

STATEMENT OF CASE TO RENEW THE DESIGNATION OF EUSKADI TA ASKATASUNA (ETA) AS A TERRORIST ENTITY

PURPOSE

1. The purpose of this paper is to assess whether Euskadi ta Askatasuna (ETA) meets the statutory criteria to renew its designation as a terrorist entity within New Zealand pursuant to the Terrorism Suppression Act 2002 (TSA).
2. The paper concludes that the group meets the criteria for renewal as a designated terrorist entity under the TSA.

STRUCTURE OF THIS PAPER

3. This paper sets out updated information about ETA's continued involvement in terrorist activity and covers any changes and /or developments to the organisation since its original designation, including to its objectives, structure, weapons and tactics and includes any recent attacks which meet the definition of a terrorist act under the TSA.
4. This updated information, together with the information contained in the original designation paper¹ inform the analysis of whether reasonable grounds for designation still exist and provide the basis for the conclusion that the group meets the legal criteria to renew its designation as a terrorist entity under the TSA.

STATUTORY CRITERIA FOR THIS DESIGNATION RENEWAL UNDER THE TSA

5. Section 35(1) of the TSA provides that a designation of a terrorist entity expires three years after the date of designation unless it is earlier revoked or renewed by the Prime Minister. The original designation is made pursuant to s 22 of the TSA, which provides that the Prime Minister may designate an entity as a terrorist entity if the Prime Minister believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts ("terrorist act" is defined in s 5). Carrying out a terrorist act includes the planning, preparation or credible threat to carry out the act, whether it is actually carried out or not (s 25(1)(a) and (b)) and also includes an attempt to carry out the act (s 25(1)(c)).
6. The Prime Minister may renew that designation for a further three years under s 35(2) if satisfied that there are still reasonable grounds as set out in s 22 for the entity to be designated under that section.
7. Before the expiry of an order made under s 35(2), the Prime Minister may make another order under s 35(3) renewing the designation concerned for a further three years. The Prime Minister may make any number of orders under s 35(3) in respect of the same designation (s 35(5)).

CREDIBILITY OF SOURCES

8. This paper has been prepared using open or unclassified sources which have a reputation for careful and unbiased reporting. These are: Europol, Jane's World Insurgency and Terrorism series, the BBC, El Pais, Time Magazine, United Press International, the Associated Foreign Press and others.

EVIDENCE TO SUPPORT DESIGNATION RENEWAL UNDER THE TSA

Continued involvement in terrorist activity

9. ETA was designated as a terrorist entity on 10 February 2010.²
10. Several activities indicate continued planning, preparation or credible threat to carry out a terrorist act since this date.
11. In January 2010, two ETA members were arrested in Portugal while driving a stolen French police vehicle carrying explosives, detonators, movement sensors and forged documents. The vehicle had been stopped on the request of Spanish authorities after it had fled a routine vehicle checkpoint in Spain. After the arrest, the two individuals were identified as belonging to ETA.³ Spanish authorities concluded that the two were seeking to assemble bombs to be used for an attack on the KIO Towers⁴ in Madrid, Spain.⁵
12. On 5 February 2010, Portuguese police discovered half a ton of explosives, weapons, electronic devices and maps of several locations in Spain at a house in Obidos, Portugal.⁶ Video footage identified the tenants of the house as individuals known to be ETA members. This established a connection to documents found in the vehicle from the January 2010 arrest, confirming the association to ETA. Spanish and Portuguese authorities were of the opinion that ETA was seeking to establish alternative bases in Portugal.⁷
13. On 23 June 2010, an ETA spokesperson telephoned police and stated the group had planted four bombs around the Spanish city of Valencia, placed to target roads and railways.⁸ Security forces were dispatched to the city, but no explosive devices were located.
14. In August 2012, ETA member Inaki Imaz Munduate was arrested in the French border town of Hendaye. He had fled Spain five years previously and is known to have lived for a time in Ireland under a false name. Weapons and ammunition were found in his apartment at the time of his arrest, as were documents reportedly written by Imaz laying plans for future terrorist attacks. The documents reportedly included an analysis of the schedules followed by police at their barracks in San Sebastian and the address of the parents of a Basque Police Force officer. Imaz also reportedly had information on the movements of local Basque politicians.⁹

Involvement in criminal activity

15. On 16 March 2010, a French police officer was shot dead by suspected ETA militants during an armed clash following the theft of six high powered vehicles from a garage showroom in a suburb outside of Paris.¹⁰ French police estimated there were at least six suspects involved, all but one of whom escaped.¹¹ The male suspect arrested was a Spanish national wanted in Spain for ETA-orchestrated street violence.¹²
16. In March 2011, four ETA members, including the suspected leader of the group Alejandro Arriola were arrested in northern France, near Dunkirk. Firearms and documents were seized from their rented address.¹³

17. On 9 April 2011, a French police officer was shot and wounded by the male passenger of a motor vehicle which failed to stop at a roadblock in the town of Valliere. The vehicle was later located fifty miles away in Correze and further shots were fired at police. There were no casualties and the couple escaped custody. French police stated that the actions of the pair "closely resembled" those of ETA members.¹⁴

Ideology and objectives of ETA

18. ETA's objective is to bring about an independent Basque State in northern Spain and south western France.¹⁵ This goal has been unchanged since the group formed in 1959. In the past, ETA received significant support from the Basque population which helped to increase both its membership and operational capacity. This support has declined significantly in recent years due to democratic processes being implemented in the Basque region, which have given the Basque population greater political and cultural autonomy.¹⁶
19. In 1998 ETA declared an indefinite ceasefire and commenced peace talks with the Spanish government. Negotiations broke down and the group's bombing campaign resumed within 12 months.¹⁷
20. In March 2006, ETA declared a 'permanent' ceasefire, following 38 years of conflict.¹⁸ Nine months later, peace talks collapsed when two men were killed by a bomb planted by ETA at Madrid Airport.¹⁹ Jose Zapatero, then Spain's Prime Minister stated that he "understood that ETA's only intention (in calling a ceasefire) had been to rearm and regroup so as to continue the terrorist attacks".²⁰
21. In January 2011, ETA again announced a permanent ceasefire in its campaign for independence.²¹ The Spanish government stated it would not engage in the peace process until such time as ETA had either disarmed or announced their dissolution.²²
22. On 4 October 2011, ETA announced via video release,²³ that following 10 months of peace since their January announcement of a ceasefire, they had made a "definitive cessation" of bombings and shootings. They called for the new government, to be elected the following month, to engage in direct dialogue with them. However, the declaration stopped short of offering to disarm and disband. The outgoing Spanish government repeated their call on ETA to lay down their arms and disband.²⁴
23. On 24 November 2012, ETA issued a statement saying it was ready to enter negotiation to disband. However, in return for the dismantling of its own "armed structures", the statement also called for the "demilitarisation" of the Basque region, referring to Spanish security forces, in order to bring about "a definitive end of the armed conflict".²⁵
24. ETA has a history of failed ceasefires: the most recent ceasefire announcement is the group's 11th such declaration in its 53 year history. Weapons, ammunition and written plans for future attacks continue to be located during anti ETA operations.
25. ETA is currently listed as a terrorist organisation by Spain, the US, Canada and the United Kingdom.

Organisation and structure

26. ETA's membership has suffered as a result of the arrests of many of its significant and senior members during the last decade. More than 50 senior members have been arrested during 2011 and 2012; many had been living in Britain, Ireland and Portugal under false names. By mid-2012, 15 people had been arrested on suspicion of having ETA ties since the group announced its "definitive" ceasefire.²⁶
27. ETA leaders have been captured regularly enough to deny the group a chance to reorganise its former military structure.²⁷ Following the arrest in France of ETA's last known military leader, Alejandro Zobaran Arriola,²⁸ in March 2011, its leadership status is unknown.
28. In May 2012, French police arrested two senior ETA leaders in the south-western village of Cauna. The men Oroitz Gurruchaga and Xabier Aramburu were travelling in a stolen vehicle with falsified number plates. Both men were armed, with a pistol and a revolver. The Spanish Interior Ministry said the presence of both men in southern France could indicate they were setting up meetings to recruit new ETA members. Aramburu was believed responsible for a series of bomb attacks in Spain in 2008 and Gurruchaga is believed to be the current ETA military and recruiting officer.²⁹
29. On 13 July 2012, senior ETA member Benat Ordonez was arrested in Edinburgh, Scotland. He had been living there for 11 years and had outstanding arrest warrants issued in both Spain and France. He was wanted for his part in organising a series of attacks including the assassination of Spanish politician Miguel Blanco in 1997. The Spanish Interior Minister stated that "Ordonez was an ETA sleeper, living in Scotland awaiting orders to mount future terrorist operations".³⁰
30. On 16 November 2012, Izaskun Lesaka, who controlled ETA's reserves of arms and explosives, and Joseba Iturbide, considered to be one of Lesaka's top lieutenants, were arrested by French police in the town of Macon. Officials said she was armed at the time of her arrest.³¹
31. ETA is diminished in size compared with numbers during the groups most active years.³² *Jane's* reports that its current membership is estimated to be anywhere between 30 and 200.³³ It is likely that most current members are young and inexperienced.³⁴

Weapons, Tactics and Capability of ETA

32. Since June 2007 the Spanish government has intensified its crackdown on the group, as a result of which it is widely accepted that ETA's operational capability is significantly reduced with more than 700 of its members in prison.³⁵ However, it is also accepted that until ETA members hand over their weapons, the group retains the capacity to carry out terrorist attacks. ETA has yet to announce disarmament and dissolution.³⁶
33. ETA's struggle with the Spanish state has historically oscillated between warfare and ceasefire. ETA will need to follow through with disarmament (see paragraphs 21-22)

before it can genuinely maintain, and have the Spanish government accept, that it is no longer a threat.

Law of armed conflict (LOAC)

34. There have been no significant changes in the status of the conflict or in the conduct of ETA to invalidate the legal analysis contained in the original designation. There still fails to exist an “armed conflict” for the purposes of the exemption in section 5(4) of the TSA. Accordingly, the exemption in s 5(4) cannot apply, and the ETA attacks are properly characterised as terrorist acts.

Conclusion

35. On the evidence set out above, this paper concludes that there are still reasonable grounds as set out in s 22 of the TSA for ETA to be designated under that section.
36. ETA’s leadership appears significantly weakened and it has declared a ceasefire on a number of occasions since the original designation. However, ETA has a history of broken ceasefires and has failed so far to disarm and disband. In particular, there is evidence that ETA members have continued to make preparations, plans or credible threats to carry out terrorist attacks (s 25(1)(a) and (b)), including one occasion shortly before the most recent declaration of ceasefire (see paragraph 14).
37. The definition of carrying out terrorist acts under the TSA includes planning and preparation, and credible threats, to carry out an act (s 25(1)(a) and (b)) and on this basis, ETA has continued knowingly to carry out terrorist acts in terms of s 22 (see paragraphs 11-14). Accordingly, ETA is considered to meet the legal criteria for renewal of its designation as a terrorist entity under s 35.
38. The designation must be renewed by 11 February 2013 to be effective.

¹ The statement of case, dated 10 February 2010 can be accessed at:
<http://www.police.govt.nz/service/counterterrorism/designated-terrorists.html>

² *Ibid*

³ (11/01/2012) *ETA suspect held in Portugal first fled Spain in stolen police car*. Retrieved 14/12/2012 from
<https://www.opensource.gov>

⁴ (20/06/2011) *Ex-ETA military chief calls for end to violence..* Retrieved 01/10/2012 from
http://elpais.com/elpais/2011/06/20/in_english/1308547241

⁵ (11/02/2010) *ETA safe house found in Portugal-Lisbon cable #10LISBON65*. Retrieved 19/09/2012 from
wikileaks.org/cable/10Lisbon65.html

⁶ (09/2010) Noivo, D. *ETA ceasefire: Handle with caution*. Retrieved 19/09/2012 from www.ipris.org.
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- i *Herido-gendarme-tiroteo-Valliere-Francia*. Retrieved 18/09/2012 from www.telecincio.es/informativos/nacional/1373262664.html.
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³⁴ (11/01/2011) *Eta ceasefire: Spain talks tough with weakening separatists*. Retrieved 03/11/2011 from <http://www.bbc.co.uk/news/world-europe-12167691?print=true>

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