

## **PROPOSAL TO DESIGNATE EUSKADI TA ASKATASUNA (ETA) AS A TERRORIST ENTITY**

### **Purpose**

1. The purpose of this paper is to set out the case for designating Euskadi Ta Askatasuna (“ETA” or ‘Basque Fatherland and Liberty’) as a terrorist entity within New Zealand pursuant to the Terrorism Suppression Act 2002 (“TSA”).
2. The paper concludes that ETA meets the legal criteria for designation as a terrorist entity under the TSA and recommends that it should be so designated. Designation of ETA is consistent with the criteria established by Cabinet that are relevant to this entity (see paragraphs 19 to 21 and 89 to 95 below) and with New Zealand's obligations under UNSCR 1373 (see paragraph 12 below). As noted below (paragraph 95), a primary purpose of New Zealand designating terrorist entities under the TSA is to contribute to international efforts to constrain the operating space of terrorist entities as much as possible.

### **Terrorist Designations Working Group**

3. The process for advancing the designation of non-United Nations listed terrorist entities has been underpinned by the establishment of a Terrorist Designations Working Group, coordinated by the Department of the Prime Minister and Cabinet, and including officials from New Zealand Police, the New Zealand Defence Force, Crown Law, the Ministry of Foreign Affairs and Trade, the Ministry of Justice, the New Zealand Security Intelligence Service and the External Assessments Bureau.
4. This paper has been jointly prepared by the agencies represented on the Terrorist Designations Working Group.

### **Legal framework for designation**

#### *Terrorism Suppression Act 2002*

5. In October 2002 New Zealand enacted the TSA. The TSA establishes a legal framework for the suppression of terrorism. In particular, it is the mechanism by which New Zealand gives effect to the United Nations Security Council (“UNSC”) mandatory resolutions requiring UN member states to take certain steps to suppress terrorism. An important feature of this framework is the Prime Minister’s power under the TSA to designate individuals or groups as terrorist or associated entities. Designation can be on an “interim” (s 20 TSA) or “final” (s 22 TSA) basis.<sup>1</sup>
6. The TSA criminalises various forms of interaction with designated entities. It is an offence under the TSA to deal with a designated entity’s property or provide such an entity with property, financial or related services. It is also an offence to knowingly recruit for a group which is a designated entity, or participate in a group for the purpose of enhancing its ability to carry out a terrorist act, knowing, or being reckless as to whether the group is a designated entity. Simple membership of a designated entity, however, is not an offence.
7. The TSA also enables action to be taken against designated entities’ property. For example, the TSA empowers Customs officials to seize and detain goods or cash

they have good cause to suspect are owned or controlled by designated entities. In certain specified circumstances, the TSA also permits an application by the Attorney-General to the High Court for orders that property owned or controlled by designated entities be forfeited to the Crown.

8. There are two broad categories of entities that are affected by the TSA – entities listed by the UN as terrorist entities (by the UNSC’s 1267 Committee) and non-UN listed entities designated under the TSA.
9. UN listed entities are defined as designated terrorist entities in the TSA and so engage the criminal provisions of the TSA without the need for further designation under s 22. The UNSC listing process involves only Al-Qaeda and the Taliban and associated individuals and organisations.
10. The legal consequences that flow from designation under the TSA are primarily a response to international obligations. The two categories of entities described above reflect two different obligations.
11. First, New Zealand is specifically obliged to take action against those terrorist entities listed by the UNSC 1267 Committee.
12. Secondly, and by contrast, while UNSC Resolution 1373 obliges New Zealand (inter alia) to outlaw the financing of, participation in and recruitment to, terrorist entities, it does not specifically identify those entities. The Resolution effectively leaves it to Member States to identify the entities against which they should act.
13. Some countries, such as Australia, the United Kingdom and Canada maintain separate procedures for designating entities for certain purposes. One procedure directed at preventing the use of property and financial assets of designated terrorist entities is 'asset freezing' which is generally applied to all entities listed by the UN as well as to a range of non-UN listed entities selected by individual jurisdictions. The other procedure criminalises terrorist acts and the participation in and membership of designated terrorist entities, and again is applied mostly to UN-listed entities but also to some non-UN listed entities that countries choose to list. New Zealand’s TSA uses a single designation procedure for both sets of purposes, although as noted above, it does not criminalise membership of a designated entity.

### **Non-UN entity designation process**

#### *Satisfying the s 22 legal requirements*

14. The Prime Minister has the power under the TSA to designate individuals or groups as terrorist entities. Section 22 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.
15. It does not follow, however, that every entity that meets the legal test in s 22 must be designated. Section 22 confers a discretion on the Prime Minister (“the Prime Minister may designate ...”) as to whether to designate an entity that meets the legal test for designation. No specific factors are identified for the Prime Minister’s consideration when exercising his discretion. However, it would be reasonable to suggest that both the TSA’s purpose (as stated in s 3 of the TSA) and the matrix of

obligations in UNSC Resolution 1373 that the TSA was enacted, in part, to implement, point to the guiding consideration being whether designation of the relevant entity would effectively assist the suppression of terrorism.

16. A terrorist act is defined in s 5 of the TSA. A number of different acts fall within this definition. The s 5 criteria relevant to this paper are those criteria which deem an act to be a terrorist act if that act:
  - i. Is intended to cause either:
    - (a) the death of, or serious bodily injury to, one or more persons; or
    - (b) serious damage to property of great value or importance, or major economic loss, where that act is also likely to result in the death of, or serious bodily injury to, one or more persons; and
  - ii. Is carried out for the purpose of advancing an ideological, political, or religious cause; and
  - iii. Is intended to either:
    - (a) Induce terror in a civilian population; or
    - (b) Unduly compel or force a government or an international organisation to do or abstain from doing any act; and
  - iv. Is not an act that occurs in a situation of armed conflict and which is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict.

*The legal threshold and reliance on non-classified information*

17. In deciding whether reasonable grounds exist to support a belief that an entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts, s 30 of the TSA provides that the Prime Minister may consider any relevant information, including classified security information.
18. This paper relies only on unclassified open source information. Open source information may include newspaper reports, literature, and public statements by the entity itself. It may include unclassified information supplied to New Zealand by foreign governments and material from domestic agencies. The case describing an entity's involvement in terrorism need not be constructed from evidence that would ordinarily be admissible in court proceedings.

*The formal process*

19. In 2003 Cabinet agreed to a process for advancing requests to designate non-UN listed terrorist entities. This is set out in the Cabinet Minute CAB (03) 34/15A.
20. Cabinet agreed that the following factors may be relevant in deciding whether to recommend the designation of a non-UN listed terrorist entity that meets the s 22 TSA criteria:<sup>2</sup>
  - i. New Zealand presence;

- ii. Regional presence;
  - iii. The nature and scale of involvement in terrorist acts or support activity;
  - iv. Links with New Zealand citizens but no known New Zealand presence;
  - v. Risk to New Zealand citizens; and
  - vi. The rationale for going beyond the UN listing.
21. Cabinet also agreed that a further factor in deciding whether to make the request may be the need for New Zealand to contribute to the international security environment by preventing activities such as recruiting, harbouring, participating in or financing terrorist entities that fall outside the scope of the UN listing process.
  22. The process formally agreed to by Cabinet requires the Working Group to refer recommendations relating to non-UN listed entity requests to ODESC. ODESC is to make the final determination on whether the Commissioner of Police proceeds with presenting the request to the Prime Minister. In making this determination, the Working Group and ODESC consider those factors identified by Cabinet that are relevant. They are specifically examined at paragraphs 89 to 95 below.
  23. Upon presentation of the recommendation for designation to the Prime Minister, the Prime Minister must then be satisfied that ETA falls within the scope of the designation power in s 22 of the TSA. If the Prime Minister considers that ETA meets the legal criteria for designation as a terrorist entity, the Prime Minister must then consult the Attorney-General about the designation and may then exercise his discretion under s 22 as to whether to designate, bearing in mind New Zealand's international obligations under UNSCR 1373 and the guiding consideration of whether designation would effectively assist the suppression of terrorism.
  24. The TSA requires that the designation be publicly notified in the *Gazette* and also that the designated entity itself be notified, if practicable and where the entity or a representative of it is in New Zealand, with all reasonable speed.
  25. The designated entity can apply in writing to the Prime Minister for the designation to be revoked on the grounds that the entity does not satisfy the s 22 TSA test or that the entity is no longer involved in any way in acts of the kind that made, or that would make, the entity eligible for designation. Judicial review proceedings are also possible in respect of a designation under the TSA.
  26. In May 2008, ETA was endorsed by ODESC as meriting priority work following its identification by the Designations Working Group as an entity that aligned with the relevant factors agreed by Cabinet. The United States, Canada, the United Kingdom and the European Union have listed ETA as a terrorist entity; it has also been listed by Australia for asset freeze purposes only.

### **Structure of this paper**

27. This paper sets out background and historical information about ETA and also discusses various other aspects of the organisation including its targets, tactics,

weapons and intentions, before detailing three case studies of recent attacks which meet the definition of a terrorist act under the TSA.

28. In the discussion preceding the case studies, a number of other attacks either claimed by ETA or attributed to ETA are mentioned. These have been included as part of the background and general discussion on the organisation and along with that information, help inform the analysis of the specific attacks in the case studies below. The attacks detailed in the three case studies represent recent and serious attacks attributed to and claimed by ETA. It is these three attacks that have been analysed as meeting the definition of a "terrorist act" under s 5 of the TSA that provide the basis for the paper's conclusion that ETA meets the legal criteria for designation as a terrorist entity under the TSA.

### **Background and history of ETA**

29. In both Spain and France, the Basques are a culturally distinct group. Until the 19th and 20th centuries, the Spanish Basques had a degree of autonomy from the central government in Madrid. In the 19th and 20th centuries however, Madrid tightened its control, generating resentment amongst the Basques and by the beginning of the 20th century, there was some resistance by the Basques. The rough treatment meted out to some of the Basque Provinces by Franco's Republican forces during the Civil War (1936 to 1939), coupled with the state's actions against the Basques in the years of the dictatorship between the war and Franco's death in 1975, added to the grievances felt by the Basques against Spain.
30. From the time it was established in 1959, ETA has always sought an independent and socialist Basque state. Since the early 1960s, ETA has been involved in what it describes as an "armed struggle" against Spain. ETA has sustained its long-running effort through a combination of the weapons and tactics of terrorism and the support of those Basques who are deeply sympathetic to its cause. There have been three ceasefires, all accompanied by political discussions with Madrid which failed, essentially because the gap between the parties was too great.<sup>3</sup>
31. Since its formation, ETA's operational side has included 'attack' units. Throughout the 1970s and early 1980s these units mounted many attacks indicating that the Spanish authorities were having difficulty combating ETA.<sup>4</sup> ETA was once considered to be the most sophisticated and dangerous European terrorist organisation.<sup>5</sup>
32. More recently however, ETA has been in retreat. Its use of violence continues, but the attacks are fewer than in the 1970s and 1980s.<sup>6</sup> A number of recent successful anti-terror actions by Madrid based authorities, plus improved co-operation between Spanish and French authorities, have led to the apprehension of many of ETA's leaders and operatives. Some of ETA's organisational structures have been dismantled, including some of the main "commando cells."<sup>7</sup> It is not yet clear whether these arrests will have a significant permanent impact on the organisation, although ETA's ability to regroup and rebuild its leadership has been demonstrated in the past. A younger generation of radicals are challenging for ETA's leadership.<sup>8</sup>
33. Compounding ETA's current difficulties is its declining political support amongst the Basques. There is a non-violent politically-oriented stream of Basques who work with, and participate in, the day to day running of the Basque areas. This tendency appears to have more support amongst the Basques than does ETA's.

Since 1980, the Basque Nationalist Party governed the Basque region favouring greater autonomy from Spain, but opposing ETA's violence.<sup>9</sup> The March 2009 Basque elections have seen this party replaced by a Socialist led coalition, giving the Basque region its first non-nationalist government in nearly 30 years.<sup>10</sup> The change in government supports the proposition that political support for ETA's cause is declining, although this has not vanished.<sup>11</sup>

34. A number of reasons have been advanced for ETA's declining support. There have been reports that ETA's use of violence is rejected by more Basques than in earlier years. For example following the assassination of Popular Party Councillor<sup>12</sup> Miguel Angel Blanco in 1997 more than six million people reportedly took part in marches across Spain to demand an end to ETA's violence.<sup>13</sup> Also, as at 2007, the GDP of the Basque region was equal to that of Madrid, and significantly higher than most other regions in Spain.<sup>14</sup> Another reason is that Spain's once highly centralised political and administrative system has been decentralised, and this devolution sits sufficiently well with enough Basques that it draws some of the strength away from the argument for Basque independence.
35. Nevertheless, there is still a body of Basque opinion that has not been reconciled with Spain. For these people, Basque independence remains an article of faith and some remain deeply involved with ETA. ETA itself remains defiant and retains its desire for an independent Basque state, as the following statements suggest:

- i. In a statement carried in the Basque language newspaper, Gara, on 5 November 2008, ETA said "The resistance will continue as long as the rights of Euskal Herria [the Basque Country] are not recognized and respected";<sup>15</sup>
- ii. On 8 April 2007, in an interview with Gara newspaper, an ETA spokesperson stated:

"So what we are saying is that ETA will continue to fight until the purpose for which it came into existence is achieved... Today, in the conditions our country is in, we consider that the reasons for carrying out armed struggle are still applicable and as long as that is the case we will continue. It's one thing to offer a ceasefire...

...But it's quite another matter to consider that the practice of armed struggle is unnecessary. In today's conditions we are nowhere near that situation. That will happen when we consider that conditions in Euskal Herria are sufficiently democratic and there are adequate safeguards to ensure that they will continue to be so.

...When that time arrives, ETA will inform the Basque public of its decision. Sadly it is quite clear that no such conditions exist today, given the enormity of the division, cultural imposition and repression of our country.

If only you take a look at this country's recent history and its will to survive, you will see that it really makes no sense to demand that ETA should disappear. Other Basque organisations besides ETA have practised armed struggle before, and even if ETA itself were to disappear today, for as long as the oppression of our country continues the reasons for continuing with the armed struggle will not go away, and there will always be people ready to organise and take up arms to

fight for Euskal Herria's survival, when they see that their country has no other way to attain freedom;"<sup>16</sup> and

- iii. On 27 September 2006, at celebrations for "Basque Soldier's Day" a spokesperson said:

"...The fight is not a thing of the past. It is the present and the future. Continuing the fight, without failing as the Basque soldiers did, will make of us a free nation...This is, exactly, the message ETA wants to put across today: We will keep fighting, with weapons in our hands, until we achieve independence and socialism in the Basque Country. We have got our blood ready to give it for the Basque Country! We will succeed! Long live to the Basque soldiers! (sic) Long live to a free Basque Country! (sic) Long live to a socialist Basque Country! (sic) No surrender until we achieve independence and socialism!"<sup>17</sup>

- 36. The government maintains that it will not negotiate with ETA.<sup>18</sup> ETA retains the view that the Basques are not Spanish; the Spanish legal system is 'foreign' to the Basques and the rulings and decisions of the Spanish courts lack legitimacy.<sup>19</sup> In this situation, political settlement is unlikely.

#### *The credibility of sources*

- 37. Gathering unclassified and authoritative information about ETA's involvement in the use of terrorism in general, and specific terrorist attacks in particular, has been relatively straightforward. ETA has openly admitted that it has adopted "armed struggle" as a tool for obtaining independence.<sup>20</sup> The Spanish government says, and observers accept, that since 1968, ETA has caused more than 825 deaths<sup>21</sup> and carried out over 1600 terrorist attacks.<sup>22</sup> On a number of occasions, ETA has acknowledged responsibility. Authorities have been able to attribute other terrorist attacks, not specifically claimed by ETA, to the organisation.
- 38. Public statements by ETA and actions by the organisation are a key source for this paper. Its statements, for example those of 8 April 2007 and 5 November 2008 (paragraph 35 above), demonstrate its continued willingness to attack the Spanish state and its assets. It has also claimed responsibility, in the Basque newspaper, Gara, for specific attacks.<sup>23</sup> Gara is accepted by observers as the vehicle through which ETA currently acknowledges its actions.
- 39. Reputable secondary sources have also been consulted. These sources were consulted for the following reasons:
  - i. They have an established international track record of good quality reporting and a vested interest in not damaging their reputation. Their reports appear to be consistent with events and not biased;
  - ii. Some have a background of study in Spanish history and the conflict between ETA and Spain. Others are reputable commentators on Spanish current affairs;
  - iii. Some of the information in this report has been gained from sources such as Amnesty International, the Council on Foreign Relations (CFR), the International Crisis Group (ICG), Europa, Jane's and Human Rights Watch (HRW). Media sources used include the

International Herald Tribune, the BBC, Reuters, The Economist, the Independent, the New York Times, the Guardian, CNN, NZ Herald, El Mundo<sup>24</sup>, El Pais<sup>25</sup> and Eitb24,<sup>26</sup> and

- iv. Basque nationalism has been the subject of academic study and some academic writings have also been consulted in the preparation of this paper. Diego Muro is a specialist in contemporary Spain, Spanish history and the Basque conflict and lectures at Kings College in London. His book, *Ethnicity and violence: the case of radical Basque nationalism*, deals with Basque nationalism and ETA's violence from the Civil War onwards.<sup>27</sup> Work by Rogelio Alonso, the director of the unit for terrorism documentation and analysis at King Juan Carlos University in Madrid, has also been consulted.<sup>28</sup>

#### *ETA's pursuit of Basque independence*

- 40. Since its formation fifty years ago, ETA has pursued Basque independence. It formally adopted the use of violence 41 years ago (it had already used violence against Franco's regime since 1961).<sup>29</sup>
- 41. When Spain moved from dictatorship to democracy in 1975, ETA did not alter its approach. This was because the new democratic government did not accept the Basques' claims for independence. ETA regarded the change as being in name alone.<sup>30</sup> It has recently described the onset of democracy as a fraud.<sup>31</sup>

#### *Spain vs. ETA: the dynamics*

- 42. The clash between Spain and ETA has five defining features:
  - i. It is deeply entrenched in history and it has a strong ethno-nationalist aspect. From ETA's beginning, some activists saw their role as a continuation of a fight started long before them.<sup>32</sup> The response of the Spanish state to the Basque challenge is also rooted in its history;
  - ii. ETA's struggle with the Spanish state oscillates between warfare and ceasefires.<sup>33</sup> ETA's most violent year was 1980 when it reportedly killed 118 people.<sup>34</sup> By contrast, between May 2003 and December 2006, ETA apparently caused no deaths although other aspects of its campaign, for example, extorting money and damaging property continued.<sup>35</sup> In its 41 years of 'armed struggle' the average number of people killed annually by ETA amounts to 21;
  - iii. Both sides have used force in the conflict. Especially in the Franco era and the early post-Franco years, the Spanish government responded harshly to ETA's acts of terror.<sup>36</sup> Madrid is now much more restrained but some of its actions still draw complaints. For example, Gara has reported that ETA members in prison have complained of torture<sup>37</sup> and non-governmental organisations such as Human Rights Watch<sup>38</sup> and Amnesty International<sup>39</sup> have called for investigations into Spain's counter-terrorism measures which, they say, infringe basic human rights;<sup>40</sup>

- iv. The lack of other options has meant that ETA has had to use guerrilla tactics. There is no information to suggest, and it has not been reported that ETA members wear uniforms or identify themselves during attacks – rather, their attacks are covert;<sup>41</sup> and
- v. ETA's attacks are not confined to the Basque region.<sup>42</sup>

#### *ETA's structure*

- 43. Information seized by authorities after the recent arrests of individuals in ETA's leadership has provided an insight into the group's current organisational structure.<sup>43</sup> Jane's reports that ETA's hierarchy has been decentralised,<sup>44</sup> apparently to ensure continuity within the group and minimise the impact of arrests. ETA's three main divisions (military, political and logistics) have been restructured to form 11 departments, all of which answer to ETA's executive committee (also known as the Zuba).<sup>45</sup> ETA's core members operate in cells with secure, but slow, communication with the organisation's hierarchy. Jane's reports that each cell is often expected to carry out its own target selection and intelligence gathering. While the cells have some operational autonomy in the planning and carrying out of specific attacks, ETA's leadership provides training both on target identification and intelligence gathering for possible attacks.<sup>46</sup>

#### *ETA and terrorism*

- 44. The use of terror by ETA is well attested. As noted above, ETA has claimed responsibility for terrorist attacks and others have also been attributed to the organisation.

#### *Targets*

- 45. The first death attributed to ETA occurred in 1968<sup>47</sup> and the most recent was in December 2008.<sup>48</sup> ETA's past actions demonstrate that it has a well-established set of targets. The upper echelons of the Spanish state (the King, high-level politicians and civil servants, senior army and police officers and the judiciary) have been targets. Individuals in the Basque areas who work for, or collaborate with, the Spanish government (such as police, the security forces, local politicians and industrialists) have also been targets. Infrastructure provided by Madrid is often attacked, as are some key national industries (including tourist areas). Journalists who are anti-ETA have also been attacked.<sup>49</sup> On 31 December 2008 ETA bombed the regional broadcasting headquarters of Basque Radio and Television (EiTB) which is linked to the moderate Basque Nationalist Party that governed the Basque region at the time of the attack.<sup>50</sup>
- 46. The Basque population has been targeted by ETA, it has used violence and extortion in order to intimidate them, to keep them loyal to ETA and its cause, and to raise funds for operational purposes.<sup>51</sup> For example a number of media sources have attributed to ETA the killing of Basque politicians shortly before local elections. Joseba Pagazaurtundua was an active member and organiser of the "Basta Ya" movement which publicly opposes ETA's violence. He was shot in February 2003 just prior to the March municipal elections.<sup>52</sup> Froilan Elexpe, the Deputy Mayor of Lasarte (a Basque town) and member of the Socialist party was killed on 20 March 2001, prior to the Basque Parliamentary elections of 13 May 2001.<sup>53</sup>

47. The killing of Manuel Indiano Azaustre in August 2000 has also been attributed to ETA. Azaustre was a Basque councillor who represented Spain's Popular Party and he was shot one day before talks between Spain's Interior Minister and the Spanish Political parties to discuss the situation in the Basque region were scheduled to begin.<sup>54</sup>

*Weapons, tactics and intentions*

48. A well-established set of weapons and tactics are successfully utilised by ETA. These include assassination or murder and the placing of improvised explosive devices (IEDs).
49. Recent success by counter-terrorist authorities in Spain and France has degraded but not eliminated ETA's capabilities. Attacks attributed to and claimed by ETA have continued throughout 2008 and into 2009. ETA's campaign since it resumed terrorist actions in late 2006 suggests that it is planning how, when, where and against whom or what it strikes. For example, the circumstances surrounding the assassinations detailed in the second and third case studies below, make it clear the men were deliberately targeted by ETA. In particular, the assassinations were carried out in a professional manner that suggests they were preceded by good intelligence and good planning.
50. **The organisation** continues to be able to fabricate a range of IEDs suited to specific tasks. These are delivered to the intended attack sites and the targets are consistent with ETA's criteria (see paragraphs 45 and 46). The nature of IEDs spread fear and terror amongst a population aware that ETA has the ability to place bombs and have them explode at times of their choosing.
51. The use of IEDs by ETA is less precise in terms of who is killed or injured than is the case with assassinations. A common practice of ETA's is to give authorities a warning prior to an explosion in a civilian area. The warning is given usually through the Police or through the DYA (a Basque roadside assistance organisation). The amount of time between the warning and the intended explosion varies, as does the warning content, which impacts on the ability of police and other authorities to act to clear the area. For example, in the bombing of the Madrid airport car park building detailed in the first case study, police were able to almost completely clear the area following a telephone warning, although two people were killed and around twenty injured in the blast. In contrast, it was reported that the warning given prior to the explosion at the University of Navarra in Pamplona in October 2008 led the police to search the wrong university leaving insufficient time to clear the area where the bomb had been placed before it exploded. The International Herald Tribune reported that the casualties from the blast itself were limited to around 30 injuries, because rain meant students had remained indoors that day.<sup>55</sup>
52. However, if the targets of the attack are the servants of the Spanish state (and their dependents), particularly if they are members of the security forces, then no warning is given. For example, there was no warning prior to the attack on the barracks of the Guardia Civil in Legutiano (a Basque town) on 14 May 2008. One Civil Guard was killed and four civilians injured.<sup>56</sup> ETA claimed responsibility for that attack in a statement published in Gara on 30 May 2008. Other attacks against the security forces include elements which point to ETA wanting to cause heavy security force casualties.<sup>57</sup>

53. The public attitude ETA has to the threat IEDs pose to civilians (see paragraph 67(iii)) is that it endeavours to minimize casualties, but it refuses to abandon IEDs even though they often result in deaths and/or injuries. Both ETA's public statements and its attacks demonstrate ETA's awareness that its use of IEDs contributes to an atmosphere of fear and terror.
54. In addition to assassinations and IEDs, ETA also uses Molotov cocktails, extortion, kidnappings and harassment, largely in the Basque areas, to extract funds and to continually remind people that the state cannot protect them. Recently, the Spanish state has begun to combat ETA's imposition of a "revolutionary tax" on businessmen in the Basque area which, if successful, will be a considerable blow to ETA.
55. The use of violence by ETA peaked in the years after the installation of democracy in Spain. Muro's view was that ETA hoped it could 'bomb Spain to the negotiating table'.<sup>58</sup> During the negotiating phases that followed the ceasefires, ETA used violence intending to strengthen its support amongst the Basques.<sup>59</sup>

#### *ETA and other terrorist groups*

56. There are other terrorist groups that operate in Spain,<sup>60</sup> but ETA is the most persistent and active. The growth of Islamist groups in Spain, demonstrated by the 11 March 2004 Madrid train bombings, has led the Spanish authorities to investigate the extent of links between ETA and the Islamists.<sup>61</sup> Jane's reports the possibility of links being established in prison, for example, leading to ETA reportedly selling explosives to Islamist groups who may be planning attacks within Spain.<sup>62</sup> There might be some accommodation between the two groups, but at present, there does not appear to be sustained cooperation.

#### *ETA and politics*

57. Since the late 1970s, ETA has also had a political dimension. This has been no more successful in attaining Basque independence than has its attempts to gain independence by force.
58. Herri Batasuna ('HB' or 'Batasuna'), regarded by many as ETA's political wing, was set up in 1978. HB's central aim was national liberation of the Basques through political means. HB also sought: an amnesty for Basque political prisoners; the legalisation of all Basque political parties; the withdrawal of Spanish security forces from the Basque Country; the improvement of living conditions; and a Statute of Autonomy that would recognise the Basque right of self-determination, establish Euskara as the main language, give the Basque Government control over the Army units located on Basque soil and would allow the Basques to decide the region's future.<sup>63</sup> These aims were never likely to be acceptable to Madrid.
59. In 2003, the Supreme Court placed an indefinite ban on the party, using legislation aimed at banning political parties that represent terrorist groups.<sup>64</sup> The Basques replaced Batasuna with a party known as the "Communist Party of the Basques" or PCTV. That party was banned by the Supreme Court in September 2008 because of its links to ETA.<sup>65</sup> Another Basque Party, "Basque Nationalist Action" (ANV) has also recently been banned,<sup>66</sup> and the political groups Askatasuna and Democracy 3 Million (D3M) were banned from taking part in the Basque region March 2009 elections.<sup>67</sup>

## Case studies

60. As discussed above the Prime Minister may designate an entity as a terrorist entity if he 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. The following three case studies of recent attacks provide the necessary reasonable grounds for that belief.

### **The bombing of Madrid's Barajas International Airport, 30 December 2006**

#### *Facts*

61. On 30 December 2006, a bomb exploded in a van in the four story car park building of Terminal 4 in Madrid's Barajas International Airport. According to Jane's, the Spanish police's specialist explosives unit concluded that the bomb, comprising 200kg of a military explosive known as RDX (a combination of ammonal and hexogen), was designed to cause maximum damage.<sup>68</sup> The Police were given three telephone warnings just over an hour before the bomb exploded<sup>69</sup> and cleared many people from the area, but two people, asleep in their cars, were killed and 26 were injured.<sup>70</sup> These were the first deaths caused by an ETA action since 30 May 2003.<sup>71</sup> The bombing destroyed the car park building and the cost for repairing the damage was assessed at around \$NZ73.7 million.<sup>72</sup> ETA claimed responsibility for this attack on 9 January 2007 through a statement published in the newspaper, Gara.<sup>73</sup>
62. The bombing happened during talks between ETA and Madrid, sanctioned by the Spanish Parliament.<sup>74</sup> ETA asserted that, regardless of the attack, they considered the "permanent ceasefire", which began on 24 March 2006, to still be in place.<sup>75</sup> The Spanish Government disagreed, declaring the ceasefire to be at an end.<sup>76</sup> The BBC,<sup>77</sup> the International Herald Tribune,<sup>78</sup> the New York Times,<sup>79</sup> Amnesty International<sup>80</sup> and Jane's<sup>81</sup> all accepted that ETA was responsible for the bomb, basing their reporting on ETA's own claims in Gara.
63. In an interview published in Gara on 8 April 2007, ETA restated its responsibility for this attack. When questioned about the reason for the airport bombing, the representative stated that "the Barajas bombing was a strike in reaction to continual aggression by the Spanish government" and that this was a way of getting the negotiations to move along "on a firmer basis". The ETA representative further stated that this act was a "move to stop the whole process [of talks with Madrid] from derailing by sending the Spanish government an unequivocal message to think about".<sup>82</sup>
64. Constructing, placing and detonating a large IED is well within ETA's area of competence. The chosen target is also consistent with ETA's past actions in its "armed struggle".
65. On 6 January 2008, two alleged members of ETA were arrested and are reported to have confessed to carrying out the bombing of the Madrid airport.<sup>83</sup> Mikel de Garikoitz Aspiazu (also known as Txeroki), suspected of being one of ETA's top leaders, was arrested in France on 17 November 2008.<sup>84</sup> On 24 November 2008, a Spanish court indicted Aspiazu and four other men for their alleged role in the bombing of Madrid Airport.<sup>85</sup> The case has not yet gone to trial. The various

sources discussed above provide reasonable grounds to conclude that ETA was responsible for the attack on the airport car park building.

*Attack meets designation criteria*

66. The attack is consistent with the definition of a terrorist act under s 5 of the TSA.
67. The placement of such a large bomb containing military grade explosives in an airport car-park building indicates that ETA intended (in terms of s 5(3)(c) TSA) to cause serious damage to this property of great value and, given the cost of rebuilding and repercussions for airport business, major economic loss. ETA's subsequent responsibility claim expressed no regret for the physical and economic consequences of the attack, even noting that it "caused great damage".<sup>86</sup> In addition, the following circumstances of the case demonstrate that the action was likely to result in death or serious bodily injury to one or more persons (s 5(3)(c) and 5(3)(a) TSA):
  - i. Although ETA made warning calls approximately one hour prior to detonation, the bomb was designed to cause maximum damage and placed in a large building frequented by many people at a busy time of day and year (0900 hours on 30 December). It was likely that the authorities would be unable to completely evacuate the building and put a suitable perimeter in place before the explosion;
  - ii. Past experience of ETA activity and the size of the bomb together demonstrate the likelihood of human casualties despite giving advance warning to the authorities. For example, despite advance warning calls being made on both occasions, ETA car bomb attacks in May and July 2001 respectively resulted in a police officer being killed in each case;<sup>87</sup> and
  - iii. Although in its statement claiming responsibility for the attack, ETA claimed the deaths were unintended, it has made public statements acknowledging that such human casualties are a known risk of its activity. In 2000, ETA's former leader was reported as saying in Spain's National Court, "As an ETA activist, I would like to say that ETA, in its actions, takes special care not to incur civilian victims, although unfortunately this happens."<sup>88</sup>
68. Finally, both the political context of the bombing and the statements made by ETA following the attack (noted at paragraph 63 above) demonstrate that it was carried out to unduly compel the government to take a negotiating stance more agreeable to ETA (s 5(2)(b) TSA), and thus also to advance ETA's political cause of Basque independence from Spain (per s 5(2) TSA). Given it was an attack on a car park building at a civilian airport, it is also reasonable to infer an intention to induce terror in the civilian population (per s 5(2)(a) TSA).

**The assassination of former Socialist Councillor Isaias Carrasco, 7 March 2008**

*Facts*

69. On 7 March 2008, Isaias Carrasco, ethnically a Basque and a former town councillor, was shot in the neck and chest at short range outside his home as he left for work.<sup>89</sup>
70. The assassination occurred two days prior to the Spanish parliamentary elections and followed a call by ETA, carried in Gara on 1 March 2008, for Basques to boycott the elections.<sup>90</sup> The murder is similar in all respects to the assassinations of Joseba Pagazaurtundua in 2003 and Froilan Elexpe in 2001 (outlined in paragraph 46 above), except that ETA has admitted killing Carrasco.
71. On 1 April 2008 ETA claimed responsibility for Carrasco's assassination in a statement published in Gara newspaper.<sup>91</sup> Reuters,<sup>92</sup> Amnesty International,<sup>93</sup> ABC news<sup>94</sup> and Jane's<sup>95</sup> all accepted ETA's culpability. ETA's claim of responsibility along with other sources discussed above provide reasonable grounds for concluding that ETA was responsible for Carrasco's assassination.

*Attack meets TSA designation criteria*

72. Carrasco's assassination is consistent with the definition of terrorist act under s 5 of the TSA. The killing was clearly intended (s 5(3)(a) TSA). It targeted a Basque who had worked as a town councillor within the Spanish administrative apparatus, two days before the Spanish General Elections and following ETA's call for an election boycott. The killing thus seems to have been an intentionally terrorising message to ordinary Basques that ETA required them to abstain from voting and that Basques should not cooperate with, or participate in, the Spanish political system (s 5(2)(a) TSA).
73. The Carrasco assassination is another example of ETA's long-standing practice (see paragraph 46 above) of intimidating the Basque population into loyalty to the ETA cause. His killing was thus also clearly designed to further ETA's political cause of an independent Basque state (s 5(2) TSA).

**The assassination of Spanish businessman, Ignacio Uria Mendizabel, 3 December 2008**

*Facts*

74. On 3 December 2008, Ignacio Uria Mendizabel, a Spanish businessman, was shot in the head at close range in the Basque town of Azpeitia.<sup>96</sup> Emergency services attempted to revive him, but he died at the scene from his injuries.<sup>97</sup>
75. Mendizabel was one of the owners of a construction company which held a contract to build a high speed train line (AVE) to connect several Basque cities to Madrid.<sup>98</sup> ETA has stated on several occasions that the building of this train link is not in the interests of Basque independence.<sup>99</sup> The high speed train project has been named as a target by ETA for some time<sup>100</sup> and in August 2008, ETA claimed responsibility for three bomb attacks against companies working on the project.<sup>101</sup>
76. Amnesty International reports that Mendizabel had received threats from ETA in the past few years for refusing to pay its "revolutionary taxes."<sup>102</sup>
77. On 21 January 2009, ETA claimed responsibility for Mendizabel's assassination through a statement published in Gara newspaper.<sup>103</sup> ETA is reported to have

described the killing of Mendizabel as "an execution", and called for an end to the building of the high speed train link, warning that others involved in its construction would be an ETA target.<sup>104</sup> Reuters,<sup>105</sup> the International Herald Tribune,<sup>106</sup> Eitb24<sup>107</sup> and the BBC<sup>108</sup> all accepted ETA's culpability, basing their reports on its 21 January 2009 statement. ETA's claim of responsibility and the fact that reputable secondary sources accept ETA's claim provide reasonable grounds to conclude that ETA was responsible for Mendizabel's assassination.

*Attack meets TSA designation criteria*

78. The assassination of Mendizabel is consistent with the definition of a terrorist act under s 5 of the TSA. The killing was clearly intended as per s 5(3)(a) of the TSA. Further, as is shown in ETA's statement after the attack threatening others who are involved in the project, it was done with the intention to compel the Spanish state to end work on the high speed rail project (s 5(2)(b)) and to terrorise the local population who may be involved in, or support, the project (s 5(2)(a)). The assassination was also done for the purpose of advancing ETA's political cause of Basque independence (s 5(2) TSA).

**Law of armed conflict**

79. Section 5(4) of the TSA states that an act is not a terrorist act if "it occurs in a situation of armed conflict and which is, at the time and in the place that it occurs, in accordance with the rules of international law applicable to the conflict." This exemption does not apply to the acts detailed in the case studies.

*Is there an armed conflict and are ETA members combatants?*

80. For the s 5(4) exemption to apply, two conditions must be satisfied. First that there is a state of armed conflict currently in Spain and second that the attack accords with the law of armed conflict ("LOAC"). If one of these conditions is not met, the exemption does not apply.
81. An internal armed conflict exists where the conflict is fought between government forces and opposing non-state forces, or amongst armed groups, none of whom qualify as a legitimate government. Additional Protocol II (1977) to the 1949 Geneva Conventions adopted a higher threshold, requiring the insurgent forces fighting the government to be under responsible command and to control territory such that it would be able to implement the Additional Protocol. Such violence may even be classified as an international armed conflict when peoples are fighting against colonial domination, alien occupation or racist regimes in the exercise of their right to self determination.<sup>109</sup> LOAC distinguishes, however, between armed conflict and other internal disturbances or tensions such as riots and isolated and sporadic acts of violence.
82. Although ETA describes its actions as an "armed struggle" against Spain and the state's response as "aggression,"<sup>110</sup> the situation is one of violent activity by the organisation drawing a broad police and political response from the state. ETA's most recent 'campaign' began in 2006 and since then, and particularly in 2008, a large number of attacks have been claimed by and/or attributed to ETA.<sup>111</sup> There is not however evidence of violence that has reached a degree of intensity and

continuity on the part of either ETA or the Spanish state that would bring the situation within the meaning of “armed conflict.”

83. Some international human rights groups and ETA allege that Spain has acted unlawfully, including using torture against ETA members.<sup>112</sup> Even if this is the case, it does not alter the character of the situation to make it an “armed conflict.”
84. Given there is no situation of armed conflict, the exemption in s 5(4) cannot apply to ETA’s attacks detailed in the case studies.
85. Even if it is accepted that there is a current armed conflict, the second threshold for applying LOAC is also not met. In accordance with LOAC, only combatants<sup>113</sup> have the right to conduct attacks. This generally means members of armed forces, however irregular forces can still qualify provided that they distinguish themselves from the civilian population while engaged in an attack or operations preparatory to an attack<sup>114</sup> ETA, by not distinguishing themselves from the civilian population during operations (their attacks are covert or carried out remotely) or conducting its operations according to LOAC, does not qualify for combatant status.<sup>115</sup> Furthermore there is no evidence of a responsible internal disciplinary system within ETA which enforces compliance with LOAC.<sup>116</sup> Again, this means that the exemption in s 5(4) cannot apply.

#### *The case studies*

86. For completeness, even if the two threshold questions were answered in the affirmative and LOAC did apply to ETA, in all three instances detailed in the case studies, ETA has breached LOAC in two respects.
87. First, all three attacks were clearly targeted against civilians or civilian objects. This breaches the LOAC principle of distinction – that attacks on enemy combatants and military objectives are lawful, whereas attacks on the civilian population, civilian objects and people rendered *bors de combat*<sup>117</sup> are not.
88. Second, “acts of terrorism” are prohibited by LOAC.<sup>118</sup> As is seen from the discussion above, the attack on the airport which destroyed the building and killed two people was intended to terrorise the population. The assassination of Carrasco, a Basque former town councillor, followed a call by ETA for Basques to boycott the upcoming elections. The assassination of Mendezibel was linked to his involvement with the high speed rail project ETA had previously named as a target and continues to target. These killings were also clearly meant to send a terrorising message to the population.

#### **The Cabinet criteria**

89. As discussed above at paragraphs 20 and 21, Cabinet agreed a number of factors that may be relevant in deciding whether to recommend to the Prime Minister the designation of a non-UN listed terrorist entity that meets the s 22 TSA threshold. The criteria that are specifically relevant in relation to the recommended designation of ETA are discussed below.

#### *The nature and scale of involvement in terrorist acts or support activity*

90. The information presented in this paper shows that the nature and scale of ETA's involvement in terrorist acts is long-standing and extensive. It is a well established organisation that has either claimed responsibility for or been attributed with many terrorist attacks, and it continues to carry out such attacks.

*Risks to New Zealand citizens*

91. Terrorist activity may pose a risk to the security of New Zealand citizens or interests, or the national security of New Zealand. A risk to New Zealand citizens, albeit that this is most likely to be in an overseas jurisdiction rather than in New Zealand, will constitute an important factor in considering whether to request the designation of that entity.
92. New Zealand's consular advice to New Zealanders travelling to Spain (as at April 2009) is that there is some risk to people's security from terrorist attacks by ETA and caution is advised. Large numbers of New Zealanders visit Spain as tourists during spring, summer and autumn (exact figures are not known as many enter Spain from another European country and as such are not logged on entry), and numbers could increase as links expand between New Zealand and Spain. The case of the ETA bombing at Madrid's Barajas Airport is a clear example of how New Zealanders travelling in Spain could be affected by an ETA attack. There is also a risk of New Zealanders living in Spain being injured or killed in an ETA attack, but given the relatively small number of New Zealanders resident there,<sup>119</sup> this risk is assessed as low.
93. In terms of the possibility of a New Zealand designation of ETA increasing the risk to New Zealand citizens or interests either in Spain or elsewhere, a degree of risk exists, but it is assessed as being very low. ETA does not appear to target foreign citizens or interests, and even if it shifted strategy to do so, the New Zealand presence in Spain (official, commercial and private) is relatively small.

*The rationale for going beyond the UN listing*

94. As outlined at paragraph 9 above, pursuant to UN Security Council Resolution 1267, the UN maintains one list of terrorist entities – individuals and entities belonging to or associated with Al-Qaida and the Taliban. ETA is not on the consolidated list and, in the absence of any signs of ETA having associations with Al-Qaida or the Taliban, or being likely to form them in the future, the group is unlikely to be designated by the UN under this process. UNSCR 1373 (2001) does not establish any further UN listing process to cover terrorist entities beyond those on the consolidated list. Therefore, any designation of ETA must be a New Zealand national decision.

*Contribution to international security*

95. As noted above, the designation of terrorist entities not already listed by the UN helps New Zealand implement its obligations under UNSCR 1373. As the threat of terrorism and terrorist activity in New Zealand is very low, the primary purpose of New Zealand designating terrorist entities is usually to contribute to international efforts to constrain the operating space of terrorist entities as much as possible. By making New Zealand an unwelcome environment for terrorist entities, in particular regarding their financing, we make it more difficult for them to operate internationally. As well, designation by New Zealand would send a broader political

signal to ETA that its activities are condemned not just by Spain and the EU, but also by countries beyond Europe.

### **The case to designate**

96. This paper concludes that ETA meets the legal criteria for designation as a terrorist entity and also that it is in line with the relevant cabinet criteria for recommending designation to the Prime Minister.
97. The nature of its engagement in terrorist acts is that of a skilled and disciplined terrorist organisation, on a scale that extends over 41 years against a wide range of targets. Terror is an integral part of ETA's methods for waging what it sees as a drive for independence from Spain. ETA uses terrorism to induce terror amongst the Spanish population, to try to force certain actions by the Spanish Government, and to maintain either the allegiance or the acquiescence of the Spanish Basques.
98. There are no formal established links to Al-Qaida or the Taleban, making designation of ETA by the UN very unlikely. ETA has been designated as a terrorist organisation by Canada, the European Union, the United Kingdom, and the United States, and by Australia for asset freeze purposes only.
99. There is a small risk to New Zealanders in Spain from ETA's actions, however the main purpose of designation would be to contribute to international security by assisting international efforts to constrain the operating space of terrorist entities as much as possible.
100. Designation of ETA would not necessarily contribute, in any material way, to defeating ETA in Spain. That will depend on whether ETA continues to be able to draw sufficient participation in its violent actions from the Basque people.
101. If the Prime Minister were to agree that ETA meets the legal criteria for designation under the TSA, he may then exercise his discretion in s 22 of the TSA to designate.
102. While the Police and NZSIS would be responsible for enforcement action were ETA to be designated, the resource implications are likely to be minimal.

### **Recommendation**

103. It is recommended that you:
  - i. **Note** that officials, acting in accordance with Cabinet mandated procedures, have concluded that ETA meets the legal criteria for designation as a terrorist entity under the TSA and recommend that ETA be so designated.
  - ii. **Note** that should the Prime Minister be inclined to proceed to designation he is required to consult the case with the Attorney-General.
  - iii. **Note** that the decision to designate otherwise falls within the statutory discretion of the Prime Minister.

Howard Broad  
Commissioner of Police

<sup>1</sup> Final designations expire under the TSA after 3 years unless renewed by the Prime Minister (section 35 TSA).

<sup>2</sup> See CAB (03) 34/15A.

<sup>3</sup> These were:

- The 'Algiers negotiations' which took place between 1986 and 1989. See Diego Muro, *Ethnicity and Violence: the case of radical Basque nationalism* (New York: Routledge 2007), pages 148-151. Muro is a specialist in contemporary Spain, Spanish history and the Basque conflict. *Ethnicity and Violence* deals with Basque nationalism and ETA's violence from the Civil War onwards.
- ETA declared a 'unilateral' ceasefire in 1998. This ended in January 2000 when ETA exploded two car bombs in Madrid, killing a Spanish Army Officer. (See *Ethnicity and Violence*, pages 166-171).
- In 2006, ETA announced a permanent ceasefire which they themselves broke in late December 2006 by bombing the Madrid Barajas airport on 30 December 2006, ETA formally ended this ceasefire on 5 June 2007. (See *Ethnicity and Violence*, pages 183-189).

<sup>4</sup> See the International Herald Tribune "A glance at ETA's formation and goals", dated 5 October 2007, which is available at: <http://www.ihf.com/articles/ap/2007/10/05/europe/EU-GEN-Spain-ETA-Glance.php> last accessed 13 January 2009.

<sup>5</sup> See the report by Jane's titled: "Euzkadi Ta Askatasuna (ETA)", dated 1 December 2008, last accessed 22 January 2009. This is available only on subscription.

<sup>6</sup> As evidence see:

- See above, footnote 5; shows that ETA's most active period was the 1970's and 1980's.
- The Spanish Ministry of Interior website publishes names of "Victims of ETA Terrorism" and shows the number of deaths caused by ETA each year since 1968. This table shows that the number of deaths caused by ETA were highest during the 1980's. This is available at: <http://translate.google.co.nz/translate?hl=en&sl=es&u=http://www.mir.es/&ei=kjSKSarkIomMsAPX1rDIAQ&sa=X&oi=translate&resnum=1&ct=result&prev=/search%3Fq%3Dministry%2Bof%2Binterior%2Bspain%26hl%3Den> (to find the statistics, when this link is reached, click on 'Press' on the left hand side of the screen; then click on 'ETA terrorism', then 'latest deaths', then 'statistical tables' in the middle of your screen).
- Also see paragraph 49 above.

<sup>7</sup> See the report by Jane's titled "Generation games: Basque separatists fight for ascendancy", page 8; dated 13 January 2009, last accessed 22 January 2009. This is available only on subscription. Regarding recent arrests see paragraph 65 of this paper and also Reuters article 'France arrests ETA military chief' April 18 2009.

<sup>8</sup> see above, footnote 7, pages 7 and 8.

<sup>9</sup> See the Council for Foreign Relations (CFR) article titled "ETA ceasefire brings hope, scrutiny", page 1 which is available at: [http://www.cfr.org/publication/10229/eta\\_ceasefire\\_brings\\_hope\\_scrutiny.html](http://www.cfr.org/publication/10229/eta_ceasefire_brings_hope_scrutiny.html) dated 24 March 2006 last accessed 10 October 2008.

<sup>10</sup> See EITB article titled "ETA says incoming Basque government is 'priority target'" dated 12 April 2009, last accessed 17 April 2009, which is available at <http://www.eitb.com/news/politic/detail/126879/eta-says-incoming-basquegovernment-is-priority-target/>

**Note:** On 12 April 2009, ETA issued a statement in Gara newspaper in which it named the incoming Basque government as a "priority target". See above article and Turkish Weekly article titled "ETA threatens new Basque Regional Government with attacks" dated 12 April 2009 last accessed 14 April 2009, which is available at <http://www.turkishweekly.net/print.asp?type=1&id=71907>

<sup>11</sup> See the Economist article titled "How much is enough?", page 3, dated 6 November 2008, which is available at [www.economist.com/specialreports/displaystory.cfm?story\\_id=12501023](http://www.economist.com/specialreports/displaystory.cfm?story_id=12501023). Last accessed 7 January 2009.

<sup>12</sup> Spain's Popular Party is a party of the centre-right and was in government from 1996 until 2004.

<sup>13</sup> See the article by BBC News titled "Who are ETA?" which is available at: <http://news.bbc.co.uk/2/hi/europe/3500728.stm> Published January 5, 2007, last accessed 10 October 2008.)

<sup>14</sup> See above, footnote 11, page 3 (refer to map).

<sup>15</sup> See "ETA does not cross its arms before the terrorist attack on Euskal Herria" published in Gara newspaper on 6 November 2008.

<sup>16</sup> A representative of ETA carried out an interview with Gara newspaper titled "An Interview with ETA - If the attacks stop we are ready for a firm commitment to a violence-free scenario", see page 11-12. This interview is dated 8 April 2007, and is available at: <http://www.gara.net/paperezkoa/20070408/13404/en/If/the/attacks/stop/we/are/ready/for/firm/commitment/to/violence-free/scenario> last accessed 10 October 2008.

<sup>17</sup> See

- the statement by ETA titled "27th of September: Basque Soldiers Day" which is available at: <http://reibiliun.blogspot.com/2006/09/27th-of-september-basque-soliders-day.html> last accessed 17 November 2008.
- above, footnote 4, page 2.

<sup>18</sup> As a result of ETA's bombing of the airport in December 2006, the government has said that it does not want to enter into negotiations with the group again. See the CFR article titled "Deadly end to Spain's ETA talks", page 1, which is available at: [http://www.cfr.org/publication/12428/deadly\\_end\\_to\\_spains\\_eta\\_talks.html](http://www.cfr.org/publication/12428/deadly_end_to_spains_eta_talks.html) dated 16 January 2007, last accessed 10 October 2008.

<sup>19</sup> See above, footnote 16 page 10

<sup>20</sup> As evidence see ETA statements:

- above, footnote 16, page 11 and
- above, footnote 17 bullet point.

<sup>21</sup> See above, footnote 4, page 9.

<sup>22</sup> See the CFR article titled "Basque Fatherland and Liberty (ETA) (Spain, separatists, Euskadi ta Askatasuna)" which is available at: <http://www.cfr.org/publication/9271/> dated 17 November 2008, last accessed 5 February 2009.

<sup>23</sup> Gara is a nationalist Basque newspaper. It is generally recognised as a vehicle through which ETA publishes its statements. Gara's website is <http://www.gara.net>. As an example, refer to the statement issued in Gara on 10 January 2007 in which ETA claimed responsibility for the attack on Madrid Airport on 30 December 2006: <http://www.gara.net/idatzia/20070110/art196519.php> dated 10 January 2007, last accessed 13 October 2008. Note that ETA's statements published in Gara are received in Basque and translated to Spanish by Gara. That Spanish version is then translated to English by the New Zealand government.

<sup>24</sup> El Mundo is the second largest daily newspaper in Spain <http://www.elmundo.es/>

<sup>25</sup> El Pais is the most widely circulated daily newspaper in Spain <http://www.elpais.com/>

<sup>26</sup> The Basque news and information channel <http://www.eitb24.com/en/>

<sup>27</sup> *Ethnicity and Violence*, see above footnote 3, bullet point 1.

<sup>28</sup> "Attempting to end violence in Northern Ireland and the Basque Country: The Misrepresentation of the Irish Model" published in *Terrorism and Political Violence*; Volume 16, Number 4, October–December 2004, pp. 695–713(19).

<sup>29</sup> See above, footnote 4. Jane's reports that in 1961, ETA attempted to derail a train that was transporting politicians. This information can be found under the "Chronology of major events" section at page 11.

<sup>30</sup> See above, footnote 3, bullet point 1, page 140.

<sup>31</sup> See the article published in Gara newspaper "The ETA reiterates the necessity of a democratic framework and fixes the creation of a Basque State as its lode-star" dated 30 May 2008. The original was in Basque, rendered in Spanish, then translated to English dated 30 May 2008. Officials hold a copy of this Spanish to English translation.

<sup>32</sup> See above, footnote 3, bullet point 1, page 100.

<sup>33</sup> See above, footnote 3, all bullet points, as evidence.

<sup>34</sup> See above, footnote 4, page 9.

<sup>35</sup> See above, footnote 4, page 9

<sup>36</sup>

- See above, footnote 4, page 10. Jane's reports that during the 1980's a paramilitary organisation named The Anti-Terrorist Liberation Group (GAL) which is said to have killed 27 suspected ETA members, was later reported to have acted with the consent of certain Spanish Government Ministers.
- See above, footnote 3, bullet point 1, Muro writes about the GAL in *Ethnicity and Violence*, page 139. Diego Muro says that investigations at the highest judicial level proved that the Spanish state had secretly funded GAL with the intention of changing the French government's attitude towards ETA.
- See the report published by Amnesty International "2000 Annual Report for Spain" page 1, which says that Judges pursued investigations into the 1980's "dirty war" waged against ETA by the GAL, they included officers of the security forces and hired gunmen linked at the highest levels with the former Spanish administration. This report is available at <http://www.amnestyusa.org/annualreport.php?id=9BAD9D52CD367614802568E400729F3C&c=ESP>

<sup>37</sup> See the article published in Gara Newspaper "All detainees have complained of torture to pass before the Judge Garzon." dated 28 July 2008, last accessed 13 October 2008. Officials hold a copy of this article.

<sup>38</sup> For example, see the Human Rights Watch article "Counter terrorism measures infringe basic human rights" which is available at <http://hrw.org/english/docs/2005/01/27/spain10066.htm> dated 27 January 2005, last accessed 9 February 2009.

<sup>39</sup> See "Amnesty International 2008 report on Spain" which is available at <http://thereport.amnesty.org/eng/regions/europe-and-central-asia/spain> last accessed 10 October 2008.

<sup>40</sup> See:

- Amnesty International's report dated 14 November 2006 in which the organisation expressed concern over the lack of improvements to the human rights of imprisoned ETA members following the confirmation of the ceasefire on 24 March 2006 is available at <http://www.amnesty.org/en/library/asset/EUR41/013/2006/en/dom-EUR410132006en.html> last accessed 10 October 2008; and
- See a further report from Amnesty International dated 8 January 2008, where the organisation calls for a thorough investigation to determine whether human rights were violated when one of the individuals, suspected of being a member of ETA who participated in the bombing of Madrid Barajas Airport, was arrested. This article is available at: <http://www.amnesty.org/en/library/asset/EUR41/001/2008/en/EUR410012008en.html> last accessed 10 October 2008.

<sup>41</sup> See paragraphs 61 to 78 and footnotes at those paragraphs detailing the three attacks used as case studies.

<sup>42</sup> Examples of attacks attributed to ETA by Jane's outside of the Basque region include:

- In **2000**, ETA exploded two car bombs in Madrid; killing a Spanish Army Officer.
- In **2001**, a car bomb in Madrid injured 99 people, four of them seriously, causing extensive damage. The bomb was attributed to ETA.
- In **2002**, a car bomb exploded in front of a stadium in Madrid, hours before the Real Madrid and Barcelona football clubs were due to play; 19 people suffered slight injuries.
- In **2003**, a bomb ripped through a car park at Santander Airport in Northern Spain, destroying vehicles but causing no injuries.
- In December **2004**, ETA set off seven small bombs in four Spanish cities (Leon, Avila, Santillana del Mar and Ciudad Real in northern Spain).

<sup>43</sup> See above, footnote 7, page 7.

<sup>44</sup> See above, footnote 7, page 6.

<sup>45</sup> See above, footnote 7, page 6.

<sup>46</sup> See above, footnote 4, page 8.

<sup>47</sup> As evidence:

- see above, footnote 4, page 9; and
- see above, footnote 22, page 2.

<sup>48</sup> See: <http://news.bbc.co.uk/2/hi/europe/7841878.stm> "ETA warns rail workers are target" dated 21 January 2009, last accessed 2 February 2009; and <http://iht.com/articles/reuters/2009/01/21/europe/OUKWD-UK-SPAIN-ETA.php> "ETA claims businessman killing" dated 21 January 2009, last accessed 2 February 2009.

<sup>49</sup> The range of attacks mounted by ETA can be seen in documents published by Jane's, the BBC and Council for Foreign Relations (CFR) see for example:

- footnote 4 above, pages 11-22;
- "Timeline: ETA campaign" which is available at: <http://news.bbc.co.uk/2/hi/europe/545452.stm> posted 22 September 2008, last accessed 13 November 2008; and
- footnote 22 above, page 2.

<sup>50</sup> As evidence, see:

- "ETA claim responsibility for Uria murder, attack against EITB" which is available at: <http://www.citb.com/news/politic/detail/70386/eta-claim-responsibility-for-uria-murder-attack-against-citb/> dated 21 January 2009, last accessed 26 February 2009, and;
- "ETA under pressure ends 2008 by bombing Basque TV building" which is available at: <http://www.france24.com/en/print/4416762> dated 31 December 2008, last accessed 26 February 2009.

<sup>51</sup> See above, footnote 4, page 4.

<sup>52</sup> See for example:

- "The family of the sergeant killed by ETA in the wake exclude the members of the Basque government, which is available at: [http://209.85.171.104/translate\\_c?hl=en&sl=es&u=http://www.elmundo.es/elmundo/2003/02/08/espana/1044696431.html&prev=/search%3Fq%3Deta%2Bla%2Bdicadura%2Bdel%2Bterror](http://209.85.171.104/translate_c?hl=en&sl=es&u=http://www.elmundo.es/elmundo/2003/02/08/espana/1044696431.html&prev=/search%3Fq%3Deta%2Bla%2Bdicadura%2Bdel%2Bterror)

[%26hl%3Den&usg=ALkJrhgOjOCAHrOCBolgq-f49a8aenD4A](#) " dated 9 February 2003, last accessed 14 November 2008; and

- "Spain: The lethal cost of freedom of expression in the Basque Country" which is available at, <http://www.amnesty.org/en/library/asset/EUR41/001/2003/en/dom-EUR410012003en.html> dated 11 February 2003, last accessed 10 October 2008. Amnesty stated that the killing "can only be seen as an attempt to intimidate those who articulate views different from, or opposed to its (ETA's) policies and actions."

<sup>53</sup> See:

- "ETA kills one of the PSOE, shot in the head in a bar in Lasarte" which is available at: [http://209.85.171.104/translate\\_c?hl=en&sl=es&cu=http://www.elmundo.es/elmundo/2001/03/20/espana/985098154.html&prev=/search%3Fq%3Deta%2Bla%2Bdictadura%2Bdel%2Bterror%26hl%3Den&usg=ALkJrhi3YUBBe64SijFX4WoqeiOBZ7TyNA](http://209.85.171.104/translate_c?hl=en&sl=es&cu=http://www.elmundo.es/elmundo/2001/03/20/espana/985098154.html&prev=/search%3Fq%3Deta%2Bla%2Bdictadura%2Bdel%2Bterror%26hl%3Den&usg=ALkJrhi3YUBBe64SijFX4WoqeiOBZ7TyNA) dated 21 March 2001, last accessed 8 December 2008; and
- See "Spanish politician shot dead" which is available at: <http://news.bbc.co.uk/1/hi/world/europe/1231767.stm> dated 20 March 2001, last accessed 8 December 2008.

<sup>54</sup>

See:

- "Basque politician shot dead" which is available at <http://news.bbc.co.uk/1/hi/world/europe/900962.stm> dated 29 August 2000, last accessed 8 December 2008.
- CNN reported "Vigils for murdered Basque politician" which is available at: <http://archives.cnn.com/2000/WORLD/europe/08/29/spain.shooting.03/index.html> dated 29 August 2000, last accessed 8 December 2008.
- "Local councillor shot dead by ETA gunmen" <http://www.guardian.co.uk/world/2000/aug/30/spain/print> dated 30 August 2000, last accessed 8 December 2008.

<sup>55</sup> See "Car bomb in Spain injures at least 17" published 30 October 2008, last accessed 31 October 2008.

This is available at <http://www.ihf.com/articles/2008/10/30/europe/31spain.php>

<sup>56</sup> See "Car bomb at barracks kills Spanish Police officer" published 14 May 2008, last accessed 1 July 2008.

<sup>57</sup> Two recent attacks in September 2008 and January 2009 demonstrate this point. In both attacks, no warning was given. The initial blasts were aimed at luring a large number of police into an area where a second bomb was set up to cause many casualties. In the September 2008 attack, no one was killed, probably because the police evacuated the building through its rear instead of the front. They thus avoided the second explosion, which was reported to have been made up of approximately 100kg of explosives. Regardless, three police officers and seven civilians were injured, and serious damage was caused to the building and nearby cars. See:

- "ETA bomb kills Spanish officer" which is available at: <http://news.bbc.co.uk/1/hi/world/europe/7628555.stm> dated 22 September 2008, last accessed 2 February 2009; and
- "Bomb wounds 10 in North Spain" which is available at: <http://www.ihf.com/articles/2008/09/21/europe/spain.php> published in International Herald Tribune dated 21 September 2008, last accessed 26 February 2009.

<sup>58</sup> See above, footnote 3, bullet point 1, page 127.

<sup>59</sup> See above, footnote 3, bullet point 1, page 127.

<sup>60</sup> Apart from the Muslim extremist group that mounted the attacks on Madrid's trains in March 2004, examples of such groups include:

- **Iparretarrak** is a small Basque organisation campaigning for full Basque autonomy which emerged in December 1973, in 1978 the organisation was declared illegal.
- **GRAPO** formed in 1975 in Spain and is an anti-American group, seeking removal of all U.S. military forces from the Spanish territory.

<sup>61</sup> See above, footnote 4, page 7.

<sup>62</sup> See above, footnote 4, page 7.

<sup>63</sup> See above, footnote 3, bullet point 1, page 154.

<sup>64</sup> See above, footnote 3, bullet point 1, page 173.

<sup>65</sup> See "Spain: Another Basque party banned" which is available at:

<http://www.ihf.com/articles/ap/2008/09/19/europe/EU-Spain-Basque-Party.php> posted 19 September 2008, last accessed 17 November 2008.

<sup>66</sup> See "Spain's Supreme Court bans Basque party" which is available at

<http://www.ihf.com/articles/ap/2008/09/16/europe/EU-Spain-Basque-Party.php> posted 16 September 2008, last accessed 17 November 2008.

<sup>67</sup> See "Spain's Supreme Court bars Askatasuna, D3M from Basque election" dated 9 February 2009, last accessed 17 February 2009, which is available at [http://www.citb.com/en/-X-url\\_home-X-/detail/82707/spains-supreme-court-bars-askatasuna-d3m-from-basque-election/](http://www.citb.com/en/-X-url_home-X-/detail/82707/spains-supreme-court-bars-askatasuna-d3m-from-basque-election/)

<sup>68</sup> See above, footnote 4, page 3.

<sup>69</sup> See "ETA's farewell to peace" which is available at [http://www.opendemocracy.net/conflict-terrorism/eta\\_peace\\_4259.jsp](http://www.opendemocracy.net/conflict-terrorism/eta_peace_4259.jsp) dated 18 January 2007, last accessed 9 February 2009.

<sup>70</sup> See above, footnote 4, page 3.

<sup>71</sup> See above, footnote 4, page 3.

<sup>72</sup> See above, footnote 69, this article states that the damage to the airport was estimated to be around 30 million Euro which converts to approximately \$73.7 million NZD (current for exchange rate as at 19 February 2009).

<sup>73</sup> ETA's statement, dated 9 January 2007, can be found at:

- see above, footnote 23; and
- <http://www.gara.net/idatzia/20070110/art196519.php> dated 10 January 2007, last accessed 13 October 2008.

<sup>74</sup> See above, footnote 3, bullet point 1, pages 184-186.

<sup>75</sup> See above, footnote 73.

<sup>76</sup> See:

- "Ceasefire still in effect, ETA asserts" which is available at: <http://www.iht.com/articles/2007/01/09/news/spain.php> dated 9 January 2007, last accessed 12 January 2009; and
- "Spain: Amnesty international condemns ETA's campaign of threats and deliberate killings of Representatives of Political parties" which is available at: <http://www.amnesty.org/en/library/asset/EUR41/007/2008/en/b6f5dddf-0248-11dd-9f22-c78dcd6ee044/eur410072008eng.html> published 3 April 2008 last accessed 13 October 2008.

<sup>77</sup> See "ETA claims Madrid airport attack" which is available at:

<http://news.bbc.co.uk/2/hi/europe/6245013.stm> published 9 January 2007, last accessed 10 October 2008.

<sup>78</sup> See above, footnote 76, bullet point 1.

<sup>79</sup> See "Separatists Admit to Madrid Airport Attack but Stand by Cease-Fire" which is available at

<http://www.nytimes.com/2007/01/10/world/europe/10spain.html> dated 10 January 2007, last accessed 10 October 2008.

<sup>80</sup> See above, footnote 76, bullet point 2.

<sup>81</sup> See above, footnote 4, page 3.

<sup>82</sup> See above, footnote 16, page 4.

<sup>83</sup> See "2 confess to bomb attack linked to ETA, Spanish official says" which is available at

<http://www.iht.com/articles/2008/01/09/europe/spain.php> published 9 January 2008, last accessed 10 October 2008.

<sup>84</sup> See "Profile: Suspected ETA terrorist 'Txeroki'" which is available at

<http://www.telegraph.co.uk/news/worldnews/europe/spain/3473132/Profile-Suspected-Eta-terrorist-Txeroki.html> dated 17 November 2008, last accessed 2 December 2008.

<sup>85</sup> See "Spain indicts Basque suspect over airport attack" which is available at:

<http://www.iht.com/articles/ap/2008/11/24/europe/EU-Spain-Basque-Militant.php> dated 24 November 2008, last accessed 2 December 2008.

<sup>86</sup> See above footnote 73.

<sup>87</sup> See:

- "ETA kills a young man from Squad to blow up a car bomb in Roses" 18 March 2001 which is available at [http://209.85.171.104/translate\\_c?hl=en&sl=es&u=http://www.elmundo.es/2001/03/18/espana/970538.html&prev=/search%3Fq%3Deta%2Bla%2Bdictadura%2Bdel%2Bterror%26hl%3Den&usg=ALkJrhjrJ87YQ4AYsSHxXXwdOf3xrY9jsg](http://209.85.171.104/translate_c?hl=en&sl=es&u=http://www.elmundo.es/2001/03/18/espana/970538.html&prev=/search%3Fq%3Deta%2Bla%2Bdictadura%2Bdel%2Bterror%26hl%3Den&usg=ALkJrhjrJ87YQ4AYsSHxXXwdOf3xrY9jsg) and;
- "ETA killed a policeman in Madrid a few hours before the inauguration of Ibarretxe" 11 July 2001 which is available at [http://209.85.171.104/translate\\_c?hl=en&sl=es&u=http://www.elmundo.es/2001/07/11/espana/1021044.html&prev=/search%3Fq%3Deta%2Bla%2Bdictadura%2Bdel%2Bterror%26hl%3Den&usg=ALkJrhidmlnICIQdN2tDT2QoCpeZbqWF7Q](http://209.85.171.104/translate_c?hl=en&sl=es&u=http://www.elmundo.es/2001/07/11/espana/1021044.html&prev=/search%3Fq%3Deta%2Bla%2Bdictadura%2Bdel%2Bterror%26hl%3Den&usg=ALkJrhidmlnICIQdN2tDT2QoCpeZbqWF7Q)

<sup>88</sup> See the article by Amnesty International titled "Spain: ETA's killing campaign and acts of Street Violence" dated 5 October 2000 which is available at

<http://asiapacific.amnesty.org/library/print/ENGEUR410122000> last accessed 1 December 2008

<sup>89</sup> The shooting of Isaias Carrasco by ETA was widely reported, see the following links for reports of the attack:

- [http://www.economist.com/PrinterFriendly.cfm?story\\_id=10853871](http://www.economist.com/PrinterFriendly.cfm?story_id=10853871), "Back - to a new challenge" published 13 March 2008, last accessed 10 October 2008.
- <http://www.iht.com/articles/2008/03/07/europe/spain.php> titled "Terrorism again intrudes as Spain heads to the polls" dated 7 March 2008, last accessed 10 October 2008.
- <http://news.bbc.co.uk/2/hi/europe/7283488.stm> titled "Spain PM accuses ETA after death" dated 7 March 2008, last accessed 10 October 2008.
- [http://www.eitb24.com/imprimir-noticia/en/B24\\_89520/](http://www.eitb24.com/imprimir-noticia/en/B24_89520/) titled "Former socialist city councillor shot to death in Basque Country" dated 7 March 2008, last accessed 10 October 2008.

<sup>90</sup> See:

- "Communique of Euskadi ta Askatasuna 'ETA makes a call to boycott and abstention in the elections'" which is available at: <http://translate.google.co.nz/translate?hl=en&sl=es&u=http://www.gara.net/&sa=X&oi=translate&resnum=1&ct=result&prev=/search%3Fq%3Dgara%2Bnewspaper%26hl%3Den> published 1 March 2008 last accessed 10 October 2008;
- "Basque guerrillas ETA call for election boycott" which is available at <http://www.reuters.com/article/latestCrisis/idUSL01661838> dated 1 March 2008, last accessed 10 October 2008;
- "ETA urges Spanish polls boycott" which is available at <http://news.bbc.co.uk/1/hi/world/europe/7272149.stm> dated 29 February 2008, last accessed 13 October 2008.
- "Basque guerrillas ETA call for election boycott" which is available at <http://www.iht.com/articles/reuters/2008/03/01/europe/OUKWD-UK-SPAIN-ETA.php> dated 1 March 2008, last accessed 12 January 2009.

<sup>91</sup> See "ETA afirma que los pactos políticos que buscan perpetuar la negacion de Euskal Herria solo conseguiran alargar el conflicto" published in Gara newspaper on 1 April 2008, last accessed 9 July 2008. This article confirms that ETA has claimed responsibility for the death of Isais Carrasco. This article was originally in Basque, translated to Spanish by Gara newspaper. The Spanish article has been translated to English by the New Zealand Government.

<sup>92</sup> See "Basque ETA says killed Spanish councillor in May" which is available at <http://uk.reuters.com/articlePrint?articleID=UKI0142826220080401> published 1 April 2008, last accessed 9 July 2008.

<sup>93</sup> See "Spain: Amnesty international condemns ETA's campaign of threats and deliberate killings of Representatives of Political parties" which is available at: <http://www.amnesty.org/en/library/asset/EUR41/007/2008/en/b6f5dddf-0248-11dd-9f22-c78dcd6ee044/eur410072008eng.html> published 3 April 2008 last accessed 13 October 2008.)

<sup>94</sup> See "ETA claims responsibility for four Spain bombings" which is available at: <http://www.abc.net.au/news/stories/2008/05/09/2240708.htm> dated 9 May 2008, last accessed 13 October 2008.

<sup>95</sup> See above, footnote 4, page 4.

<sup>96</sup> "Spanish businessman murdered in ETA shooting" which is available at: <http://iht.com/articles/ap/2008/12/03/europe/EU-Spain-Basque-Attack.php> dated 3 December 2008, last accessed 4 December 2008.

<sup>97</sup> See above, footnote 96.

<sup>98</sup> See "Man killed in Basque town of Azpeitia" which is available at <http://www.eitb.com/news/politic/detail/42648/> dated 3 December 2008, last accessed 22 December 2008.

<sup>99</sup> See "Suspected ETA rebels shoot man dead in Basque town" which is available at <http://uk.reuters.com/article/worldNews/idUKTRE4B26SW20081203> dated 3 December 2008, last accessed 4 December 2008.

<sup>100</sup> See "Suspected ETA rebels shoot man dead in Basque town" which is available at <http://www.iht.com/articles/reuters/2008/12/03/europe/OUKWD-UK-SPAIN-SHOOTING.php> dated 3 December 2008, last accessed 4 December 2008.

<sup>101</sup> See:

- "Spanish businessman 'shot by ETA'" which is available at <http://news.bbc.co.uk/2/hi/europe/7763216.stm> dated 3 December 2008 last accessed 22 December 2008; and
- "Spain: Amnesty International condemns killing of Ignacio Uria Mendizabal" which is available at <http://www.amnesty.org/en/library/asset/EUR41/022/2008/en/0772b83d-c161-11dd-9368-1fd51b1be7bc/eur410222008en.html> dated 3 December 2008 last accessed 22 December 2008.

<sup>102</sup> See above, footnote 101, bullet point 2.

<sup>103</sup> See "ETA claims responsibility and technicians who are its target TAV" published in Gara newspaper on 21 January 2009, last accessed 22 January 2009.

<sup>104</sup> See:

- "ETA warns rail workers are target" which is available at <http://news.bbc.co.uk/2/hi/europe/7841878.stm> dated 21 January 2009, last accessed 22 January 2009;
- "ETA claims businessman killing" which is available at <http://iht.com/articles/reuters/2009/01/21/europe/OUKWD-UK-SPAIN-ETA.php> dated 21 January 2009, last accessed 22 January 2009; and
- "ETA claims businessman killing" which is available at <http://uk.reuters.com/articlePrint?articleID=UKTRE50K1XP20090121> dated 21 January 2009, last accessed 22 January 2009.

<sup>105</sup> See above, footnote 104, bullet point 3.

<sup>106</sup> See above, footnote 104, bullet point 2.

<sup>107</sup> See "ETA claim responsibility for Uria murder, attack against EITB" which is available at <http://www.eitb.com/news/politic/detail/70386/eta-claim-responsibility-for-uria-murder-attack-against-eitb/> dated 21 January 2009, last accessed 22 January 2009.

<sup>108</sup> See above, footnote 104, bullet point 1.

<sup>109</sup> Additional Protocol I (1977) to the Geneva Convention of 1949 Art 1 (4).

<sup>110</sup> See above, footnote 16.

<sup>111</sup> See above, footnote 4, a timeline is provided at the back of the article setting out attacks attributed to or claimed by ETA.

<sup>112</sup> See above, footnote 40.

<sup>113</sup> Strictly speaking combatant status only arises in international armed conflict.

<sup>114</sup> Additional Protocol I (1977) to the Geneva Convention of 1949 Art 44.

<sup>115</sup> The applicable LOAC would be Common Article 3 of the Geneva Conventions 1949 and Additional Protocol II (1977) to those Conventions. Spain has ratified all four Geneva Conventions and the two Additional Protocols.

<sup>116</sup> Additional Protocol I (1977) to the Geneva Convention of 1949 Arts 44 and 43(1).

<sup>117</sup> A person is *hors de combat* if he or she is wounded, sick or shipwrecked or captured by the opposing force.

<sup>118</sup> Additional Protocol II (1977) to the Geneva Convention of 1949 Art 4(2)(d). Such attacks are also unlawful under customary international law.

<sup>119</sup> Generally there are approximately 400 New Zealanders resident in Spain (approximately one third in Madrid, one third in Barcelona, and one third elsewhere).