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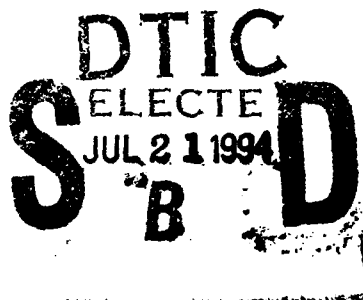
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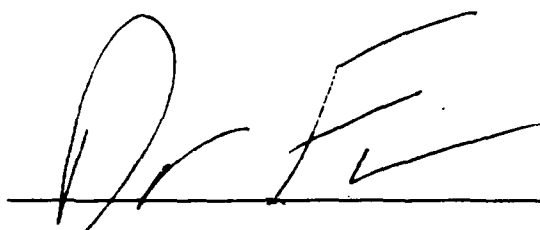
THE POLITICS OF COUNTERTERRORISM IN WESTERN EUROPE

Tracy Higgins

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for the degree  
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in the Department of West European Studies  
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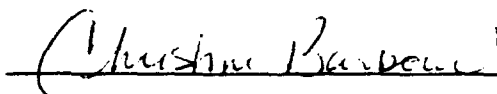
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## INTRODUCTION

European nations, the victims of left and right wing, separatist, and transnational terrorism, share a desire to deter terrorist violence within their own borders. This provides an incentive to develop effective domestic counterterrorist policies as well as to coordinate counterterrorism programs among European nations in order to be more effective in the prevention of terrorist violence. Some attempts have been made to improve police and judicial cooperation both within the EU and internationally, and this has had a positive effect on counterterrorism operations. However, progress in the area of counterterrorism strategy in Europe continues to be unsatisfactory as it is still the source of internal policy battles and many diplomatic disputes.

A nation's counterterrorism strategy is highly dependent on the political will of its leaders, which in turn is partly driven by public opinion and the media. Despite the usual official denunciation of terrorist acts by leaders of all European nations, each will deal with the effects of violence within its own borders in a way which best suits his or her

own political and economic interests. Any outside pressure to do otherwise will not be tolerated as an encroachment on national sovereignty. The decision on how to react to terrorism is a political one (diplomacy vs. a law and order stance, increased police powers of the state vs. maintenance of individual liberties, prosecution vs. extradition, no negotiation vs. secret negotiation, etc). Therefore, counterterrorism strategy in the EU may be enhanced if and when a higher level of political unity is achieved. Multi-lateral treaties have been of little use as they have been ignored and misinterpreted in the past. Multi-lateral cooperation is affected by the need for secrecy to protect sensitive methods and clandestine informants. This limits the number of participants in any cooperative effort against terrorism as members will place their trust in only those few who have proven their reliability. To make matters worse, internal battles may ensue over counterterrorism strategy between the elected officials, the judiciary, the foreign office, and the security services, further complicating efforts towards concerted action.

There has been a great deal of evidence to show that terrorist organizations of all types throughout Europe have relied extensively on one another for logistical support. Therefore, one of the keys to effective counterterrorism investigations in Europe is cooperation in the form of open communication and sharing of information in a timely manner by

counterterrorist forces. Substantial progress has been made in this area through the development of personal relationships between members of the security services of different nations. Yet efforts of law enforcement and judicial personnel may well continue to be hampered when their investigations run counter to the government's political and diplomatic objectives. Political unity may be a necessary precursor to a genuine joint counterterrorism strategy, the absence of which is a serious disadvantage in the European struggle against terrorist violence.

This thesis explores the question of why there is no effective counterterrorism policy both at the national and inter-state level. It will begin with a review of the impact of irredentist, ideological, and transnational terrorism in Europe for the past two decades and the associated government response in the form of new legislation and changes to the security services. It will take a more detailed look at the experiences of France and Italy to see how the political responses to terrorism affected their ability to counter the threat and to cooperate with the counterterrorism efforts of other EU nations. It will conclude with an examination of the status of police and judicial cooperation in Europe by looking at the EU and international agreements created for that purpose.

Prior to embarking on this subject, it may be necessary to define the term "terrorism". "Terrorism", as it is used

here, is defined as the use of violence to promote fear within the civilian community so that public opinion may exert its influence within the democratic process to effect a policy change by legitimate government representatives. Such a wide definition often raises more questions than it answers. For example, what are the differences between a terrorist, a revolutionary, and the leader of an organized crime network, as they all employ terror to achieve political objectives? Certain qualifiers may be applied to make these distinctions. In contrast to organized criminals whose ultimate goal is to obtain wealth and power, terrorists do not benefit directly from their activities, but rather see their actions as a personal sacrifice in pursuit of higher objectives for the greater good of their community. The use of terror in itself does not constitute terrorism. It must be applied for the purpose of achieving a policy change by a legitimate government. Revolutionary groups throughout the world may or may not be classified as terrorists, depending on their objectives, targeting, and whether the government in power may be considered legitimate. Such judgements would have to be made on a case by case basis. It will suffice here to say however, that indigenous European terrorists fit the definition well, and transnational terrorists attempt to bring about a policy change outside diplomatic channels without regard for international law by using violence against civilians with the same effect.



## CHAPTER I

### TERRORISM IN WESTERN EUROPE

#### Irredentist, Ideological, and Transnational Terrorists since 1968

Terrorism in Europe tends to fall into three basic categories: irredentist, ideological, and transnational. In the first category are those groups struggling for autonomy from a sovereign state and/or attempting to become a part of another state. Ideologically motivated terrorists seek to bring about fundamental changes in government policy in favor of a more conservative or radical philosophy. Transnational terrorists often use Europe as a stage to carry out attacks related to conflicts elsewhere, or may attempt to influence a European nation's foreign policy through its target selection.

Although there are many autonomous movements in Europe (four in France alone), only two have a terrorist element worthy of consideration given their effect on internal

politics and international relations. These include Euzkadi Ta Askatasuna (Basque Homeland and Freedom), or ETA, and the Irish Republican Army, or the IRA. These two separatist groups have a long history of violence behind them. (Although Corsican terrorists belonging to the FLNC and ALNC cause a great deal of property damage, their impact outside of Corsica is slight.)

The Basque land is made up of four Spanish provinces and three French provinces around the Pyrenees mountains where France and Spain meet. Their culture dates back before the Celts. In fact it is believed that the Basques have been in Europe for over twenty thousand years, enduring conquests by the Romans, Visigoths, and Islamic warriors. The Basque language, Euzkera, is unique and is still in use today despite outside attempts to wipe it out. In order to protect Basque culture and promote solidarity, the Basque Nationalist Party (PNV) was established in 1895. After the Spanish Civil War, however, the PNV was persecuted by the Franco regime which tried to repress the use of the Basque language. ETA was born of a student group in the 1950s which was searching for a way to resist the policies of Franco's government. The ETA was divided into political and secret armed factions and the terrorist violence began in 1968 with attacks on Spanish police and later government officials. After Franco's departure, ETA stayed on its course insisting that peaceful change was impossible. In fact, they widened the scope of

their attacks and included tourist facilities and commercial centers as targets. While the PNV accepted the new constitution of 1978 granting the Basques greater political autonomy, ETA has refused to consider anything other than complete independence.

The conflict over British control of Ireland began in the twelfth century when the Anglo-Normans began flowing into the Gaelic island. Henry II conquered the island in 1171 after having been awarded a grant by Pope Adrian V to rule Ireland. After Henry VIII broke with the Catholic Church, Protestant settlers arrived in large numbers. English rule was oppressive for the Catholics who were not able to vote, receive an education, or own land until the late 19th Century. Five years of terrorist struggle resulted in the Anglo-Irish treaty of 1921 which established the Irish Free State in the south and maintained six counties in the northeast under British rule. The population of British-ruled Northern Ireland was one third Catholic, and Catholics continued to suffer from discrimination. In the years following the treaty, the IRA led a civil war in rejection of the terms of the partition and was defeated by the Free State Army. They then changed their strategy and targeted the British themselves, conducting the "Bombs for Britain" campaign in the late thirties. In the 1950s, the IRA began another terror campaign, this time directed at the border, targeting British military and Customs personnel. Many of the perpetrators were

eventually arrested, but the violence started all over again in 1969, when Catholics and members of NICRA (Northern Ireland Civil Rights Association) were victims of Protestant paramilitary attacks. Throughout the seventies, the Catholic and Protestant communities became more polarized as attacks between armed representatives of the two groups (now Provisional IRA and Protestant paramilitary groups such as the Ulster Volunteer Force) became more frequent. The IRA conducted a series of bombings and assassinations in both Ireland and Great Britain in the eighties and continue their armed struggle today. These terrorists are conscious of their long history of oppression by the British and believe that there can be no peace without reunification of Ireland, complete withdrawal of British interests, and release of all political prisoners. They apparently believe that violence is the only tool available to them in pursuit of these goals.

The historical basis for such left-wing ideological terrorist groups such as the Red Army Faction (RAF) in Germany, Red Brigades (BR) in Italy, and Direct Action (AD) in France, is not as extensive. These groups aspire to bring about revolutionary change in social organization, relying in varying degrees on communist, socialist, and/or anarchist teachings. These groups were the radical offshoots of the student protest movements of the late sixties, and, while much less active, continue their armed struggle today. They are anti-capitalist, and thereby anti-American as the U.S. is

considered the capitalist giant, anti-NATO (as it is U.S. led and uses nuclear weapons), anti-consumerism, and anti-Establishment. As a result, they have generally targeted political figures, police, military, and large department stores. In their destruction of the traditional authoritarian social structure, they hope to bring about a society ruled by the masses. What is interesting to note is that the leadership and membership of ideological terrorist groups does not for the most part consist of people who have been "victims" of the capitalist system, in that they have suffered from poverty or injustice. Many come from apparently stable middle class backgrounds. The famous mercenary terrorist, Carlos, came from a very well-to-do family, albeit with theoretical communist sympathies. Biographers who have studied the psychological motivations of terrorist leaders such as Ulrike Meinhof (RAF) and Renato Curcio (BR) suggest that their motivations to commit violent acts in support of their ideology is the result of narcissistic injury or disappointment early in life.<sup>1</sup> In other words, it is highly possible that these types of ideological terrorists do not really expect that their efforts will produce a change in their society. The sense of power and control that violence and media attention gives them may be sufficient. Perhaps the same satisfaction is what motivates their counterparts on the extreme right. Right-wing terrorists feed the xenophobic fears of their countrymen and use violence to destabilize the

state, encouraging the adoption strong reactionary policies. Right-wing terrorists have been especially active in Italy and are gaining momentum in Germany.

Transnational terrorists present a complicated problem for Europeans. Not only are Europeans themselves targeted by alien terrorists, but they are frequently the victims during a "settlement of accounts" between two groups of alien terrorists. Those groups with the greatest impact include the Armenians, Shi'ite radicals, and various splinter groups of the Palestine Liberation Organization (PLO), such as Abu Nidal, PFLP (Popular Front for the Liberation of Palestine), and PFLP-GC (General Command). The Japanese Red Army, JRA, joined forces with PFLP after fleeing Japan.

One of the most prolific sources of terrorist action are groups that support the Palestinian cause. The frustration and anger felt by the Palestinians is reflected in *The Disinherited, Journal of a Palestinian Exile*:

When we looked around us we could see either the desert to shed our tears in or the whole world to hit back at. Having nothing and with nothing to lose, we proceeded to do the latter.<sup>2</sup>

The conflict between Palestinians and Israelis began in 1400 B.C. when the Philistines and Hebrews fought over the land of Canaan. The Jewish diaspora began in 70 AD when the Romans destroyed the Jewish temple in Jerusalem. At the turn of the twentieth century the Zionist movement, encouraged by Theodore

Herzl's *The Jewish State* and the Balfour Declaration announcing British support for a Jewish homeland in Palestine, began massive immigration back into Palestine after 1945. When the British relinquished control of the area and Israel was established as a Jewish state, not only was Israel attacked by its Arab neighbors, but the violence between Jews and Palestinians increased. When Israel enlarged its territory with the Six-Day War, the Palestinians lost hope in the support of their Arab neighbors and relied on terrorist action to further their aims. FATAH, or Palestine Liberation Movement, began attacks in 1965 inside Israel, but due to the efforts of the Israeli Defense Force and the restricted access to Israel proper, attacks were more successfully carried out against Israeli interests outside their borders and directed also at those who supported Israel. Sensational attacks in the seventies and eighties brought worldwide attention to the Palestinian cause.

Islamic fundamentalism, led by the Shi'ites in Iran, provides another prolific source of foreign terrorists in Europe. Iran has organized, trained, and funded Islamic Jihad (responsible for 1983 suicide bombings of U.S. Marine barracks) and Hezbollah (1985 TWA 847 hijacking). Iran, since 1979, is governed by its religious leaders who support the muslim teaching that all followers of Islam are obligated to wage war to defend their faith.

Armenian nationalists, especially ASALA (Armenian Secret

Army for the Liberation of Armenia), have conducted many deadly attacks throughout Europe. Armenians, like the Palestinians, assert that they have been driven out of their homeland. There is an Armenian Republic in the former Soviet Union but it is not recognized as the Armenian homeland and most Armenians are expatriate. Armenians call part of eastern Turkey their rightful homeland and allegedly have suffered mass executions at the hands of the Turks in 1894-1896, 1909, and 1915-1916. The Turkish government denies having sanctioned genocide while Armenian terrorists try to keep the memory of what they refer to as the Armenian holocaust alive. Verification of the atrocities suffered by the Armenians had been provided by the French and U.S. governments, yet the victors of WWI failed to fulfill their commitment to the creation of an independent Armenia as laid out in the Treaty of Sevres. Evidence supplied by the Turkish government has since suggested that the number of Armenians killed was far less than that claimed by ASALA and that much of the loss of life was related to the Armenians collaboration with the Russian Army during World War I. Nonetheless, ASALA continues to demand an independent state to preserve Armenian culture and carry out attacks in order to publicize Turkish aggression, obtain revenge, and secure international attention to the Armenians' plight.



## The Response of West European Governments

What has been the impact of terrorism in Europe over the past two decades? In terms of the number of deaths and the cost of property damage, the impact has not been great. When compared to the cost of traffic accidents for example, the loss due to terrorism seems minuscule. But the real impact of terrorism cannot be shown on a chart. It is the effect on internal public policy and foreign relations which must be measured. Some say that terrorism replaces conventional warfare and others say it is a weak country's diplomacy. In either case, terrorists have succeeded to a certain degree. They have claimed enemy lives, taken hostages, and have played a part in the internal politics and foreign relations of European countries.

One of the reasons why terrorists have successfully carried out a large number of attacks in Europe is that when a democratic nation is faced with an upsurge of terrorist activity, it must struggle with the fundamental debate between increased police powers of the state and maintenance of individual freedoms while engaged in a war with terrorists who, in contemporary democratic society, seem to have the odds

in their favor. Needless to say, the average constituent would sooner condemn an incumbent politician for a weak reaction to terrorist events than to support his commitment to minimal state interference in the lives of individuals. The opposite would be true in the event of any preemptive limitations to individual liberties when the danger is not known to the general public. This situation demands elaborate political maneuvering in itself without taking into account the pitfalls encountered when secrecy is required.

The role of the media in democratic society may be considered a great benefit to terrorists, keeping in mind that influencing public opinion and spreading fear are among the their primary objectives. Terrorists have learned to exploit media resources to further their cause. They know that competition between news agencies and sensationalism are what motivates journalists and this works to the terrorists' advantage. The Black September (PLO splinter group) attack at the 1972 Munich Olympic Games sparked global awareness of the Palestinian cause through an unprecedented television audience of an estimated 800 million people, many of whom perhaps were not acquainted with the issue beforehand.

This leads to yet another fundamental debate. How much control should the government exert over the media in the interest of reducing the terrorist threat? In the interest of public safety, may reporting on terrorism be limited in order to discourage terrorist action- the risks involved in

conducting an attack then becoming too great in return for little or no media attention? Or will freedom of the press and the public's right to know prevail at all costs?

For the most part, western governments have not attempted to impose controls on the press. However, there have been certain notable exceptions. The West German government has enforced news blackouts on several occasions in order to limit the impact of terrorist actions and reduce the pressure on government leaders in their choice of responses.<sup>3</sup> Apparently West German journalists comply willingly with the government's demands for a news blackout. Terrorism became a serious problem in Germany, first at the Munich Games, then through the increased attacks by the RAF, including the abductions of West Berlin Christian Democratic Party leader Peter Lorenz in 1974, and industrialist Hans Martin Schleyer in 1977. It was the Schleyer kidnap which initiated government-media cooperation. The government's objective was to deny the RAF any form of publicity and to control and coordinate any press releases that did go out. The media and the public accepted this strategy. While Schleyer was in captivity, the RAF had sent out over 100 communiques, almost none of which were published. In addition, the government released through the media false reports of negotiations for the release of terrorists whose freedom was demanded in return for Schleyer's life. This went on for nearly two months and Schleyer died in captivity, yet there were no negative repercussions regarding

the news blackout. Another news blackout occurred in 1986 when German hostages were taken in Beirut in expectation of an eventual exchange for Lebanese terrorists captured in Germany and facing extradition to the U.S. for a 1985 hijacking. The blackout enabled the German government to negotiate privately and without political pressures created by public opinion. Although such cooperation between the media and the government may make American journalists uneasy (the U.S. government has not imposed direct censorship on the media except in wartime, but it has exercised successful manipulation of the press), the German people have accepted this arrangement as in the best interest of all concerned.

The United Kingdom has also used blackouts since political violence in Northern Ireland escalated in the late sixties and early seventies.<sup>4</sup> Since the major television and radio producer in the U.K. (BBC) is government funded, the government may exert some influence over the broadcasts. As a result, BBC journalists must clear their stories through several levels of editors and bureaucrats before a story can be aired. Often stories never make it to broadcast or are heavily edited. BBC journalists must adhere to a written set of guidelines that include the interdiction of IRA interviews without prior approval. But BBC journalists have not always accepted censorship of their programs as in 1985 when they staged a worldwide 24 hour strike to protest the network's refusal to air a documentary on the current situation in

Northern Ireland because the Catholic spokesperson in the documentary was alleged to be a member of the IRA. The network and its journalists eventually reached a compromise by airing an edited version of the program. There have been other programs produced which have been banned or edited by the BBC. Authorities overseeing independent stations have also been pressured by government and law enforcement officials to abstain from publicizing terrorism or criticizing the government response. British journalists believe that censorship on stories related to the troubles in Northern Ireland has had a negative impact on their credibility and the public's access to information. Therefore, they believe that the public does not understand the violence in Northern Ireland and does not trust the press reporting in that area.<sup>5</sup>

The dilemma of whether or not to exert government control over the media is one that must be resolved according to the particular needs and values of each European nation, its relationship to the terrorist threat, and the willingness of its citizens to accept the government's reaction to terrorist manipulation of the media. Some strong arguments can be made against censorship. For example, when the public loses its right to free access to information, it loses its ability to govern. Also, censorship may mask the government's lack of resolve to effectively handle the problem of terrorism by simply treating the symptoms of fear inspired by the publication of information on terrorist action. Further, if

the terrorist aims for public attention, he will be forced to commit acts on a much greater scale to insure public knowledge of the event. However, there have been past incidents where press interference have had a dangerous impact on anti-terrorist operations. For example, when a British Airways jet was hijacked in November 1974 to secure the release of fellow terrorists in an Egyptian prison, a journalist reported that a plane supposedly carrying the released prisoners to the pre-arranged meeting point was actually empty. Upon learning that the operation was a ruse, the terrorists executed one of their hostages. There have also been occasions where journalists have communicated directly with hostage-takers in the midst of an operation, thus endangering the success of trained hostage negotiators. In the U.S., professional guidelines have been set in order to avoid manipulation of the press by terrorists, such as denying live video coverage for terrorists, non-interference in the police response, and balanced coverage. Of course, the possibility of censorship cannot be completely ruled out in the U.S. either, considering the political interests of powerful network executives. An interview of Anis Naccache (attempted the assassination of Chapour Bakhtiar in 1980 in Paris and was pardoned in 1990 by Mitterand) in Teheran by French journalists revealed that American journalists may have done a story on him earlier which had never appeared in the U.S. press.<sup>6</sup>

One way to evaluate the impact of terrorism in Europe is

to look at the counterterrorism related legislation which has been passed during the last two decades and its implications for the effectiveness of the government's security agencies as well as its impact on the lives of ordinary citizens. The number of legislative changes has been significant and there have been marked similarities in counterterrorist legislation passed in most West European countries. With some exceptions, the overall impact of these changes on individual liberties appears to have been moderate.

Beginning in the 1970s, West European governments launched an offensive in the war against terrorism. A considerable number of changes passed through the legislatures that increased the police powers of the state and increased the penalties for terrorist related crimes. For offenses where terrorism was considered an aggravating factor in the act of committing another crime, sentences were as much as doubled. A very useful tool which was used in nearly all countries was the opportunity for convicted offenders to turn state's evidence in exchange for a lighter sentence. This led directly to the successful prosecution of long sought after terrorists especially in Italy, Germany, and Spain. The use of "supergrasses" or IRA informants had already been in use since leniency for turning Queen's evidence had long since been legal in the UK. However, many convictions based on the Supergrasses were overturned because their self-serving testimony was not considered sufficient evidence.<sup>7</sup> This

method was widely used in Italy (referred to as *pentitismo*) aiding in the conviction of 4,000 people between 1979 and 1982.<sup>8</sup> There has been strong criticism of *pentitismo* in Italy because those who committed the most serious crimes received light sentences because, being higher up in the organization, they had more information to offer police. Often the low level members who had little information to offer, but had committed less serious crimes, received harsher sentences.

Police powers were extended substantially in most West European countries, making it easier to arrest and detain suspects. Arrests could be made on suspicion only, without a warrant, then police could hold a suspect for two to seven days without any formal charge. Spanish police could hold suspects for up to ten days without a charge in 1984, but it was reduced to three (or five with a magistrate's approval) in 1987 after much criticism about human rights violations. In 1985, out of 1,181 people detained, only 765 were charged, and 69 convicted and sentenced.<sup>9</sup> Great Britain has been criticized by the United Nations on elements of the 1974 Prevention of Terrorism Act still in effect which allows police to hold suspects of terrorist related offenses for up to seven days without a specific charge.<sup>10</sup> The British defend this practice by saying that the length of time is necessary to allow for travel to Northern Ireland to collect evidence. The power of police to search entire blocks of homes to look for a suspect was an emergency measure that went into practice



in Italy and Germany. In Italy this could be carried out without the authority of a magistrate. German police were also accorded the right to set up roadblocks and detain anyone whose identity could not be positively established. They may also collect evidence at roadblocks (including body fluids for the DNA molecule and the data obtained may be stored in the central police surveillance data bank at Wiesbaden (BEFA or *Beobachtende Fahndung*). However, this system is strictly controlled in that it can only be undertaken with the approval of a judge (or prosecutor if a judge is unavailable) and personal information must be deleted from the computer after three months.

Trial without jury for terrorism related criminal offenses was begun in Great Britain and France after proceedings had often been disrupted and jury members intimidated or even directly threatened. On one hand, trial by judge alone improved the chances of a fair trial by speeding up the adjudication process and encouraging a verdict based on the evidence and untainted by fear. On the other hand, the considerations of fairness through a trial by one's peers was sacrificed. Italy continued to have jury trials for terrorists but it was necessary to impose restrictions on juries to limit the high number of jurors who excused themselves for "health reasons".

Important changes took place within the security services as well. The need for increased cooperation between services,

as opposed to competition and noncommunication, was recognized. The systems were restructured so that lines of responsibility were more clearly delineated and the heads of government normally had a coordinating committee to facilitate sharing of important information. While in Great Britain there was little need for such restructuring, France and Italy were especially in need of it. These changes did not solve all problems of noncooperation and interservice rivalry, but they were a start in recognizing and implementing some of the steps necessary for an effective counterterrorism program. Police powers had already been extended to the limits of what some considered reasonable in a democratic society, and it was understood that improving the effectiveness of the security services would reap greater benefits than increasing police powers even further. Improved and well controlled methods of intelligence collection, retention, and dissemination coupled with competent police work was a sensible and appealing solution to most policy makers. Another useful measure was the institution of anti-terrorist commando units, specially selected and trained in anti-terrorist action such as the German GSG9, the British SAS, and the French RAID.

Before going on to a more extensive look at counterterrorism in France and Italy, and interstate cooperation in Europe, let us consider why terrorism has had such an impact during the seventies and eighties. Recent advances in communication and transportation have facilitated

terrorist action in that terrorists may communicate instantly among themselves or with the outside world. International travel in Europe is now commonplace and within the financial reach of most people. Technology in weapons and explosive devices is easily accessible through a worldwide network of suppliers. In other words, one of the reasons why terrorists have carried out more attacks in the last two decades is because they were better able to do so. Immigration into Europe during the 20th century has also played a part in the escalation of terrorism, creating an underclass that suffers from discrimination and poverty resulting from an unwillingness or incapacity to be assimilated fully into European society. The lower classes of the 20th century are distinct from their predecessors in that they have greater access to information and an awareness of their political power in democratic society. This underprivileged class may serve as a recruiting ground, or at least a source of logistical support for terrorist groups. The many immigrants and their offspring who may have been well assimilated into European society may still have sympathies for their previous homeland and this translates into political power in deciding government policies towards those states and their revolutionaries. Another factor which is often blamed for the general escalation of violence in Europe, terrorism included, is the impact of radical social change in the 20th century on social relationships. This is an area which has merited a

great deal of examination in itself and there is little doubt that the conclusions may be germane to the study of terrorist violence as well.

## CHAPTER II

### FRANCE

As France entered the decade of the nineties, it appeared as if the violence and scandal associated with terrorism were a problem of the past. Even during the Gulf War there was surprisingly little terrorist activity in France, despite the presence of what was believed to be a considerable number of Iraqi sympathizers. Yet two events brought the frustration and horror of terrorism swiftly back into the hearts and minds of French citizens and leaders alike. On 6 August 1991, Chapour Bakhtiar, former Iranian Prime Minister under the Shah, was brutally murdered in his suburban Paris home by Iranian terrorists. After twelve years in exile under tight French security, no one anticipated that this mild-mannered intellectual septuagenarian, educated in France and veteran of the French Resistance, would still be a worthwhile target for such a dangerous operation by Iranian Islamic extremists, especially at a time when Iran appeared to seek improved diplomatic relations with the West. Initially, most people

were shocked at the senselessness and ruthlessness of the crime and later, those who followed the story were surprised at the investigative complications resulting from interstate police cooperation and diplomatic concerns.

Six months later, a prominent terrorist hijacker from the late sixties and seventies reappeared in France, creating a new political crisis related to France's sanctuary doctrine and suspected negotiations with terrorists. Georges Habache, former PFLP leader, was transported into France for emergency medical treatment that was not available where he was struck ill in Tunisia. Such an operation would require approval from the highest levels of French government for visa requirements and police protection, not to mention the political ramifications for such an event. Yet, when the arrival of the well known terrorist was leaked to the press, presumably by the political opposition on the right,<sup>11</sup> the President, Interior Minister, and Foreign Minister denied any knowledge of the operation and passed all blame on to the Red Cross Director and lower level public servants in the Interior and Foreign Ministry. Although the act of providing humanitarian assistance to an aging PLO leader who had long since denounced violence in his efforts to promote the Palestinian cause should not be a surprising one by French Socialists (and has been done before with more discretion<sup>12</sup>), the leak was nevertheless a great coup for the right, which severely diminished the credibility of the Socialist government. Both

Habache's entry into France and Bakhtiar's assassination were terrorism related events that cost no French lives nor property damage. Yet their occurrence is a recent reminder that terrorism has far-reaching effects on the political life of France.

According to Phillip Cerny, author of Social Movements and Protest in France, the French have adhered to a tradition of offering refuge to those who claim to be the victims of political persecution. Cerny's view of French culture may provide some insight into France's unique response to terrorism. He believes that political freedom and the preservation of individual liberty has remained one of France's highest societal values in and of itself, not simply as a means to facilitate liberal economic practices, as is perceived to be the driving force in some other capitalist systems. Further, Frenchmen are more apt to judge terrorists by their aims rather than categorically reject all terrorist methods and that for two reasons. First, French culture prizes critical intellectualism which discourages them from jumping on the bandwagon of popular opinion or being swayed by emotionally charged issues. Second, terrorism loses some of its pejorative power due to the French historical experiences with state terror associated with the revolutionary period. Further, the French may not have perceived any threat due to their limited experience with authoritarian regimes and the absence in recent French history of large scale political

violence due to the pluralistic nature of the political system which provides more than adequate opportunities for self-expression.<sup>13</sup>

Counterterrorism policy normally follows one of two strategies. Either the government pursues political overtures and communication with terrorist groups or it takes a law and order stance for the sake of public security. Yet one position may be embraced publicly and the other secretly, or both may be pursued to the extent possible. It appears that France has adhered primarily to the former, following what is often referred to as the "sanctuary doctrine" in its dealings with international terrorism.<sup>14</sup> The objective of the sanctuary doctrine is for France to maintain neutrality in terrorism matters in order to isolate itself from the effects of international terrorism. Due to the political fallout associated with the act or intention of negotiating with terrorists, this doctrine obviously implies that the political authorities conduct their negotiations in secrecy. While some western countries, notably the US, claim to adhere to an unbending refusal to negotiate with terrorists (or at least try very hard to conceal their efforts), France has discreetly hosted members of terrorist organizations in return for protection against attacks on French citizens. Needless to say, the sanctuary doctrine does not allow for full French participation in international cooperation against terrorism.

While the French are adamantly opposed to state



limitations on individual liberties, there have been necessarily some safeguards in place to protect the security of the state. Article 36 of the Constitution allows the government to take over police powers through the army when under a "state of siege". The government can also ban demonstrations and since 1936 can outlaw the existence of organizations that threaten the security of the state. Both measures are ineffective since groups will organize and demonstrate anyway, be it illegally or under a different name. In 1963 the State Security Court was established to deal with terrorist actions associated with the conflict in Algeria and it held the power to detain prisoners for longer periods of time than a criminal court prior to a hearing and for unlimited time afterwards. Also, police powers were extended if a suspect was caught in *flagrant delit*.

Beginning with the Socialist government of President Mitterrand, as well as the benefit of a calming of political violence during the preceding years, some policies were instituted that may have been detrimental to the fight against terrorism. In 1981, capital punishment was abolished along with the State Security Court. More importantly, Mitterrand granted amnesty to hundreds of jailed prisoners which released many convicted terrorists and encouraged others to undertake violent methods to secure the release of fellow terrorists who had not been pardoned. Furthermore, Mitterrand reiterated France's traditional policy of offering political asylum to

refugees and blocked demands for extradition of politically motivated criminals to the proper jurisdictions. By late 1982 however, the tolerant attitude of the Socialist government was highly criticized by the French people due to a number of foreign terrorist attacks occurring on their soil and their neighbors' criticism of France as a safe haven for criminals. This compelled the Socialists to institute new measures including the appointment of a Secretary of State for Public Security, establishment of a centralized terrorist data bank, stricter laws on weapons sales, and reinforcement of police services.

The crucial events that sparked a government response was the escalation of terrorist incidents that occurred in Paris during the 1980s and reached its height in 1986. Nearly 100 people were killed during this time frame as a result of foreign and indigenous terrorist operations. Although most of the victims were foreigners targeted by Arab and Middle Eastern terrorist groups, many French were also unintended victims. In addition, a new indigenous terrorist group, Direct Action (Action Directe (AD)), had become active and was responsible for the deaths of many innocent bystanders in bombings of public places. The leaders of AD had been imprisoned in 1980 following an armed confrontation with police but had been released by Mitterrand's amnesty program in 1981 for political prisoners. AD consisted of approximately 70 regular members who shared an antipathy for

U.S. and French based capitalist-imperialist domination (and their use of computers as a tool for control) and supported the Palestinians and Iranian-sponsored factions in Lebanon. AD joined with the German Red Army Faction (RAF) and declared war on NATO through assassinations of military leaders and industrialists. By 1988, after nearly a decade of successful terrorist operations that had included bombings of public places that killed dozens of civilians in 1985-86, the most prominent and active AD members were arrested.

The other most significant terrorist incidents that occurred in France were the 1986 bombings carried out by North Africans from former French colonies and sponsored by Iran. The bombings were claimed by the Committee for Solidarity with Arab and Middle Eastern Prisoners (CSPPA) which was seeking the release of Georges Abdallah, a Lebanese terrorist serving time in a French prison. CSPPA set off six bombs in ten days in crowded public areas in Paris killing ten people and wounding 170.

The outbreak of terrorist violence forced the French government to act. Then Prime Minister Jacques Chirac of the Gaullist Party introduced new anti-terrorist legislation that resulted in Law 86-1020 of 9 September 1986. This law specified trial without jury for certain offenses under special circumstances. These offenses were all crimes against the person including property crimes which may have posed a danger to persons due to their close proximity, as well as any

evidence indicating intent to commit such an offense. The special circumstances which applied were those acts intended to disturb public order through intimidation or terror. As a result, terrorism-related cases could be tried with a panel of professional judges, rather than juries who were subject to intimidation, as had occurred during the well-publicized trial of AD member Regis Schleicher, accused of the murder of two policemen. Schleicher had threatened the jury with AD reprisals, causing five members to excuse themselves from the proceedings. Provisions were also made in the new law to allow for terrorists to renounce their past activities and turn state's evidence in return for reduced sentences (pentiti legislation). Parliament later passed an amendment to make the laws retroactive, allowing a new trial for Schleicher and a new tool for investigators.

The powers of the police were also expanded. Citizens were required to produce identification on demand to police at any time. Police could act at their own discretion and did not have to show reasonable cause. Noncooperation by citizens could lead to detention and fingerprinting, or even a fine or imprisonment. Pursuant to any suspected criminal action, the police had greater discretion to detain any possible witnesses and take persons into custody if only to establish their identity.

More effective controls were placed on the movement of foreigners. Visas were required of all visitors to France,

except those from Switzerland and EC countries. Known Spanish Basque Separatists were expelled from France. The Minister of the Interior was given the authority to expel any foreigners from France without having to go through the usual lengthy extradition process.

One of the most effective measures taken was the formation of UCLAT (Unite de la Coordination de la Lutte Anti-Terroriste or Anti-Terrorism Coordination Unit) in 1984 and continues to be an active and useful entity today. Political leaders, conscious of the effects of interservice rivalries and the independent functioning of each security service, created UCLAT to bring together the heads of all the services including the Police Judiciaire (Criminal Investigators), Renseignements Generaux (see note 20), Police de l'Air et Frontieres (Customs Police), Direction de la Surveillance de la Territoire or DST (internal intelligence agency under the Interior Ministry), Direction Generale de la Surveillance Extérieur or DGSE (external intelligence agency under the Defense Ministry), RAID (Recherche, Assistance, Intervention, et Dissuasion, the anti-terrorist commando force), Gendarmerie, and representatives of the Defense Ministry. Other security services provide input to UCLAT but are not full members, such as CRS (Compagnies Republicaines de la Securite or riot police), VO (Voyages Officiels or French Secret Service but limited to the personal protection mission), DPSD (Direction de la Protection et la Securite de

la Defense or internal military intelligence service), and others. UCLAT was very successful in meeting its objectives of creating an operational means of interservice coordination, enabling the fulfillment of a political strategy to fight terrorism, and facilitating the continuity of the counterterrorism program.<sup>15</sup>

Recognizing that terrorist groups from different countries often share not only ideology but safe-houses, intelligence, and arms sources as well, the French government realized the usefulness of information exchange and cooperation between the security services at the international level. In April 1987, the French government signed bilateral agreements with the German government to institutionalize and encourage the exchange between the security and intelligence services of the two countries. While some progress had been made earlier with the institution of the TREVI group (French acronym for International Terrorism, Radicalism, Extremism, and Violence) in 1976 at the EC ministerial level, direct bilateral personal interaction by representatives of the police agencies of the two countries was more effective at the operational level. Fragmentation of the European intelligence network had been a strong advantage for international terrorists. Intelligence obtained through Franco-German cooperation in combination with the new pentiti legislation played an important part in the elimination of AD and CSPPA.<sup>16</sup> The Germans played an important role in helping to resolve

many French cases through the development of the vast criminal computer system (BEFA), which was a useful source of information in anti-terrorism cases for their allies. For example, in 1982, the French unknowingly arrested two important RAF terrorists. Four days later the instructing magistrate (in France and Italy a criminal investigation is undertaken from the start by the direction of a lawyer for the government who will prepare the case for a prosecutor) was surprised to learn not only the importance of his prisoners in the terrorist hierarchy, but that the information was to come from the BKA (Bundeskriminalant), the German federal criminal investigators and not the French service.<sup>17</sup>

Despite the presence of known terrorists in France, criminal investigators relied directly on their foreign counterparts rather than other French agencies, such was the relationship between French intelligence services, law enforcement, the judiciary, and government.<sup>18</sup> The DST and the DGSE maintained strict control of all the terrorist related information that they obtained through clandestine sources and extensive surveillance operations to the point where the information was not effectively put to use.<sup>19</sup> This created a hostile environment in the law enforcement and intelligence community where each service operated independently and jealously guarded the fruits of their efforts. In the anti-terrorist arena, each service, Police Judiciaire, Renseignements Generaux <sup>20</sup>, Gendarmerie, and DST had their own

anti-terrorist branch which operated independently of the others. This is a disastrous state of affairs for any counterterrorism program. Perhaps as a result of this interservice rivalry, and its effects on judicial cases and the government's counterterrorism policy, Mitterrand created the antiterrorism Elysee cell, so named because it was made up of advisors who represent the different services' anti-terrorism programs who reported to the president's anti-terrorism advisor, a Gendarme. The fact that a Gendarme was chosen as the cell's leader was significant in itself because the other services saw the Defense Ministry as taking the lead in terrorism affairs. This proved to be an even greater disaster since these advisors, rather than combining the forces from their respective agencies, vied for the confidence of those closest to the president and attempted to show that their agency was superior in the increasingly important fight against terrorism. Moreover, the members of the Elysee cell, since they were supposed to be a high level cooperative mechanism between the agencies, were not trusted by their counterparts at their home agency, who neglected to provide their full cooperation. When one of the cell members went to DST office to seek out information, the DST responded by contacting a commissaire in the cell to insist that he stop sending "spies" to his agency.<sup>21</sup> The well publicized story of Gendarme Captain Barril and the Vincennes Irish was an example of the overzealousness of that agency to demonstrate their



capabilities in anti-terrorism and this event brought the downfall of the Elysee cell.<sup>22</sup>

Those in the Justice Ministry charged with directing the investigations of terrorist incidents in France found themselves caught between the will of the politicians above them and the inefficiencies of the security network below them. These instructional magistrates, as they are called in the French judicial system, are managed by the General Prosecutors for the Parquet de Paris, which in turn is responsible to the Justice Minister, a political appointee. If an investigation is considered too risky in terms of possible terrorist reprisals or may lead to the discovery of unfavorable information on past government policy or party officials, it can be slowed down or stopped altogether, which was occasionally the case. The police who actually carried out the investigations did not have immediate access to all relevant information available due to the noncooperation between security services and were also prevented at times from pursuing an investigation by direction of their hierarchy which flows down from the Minister of the Interior. This led to a great deal of confusion and frustration for the instructional magistrates who were ultimately responsible for the adjudication of terrorist offenses.

Some magistrates assigned to terrorism cases have tried very hard to maintain the independence of the Judicial System with respect to the Executive, most notably Jean-Louis

Brugiere. Brugiere has been an instructional magistrate for terrorism cases for the past ten years and has thus become the expert in the Justice Ministry. His expertise has not only led to a high degree of factual knowledge relative to who's who in the terrorist network and their operational strategies, but, more importantly, how to operate as a political figure and a media personality. He realized that in order to succeed in his position he had to know what the government knows, or what the DST and DGSE tells it, in addition to the implications of the secret negotiations conducted by the Foreign Ministry. Once he became well known and respected for his persistence and integrity as a magistrate, it became harder for the government to exert any influence on the way he pursued his investigations because of his direct contact with members of the security services, foreign representatives, and journalists. Brugiere knows how to manipulate the media so as to draw direct public support in his role as the aggressive magistrate trying to bring terrorists to justice. His approach to the families of the victims of the UTA airline bombing, whether out of sympathy for the living victims of the tragedy or as a media opportunity, was an extremely effective and an original one. He prepared a video to be distributed to all the families in which the terrorist action and the ensuing investigation was explained in detail.<sup>23</sup> In this way, the families did not feel abandoned and Brugiere's valiant efforts (he was the star of the film) were brought to light. (The

film also made its way somehow to a major television network.) This can be compared to the Americans' handling of Pan AM 103, which occurred at about the same time and was believed to have been perpetrated by the same authors. The families of the Pan Am victims had to fight aggressively to get information on what happened and what was being done about it.<sup>24</sup> Brugiere was a pioneer in direct interstate judicial cooperation, travelling personally to many countries in order to improve the type and amount of intelligence and cooperation needed for his investigations. In the past, all requests for judicial assistance had to pass through the lengthy official process by way of the Ministry of Foreign Affairs. He is accused of "judicial tourism" by his detractors since not every trip will yield immediate tangible results. But such personal contacts overseas have resulted in some important information sharing. For example, after having travelled to Turkey, valuable information regarding Bakhtiar's Iranian assassins was obtained from Turkish authorities who initially were very reluctant to participate in any form of incrimination of Iranian terrorists.<sup>25</sup>

Due to the large Maghreb population in France which grew as a result of the influx of guest workers during the 1960s, it appears as if the French government were wary to avoid promoting negative sentiments through their dealings with Muslim extremists. Not only is there a political price to be paid in terms of votes by the recently enfranchised citizens

of North African and Middle Eastern descent, but there may likely be clandestine agreements between the government and leaders of terrorist groups to control the level of violence that could affect French interests. Although this idea invokes the ire of many citizens, this may be considered necessary to state security.

With the passage of time, more information has been extracted from past participants in the exercise of secret negotiation. The French refer to such negotiation as "active" diplomacy (diplomatie active), as opposed to "official" diplomacy. An arrangement reached with Abou Nidal (leader of one of the most violent pro-Palestinian splinter groups, Al-Fatah-RC, responsible for the "Black June" operations where moderate PLO representatives were assassinated in many countries) in 1982-83 is an illustration of active diplomacy where, through an emissary controlled by the DGSE, an agreement was made where no attacks were to have been carried out on French soil.<sup>26</sup> Nidal was based in Iraq at the time and this alternative diplomacy had to pass through Hussein's government first. There was no question of the affair being brought up through official diplomatic channels for the negative effect it would have had on Franco-Iraqi relations, especially if knowledge of the affair were to become public. The DGSE agent had developed personal contact with the head of the Iraqi secret service (half brother to the Iraqi President) who was able to put him into contact with his supervisor on

Hussein's cabinet. An agreement was easily reached - Abu Nidal would carry out no attacks on French soil nor against French citizens while the French would take no position on Abu Nidal operations elsewhere. One can only guess what pressure the Iraqi government was under to act as an intermediary for the agreement, be it arms sales, investments etc. The Paris based Arab journal "Al Watan Al Arabi" of 22 April 1983 provides some verification of the agreement (in addition to statements by the ex-DGSE agent and the former DGSE Director) stating that "due to very important private contacts made recently, Abu Nidal has decided to save French territory from all violent action ..."

Willingness to negotiate with terrorists was noted as early as 1974. Yukata Fuyaka, one of the leaders of the Japanese Red Army, was released from French custody after the infamous "Carlos" bombed the Publicis Drugstore in Paris killing two people. Abu Daoud, principal organizer of the attack at the Munich Olympic games, was deported from France three days after his arrest rather than turning him over to the Germans who had issued an arrest warrant, causing a diplomatic crisis with Israel in the process.<sup>27</sup>

In the 1980s it became more difficult to follow the sanctuary doctrine and conduct secret agreements because terrorist incidents increased and France itself became a target. Media reports condemning the soft treatment of terrorists by a government that claimed to be tough on

terrorism raised public awareness of the government's actions. A copy of a threat letter by Carlos to the Interior Minister demanding the release of two suspected terrorists was leaked to the media, making negotiations impossible in that instance. Carlos therefore carried out two more deadly bombing attacks.

French judges complained publicly that the judicial system was being flouted by political interventions and their judgement was forced to yield to *raison d'etat* in terrorism matters. Prosecutor Pierre Baechlin asked for a light sentence for Georges Abdallah, principal leader of FARL (Lebanese Armed Revolutionary Faction, responsible for many attacks on French soil including the assassinations of two American diplomats) so that France not be taken hostage. Before Abdallah's involvement in these attacks became public knowledge, the French government had worked out a secret agreement through Algeria to exchange a light sentence for Abdallah for a French hostage in Lebanon. When the new evidence surfaced, the French were unable to keep their original agreement, but statements made by the Interior Minister hinting at possible terrorist reprisals and the legal arguments advanced through the nature of DST's testimony indicated an attempt to reduce his sentence as much as possible.<sup>28</sup> It didn't work, though. This time the judges held their ground and passed down a stiff sentence, which was praised by the public.

The sanctuary doctrine was not abandoned however. The

French government maintained relations with the PLO. In 1982, Abu Ayal, the PLO's second in command, met with Presidential Advisor Francois de Grossouvre and Undersecretary for Law Enforcement Joseph Franceschi. He also met with former Interior Minister Pierre Joxe in 1985. Such meetings provide a means of communication and source of information on other groups such as Abu Nidal, FARL, and ASALA (Secret Armenian Army for the Liberation of Armenia). Partial sanctuary appears to have been continued to Abu Nidal as seen in the 1986 release of those of the Abu Nidal group convicted of murder of Ezzedine Kalak in 1978.

During the 1986-1988 cohabitation period when conservative Jacques Chirac became Prime Minister, the government moved toward a "law and order" doctrine in contrast to the sanctuary doctrine. Charles Pasqua, an RPR leader with a strong law and order reputation, was appointed Interior Minister to carry out the right-wing's promise to institute *Une Politique pour la Securite* or "A policy for Security". This new political strategy was responsible for the creation of new anti-terrorist legislation which was later very useful in resolving and adjudicating the most serious terrorist offenses. Even so, France continued "diplomatic" relations with state sponsors of terrorism. When British Prime Minister Margaret Thatcher broke relations with Syria over a terrorist attack at Heathrow Airport on an Israeli airliner, Chirac publicly agreed with the Syrian viewpoint and voiced his

suspicion of Israel in carrying out this action (with possible assistance by British secret services) that was blamed on Syrian President Assad. Chirac was reported by the Washington Times as having little concern for small scale terrorist incidents in Western cities and proposed Western retaliation. Rather, he was concerned with large scale religious fanaticism in the Middle-East. In the article he provided the unpopular quote, "The martyred Lebanese people certainly deserve much more of our attention than the few bombs that terrorists set off in western countries."<sup>29</sup> Personal opinions may vary greatly on such a stand, yet it is clear that this was in direct opposition to the official counterterrorist doctrine of most Western countries, not to mention French popular opinion. Later, it seemed no coincidence that French hostages in Beirut were released on the eve of the presidential election.

During the cohabitation period, the bitterness and depth of the feud between the political parties of the left and right was evidenced by the handling of negotiations for the release of French hostages in Lebanon and the investigations into the CSPPA bombings. In order to make it appear as if the Socialist head of state was taking strong action against those responsible for the bombings, a media event was staged in coordination with the DST where an explosives cache was discovered in the Fontainebleau forest. In doing so, the DST took unnecessary risks for the policemen who seized the cache (knowledge of its approximate location had been revealed



earlier by an informant so the cache might have been booby trapped, agents ambushed, or the cache might have been removed by that time). The informant, who may have proven extremely useful in tracking down the other members of the terrorist network and perhaps put a stop to the bombings, was compromised through the publicity. The secret negotiations for the release of the hostages was pursued independently by the Socialists and Conservatives which hindered early resolution of the crisis and may have even increased the time in captivity for the hostages. Interior Minister Pasqua sought his own secret line of communication with the captors through a well-connected DST agent that he recruited for this purpose. His strategy was working well until his agent barely avoided an armed confrontation with France's own GIGN (Gendarmerie anti-terrorist commando and intervention unit) on Isle-Adam near Paris where a crucial informant was being hidden and interviewed for several days. The GIGN was sent by the Elysee (President's staff) and Pasqua made no attempt to intervene. While the mission was successful in terms of intelligence acquired, the DST agent lost his job for having worked directly for the Interior Minister (who is incidentally the chief of all the civilian security services) while his superiors at the DST were loyal to the Socialists. There are other instances where politicization of the security services has had equally undesirable results.<sup>30</sup>

These few examples of the French attitude towards its

counterterrorism program is evidence of why a Europe-wide counterterrorism program is not realistic at present. During the early part of the 1980s, France was fiercely condemned by both Spain and Italy because of a refusal to abandon the sanctuary doctrine. Doing so would have meant the possible return of Red Brigade members to Italian custody and ETA members in the French Basque country back to Spain.

There have been domestic disputes over the policy as well. The Interior Ministry and Foreign Ministry have at times operated at cross purposes. In 1986, while the Foreign Ministry was attempting to normalize relations with Iran, the Interior Minister was carrying out the Prime Minister's and the public's demand for security by arresting a pro-Iranian network involved in the September 1986 actions. The Interior Minister forced Iranian terrorist Gordji to turn himself in against the Foreign Minister's wishes. In these instances, the wishes of the Interior Ministry took precedence over that of Foreign Affairs, yet this has not always been the case. In fact it appears that in some isolated instances the two ministries were unaware of each other's plans or commitments which has led to some embarrassing or even tragic results. In 1981, one of ASALA's leaders, Dimitriu Giorgiu, was arrested in France despite a secret agreement which guaranteed him freedom of movement on French soil. In retaliation for having broken the agreement, ASALA carried out an attack at Orly airport.<sup>31</sup>

Several months into the 1991 Bakhtiar investigation, the political implications of the assassination became clear. France and Iran had been attempting to normalize diplomatic relations for some time and France had become Iran's fourth highest trading partner. For France to seek justice for the assassins of a man who was an enemy of the Iranian state would be disruptive for an ensuing agreement on the sale of Airbus and the long sought after conclusion of Eurodif. (The Shah of Iran had invested in France's nuclear program. After the Shah fell from power, the French had no intention of allowing Iranian participation in the program and were under pressure to find a solution to Iranian demands for a refund.) The same day that the Foreign Minister's trip to Iran to sign the Eurodif accord was announced, one of Brugiere's arrest warrants was served in Switzerland on a suspect in the Bakhtiar case. The timing may not have been accidental, and officials at the Ministry of Foreign Affairs did little to hide their disgust with Brugiere, who destroyed their hopes for an impending resolution to the Eurodif problem that they had been working on for years.<sup>32</sup> Either Brugiere was simply moving forward with his investigation without consideration for what was happening at the Foreign Ministry (and perhaps not bending to pressure to do otherwise) or he was striking back at a policy of *rapprochement* with a country that advocates assassination to carry out its policies.

### CHAPTER III

#### ITALY

The structure of Italy's national institutions and what Italian political scientist and terrorism specialist, Vittorfranco Pisano, refers to as the "problem of governability" are major obstacles to the creation and pursuit of an effective policy in response to Italy's long-standing problems of political violence. The system of proportional representation allows for the presence of many small parties and unstable coalitions requiring extensive compromises by the party with a relative majority in order to avoid a vote of no confidence in Parliament. (This paper was written prior to the 1994 changes to Italy's electoral laws.) Italy's 1948 constitution formed a unitary system which was marked by anti-fascist preoccupation and a long tradition of political pluralism. This resulted in the pre-eminence of the legislative branch and weakness of the executive. The Prime Minister is in fact considered the chief executive who is expected to maintain unity of political and administrative

control, yet in reality he is considered *primus inter pares* in Parliament. In opposition to the spirit of the Constitution, the judiciary suffers from the effects of politicization as one-third of the Supreme Council of the judiciary is elected by Parliament. In addition, a survey of Milan's lawyers indicated that as many as 87% believed that magistrates' political views affected their decision-making.<sup>33</sup> Although the Christian Democrats (DC) have been the governing party as the relative majority partner in multi-party coalitions during the post-war years, there has not been a sense of continuity or progress towards any set counterterrorism goals given the emasculation of the intelligence services through poorly timed and inefficient reorganizations and the absence of a clearly defined objectives and guidance by the government leadership in the fight against terrorism. A set of Prime Ministers (Moro, Andreotti, Fanfani, etc) have rotated in and out of office at an average rate of every six months, not long enough to institute changes and implement new policies. In order for the DC to retain power, they have been forced to compromise with parties with ideas quite different from their own. The DC has never had an absolute majority in the Senate or Chamber of Deputies (except once in 1948) and have averaged 40% of the electoral vote. The electoral returns in 1983 for example showed only 33% support while the Communist Party (PCI) received a nearly equivalent 30% of the vote.

The effects of Italy's form of government (or lack of

effective government) can be seen in three areas. First, the absence of a strong central government leaves greater autonomy for the administration of the prefectures, the judicial branch, and the individual ministries in government. Without a certain degree of centrally-formed objectives and guidelines, the branches of government will not complement each other as they must do to carry out any plan to tackle a problem as formidable as political violence. In addition, the presence of a black market economy compounds the tendency for personal relationships to replace formal bureaucratic networks allowing for widespread corruption in the form of nepotism and graft. As a result, the Italians, while highly resilient to the problems posed by ineffective government, are nonetheless highly distrustful of the state and prefer to rely on "unofficial" means of getting things accomplished.<sup>34</sup>

All this may help us to understand the ineffectual response to terrorism by the security services and the judiciary. The security services, including the police (military Carabinieri under the Minister of Defense and the civilian National Police under the Minister of the Interior) and intelligence services (military SISME for external intelligence and civilian SISDE for internal political and subversive intelligence) have suffered from a lack of coordination between the services which is crucial to the successful completion of their missions. Coordination would normally be facilitated through an Executive Committee (CESIS)

chaired by the Prime Minister, but this committee has been frequently disrupted by reorganizations since appointments to the committee are made by the each new Prime Minister.

A surge of terrorist activity during the 1970s and early 1980s forced the government to enact new legislation that eased some restrictions on police regarding search, detention, and wiretapping for example, and facilitated the judicial process in dealing with terrorist cases by limiting the possibility of release on bail and lengthening a suspect's time in detention where necessary. The crises were caused by the growth of both left and right-wing terrorist groups during the "years of lead", a term used to describe the period of increased violence in the 1970s, the lead representing bullets as well as the associated political rhetoric distributed in print. Right-wing groups such as the Armed Revolutionary Nuclei (NAR) were attempting to destabilize the state through terror tactics, making it appear as if the left wing groups were responsible for bombing attacks that caused many deaths and injuries.<sup>35</sup> Right-wing groups were alleged to have been responsible for the bombings at Milan's Piazza Fontana in 1969 and the Bologna train station in 1980 which killed a total of over 100 people, in addition to many other attacks. These types of senseless attacks set the right-wing terrorists apart from their left-wing counterparts in that their victims were not chosen according to their value for the cause. They terrorized innocent people in well frequented public places

and attributed the attacks to the left. Their intent of course was to instill fear in the population who would then submit to a more authoritarian state. The right-wing terrorists also played on people's fears by spreading exaggerated propaganda on the increasing danger of Italy's social problems.

The Red Brigades (BR) were responsible for most attacks (abductions, woundings, murders, and explosions) throughout the 1970s and early 1980s, with a little help from their comrades in lesser known leftist groups such as Prima Linea and the Armed Proletarian Nuclei. BR was a collection of Marxist-Leninist militants who viewed themselves as the vanguard of the proletariat and declared war against the "imperialist state of the multi-nationals". BR's struggle was brought to a climax when the Italian Communist Party agreed to the "historic compromise" in 1976 with the DC which meant that the DC agreed to alter some of their policies to satisfy the Communists in return for a guarantee not to vote the minority DC party out of power. This betrayal of the workers by the party became a central theme to BR propaganda. BR in fact had considerable support from the Italian shop-floor workers initially (AD had no such support from any segment of the population) for their extortion of management through short-term kidnappings.<sup>36</sup> BR earned its initial notoriety and rapt attention of the Italian government through the kidnap of public prosecutor, Mario Sossi. This began a series of



abductions and murders of public figures which peaked with the spectacular media event of the Moro affair.

Early response to the escalation of terrorist violence was very poor and this was made clear by the action taken during the Moro affair.<sup>37</sup> The Interior Ministry attempted to put the emergency "Plan Zero" into effect, but no one knew what the plan was. The police lacked the training and funds to carry out their mission effectively. There was no central data bank or investigative expertise available, nor was there coordination among the Carabinieri, National Police, SISDE, and other agencies involved in counterterrorism. A poorly timed reorganization of the security services resulted in the loss of those few agents with any corporate knowledge. Apparently the government did not anticipate a real threat from left-wing extremists and did not act accordingly.

The government did take one very effective, albeit illegal step. The Prime Minister gave free reign to General Dalla Chiesa, head of the Carabinieri, to use whatever methods necessary to bring BR leaders to justice. The powers granted to Dalla Chiesa had been kept secret from Parliament for a year during which time much progress was made in intelligence gathering and several arrests were made.<sup>38</sup> When his activities were discovered by Parliament, he was forced to disband his anti-terrorist organization. However, following Aldo Moro's abduction and murder in 1978, Dalla Chiesa was reappointed, this time with the concurrence of Parliament.

Dalla Chiesa's methods were highly controversial, yet since he reported only to the Minister of the Interior and was not subjected to judicial scrutiny through the normal direction of an examining magistrate, he was highly successful in decimating the BR by 1982. His methods may have predated some of the emergency legislation (see below) that was passed in the late seventies but this was apparently overlooked by party leaders as necessary for public safety since there were few objections voiced in the media or in Parliament at the time.

Many new laws were passed in the late 1970s and early 1980s that would have been unthinkable before the onslaught of terrorist violence, and in fact the laws were assailed by public opinion once the crisis was over in the mid 1980s.<sup>39</sup> The first laws passed were the Reale Laws of 1975 and 1977 which increased police powers of search, arrest, detention for mere suspicion, and permitted wiretaps with written consent from a magistrate. They also limited the judges' ability to grant bail and extended the length of stay in custody for the accused whose trials were disrupted or delayed. A referendum in 1978 showed 75% of voters were in support of the Reale Laws.<sup>40</sup> Shortly after Moro was kidnapped, Law 191 was passed increasing the sentence to 30 years to life for kidnapping when it was carried out with the aim of terrorism. It also allowed investigators to operate more quickly by allowing verbal authorizations from magistrates for wiretaps and immediate questioning of detainees without counsel for

investigative purposes only (evidence not admissible in court). In addition, all property rental and sales agreements were to be documented which aided in the discovery of safe-houses.

In 1980, Law 15, better known as the Cossiga Laws increased police powers even further to the point where civil liberties could have been placed at risk by unscrupulous police officers. Not only were sentences for terrorist related crimes and pre-trial detention times increased, but the police could detain and question a suspect for 48 hours without consulting a judge. (Although the Constitutional Court determined the extensions to preventive detention to be a violation of Article 27 of the Constitution, they ruled that the measure was reasonable in view of the state "emergency".) Police could even search houses or whole blocks of homes without a magistrate's authority if they had reasonable suspicion that terrorist related activity was taking place. (The laws for search and pre-trial detention were scaled back in 1982 and 1985 respectively.) Two other laws passed at the same time improved coordination between the judiciary and all the security forces.

The *pentiti* legislation was without a doubt the most fruitful. A total of 709 arrests of suspected right and left wing terrorists were made directly as a result of information provided by *pentiti* in 1982-83.<sup>41</sup> It had its beginnings with the Reale and Cossiga Laws and were most advantageous to

repentant terrorists with the passing of Law 304, or the Penitence Law of 1982. In short, convicted and suspected terrorists could expect lighter sentences if they provided information which led to the prevention of a terrorist action and arrest of wanted terrorists. When Patrizio Peci, leader of the Turin column of the BR was arrested, information he provided under the new law led to 85 more arrests in the Turin column and provided a wealth of information on BR tactics. Dalla Chiesa had employed these methods surreptitiously when he had been in charge of the prison system. The Disassociation Law of 1983 gave repentant terrorists one month to denounce their crimes and permanently disassociate themselves from the terrorist cause in order to receive lighter sentences.

There have been several inhibitors to an effective counterterrorist program in addition to the endemic lack of political homogeneity and government stability. Italians have developed a negative attitude toward law enforcement as a result of negative publicity associated with alleged involvement in political scandals.<sup>42</sup> The judiciary were hostile towards the police and all parties were competing with one another in their attempt to display anti-rightist attitudes. The Italian government has been accused of taking action inordinately late despite many reliable early warnings. As early as 1972, the Confidential Matters Office in the Interior Ministry had submitted an extensive report on the

newly formed Red Brigades. Apparently this and reports by other agencies were unheeded as there was little agreement among the parties as to the real nature of the threat. In fact, the Parliamentary left questioned whether BR was indeed a far left group or a creation of neo-fascist subversives and strongly criticized the reports when leaked to the press.<sup>43</sup>

Corruption in the secret services was, no doubt, another obstacle to enforcing an appropriate counterterrorist response. Elaborate conspiracy theories aside, there has been real evidence indicating involvement by high level members of SISDE and SISME with neo-fascists and right-wing violence. Two defendants in the Bologna bombing include the former secretary general of SISMI and a colonel on the SISMI staff.<sup>44</sup> SISME's predecessor, the SID, which had been replaced because of incompetence and corruption, was headed by General Vito Miceli who was removed from his post due to his involvement with one of the authors of the Piazza Fontana bombing. He was later elected to Parliament on the MSI ticket (neo-fascist political party). Last year, a top SISDE agent was arrested for his dealings with the Mafia. And in September 93, another high level SISDE agent was accused of transporting explosives along with two Camorra members following the discovery of an unfused bomb on the Palermo-Turin train. The SISDE agent had apparently intended to get credit for finding the bomb.<sup>45</sup>

Ineffective government and political corruption has been considered a fact of life for Italians in the past but the

public has recently cried out for change. Public outrage at the Andreotti indictment, implications of President Scalfaro's guilt in accepting money from the secret service slush funds, and the Mani Pulite investigations (Clean Hands scandal where over 3,000 businessmen and politicians have been implicated in bribery for official contracts) all have severe ramifications regarding the depths of political corruption and may be a catalyst for change.

More pertinent to this discussion, however, is the thus far unsubstantiated allegation of Andreotti's involvement in the Moro murder as a result of information he supplied to his BR captors on the clandestine anti-communist organization Gladio.<sup>46</sup> Without the ability to judge the veracity of the allegations, the existence of this organization suggests the possible employment of clandestine methods by the Italian government to suppress Communism in Italy. The PCI initially opposed Italian participation in NATO, the EEC, and the Marshall Plan and Andreotti was under pressure from the U.S. government not to allow the Communists in government. There are indications that some of the material regarding Andreotti's relationship to the secret services written by Moro while in captivity was excised from the text. The only two people who may have seen the full text, Dalla Chiesa and journalist Mino Pecorelli, are now deceased. Andreotti, who was Prime Minister at the time of Moro's abduction, had refused to attempt any form of negotiation with the terrorists

in order to save Moro's life, despite pleas from the family and consideration of various proposals by Christian Democrats and the Socialists. Now, to make matters worse, the Mafia informer Tommaso Buscetta has accused Andreotti of having given the order for Moro's killing.<sup>47</sup>

## CHAPTER IV

### Police and Judicial Cooperation in the European Community

National approaches to the formation of a counterterrorism program has been, and will continue to be, a salient political issue, both for internal public policy and international relations. Political responses to terrorism will vary according to many factors including the national political culture, legal system, and the immediacy of the threat to the constituents. Attempts to form an integrated EU-wide program in the areas of police and judicial cooperation as a consequence of the free movement of goods and persons across national borders have progressed slowly. Both the absence of a common law enforcement and legal infrastructure, and the unwillingness of national governments to submit to supranational authority in times of national crisis lead one to believe that terrorism is a subject that will continue to drive a wedge between member governments and disrupt relations between the EU and the international community. The Achille Lauro incident provides a recent



example. The jurisdictional disputes and political pressures created by that crisis could not readily be resolved using existing international treaties as a guide since the incident occurred on an Italian vessel in Egyptian waters with an American victim. The incident strained relations between four countries (despite an agreement between all concerned parties to ensure the remaining victims' safety, the airplane transporting the terrorists to Tunisia was forced to land by U.S. fighters on Italian soil). Extradition from Italy to the U.S. was not possible since Italy will not extradite criminals to nations with capital punishment, and they had their own interests in prosecuting terrorists. The handling of the affair in Italy ultimately led to the fall of Bettino Craxi's government.

Although the lack of progress thus far has been discouraging, the pursuit of greater counterterrorist cooperation must and will continue as freedom from fear and repression of violence are basic western values that provide common incentives for cooperation both internal and external to the Community. Further, the police and judicial cooperation upon which a joint counterterrorism program is predicated, is a necessary precursor to the abolition of border controls set forth by Article 8A of the Rome Treaty.

The Treaty of Rome does not directly address the topic of suppression of terrorism as it is outside the jurisdiction of the EU institutions. However, the rise in terrorist incidents

of the late 1960s and 1970s provided the impetus for concerted action among European governments in order to effectively counter the threat. The Council of Europe was the first to take action in this domain in 1973 and it later ratified the European Convention for the Suppression of Terrorism (ECST) in 1977. Despite the European Parliament's interest in drafting a similar document since 1976 due to the inadequacy of international provisions in that area, opposition by EU member governments has prevented it. The main argument against a common EU policy on terrorism is that it would extend the EC's competence to an area that was still a prerogative of member states. This implies that EU law in this area would be binding and assume precedence over national law. Further, counterterrorist policies cannot be decided in the EC without significant ramifications for other sectors in the integration process.

Some of the obstacles to an effective EU-wide counterterrorism program derive from the political offense exception in international extradition treaties which protects a suspect from extradition when his alleged crimes were determined to be politically motivated. However, the definition of a political offense is highly subjective. In an attempt to close what some view as a loophole in extradition treaties regarding air piracy, there was an international agreement committing 113 signatories to either extradite or prosecute hijackers, which is laid out in the Hague Convention

of 1970. The agreement to extradite or prosecute may be ineffective in some cases as a state may choose the prosecution option without sincerely pursuing a conviction. No control or pressure can be placed on the judiciary of one state by another, therefore a state may avoid extradition by trying and acquitting an individual. Further, the executive in some states appear to exercise a varying degree of control over the judiciary, allowing political aims to override the pursuit of justice.

The intent of the Hague Convention, as well as the Tokyo Convention of 1963 and the Montreal Convention of 1971, was to extend the jurisdiction of a state over its aircraft regardless of its location and to seek extradition of the hijackers. These treaties retained the exception, however, that allows the signatories to deny extradition if the offense can be classified as political. This exception continues to exist despite the efforts of the Council of Europe's ECST to remove it. Article 1 of the Convention declared that certain offenses would not be regarded as political, including kidnapping, hijacking, and the dangerous use of bombs and automatic guns. In order for the Convention to be signed by enough countries to be adopted, however, two other articles were added to the Convention which kept the loophole open. Article 5 says that extradition is not necessary when there is sufficient reason to believe that the accused person might be prosecuted due to his race, religion, nationality, or

political orientation. Article 13 states that, notwithstanding Article 1, a state may refuse extradition for any "political" offense. The state would still be obliged to try the offender according to the *aut dedere aut judicare* (prosecute or extradite) principle, which of course does not guarantee a conviction. To make matters worse, signatories may withdraw from the treaty at any time without notice. The impact of the ECST has been small apart from its symbolic gesture of solidarity to fight terrorism, and no cases have yet been reported under the Convention.

Motivated perhaps by the Pan Am 103 and UTA 772 bombings, an international agreement was signed between the U.S. and fifty other countries to control the use of plastic explosives. Plastic explosives cannot be detected during the security screening at airports and therefore it has been agreed that explosives will be "tagged" using an ingredient during their manufacture which would facilitate their detection (when the technology catches up) and the ability to trace the origin of the explosive for investigative purposes. Although the agreement has been signed, it remains to be implemented by national law. Although such explosives would still be obtainable from other sources, it would reduce the availability considerably.

Economic sanctions may be considered an effective tool against state-sponsored terrorism and some progress has been made through discussions at the yearly economic summit

meetings. In 1978, German Chancellor Helmut Schmidt proposed a total air boycott on any country that did not adhere to the extradite or prosecute principle. Although the effect of such a boycott would have been devastating to countries outside the G-7, such a boycott has never been applied since the complicity of those with jurisdiction over the terrorists was always necessary for the safety of the hostages. For example, the release of hostages in the 1988 hijacking of a Kuwaiti airliner in Algeria could not have been accomplished without the help of the Algerian government, who in turn had to permit the terrorists safe passage back to the Hezbollah controlled area of Lebanon.<sup>48</sup> Later economic summits brought promises of closer cooperation including expulsion of terrorists (including those with diplomatic status), review of arms sales to countries suspected of terrorist involvement, improvement of airport and maritime security, and a pledge to make no concessions to terrorists. The seven nations clearly have a coercive tool in the form of their economic power as well as a shared objective in the fight against terrorism, yet the question remains as to whether their cooperation will continue in times of crisis where the national interest is at stake.

There are a number of entities which have been created to facilitate information sharing in the counterterrorism arena, some of which are international and others strictly intra-European. Among the international institutions are NATO and Interpol. The sixteen member nations of NATO have a well

established intelligence mechanism which is used to collect, evaluate, and disseminate information which affects the interests of the western nations, to include information on terrorist activities.

Interpol is a useful mechanism for its 136 member countries only as an exchange point for information on ordinary criminals who operate in more than one country, reside in a country other than where the crimes took place, or whose criminal activity in one country affects another. In the area of terrorism, Interpol cannot be a useful tool due to its large and varied membership. Sensitive intelligence information cannot be shared in a pool that large where not all members may be trusted. In addition, members have no motivation or obligation to provide information other than what serves their own interests. While Article 3 of the Interpol constitution bars members from exchanging information on political, military, religious, or racial matters, a later resolution clarified this article so that the aforementioned political offense loophole could be closed. The resolution stated that any crimes committed against innocent victims or property outside the area of conflict could not be classified as political. The sharing of technical information on terrorism matters is permitted as far as national laws will allow, as long as the information did not discriminate along political lines. These Interpol resolutions are not legally binding and therefore they may not serve as a basis for

recourse against those members who support terrorism and do not cooperate with the resolutions. Aside from the beneficial personal contact that the member nations' law-enforcement representatives receive through Interpol, which may enhance bi-lateral cooperation, the organization is not very effective as a tool in international counterterrorism strategy.

Two international groups which were created specifically for antiterrorism matters are the Quantico Working Group and the Berne Club. The Quantico Group was initiated in 1979 by the FBI to study the problem of Croation terrorism. Its scope was expanded later in 1982 and 1985 to look at Armenian and Shi'ite terrorism respectively. This group is composed of counterterrorism experts from seven nations: Australia, Canada, U.S., France, Great Britain, Germany, and Sweden. The Berne Club is made up mostly of European nations: Germany, Italy, Belgium, Luxembourg, Denmark, Great Britain, the Netherlands, Switzerland, and France, plus the U.S. The Berne Club was designed to enhance collaboration in anti-terrorism matters by sponsoring informational meetings, technical conferences, and to arrange technical assistance for surveillance, etc. The Berne Club even has its own secure telecommunications system.

Outside of TREVI and Schengen, there are no less than four intra-European anti-terrorism working groups, two of which include members who are not in the EU. The Pompidou Group includes most of the members of the Council of Europe

(excluding the more recent admissions). Although one of its purposes is to deal in anti-terrorism, it deals mostly with drug traffick'ng. It is known that this group is still active but, since its work is kept secret, it is not known how effective it is. The Vienna Club, or Club of Five, unites high level government representatives in charge of anti-terrorism affairs from Austria, France, Italy, Germany, and Switzerland in a forum for information exchange. The presence of Austria in the group is significant because Austria is absent from other working groups yet that country is considered a center for terrorist infiltration in Europe. The last known meeting of the Vienna Club occurred in October 1989 in Vienna.

As a result of the terrorist violence committed by AD, RAF, and CCC (Communist Combattant Cells in Belgium) and the mutual support shared by the three groups, the governments of France, Germany, and Belgium created the Tri-Partite Working Group in 1985. Since the threat from these groups has diminished, there have been no meetings of this group after 1988.

The GIECLCT, or French acronym for Informal European Group for Anti-terrorism Cooperation, consists of representatives of the security services from the EU member nations. The group has met twice per year since its inception in 1980 and representatives from Norway and Sweden are also invited to attend. Its goal is to improve the law enforcement



assistance between the nations and encourage information sharing on anti-terrorism measures and technical developments.

The Schengen Accords of 1985 (Implementing Convention in 1990) provide a testing ground for the elimination of border controls in the EU. Although the Schengen Accords do not directly address terrorism, they attempt to harmonize legislation among the signatory states in matters of criminal procedure which may directly or indirectly affect each state's counterterrorism program. The nine members of the Schengen Group include Spain, Italy, Portugal, and Greece and the original five, France, Germany, and the Benelux states. The Schengen Convention aims to standardize member's legislation in the areas of visas, organized crime, arms trafficking, and the drug trade. It also created necessary regulations to guide police and judicial cooperation. The most important areas covered were those of surveillance and hot pursuit across national borders. In sum, law enforcement officers may cross national borders in order to make an arrest or to continue a surveillance on persons suspected of engaging in criminal activity, but they are subject to certain limitations. They must adhere to national laws after crossing the border, they must notify local judicial authorities as soon as practicable, must not make an arrest on their own if avoidable, and may not use a weapon unless it is necessary for self-defense. This leaves one minor logistical problem in that the various national police forces must have compatible

communications systems, which is not the case at present and will require a considerable financial investment, as a secure system will undoubtedly be necessary. The Schengen Agreement also addresses the need for reinforcement of external borders, greater standardization of judicial matters (sentences handed down in one country may be served in another), improved police cooperation through a shared database, and centralized control of requests for political asylum. While Schengen does not tackle counterterrorism strategy directly, it indirectly provides a means for more effective cooperation in the areas of prevention and adjudication.

The organization that shows promise for genuine cooperation in counterterrorism strategy is the EU's TREVI (Terrorism, Radicalism, Extremism, and Violence) Group. Although few concrete developments have been achieved thus far in the way of creating an EU-wide strategy or system of information sharing, TREVI has provided an institutional means of multi-lateral coordination. TREVI, which keeps its proceedings confidential, provides the authority and the means for national police and intelligence services to cooperate discreetly in counterterrorism operations. TREVI also has a major advantage in that such cooperative strategies may be planned and executed without media scrutiny, which has always been a political drawback. TREVI was established by the EEC in 1976 and is directed by regular meetings of the EU member nations' Interior Ministers. Under the supervision of the

Ministers and the working groups of senior permanent officials of the ministries, there is now regular contact between police and intelligence agencies of the member nations. In most cases there is a national police coordination bureau or liaison office created to facilitate this process. Although multi-lateral coordination is difficult in some areas due to the warranted reluctance of members to discuss sensitive information in such a large entity, TREVI's strength lies in the fostering of bi-lateral coordination between member nations' services. It provides a mechanism where personal contact and trust can be developed between officers of the services of different nations, this being the most important element in effective cooperation in counterterrorism operations. Law enforcement and intelligence officers of all European countries share an understanding on the means to protect informants and the principles adhered to when determining how to share information. There are several examples of how such cooperation has led to successful counterterrorist operations. One of the best known examples of successful joint operations is Mogadishu, where German GSG9 and British SAS (Special Air Service) anti-terrorist commandos combined their talents and technical equipment to rescue all the hostages on a hijacked Lufthansa airplane. The operation could not have succeeded without the prior knowledge of the two services capabilities and coordination of their efforts which comes only through close personal cooperation over a

period of time. Information obtained by the Germans upon apprehending the Hamadei brothers in 1987 was passed on to their French counterparts which played a crucial role in their arrest of the leaders of an Arab terrorist cell that was responsible for a number of attacks that terrorized Paris during 1986. This information, along with information uncovered by the Belgians, also helped to bring an end to attacks by Direct Action (AD).<sup>49</sup>

The most recent concerns of the TREVI Ministers have expanded to racism, environmental crime, and motorcycle gangs. In fact, the Ministers elevated their concerns about racist inspired attacks to the same level as terrorism and organized crime and it will be included in the six-monthly threat analysis published by TREVI. At the Copenhagen summit in June 1993, two new working groups were established to combat toxic waste trafficking and to exchange information on closely linked motorcycle gangs throughout Europe who are becoming increasingly involved in organized criminal activity. Implementation of TREVI initiatives is carried out by the "K4 Committee" which is made up of security service officers, customs officials, and Interior Ministry civil servants. The committee will answer only to federal governments and is responsible for establishing the Maastricht Treaty's "third pillar" which refers to inter-governmental cooperation on law and order, asylum and immigration policy, and Europol. The committee is composed of several working groups including WG1

for political violence and terrorist threat information, WG2 for police cooperation in training, forensics, data processing, and traffic control, and WG3 for serious crime such as drug trafficking and money laundering. A fourth working group, referred to as TREVI 92, was established to examine the consequences of a Europe without borders. During the six month EC presidency of Great Britain, there were 60 meetings of these working groups which generated so much paperwork as to overburden the secure fax network, forcing TREVI to develop a coded electronic mail system to decrease the load.

In June 1993, the Interior/Justice Ministers also signed the convention that serves as the basis for the Europol Drug Unit which will be located in the Hague. Europol will be responsible for gathering and analyzing information collected by national police forces but will not be able to take part in physical actions. Its mission covers strictly drug related crimes now, but it is hoped that its mission will expand to other forms of crime once the groundwork is established.

Partly as a result of the TREVI inspired success, there has been some discussion of the possibility of an EU wide anti-terrorist commando force prepared to respond to any terrorist related crisis. This proposal has not received much serious consideration for two main reasons. First, as is the case with a European army, an anti-terrorist force requires clear, direct political control. Without political unity in

the EU, no such control is possible. Second, such highly trained elite units (as does an army) require a high degree of unit cohesion to operate effectively. It is uncertain if such cohesion could be developed among a group of individuals with different language and cultural backgrounds. (This may be a weak argument considering the unit cohesion and devotion to duty present in the French Foreign Legion.)

Another possible change which was introduced by the French involves the creation of *une espace judiciaire europeenne*, or a European judicial area, which at first would seem to alleviate some of the difficulties with extradition and prosecution. However, it is more appearance than reality at the moment since some countries have an adversarial common law system with a jury trial (UK), while some have an inquisitory codal law system (France, Italy) with trial by judge (Germany). Some judicial systems give pride of place to the subjective motives of the offender (Germany, France, Italy) while in the Netherlands the nature of the interests affected must also be considered. Great Britain gives some consideration to the offender's motives but is adopting an increasingly restrictive view of the definition of a "political" crime. Since the legal system is an integral part of the national culture, not to mention an important element of national sovereignty, there is little chance that such judicial uniformity may occur in the near future.

The current battle in TREVI is the debate on how best to

manage a common information storage and retrieval system that will enhance the cooperation of the member security services. This subject necessarily touches on the civil liberties of individuals in the member states. The requirement to carry an EU identity card would be more acceptable to the French, who are already required to carry a French ID card at all times, than to the British, who have never been required to do so in the past. Some Britons already consider the possibility as a threat to civil liberties considering the expanded access to personal information that this entails. As a protection against fraud, ID cards of the future will probably contain fingerprint, voice, retina, or DNA identification system which lends itself to the possibility of abuse through access to other personal information. The adequacy of the controls and safeguards for data protection has not been fully debated in an open forum. The secrecy surrounding the development of a Europe-wide data base has been criticized especially since the development of such a system represents a level of cooperation beyond the reach of European National Parliaments.

There are three police intelligence data bases being developed; the Schengen Information System (SIS), the Europol System, and TREVI's European Information System (EIS). The Schengen system is the most advanced of the three and its aim is to improve police and customs cooperation between the Schengen states. Chapter 1 of the Schengen Convention defines the SIS as a databank for the purpose of tracing criminals,

suspects, aliens reported for non-admission, and others. It is planned to have a central data pool located in Strasbourg and a national unit in each member state with a technical support function. The UK has been opposed to the Schengen system because they believe their sea borders make their police and customs requirements unique. The SIS is necessarily subject to certain restrictions. It is only available for use by law enforcement officers, individuals have the right to look at their file, and a file must be destroyed when the investigation is closed. SIS is expected to be on line early 1994.

The Europol system is similar to the SIS with a National Drugs Intelligence Unit set up in each member state with access to the central data base in the Hague. Those opposed to greater European unity favor the TREVI EIS System as it would require a central database yet retain the autonomy of the individual police forces. It appears that some progress is being made behind the scenes on this system, according to a UK delegate to the Trevi system's working group who describes the system as very similar to that of Schengen yet there are some areas of the SIS that TREVI members disagree with.

Considering the fact that many European police forces and intelligence services are not yet completely automated, and those areas that have computerized data bases may have incompatible systems, it is difficult to imagine a Europe



based integrated system that would be useful before the turn of the century. According to Sir John Wheeler, ex-chairman of the Home Affairs Committee in the British Parliament,

"We have yet to establish a national police system, so you have to be cautious about other larger developments. You must bear in mind that there are 17 police systems in Germany and three in France which appear to be in a similar situation to those in the UK. At the moment we have 52 police forces in the UK who can't even agree on a common fingerprint retrieval system, so any development in a European sense is a long way away." <sup>50</sup>

To get an idea of the enormity of the data processing needs, the U.S. has two and one half to three million people on the watch list compiled by the State and Justice Departments. Although the U.S. system has been automated for some time, it does not always work as it should as seen when Sheik Abdel Rahman obtained his visa.

While most representatives of EU member nations are, in principle, strongly committed to the fight against terrorism, their selection of methods on how to approach the problem will vary. For a time, some theorists described terrorism as part of a Soviet backed conspiracy to destabilize democratic regimes in Europe. Aside from some training and logistical support, there is no evidence of an active Soviet role in planning or carrying out terrorist actions, although anti-communists have attempted to profit from this theory. Even more important is the extent of the immediate threat to the citizens of that nation. If an indigenous terrorist group

carries out an attack within its own borders, calling for unilateral action, it poses less of a problem. During the Schleyer kidnap in Germany Chancellor Schmidt responded in what may be the ideal manner. He publicly stated that no concessions would be made to terrorists while encouraging the family to continue ransom negotiations and directing lower level diplomats to behave under the journalists' eyes as if they were seeking interlocutors for unofficial negotiations. This strategy gives the kidnappers the impression that there is still hope while their hostage is alive, and buys precious time for investigators to continue their work. For a country with a highly effective security network, control of the media, and above all, comparatively little political backbiting when it comes to terrorism affairs, this is a sound strategy, but this may not apply as well in France for example. When terrorism strikes, it becomes a salient internal political issue and no member nation would choose to submit to a wider EU authority unless it were clearly in their own self-interest. In times of national crisis, national interests will always come first, regardless of prior commitments. To give up that part of national sovereignty which enables a government to act in whatever manner necessary for the physical protection of its citizens would be unimaginable at the present stage in EU development.

Without European political union, it appears that a common counterterrorism program will flounder. Police and

judicial cooperation in the drug trafficking, counterfeiting, and other strictly criminal activity will undoubtedly progress as objectives and approaches do not vary greatly between the member states. Indeed, the mechanisms for effective cooperation in these areas is nearly in place. Where terrorism is concerned, however, national police and intelligence services are simply agents of the national governments who will pursue a policy according to their political will. In trying to protect their international reputation and maintain the confidence of the electorate, German leaders (politics) had a detrimental effect on cooperation between the British, American, and German investigators following the Pan Am 103 disaster. According to journalist Stephen Emerson who followed the story closely, complete German cooperation was not forthcoming for several reasons. First, the German Interior Minister Hans Neusel reacted strongly to the British and American announcement of their conclusion that the bomb had been placed on the airplane in Frankfurt, which reflects badly on the German's ability to enforce security standards. German intelligence may also have tried to cover their tracks because they had perhaps mishandled an operation (Autumn Leaves) in which their informant either lied to them or was not familiar with all phases of the terrorist operation that was being planned. It appeared that information gathered through their wiretaps and surveillance was misinterpreted with tragic results. (Germans

arrested a network of PFLP members and confiscated most of the bombs that they had constructed which were of the same type used for the explosion on Pan Am 103. But at least one of the bombs were not recovered.) There may also have been a rift between Germans and the British due to an unauthorized covert anti-terrorist operation by British Intelligence (SAS) discovered by the German BfV (internal intelligence) in German territory. The SAS was apparently tracking an IRA action service unit that was responsible for attacks on British troops in Germany. Yet another important incident strained relations between the Anglo-American alliance and Germany. U.S. intelligence had discovered that a German firm, Imhausen-Chemie GmbH, was assisting Libya in building a huge chemical plant. The accusations were disastrous for German leaders and they continued to deny them until the Deputy Manager of Imhausen killed himself and a German prosecutor opened an investigation. Eventually the German government conceded that Imhausen had assisted with the construction of two poison gas plants in Libya, but the relationship between Washington and Bonn had already been severely strained. All these events probably affected the ability of German security to cooperate with their foreign counterparts, since otherwise capable and efficient investigators who had been extremely helpful in the past suddenly refused to cooperate and even provided misinformation to American and British investigators.<sup>51</sup>

The number and severity of terrorist incidents during the

last two decades has in fact influenced the political will of the leaders of West European countries. Since 1981, 35-50% of worldwide terrorist attacks have occurred on European soil. In the first three months of 1986 alone, 488 attacks caused 422 deaths and as many injuries. In an attempt to organize a concerted and thereby more effective response, a number of international treaties, bi-lateral and multi-lateral agreements, working groups, and exchanges have taken place. These may be indicative of a desire on the part of west European politicians to fight terrorism, but it does not necessarily constitute concrete measures. Most often it is economic interests that take precedence over any prior commitments. Four years after the Pan Am 103 and UTA 772 bombings, France, Great Britain, and the U.S. still cannot agree to a combined response to Libya's refusal to extradite the accused. Although economic sanctions have been applied, it does not affect Libya's oil trade which makes up 90-95% of its foreign exchange. The British are considering an oil embargo while the French prefer an assets freeze and an agreement seems unlikely to occur in the near future.

## CONCLUSION

The preceding discussion has reviewed some of the obstacles and developments related to the creation of a coherent counterterrorism strategy in France, Italy, and the EU in general. In sum, the problems of competition and non-communication between the nation's security services, compounded by the adversarial relationship between the political parties impedes pursuit of an effective counterterrorism program. In Italy, the weaknesses of the political institutional structure and political corruption are the main sources of difficulty in forming counterterrorist strategy. In France, it appears as if the government has maintained a relationship with Middle Eastern terrorists as a means to prevent France from becoming a future terrorist target, to placate the considerably large group of Arab citizens living in France, or to position itself in a role where it may effectively aid the process of peace in the Middle East. Motives aside, France has certainly beat a unique and independent path in its approach to counterterrorism. The French must consider the implications of its policies regarding transnational terrorist groups due

to a large Magreb population sympathetic to the aims of Muslim extremists, as well as its commitment to take its own stand in making the distinction between freedom fighters and terrorists. The ability of the Italian government to adapt its political system to serve present needs and overcome political corruption and the willingness of future French governments to modify their approach to help form a common EU policy will be crucial not only to improve police and judicial cooperation in the counterterrorism area, but to further European political cooperation in general.

A counterterrorism strategy suggests a pro-active program to control or prevent terrorist actions, while the response described over the last two decades has been reactive in nature since political violence as a national security issue has only become a high priority during that time. Only fairly recently has the need for a preventive strategy been recognized and there is no unanimous agreement on how to approach the issue. However, real progress has been made in this area through improved communication among European political leaders and between representatives of the security services on how to collectively counter the threat of terrorism on European soil.

Concrete measures towards joint counterterrorism strategy are found in the Schengen Accords, TREVI, and Europol. Although Europol is not yet operational and many of the TREVI and Schengen measures have not come into force (as of this

writing), they will provide the basis for cooperation in criminal matters that will ultimately have a debilitating effect on terrorism in Europe. Through improved coordination between European security forces in the areas of ordinary crime, arms and drug trafficking, money laundering, and immigration, much of the battle will be won considering how all these areas have a direct bearing on terrorist operations. Furthermore, as the police and intelligence services of the member nations are drawn closer together through shared databases and direct communication (where an investigating officer no longer must pass through an extensive hierarchy or Foreign Office to obtain assistance from a foreign agency, which is already often the case for criminal investigators from Great Britain, Germany, and France), it becomes more difficult for elected officials to discreetly intercede in the course of justice without the risk of damaging media scrutiny.

The situation is perhaps comparable to the functional approach to European Union. Rather than attempting a counterterrorism program from the top down, that is, convincing government leaders to accept one counterterrorism strategy that will be applied in all circumstances, the problem of terrorism may be approached in specific areas at the working level. Terrorists are necessarily dependent on illegal sources of money and arms, and a safe place to hide. The types of police and judicial cooperation being introduced in the EU will initiate a more effective response in those



areas, leading inevitably to a more comprehensive implementation of EU police and judicial cooperation over the long term.

## NOTES

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2. Fawaz Turki, The Disinherited, Journal of a Palestinian Exile (New York: Modern Reader, 1972) 16, quoted in Schlagheck, 37.
3. Donna M. Schlagheck, International Terrorism (MA: Lexington Books, 1988), 76.
4. Schlagheck, 74-75.
5. Schlagheck, 80.
6. Jean Yves Chaperon, Interview of Anis Naccache in Enquete sur l'Assassinat de Chapour Bakhtiar (Paris: Edition 1, 1992) 26.
7. Richard Clutterbuck, Terrorism ,Drugs, and Crime in Europe After 1992 (London: Routledge, 1990), 80.
8. Ibid., 45.
9. Clutterbuck, 102.
10. Agence France Presse, 13 November 1991.
11. The right (RPR and UDF) is an educated guess as to the source of the leak since they are one of two possible sources based on motive and opportunity. In addition, Stephen Emerson of CNN obtained a copy of a taped telephone conversation between Arafat and the top Palestinian leader in France crediting the political opposition in France and the Israelis for the leak. The transcript was published in Le Monde, 13 February 1992.
12. Jean Marc Gonin, L'Express, 14 Feb 92.
13. Philip Cerny, Social Movements and Protest in France (New York: St Martin's Press, 1982), 97-121.

14. Michel Wievorka, "France Faced with Terrorism," Terrorism 14 (1987): 157-170.
15. Pierrick Le Jeune, La Cooperation policiere Europeene contre le Terrorisme (Brussels: Etablissements Emile Bruylant, S.A., 1992), 27.
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17. Charles Villeneuve, Histoires Secrets du Terrorisme (Paris: Plon, 1987), 26-27.
18. Ibid. Also, Daniel Burdan, Neuf Ans a la Division Antiterroriste (Paris: Editions Robert Laffont, 1990).
19. Ibid. (Burdan)
20. RG is an intelligence branch of the National Police. Yet its intelligence collection is limited to information of internal political significance such as public unrest, activities of immigrant groups, etc. It is considered the eyes and ears of the government on the street.
21. Burdan
22. Wieviorka, 168. Gendarmes of the Elysee cell led by Captain Barril arrested members of an Irish nationalist organization in 1982 and offered as evidence arms that were allegedly discovered at the scene. It was later learned that the arms were placed at the scene by the Gendarmes themselves.
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26. Ibid.
27. Clutterbuck, 61-69.
28. Ibid.
29. Serge Quadruppani, L'Anti-terrorisme en France. (Paris: Editions la Decouverte, 1989), 220.
30. Daniel Burdan, Neuf Ans a la Division Anti-Terroriste, (Paris: Editions Robert Laffont, 1990).
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32. Chaperon
33. David Moss, The Politics of Left-Wing Violence in Italy (New York: St Martin's Press, 1989), 170.
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