

TERRORISM AND COUNTERTERRORISM IN ITALY FROM THE 1970'S TO DATE: A REVIEW



Edited by
Barbara Vettori

 **TRANSCRIME**

A study carried out in the framework of the
**NCTB (NATIONAAL COÖRDINATOR TERRORISMEBESTRIJDING)
COUNTERTERRORISM PROJECT**

by
**WODC, RESEARCH AND DOCUMENTATION CENTRE OF THE DUTCH
MINISTRY OF JUSTICE**



**UNIVERSITÀ DEGLI STUDI
DI TRENTO**



**UNIVERSITÀ CATTOLICA
DEL SACRO CUORE**

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1.**FOREWORD**

This report is the Italian contribution to the Nationaal Coördinator Terrorismebestrijding Counterterrorism project. It has been produced by TRANSCRIME (Joint Research Centre on Transnational Crime, Università di Trento–Università Cattolica di Milano).

It has been edited by Dr. Barbara Vettori, research coordinator at TRANSCRIME (Milan office). It has been written by Martina Montauti, Ph.D. candidate in criminology at the Università Cattolica del Sacro Cuore and researcher at TRANSCRIME, who elaborated a first draft, and Barbara Vettori, who revised it. Francesco Calderoni, Ph.D. candidate in criminology at the Università Cattolica del Sacro Cuore and researcher at TRANSCRIME, and Nick Ridley, researcher at TRANSCRIME, have also cooperated in producing this report.

The Nationaal Coördinator Terrorismebestrijding Counterterrorism project has been carried out by WODC, the Research and Documentation Centre of the Dutch Ministry of justice. It aims at *“obtaining an overview of policy, specific measures and legislation with respect to counterterrorism in the EU, the US and Israel, as well as insight in the effectivity of measures. This also includes policies aimed at mitigating the process of radicalisation among certain layers of the population”*.

Since this report is the Italian contribution to the project, its aim is to provide an overview of policy, specific measures and legislation with respect to counterterrorism in Italy from 1990 to September 1st 2005. It is organised as follows:

- Section 2 defines the main concepts of the paper, i.e. radicalism and terrorism, with respect to the Italian context;
- Section 3 presents a brief history of terrorism and counterterrorism in Italy from the 1970's to date;
- Section 4 analyses the specific counterterrorism measures adopted in Italy from 1990 to date;
- Section 5 includes a brief résumé of the counterterrorism measures adopted in Italy from 1990 to date (as analysed in Section 4) and some preliminary reflections on the implementation of these measures.

2.

DEFINING "RADICALISM", "SUBVERSION" AND "TERRORISM" IN THE ITALIAN LEGAL CONTEXT

This section aims at understanding how radicalism and terrorism are defined within the Italian legal context. In addition, it will define another relevant concept dealt with by the Italian legal system, i.e. that of subversion.

With reference to radicalism, the word radical (latin radix meaning root) has been used in the United Kingdom since the late 18th century as a label in political science for those favouring or trying to produce thoroughgoing or extreme political reforms which can include changes to the social order to a greater or lesser extent.¹ Radicalism can therefore be defined, in general terms, as the attitude of favouring or producing thoroughgoing or extreme political reforms which can include changes to the social order to a greater or lesser extent.

Radicalism is not expressly taken into account in the Italian Criminal Code, which establishes the offences of subversion and terrorism.²

The starting point for defining subversion is the offence of 'subversive associations' (associazioni sovversive), regulated by article 270 of the Italian Criminal Code. This article states that:

"1. Whoever, within the territory of the State, who promotes, establishes, organizes or runs associations aimed at violently establishing the dictatorship of a social class on the other classes or at violently suppressing a social class or subverting the economic and social systems constituted within the State is sentenced from five to twelve years of imprisonment.

2. The same sentence applies to whoever within the territory of the State promotes, establishes, organizes or runs associations aimed at violently suppressing each political and legal system of the society.

3. Whoever takes part in these associations is sentenced from one to three years of imprisonment.

4. Sentences are increased for those who re-establish, including under a false name or fake form, the above-mentioned associations whose dissolution has been ordered."

¹ The definition of radicalism, together with a complete history of the term can be found on the following website: <http://en.wikipedia.org/wiki/Radicalism>.

² Bauccio L. (2005), *L'accertamento del fatto di reato di terrorismo internazionale. Aspetti teorici e pratici*, Giuffrè. Baudrillard J.(2002), *Lo spirito del terrorismo*, Cortina.

On the basis of this article, subversion can be defined as

- a) the violent establishment of the dictatorship of a social class on the other classes;
- b) the violent suppression of a social class;
- c) the violent suppression of the economic and social systems constituted within the State;
- d) the violent suppression of each political and legal system of the society.

In short, subversion aims at undermining, within the borders of the State, the constitutional order and the pluralistic and democratic organization of the State. This is reached through violent acts whose purpose is to disarticulate the structures of the State, to prevent its functioning and divert it from its essential and fundamental principles.³

The starting point for defining terrorism is the offence of associations with purposes of terrorism, including international terrorism, or purposes of subversion of the democratic order (*associazioni con finalità di terrorismo anche internazionale o di eversione dell'ordine democratico*), regulated by article 270 bis of the Italian Criminal Code. This article was introduced by law n. 15 of 1980⁴ to fight the movements which, during the 1970's, aimed at undermining the democratic order of the State defined as the “system of the basic principles fixed by the Italian Constitution to define the structure and the function of the State”.⁵ It has recently been amended in 2001,⁶ by law n. 438.⁷ The article, after the 2001 amendments, states that:

“1. Whoever promotes, establishes, organizes, runs or finances associations aimed at the commission of violent acts with the purpose of terrorism or of subversion of the democratic order is sentenced from seven to fifteen years of imprisonment.

2. Whoever takes part in these associations is sentenced from five to ten years of imprisonment.

3. Under penal law, the purpose of terrorism is verified as also including violent acts targeted at a foreign State, institution and international organisation.

4. In the case of conviction for this offence, the things which were used for its commission and those representing the price, product and profit of the offence or the use thereof are mandatorily confiscated.”

³ Italian Supreme Court (*Corte di Cassazione*), section I, 28 April 1983 (c.c 3 February 1983, n. 302).

⁴ The original version of article 270 bis, introduced by law n. 15 of 6 February 1980, stated that:

“1. Whoever who promotes, establishes, organizes or runs associations which aim at the commission of violent acts with purposes of subversion of the democratic order is sentenced to between seven and fifteen years imprisonment.

2. Whoever takes part in these associations is sentenced to between four and eight years imprisonment.”

⁵ Italian Supreme Court (*Corte di Cassazione*), section VI, 17 April 1996, n. 973.

⁶ Latino A. (2002), *I nuovi reati di terrorismo internazionale*, in *Diritto Penale/Dottrina-Temi Romana*.

⁷ Decree law n. 374 of 18 October 2001 “Disposizioni urgenti per contrastare il terrorismo internazionale” (Urgent measures to combat international terrorism), then converted into law n. 438 of 15 December 2001. The law introduced in the Italian system the offence of ‘international terrorism’.

On the basis of this article, it is not possible to define terrorism. The word is only mentioned, but no criteria for defining it are offered by the legal text. It is therefore necessary to turn to other sources to clarify its meaning. The first relevant source defining terrorism in the Italian context is a 1987 decision by the Supreme Court. According to this sentence, the purpose of the term 'terrorism', as quoted in the title of the original version of the article, has to be intended as the purpose to strike terror in the community through indiscriminate criminal actions. These actions, which aim at undermining people's trust in the established order and in its structure, are not directed towards people, but rather towards what these people represent.⁸

Apart from this clarification, the first definition of terrorism to be found in Italian legislation is very recent and dates July 31, 2005. On this day, law n. 155 was enacted, whose article 15 introduced in the Criminal Code, amongst other things, article 270 sexies on conducts with the purpose of terrorism (*condotte con finalità di terrorismo*). This article states that:

"1. Conducts with the purpose of terrorism are all the conducts that, due to their nature or context, can cause serious damage to a country or to an international organisation and are committed in order to intimidate the population or force public authorities or international organizations to perform or not to perform a given act, or to destabilize or destroy the fundamental political, constitutional, economic and social structures of a country or of international organization, as well as any other conduct defined as terrorism, or committed for the purpose of terrorism, by conventions or other provisions of international law which are binding for Italy".⁹

⁸ Italian Supreme Court (*Corte di Cassazione*), section I, 5 November 1987, n. 11382.

⁹ The whole text of the law 155 of 2005 can be found on the following website: www.parlamento.it/parlam/leggi/05155l.htm.

On the basis of this article, the term terrorism in the Italian context can be defined as:

- any conduct that can cause serious damage to a country or to an international organisation (this reinforces the statement, already included in article 270 bis, par. 3, which states that terrorism also occurs when violent acts are targeted at a foreign State, institution and international body and enables Italy to fight against international terrorism);¹⁰
- AND aimed alternatively at 1) intimidating the population or forcing public authorities or international organizations to perform or not to perform a given act 2) or destabilizing or destroying the fundamental political, constitutional, economical and social structures of a country or of an international organization.¹¹

In addition, terrorism is also considered to be any other conduct defined as such by conventions or other provisions of international law which are binding for Italy.

It is worth noting that this recent definition of terrorism by the Italian legislator, and in particular the reliance on international conventions to define it, supports the international efforts to reach a common definition of terrorism to better combat it.¹²

After having analysed how subversion and terrorism are defined in the Italian legal context, it is interesting to clearly differentiate the two concepts. Again, some sentences of the Supreme Court are helpful.

According to a 1987 Court decision, terrorist associations, which aim at striking terror in the community, may not aim at subverting the constitutional and the democratic order, whilst subversive groups could subvert the constitutional and democratic order of the State without adopting any mean which strikes terror in the society.¹³ In addition to these, while subversion occurs only within the territory of the State (see article 270 of the criminal code), terrorism (see article 270 bis, par. 3) is relevant for the Italian system even when committed against a foreign country or institution.¹⁴

¹⁰ Bauccio L. (2005), *L'accertamento del fatto di reato di terrorismo internazionale. Aspetti teorici e pratici*, Giuffrè.

¹¹ Italian Supreme Court (Corte di Cassazione), section I of 5 November 2005.

Baudrillard J. (2002), *Lo spirito del terrorismo*, Milano, Cortina. An abstract of the work can be found on the following website: www.egs.edu/faculty/ baudrillard/ baudrillard-the-spirit-of-terrorism-french.html.

¹² Ganor B. (1998), *Defining terrorism: is one man's terrorist another man's freedom fighter?*, available on the following website: www.ict.org.il/articles/define.htm#20.

¹³ Italian Supreme Court (Corte di Cassazione), section I, 5 November 1987, n. 11382.

¹⁴ Italian Supreme Court (Corte di Cassazione), section I, 28 April 1983 (c.c. 3 February 1983, n. 302).

3.

BRIEF HISTORY OF TERRORISM AND COUNTERTERRORISM IN ITALY FROM 1970'S TO DATE

This section presents a résumé of the Italian history of terrorism. It is organised as follows. Paragraph 3.1 deals with the history of terrorism (3.1.1) and counterterrorism (3.1.2) during the 1970's. Paragraph 3.2 deals with the history of terrorism (3.2.1) and counterterrorism (3.2.2) during the 1980's. Paragraph 3.3 deals with the history of terrorism (3.3.1) and counterterrorism (3.3.2) during on the 1990's.

During the early 1970's the oil crisis and the consequent increase in costs, runaway inflation and the drop in production generated social, political and institutional mistrust; this was the fertile soil for the birth of several subversive organizations that took their cue from both extreme rightwing and leftwing parties.¹⁵

The subversive organisations active in Italy from the 70s to date can be grouped as follows:

- rightwing movements:¹⁶ they took inspiration from neofascist ideology and had ambiguous connections with the secret services (SID) and the freemasonry (P2).¹⁷ They aimed at contrasting the leftwing movements and their principles of inspiration by spreading the so-called 'strategy of tension' through several massacres and the consequent authoritarian turnover of the Government. The terrorism carried out by rightwing movements was called 'black terrorism' (terrorismo nero);
- leftwing movements:¹⁸ their background was inspired by the Communist ideology, with a particular connection to the student and worker movements. They aimed at subverting the political organization of the State by claiming the rights of the less well-off social classes, and did not recognize the authority of the Government. The 'strategy of tension' brought about by leftwing movements was named 'red terrorism' (terrorismo rosso), and was well exemplified by Brigate Rosse.

¹⁵ Balcet G. (1997), *L'economia italiana. Evoluzione, problemi e paradossi*, Feltrinelli.

¹⁶ The rightwing movements include the following: Ordine Nuovo, Ordine Nero, Lotta di Popolo, MAR-Movimento di Azione Rivoluzionaria, FNR-Fronte Nazionale Rivoluzionario, MRP-Movimento Rivoluzionario Popolare, Lotta Popolare, GAO-Gruppo d'Azione Ordinovista, Lotta Studentesca, Terza Posizione, NAR. This list has been taken from this website www.misteriditalia.it/il68/.

¹⁷ Tassina U.M. (2002), *Tra reazione, rivoluzione e trame politiche (1960-1975)*, in *L'Estrema Destra in Italia*. The paper can be found on the following website: www.misteriditalia.com/estremadestra/destra-estrema.

¹⁸ The leftwing movements include the following: CPM-Collettivo Politico Metropolitano, BR-Brigate Rosse, NAP-Nuclei Armati Proletari, PL-Prima Linea etc. This list has been taken from this website www.misteriditalia.it/il68/.

3.1 TERRORISM AND COUNTERTERRORISM IN ITALY DURING THE 1970's (1969–1979)

3.1.1 Terrorism in Italy During the 1970's (1969–1979)

The 1970's have been characterized by the “armed fight” between rightwing and leftwing Movements. Both of them were born during the first years of this period, which has been the most bloody of the Italian history of terrorism.¹⁹

If the “official” birth of terrorism in Italy has been dated to January 25th 1971, when the five-pointed red star came to prominence as the symbol of Brigade Rosse, the real start of the so called ‘strategy of tension’, i.e. a repeated way of attacking institutions by striking tension among the population, can be dated to August 9th 1969, when eight bomb attacks shook Italy. During the same year, on December 12th, a bomb attack in Milan (Piazza Fontana) caused the death of 17 people and injuries to 88 people.

This period of Italian history is still obscure: the chronology of the period from 1969 to 1979 presents several actors like red terrorists, black terrorists, anarchists, institutions, law enforcement and parallel organizations which all seemed to be connected to the secret services²⁰. In any case, the main traits of terrorism, regardless of “colour”, were as follows:

1) the striking of terror into the society and public opinion, in two main ways:

- by attacking public high-profile targets (like judges, journalists, businessmen), who represented all the social values that terrorists aimed to fight. This method was mainly preferred by red terrorists, who used to hurt, kneecap or kidnap the public symbols of their opposite principles. The peak of their activities was the kidnapping of Aldo Moro, the leader of DC (Democrazia Cristiana), who was finally murdered. Perhaps this period marks the darkest days of the Italian Republic;²¹
- by indiscriminately targeting bombs at the general public, in order to force a turnover of Government (black terrorism) or public policies (red terrorism). Examples of these kinds of attacks were the train bombings in Reggio Calabria (9 September 1970), the workers’ demonstration massacre in Brescia (Piazza della Loggia, 28 May 1974) and the slaughter on the train in Italicus (4 August 1974).²²

2) the massive use of symbols or mottos as signs of recognition, such as the five-pointed red star of the Brigade Rosse or the shout “boia chi molla”²³ used by black terrorists during the armed clash. Symbols were used as a sort of “signature” and a strategy of communication, thus building a strong identity for

¹⁹ Bravo G.M. (1982), *L'estremismo in Italia*, Editori Riuniti.

²⁰ A good chronology of the period from 1969 to 1981 can be found on the following website: www.informagiovani.it/Terrorismo/tercronolog.htm.

²¹ Scalfari E. (1998), *Quella cappa di paura che avvolse l'Italia* in *La Repubblica Dossier*. The paper can be found on the following website: www.repubblica.it/online/dossier/moro/scalfari/scalfari.html.

²² All these attacks were carried out by black terrorists.

²³ The Italian saying “boia chi molla” aimed at denigrating those people who deserted the struggles and the political engagement with the rightwing movements. It can be literally translated into English as “the one who yields is like an hungman”.

the insiders (i.e. the terrorists), at the same time raising awareness on the phenomenon in the outsiders (i.e. the rest of society);²⁴

- 3) the use of “statements” in order to claim responsibility for the attacks. As an example, this was done by Brigate Rosse who always used the same text formatting and vocabulary.²⁵

The decade ended with the massacre at the Bologna railway station on the 28th of August 1980 which, with its 80 fatalities, was the largest attack to that date in all Europe. Some representatives of NAR – Nuclei Armati Rivoluzionari (part of the ‘black terrorism’) were accused of it. This led to a gradual break-up of the rightwing movements, also due to the fact that after 1982 the electoral success of the neofascist movement pushed the members of the related Party to break with them.²⁶

3.1.2 Counterterrorism in Italy during the 1970's (1969–1979)

The spread of terrorism during the decade between 1969 and 1979 led to the revision and strengthening of the existing legislation in the field, which had been revealed to be insufficient to adequately face the phenomenon. This phase in counterterrorism can be called the “legislation of emergency”. All the measures adopted in this decade aimed at combating terrorism by punishing terrorists.

A first example of these measures was decree n. 99 of 1974.²⁷ This decree modified article 272 of the Italian Code of Criminal Procedure on the maximum duration someone could be remanded in custody (*durata massima della custodia preventiva*) which was now up to a maximum of four years, if the arrest warrant was optional, and up to twenty years if the arrest warrant was compulsory. In the same year, law n. 497 reintroduced the interrogation by the investigative police with only the guarantee of a defender’s presence, which was previously cancelled by n. 932 of 1969.²⁸

The watershed of counterterrorism measures was the adoption of the special law against terrorism, i.e. law n. 152 of 1975 – the so called Legge Reale.²⁹ Although the campaign in favour of Legge Reale talked about “delinquency” and “public order” in general terms, this law was mainly about subversion and terrorism. Among other things, article 4 of Legge Reale allowed body searches, including without any authorisation from a magistrate; article 5 prohibited the use of garments which made a person unidentifiable; article 6 extended the definition of “improper weapons” (i.e. any object other than firearms aimed at offending; munitions; explosives etc.) thus allowing to a greater extent than in the past the arrest of people carrying instruments aimed at offending others.

²⁴ Garelli B. (1978), *Il linguaggio murale*, Garzanti.

²⁵ Della Porta D. (1990), *Il terrorismo di sinistra*, Il Mulino.

²⁶ Laqueur W. (2002), *Il Nuovo Terrorismo*, Ed. Corbaccio, pp. 154–155.

²⁷ *Nuove linee di politica criminale nel decreto legge n. 99* (11 April 1974), Il Mulino–Italian bimestrial journal on culture and politics (Rivista bimestrale di cultura e politica), n. 3 May–June 1974 pp.481–491.

²⁸ Di Gregorio C., *Diritto al silenzio e soggetti processuali*. The paper can be found on the following website: www.gdf.it/RIVISTA/Sitorivista/Anno%201999/Rivista%202-1999/ARTICOLI/10digregorio2-99.html.

²⁹ Law n. 152 of 22 May 1975.

Another relevant counterterrorism measure of this period is law n.191 of 1978,³⁰ which allowed the detention of those who refused to give their personal details to public officials, as well as of those people suspected of furnishing false details to public officials. This law also allowed suspected terrorists' telephones to be tapped and introduced new offences like attacks on public facilities,³¹ kidnapping of a person for terrorist or subversive purposes³² and money laundering.³³

Finally, law n. 15 of 1980,³⁴ at article 3, introduced article 270 bis in the Italian Criminal Code, which criminalised the associations established with purposes of terrorism or of subversion of the democratic order (*associazioni con finalità di terrorismo o di eversione dell'ordine democratico*). This article has been already discussed in section 2 of this paper. The same law has also foreseen, at article 5, some benefits for those who helped in the identification and arrest of terrorists.

³⁰ "Decreto Moro" of 21 March 1978, then converted into law n. 191 of 18 May 1978.

³¹ Article 420 of the Italian Criminal Code as modified by Article 2 of the law n. 547 of 23 December 1993.

³² Article 289 bis of the Italian Criminal Code.

³³ Article 648 bis of the Italian Criminal Code.

³⁴ Decree law n. 625 of 15 December 1979, then converted into law n. 15 of 6 February 1980.

3.2 TERRORISM AND COUNTERTERRORISM IN ITALY DURING THE 1980's (1979–1989)

3.2.1 Terrorism in Italy during the 1980's (1979–1989)

Although Italian terrorism in the 1980's had the same traits and political matrix of the previous decade, it can be considered as weaker than in the past. The reasons for this drop can be summarized as follows:

- the growing economic welfare of the Italian society in the 1980's produced several changes in economy and society, which in turn impacted upon terrorist movements. During the 1970's the extreme movements were inspired by a strong ideological basis, mirrored in the economic and social gaps in society. Instead, in the 1980's society itself became more hedonistic and less aware of ideologies, while the "second" generation of terrorists was less motivated. This also decreased the impact of extreme movements on media;³⁵
- the enforcement of legislation passed in the 1970's³⁶ had a strong impact on the terrorist movements,³⁷ which showed a process of disjoining. So, for example, the year 1980 marked a turnover in the internal organisation of the Brigate Rosse and between 1980 and 1981 three different splinter movements came away from it: BR-Partito della Guerriglia (PG), BR-Walter Alasia (WA) and BR-Partito Comunista Combattente (PCC).³⁸

3.2.2 Counterterrorism in Italy during the 1980's (1979–1989)

The above mentioned changes in economy and society weakened terrorist movements, which were now less united and strong, and increased the propensity of terrorists to collaborate with justice. Counterterrorism measures of this period just aimed at promoting to the widest possible extent their collaboration with justice.³⁹

In particular, law n. 304 of 1982,⁴⁰ also called 'law on collaborators of justice' (*legge sui pentiti*) defined more sharply the legal category of the 'collaborator of justice'. Law n. 304 applies to those belonging to a criminal organisation. These collaborators can now assist Justice in return for a degree of leniency (e.g. time off a) from a life sentence to a sentence to between fifteen and twenty-one years imprisonment, for those terrorists who dissociate from their criminal organisation and b) from a life sentence to a sentence to between ten and twelve years imprisonment, for those terrorists who cooperate with justice). Since a terrorist can be considered as belonging to a criminal organisation, this law can apply to him too.

³⁵ Catanzaro R. (1990), *Ideologie, movimenti, terrorismi*, Il Mulino.

³⁶ See section 3.1.2 of this paper.

³⁷ Di Giovacchino R. (2005), *Il libro nero della Prima Repubblica*, Fazi Editore.

³⁸ Of these three movements, only PCC is still active. It involves supporters from all over Italy and its basic ideology consist of an anti-American Imperialism policy.

³⁹ Della Porta D. (1995), *Movimenti collettivi e sistema politico in Italia 1960 - 1995*, Laterza, Roma.

⁴⁰ This law was later abrogated and the topic is now regulated by law n. 45 of 13 February 2001. It can be found on the following website: www.parlamento.it/parlam/leggi/010451.htm.

3.3 TERRORISM AND COUNTERTERRORISM IN ITALY FROM THE 1990'S TO DATE

3.3.1 Terrorism in Italy from the 1990's to date

As explained in sections 3.1.1 and 3.2.1, Italian terrorism has been characterized by a purely political matrix in the period from 1969 to the 1990's. Before 1989 Eastern society and Western society had different social values, which were expressed also by different political ideologies. Terrorists faced the principles of a given political party, had a shaped ideology, specific targets and mainly "national" borders.

In 1989, after the fall of the Berlin wall, this simple juxtaposition between right and left blurred, new enemies appeared on the horizon and the physical and political opening of the frontiers changed the national dimension of terrorism (also Italian). Several sub-groups or splinter groups with different aims emerged. As more ideologies were introduced from the new global society, more movements rose from these ideologies.⁴¹

Some extreme movements which appeared in Italy – though having international networks – in the 1990's were as follows: AS– Azione Skinheads, FN – Fronte Nazionale, Hammerskinheads (which is an international organization of Neonazists which leads extremists football supporters, also known as "Ultrà"),⁴² Black Blocks, No global, BR–PCC (Partito Comunista Combattente), which takes inspiration from the historical BR movement but having a new organization.

These extreme movements can be regarded as hybrids between 'terrorist' and 'subversive' movements. On the one hand they make massive use of symbols (like in the case of terrorism); on the other hand they show the same hostility towards the institutions but this does not always result in the striking of terror among the population (like in the case of subversion). They still have a strong ideology, but this is transversal (i.e. not purely leftwing or rightwing), also as a consequence of the fact that their targets are no longer limited to political organisations, but include economic institutions (i.e World Trade Organization, World Bank) and the business world in general.⁴³

The key element of the birth and development of some of these new extreme movements (i.e Black Blocks, No Global and BR–PCC) is *globalization*, that plays two roles in "feeding" and motivating these groups:⁴⁴

- 1) globalization is the *enemy* of these movements, whose main targets are the cultural uniformity and the capitalistic models produced by globalisation;⁴⁵
- 2) globalization is an *instrument* for these movements, because it helps the circulation of their ideology across national borders, so as to find new

⁴¹ Sabbatucci G. (2005), *Il mondo contemporaneo: dal 1848 a oggi*, Laterza.

⁴² Marchi V. (1993), *Blood and Honour: rapporto internazionale sulla Destra Skinead*, Koinè.

⁴³ A good explanation of how phenomenon of globalisation contributed to the birth and development of new movements can be found in Klein N. (2001), *No logo. Economia globale e nuova contestazione*, Baldini e Castoldi.

⁴⁴ Brecher J., Costello T. (1995), *Contro il capitale globale. Strategie di resistenza*, Feltrinelli.

Molinari M. (2003), *No global?: cosa veramente dicono i movimenti globali di protesta*, Laterza.

⁴⁵ Ibidem.

followers, and makes contacts among their members easier, also due to the diffusion of new technologies.

Movements like Black Blocks are a good example of the complexities of the present context. They have a strong ideology and economic targets (e.g. the International Monetary Fund, McDonalds, WTO); carry out sabotage and act in groups; are organised as an international network; as well as make use of specific symbols. Nevertheless, they do not aim at spreading terror, but rather aim at disrupting the existing economic structures by employing a sort of urban guerrilla warfare. To this purpose, they resemble a subversive movement.

The fight against the effects of globalization is also a leit motiv of BR-PCC. This movement however, when compared to Black Blocks, is more similar to a terrorist organisation. Indeed they claimed both the murder of Professor Massimo D'Antona (Legislative Counsellor of the Ministry of Employment), who was killed in May 1999, and that of Professor Marco Biagi (Legislative Counsellor of the Ministry of Employment), both of whom were murdered in similar circumstances in March 2002.⁴⁶

3.3.2 Counterterrorism in Italy from the 1990's to date

As discussed in sections 3.1.1 and 3.2.2, during the 1970's the counterterrorism measures were part of emergency legislation, whilst during the 1980's these measures favoured the collaboration of terrorists with Justice.

During the 1990's Italy changed its way of approaching terrorism: all the counterterrorism measures adopted in this period aim not only at repressing, but also at preventing the phenomenon. Furthermore, the increasing cooperation with international establishments can be considered as another distinctive element of the 1990's Italian counterterrorist strategy.

1. *Strengthening of security measures in the whole Italian territory (Rafforzamento delle misure di sicurezza in tutta Italia)*⁴⁷

This counter-measure has been taken by the Ministry of Interior starting from September 20th, 2001. It includes increased surveillance for places prone to targeting by terrorists (e.g. Embassies, airlines, synagogues), for the main Italian cities and for the "strategic objectives" (e.g. water and electrical systems, chemical industries).

2. *Establishment of the CSF - Committee of Financial Security (Comitato di sicurezza finanziaria)*

This Committee has been established by law n. 431 of December 2001.⁴⁸ It involves a variety of institutions and has the following tasks: a) the protection of the Italian financing system from terrorists; b) the collection of information useful to freezing their assets; c) the introduction of the regulation necessary to strengthen the fight against the financing of terrorism, by defining the procedures to contribute to EU terrorist lists and to solve the cases of

⁴⁶ Franceschini A. (2004), *Che cosa sono le BR: le radici, la nascita, la storia, il presente*, BUR.

⁴⁷ For a more detailed overview of this measure see the following website: www.interno.it/news/articolo.php?idArticolo=15708.

⁴⁸ Decree n. 369 of 12 October 2001, then converted into law n. 431 of 14 December 2001. The whole text of the law can be found on the following website: www.dt.tesoro.it/Aree-Docum/Prevenzion/Comitato-di-Sicurezza-Finanziaria/Normativa-/Normativa-/Legge-14-d/Legge-14-dicembre-2001.pdf.

homonymy; d) the maintaining of close links with analogous foreign offices. This measure is important to ensure the necessary international cooperation.⁴⁹

3. *Criminalising the associations with purposes of terrorism, including international terrorism, or purposes of subversion of the democratic order (associazioni con finalità di terrorismo anche internazionale o di eversione dell'ordine democratico)*

Article 270 bis of the Criminal Code, introduced by law n. 15 of 1980 and modified by law n. 438 of 2001, criminalised the associations with purposes of terrorism, including international terrorism, or purposes of subversion of the democratic order.

This article states:

"1. Whoever promotes, establishes, organizes, runs or finances associations aimed at the commission of violent acts with the purpose of terrorism or of subversion of the democratic order is sentenced from seven to fifteen years of imprisonment.

2. Whoever takes part in these associations is sentenced from five to ten years of imprisonment.

3. Under penal law, the purpose of terrorism includes when violent acts are targeted at a foreign State, institution and international body.

4. In the case of conviction for this offence, the assets which were used for its commission and those representing the price, product and profit of the offence or the use thereof are mandatorily confiscated."

It is worth remarking that the article, following the 2001 amendment, now covers cases of international terrorism (par. 3), thus honouring the international commitments made by Italy.⁵⁰

4. *Criminalising assistance to associates (assistenza agli associati)*

Article 270 ter of the Criminal Code, introduced by law n. 438 of 2001, criminalises those who provide the associates of terrorist organisations with assistance. It states as follows:

"1. Anyone [...] who gives shelter, board, lodging, transport means and communication facilities to those who take part in criminal associations listed under articles 270 and 270 bis is punished by imprisonment up to 4 years.

2. The sanction is increased if the assistance is provided in a continuative way.

3. One is not punishable who acts in favour of a close relative".

5. *Making the penitentiary regime severer*

Law n. 279 of December 2002 – which applies to all criminal associations, including terrorist ones – strengthens the penitentiary regime of those convicts linked to a criminal association. These are excluded from external contacts connected to the organization. Also, their correspondence is subjects to strict controls, and the objects they can receive in prison are limited.

⁴⁹ See the following website: www.dt.tesoro.it/Aree-Docum/Prevenzion/Comitato-di-Sicurezza-Finanziaria/.

⁵⁰ Government Report to the Decree 374/2001; the cross-references can be found on the following website: www.studiperlapace.it/view_news_html?news_id=terrorismo.

6. *Establishment of a task force to coordinate the investigations on terrorist attacks in Sardinia*

This counterterrorism measure has been adopted by the Ministry of the Interior in January 2003 to face some subversive attacks that occurred in Sardinia. The task force involved some experts tasked with the coordination of intelligence and police activities.

7. *Expulsions of the Carmagnola's and Turin Imams to prevent them from breaching the peace and being a risk for the security of the State*

The expulsion of the Carmagnola's Imam in November 2003 and that of the Turin's Imam in September 2005 are two examples of preventive actions against individuals recognized as spreading hard feelings and dissidence with relation to the national social, political and religious values. The legal basis of these actions is art. 11 of law n. 40 of 1998.

8. *New rules which favour the victims of terrorism and related massacres (Nuove norme in favore delle vittime del terrorismo e delle stragi di tale matrice)*

Law n. 206 of 2004 contains rules which financially support those who have been victims (or whose family members have been victims) of terrorist acts.⁵¹

9. *Preventing terrorism through the monitoring of places frequented by Islamic fundamentalists*

In August 2004 the Ministry of the Interior introduced the measure of monitoring those places which were recognized as "hot spots" for terrorists, like meeting places for fundamentalists.⁵²

10. *Antiterrorism drills*

The antiterrorism drills which took place in Milan (September 23rd 2005), in Rome (October 3rd 2005) and in Naples (October 22nd, 2005) aimed at monitoring the efficiency and the effectiveness of counterterrorism procedures operated by police, firemen, civil defence, etc.⁵³

11. *Establishment of the Islamic Council (istituzione presso il Ministero dell'Interno della Consulta per l'Islam italiano)*

The Ministerial Decree of 10 September 2005⁵⁴ established under the aegis of the Ministry of the Interior the so-called Islamic Council, which includes experienced and authoritative people from Islamic religion and culture. The Islamic Council is an advisory organ which represents a policy of opening-up with regard to moderate Islam.

12. *Urgent measures to combat international terrorism (Disposizioni urgenti per contrastare il terrorismo internazionale)*

⁵¹ The whole text of the law can be found on the following website: www.parlamento.it/parlam/leggi/04206l.htm.

⁵² See www.interno.it/salastampa/comunicati/pages/articolo.php?idarticolo=595.

⁵³ See www.interno.it/salastampa/comunicati/pages/articolo.php?idarticolo=869 and www.interno.it/news/articolo.php?idArticolo=21449.

⁵⁴ This Ministerial Decree has been published in the Italian Official Journal (Gazzetta Ufficiale) of 26 October 2005.

Law n. 155 of July 2005⁵⁵ is the most updated legislative initiative against terrorism. It includes a variety of measures, such as:

- *residence permits for investigating purposes (permessi di soggiorno a fini investigativi, article 2)*: a special residence permit can be granted to those foreigners who cooperate with justice;
- *new rules for expelling foreigners in order to prevent terrorism (nuove norme in materia di espulsioni degli stranieri per motivi di prevenzione del terrorismo, article 3)*: competent authorities can request the administrative expulsion of those immigrants who are suspected of terrorism;
- *counterterrorist unit (unità antiterrorismo, article 5)*: the Minister of the Interior is requested to establish a counterterrorist unit, which takes a multi-agency form including experts from various bodies;
- *new rules on telephone and telematic traffic data (nuove norme sui dati del traffico telefonico e telematico, article 6)*: those who buy a phone-card or a sim-card have to show a document of identification; the phone-tabulations can be kept for up to twenty-four months for investigation purposes, and net surfing data has to be retained for thirty months by the companies which offers the network services. Furthermore, competent authorities may intercept the phone calls of those who are suspected of being terrorists;
- *new rules on personal identification (nuove norme sull'identificazione personale, article 10)*: in order to make DNA identification of a person possible, it is permitted to take samples of saliva or hair of those who are suspected of being terrorists;
- *new rules on arrest and custody (nuove disposizioni in materia di arresto e di fermo, article 13)*: arrest is mandatory for terrorists, also international terrorists, who are caught in flagrante delicto;⁵⁶

⁵⁵ Law n. 155 of 31 July 2005 "Conversion into law, with amendements, of the decree law n. 144 of 27 July 2005 on urgent measures to combat international terrorism" (Conversione in legge, con modificazioni, del decreto-legge 27 luglio 2005, n. 144, recante misure urgenti per il contrasto del terrorismo internazionale) has been published on the Italian Official Journal (Gazzetta Ufficiale) n. 177 of 1 August 2005. The whole text of the law can be found on the following website: www.parlamento.it/parlam/leggi/051551.htm.

⁵⁶ Article 104, paragraph 2 of the Italian Criminal Procedure Code states that the arrested person has the right to have a consultation with his/her lawyer immediately after the arrest (article 386, par. 1). At the moment of the arrest, the police must inform the arrested person of such right, and then immediately inform his/her lawyer (article 386, par. 2: a duty solicitor may be nominated by the prosecutor). As an exception to the above rule, article 104, par. 3 and 4 states that, during preliminary investigations, for exceptional and specific precautionary reasons the examining magistrate may delay the exercise of this right for no longer than five days; in case of arrest, this power is exercised by the prosecutor until the validation hearing.

In Italy the arrest must be immediately communicated by the police to a public prosecutor (article 386, par. 1); the prosecutor must request validation by the examining magistrate within 48 hours (article 390, par. 1; article 13, par. 3 of the Italian Constitution). The examining magistrate must convey a validation hearing within 48 hours (article 390, par. 2; article 13, par. 3 of the Italian Constitution). By this act, he has to inform the defender of the arrested person.

Is not possible to hold somebody in custody without a specific charge (article 13, par. 3 of the Italian Constitution). Arrest and custody may be carried out when there is whether the evidence of the commission of a crime or serious clues of that.

In Italy the length of the remand period depends on:

the phases of the proceedings;

- *new terrorism related offences (nuove fattispecie di delitto in materia di terrorismo, article 15)*: the following articles – related to new terrorism related offences – have been introduced into the criminal code:
 - a) article 270 quater, which states that anybody who enrolls people in order to commit acts of violence aimed at terrorism, including acts targeted at a foreign State, institution or organization, is sentenced to between seven and fifteen years imprisonment;
 - b) article 270 quinquies, which states that anybody who trains people to commit acts of violence aimed at terrorism, including by giving instructions about the preparation/use of dangerous weapons, is sentenced to between five and ten years;
 - c) article 270 sexies: which states that conducts with the purpose of terrorism are all, due to their nature or context, conducts which can cause serious damage to a country or to an international organisation and are committed in order to intimidate the population or force public authorities or international organizations to perform or not to perform a given act, or to destabilize or destroy the fundamental political, constitutional, economical and social structures of a country or of an international organization, as well as any other conduct defined as terrorism, or committed for the purpose of terrorism, by conventions or other provisions of international law which are binding for Italy.

13. Cooperation with the United Nations to fight terrorism

Italy has ratified all Twelve International Conventions against Terrorism⁵⁷ and sustains the activities of the CTC–Counter Terrorism Committee, which has been established by the UN Security Council on 28 September 2001 and tasked with the monitoring of terrorism.⁵⁸

Italy also gives a strong contribution to the Sanction Committee against Al Qaeda and the Taliban, which was established by the UN Security Council in October 1999 through the resolution 1267 of 15 October 1999.⁵⁹ The Sanction

the maximum sentence prescribed for the offence or the actual sentence inflicted in the previous instance trials;

Article 303, par. 4 fixes an overall maximum limit also depending on the maximum sentence prescribed for the offence:

two years, for those offences whose maximum sentence prescribed by law does not exceed six years;

four years, for those offences whose maximum sentence prescribed by law does not exceed twenty years;

six years, for those offences whose maximum sentence prescribed by law exceeds twenty years or is a life imprisonment.

Accordingly, a person charged for participating to a terrorist association (article 270 bis, par. 2 of the Italian Criminal Code, sanction to between five and ten years imprisonment) may be held on remand in custody for a maximum of four years.

⁵⁷ See the following website: www.unodc.org/unodc/terrorism_conventions.html.

⁵⁸ See the following website: www.un.org/Docs/sc/committees/1373/mandate.html.

⁵⁹ The resolution can be found on the following website: www.globalpolicy.org/security/sanction/afgnstan/1999/1015resol.pdf.

It can be also useful to check all the UN resolutions concerning Al Qaeda and Talibans on the following website: www.globalpolicy.org/security/sanction/indexafg.htm#resol.pdf.

Committee asks the Members of the Security Council and UN Members to report any useful information about Al Qaeda's terrorist organization.⁶⁰

14. Cooperation at the European level to fight terrorism

Italy, as Member State of the European Union, is requested to adapt its national legislation to the counterterrorism measures which have been adopted at the EU level, like the Council Framework Decision of 13 June 2002 on combating terrorism,⁶¹ the Council Framework Decision on the European arrest warrant,⁶² the Council Framework Decision on the joint investigation teams,⁶³ the Council Decision on the establishment of Eurojust⁶⁴ and the Joint Action on the identification, tracing and confiscation of instrumentalities and the proceeds from crime.⁶⁵ Italy also endorses other important measures like the mutual Assistance in Criminal Matters between Member States⁶⁶ and the adoption of the uniform format for residence permits.⁶⁷

Furthermore, on 8 June 2005 Italy signed the Council of Europe Convention on the Prevention of Terrorism.⁶⁸

15. Cooperation with G8 to fight terrorism

The G8 Rome–Lyon Group was established in October 2001 when senior representatives of G8 Justice and Home Affairs Ministries met in Rome to discuss steps for the G8 to take in combating international terrorism and decided to combine the G8's Lyon Group (fighting international crime) and the G8's Roma Group (fighting international terrorism).⁶⁹ It works on proposals which could be approved at a political level and also promotes best practices and guidelines about specific security procedures which have to be adopted by multilateral organizations (i.e ICAO– International Civil Aviation Organization and IMO–International Maritime Organization). Within the CTAG–Counter

⁶⁰ The whole text which concerns the duties of Sanction Committee and the ones of UN Security Council can be found on the following website: www.globalpolicy.org/security/sanction/afgnstan/1999/1015resol.pdf.

⁶¹ Council of the European Union, *Council Framework Decision on combating terrorism*, 13 June 2002.

⁶² Council of the European Union, *Council Framework Decision on the European arrest warrant and the surrender procedures between Member States*, 13 June 2002.

⁶³ Council of the European Union, *Council Framework Decision on joint investigation teams*, 13 June 2002.

⁶⁴ Council of the European Union, *Council Decision setting up Eurojust with a view to reinforcing the fight against serious crime*, 28 February 2002.

⁶⁵ Council of the European Union, *Joint Action adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the identification, tracing, freezing, seizing and confiscation of the instrumentalities and proceeds from crime*, 3 December 1998.

⁶⁶ Council of the European Union, *Council Act establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union*, 29 May 2000.

⁶⁷ Council of the European Union, *Council Regulation laying down a uniform format for residence permits for third-country nationals*, 13 June 2002.

⁶⁸ Council of Europe, *Convention on the Prevention of Terrorism*, 16 May 2005 and

Council of Europe, *Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism*, 16 May 2005.

⁶⁹ See the following website: www.usdoj.gov/criminal/cybercrime/g82004/g8_background.html.

Terrorism Action Group,⁷⁰ Italy has taken charge of the coordination of the technical assistance to Third Countries, thus also facing the terrorist menace in the airports of the Western Balkans.

16. Cooperation with NATO to fight terrorism

Italy takes part in the NATO naval mission "Active Endeavour" which aims at tackling terrorism in the Mediterranean. This mission is based on the measures taken in October 2001 through NATO's decision to implement article 5 of the Washington Treaty.⁷¹ Article 5, was invoked for the first time less than 24 hours after the attacks of 11 September in New York, and it declared the attacks as an attack against all NATO members.

Italy also endorses the NATO "Declaration on Terrorism"⁷² issued at the Meeting of the North Atlantic Council in Foreign Ministers Session held in Brussels on 2 April 2004. The Declaration reaffirms principles of cooperation and solidarity among the state parties, also by recalling the guidelines on international cooperation in terrorism matters established by the UN.

⁷⁰ On 2 June 2003 the CTAG-Counter Terrorism Action Group has been established by the G8 leaders in Evian, France. to expand counterterrorism capacity building assistance. It includes the G8, as well as other states, mainly donors. The guidelines of the CTAG establishment can be found on the following website: www.g8.fr/evian/english/navigation/2003_g8_summit/summit_documents/building_international_political_will_and_capacity_to_combat_terrorism_-_a_g8_action_plan.html.

⁷¹ A more detailed overview of the Operation "Active Endeavour" can be found on the following websites: www.nato.int/docu/update/2001/1001/e1002a.htm and www.afsouth.nato.int/operations/Endeavour/Endeavour.htm.

⁷² The whole text of the *Declaration on Terrorism* can be found on the following website: www.nato.int/docu/pr/2004/p04-057e.htm.

4.

COUNTERTERRORISM MEASURES ADOPTED IN ITALY FROM THE 1990'S TO DATE: AN IN-DEPTH ANALYSIS

This section provides an in-depth analysis of the counterterrorism measures adopted in Italy from 1990 to date, identified and briefly presented in section 3.3.2.

They are herein first grouped into the appropriate policy areas (section 4.1).

They are then analysed in depth, one by one, according to a common matrix (section 4.2).

4.1 CLASSIFICATION OF THE COUNTERTERRORISM MEASURES ADOPTED IN ITALY FROM 1990 TO DATE BY POLICY AREA

This section classifies the counterterrorism measures adopted in Italy from 1990 to date by the appropriate policy area (i.e. prevention; information; immigration and asylum; special competences to police, customs, prosecutors; institutional developments; international cooperation; counteracting financing of terrorism; security of infrastructure; crisis management).

This is done by Table 1 below.

Table 1: Main counterterrorism measures adopted in Italy from 1990 to date and related policy areas

MEASURES \ POLICY AREAS	1. Prevention of radicalisation and recruitment	2. Information	3. Immigration and asylum	4. Special competences to police, customs, prosecutors	5. Institutional developments	6. International cooperation	7. Counteracting financing of terrorism	8. Security of infrastructure	9. Crisis management
1. Strengthening of security measures in the whole Italian territory				X				X	
2. Establishment of the CSF - Committee of Financial Security					X	X	X		
3. Criminalising the associations with purposes of terrorism, including international terrorism, or purposes of subversion of the democratic order							X		
4. Criminalising assistance to associates									
5. Making the penitentiary regime severer				X					
6. Establishment of a task force to coordinate the investigations on terrorist attacks in Sardinia.				X					
7. Expulsions of the Carmagnola and Turin Imams to prevent them from breaching the peace and being a risk for the security of	X		X						

the State									
8. New rules which favour the victims of terrorism and related massacres									
9. Preventing terrorism through the monitoring of places frequented by Islamic fundamentalists									
10. Antiterrorism drills									X
11. Establishment of the Islamic Council	X				X				
12. Urgent measures to combat international terrorism			X	X		X		X	
13. Italian cooperation with UN						X			
14. Italian cooperation at European level			X			X	X	X	
15. Italian cooperation with G8						X			
16. Italian cooperation with NATO						X			

Source: Author's elaboration

Table 1 suggests some comments, with regard to the following 9 policy areas:

- 1) *Prevention of radicalisation and recruitment*: only two countermeasures address this policy area, thus showing a lack of initiatives aimed at decreasing radicalisation and recruitment.
- 2) *Information for the general public*: counterterrorism measures addressing this policy area have not been envisaged. Even if the websites of the Ministry of the Interior and of the Ministry of Foreign Affairs are often updated,⁷³ there are no particular rules regulating this sector of communication; moreover, information provided by the media is often alarmist.⁷⁴
- 3) *Immigration and asylum*: three counterterrorism measures address this policy area. It's remarkable that these countermeasures do not aim at promoting initiatives of integration, whilst they try to simplify the processes of extradition (i.e. *new rules for expelling foreigners in order to prevent terrorism, European arrest warrant*) or to give benefits for those foreigners who cooperate with justice (i.e. *residence permits for investigating purposes*).⁷⁵
- 4) *Special competences for police, customs, prosecutors*: there are four counterterrorism measures addressing this policy area, which is one of the most developed. This fact could be interpreted as one of the consequence of an emergency approach directly linked to the attacks in New York (2001), Madrid (2004) and London (2005). The emergency approach tries to avoid the risk of terrorist offences by increasing the controls and the competences for public officials.
- 5) *Institutional developments*: two counterterrorism measures address this policy area; they are the *Committee of Financial Security*,⁷⁶ which can be recognized as an organ of protection, and the *Islamic Council*, which is an advisory organ representing a policy of opening-up with regard to moderate Islam.⁷⁷
- 6) *International cooperation*: this is the most developed policy area, which is addressed by five counterterrorism measures. This fact highlights the Italian engagement in cooperating with International Establishments to fight against terrorism.⁷⁸
- 7) *Countering the financing of terrorism*: three counterterrorism measures address this policy area,⁷⁹ whose importance is increasing; terrorism financing can be considered as one of the menaces which have to be urgently faced in order to prevent the commission of future offences.

⁷³ Website of the Italian Ministry of the Interior: www.interno.it; website of the Italian Ministry of the Foreign Affairs: www.esteri.it.

⁷⁴ Di Meo L. (2004), *Media e terrorismo. Vittime, condottieri, carnefici*, Kappa Edizioni.

Beckett A. (2004), *The making of the terror myth*, in *The Guardian*, Friday, 15 October, 2004. The article can be found on the following website: www.guardian.co.uk/print/0,3858,5039836-111274,00.html.

BBC documentary, *The power of Nightmares*. See the following website: <http://news.bbc.co.uk/1/hi/programmes/3755686.stm>.

⁷⁵ See sections 4.2.7, 4.2.12 and 4.2.14 of this paper.

⁷⁶ See section 4.2.2 of this paper.

⁷⁷ See section 4.2.11 of this paper.

⁷⁸ See sections 4.2.12, 4.2.13, 4.2.14, 4.2.15 and 4.2.16 of this paper.

⁷⁹ See sections 4.2.2, 4.2.3 and 4.2.14 of this paper.

- 8) *Security of infrastructures*: three counterterrorism measures address this policy area,⁸⁰ which can be recognized as an important sector for a preventive approach.
- 9) *Crisis management*: only one countermeasure addresses this policy area,⁸¹ which is still at an embryonic stage within the Italian context.

4.2 IN DEPTH ANALYSIS OF EACH OF THE COUNTERTERRORISM MEASURES ADOPTED IN ITALY FROM 1990 TO DATE

This section provides an in-depth analysis of each of the Italian counterterrorism measures from 1990 to date (as preliminarily identified and discussed in section 3.2 and grouped in 9 provisional policy areas in section 4.1).⁸²

According to the Working Plan of the Project,⁸³ each counterterrorism measure has been analysed according to the following common matrix:

<p><u>Source</u>: the sources or citations providing information about the strategy.</p> <p><u>Description</u>: a brief overview of the strategy being employed, including what is being done and the key agencies involved.</p> <p><u>Theory</u>: the underlying theory about why the strategy should “work” with counterterrorism against insurgency.</p> <p><u>History</u>: when and where the strategy was first employed and any information on its history if used over a period of time.</p> <p><u>Costs</u>: information on how expensive the strategy is, if available.</p> <p><u>Problems/Negative Consequences</u>: legal quandaries, privacy concerns, agency difficulties in implementation or other criticisms of the strategy should be noted. If available.</p>

⁸⁰ See sections 4.2.1, 4.2.12 and 4.2.14 of this paper.

⁸¹ See section 4.2.10 of this paper.

⁸² The analysis has been carried out according to the common matrix which is described in annex I of this paper.

⁸³ See Working Plan, p. 3.

4.2.1 *Strengthening of security measures in the whole Italian territory
(Rafforzamento delle misure di sicurezza in tutta Italia)*

Source: website of the Italian Ministry of Interior.⁸⁴

Description: this counter-measure includes increased surveillance for:

- 1) places prone to be targeted by terrorists (i.e. Embassies, airlines, travel agencies, synagogues, universities, Jewish schools, multinationals, shopping centres),
- 2) the main Italian cities, and
- 3) the "strategic objectives" (e.g. water and electrical system, chemical industries).

Theory: the underlying theory for this countermeasure is the prevention of terrorist attacks on Italian territory, after the public alarm generated by the NY attacks of 11 of September 2001.

History: first application of this policy can be dated to 20 September 2001, after Al Qaeda's attacks in New York.

Costs: not available.

Problems/Negative Consequences: no particular problems have yet been envisaged.

⁸⁴ See the following website: www.interno.it/news/articolo.php?idArticolo=15708.

4.2.2 Establishment of the CSF - Committee of Financial Security (*Comitato di sicurezza finanziaria*)

Sources: law n. 431 of 2001;⁸⁵ website of the Italian Foreign Ministry;⁸⁶ website Italian Ministry of Economy - Department of Treasury.⁸⁷

Description: this Committee has been established by law n. 431 of December 2001 with the following tasks: a) the protection of the Italian financing system from terrorists; b) the collection of information useful to freezing their assets; c) the introduction of the regulation necessary to strengthen the fight against the financing of terrorism, by defining the procedures to contribute to EU terrorist lists and to solve the cases of homonymy; d) the maintaining of close links with analogous foreign offices, especially the American ones and those from the countries belonging to the Group of Seven and to the European Union. This measure is important to ensure the necessary international cooperation.

It involves a variety of institutions. The General Director of the Italian Treasury Department runs the CSF, which includes representatives from the main financial institutions and from the law enforcement area, such as the Italian Ministry of the Interior, the Italian Ministry of Justice, Bank of Italy, UIC- Ufficio Italiano dei Cambi (Italian Foreign Exchange Office), CONSOB - Commissione Nazionale per la Società e la Borsa (the public authority responsible for regulating the Italian stock exchange),⁸⁸ Guardia di Finanza, Direzione Nazionale Antimafia, Direzione Investigativa Antimafia and Carabinieri.

Theory: this measure has been adopted to comply with international commitments to fight terrorism related activities and to strengthen the related counterstrategy. The underlying theory is that an effective fight against terrorists needs to tackle the financing of terrorist organisations and to rely on close links among the law enforcement agencies of the different countries because of the transnational nature of the phenomenon.

History: this Committee was established after September 11th 2001, by law n. 431 of 14 December 2001.

Costs: not available.

Problems/Negative Consequences: no particular problems/negative consequences have been envisaged.

⁸⁵ Decree n. 369 of 12 October 2001, then converted into law n. 431 of 14 December 2001. The whole text of the law can be found on the following website:

www.dt.tesoro.it/Aree-Docum/Prevenzion/Comitato-di-Sicurezza-Finanziaria/Normativa-/Normativa-/Legge-14-d/Legge-14-dicembre-2001.pdf.

⁸⁶ See the following website: www.esteri.it/ita/4_28_63_60.asp.

⁸⁷ For a more detailed overview of CSF, see the following website:

www.dt.tesoro.it/Aree-Docum/Prevenzion/Comitato-di-Sicurezza-Finanziaria/Normativa-/Normativa-/Legge-14-d/Legge-14-dicembre-2001.pdf.

⁸⁸ An overview of the activities carried out by CONSOB can be found on the following website: www.consob.it/mainen/consob/what/what.html?symbblink=/mainen/consob/what/index.html.

4.2.3 *Criminalising the associations with purposes of terrorism, including international terrorism, or purposes of subversion of the democratic order (associazioni con finalità di terrorismo anche internazionale o di eversione dell'ordine democratico)*

Sources: article 270 bis of the Italian Criminal Code; law n. 438 of 2001.⁸⁹

Description: article 270 bis of the Criminal Code, introduced by law n. 15 of 1980 and modified by law n. 438 of 2001, criminalised associations with purposes of terrorism, including international terrorism, or purposes of subversion of the democratic order.

This article states:

"1. Whoever promotes, establishes, organizes, runs or finances associations aimed at the commission of violent acts with the purpose of terrorism or of subversion of the democratic order is sentenced from seven to fifteen years of imprisonment.

2. Whoever takes part in these associations is sentenced from five to ten years of imprisonment.

3. Under penal law, the purpose of terrorism includes when violent acts are targeted at a foreign State, institution or international body.

4. In the case of a conviction for this offence, the assets which were used for its commission and those representing the price, product, and profit of the offence or the use thereof are mandatorily confiscated."

It is worth remarking that the article, following the 2001 amendment now covers cases of international terrorism (par. 3), thus honouring the international commitments made by Italy.

Theory: this article was modified in 2001 in the aftermath of the NY attacks of 11 September. The underlying theory is that, terrorism being an international phenomenon and an attack to the civil liberties and rights of Western societies, it has to be combated whatever its direct enemy is (whether Italy or a foreign country).

History: article 270 bis was issued during the 1970's in order to fight the various kinds of subversive movements which appeared in Italy during that period and it stated for terrorist and subversive organizations. The rule aimed at protecting Italy from those organizations which aimed at undermining the democratic order defined as the "system of the basic principles fixed by the Italian Constitution in order to define the structure and the function of the State".

After September 11th 2001, the Italian Government felt the need to update its legal definition of terrorism, also in order to avoid the impunity of international terrorists on Italian territory. To this purpose, art. 270 bis was updated, thus including and punishing also those acts which aim at "*promoting, organizing, directing or financing acts of violence against foreign Countries, institutions and international system*".

Costs: not available.

⁸⁹ Decreto Legge n. 374 of 18 October 2001, "Disposizioni urgenti per contrastare il terrorismo internazionale", then transformed into the law n. 438 of 15 December 2001. The law introduces in the Italian court system the case of "international terrorism".

Art. 270 bis was issued in the Italian Criminal Code in the art. 3 of the decree 15 December 1979 (decreto Cossiga), transformed into the law n. 15 of the 6 February 1980.

Problems/Negative Consequences: no particular problems/negative consequences have been envisaged.

4.2.4 Criminalising assistance to associates (*assistenza agli associati*)

Source: article 270 ter of the Italian Criminal Code; law n. 438 of 2001.⁹⁰

Description: article 270 ter of the Italian Criminal Code states that:

"1. Anyone [...] who gives shelter, board, lodging, transport means and communication facilities to those who take part in criminal associations listed under articles 270 and 270 bis is punished by imprisonment up to 4 years.

2. The sanction is increased if the assistance is provided in a continuative way.

3. One is not punishable who acts in favour of a close relative".

Theory: this article was introduced in 2001 in the aftermath of the NY attacks of 11 September. The underlying theory is that, because terrorism is an international phenomenon and an attack on the civil liberties and rights of Western societies, it has to be combated whatever its direct enemy is (whether Italy or a foreign country).

History: article 270 ter has been introduced by the Decree n. 374/2001 which also introduced article 270 bis.

Costs: not available.

Problems/Negative Consequences: no particular problems/negative consequences have been envisaged.

⁹⁰ Decreto Legge 18/10/2001 n. 374 "Disposizioni urgenti per contrastare il terrorismo internazionale", then transformed into the law 15/12/2001 n. 438. The law introduces in the Italian court system the case of "international terrorism".

Art. 270 bis was issued in the Italian Criminal Code in the art. 3 of the decree 15/12/1979 (decreto Cossiga), transformed into the law 06/02/1980 n. 15.

4.2.5 Making the penitentiary regime severer (modificata degli articoli 4-bis e 41-bis della legge 26 luglio 1975, n. 354, in materia di trattamento penitenziario)

Source: law n. 279 of December 2002;⁹¹ articles 4 bis and 41 bis of law n. 354 of July 1975;⁹² article 27 of the Italian Constitution.⁹³

Description: this counterterrorism measure consists of a strengthening of the penitentiary regime. It has been introduced by law n. 279 of December 2002 – which applies to all criminal associations, included terrorist ones – strengthens the penitentiary regime of those convicts linked to a criminal association. These convicts are excluded from external contacts connected to organization. Also, their correspondence is subject to strict controls, and the objects they can receive in prison are limited.

Theory: this legal instrument represents an example of “emergency legislation”, because it enforces the existing penal treatment procedures. Law n. 279 and the related article 41 can be applied to terrorists whenever they have been captured. The impact of this law can be envisaged in a reduction of the information shared between the convicts and their affiliated criminal organizations.

History: law n. 279 is the most updated legislative measure regulating the penitentiary regime. It aims at modifying articles 4 bis and 41 bis of law n. 354 of 26/7/1975. This rule was adopted in April 1976, and it granted some rights (like the custody linked to social services, the possibility for the convicted person to spend some time doing work, studying or cooperating for a reintegration into society and the granting of permits) to the convicted person. Most of these rights have been rarely applied, with the exception of the granting of permits. Nevertheless these permits were granted only exceptionally or for “serious reasons”. In other words, the procedures for reintegration were not really applied.

Costs: not available.

Problems/Negative Consequences: law n. 279 could be regarded as a restriction of human rights.⁹⁴ Article 27 of the Italian Constitution states that: “Punishments cannot consist of treatments which are against the sense of humanity and they have to aim at the rehabilitation of the convicted.”

⁹¹ The whole text of the law can be found on the following website: www.parlamento.it/parlam/leggi/02279l.htm.

⁹² The whole text of the law can be found on the following website: www.giustizia.it/cassazione/leggi/l354_75.html.

⁹³ The whole text of the Italian Constitution can be found on the following website: www.quirinale.it/costituzione/costituzione.htm.

⁹⁴ The Italian Supreme Court pronounced several judgements on articles 4 bis and 41 bis. They can be found on the following website: www.delittoecastigo.info/ilcastigo/giurisprudenza.htm#s.

The Italian Constitution presents several dispositions aimed at protecting human rights (see art.1 to 54 of the Italian Constitution). Moreover, Italy is Party to several international instruments protecting human rights, e.g. the *European Convention on Human Rights and Fundamental Freedoms* (ratified by law n. 848 of 4 august 1955). This implies that the activity of the public administration, including police agencies, have to respect the mentioned rights.

National Courts have the full jurisdiction over breaches on human rights. Beside this, following articles 19 to 51 of the *European Convention on Human Rights and Fundamental Freedoms*, the European Court has jurisdiction over the Italian territory.

4.2.6 *Establishment of a task force to coordinate the investigations on terrorist attacks in Sardinia*

Source: website of Italian Ministry of Interior.⁹⁵

Description: this counterterrorism measure has been adopted by the Ministry of the Interior on January 2003 to face some subversive attacks that occurred in Sardinia. The task force involved some experts tasked with the coordination of intelligence and police activities

Theory: the underlying theory for this countermeasure is to ease the situation of public alarm generated by the terrorist attack on the editorial office of "L'Unione Sarda", a Sardinian local newspaper. Furthermore, the establishment of the task force was aimed at preventing other similar terrorist attacks.

History: the first application of this policy can be dated to January 2003, in order to face subversive attacks in Sardinia.

Costs: not available.

Problems/Negative Consequences: no particular problems/negative consequences have been envisaged.

⁹⁵ See the following websites: www.interno.it/news/articolo.php?idarticolo=17912 and www.interno.it/news/articolo.php?idarticolo=17910.

4.2.7 *Expulsions of the Carmagnola and Turin Imams to prevent them from breaching the peace and being a risk for the security of the State*

Source: website of the Italian Ministry of Interior;⁹⁶

law n. 40 of March 1998.⁹⁷

Description: the expulsion of the Carmagnola's Imam in November 2003 and that of the Turin's Imam in September 2005 are two examples of preventive actions taken against individuals recognized as spreading hard feelings and dissidence with relation to the national social, political and religious values.

Theory: the underlying theories for this countermeasure are the criteria for immigration and the rules about the position of the foreigner (disciplina dell'immigrazione e norme sulla condizione dello straniero), regulated by law n. 40 of March 1998. Article 11 of this law allows for administrative expulsion (espulsione amministrativa), thus allowing the Italian Ministry of the Interior to decide to expel a foreigner for "order and security of the State purposes". Accordingly, the expulsions of the Imams are the consequence of applying article 11.

History: the expulsion of Carmagnola's Imam in November 2003 and the expulsion of Turin's Imam in September 2005.

Costs: not available.

Problems/Negative Consequences: this countermeasure gives the illusion of removing the whole problem only by removing some of its elements; it's a countermeasure of short-term impact, but also its effects show a short-term duration.

⁹⁶ See the following websites: www.interno.it/news/articolo.php?idArticolo=18971;
www.interno.it/salastampa/comunicati/pages/articolo.php?idarticolo=853.

⁹⁷ The whole text of the law can be found on the following website: www.parlamento.it/parlam/leggi/98040l.htm.

4.2.8 *New rules which favour the victims of terrorism and related massacres (Nuove norme in favore delle vittime del terrorismo e delle stragi di tale matrice)*

Source: law n. 206 of 2004;⁹⁸ website of the Italian Ministry of Interior.⁹⁹

Description: law n. 206 of 2004 contains rules which support financially those who have been victims (or whose family members have been victims) of terrorist acts.

Theory: the underlying theory for this countermeasure is the recognition of terrorist attacks as high-impact offences. The physical and psychological damage which is caused to the victims of terrorism needs the financial support of the State.

History: this law was issued on 3 August 2004.

Costs: not available.

Problems/Negative Consequences: no particular problems/negative consequences have been envisaged.

4.2.9 *Preventing terrorism through the monitoring of places frequented by Islamic fundamentalists*

Source: website of the Italian Ministry of Interior.¹⁰⁰

Description: the Ministry of the Interior introduced the measure of monitoring those places which were recognized as “hot spots” for terrorists, like meeting places for Islamic fundamentalists.

Theory: the underlying theory for this countermeasure is preventive strategy; in fact the monitoring of all those places frequented by Islamic fundamentalists has an investigative purpose, aimed at avoiding or removing the creation of Islamic fundamentalists' cells.

History: the monitoring of places frequented by Islamic fundamentalists has been carried out in Italy since August 2004.

Costs: not available.

Problems/Negative Consequences: no particular problems/negative consequences have been envisaged

⁹⁸ The whole text of the law can be found on the following website: www.parlamento.it/parlam/leggi/04206l.htm.

⁹⁹ See www.interno.it/news/articolo.php?idArticolo=18971 and www.interno.it/salastampa/comunicati/pages/articolo.php?idarticolo=853.

¹⁰⁰ See the following website: www.interno.it/salastampa/comunicati/pages/articolo.php?idarticolo=595.

4.2.10 Antiterrorism drills

Source: website of the Italian Ministry of Interior.¹⁰¹

Description: the antiterrorism drills which took place in Milan, Rome and Naples, aimed at monitoring the efficiency and the effectiveness of counterterrorism procedures operated by police, firemen, civil defence, etc.

Theory: the underlying theory for this countermeasure is simulation, which shows the gaps in existing resources. To this purpose, the existing policies can be improved and completed in order to better organize both the security options and the recovery plans.

History: the antiterrorism drills took place in Milan (23 September 2005), in Rome (3 October 2005) and in Naples (22 October 2005)

Costs: not available.

Problems/Negative Consequences: simulation cannot grant an exhaustive comprehension of the reality, thus excluding some real aspects of terrorist attacks.

4.2.11 Establishment of the Islamic Council (*istituzione presso il Ministero dell'Interno della Consulta per l'Islam italiano*)

Source: Ministerial Decree of 10 September, 2005.¹⁰²

Description: the Ministerial Decree of 10 September 2005 establishes under the aegis of the Ministry of the Interior the so-called Islamic Council, which includes experienced and authoritative people from Islamic religion and culture. The Islamic Council is an advisory organ which represents a policy of opening-up with regard to moderate Islam.

Theory: the underlying theories for this countermeasure are

1. the inter-religious dialogue;
2. the growing interdependence between the security policies, the guarantee of social and civil rights and integration with the purpose of social cohesion;
3. the growing presence of the Islamic community in Italy;
4. the aim of promoting an harmonious integration of the Islamic community with respect to the constitutional principles and to the laws of the State.

History: the Ministerial Decree of September 10, 2005 establishes the so-called Islamic Council under the aegis of the Ministry of the Interior.

Costs: not available.

Problems/Negative Consequences: no particular problems/negative consequences have been envisaged.

¹⁰¹ See the following website: www.interno.it/sezioni/ministro/intervistadiscorso.php?idarticolo=384.

¹⁰² The whole text of the Decree can be found on the following website: www.asgi.it/content/documents/dl05102700.d.consulta.islamica.doc.

4.2.12 Urgent measures to combat international terrorism (*Disposizioni urgenti per contrastare il terrorismo internazionale*)

Source: law n. 155 of July 2005 on urgent measures to combat international terrorism (*Disposizioni urgenti per contrastare il terrorismo internazionale*); articles 270 quater, quinquies and sexies of the Italian Criminal Code.¹⁰³

Description: law n. 155 of July 2005 is the most up to date legislative initiative against terrorism. It includes a variety of measures, such as:

- residence permits for investigative purposes (*permessi di soggiorno a fini investigativi*, article 2): a special residence permit can be granted to those foreigners who cooperate with justice;
- new rules for expelling foreigners in order to prevent terrorism (*nuove norme in materia di espulsioni degli stranieri per motivi di prevenzione del terrorismo*, article 3): competent authorities can request the administrative expulsion of those immigrants who are suspected of terrorism;
- counterterrorist unit (*unità antiterrorismo*, article 5): the Minister of the Interior is requested to establish a counterterrorist unit, which is of multi-agency form, including experts from various bodies;
- new rules on telephone and telematic traffic data (*nuove norme sui dati del traffico telefonico e telematico*, article 6): those who buy a phone-card or a sim-card have to show a document of identification; the phone-tabulations have to be kept for twenty-four months for investigation purposes, and internet surfing data has to be retained for thirty months by the companies which offer network services. Furthermore, competent authorities may intercept the phone calls of those who are suspected of being terrorists;
- new rules on personal identification (*nuove norme sull'identificazione personale*, article 10): in order to use DNA identification, it is permitted to take samples of saliva or hair of those who are suspected of being terrorists;
- new rules on arrest and custody (*nuove disposizioni in materia di arresto e di fermo*, article 13): arrest is mandatory for terrorists, as well as international terrorists, who are caught in *flagrante delicto*;
- new terrorism related offences (*nuove fattispecie di delitto in materia di terrorismo*, article 15): the following articles – related to new terrorism related offences – have been introduced into the criminal code:
 - a) article 270 quater, which states that anybody who enrolls people in order to commit acts of violence aimed at terrorism, including those targeted at a foreign State, institution or organization, is sentenced to between seven and fifteen years imprisonment;
 - b) article 270 quinquies, which states that anybody who trains people to commit acts of violence aimed at terrorism, including by giving instructions about the preparation/use of dangerous weapons, is sentenced to between five and ten years;

¹⁰³ Law n. 155 of 31 July 2005, "*Conversione in legge, con modificazioni, del decreto-legge 27 luglio 2005, n. 144, recante misure urgenti per il contrasto del terrorismo internazionale*" The whole text of the law can be found on the following website: www.parlamento.it/parlam/leggi/051551.htm.

- c) article 270 sexies: which states that any conduct with the purpose of terrorism is by definition, due to its nature or context, a conduct which can seriously damage a country or an international organisation and is committed in order to intimidate the population or force public authorities or international organizations to perform or not to perform a given act, or to destabilize or destroy the fundamental political, constitutional, economical and social structures of a country or of an international organization, as well as any other conduct defined as terrorism, or committed for the purpose of terrorism, by conventions or other provisions of international law by which Italy is bound.

Theory: the underlying theory for this countermeasure is of updating legislation, thus regulating all these areas (e.g telecommunications) which can be exploited for terrorist purposes; furthermore, law 155 brings "urgent dispositions", and it can be recognized as "emergency legislation" adopted after the attacks in London of 7 July 2005.

History: law n. 155 was issued on 31 July 2005 and published in the Italian Official Journal (Gazzetta Ufficiale) on 1 August 2005.

Costs: not available.

Problems/Negative Consequences: among other rules, since this law grants special competences to police, customs, prosecutors, etc., it may conflict with civil rights.¹⁰⁴

Furthermore, article 6 may conflict with privacy. In the Italian system privacy issues are regulated by Decree n. 196 of 30 June 2003 (*Codice in materia di protezione dei dati personali*),¹⁰⁵ which abrogated several previous provisions on the same matter. Articles 153 and following discipline an independent Authority¹⁰⁶ charged with protecting privacy and supervising the application of the law. Following article 154 par.1, letter c) the Authority for the Protection of Personal Data¹⁰⁷ has established new standards of security¹⁰⁸ for the companies which manage telephone tapping.

¹⁰⁴ See above under footnote 94.

¹⁰⁵ The whole text of the Decree can be found on the following website:

www.camera.it/parlam/leggi/deleghe/testi/03196dl.htm.

An English version is available at: www.garanteprivacy.it/garante/doc.jsp?ID=1030925.

¹⁰⁶ The Authority was first established by law n. 675 of 31 December 1996, now abrogated by law n. 196 of 2003. The website of the Authority is www.garanteprivacy.it.

¹⁰⁷ Some useful sources for the Italian legislation in matter of privacy issues can be found on the following website:

www.garanteprivacy.it/garante/navig/jsp/index.jsp?folderpath=Normativa%2Fitaliana%2FII+Codice+in+materia+di+protezione+dei+dati+personali.

¹⁰⁸ See the following website: www.garanteprivacy.it/garante/doc.jsp?ID=1203890.

4.2.13 Cooperation with United Nations to fight terrorism

Sources: United Nations, *Twelve International conventions against terrorism*; ¹⁰⁹ United Nations Security Council, *Resolution 1267*, 1999; ¹¹⁰ United Nations Security Council, *Resolution 1373*, 2001; ¹¹¹ website of Italian Foreign Ministry; ¹¹² website of United Nations. ¹¹³

Description: Italy has ratified all Twelve International Conventions against Terrorism and sustains the activities of the CTC–Counter Terrorism Committee. The CTC aims to monitor and fight terrorism. Italy also gives a strong contribution to the Sanction Committee against Al Qaeda and the Taliban. The Sanction Committee asks the Members of Security Council and UN Members to cooperate and to report any useful information about Al Qaeda's terrorist organization. From 2002 Italy has presented 7 reports (to the amount of 79 individuals and 14 terrorist organizations which were counted in the list of the Committee itself). For this reason Italy can be placed in second place, after United States, in terms of presented reports, which represent an important contribution to the work of Sanction Committee, because they help to extend its knowledge about Al Qaeda terrorism. ¹¹⁴

Theory: the cooperation with the UN represents a necessary step towards maintaining close contact with the Western World, whose dissolution is the primary ideological objective of fundamentalists' terrorism.

History: the Counter Terrorism Committee has been established by the UN Security Council on 28 September 2001, acting under Chapter VII of the United Nations Charter (concerning threats to international peace and security), and on the basis of resolution 1373. From 2002 Italy has been collaborating with the Sanction Committee against Al Qaeda and the Taliban, which was established by the UN Security Council in October 1999 through resolution 1267 of October 15, 1999.

Costs: not available.

Problems/Negative Consequences: no particular problems/negative consequences have been envisaged.

¹⁰⁹ The *Twelve International Conventions* can be found on the following website: www.unodc.org/unodc/terrorism_conventions.html.

¹¹⁰ *UN resolution 1267* can be found on the following website: www.globalpolicy.org/security/sanction/afgnstan/1999/1015resol.pdf.

¹¹¹ *UN resolution 1373* can be found on the following website: www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf.

¹¹² See the following website: www.esteri.it/ita/4_28_63_60.asp#2.

¹¹³ See the following website: www.un.org/Docs/sc/committees/1373/.

¹¹⁴ See www.esteri.it/ita/4_28_63_60.asp#2.

4.2.14 Cooperation at European level to fight terrorism

Sources: Council of the European Union, Joint Action, adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the identification, tracing, freezing, seizing and confiscation of the instrumentalities and proceeds from crime, 3 December 1998;¹¹⁵ Council of the European Union, Council Act establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, 29 May 2000;¹¹⁶ Council of the European Union, Council Decision setting up Eurojust with a view to reinforcing the fight against serious crime, 28 February 2002;¹¹⁷ Council of the European Union, Council Framework Decision on combating terrorism, 13 June 2002;¹¹⁸ Council of the European Union, Council Framework Decision on the European arrest warrant and the surrender procedures between Member States, 13 June 2002;¹¹⁹ Council of the European Union, Council Framework Decision on joint investigation teams, 13 June 2002;¹²⁰ Council of the European Union, Council Regulation laying down a uniform format for residence permits for third-country nationals, 13 June 2002;¹²¹ Council of Europe, Convention on the Prevention of Terrorism, 16 May 2005; Council of Europe, Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 16 May 2005.¹²²

Description: Italy, as Member State of the European Union, is requested to adapt its national legislation in response to the counterterrorism measures which have been adopted at the EU level, like the Council Framework Decision of 13 June 2002 on combating terrorism, on the European arrest warrant, on the joint investigation teams, the Council Decision on the establishment of Eurojust, the Joint Action on the identification, tracing and confiscation of instrumentalities and the proceeds from crime. Italy also endorses other important measures like the mutual Assistance in Criminal Matters between Member States and the adoption of the uniform format for residence permits.

Furthermore, on June 8th 2005 Italy signed the Council of Europe Conventions on the Prevention of Terrorism.

¹¹⁵ Council of the European Union, *Joint Action adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the identification, tracing, freezing, seizing and confiscation of the instrumentalities and proceeds from crime*, 3 December 1998.

¹¹⁶ Council of the European Union, *Council Act establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union*, 29 May 2000.

¹¹⁷ Council of the European Union, *Council Decision setting up Eurojust with a view to reinforcing the fight against serious crime*, 28 February 2002.

¹¹⁸ Council of the European Union, *Council Framework Decision on combating terrorism*, 13 June 2002.

¹¹⁹ Council of the European Union, *Council Framework Decision on the European arrest warrant and the surrender procedures between Member States*, 13 June 2002.

¹²⁰ Council of the European Union, *Council Framework Decision on joint investigation teams*, 13 June 2002.

¹²¹ Council of the European Union, *Council Regulation laying down a uniform format for residence permits for third-country nationals*, 13 June 2002.

¹²² Council of Europe, *Convention on the Prevention of Terrorism*, 16 May 2005 and Council of Europe, *Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism*, 16 May 2005.

Theory: cooperation at European level aims at regulating all those vulnerable areas which can be exploited by terrorist for their criminal purposes. It also aims at speeding up these processes (like extradition) which has previously required much bureaucracy or legal bonds.

The cooperation with the EU harmonizes the procedures apt for prosecuting terrorists and it also helps at recognizing a European dimension of terrorism itself.

History:

the identification, tracing, freezing, seizing and confiscation of the instrumentalities and proceeds from crime has been regulated by the *Joint Action adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the identification, tracing, freezing, seizing and confiscation of the instrumentalities and proceeds from crime* of 3 December 1998;

the mutual Assistance in Criminal Matters between Member States has been adopted through *Council Act establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union* of 29 May 2000;

Eurojust has been established with *Council Decision setting up Eurojust with a view to reinforcing the fight against serious crime* of 28 February 2002;

the Council Framework Decision on combating terrorism has been established with *Council Framework Decision on combating terrorism* of 13 June 2002;

the Joint Investigation teams have been established with the *Council Framework Decision on joint investigation teams* of 13 June 2002;

the European arrest warrant has been established with *Council Framework Decision on the European arrest warrant and the surrender procedures between Member States*¹²³ of 13 June 2002;

the adoption of the uniform format for residence permits has been established with *Council Regulation laying down a uniform format for residence permits for third-country nationals* of 13 June 2002. The Conventions on the Prevention of Terrorism have been established through the following acts:

Council of Europe, *Convention on the Prevention of Terrorism* of 16 May 2005;

Council of Europe, *Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism* of 16 May 2005.

Costs: not available.

Problems/Negative Consequences: acts adopted in the framework of the Third Pillar of the European Union may play a great role in pushing MSs towards creating a common framework that would facilitate police and judicial co-operation and ensure that terrorist acts are not punished differently in different Member States.¹²⁴ Such a role is even more important in the field of terrorism if one considers, for example, that before the adoption of *Council Framework Decision on combating terrorism*, only 7 countries – France, Germany, Italy, Portugal, Greece, Spain and the United Kingdom – out of the 15 Member States of the European Union had specific laws to fight terrorism. These laws were different from country to country. In the

¹²³ See the following website: europa.eu.int/scadplus/leg/en/lvb/l33167.htm.

¹²⁴ See the following website: europa.eu.int/comm/justice_home/fsj/criminal/terrorism/fsj_criminal_terrorism_en.htm.

other Member States, where no legislation existed, terrorist acts were judged on the basis of common criminal offences.

The processes of legislative harmonisation set in motion by these acts, however, are problematic if one considers that acts adopted in the framework of the Third Pillar of the European Union do not have any direct effect. Their translation into national legislation is therefore strongly dependent on the MS's willingness to do so.

4.2.15 Cooperation with G8 to fight terrorism

Sources: website of Italian Foreign Ministry;¹²⁵ *G8 Action Plan on Building International political will and capacity to combat terrorism*, 2003.¹²⁶

Description: the G8 Rome–Lyon Group was established in October 2001 when senior representatives of G8 Justice and Home Affairs Ministries met in Rome to discuss steps for the G8 to take to combat international terrorism and decided to combine the G8's Lyon Group (fighting international crime) and the G8's Rome Group (fighting international terrorism). Since that time, the Rome–Lyon Group has met three times annually in joint session. While continuing important work to combat international crime, the group uses its resources to combat terrorism through such avenues as enhancements to legal systems, port and maritime security, and tools for investigating terrorist uses of the Internet. The Rome–Lyon Group works on proposals which could be approved at a political level. It also promotes best practices and guidelines about specific security procedures which have to be adopted by multilateral organizations (i.e. ICAO– International Civil Aviation Organization and IMO–International Maritime Organization). Within the CTAG–Counter Terrorism Action Group,¹²⁷ Italy has taken charge of the coordination of the technical assistance to Third Countries, thus also facing the terrorist menace in the airports of the Western Balkans.

Theory: the underlying theory for the cooperation with G8 is the prevention and eradication of terrorism, by strengthening the counter–terrorism measures of G8 and of the other countries.

History: the Rome–Lyon Group was established in October 2001; the Counter Terrorism Action Group was established in 2003.

Costs: not available.

Problems/Negative Consequences: no particular problems/negative consequences have been envisaged.

¹²⁵ See the following website: www.esteri.it/ita/4_28_63_60.asp#2.

¹²⁶ The G8 Action Plan can be found on the following website: www.g8.fr/evian/english/navigation/2003_g8_summit/summit_documents/building_international_political_will_and_capacity_to_combat_terrorism_-_a_g8_action_plan.html.

¹²⁷ On 2 June 2003 the CTAG–Counter Terrorism Action Group has been established by the G8 leaders in Evian, France. expand counterterrorism capacity building assistance. It includes the G8, as well as other states, mainly donors.

The guidelines of the CTAG establishment can be found on the following website: www.g8.fr/evian/english/navigation/2003_g8_summit/summit_documents/building_international_political_will_and_capacity_to_combat_terrorism_-_a_g8_action_plan.html.

4.2.16 Cooperation with NATO (North Atlantic Treaty Organization) to fight terrorism

Sources: website of Italian Foreign Ministry;¹²⁸ website of Italian Ministry of Defence;¹²⁹ website of NATO–The North Atlantic Treaty Organization;¹³⁰ article 5 of the Washington Treaty.¹³¹

Description: Italy takes part in the NATO naval mission “Active Endeavour”, which aims at deterring terrorism in the Mediterranean. This mission is based on the measures taken in October 2001 through NATO’s decision to implement article 5 of the Washington Treaty. Article 5, was invoked for the first time less than 24 hours after the attacks of 11 September in New York, and it declared the attacks as an attack against all NATO members.

Theory: on 12 September 2001 NATO implemented Article 5 of the Washington Treaty following the 11 September attacks against the United States. Following US requests, NATO subsequently agreed to implement 8 specific measures to expand the options available in the campaign against terrorism. These measures included the deployment of elements of NATO’s Standing Naval Forces to the Eastern Mediterranean in order to provide a NATO presence and demonstrate resolve.

History: the NATO Operation “Active Endeavour” formally began on 26 October 2001, when the activation order was issued. However, patrolling in the Eastern Mediterranean had already started on 6 October, when the Standing Naval Force in the Mediterranean was dispatched to conduct maritime presence operations in support of the international campaign against terrorism.¹³²

The Declaration on Terrorism was issued at the Meeting of the North Atlantic Council Session of Foreign Ministers held in Brussels on April 2, 2004.

Costs: not available.

Problems/Negative Consequences: no particular problems/negative consequences have been envisaged.

Next section (section 5) will present some preliminary reflections on the implementation of all the counterterrorism measures analysed above.

¹²⁸ See the following website: www.esteri.it/ita/4_28_63_60.asp#2.

¹²⁹ See the following website: www.marina.difesa.it/attivita/incorso/activeendeavour/.

¹³⁰ For more information about Italy and NATO, see the following websites: www.esteri.it/ita/4_28_64_266_184.asp and www.nato.int/issues/terrorism/index.html.

¹³¹ The whole text of the Washington Treaty can be found on the following website: www.nato.int/docu/basicxt/treaty.htm.

¹³² For more information about “Active Endeavour” and its history, see the following website: www.afsouth.nato.int/operations/Endeavour/Endeavour.htm.

5.

BRIEF RÉSUMÉ OF THE SPECIFIC COUNTERTERRORISM MEASURES ADOPTED IN ITALY FROM 1990 TO DATE AND PRELIMINARY REFLECTIONS ABOUT THEIR IMPLEMENTATION

The counterterrorism measures adopted in Italy from 1990 to date, which have been analysed in depth in the previous section, can be summarized as follows:

- 1) 1998 onwards: cooperation at European level;
- 2) September 2001: strengthening of security measures over the whole Italian territory (*Rafforzamento delle misure di sicurezza in tutta Italia*);
- 3) December 2001: establishment of the CSF – Committee of Financial Security (*Comitato di sicurezza finanziaria*);
- 4) December 2001: criminalising the associations with purposes of terrorism, including international terrorism, or purposes of subversion of the democratic order (*associazioni con finalità di terrorismo anche internazionale o di eversione dell'ordine democratico*);
- 5) December 2001: criminalising assistance to associates (*assistenza agli associati*);
- 6) 2001 onwards: cooperation with United Nations to fight terrorism;
- 7) 2001 onwards: cooperation with G8 to fight terrorism;
- 8) 2001 onwards: cooperation with NATO to fight terrorism;
- 9) December 2002: making the penitentiary regime severer (*modifica degli articoli 4-bis e 41-bis della legge 26 luglio 1975, n. 354, in materia di trattamento penitenziario*);
- 10) January 2003: establishment of a task force to coordinate the investigations on terrorist attacks in Sardinia;
- 11) 2003 onwards: expulsion of the Carmagnola and Turin Imams to prevent them from breaching the peace and being a risk to the security of the State;
- 12) August 2004: new rules which favour the victims of terrorism and related massacres (*Nuove norme in favore delle vittime del terrorismo e delle stragi di tale matrice*);
- 13) August 2004: prevention of terrorism through the monitoring of places frequented by Islamic fundamentalists;
- 14) September–October 2005: antiterrorism drills in Milan, Rome and Naples;
- 15) September 2005: establishment of the Islamic Council (*istituzione presso il Ministero dell'Interno della Consulta per l'Islam italiano*);
- 16) July 2005: urgent measures to combat international terrorism (*Disposizioni urgenti per contrastare il terrorismo internazionale*).

As the list above shows, all but one counterterrorism measure adopted in Italy from 1990 to date has been issued from 2001 onwards, in the aftermath of the September 11th attack. They can be regarded as a sort of “emergency plan” aimed at

boosting resources and providing fine-tuned legal instruments to fight terrorism,¹³³ especially after the raising of its threat and impact in the period post September 11th 2001 and Madrid–London attacks. Each of the analysed counterterrorism measures, with its own advantages and disadvantages, is crucial as part of an overall strategy against terrorism made up of different aims (prevention, immigration and asylum, special competences to police, customs, prosecutors, institutional developments, international cooperation, counteracting financing of terrorism, security of infrastructure, crisis management).

With reference to the implementation of these countermeasures, due to a lack of data it is hard to come to any well-grounded finding. Some comments can however be made.

First, it is important to distinguishing between:

- those countermeasures consisting of concrete actions (e.g. antiterrorism drills; expulsion of the Carmagnola and Turin Imams): with reference to these countermeasures – whose implementation, because of their operative nature, is relatively easy to check and is often implicit in the countermeasure itself – it is possible to state that they have all been implemented; and
- those counterterrorism measures consisting of the introduction of legal rules (either as a result of international obligations or not): verifying implementation of these countermeasures is hampered both by the fact that the first issue at stake may be ratification, rather than implementation (as it happens with reference to those legal rules to be adopted by Italy as a result of international obligations) and, more generally, by the lack of data related to the implementation of the legal rules themselves.

If the paucity of data makes it hard to talk properly about implementation of the countermeasures herein analysed, what can be done is to present the (few) most up to date available data related to the major antiterrorism operations carried out in the past few years. These data, which have been published in the 2005 Italian Ministry of the Interior Annual Report on the State of Security in Italy (*Rapporto Annuale 2005 sullo Stato di Sicurezza in Italia*) refers to the period between 2001 and 2005 and they are as follows:¹³⁴

- 13,246 sensible targets (e.g. places potentially prone to terrorist offences) have been put under strict surveillance by 18,061 law enforcement officers;
- during the first semester of 2005, 25 fundamentalists have been arrested; among these, also Hamdi Issac Adus (one of the perpetrators of the failed attack of 21 July 2005 on the London Underground) and his brother have been arrested within the Italian territory;
- 141 signals of menace have been analysed;
- during the last four years, 95 domestic terrorists have been arrested;

¹³³ Italian Ministry of the Interior, *Annual Report 2005 on the State of Security in Italy (Rapporto Annuale 2005 sullo Stato di Sicurezza in Italia)*. The whole text of the document can be found on the following website: www.interno.it/assets/files/8/20058141464.pdf.

¹³⁴ An interview to the Italian Minister of the Interior about the findings of this Annual Report can be found on the following website: www.interno.it/sezioni/ministro/intervistadiscorso.php?idarticolo=386.

- during the last four years, 427 extremists have been arrested (up to 50% with regard to the period between 1995 and 1999).

6.

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