, "*yet all of them not satisfactory*", which leads them to conclude "*that we can at the moment only speak in plausibility terms, when referring to the effect of various [counter-terrorism] measures*" (p. 13).

3. Methodology

3.1 Research Purpose

This thesis will for the most part be descriptive⁹ and evaluative¹⁰, and to a lesser extent exploratory¹¹. It will be descriptive as information will be collected and summarized on two of the most important policies and instruments adopted by the EU to tackle terrorism since the introduction of the Treaty of Amsterdam in 1999. The descriptive section essentially serves to introduce these EU policies, to shed light on their main features and intended results, and to hint at what potential/theoretical impacts they might have had in terms of fighting and eliminating the Basque ETA, specifically. The evaluative part then looks at hard data in the form of e.g. attack numbers, and thereby seeks to indicate whether the EU instruments in question might have had an impact on ETA's terrorist activity. The thesis will further be exploratory as earlier studies on this specific subject can hardly be found. EU counter-terrorism policies have to date not been thoroughly evaluated. Moreover, literature analysing the EU's impact on the ethno-nationalist/separatist terrorist group ETA in particular, is largely non-existent. In this regard, the study is expected to stimulate further research on this specific branch of terrorism.

3.2 Research Approach and Research Strategy

In this thesis, use will be made of both quantitative and qualitative research approaches. Strauss and Corbin (1990) define qualitative research as *“any kind of research that produces findings not arrived at by means of statistical procedures”* (p.17). It is thus research where the data are primarily in the form of words and text, usually analysed by means of interpretive methods. Quantitative research, on the other hand, relies on numerical data, and typically draws on statistical/mathematical techniques for analysis. In this thesis, a mixed approach to research will be applied. Essentially, this means that the research *“involves the collection or analysis of both quantitative and/or qualitative data in a single study”* (Creswell, Plano Clark, Gutmann & Hanson, 2003, p. 212). As to the study's research strategy, use will be made of a case study. This method is commonly described as the in-depth investigation of a specific unit or social phenomenon (a person, a group, an event, an institution etc.). Case studies can draw on both quantitative and qualitative data, and may be based on one case (single-case study), or on several cases (multiple-case study). This thesis employs a single-case study

⁹ Descriptive research *“sets out to collect, organize and summarize information about the matter being studied”* (Punch, 2006, p. 33). It describes a phenomenon as it exists, and thus primarily provides answers to ‘what’ and ‘how’ questions. Hence, descriptive research does not attempt to answer ‘why’- questions, and is therefore not suitable for establishing causal relationships between variables

¹⁰ Evaluation research is *“undertaken for the purpose of determining the impact of some social intervention”* (Babbie, 2006, p. 350). A social intervention is defined as *“an action taken within a social context for the purposes of producing some intended results”* (Babbie, 2006, p. 350), and can take on many forms, such as programs, policies or practices

¹¹ Exploratory research is typically conducted when a researcher wants to examine a new interest, or when there are hardly any earlier studies to which to refer for additional information about the issue or problem at hand. Rather than testing hypotheses, this type of research starts to acquaint a researcher with a topic, and helps him or her to gain insights into the respective subject area that might be of potential use for further investigations

method, as two EU counter-terrorism policies will be analysed with regard to their possible impacts on one unique case only - the ethno-nationalist/separatist terrorist organization ETA. Usually, multiple-case studies are preferred in research as they are said to increase external validity, and therewith the ability to generalize. Single-case study designs, on the other hand, enable the researcher to gain a thorough understanding of a particular case, and hence are seldom chosen for representativeness. According to Yin (2003) they are best suited when the case is a unique, revelatory or critical case. ETA is considered such a unique case. Therefore, results obtained from this study will hardly be generalizable to other cases. This, however, is not the primary intention of this research. Rather, it seeks to provide insights that help improving the (EU's) fight against ETA specifically.

3.3 Data Collection and Data Analysis

As has been previously stated, both qualitative and quantitative data will be used to answer the research question in this thesis. Qualitative data will be collected by means of a document analysis (desk research). Taking into account both primary sources (e.g. official EU policy documents) and secondary sources (academic articles, [electronic] books), the document analysis will mainly provide the information needed to thoroughly describe the EU policies in question, and to assess the possible effect(s) these policies might have (had) on the Basque terrorist organization ETA. Additionally, use will be made of official statistics published by e.g. the Spanish Interior Ministry and the Global Terrorism Database, one of the world's largest publicly available datasets, covering data on terrorism from 1970-2010. Alongside information stemming from newspaper and academic articles, these quantitative data will be used to assess in how far the respective EU policies might have contributed to decreased ETA terrorist activity. Data analysis techniques applied in this thesis will not rely on statistical methods, but will largely remain interpretive.

3.4 Case selection

As indicated, the thesis will be dealing with one specific case - the Basque ETA. The decision to focus on this terrorist group has had several reasons, the most important of which will be outlined in the following.

To begin with, ETA is considered the most persistent of terrorist groups in Europe. Since the IRA officially renounced its armed campaign in 2005, it is deemed the only remaining terrorist group in Europe among those that emerged during the 1960s, a period that witnessed the rise of numerous violent national liberation movements and terrorist organizations. Fighting for an independent Basque State throughout the past four decades, ETA withstood numerous internal divisions, crises and schisms, a change of regime, several truces, negotiations with the Spanish and French authorities, changes in ideology and strategy, as well as a series of severe setbacks¹². The group did not even cease to exist or stop its violent activities when the Basque region gained significant autonomy in

¹² Chapter 4 will provide a more detailed overview of ETA's history

1978, which indicates that it will probably stick to terrorism until actual independence is achieved. All in all, ETA's longevity is one of its most distinct features, demonstrating the group's continued determination and significance, and setting it apart from other European terrorist groups that might have been selected for analysis. Furthermore, ETA is the only (ethno-nationalist/separatist) terrorist organization in the EU known to operate across national borders. In the past, logistical bases, safe houses and explosives have been discovered, and members have been arrested not only in Spain and France, but also in Portugal, Belgium, the Netherlands and the United Kingdom (European Police Office, 2012a). The organization thus obviously takes advantage of some of the EU's fundamental principles such as the free movement of persons, goods, services and capital. In this regard, it is deemed interesting to take a closer look at the extent to which the EU has brought about disadvantages for the Basque terrorist group, and how specific policies might have contributed to its future demise. Lastly, ETA is considered an interesting case because literature on the specific subject can hardly be found. As has been previously mentioned, lots of articles have been published about the EU's impact on the Northern Ireland or Cyprus conflicts. The organization's influence on ETA, however, remains largely unexplored.

The reasons just mentioned indicate that ETA represents a unique case among terrorist organizations in the EU. It is therefore regarded an appropriate and interesting case for analysis.

3.5 Conceptualization

Babbie (2006) defines conceptualization as *"the process through which we specify what we mean when we use particular terms in research"* (p. 124). This process is of utmost importance, as without it, terms used in research would remain fuzzy and inaccurate, resulting in misunderstanding or even conflict. By way of conceptualizing, researchers are able to circumvent this imprecision, as it *"produces a specific, agreed-on meaning for a concept for the purposes of research"* (Babbie, 2006, p. 125). This section serves to conceptualize two important terms that will be frequently used in this thesis, thereby attempting to avoid confusion and establishing a common basis.

Terrorism

For the purpose of this thesis, terrorism will be defined as *'the systematic use of, or threat to use, violence to obtain a political or social objective. It targets an audience beyond the immediate victims, is deliberately aimed at civilians and is perpetrated exclusively by non-state or subnational actors'*.

This definition is deemed appropriate for academic use¹³ as it contains most of the elements terrorism is nowadays associated with. In keeping with the literature, and given the thesis' focus on a sub-national group (ETA), the exclusion of state terrorism from the definition is regarded as justified.

¹³ Definitions to be used in courts, however, would need to be more precise, *"since they are a tool for combating terrorism rather than a method for understanding it"* (Lutz & Lutz, 2004, p. 13) and hence often provide the basis for convicting and punishing an individual

Counter-Terrorism

The establishment of a coherent and universally accepted definition of counter-terrorism proves difficult as a result of the contested and complicated nature of terrorism itself. In the thesis, however, the term '*counter-terrorism*' will essentially refer to all actions taken (by a government) with the intention to prevent, combat or thwart terrorism.

3.6 Operationalization

Operationalization refers to how exactly one attempts to measure concepts in research (Babbie, 2006). With regard to the thesis, clarification is thus needed on how I intend to measure the possible effectiveness of the specific EU policies and instruments in terms of fighting the Basque ETA. The indicators taken into account in this regard are:

- Number of attacks/incidents
- Number of victims
- Number of arrests

As was made clear in the literature review section, these indicators are far from being perfect. Nevertheless, having taken into consideration all other measurement options and limitations, and given the fact that these indicators have frequently been applied by researchers engaged in counter-terrorism policy evaluation, using them is deemed an appropriate way to assess the impact the European Arrest Warrant and Joint Investigation Teams might have had with regard to ETA's terrorist activity. In addition to these purely quantitative measures, further (qualitative) information will be gathered from relevant newspaper and academic articles, which will allow me to interpret effectiveness more thoroughly and hence to provide a more comprehensive picture.

3.7 Time Frame

The research will focus on the period 1999-2011. The main reason for doing so is that in 1999, the Treaty of Amsterdam entered into force, creating an 'Area of Freedom, Security and Justice', and therewith making the fight against terrorism a priority on the European agenda. Much of the EU's important anti-terrorism legislation adopted, especially in the aftermath of the 9/11 attacks and the Madrid & London bombings, is based on this Treaty. The past decade is further deemed interesting as ETA has experienced numerous setbacks and has been weakened like never before in its decades-long history (Deutsche Welle, 2011; CBSNews, 2011). Whether this is just a coincidence, or whether EU counter-terrorism policies adopted during that time, such as the EAW or JITs, might have actually played a decisive part, remains to be seen. Moreover, extending the analysis to the years before the introduction of the Treaty of Amsterdam would simply go beyond the scope of a bachelor's thesis.

4. ETA

4.1 The Basque Region



Map 4-1. The Basque Region

Source: Clark (1984)

The Basque Country (Basque: Euskal Herria) stretches across two European nations: France and Spain. It has been divided ever since in 1512 the current frontier between these two countries became permanent, and is made up of seven provinces. The Basque region on the Spanish side (Basque: ‘Hegoalde’) is historically made up of four provinces: Vizcaya, Guipúzcoa, Navarra and Alava (Spanish names). Together, these provinces contain about 17.600 km², accounting for approximately 85% of the total Basque land, and for an estimated 3.5% of the entire Spanish territory. In January 2011, some 2.8 million people lived in the Basque provinces of Spain, amounting to approximately 7% of the total Spanish population (Instituto Nacional de Estadística, 2012). As of 1978, the three provinces of Alava, Guipúzcoa and Vizcaya constitute the so-called Basque Autonomous Community (BAC), while Navarra province is referred to as the Autonomous Community of Navarra. The Basque region on the French side (Basque: ‘Iparralde’) includes the provinces of Labourd, Basse Navarre and Soule (French names). These three provinces, altogether part of the Département Pyrénées-Atlantiques, occupy an estimated 3.000 km², amount to around 15% of the total Basque land, and are inhabited by approximately 250.000-300.000 people.

Taken together, the Basque Country (the BAC, the Autonomous Community of Navarra and Iparralde) covers an area of approximately 20.600 km² and is home to an estimated 3.1 million people.

4.2 Historical Background

The Basques are said to be one of the oldest indigenous ethnic groups living in Europe. According to Clark (1984), evidence suggests “*there were people living in what is now the Basque region as long ago as 20,000 B.C.*” (p. 13). Yet the precise origins of modern Basques remain unknown. What is known, however, is that throughout their history, the Basques have managed to “*preserve their land, language, and culture against a succession of invaders*” (Anderson, 2003, p. 6), among which the Celts, the Romans, the Visigoths, the Moors and the Franks. The Basque people withstood these invaders’ influences, and were able to maintain their unique identity until this day (Murphy, 2007). A crucial part of this Basque identity, and “*the most significant distinguishing feature of Basque ethnicity*” (Clark, 1984, p. 11) is manifested in their language, Euskera, whose origin is as much a mystery as the origin of the Basque people themselves. Contrary to all other Western European languages, Basque does not form part of the Indo-European family, and “*though numerous attempts have been made, no one has ever found a linguistic relative of Euskera*” (Kurlansky, 1999, p. 23), which is why it is sometimes referred to as an orphan language.

Prior to the existence of Spain as a country, the Basque provinces in the 10th and 11th centuries belonged to the Kingdom of Navarra, creating a somewhat unified Basque political entity for the first time in history. However, the kingdom rapidly fell apart and by 1512, the ethnically Basque regions on the Iberian Peninsula had been incorporated into the Kingdom of Castile. As of that time, relations between the various Basque provinces and Castile were regulated by the *fueros*, a set of ancient local laws, customs and privileges, “*wherein each province was granted substantial powers of self-government by the reigning monarch*” (Clark, 1984, p. 13). Kings were obliged to abide by the *fueros*, which e.g. allowed a province to be exempted from government taxes and military services “*in exchange for political loyalty to the Spanish monarchy*” (Murphy, 2007, pp. 337-338). When the Spanish government adopted a liberal centralizing constitution in the early 19th century, it paved the way for conflict to erupt between traditional regionalists and liberal centralists. The two Carlist Wars (1833-1840; 1873-1876) that followed resulted in the abolition of the *fueros*, and hence the loss of Basque autonomy and regional privileges (Clark, 1984). According to Murphy (2007), “*a Basque nationalist sentiment developed steadily thereafter*” (p. 338), a feeling that was reinforced by the end of the 19th century as the region experienced rapid industrialization and modernization.

In the wake of these events, the Basque society, which was traditionally “*founded on small-scale agriculture and commerce, was changed to a society based on mining, heavy industry, ship-building, and banking*” (Shabad & Llera Ramo, 1995, p. 415). The region soon transformed into one of Spain’s most prosperous areas, while at the same time, “*the ills of rampant industrialization began to afflict the Basques*” (Clark, 1984, p. 16), who suddenly found themselves grappling with pollution, crime, poor working conditions, slum housing and economic competition, as people from all over Spain massively started migrating into the area. Yet, the biggest problem caused by urbanization and

migration was “*the threat posed to Basque language, culture, and customs*” (Murphy, 2007, p. 338). The newcomers did neither speak the Basque language, nor did they make any efforts to adjust to the ancient local culture, but instead preferred the company of their own people. As a result, “*Basque culture, and particularly use of the language, was retreating visibly*” (Douglass & Zulaika, 1990, p. 243). Basque nationalism was brought to a whole new level during that time, and eventually transformed into a political movement when Sabino Arana in 1895 founded the Basque Nationalist Party (Spanish: Partido Nacionalista Vasco, PNV), which aimed at obtaining Basque independence or at least a large degree of regional autonomy. Although the PNV was forbidden throughout the dictatorship of Primo de Rivera (1923-1930), it became “*a dominant political force in municipal and provincial bodies and a vocal minority within the Spanish Parliament*” (Douglass & Zulaika, 1990, p. 243) during the Spanish Republic (1931-1936).

Shortly after the Spanish Civil War broke out in 1936, the Basque region was granted complete autonomy for the first time in its history. However, when General Francisco Franco came to power only a year later, he withdrew Basque autonomy and the newly created government was forced into French exile (Taylor, 2002). Throughout the following four decades, “*the Basque people, their language, their culture, and their history endured severe oppression in the name of Spanish unity and nationalism*” (Murphy, 2007, p. 338). Basque cultural institutions and symbols, such as the flag, were banned; property of Basques was confiscated; Basque citizens were randomly assassinated; and it was strictly forbidden to speak Euskera in public areas or to teach it in schools (Clark, 1984, p. 21). Frustrated by their parties’ passiveness in the struggle against the dictatorship, a group of young PNV-members “*sought new, more radical ways both to oppose the Francoist regime and to express their ethnic identity*” (Shabad & Llera Ramo, 1995, p. 419), and eventually founded ETA in 1959.

Initially, ETA was a non-violent organization, demanding “*democratization, national self-determination, [the] withdrawal of Spanish security forces from the Basque region, and cultural, educational, linguistic and political autonomy for the Basque [people]*” (Bueno de Mesquita, 2005, p. 10). The group circulated pamphlets, leaflets and journal articles to raise awareness for its cause among the Basque population, and thereby sought to peacefully attain its objectives. The Spanish state, however, reacted brutally to the insurgent Basque nationalists, and by the late 1960s, ETA saw no other option but to resort to violence to achieve its goals. The organization claimed its first victim, a Spanish police officer, in 1968. Franco responded by declaring several ‘states of exception’ in the Basque Country, which allowed him to implement martial law. As a result, many Basques were killed and “*thousands were jailed, tortured, and exiled*” (Barros, Passos, & Gil-Alana, 2006, p. 337). In 1970, events culminated in the so-called Burgos trials, which left sixteen *etarras*¹⁴ either condemned to death¹⁵ or sentenced to life imprisonment (Clark, 1984). The severity of the convictions outraged

¹⁴ Spanish: members of ETA

¹⁵ Due to growing international pressures, the death penalties were later commuted into life imprisonments

the public and “for the first time, massive demonstrations [and] strikes (...) took place in support of ETA’s demands and its prisoners“ (Shabad & Llera Ramo, 1995, p. 429). Sympathy for the group augmented even more when a reinvigorated ETA carried out its most significant attack in 1973 - the assassination of the Spanish Prime Minister Luis Carrero Blanco. Blanco was considered the heir - apparent to Franco, and by killing him, not only did ETA demonstrate that it would employ all means necessary to achieve its goals, but also that the authoritarian regime was not invincible (Tellidis, 2008).

Franco’s death in 1975 marked the beginning of Spain’s transition to democracy which led to some major changes in the country’s political landscape: Juan Carlos became king, free elections were held and a new Spanish constitution was adopted in 1978, granting the Basque Country a considerable degree of autonomy¹⁶, including “the establishment of separate Basque political institutions (...), an independent Basque police force, tax autonomy from the central government, control over education, culture, language, the media, (...) and official recognition of the Basque flag and anthem” (Bueno de Mesquita, 2005, p. 12). Yet, despite the fact that ETA had lost its sworn enemy (Franco and his regime) and many of its initial demands had been met, the group continued with its attacks and took violence to a whole new level between 1978 and 1981. During what later came to be known as ETA’s most violent period ever, the organization killed more than three times as many people than it had in all of the previous years combined (Clark, 1984). While many Basques were quite satisfied with the on-going political developments, ETA “rejected autonomy as an unacceptable compromise and continued to insist on complete Basque independence¹⁷” (Bueno de Mesquita, 2005, p. 12). The group was convinced that raising the level of violence was the best option available to force the Spanish state to meet these demands. As a result, popular support for ETA started crumbling in the early 1980s, and many began viewing it as a terrorist organization, rather than a resistance movement.

Eager to defeat ETA, the Spanish government in the early 1980s not only passed several anti-terrorist laws, but also formed the Grupo Antiterrorista de Liberación (GAL, ‘Anti-terrorist liberation group’), a death squad targeting Basque political activists, who were residing in the French Basque provinces. Operating from 1983-1987, the GAL assassinated, kidnapped and tortured many people, some of whom turned out to have no relation with ETA at all. Its main goals - pressurizing the

¹⁶ The then newly created Basque Autonomous Community (BAC) consisted of the three Spanish Basque provinces Alava, Guipúzcoa and Vizcaya. The province of Navarra was excluded and later became the Autonomous Community of Navarra

¹⁷ ETA’s demands to be met by the Spanish state for violence to end were laid down in the 1978 ‘KAS Alternative’, which consisted of five non-negotiable conditions: (1) the right to self-determination and the inclusion of Navarra into the BAC; (2) amnesty for all Basque prisoners; (3) legalisation of all political parties approving of Basque independence; (4) the withdrawal of all Spanish law enforcement authorities and (5) improved working and living conditions for Basque workers (Clark, 1984; Sánchez-Cuenca, 2010)

French government into abolishing its policy of allowing sanctuary¹⁸ for etarras and forcing the country to more actively cooperate in fighting ETA -were achieved when the French authorities “signed an agreement with their Spanish counterparts in June 1984 and started to [arrest and] extradite Basque activists” (Aiertza & Zabalo, 2010, p. 23). Cooperation between both countries increased steadily in the wake of Spain’s accession to the European Community (EC) in 1986, leading to more and more members of the group being arrested, surrendered and convicted. In reaction to these events, and to another severe drop in popular support following ETA’s most lethal attack¹⁹, the group announced its first cease-fire in 1988 and entered into negotiations with the Spanish government. However, shortly afterwards the Basque activists resumed their violent activities. Ever since, ETA has declared several truces (1989, 1992, 1996, 1998, 2006), which all followed the same pattern.

Throughout the 1990s, collaboration between Spanish and French police forces intensified. As a result, ETA suffered major setbacks, the most important of which occurred in 1992, when the group’s entire leadership was arrested in the French Basque town of Bidart. The event led to considerable changes in ETA’s overall direction and strategy as the organization came to accept “*the impossibility of gaining independence by the pressure of arms alone*” (Sánchez-Cuenca, 2009, p. 615). Hence, ETA published the so-called ‘Democratic Alternative’. The document contained a new set of demands²⁰ and emphasized the group’s decision to collaborate with the more moderate nationalist forces in the Basque Autonomous Community in order to gain independence. The Basque activists anticipated that Spain “*would not be able to prevent secession if there was a broad consensus among parties, unions, social movements, and ETA about the necessity of exercising the right of self-determination*” (Sánchez-Cuenca, 2010, p. 20). The ‘Democratic Alternative’ was issued shortly after an attempt to assassinate José Maria Aznar (the-then opposition leader) failed in 1995, and was subsequently rejected by the Spanish government. Only one year later, Aznar’s Popular Party (Partido Popular, PP) came to power and he became Prime Minister of Spain. As one of his first moves in office, Aznar emphasized that his government would never negotiate with terrorists and was bound and determined to defeat ETA. The group reacted to this statement by assassinating a local town councillor of the PP, in 1997. Outraged over the brutal murder, some six million people throughout Spain took to the streets to protest against ETA, marking a new low in public support for the group. Inspired by the Good Friday Agreement²¹ reached in Northern Ireland, ETA declared an indefinite

¹⁸ Since the Franco-era, France provided a safe haven for Basque nationalists, allowing them to move freely within the country

¹⁹ In 1986, a car bomb detonated in a Barcelona supermarket, killing 15 civilians and injuring 39 (The New York Times, 1987)

²⁰ The ‘Democratic Alternative’ strongly resembled the old ‘KAS Alternative’, yet renounced the latter’s socialist character

²¹ The agreement settled the conflict in Northern Ireland, bringing an end to the IRA’s long-lasting violent campaign

ceasefire and engaged in new peace talks with the Spanish government in 1998. Yet, due to the government's lack of progress in meeting its demands, ETA called off the truce in late 1999.

In 2000, ETA initiated a new cycle of violence, and was declared a terrorist organization by the EU following the attacks that took place in the USA on September 11th, 2001. Since 2003, however, ETA terrorist activity has severely declined²². The group announced another 'permanent' ceasefire in March 2006, but terminated it by bombing the international airport in Madrid in December that year. In September 2010, ETA called yet another ceasefire, which was declared 'permanent and verifiable by the international community' in January 2011. Since then, the most recent development in the Basque conflict is ETA's October 2011 announcement of the "*definite cessation of its armed activity*", calling upon the French and Spanish authorities "*to open a process of direct dialogue*" (Presseurop, 2011). Although the statement was welcomed both nationally and internationally, scepticism has remained given that ETA has broken previous truces and has neither agreed to fully disarm nor to completely disband. Additionally, the statement concludes "*Long live the free Euskal Herria! Long live Basque socialism! No rest until independence and socialism*" (The Guardian, 2011), indicating that ETA will continue to pursue full autonomy. Hence, only time will tell if the Basque activists will stay true to their words and will finally bring peace to the Basque Country.

4.3 ETA: Organizational Structure, Membership, Targets & Funding

ETA is a terrorist organization usually attributed to the 'old' terrorism-category mentioned earlier.

The group has adopted a nationalist ideology and wants the Basque people "*to have total control over the political, economic and social resources native to the Basque Country without outside interference and exploitation*" (Weaver, 2002, p. 49). During the Franco era, many Basques agreed with this call for independence and greatly supported ETA, allowing the group to grow steadily as the recruitment of new members was quite an easy task. In order to maintain the high level of popular support for its cause, ETA has since chosen its targets very carefully. As the main purpose of attacking was "*to create an impact on the political environment and to enter into negotiations with the central government*" (Weaver, 2002, pp. 49-50), attacks were often highly symbolic and mainly aimed at Spanish government and military officials, law-enforcement personnel and entrepreneurs. By the late 1990s, the organization extended its list of targets to university professors, academics, judges, city councillors, journalists and tourist sites (Gil-Alana & Barros, 2010). However, despite the discriminate selection of victims and the fact that attacks were usually preceded by warning calls, ETA could rarely avoid civilian casualties²³. Furthermore, attacks conducted by ETA since 1968 were

²² The development of ETA's terrorist activity in the last decade will be analysed in greater detail in chapter 7

²³ In fact, 343 people of the 829 killed in ETA attacks since 1968, were civilians (Spanish Interior Ministry, 2012b)

largely concentrated in the Basque region, but have also occurred in other parts of the country, particularly in Barcelona, Madrid and Zaragoza (Weaver, 2002).

The terrorist group has typically made use of car bombings, shootings and assassinations to force the Spanish state into making concessions, and has raised most of its funds through armed robberies, kidnappings, and the so-called 'revolutionary tax' - a tax extorted from entrepreneurs since the 1970s in exchange for their safety. Refusing to pay the tax and hence fearing for their lives, many businessmen decided to leave the Basque area. Clearly, this had a negative impact on the region's economy. In fact, it is estimated that since the start of ETA's violent campaign, the per-capita Gross Domestic Product (GDP) in the Basque Country has declined by approximately 10% relative to other Spanish provinces (Abadie & Gardeazabal, 2003).

ETA is a rather small terrorist organization. Whereas estimates indicate that during its most violent years (1978-1981), the group's hard core²⁴ was made up of some 350-500 members (Clark, 1984), it is believed that this number has declined to fewer than one hundred people in recent years (Sánchez-Cuenca, 2010). However, given ETA's clandestine nature, obtaining exact numbers is rather difficult. The socioeconomic profile of an ETA-member is somewhat easier to define - a typical *etarra* is a young male (~ 25-30 years old) who has a lower-middle or working class background, and comes from an ethnically Basque family (Clark, 1984; Weaver, 2002). The group's organizational structure is highly hierarchical. It is headed by an Executive Committee, which "*makes all the important decisions*" (Sánchez-Cuenca, 2010, p. 12) and determines the group's general direction. Additionally, the Executive Committee oversees ETA's political, military and logistical branches, which in turn are subdivided into numerous independent cells. The lowest level consists of those people who help maintaining ETA's infrastructure, providing intelligence, safe houses and weapons, or establishing communication lines, amongst others.

²⁴ The hard core consists of the leadership and the active cadre, which includes the people responsible for carrying out the attacks

5. The European Union and its Fight Against Terrorism

5.1 European Counter-Terrorism Cooperation *before* the Treaty of Amsterdam

The issue of terrorism - whether of domestic origin or of an international nature - is not something new in Europe. Some Member States had already been fighting the phenomenon for decades, when in the 1970's terrorism became such a substantial problem for the then European Community, that resistance towards closer European cooperation in fighting it started crumbling. During that time, several states experienced the rise of indigenous Western terrorist groups (e.g. the RAF, the Italian Red Brigades, the IRA, ETA etc.). Another incident significantly contributing to the awareness of the need for joint action was the 1972 terrorist attack that took place during the Olympic summer games in Munich. The incident illustrated how dangerous and geographically close (international) terrorism had become and revealed the incapability of hitherto existing isolated national efforts to tackle the problem. These events, amongst others, in 1975 triggered the creation of the Terrorism, Radicalism, Extremism and International Violence group, the so-called TREVI group. It was a purely intergovernmental and informal forum set up by the European Community Member States outside the then EC framework "*to deal with cross-border terrorism through closer cooperation among EC law enforcement authorities*" (Cini, 2007, p. 306). TREVI did thus not include any of the EC institutions, but regularly brought together the Member State's Justice and Interior Ministers, as well as high-level security officials and experts, to discuss terrorist threats, to exchange information and to provide mutual assistance in fighting terrorism and related crimes. Besides the TREVI-group, European states throughout the 1970s brought about additional cooperative agreements to fight terrorism outside the then EC-framework, such as the Police Working Group on Terrorism (PWGOT)²⁵ and the Club of Berne²⁶. Given the increased tendency of terrorists to operate across national borders, another substantial step to combat terrorism was taken in 1977 with the adoption of the European Convention on the Suppression of Terrorism (ECST). Signed under the auspices of the Council of Europe (CoE)²⁷, it aimed to "*facilitate the extradition between States of persons suspected of certain terrorist offences*" (Saul, 2003, p. 338)²⁸. In 1985, the Schengen Agreement resulted in the abolishment of internal borders between France, Germany, Belgium, the Netherlands and Luxembourg. Although the free movement of people was generally welcomed, particularly with a view to the future establishment of the European Single Market, security concerns were raised over the fact that such a borderless region

²⁵ The PWGOT was set up in 1979 in reaction to the terrorist threats of the RAF, the Red Brigades and the IRA. Bringing together senior police officials, it intended to simplify the exchange of operational information on these groups' terrorist activity (Cronin & Ludes, 2004)

²⁶ The Club of Berne is a forum for the 27 Member States of the EU, Norway and Switzerland, set up in 1971, to voluntarily exchange police and intelligence information, and to share experiences on terrorism

²⁷ The Council of Europe was founded in 1949 and currently has 47 member states. It is headquartered in Strasbourg, France, and aims at developing throughout Europe common democratic and legal principles which are based on the European Convention of Human Rights and related texts (Council of Europe, 2012)

²⁸ The ECST sought to complement, yet not replace, an initial agreement- the 1957 European Convention on Extradition

might open the door to terrorists. Hence, the signatory states agreed on introducing several counter-terrorism provisions, which related to increased police and judicial cooperation, amongst others.

With the entry into force of the Treaty on European Union (hereinafter: Treaty of Maastricht) in 1993, and the foundation of the European Union, the TREVI-group ceased to exist as its various policy fields were incorporated into the new EU pillar structure (more specifically into the third pillar, Justice and Home Affairs, JHA), bringing cooperation in fighting terrorism and related crimes into the realm of the European Union Treaties and institutions for the first time in history. The inclusion of counter-terrorism competencies into the intergovernmental JHA pillar clearly reflected the perception that “*terrorism was no longer exclusively a domestic criminal issue of [the] Member States*”, but rather an “*internal security problem of the Union*” (Chalk, 2000, as cited in Bures, 2011, p. 61)²⁹. Furthermore, the Treaty of Maastricht included a provision for the creation of Europol³⁰, and in the area of police and judicial cooperation explicitly provided for the possibility to coordinate actions by drawing up conventions (Art. K.1 and K.3). With regard to the latter, the EU quickly took action. In the mid-1990s, it signed several agreements supplementing the hitherto existing extradition treaties, the most important of which were the 1995 EU Convention on Simplified Extradition Procedure between the Member States of the EU and the 1996 EU Convention Relating to Extradition between Member States of the EU.

When the Treaty of Amsterdam entered into force in 1999, counter-terrorism cooperation further intensified. The Treaty introduced a new cross-pillar EU objective, namely the creation of an ‘Area of Freedom, Security and Justice’, which was to be achieved through “*preventing and combating crime (...), in particular terrorism*” and “*developing common action among the Member States in the fields of police and judicial cooperation*” (Art. 29). Furthermore, the Treaty renamed the JHA-pillar ‘Police and Judicial Cooperation in Criminal Matters’ (PJCCM), and saw the introduction of a new legal instrument - the framework decision³¹. Framework decisions were adopted as a result of the disappointing and cumbersome results achieved through instruments introduced by the Maastricht Treaty (e.g. joint actions, conventions). This instrument intends to somewhat harmonize the various European national laws existing with regard to the third pillar, and has nowadays become “*one of the most important legal tools of the EU for actions in the fight against terrorism*” (Wade & Maljevic, 2010, p. 115).

²⁹ Nevertheless, the EU still has only very limited competencies in the field of police and justice matters, given that Member States consider these the core areas of national sovereignty that should be dealt with domestically

³⁰ Europol is an organization intended to foster cooperation between the different Member States’ law-enforcement authorities in combating organized crime and terrorism. Due to the slow ratification of the Europol convention, it became fully operational only in 1999

³¹ Framework Decisions are to be used “*for the purpose of approximation of the laws and regulations of the Member States*”, and are binding “*as to the result to be achieved but shall leave to the national authorities the choice of form and methods*” (Treaty of Amsterdam, Art. 34). Framework Decisions need to be transposed into national law before the expiration of a particular deadline

5.2 European Counter-Terrorism Cooperation *since* the Treaty of Amsterdam

Shortly after the introduction of the Treaty of Amsterdam, an extraordinary European Council summit was convened in Tampere, Finland, “*to discuss how to achieve the aspiration that is the AFSJ*” (Fletcher, Lööf, & Gilmore, 2008, p. 104). In the end, the then 15 European Heads of State and Government came up with an ambitious five-year plan, the so-called Tampere Programme, which contained a set of provisions, objectives, and deadlines that would have to be met in order to create a genuine European AFSJ. Besides calling for action in traditional fields such as asylum, migration and external border controls, the Tampere Programme further emphasized the necessity to take concrete steps in the areas of police and judicial cooperation, and the fight against organised crime and terrorism. Some of the most important decisions taken in this regard refer to the creation of a European Judicial Cooperation Unit (Eurojust)³², the establishment of a European Police Chiefs Operational Task Force (TFPC)³³ and a European Police College (CEPOL)³⁴, and the setting up of Joint Investigation Teams. Nevertheless, the real significance of the Tampere summit lay in the decision to abolish traditional extradition laws and to make the principle of mutual recognition “*the cornerstone of judicial cooperation in both civil and criminal matters within the Union*” (European Council, 1999). The principle refers to the mutual recognition of judicial decisions and judgments between EU Member States, and was introduced to prevent terrorists and other criminals from “*exploiting differences in the judicial systems of the Member States*” (European Council, 1999).

Following the attacks that took place in the United States on 11 September 2001, EU counter-terrorism cooperation expanded rapidly. Only ten days later, on 21 September 2001, an Extraordinary European Council was convened, declaring that “*terrorism is a real challenge to the world and to Europe, and that the fight against terrorism will be a priority objective of the European Union*” (Council of the European Union, 2001). In this regard, the European Heads of State and Government adopted the first ‘EU Action Plan on Combating Terrorism’, which set out various measures to be taken in areas such as e.g. police and judicial cooperation, air security and terrorist funding (Council of the European Union, 2001). Following the JHA Council meeting (6-7 December 2001) and the Laeken summit (14-15 December, 2001), political agreement was reached on a draft Framework Decision to Combat Terrorism³⁵ and on a draft Framework Decision for a European Arrest Warrant.

³² Eurojust aims to improve, stimulate and strengthen cooperation among the various national judicial authorities in the EU in the realm of serious crime. As such, it is composed of prosecutors, senior magistrates, judges, and/or police officers. Eurojust was established in 2002 by the Council of the European Union

³³ The purpose of the European Police Chiefs Operational Task Force is to “*exchange experience, best practices and information on current trends in cross-border crime, in cooperation with Europol*” (European Union, 2006)

³⁴ The European Police College provides training for senior police officers from across the EU and aims to improve cross-border cooperation in the fight against crime and terrorism, by fostering mutual understanding and trust

³⁵ The Framework Decision on Combating Terrorism defines terrorist offences and terrorist groups, and harmonizes penalties applicable to those offences in the EU. It is considered the cornerstone of the EU’s fight against terrorism

Both legal instruments were formally adopted by the Council of the European Union on 13 June 2002, as was the Framework Decision on Joint Investigation Teams.

In the remainder of this chapter, the European Arrest Warrant and Joint Investigation Teams will be analyzed in greater detail. Both are frequently praised as fundamental instruments of cooperation, especially with regard to fighting cross-border crime, and terrorism in particular (Long, 2009). Notwithstanding the thesis' focus on these two initiatives, one should, however, not overlook the plethora of other EU initiatives, instruments and measures that have been enacted during the last decade to combat organized crime and terrorism. These include the European Evidence Warrant, the EU Counter-Terrorism Strategy, the EU Counter-Terrorism Coordinator, the Framework Decision on execution in EU of orders freezing property or evidence, and Regulation 2580/2001 on the freezing of funds of suspected terrorists, to mention but a few.

5.2.1 The European Arrest Warrant

The idea to create a European Arrest Warrant was first expressed at the 1999 Tampere summit. The then 15 Heads of State and Government decided that in order to improve European judicial cooperation and eventually form an AFSJ, traditional extradition procedures among Member States should be abolished and replaced by “*a system of free movement of judicial decisions in criminal matters*” (Council of the European Union, 2002a). Following the Tampere meeting, however, some Member States expressed reservations regarding the EAW, and it was not until September 11th, 2001, that further progress was being made. The horrible attacks in the USA apparently “*forced the European leaders to recognize that the EU’s open borders and legal systems allowed terrorists and other criminals to evade arrest and prosecution*” (Bures, 2011, p. 619) as only three months later, political agreement on the EAW was finally reached. The Framework Decision on the European Arrest Warrant and the surrender procedures between Member States (hereinafter: ‘EAW Framework Decision’) was then formally adopted in June 2002, and entered into force on 1 January 2004³⁶. As of that day, the EAW replaced a multiplicity of international extradition agreements, under which the 1957 Convention on Extradition, the 1977 Convention on the Suppression of Terrorism, the 1995 and 1996 EU Conventions on extradition as well as the respective Schengen Agreement provisions.

The EAW is the first and main EU instrument in the field of criminal law to implement the principle of mutual recognition (Fletcher et al., 2008; Pérignon & Daucé, 2007;). Introduced at the Tampere summit in 1999, this principle is defined as “*the process by which a decision or judgment handed down by the judicial authority in one member state is recognised and enforced by the judicial authorities of another*” (Mackarel, 2007, p. 39). As such, it is inseparably attached to the concept of mutual trust “*on the part of Member States in each other’s legal systems*” (Pérignon & Daucé, 2007,

³⁶ Given that seven EU Member States failed to meet the implementation deadline as laid down in Article 34 (1) of the Framework Decision (31.12.2003), it entered into force only in eight countries on 01.01.2004, namely Belgium, Denmark, Finland, Ireland, Portugal, Spain, Sweden and the UK. Nowadays, all EU Member States have implemented the Decision on the EAW

p. 205). Mutual recognition thus implies that a Member State regards a judicial decision taken in another Member State as if it had been taken by its own judicial system, without questioning that other state's judicial competence and respect for human rights.

Article 1 (1) of the EAW Framework Decision defines a European Arrest Warrant as “*a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order*” (Council of the European Union, 2002a). The scope of the EAW's applicability is not limited to serious crimes such as terrorism, but encompasses all offences that are punishable in the issuing Member State either by at least a year in prison or, where a person has already been sentenced, for sentences of at least four months (Council of the European Union, 2002a). Essentially, the European Arrest Warrant is an instrument intended to simplify and speed up the traditionally slow and bureaucratic extradition processes between European Member States (Mackarel, 2007). It has some distinctive features, the most important of which will be outlined in the following.

One of the most outstanding and controversial features of the European Arrest Warrant is the partial abolition of the double criminality rule. According to this rule, which formed part of previously existing extradition agreements, “*the relevant act must be an offence in both requesting and requested³⁷ states*” (Mackerel, 2007). Nevertheless, Article 2 (2) of the EAW Framework Decision lists 32 offences for which this traditional rule should be abolished, the only requirement being that the respective act is punishable in the issuing Member State by a custodial sentence of at least three years (Council of the European Union, 2002a). As a result, persons accused of having committed any of those 32 offences (e.g. terrorism, corruption, rape) might be arrested for surrender by the authorities of the executing Member State even if the act in question is not considered an offence under the laws of the latter (Fletcher et al., 2008; Mackerel, 2007). The removal of double criminality is believed to contribute to the creation of a uniform judicial area given that certain acts are designated as crimes throughout the entire European Union. Double criminality may, however, “*still be required for non-listed offences and for listed offences that fall below the three-year threshold*” (Fletcher et al., 2008, p. 114).

As mentioned before, traditional extradition processes between Member States were characteristically slow and cumbersome. Requests for the surrender of a person “*could often take up to a year before being examined*” (Pérignon & Daucé, 2007, p. 206). In an attempt to improve efficiency and speed up the surrender process, the EAW Framework Decision introduced strict time limits in respect of the EAW. As such, Article 17 determines that the final decision on the execution of an arrest warrant ought to be made “*within a period of 60 days after the arrest of the requested*

³⁷ In the remainder of this chapter the terms ‘requested’ and ‘requesting’ states will be replaced by ‘issuing’ and ‘executing’ states, respectively

person” (Council of the European Union, 2002a). In case any unforeseen circumstances prevent the executing Member State from adhering to this time limit, the latter can be extended by an additional 30 days. Furthermore, whenever a person consents to their surrender, the final decision has to be taken within ten days after such consent has been given (Council of the European Union, 2002a).

Another feature that sets the European Arrest Warrant apart from traditional extradition agreements is the significant reduction of a Member State’s grounds for refusal to surrender a requested person. However, this does not mean that the EAW “provide[s] for automatic extradition or surrender on demand” (Mackarel, 2007, p. 45). The EAW Framework Decision defines ten grounds for the non-extradition of a person, categorized into three mandatory (Art. 3) and seven optional grounds (Art. 4) for refusal. Referring to the former, an executing Member State must refuse the execution of an arrest warrant in case the particular offence is covered by “an amnesty in the executing State, where *ne bis in idem*³⁸ applies to a final judgment in a Member State and where the suspect is a minor and cannot be held criminally responsible in the executing State” (Fletcher et al., 2008, p. 113). With regard to the optional grounds, the executing judicial authority may decline extradition if, for instance, the requested person “is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based”; that person’s “prosecution or punishment (...) is statute-barred according to the law of the executing Member State”; and where the criminal act in question “does not constitute an offence under the law of the executing Member State³⁹” (Council of the European Union, 2002a). Furthermore, the optional grounds for refusal point to yet another groundbreaking feature of the EAW, which is related to the surrender of nationals. Member States have long enjoyed the right to refuse the extradition of their own nationals under previous extradition treaties. The introduction of the EAW, however, deprived them of this traditional privilege. With a view to the creation of a uniform European judicial area in which “all criminal suspects should be treated equally, regardless of geographical location and nationality” (Fletcher et al., 2008, p. 116), the EAW prohibits Member States from refusing to surrender their own nationals or residents. Nevertheless, Article 4 (6) of the EAW Framework Decision provides Member States with a possibility to circumvent this rule by turning nationality into an optional ground for refusal. Accordingly, an executing Member States may decline the extradition of an own national or resident if it “undertakes to execute the sentence or detention order in accordance with its domestic law” (Council of the European Union, 2002a). An additional option might arise from Article 5 (3), whereby an executing country “may make surrender of an own national conditional upon return of that individual so that any sentence may be served locally” (Fletcher et al., 2008, p. 116).

Lastly, another important feature of the EAW is the de-politicization of the surrender process. Whereas previous extradition procedures consisted of a judicial and a political stage, “the EAW is sent

³⁸ The principle whereby a person may not be surrendered if he/she has already served a sentence for the same offence

³⁹ Obviously, this ground can only apply to those offences for which double criminality has not been abolished

directly from the judicial authority of the issuing state to its counterpart in the executing state, without the involvement of any diplomatic or political intermediaries” (Fletcher et al., 2008, p. 112). By reducing the extradition procedure to this single judicial stage, the EAW Framework Decision provides for the *“easier and speedier surrender of suspects and criminals between EU States”* (Fletcher et al., 2008, p. 113).

The previous section has clarified that the features introduced by the European Arrest Warrant have substantially altered the extradition process between EU Member States. Through the EAW, the surrender of a requested person can nowadays be executed much faster, simpler and more straightforward than under the traditional extradition agreements. In this regard, the European Commission’s latest evaluation report indicates that the average time to extradite a requested person has dropped from more than a year to 16 days for those who consented to their surrender, and to 48 days for those who did not consent (European Commission, 2011). It further shows that the use of the EAW has grown steadily since it entered into force in 2004. While in that year, some 3,000 warrants were issued, the period from 2005-2009 saw this number increasing to 54,689, which translates into an annual average of approximately 11,000 warrants (European Commission, 2011).

Despite the successes achieved throughout the years, however, the introduction of the EAW has not been without controversy and has led to several problems. In this regard, Mackarel (2007) points out that *“domestic constitutions and national law have at times struggled to incorporate the requirements of the Framework Decision [which] resulted in some variation as to how the EAW is applied throughout the Member States“* (p. 46). Several EU countries have, for instance, reintroduced double criminality checks although quite the opposite was envisaged by the EAW, while others, have raised *“the threshold for sentences in domestic law to which the EAW can be applied”*(Mackarel, 2007, p. 47). Further changes Member States have made relate to the alteration of time limits and administrative requirements imposed by the EAW Framework Decision, the addition of reasons for mandatory refusal, and restrictions on the extradition of own nationals, amongst others (Fletcher et al., 2008; Mackarel, 2007). Notwithstanding these problems and variations in the domestic laws of the Member States, the EAW is considered a success. According to the European Commission (2011), *“it has given judicial authorities an accessible and efficient mechanism to ensure that offenders do not evade justice wherever they may hide within the European Union”* (p. 10). The EAW is therefore regarded as one of the most important legal instruments at the EU’s disposal to fight organized crime and terrorism.

5.2.2 Joint Investigation Teams

Joint Investigation Teams entered the European stage for the first time in 1997 through the Convention on Mutual Assistance and Cooperation between Customs Administrations. Shortly thereafter, the Treaty of Amsterdam introduced the objective of creating a European ‘Area of

Freedom, Security and Justice’, which was to be achieved through closer judicial and police cooperation in the fight against crime and terrorism (Art. 29). Recognizing the potential of JITs to contribute to the latter, the European Heads of State and Government in the Tampere Presidency Conclusions called for “*joint investigative teams to be set up without delay, as a first step, to combat trafficking in drugs and human beings as well as terrorism*” (European Council, 1999). Just six months later, in May 2000, the EU Council of Ministers adopted the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (hereinafter: the 2000 Convention), which - through Article 13 - for the first time provided a legal framework for setting up Joint Investigation Teams in the EU (Fletcher et al., 2008; Gualtieri, 2007). Before it could enter into force, however, the 2000 Convention needed to be ratified in at least eight of the then 15 signatory states (Council of the European Union, 2000), which turned out to be rather difficult as “*provisions other than Article 13 caused extensive discussions in several countries*” (Rijken, 2006, p. 100). Following the slow ratification process and the 9/11 events, the Council started to recognize that a more legally binding instrument might be more effective in terms of ensuring the EU-wide implementation of JITs. On 13 June 2002, it therefore adopted the Framework Decision on Joint Investigation Teams (hereinafter: JITs Framework Decision) that was to be transposed into national law throughout the EU no later than 1 January 2003⁴⁰. The step reflected the Member States’ conviction “*that the fight against [terrorism and] cross-border organized crime could be improved by creating teams of investigators and judicial authorities from different Member States*” (Long, 2009, p. 28). The JITs Framework Decision basically reproduced the wording of Article 13 of the 2000 Convention, which dealt with the setting up and operation of JITs. According to Article 5, it would “*cease to have effect when the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union has entered into force in all [emphasis added] Member States*” (Council of the European Union, 2002b). The latter requirement, however, has not yet been met given that Greece and Italy to date failed to ratify the 2000 Convention (Council of the European Union, 2011a). As a result, JITs have a dual legal basis and may be established based on both the JITs Framework Decision as well as on Article 13 of the 2000 Convention.

According to Article 1 (1) of the JITs Framework Decision⁴¹, a Joint Investigation Team can be set up by mutual agreement of the competent authorities of two or more Member States for a specific purpose and a limited, extendable period of time, with the intention of carrying out criminal investigations in one or more of those same countries (Council of the European Union, 2002b). The

⁴⁰ According to a European Commission report published in 2005, Denmark, Latvia and Finland were the only countries that had implemented the JITs Framework Decision by this deadline. Today, all EU Member States except for Italy have transposed its provisions into national law. The report further indicated that Spain, implementing appropriate legislation in May 2003, was the only country to fully comply with the JIT Framework Decision (European Commission, 2005; Council of the European Union, 2011a)

⁴¹ Hereafter, the respective provisions of the 2000 Convention apply *mutatis mutandis*

Article further stipulates that JITs may, in particular, be formed whenever “*a Member State’s investigations into criminal offences require difficult and demanding investigations having links with other Member States*”, or in case several Member States “*are conducting investigations into criminal offences in which the circumstances of the case(s) necessitate coordinated, concerted action in the Member States involved*” (Council of the European Union, 2002b). Hence, JITs seem best applicable, yet are not restricted, to fight crimes that have a cross-border dimension, such as terrorism, trafficking in drugs and human beings, or money laundering. A Joint Investigation Team must be set up in one of the participating states “*in which the investigations are expected to be carried out*”, and should always “*operate (...) in conformity with the law applicable to that Member State*” (Council of the European Union, 2002b).

Although a JIT’s exact composition needs to be separately specified in each agreement, it first and foremost consists of law enforcement officials, prosecutors, judges and other competent personnel, who may participate either as members, seconded members or non-members. In this regard, members are “*representatives of the Member State where the operations are carried out*”; seconded members are “*representatives of other involved Member States*” and non-members are “*representatives of Eurojust, Europol and the Commission (...), or (...) of third countries*” (Gualtieri, 2007, p. 235). Moreover, each Joint Investigation Team has to appoint a leader, who, according to Article 1 (3) (a), has to be a national of “*the Member State in which the team operates*” (Council of the European Union, 2002b). In cases where investigations are carried out in more than one state, the leadership should change accordingly (Long, 2009). Seconded members are generally permitted “*to be present when investigative measures are taken in the Member State of operation*” (Council of the European Union, 2002b). Furthermore, the team leader may additionally entrust them “*with the task of taking certain investigative measures*” (Nagy, 2009, p. 235) in the territory of the Member State where the operation takes place. The most important and innovative right, however, is conferred to seconded members by means of Article 1 (7) of the JITs Framework Decision. The Article provides them with the possibility “*to directly request their own competent [national] authorities to take investigative measures*” (de Moor, 2006, p. 15). The relevant authorities of the seconding Member State shall then consider these measures “*under the conditions [as] if they were requested in a national investigation*” (de Moor, 2006, p. 15). As such, the Article enables Joint Investigation Teams to dispense with the need for time-consuming Rogatory Letters⁴², allowing for a faster procedure instead. Non-members, although generally considered observers who lack any investigative powers, might still make valuable contributions to the investigation by providing additional assistance and expertise (de Moor, 2006). Eurojust and Europol, for example, both have accumulated experience in exchanging information and coordinating legal assistance, and may therefore be of great help to the

⁴² Rogatory Letters are formal requests sent from the judicial authorities in one country to the respective authorities of another country with the purpose of obtaining some form of judicial assistance

participating Member States' judicial and police authorities. Although there is no obligation to involve these organizations when setting up a JIT, "*both could play a crucial role in ensuring the efficiency and operational capacity of the JIT and the overall success of the investigation*" (Council of the European Union, 2011a). Besides enabling the direct request of investigative measures between the participating judicial authorities, the JITs Framework Decision additionally provides for the direct exchange of information between JIT members. Article 1 (9), for example, allows members, acting within the limits of their competences and according to their national laws, to share with the team information that is available in their respective home countries and relevant to the investigation conducted (Council of the European Union, 2002b). Such information may, however, only be used for specific purposes (Art. 1 (10)). Nevertheless, Article 1 (9) provides those Member States that make use of JITs with the opportunity to circumvent the lengthy process of having to issue numerous formal requests in order to obtain relevant information from one another.

Despite the advantages JITs have over traditional mutual legal assistance and police cooperation, experience has shown that to date, EU countries have only rarely made use of this instrument (Gualtieri, 2007; Nagy, 2009). Until March 2009, only around 40 JITs had been set up in the European Union (French Ministry of Justice, 2009). Reasons explaining this rare usage refer to the slow implementation of both the 2000 Convention and the JITs Framework Decision, the resulting confusion regarding the instrument's legal basis; the lack of awareness among practitioners of JITs as a valuable tool in the field of criminal investigations; and the lack of funding, "*as JITs can be expensive to negotiate and operate*" (European Police Office, 2012b). Notwithstanding these problems and difficulties, some European countries have regularly and quite successfully made use of JITs. France, for instance, had been involved in 21 JITs by March 2009. Furthermore, Eurojust's most recent annual report indicates that the number of JITs is steadily rising as the instrument is becoming more and more "*accepted as a useful tool in the fight against cross-border crime [and terrorism]*" (Eurojust, 2011, p. 8). Member States thus seem to increasingly acknowledge the instrument's potential to improve mutual trust and facilitate cooperation of judicial and law enforcement authorities, understanding that JITs "*provide a framework in which practitioners from different jurisdictions can work together without the difficulties and delays associated with traditional forms of mutual legal assistance*" (Eurojust, 2011, p. 8).

6. Long-Term Development of the Indicators

6.1 Attacks

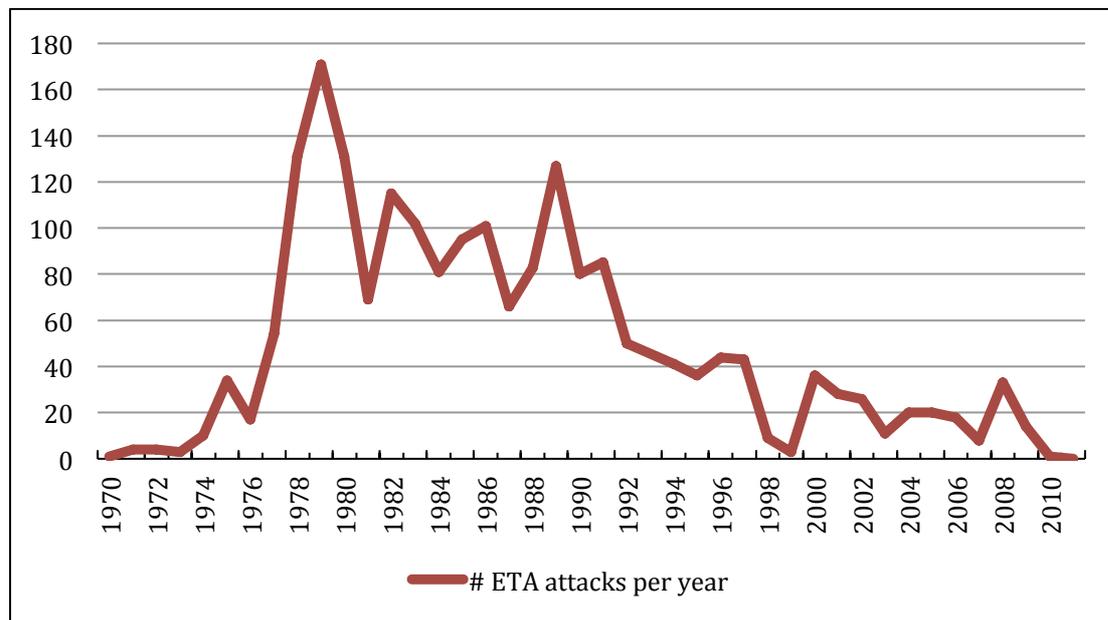


Figure 6-1. Annual number of ETA attacks, 1970-2011

Source: Data from the National Consortium for the Study of Terrorism and Responses to Terrorism (GTD) (2011)⁴³

Figure 6-1 plots the annual number of attacks carried out by the Basque ETA from 1970-2010.

It becomes clear at first sight that the period of interest, 1999-2011, is one in which the terrorist group has conducted relatively few attacks. In fact, the average annual number of attacks carried out during this time (18.2) comes close to the average amount of attacks conducted between 1974-1976 (20.3), shortly after ETA launched its violent campaign. In the mid-1970s, however, the number of attacks drastically increased. Whereas the year 1978 witnessed 131 attacks, and therewith 13.1 times as many attacks as had taken place just four years earlier, the number of incidents rose even more and peaked at 171 in 1979. ETA significantly lowered the frequency of attacks thereafter, yet, the overall level remained high during the 1980s, with an average of 97 attacks being carried out each year. Throughout the 1990s, the overall trend in terrorist attacks substantially declined. On average, 43.4 attacks were conducted annually. The number of incidents even dropped to 3 in 1999, a level that had lastly been reached when ETA's violent campaign was still in its infancy. In 2000, however, attack numbers rose again sharply. While in that year the Basque terrorists carried out 36 attacks, in 2001 and 2002 the numbers slightly decreased to 28 and 26, respectively. Although there were some fluctuations, the level of attacks remained below these values in the following years, with only 8 incidents attributed to the group in 2007. Within a year's time, however, attack numbers increased once again, and reached a level comparable to that in the beginning of the century. From 2008 to

⁴³ According to the Global Terrorism Databases' website, data for 1993 is missing as it got lost during an office move (National Consortium for the Study of Terrorism and Responses to Terrorism, 2011)

2009, the level of attacks then decreased by some 42%, and besides a single incident in 2010, no further attacks have been reported.

6.2 Victims

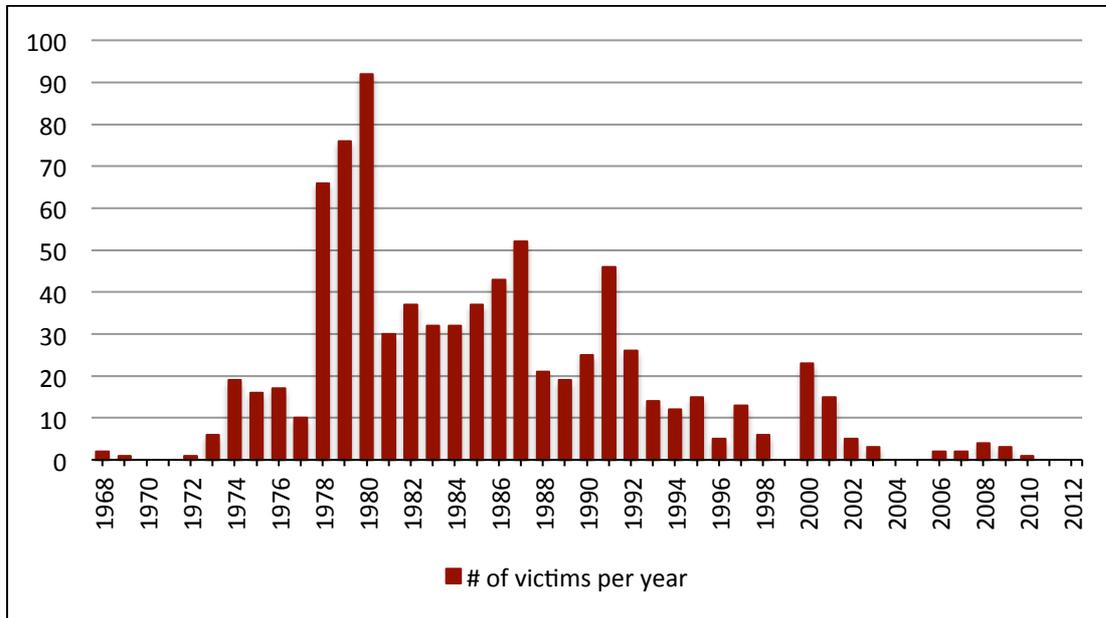


Figure 6-2. Annual deaths from ETA terrorism, 1968-2012

Source: Data from the Spanish Interior Ministry (www.interior.gob.es)

Figure 6-2 provides an overview of the annual number of deaths that resulted from ETA terrorism between 1968 and 2012. It illustrates that within the first years of ETA's violent campaign, the level of deaths was relatively low (<10). As of 1974, however, it slowly started rising. From an initial annual average of 1.67 victims claimed between 1968-1973, the number sharply rose to 15.5 people killed per year in the period 1974-1977. Following this phase, the number of deaths increased drastically - by a factor of 6.6 in 1978 - and reached a new peak of 92 in 1980. Although the level of deaths decreased substantially as of 1981, it remained high throughout the 1980s, when on average, 34.1 people per year lost their lives to ETA violence. Whereas in 1990, 25 people were killed, within a year's time that same number rose by almost 55% to 46 victims, making 1991 the deadliest year of the decade. Trends in annual deaths thereafter declined considerably, not a single person being killed in 1999. Following the turn of the century, however, the death toll increased yet again. 23 people fell victim to ETA in the year 2000, but this number rapidly declined and eventually equalled zero in 2004 and 2005. Since then, the level of deaths has remained very low (<4). ETA claimed its last victim in 2010.

6.3 Arrests

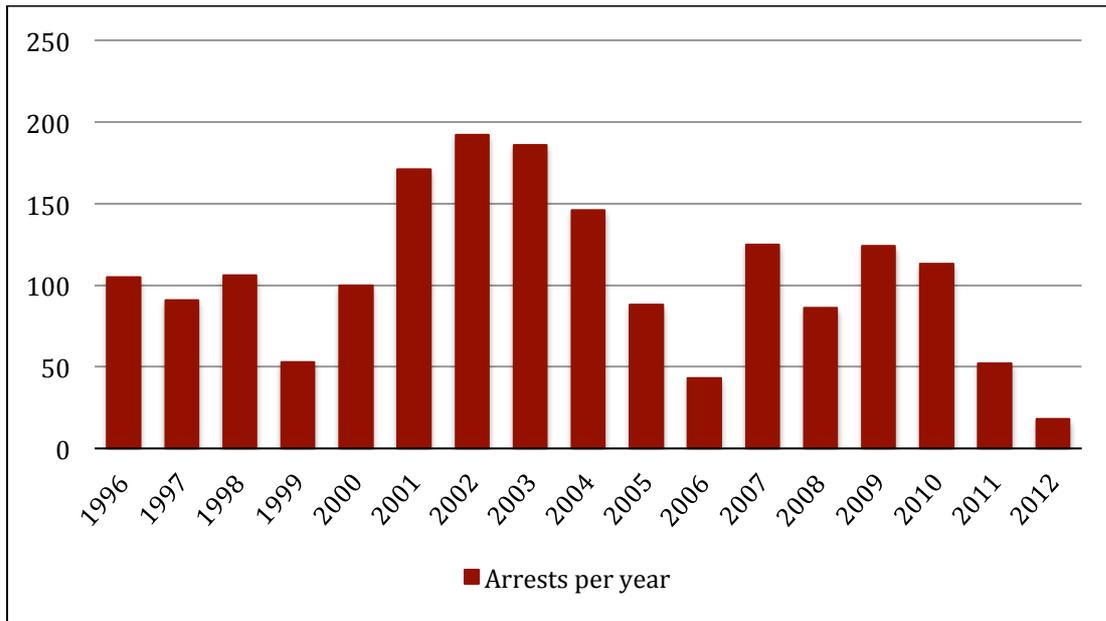


Figure 6-3. Annual worldwide number of arrests of ETA-members, 1996-2012

Source: Data from the Spanish Interior Ministry (www.interior.gob.es)

Figure 6-3 presents the annual number of etarras arrested in Spain, France and other countries between May 1996 and July 2012. It shows that the number of detentions drastically increased in the beginning of the new century, from an average of 91 arrests per year in the period 1996-2000, to 171 in 2001. Arrest numbers remained high thereafter, peaking at 192 in the year 2002, before declining to a level comparable to the pre-2001 average in 2005. The period from 2001 to 2004 is till this day the most successful regarding the arrests of ETA-members. Within those years, a total of 695 etarras have been detained, resulting in an annual average of 174. From 2005 to 2006, however, the number of arrested ETA-members fell from 88 to 43, translating into a decrease of almost 50%. Following this unprecedented low, numbers rose again sharply in 2007, when 125 etarras were detained. The arrests made in subsequent years contributed to making the period 2007-2010 the most effective one since the 2001-2004 era. During this time (2007-2010), some 448 etarras were detained, equalling an annual average of 112, which is slightly higher than the yearly average achieved between 1996-2000. From 2010 to 2011, however, arrest numbers decreased yet again by around 50%, and reached a level practically identical to that in 1999. Since 1 January 2012, law enforcement authorities have arrested 18 members of the Basque terrorist organization.

7. Analysis

This chapter provides an analysis of the extent to which both instruments were used to fight Basque terrorism in the period 1999-2011. It links the figures previously introduced to the EAW and JITs, and thereby seeks to shed light on these European counter-terrorism policies' role in the decline of ETA terrorist activities during this time. As ETA mainly operates in and from the Basque Country, which is located on both Spanish and French territories, the focus of this section will naturally lie on these two European countries.

7.1 The use of the EAW and JITs in the fight against ETA terrorism

Joint Investigation Teams

The 2002 Framework Decision on Joint Investigation Teams intends to institutionalize bi- and multilateral police cooperation pertaining to cross-border criminal investigations in the EU. As mentioned before, it was to be implemented no later than 1 January 2003. Only three EU countries - Denmark, Finland and Latvia - initially met this deadline, however, the majority had transposed the provisions of the JIT Framework Decision into their respective national laws by the year 2006⁴⁴. Nowadays, all EU Member States have implemented it, except for Italy.

Although it is quite difficult to obtain reliable quantitative and/or qualitative data on JITs given that to date, no systematic evaluation has been carried out on the part of the EU, Member States do not seem to have made extensive use of this legal instrument so far (Gualtieri, 2007). In this regard, the French Ministry of Justice (2009) reports that by March 2009, just around 40 JITs had been established in the European Union. These were for the most part set up between neighbouring countries (Block, 2012). The very first JIT was created in September 2004 between Spain and France to investigate ETA terrorism. France has since then turned out to be the Member State that most *“regularly uses the possibility given by the European legislation to create Joint Investigation Teams”* (Long, 2009, p. 34), having participated in 21 JITs until March 2009 (French Ministry of Justice, 2009). The majority of these JITs have been carried out with its neighbour, Spain, with which it created an additional 11 JITs following both countries' initial cooperation in 2004. Besides dealing with drug trafficking offences and Islamic terrorism, three of these 11 JITs particularly related to Basque terrorism (Block, 2012). Spain is the second-most frequent user of the instrument of Joint Investigation Teams in the EU and had till March 2009 set up 13 of them, the majority of which with France (12 out of 13) (Block, 2012). As previously mentioned, four of those Franco-Spanish JITs specifically targeted ETA terrorism. Starting their collaboration to combat ETA in the mid-1980s, Spain and France have since then concluded numerous bilateral agreements to strengthen cooperation and enhance cross-border operations. As a result of this decades-long experience in the fight against a common enemy, the teams of both countries nowadays enjoy a high degree of mutual trust. Following

⁴⁴ Spain and France implemented the JITs Framework Decision in May 2003 and March 2004, respectively

from the latter, Spain and France in December 2007 decided that besides engaging in traditional JITs, which are usually set up for a limited period of time only, they would go one step further and establish a permanent Joint Investigation Team “*that [would] focus exclusively on investigating ETA*” (The Independent, 2007). Following hints that ETA may have expanded its logistical bases to Portugal, Spanish authorities in late 2007 decided to establish another JIT with their Portuguese counterparts in order to investigate the group’s activities on the latter’s soil (Block, 2012; Long, 2009).

European Arrest Warrant

Having analysed the use of Joint Investigation Teams in combating Basque terrorism in the previous paragraph, this section will now turn attention to the European Arrest Warrant. As was mentioned before, this legal instrument replaces traditional extradition processes with a faster and simpler procedure by which to surrender requested persons. The official deadline by which Member States had to have implemented the EAW Framework Decision was 31 December 2003. However, as by this date seven Member States had not yet transposed the respective provisions into their national laws, it became operational on 1 January 2004 in eight EU countries only. Nevertheless, as of April 2005, the EAW Framework Decision has been implemented throughout the entire EU⁴⁵.

The Council and the European Commission regularly publish official documents⁴⁶ containing quantitative and qualitative data on the impact of the EAW. In this regard, the latter’s most recent report indicated that in the period 2005-2009, 54689 arrest warrants had been issued throughout the EU, of which 11630 were executed successfully and lead to the surrender of the requested person(s) (European Commission, 2011). Based on these numbers, the Commission came to the conclusion that the EAW is a success. When one wishes to analyse the use of the EAW in the fight against ETA, however, the reports published by the Commission and the Council are not very helpful given that the available data is very broad and does not provide any detailed insights into a Member State’s individual experience with this legal instrument. Thus, although numbers can be found on how many times a country has issued an EAW, and on how often these have been effectively executed, information about the receiving country or the offence on which such an EAW is based, is largely absent. To some extent, such information could have been obtained through country-specific evaluation reports, yet because these have not been published on a regular basis, they contain information that is severely out-dated today.

Taking into account all data available, Spain has issued 3903 warrants between 2004 and 2010, of which 493 resulted in the successful surrender of the requested person(s) (European Commission,

⁴⁵ While Spain met the official deadline and had implemented the EAW Framework Decision by 31 December 2003, France experienced some delay and did so in March 2004

⁴⁶ The respective Council documents contain the replies to a questionnaire on quantitative information about the practical operation of the EAW, which the Council annually sends to all EU Member States. The European Commission documents refer to reports published on the implementation and impact of the 2002 EAW Framework Decision

2011; Council of the European Union, 2007a; 2011b). As previously mentioned, information about the receiving countries is hardly available. However, the evaluation report on Spain, covering data about the EAW in 2005 and 2006, indicates that the great majority of EAWs have been sent to the respective French and Portuguese authorities (Council of the European Union, 2007b). Boaventura de Sousa Santos (2010), examining a sample of all EAWs issued and executed in Spain from 2004-2008, confirms this assumption by concluding that “*for more than half of the sample, France is the executing country*” (p. 529), followed closely by Portugal, Germany, Italy and the Netherlands. He further states that EAWs are often issued to neighbouring countries, adding that “*Portugal, for example, overwhelmingly sends its warrants to Spain, who in turn overwhelmingly sends its warrants to France*” (de Sousa Santos, 2010, p. 67). Clearly, this information alone does not shed much light on whether the EAW has been used by Spain to fight ETA terrorism in particular. However, when one takes into account the offences on which these EAWs are based, the picture becomes more clear. In the majority of cases, EAWs are issued for criminal offences such as drug trafficking, murder and armed robbery. Thus, although specifically approved as a counter-terrorist measure following the 9/11 attacks, the EAW has so far mainly been used for crimes other than terrorism. In Spain, however, this seems to be completely different. Based on his sample of Spanish EAWs, de Sousa Santos (2010) concludes that terrorism “*is the most frequent offence in issued warrants, closely followed by participation in a criminal organization*” (p. 86). Due to the lack of availability of official EU or Spanish data on this subject, one could of course argue that Spain issues these EAWs for persons suspected of belonging to international terrorist groups, such as Al Qaeda. However, as many warrants are sent to France where part of the Basque Country is located, and which has for many years been a safe haven to Basque militants, it is very likely that a great deal of these EAWs are in fact issued in relation to ETA. Dr. Jimeno-Bulnes, a Spanish expert on the EAW, confirms this assumption by stating that “*many criminal offences that lead to an EAW being issued in Spain are linked to ETA terrorism, whose activists often attempt to evade arrest in France*” (as cited in Górski & Hofmanski, 2008, p. 362).

7.2 Linking the EAW and JITs to the Indicators

The previous section demonstrated that since their introduction, both the EAW and JITs have been actively applied to fight Basque terrorism. In this section, it will now be assessed whether the use of these instruments has had any (significant) impact on ETA terrorist activity and on the arrests of its members.

Attacks

As mentioned in section 2.3, it is a quite common approach among researchers to examine the success of a specific counter-terrorism policy by way of analysing the development of the number of terrorist attacks both before and after the respective policy has been initiated.

In the period of interest (1999-2011) the highest number of incidents occurred in 2000, the year ETA initiated a new cycle of violence. Following the 36 attacks carried out back then, the level declined to 28 and 26 in 2001 and 2002, respectively. In 2003, when the JITs Framework Decision entered into force, ETA committed 11 attacks, which translates into a decrease of around 42% compared to the number of attacks carried out just a year earlier. However, it should be noted that France and Spain have established the first JIT in the EU in September 2004 only. The observed decrease in attacks can therefore not be attributed to this specific policy. The EAW came into force in 2004, and was -just like the JITs- used for the first time in that year. As a logical step, the possible impact of both policies on the development of attacks from 2004-2011 will now be examined simultaneously⁴⁷.

In the latter period, ETA conducted on average 14.3 attacks per year. Compared to the 1999-2003 era, in which the average annual number of attacks still equalled 20.8, this is a decrease of 31.5%. The relatively low average of 14.3 is best explained by the years 2010 and 2011, which saw one and no attack, respectively. In this regard, it should be noted that the overall amount of attacks has remained quite stable until 2009. The numbers show that the level of attacks went down considerably only *after* 2009, probably owing to several different reasons. One such reason might be, for example, that the effectiveness of the policy measures severely increased as a result of an improved usage by the respective judicial and law enforcement authorities. However, it could also be that quite the contrary is true, namely that the counter-terrorism policies did not have any significant impact at all, and hence, that the decrease in attacks after 2009 needs to be attributed to third factors. One such factor could be that ETA declared truces in 2010 and in 2011, obviously leading to fewer attacks in those years. Whether the policies helped reducing attacks can more credibly be assessed when taking into account the development of arrests of ETA members, which will be analysed below.

Victims

In terrorism research, it is safe to assume that without any attacks being carried out, there can also be no fatalities. Hence, both indicators naturally are closely intertwined, although they do not necessarily correlate. Perkoski (2010), for example, argues that there might be times in which the number of attacks rises while their severity decreases, leading to fewer casualties. Of course this holds true for the opposite as well. Therefore, it is important to look at the levels of both attacks and victims.

In this regard, the number of victims in the period 1999-2011 was highest in the same year the number of attacks peaked, namely in 2000. While back then, 23 people were killed, the death toll steadily declined in the following years, as did the number of attacks. In 2004, the year in which both policies were used for the first time, no one was killed. Comparing the time periods before and after the introduction of the policies, a decrease of 83.7% can be observed. The annual average number of victims dropped from an initial 9.2 between 1999 and 2003, to a low 1.5 for the period 2004-2011.

⁴⁷ The same applies to the sections on victims and arrests

However, given that the decline in the number of victims largely occurred between 2000 and 2004, it can hardly be attributed to the respective policies. If anything, the introduction of the EAW and the JITs helped keeping the already low levels stable. Taking into account the relatively high amount of attacks until 2009, the low death toll might be explained by the fact that attacks became less severe. Sanchez-Cuénca (2009) supports this view, stating that since 2003, “*the intensity of ETA’s lethal violence has been very low*” (p. 616), with attacks for the most part being conducted for propagandistic purposes, often merely causing (minor) injuries and property damage.

Arrests

Next to the numbers of attacks and victims, section 2.3 presented arrest numbers as an additional indicator with which to assess a particular counter-terrorism policies’ effectiveness.

For the relevant period (1999-2011), it is interesting to note that the highest levels of arrests were reached *before* both Framework Decisions became operational, namely in the years 2001-2003, when on average, 183 etarras were arrested annually. Given that the respective number was comparatively low in the preceding period 1999-2000, in which it equalled 76.5, it seems fair to assume that these high amounts of arrests directly resulted from the increased national and international police activity in the aftermath of the 9/11 attacks and the subsequent global ‘war on terrorism’. By and large, the annual average amount of arrests decreased after the policies were first used. Still equalling 140.4 between 1999 and 2003, the number fell to 97.1 in the 2004-2011 era. This decline of 30.7% could be associated with a lack of effectiveness of the respective counter-terrorism instruments. However, when one acknowledges that the 2004-2011 numbers are a bit higher than the pre-2001 levels, it seems more reasonable to treat the extraordinarily high amounts of arrests between 2001 and 2003 as an exception owing to the events of 9/11, and hence to conclude that the situation has in fact improved after both the EAW and JITs were applied for the first time.

Whether this improvement can be solely attributed to the policies, however, is hard to determine. For instance, the number of arrests might have also increased as a result of stronger public pressure following the 2004 and 2007 terrorist attacks in Madrid and London, which lead to enhanced national police activity not only in Spain and Great Britain, but in the entire EU. Nevertheless, newspaper articles and media reports suggest that many etarras have indeed been arrested based on an EAW, or as a direct result of JIT operations (cf. Daily Mail, 2008; The Telegraph, 2010, 2012). An explanation for why the arrest numbers after the introduction of the policies have only slightly increased compared to the pre-2001 era might be that ETA’s membership had already considerably declined due to previous detentions and the group’s inability to find new recruits among those Basques that still supported their cause.

7.3 Concluding Remarks

As has been described in section 2.3, assessing a policy's effectiveness in fighting terrorism is not without its problems. Most importantly, third factors can never be completely ruled out and have to be accounted for. This 'attribution problem' leads to difficulties when one seeks to establish a causal link between the indicators used and the policies examined. Evaluating counter-terrorism policies is thus a probabilistic undertaking, for one cannot be sure that an observed effect is actually the result of the policy in question. A second problem lays in the absence of the possibility for counterfactual observations, meaning that the real world cannot provide the same universal data as a model or an experiment could. One only sees how the indicators develop after the introduction of the policies, which naturally makes it impossible to observe what would have happened if these policies were never implemented. When it comes to the European Arrest Warrant and the Joint Investigation Teams, these two aspects constitute the biggest problems for the assessment of efficiency. Furthermore, the selection of indicators is problematic, as has been described in section 2.3. The choice for using the numbers of attacks, victims and arrests is not ideal, but well grounded on considerations of validity, reliability, and feasibility.

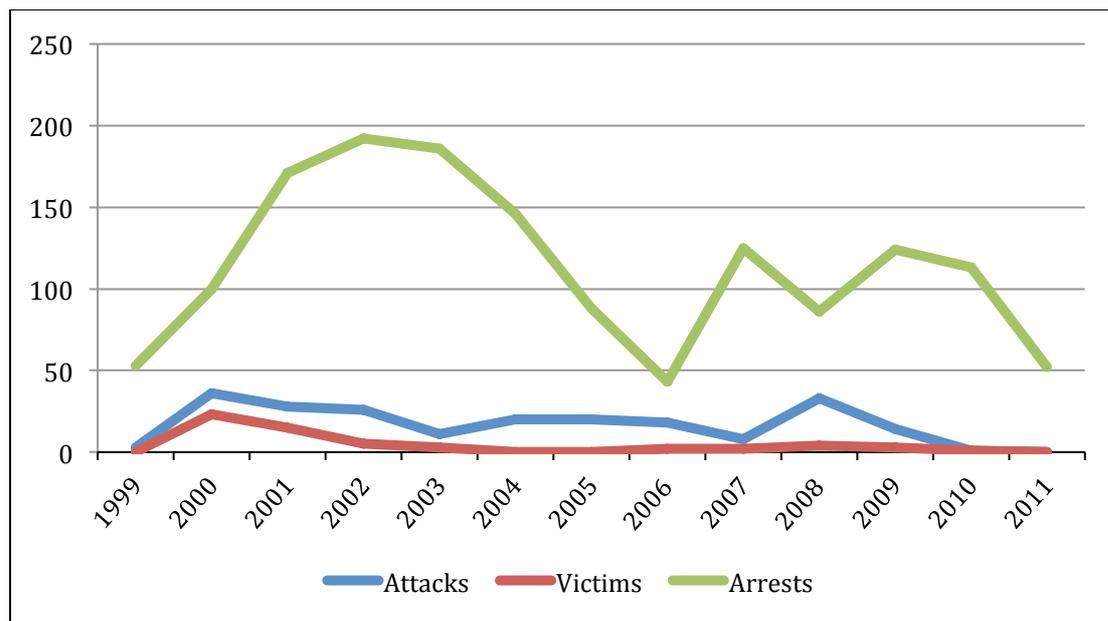


Figure 7-1. The combined development of arrests, attacks and victims, 1999-2011
Source: Data from the National Consortium for the Study of Terrorism and Responses to Terrorism (GTD) (2011) and the Spanish Interior Ministry (2012a)

Figure 7-1 provides a combined overview of each indicator's development in the period of interest. It becomes apparent that every single indicator points at a possible positive effect of the two policies in question. The number of attacks has, on average, decreased after the introduction of the Framework Decisions, as has the level of victims. Arrests, on the contrary, have increased in number when compared to the average level and the exceptional time after the 9/11 attacks is disregarded. Although these developments suggest that the EU instruments have had a positive effect, the problem of establishing a causal link between the two remains.

In this regard, the decreasing number of attacks might also be explained by the cease-fires ETA declared in the relevant period. Another reason could be that the terrorist group decided “*to lower the frequency of their attacks to save resources for bigger, more advanced attacks*” (Van Dongen, 2009, p. 3). Moreover, ETA might have chosen to shift its focus from planning and actually conducting attacks to more internal and organizational matters, taking its time to rearm, regroup and develop a new strategy with which to achieve its aims of Basque independence. Lastly, the decline in the number of attacks might also be the result of successful national (Spanish) counter-terrorism policies and measures. Concerning the number of victims, the observed decrease can hardly be connected to the two policies in question, as it has mainly occurred in the years before their introduction. Instead, the lower number of fatalities could be linked to e.g. reduced severity of the attacks, or to less attacks in general. Comparing the ratio of attacks per death for the pre- and post-2004 eras, it becomes visible that the intensity of attacks has indeed decreased. While, on average, it took three attacks in the time between 1999 and 2003 to result in one death, this number has increased to ten attacks per death for the period 2004-2011. The policies could, however, have had an indirect effect on this indicator through reducing the number of attacks. The success in the number of arrests can more clearly be attributed to the EU instruments in question, since both the EAW and JITs are implicitly aimed at the arrest of suspects. Still, the increase in the level of arrests after the introduction of the policies might also be the result of other factors, such as enhanced national police activity. In general, however, scientific and newspaper articles point to the effectiveness of the EAW and JITs when it comes to the Basque terrorists. Reading a newspaper article about the arrest of an *etarra*, for example, it is highly likely that one will encounter a reference to the use of an EAW, to Joint Investigation Teams/operations, or to both (cf. Daily Mail, 2008; The Telegraph, 2010, 2012). Block (2012) seems equally convinced of the policies’ effectiveness by emphasizing their “*significant operational success,*” which manifests itself first and foremost through the “*numerous arrests of suspected ETA members*” (p. 100). Moreover, Spain and France, through “*a history of networking and personal contacts and a shared interest in a specific criminal investigation*” (Block, 2012, p. 101), already had a profound relationship, which proved beneficial for their willingness and commitment to cooperate through the newly introduced instruments, and might explain these countries’ frequent use of both the EAW and JITs in the fight against ETA. Nevertheless, the high number of arrests can be misleading; information on the actual number of convictions or penalties is not available, suggesting that a large proportion of detainees could have been freed and hence not been punished.

8. Conclusion

European counter-terrorism cooperation dates back to the mid-1970s, when several countries were plagued by the rise of domestic terrorism, and hence decided to come together on a regular basis as the TREVI-group in order to exchange information and discuss matters relating to the phenomenon. While cooperation thereafter steadily increased, it intensified unprecedentedly following the attacks that took place in the USA on September 11th, 2001. In direct response to these horrible events, the EU rapidly took action and adopted a plethora of counter-terrorism policies, measures and initiatives. Two of the most important instruments decided on during that time were the European Arrest Warrant and Joint Investigation Teams. While the former focused on facilitating and speeding up the traditionally slow and cumbersome extradition procedures between EU Member States, the latter institutionalized bi- and multilateral police cooperation with regard to cross-border criminal investigations. This thesis aimed at evaluating the impact of these two key EU counter-terrorism instruments on Europe's oldest and most persistent terrorist group ETA, which is known to actively operate across national borders. The main question guiding the research was:

To what extent did new European judicial tools like the European Arrest Warrant and Joint Investigation Teams contribute to the decline in ETA terrorist activities during the period 1999-2011?

The analysis of the two policies showed that they are potentially well equipped to tackle crime and terrorism in general. Their particular impact on ETA has been assessed with the help of three indicators, namely the number of attacks, victims, and arrests. Although these indicators are not perfect, they have been applied frequently in academic research. Evaluating the development of the numbers before and after the introduction of the two policies, a positive impact can be assumed. While the average number of terrorist attacks and victims decreased, the number of arrests has increased after 2004, when the policies were first used. However, the 'attribution problem' previously mentioned still remains. Factors other than the EU instruments in question may have caused the effects observed with regard to the indicators. Because it is impossible to control for all of these additional factors simultaneously, causality cannot be established. Nevertheless, I am confident that the indicators chosen have allowed me to identify at least some tendencies, on the basis of which I come to the conclusion that the EAW and JITs did very likely contribute to the decline of ETA terrorist activity after their implementation.

Clearly, more extensive research is needed to verify these findings. Future studies might, for instance, devote more resources to examining the impact of third factors, or draw on interviews with the relevant national and European authorities in order to gain additional and more specific information regarding the use of the EAW and JITs in the fight against ETA. Another suggestion for further research could be to investigate alternative forms of fighting the group. Besides relying on anti-terrorism policies in the classical sense, the Dutch government, for example, focuses particularly on measures and instruments that prevent radicalization and terrorism in the first place, thereby trying

to avoid the seedbed of violence from growing. In doing so, this 'broad-based' approach aims at removing the cause for terrorism rather than the immediate effects of terrorism itself.

All in all, given the group's persistence and habit of breaking ceasefires, this thesis derives its value from providing first insights on the impact of European counter-terrorism policies on ETA, which might in the future be used by researchers and policy-makers alike.

8.1 Limitations

The thesis has some limitations that need to be addressed. First of all, when using case studies, external validity is a common concern. The term refers to the generalizability or transferability of a study's findings and results to settings and/or populations beyond those originally studied. Because a single-case study focuses on one specific case only - a case that is usually not very representative of the wider population - the danger arises that inferences drawn from it might not be generalizable to other cases. As was indicated before, this is not the intention of the thesis and is therefore of a lesser concern. An additional limitation is the subjective interpretation of the data collected. This makes it hard to replicate the study because other researchers might interpret and analyse the data differently and hence come to other conclusions. Yet another shortcoming might arise from the data used in the thesis. As was mentioned in the literature review section, relying on data published by governments is always difficult as these might be severely biased. Furthermore, given that publicly available databases often face claims of incompleteness, outdatedness and inaccuracy, using their data might be equally problematic. Despite these potential flaws, the thesis has made use of both sources: While the Spanish Interior Ministry's website provided data on ETA arrests and victims, the Global Terrorism Database offered information on the group's attacks. Researchers have regularly applied both sources in the past, which is why their use in this thesis is regarded as justified.

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