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guest edited by
Juliet Lodge

editorial team

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UACES STUDENT FORUM

Security and Liberty in the European Union

Juliet Lodge

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research articles

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Hannah M. Cross

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Security and Liberty in the European Union: Foreword

Juliet Lodge
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WHY DO LIBERTY AND SECURITY MATTER? WHY HAVE THEY BEEN SEEN AS POLAR opposites? And why is the tension in reconciling individual and collective liberty with collective security so problematic? Without security, liberty is impossible. Without liberty, as we understand it in the European Union (EU), democracy is jeopardised. There are many facets to understanding how the domesticisation of security and the securitisation of policy arenas, previously seen as domestic politics, challenge our understanding of the meaning of liberty, democracy, fundamental human rights and open governance. The EU has increasingly taken initiatives in the area of freedom, security and justice that expand the reach of cross-border cooperation by law enforcement agencies in ways that compromise the ability of the elected representatives of the people – national parliaments and the European Parliament – to hold national governments accountable for their decisions.

Soft law and bilateral agreements side-step traditional institutions, sometimes inevitably determined by compelling operational imperatives. Governments typically justify these in the name of security – both private and collective. Simultaneously, governments deploy new technologies of surveillance and automated information exchange in seemingly unthinking ways, again in the name of enhancing individual and collective security. Paradoxically, this has not led to a boost in citizens' trust in government and its ability to maintain core values and minimise threats and insecurity. Instead, there is suspicion and cynicism. This arises from the logic of the multi-purpose use of the technologies and the way in which they can be mined without the citizen knowing or being required to give consent. It arises also because many different strands of policymaking have become mired in a discourse of securitisation where new 'security' measures such as biometric radio-frequency identification (RFID) smart cards have been adopted by governments in ways that raise the spectre of centralised data bases of everyone's fingerprints.

In many states, fingerprinting is associated with criminal activity rather than with the verification of the authenticity of the identity of the person providing that fingerprint. In the context of the EU's emerging migration and asylum policies, fingerprinting is clearly associated with a discourse of 'them' and 'us'. This in turn underscores concepts of risk, insecurities, trusted insiders and not-trusted outsiders. In brief, over the past five years, deliberation on liberty and security reveals that these concepts need to be disaggregated to be better appreciated and in order to better understand how and what appropriate measures might be implemented in the name of security for liberty.

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This special issue focuses on some of the issues arising in Europe as member states and the EU Commission, Council and European Parliament have struggled with a welter of external pressures to securitise the management of the EU's external border. In so doing, older internal borders have been resurrected, and newer insecurities have arisen as cross border information exchanges in digi-space have proceeded. Arguably the European Parliament, EU Ombudsman and data protection supervisor and his national counterparts have responded strongly in order to assert the cause of liberty, individual freedom, collective fundamental rights and data protection. National parliaments have lagged behind and legal regulation continues to be outpaced by accelerating change and the challenges to liberty posed by the 'security' technologies. Why and how this has happened is addressed in this special issue.

The special issue itself was inspired by and reflects many of the core concerns of the CHALLENGE Framework Six Research Programme. CHALLENGE (The Changing Landscape of European Liberty and Security).¹ It began in 2004, after the Convention on the Future of Europe had deliberated, and ended just before the seventh direct elections to the European Parliament in June 2009. CHALLENGE focused on the scientific discourse around policy recommendations and the challenges confronting the EU in developing its territory as an area of freedom, security and justice subject to democratic accountability, respecting the EU Charter on Fundamental Rights and rooted in the shared values espoused by the concept of four freedoms (movement of persons, goods, services and capital) and boosted by the fifth freedom – that of knowledge. As suggested by the scientific officer for the project, Angela Liberatore (2007), the “paradoxical, two-sided nature of a number of technologies – namely surveillance technologies – and the different modes of using knowledge and expertise in democratic decision-making are at the core of the relations and tensions between liberty and security”.

CHALLENGE was funded by the Directorate General for Research of the European Commission. Its aim was to promote and facilitate a more responsive and responsible assessment of the rules and practices of security in Europe and beyond. It focused on the implications of these practices for civil liberties, human rights and social responsibility. Twenty-three universities and research centres from all across Europe participated in the project which concluded with an art exhibition 'State of the Heart' held in Brussels (See Annex of this special issue pages).

When CHALLENGE began working in 2004, security concerns were reflected primarily through the lens of border management, making it more effective – through Frontex, Europol, rapid reaction forces and better information sharing across borders. The tools for realising this, many of which used new technologies, were largely uncontested but quickly became mired in fears about ubiquitous surveillance, Big Brother and the end of liberty. Reconciling operational needs and tools with political security goals is difficult and traditionally bound up with border controls on the flow of people, surveillance of other (hostile) countries, and internal identity checks on citizens and foreigners within a country's borders. The vision of security has been transformed by technology, transnationalisation and globalisation and has thus come to be seen not merely as a form of protection, but as (increasingly privatised) risk management.

For sociologists, this has been interpreted as a great transformation rooted in modernity but realised after the Cold War as security controls switched from borders to people, and technological advances were presented as border technologies of control to anticipate and prevent future disasters by monitoring the future. Accordingly, the CHALLENGE project juxtaposed philosophical discourse and pan-optican visions with a pragmatic

¹ The archived website for the CHALLENGE Project can be found at <http://www.libertysecurity.org>.

mapping of the reality of securitisation and linkage of law enforcement agencies. It scrutinised the growth of exceptionalism that curtailed the exercise of liberty. It explored how this in turn eluded democratic controls, how (then) new biometric technologies redefined identity, how they evolved as part of a strategy to promote interoperability among European databases for border and immigration control purposes and also as a tool for combating international organised crime and terrorism. The Prüm Treaty (2006) allowed EU authorities to exchange information (including DNA) and afforded mutual access to criminal files. Whereas the power of national authorities to collect personal information is limited by obligations to protect individual rights based on EC law, privacy, non-discrimination and data protection, many principles regarding purpose limitation and 'proportionality' of 'information' were soon called into question by the use of the term 'security' as a justification for measures having potentially far-reaching effects, including those that compromise democratic practice, ethical values and legitimacy.

From 2004 steps were taken to boost information exchanges under the Visa Information System (SIS) and Schengen Information systems (SIS II). From October 2006, EU nationals travelling to the USA and lacking machine readable passports had to apply for a visa, and be finger printed at the US border. The management of an entry-exit system was on the EU's agenda in 2007, along with amending and expanding Frontex's remit and the position of Europol and Eurojust. The European Data Protection Supervisor's office made several important interventions to highlight risks. CHALLENGE members appeared before the LIBE Committee (on Civil Liberties, Justice and Home Affairs) of the European Parliament and national parliamentary scrutiny committees to highlight dangers inherent in outsourcing data processing, and stressed the need for proportionality and respect for the law. Simultaneously, border management strategies proceeded apace as border controls were externalised to neighbouring states (as at Eurostar terminals and in North Africa) and illegal migration, trafficking and asylum pressures grew. The movement of people within the EU (including the Roma, for example) also created problems in different member states which CHALLENGE partners explored. The security technologies for cross-border cooperation and information exchange are neither risk nor value-free, and liberty can be compromised inadvertently or using the argumentation of exceptionalism and the practices of risk management.

In short, the CHALLENGE project focused on major contemporary issues affecting the international community but reflected particularly in the EU where these pressures required, but outstripped, the capacity of member governments to re-appraise their goals. CHALLENGE engaged actively with policymakers at all levels in constructive and sometimes highly charged and heated debate. Through this debate and the academic scientific research carried out, interest was fostered among younger scholars seeking to develop knowledge about some of the most urgent problems confronting society today. Its visualisation was captured by young artists in an exhibition at the Berlaymont at the end of the project in May 2009. The artists sought to provide a space for exploring the contested terrain on which liberty and security are approached in a context framed by discourses of threat and danger. The exhibition featured the works of Charlesworth, Lewandowski & Mann; Charlie Coffey; Richard Hards; Ilias Poulos and Mark Titchner (see annex at the end of this special issue).

This special issue reflects but a fraction of the CHALLENGE endeavour. The development of critical knowledge and insight is essential to promote informed, joined-up thinking about the underlying scientific, technological, ethical and socio-politico-legal assumptions that challenge us to rethink how we define ourselves and how we visualise, value and protect liberty and security. The papers in this special issue, moreover, address not only the risks to liberty and security posed and managed by those responsible for border issues, but expose the problematic nature of trying to manage potentially uncontrollable risks to

liberty and security posed by climate change, and by the dependence of our critical infrastructures and ambient environments on external energy supplies. The special issue takes the challenges to liberty and security beyond the parameters of institutions and authorities within the EU to those that are unseen (weather patterns) and those that may be unpredictable.

The special issue therefore seeks to provide insight into some of the issues that preoccupy those whose view of security is exemplified by border management. But it also seeks to show that the strategy has inevitably been informed by an appreciation of risk that is territorially bounded. Over the past few years, awareness of the risks associated with cyber/digi-space and climate change have escalated. Those responsible for the management of security and both domestic and trans-border civil emergencies have to deal with other types of risks that may also precipitate greater flows of people from within, as well as outside. These risks are far less amenable to the kind of tools and thinking that has determined much of the EU's and its member governments' responses to security this decade.

The special issue EU begins with the more traditional approach to understanding the drivers of security dangers, vulnerabilities and responses to the identification of threats to liberty and security.

Christian Kaunert addresses the issue of the emerging EU common European asylum regime from the time of the 1999 Tampere summit which was a critical milestone in the history of the realisation of an area of freedom, security and justice. His paper focuses on the four main directives after first exploring the politico-legal background to the establishment of the asylum policy which had its origins in the pre-2001 period. He pays particular attention to the role of the Commission in navigating the challenges of the 'war on terror' which permeates much of the member governments' discourse in order to ensure that the asylum policy remained within the purview of the Geneva Convention.

Hannah Morgan Cross reflects on the development of EU border and immigration policy. She describes the impact of the EU migration regime on West African clandestine migrants. She shows how security and justice issues in the construction and implementation of asylum rules by the EU have been managed, revealing that an implicit securitisation has been prioritised, notably by Frontex. Along with the externalisation of border controls, she detects a security rationale where migrants from this part of Africa are concerned. In analysing the economic realities as the migration driver for clandestine West African migrants (notably from Senegal) across the sea route from the West African coast to the Canary Islands, she discusses the impact of EU repatriation measures and steps to prevent migration.

Chris Baker-Beall examines the discursive construction of terrorism and counter-terrorism. His argument focuses on the issue of using the construction of a discourse of fear, predicated on terrorism, which he suggests is used to legitimise the EU's security role and to 'control' society. He deploys critical discourse analysis (CDA) as a method through which to analyse the EU's official counter-terrorism policy documents. The focus of the article is on the construction of two meta-narratives linked to the production of fear. The first is the construction of the 'terrorist other' as a threat to European 'identity', 'society' or 'civilisation' and linked to the risk represented by living in an 'open' or 'globalised' society. The second is the construction of the terrorist threat as 'new' and 'imminent' which, he argues, leads to the introduction of special measures. This in turn, he suggests, has led to the conflation of the 'immigrant other', the 'Muslim other' and the 'terrorist other', into a single 'threat' and so led to the securitisation of EU migration and immigration policy, something which the CHALLENGE researchers have systematically probed from socio-legal and political

perspectives over the duration of the project. Beaker Beall concludes that the discursive construction of counter-terrorism policy in turn raises serious questions about the balance between liberty and security within the EU.

Following on from Baker-Beall's article, Rut Bermejo examines the discourse on immigration control and securitisation with a view to detecting the impact of the latter on the former. She addresses the perception that immigration controls have been boosted owing to the threat of terrorism and uses the analogy of 'fortress Europe'. The 1980-1992 period is crucial for understanding EU action on terrorism and migration. The term 'fortress Europe' was first used in the late 1980s and early 1990s within the EU (then known as European Community) to justify the removal of the internal borders and restrictions that added administrative and financial costs to the free movement of goods, services, persons and capital; and the associated reinforcement of a common external border around the then much smaller EU perimeter. Steps to create common customs and more controversially border controls (like passports, migration, refugees, asylum and policing) for the common external frontier grew. Even then, measures to promote cooperation among EC member governments to combat indigenous and international terrorism go back to the 1970s: Ireland/UK (IRA), the Netherlands (the Moluccans), Germany (Baader-Meinhof and the Red Army Faction), Italy (Black and Red terrorism) and Spain (ETA) all faced indigenous violence. Today's agencies like Europol, Eurojust, Frontex and the Rapid reaction teams, and joint investigation teams had their origins in deliberations twenty years ago when the mere suggestion of cooperation, let alone integration, in these matters provoked anxiety over the implications for national sovereignty, and scorn from those who saw such steps as nascent federalism. Cooperation on migration, asylum and refugees also has a long history: Eurodac is not a recent innovation. The problems over extraditing and prosecuting indigenous as well as international terrorist suspects and criminals led states to create the Dublin Convention. Schengen was presaged by other developments then: for example by the Kangaroo Group in the European Parliament and by others, like Altiero Spinelli creating counterpart treaty amendments (culminating in the European Parliament's Draft treaty establishing the European Union in 1984) to expedite the removal of internal borders to realise and Single European Market, a critical debate between economic liberalisation and constitutional federalism that was sometimes lost in the discussions of two-speed Europe. Bermejo shows how during this decade, policy to develop border controls, primarily around the longer external border, has developed - first impelled by migration from the East as the Soviet Union disintegrated, and second from the South-East and South. She concludes that the absence of clear progress towards a common immigration policy cannot be directly linked to the terrorist threat but to states' reluctance to develop it.

Ariadna Ripoll Servent examines the tensions between what the European Parliament wants to achieve in terms of substantive change to draft EU legislation in the Area for Freedom Security and Justice (AFSJ). She compares the European Parliament's actual impact on the Returns Directive and Data Retention directives. She does so using the example of policy-image as a way to understand change in policy-making. Policy-images are defined as perceptions or understandings of factual information. Policy-images conflate information with emotive responses. She shows how the European Parliament and its central committee in the AFSJ area - the LIBE committee - have tried to influence policy in a given direction, and so exercise the constitutionally embedded right of the European Parliament to play a role as part of co-decision in these fields. However, the results are mixed owing to machinations that relate to relative power struggles between states and parties and different European Parliamentary committees rather than to the perceived merits or otherwise of the original proposals. As a result, the ability of the European Parliament to be as influential as might be assumed is moderated just as much

by MEPs as it is by Council indifference which characterized the Council's attitude to the European Parliament before it acquired rights to co-decision in the AFSJ area.

The institutional focus of the special issue is also supplemented by a range of EU/country specific (Austria, UK, France and Russia) case-studies. In the first of these case-study articles, Alexandra Schwell takes up the theme of the communication of identity and security. Her article examines the impact on identity and perceptions of security of the incorporation of a former security risk (the Central and East European countries, CEECs) into the EU and the resultant securitization of Schengen. The abolition of border controls in the course of the Schengen enlargement, she suggests, led to ambivalence on the part of older EU members who equated criminal activity and transfrontier crime as security risks with "located in 'the East'". The article argues that the construction of security risks does not necessarily correspond to their threat potential, but that they can be instrumentalised and utilised by competing actors for various aims. By scrutinising the Austrian Ministry of the Interior, Schwell shows how West European security-political and professional actors reacted to the challenges of the 2007 Schengen enlargement. She also highlights how the sudden downplay of 'the East' as a security risk, immediately after the opening of formerly communist societies in Eastern Europe that had previously been key threats to Austria, was expressed differentially in public and media discourse. Drawing on the concepts of securitisation and desecuritisation, and comparing the Austrian Ministry of the Interior and the Austrian tabloid press, the article shows how the tabloids' securitising strategy proved to be more successful than the Ministry's desecuritising strategy.

Identity and risk are at the heart of David Murakami Wood and William Webster's article on surveillance for security. They address the issue of how securitisation practices and the domestication of security normalise surveillance, something previously closely linked with measures to track and combat external security threats. The result, they suggest, alters the landscape of liberty and security. They argue that the abundance of hazards in late-modern society change how risk and security are viewed and the extent to which individuals are prepared to sacrifice or see constrained liberty and its associated values and practices in order to minimize the risks that jeopardise their personal and collective security. Their empirical data is based on video-surveillance and electronic public registers in Britain (the 'bad example' influencing EU policy). The more de-contextualised a risk is, the more likely a security technological response (such as camera surveillance) appears to be accepted. This is something commonly presented in the discourse on the securitisation of domestic matters, such as vandalism. They show that because links between that response and the storage of surveillance data for use in other contexts are not clearly made, so the way in which liberty becomes 'securitised' and further constrained is not immediately obvious.

Paul Stephenson and Edward Hunter Christie show how EU security is endangered not by people crossing borders but by unpredictability in the atmosphere and unpredictability in respect of the supply of a commodity on which EU states are dependent – energy. Christie scrutinises in detail EU-Russia energy supply issues and concludes with a suggestion to strengthen the EU's collective bargaining power vis-à-vis supply countries. His argument proceeds from the proposition that rational energy vulnerability measurement and modelling should inform policy; and that there should be legislation to deter member states from developing energy infrastructure projects by one or more states that have the effect of increasing the energy vulnerability of one of more other member states.

By contrast, Stephenson looks at climate change. With reference to how France coped with the heatwave of 2003; an event considered to be the greatest natural catastrophe in Europe for 50 years. He argues that failure to adequately protect the most vulnerable of

citizens was aggravated by political mismanagement and other politico-cultural, societal and psychological factors. From this he deduces 20 obstacles to ensuring effective response in the face of environmental or weather-related threats, distinguishing between state-institutional, mediated and individual-community barriers, most of which have a cultural dimension. Raising questions about crisis management, he suggests that policy-makers take these factors into account in order to improve preparedness for environmental threats in the EU and to strengthen community capacity to respond to crises. Stephenson shows how human security is no longer principally about military, but also environmental threats. He argues that security is not just about protection against terrorist threat but embraces all aspects of physical safety. Rather than arguing that this is a consequence of the internalisation and domestication of a securitisation rationale and debate, he shows the role of human agency in creating and minimising risk and managing security risks. He calls for a broader definition of EU internal security to include the management of human protection, collectively and individually, from environmental rather than military threat. He develops this in relation to the idea of 'active welfare' based on the idea of *individual sovereignty*, individual responsibility and action, changing culturally-embedded attitudes towards heat, risk, state protection and the elderly, and re-appraising civil emergency response and critical infrastructures in relation to the vulnerabilities of society.

The special issue also contains two commentary pieces, the first of which by Angela Liberatore, from the European Commission Directorate General for Research and scientific officer for the CHALLENGE project, reflects on transatlantic relations between the EU and the USA in the context of liberty, security and power. Liberatore suggests that there needs to be a degree of convergence between the policy and attitude of the EU and the USA to ensure that the international order stabilises and that values such as democracy and fundamental rights are not undermined. The second commentary, written by Matteo Pallaver, starts off by asserting that the Lisbon Treaty, as it was first negotiated, is dead and the resulting institutional stalemate has the potential to kill the entire integration process. He argues that the European Security and Defence Policy (ESDP) needs effective institutions, shared rules and clear priorities. In making his case, he derives his arguments from contrasting positions taken by a policymaker, former EU Commission President at the time of the ESDP's launch, and former Italian Prime Minister, Romano Prodi, and an academic, Professor Jolyon Howorth. The question is, can the ESDP realise the EU's ambition to be a reliable and effective player in world politics by acquiring greater resources, capabilities and stronger alliances, or will politics forever inhibit its realisation?

The special issue concludes with 3 book reviews examining a range of recent publications in the field of liberty and security, including Andrew Geddes, *Immigration and European Integration: Beyond Fortress Europe* (2008); Stephen Castles and Mark J. Miller, *The Age of Migration* (2009) and Maria Fletcher, Robin Lööf and Bill Gilmore, *EU Criminal Law and Justice* (2008).

As the guest editor, I have been privileged to work with an assiduous and talented editorial team without whom, this special issue would not materialised. My thanks to them, to Eamonn Butler especially, and to all the contributors for making it possible and for showing how much the issues of liberty and security impel us to rethink the kind of societies we are creating.

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Liberty versus Security? EU Asylum Policy and the European Commission

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Abstract

The Common European Asylum System (CEAS) experienced significant developments during the Tampere programme (1999 – 2004). This article analyses how security is constituted or viewed by the European Union in the area of asylum policy; more importantly how the European Commission, in the face of the emerging discourse on the ‘war on terror’ decided to push for a more inclusive agenda. Thus, the European Commission can (though not always does) play a significant role in this process - the role of a supranational policy entrepreneur that enables the normative construction of a policy. The article analyses the high-profile case of the first phase of the CEAS, particularly the four main directives, its legal and political construction, and suggests the significance of the Commission in the political and normative process. Despite the challenges of the ‘war on terror’, the Commission managed to keep the CEAS within the limits of the Geneva Convention.

Keywords

Common European Asylum System; European Commission; European Integration; Intergovernmentalism; Liberty; Security; Supranational Policy Entrepreneurship.

IN RECENT YEARS, MIGRATION AND ASYLUM ISSUES HAVE BECOME INCREASINGLY contentious in Western Europe – at the core of electoral campaigns in several European Union (EU) member states: France, the Netherlands, Denmark and the UK. This article analyses how security is constituted or viewed by the EU in the area of asylum policy; more importantly how the European Commission, in the face of the emerging discourse on the ‘war on terror’, decided to push for a more inclusive agenda.

Since the events of the 11 September 2001 (9/11), it has been argued by some scholars that security has become the dominant force in the first phase of the Common European Asylum System (CEAS). As a result, there has been an active debate on the ‘securitization’ of the EU asylum and migration policy (Bigo 1996, 1998a, 1998b, 1998c, 1998d, 2001, 2002; Guild 1999, 2002, 2003a, 2003b, 2003c, 2004, 2006; Guiraudon 2000, 2003; Huysmans 2000, 2004). In this context, ‘securitization’ refers to the theoretical suggestion that asylum and migration are presented as security threats, based on the framework by the so-called ‘Copenhagen School’ (Buzan 1991; Buzan *et al.* 1998; Wæver 1993, 1995). Levy (2005: 35) suggests that 9/11 represents a turning point because ‘the trend towards liberalisation seemed to be stopped dead in its tracks by the events of 9/11’. Boswell (2007) concurs that while EU migration policies were not securitised since 9/11, this does not hold for asylum policies. Some non-governmental organisations (Human Rights Watch, Amnesty International, and Statewatch) have also expressed their fear that security concerns could affect the European Union’s effort to create a Common European Asylum System.

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However, this fear should be counter-intuitive. The European Union is well known for its legalistic approach to policy problems, which aims to appear to always follow the letter of the law; in fact, the Commission is often derided for being technocratic. It seems thus counter-intuitive that the EU would 'securitize' the EU Asylum Policy. According to the Copenhagen School (who argue that an issue is transformed into a security issue, in other words – securitized, after a securitizing actor presents it as an existential threat and this 'securitizing move' is accepted by the audience), this would mean that EU institutions deliberately construct refugees as a security threat in order to be able to use 'emergency measures' (Buzan 1991; Buzan *et al.* 1998; Wæver 1993, 1995). Buzan, Wæver and de Wilde (1998: 25) note that 'the existential threat has to be argued and just gain enough resonance for a platform to be made from which it is possible to legitimize emergency measures or other steps that would not have been possible (...)'. This means that the same EU institutions that want to give the impression of following the letter of the law want to construct a situation in which the letter of the law can be disregarded ('emergency measures'). The way in which the EU institutions would aim to achieve this would be through a discursive construction of threats, thereby lifting the issues 'outside the normal realms of politics' (Buzan 1991; Buzan *et al.* 1998; Wæver 1993, 1995). On the face of it, this seems plausible for right-wing politicians at the national level, but rather unlikely for EU bureaucrats who loathe nothing more than the 'political limelight'.

Moreover, this goes against several academic arguments that were often made about asylum cooperation in Europe. Amongst academic scholars in the field of immigration and asylum, the argument has been advanced that EU governments decided to 'venue shop'. This meant that they decided to circumvent domestic pressures and obstacles, and therefore 'escaped' to legislate at the EU level where they were protected from these issues (Boswell 2003a, 2003b, 2007, 2008; Ellermann 2008; Freeman 1998; Joppke 1998, 2001; Geddes 2000, 2001; Guiraudon 2000, 2001, 2003; Lavenex 1998, 1999, 2001a, 2001b, 2004, 2006; Occhipinti 2003; Stetter 2000, 2007; Thielemann 2001a, 2001b, 2004, 2005, 2006; Thielemann and Dewan 2006). EU member states, in this argument, have thus decided to enhance their co-operation in the field of asylum and migration in a process driven by national bureaucracies. These state-centred accounts (see especially, Joppke 1998; Freeman 1998) stress the resilience of nation states, their ability to control 'unwanted immigration' and the use of the EU by its member states as a device for attaining immigration and asylum (see Thielemann 2001a, 2001b) policy objectives that are unlikely to be achieved at the domestic level alone. If indeed, national policy-makers are perfectly able to circumvent national pressures in order to restrict immigration and asylum at the EU level, why should they then 'securitize' the issues in order to achieve what they are already achieving? Why should national policy-makers go to a forum where technocracy is valued in order to securitize, which would be far easier in a national context? What are the constraints to securitize at the EU level, notably the Commission and its strong links to non-governmental organisation? Thus, this article will concentrate on the obstacles of securitization, i.e. the EU institutions, notably the European Commission, and the NGOs.

This article therefore argues the following. Firstly, the Common European Asylum System, other than in its intrinsic value, is a very significant case for demonstrating that even with the 'war on terror' on the political agenda (see also Lodge 2004, 2007), the asylum policy in its first phase remained within the constraints of the Geneva Convention, and actually strengthened it. The balance between security and liberty, as a result, did not go as far towards security as some scholars may have feared, despite the importance of warning against such a possibility. Secondly, this article engages with the arguments made by intergovernmentalist EU scholars that the supranational institutions are "late, redundant, futile and even counterproductive" (Moravcsik 1999a: 270). This article argues that the Commission played a very active and significant role – the role of a supranational policy

entrepreneur – and in doing so managed to anchor the EU asylum policy in the prevailing norms of the international community, the Geneva Convention.

The article will proceed in three stages. The first section will critically examine the main advances of the first phase of the CEAS during the Tampere programme. The second section will provide a brief outline of the debate on the political role of the European Commission as a supranational policy entrepreneur, and the precise framework used for this analysis. The third section will demonstrate the empirical findings within the case study of the four asylum directives. Finally, the article will suggest that the European Commission has been significant in the process of European integration in asylum policy by playing the normative role of supranational policy entrepreneurship, and managing to anchor the first phase of the EU Asylum Policy within the Geneva Convention.

The Tampere programme in the EU Asylum Policy

The EU asylum policy is embedded in a long-standing international regime of refugee protection (Loescher 1989, 1992, 1993, 1995, 2004; Marrus 1985, 1988; Noll 2000; Peers 2002, 2004, 2006; Peers and Rogers 2006), which aims to keep the balance between security and liberty firmly towards liberty and the rights of victims of persecution. The international regime was established on 14 December 1949, when a Resolution of the United Nations General Assembly created the office of the United Nations High Commissioner for Refugees (UNHCR). The first instrument was created in 1951, when the Geneva Convention Relating to the Status of Refugees was adopted for Western Europe. Ever since, it has been the cornerstone of contemporary international refugee law, only supplemented by the 1967 New York Protocol, which extended the Geneva provisions to the rest of the world.

Signatories to the convention, which include all EU member states, are required (according to Art. 1A (1) of the Geneva Convention) to offer refuge to a person who:

- has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion;
- is outside the country of his nationality and is unable or (due to such fear) is unwilling to avail himself of the protection of that country;
- or who, not having a nationality and being outside the country of his former habitual residence, is unable or unwilling to return to it due to such fear

Despite being the cornerstone of international refugee protection, not all member states interpret and apply the Geneva Convention in the same way. According to one NGO (interview NGO8), “some EU states’ interpretation of the law has no basis in the wording of the 1951 Geneva Convention, is not in the spirit of that convention and is in contradiction to United Nations High Commissioner for Refugees’ official advice”. Differing definitions of ‘refugee’ create different levels of protection and an uneven sharing of the responsibility. Most member states have a range of statuses to confer on refugees, with varying socio-economic and judicial rights. This gap in interpretation provides clear opportunities for a progressive EU asylum policy

What are the advances of the first phase of the EU asylum policy during Tampere?

This section will analyse the legal advances of the first phase of the CEAS in more detail below. However, it is first necessary to underline the importance of the CEAS. According to Hailbronner (2004), the CEAS is important, even in the short term. The prospect of a CEAS has already produced harmonising effects in national legislations. With agreed common minimum standards, this will prevent a ‘race to the bottom’ between national legislators.

They are not competing with each other anymore for more restrictiveness, and thus do not need to lower their standards below their neighbours in order to reduce the numbers.

Moreover, Ackers (2005: 33) makes a strong case for the importance of the CEAS in the longer term. The adoption of the four directives is of historical importance for the EU as it opens up the road to a new period in decision-making on the CEAS. The area becomes communitarised, which signifies transfer of national sovereignty to the EU level. Consequently, asylum policy is now in the EU order - very different from international law (Shaw 2000). Therefore, the Geneva Convention is now cemented in EU law, and the legal value is much stronger than it was before the Tampere programme. This is due to the distinction between international law and EU law - and the principle of national sovereignty compared to an EU pooling of sovereignty (Kaczorowska 2003; Shaw 2000).

Thus, the legal doctrines of the direct effect of EU law and its supremacy will apply to the area for the first time. This creates enforceable legal obligations not only in vertical relations between public authority and individuals, but also in horizontal relations between individuals *inter se* (Weiler 1991, 1999). Community principles with direct effect can be invoked before domestic courts, which must provide adequate legal remedies. This is crucial as it alters the public international law assumption that legal obligations are addressed to states only, and thus do not create direct effects for nationals of that state. This has changed with the CEAS. These laws are now directly enforceable in domestic courts with little discretion. Individual asylum seekers can take states and individuals to the domestic courts. Thus, in addition to the EU supremacy of law, this provides a certain force to asylum rights which was previously missing under international law.

One example is the frequent discussion on whether the UK may leave the Geneva Convention. In the last UK election campaign, the opposition leader Michael Howard (BBC 22 April 2005) called for the UK's withdrawal from the Geneva Convention on numerous occasions. This only reflected statements by David Blunkett, the then Home Secretary, in 2003 (BBC News 2003). While the withdrawal from the Geneva Convention would be possible under international law prior to the CEAS, this is not possible anymore under the current rules. As the UK opted into all of the EU asylum rules, these are now fully binding and enforceable in UK courts. This hypothetical scenario makes it much clearer how the legal value of the Geneva Convention refugee protection has increased with the CEAS.

Moreover, the communitarisation of asylum matters also implies that decision-making procedures have now changed. Future legislation in the area will include the co-decision procedure between the Council and the European Parliament, which was previously only consulted on the matter. In the Council, the voting procedure is now qualified majority voting (Peers 8 November 2004). This then removes any blocking possibilities by any of the 27 member states. Therefore, on the institutional level, the CEAS represents a clear step forward and represents the hope that, with more and more involvement of other 'refugee-friendly' EU institutions, such as the European Parliament, the future of the CEAS is progressive.

However, as the analysis below will demonstrate, the current legislation already provides for a certain degree of progressive elements. The emphasis in the analysis below is only on the adopted legislative instruments - the four directives. The directives discussed below are: (1) the 'reception conditions directive', (2) the 'asylum qualification directive', and (3) the 'asylum procedures directive'. The 'temporary protection directive' is not discussed below due to space restrictions, even though its value and interconnectedness to the first phase is obvious. The temporary protection directive (Council Directive 2001/55/EC), was the first legal instrument in asylum law in the legislative programme since Tampere. As it is intended as an effective instrument of temporary protection in the context of mass

refugee movements for people not falling under the remit of the Geneva Convention, it is not discussed in this article, despite its obvious links.

(a) The 'Reception Conditions Directive'

The reception conditions directive (Council Directive 2003/9/EC) of 27 January 2003 lays down minimum standards for the reception of asylum seekers across member states. Monar (2004: 118) describes this directive as an important new legal element of the common asylum system. It is the first element of three closely linked legislative initiatives: the asylum qualification directive, the reception conditions directive, and the asylum procedures directive.

Hailbronner (2004: 78) explains the reasons why the reception conditions directive is such an important one. Firstly, the substantial differences in reception conditions in the various EU member states can be a factor for migratory movement of refugees within the EU. Logically, based on the Dublin convention and now the Dublin regulation, asylum seekers can only apply for asylum once in the EU, and thus the conditions in which they are being received matter significantly in their choice. In 2001, the Commission initiated this legislation, which was subsequently passed by the Council in January 2003. It defines certain key terms of the Geneva Convention, such as applicants for asylum, family members, unaccompanied minors, reception conditions, and detention.

The directive only applies to applicants for asylum, which has been criticised (Guild 2004: 213), especially as it does not apply to the temporary protection directive. The question of which basic rights and benefits asylum seekers deserve should be based on their needs rather than on the grounds on which the claims are based, according to this argument. This is a valid argument, but as the competent authorities in member states always have to presume an application for asylum, this should address the issue.

The directive generally accords freedom of movement to asylum seekers within the territory of the host state or within an area assigned to them by that state. This addresses more restrictive regulations of some EU member states (Hailbronner 2004: 79). Detention will only be allowed in order to check the identity of the applicant for asylum. Refugee organisations have rightly criticised the practice of restricting the freedom of movement as being contrary to human rights provisions. Yet, as Hailbronner (2004: 80) demonstrates, some member states' practices (for instance Germany) tended to be even more restrictive.

Member States must guarantee several reception conditions:

- Material reception conditions, such as accommodation, food and clothing.
- Family unity.
- Medical and psychological care.
- Access to the education system for minor children and language courses.
- Lodgings in a house, accommodation centre or hotel.
- In all cases, applicants must have the possibility of communicating with legal advisers, NGOs and the UNHCR.
- Access to employment.

The most heavily disputed provision concerns the access to employment - criticised for the delay in access to it (Guild 2004). At the same time, member states have been generally reluctant to grant access to the labour market in the field of migration. In this directive, they are at least obliged to open access to the labour market and vocational training to applicants for asylum 12 months after they have lodged their application. Thus, despite the criticisms related to its complicated procedure (Guild 2004: 215), and the UNHCR

argument that a six months delay would have been preferable, it is already significant that throughout 27 EU member states this was possible at all. In addition, as with all reception conditions, member states will be free to apply more favourable conditions of reception.

In conclusion, this directive rectified one particular problem within the member states - the wide variance of reception conditions. It is clear from the evidence presented that this is an advance in those conditions across the EU 27. For most member states, they will need to be higher than before the directive. Equally, there is no obligation to lower any favourable conditions. Consequently, the directive is beneficial for the European Union.

(b) The 'Asylum Qualification Directive'

The asylum qualification directive (Council Directive 2004/83/EC) addresses three important elements of asylum: (1) the recognition of refugees, (2) the content of refugee status, and (3) the approximation of rules. In addition, the directive highlights the grounds for qualification for subsidiary protection.

In order to make the distinction between subsidiary protection and refugee status clear, the directive provides definitions of both concepts. A refugee is defined exactly as in article 1A of the Geneva Convention. On the other hand, a person eligible for subsidiary protection is a:

third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm.

As Hailbronner (2004: 58) suggests, both protection as a refugee within the terms of the Geneva Convention, and subsidiary protection – for those who fall outside the convention – are included in this legislation.

The directive addresses many of the issues in substantive asylum law which have had forced divergences in national practices before, and it increases protection. Firstly, the established grounds for persecution are the same as in the Geneva Convention, thereby solidifying the group of people qualifying for refugee status. In addition to the generally accepted forms of persecution, the directive sets out three principles, which have not been applied by member states prior to it (Hailbronner 2004: 60). For the first time, '*persecution can stem from non-state actors*' where the state is unable or unwilling to provide protection. Given the increase in people fleeing on such grounds, this is a significant widening of the concept. Secondly, the directive also includes child specific and gender specific forms of persecution, not in existence prior to the legislation (Monar 2005: 132). Finally, persecution may take place even though all persons in a particular country face generalised oppression. In essence, the effect of all these legal changes means that the directive goes beyond existing refugee rights enshrined in the Geneva Convention.

Balzacq and Carrera (2005: 48-49), however, are concerned as to why refugees and persons under subsidiary protection are not treated equally. They demonstrate that some rights accorded to persons granted subsidiary protection are below the rights of refugee protection. Consequently, they wonder whether this is a '*double standard consistent with the general philosophy of equality of treatment for people in need of and who qualify for international protection*'. Yet, persons who are granted subsidiary protection do not qualify for international protection under the Geneva Convention (Hailbronner 2004: 62). The

provisions in this directive represent the first concrete European initiative to protect those who fall outside the refugee definition.

In an ideal world, one could conceive of rewriting the Geneva Convention to broaden the concept of asylum. However, this has not happened to date, and the alternative to this directive is only the member states' discretion as to how much they want to help. Under this directive, there is no discretion anymore, and subsidiary protection rights are codified. Consequently, this is a substantial success in expanding rights for people in need of protection.

(c) The 'Asylum Procedures Directive'

On 9 November 2004, the Council agreed politically on the directive on minimum standards for procedures - the Asylum Procedures Directive (Balzacq and Carrera 2005: 50). The Commission had first presented its proposal for the directive in September 2000, and submitted an amended version by June 2002. After intense negotiations, a 'general approach' was agreed in April 2004, and politically confirmed in November 2004. The directive had not formally been adopted by the end of 2004 due to the lack of agreement on a list of 'safe country of origin'. Yet, on 1 December 2005 it was finally formally adopted, leaving the list to the side.

The harmonisation of asylum procedures is of vital importance for a common asylum system together with the reception conditions directive. Firstly, it contributes to the prevention of secondary movements of asylum seekers. Secondly, it is vital for the asylum seekers themselves as they are no longer able to freely choose their country of application under the Dublin Regulation. As they cannot choose their country anymore, it is vital to harmonise procedures in order to maintain fairness towards people in need of protection. Thirdly, this legislation will enable follow-up legislations in the area in the longer term (Hailbronner 2004: 70).

Monar (2005: 133) describes how both the Treaty of Amsterdam and the Tampere programme demanded the adoption of policy instruments within the transitional period of five years ending on 30 April 2004. This put considerable pressure on the Council for the adoption of the directives in time, which was managed in a meeting on 29-30 April. The Asylum Procedures Directive defines minimum standards for procedures, which include:

- access to the asylum process
- the right to interview
- access to interpretation and legal assistance
- detention circumstances
- the appeals procedure

In addition, it defines controversial concepts, such as:

- 'First country of asylum': this allows applications to be rejected where applicants have been recognised as refugees in another country with sufficient protection in that country.
- 'Safe country of origin'¹: this allows considering a group of applications of nationals of one country to be unfounded, thereby entering into an accelerated procedure. The failure to agree on a specific list of countries in this category has delayed its formal adoption.

¹ It is worth noting that the European Parliament has successfully challenged aspects of the safe country of origin provisions before the European Court of Justice (ECJ) in case C133/06

- 'Safe third country': this allows the transfer of responsibility for the processing of an asylum application to countries of transit to the EU.

This directive has been more severely criticised by NGOs (ECRE *et al.* 2004) and academics than the other three directives. The main arguments relate to a supposed incompatibility with international obligations (ECRE *et al.* 2004: 51). Costello (2005) criticises the three controversial concepts: (1) first country of asylum, (2) safe country of origin, and (3) safe third country. In her view, these provisions threaten to undermine many of the other laudable features during the Tampere process, in particular the Asylum Qualification Directive (Costello 2005: 36). According to Costello, these three provisions will undermine access to and the integrity of asylum procedures in the European Union.

Doede Ackers (2005), who negotiated the Asylum Procedures Directive on behalf of the Commission, disagrees. He explains the rationale for adopting it and the different stages in the negotiations. Firstly, Ackers (2005: 32) disputes that the politically agreed general approach breaches international human rights obligations. It is argued that for each of the safe third country provisions, certain safeguards should be laid down to ensure that if member states properly implement these rules, no breaches of international law occur.

Secondly, as it stands the approach adds value to the soft-law standards already agreed, including the procedures according to the UNHCR Handbook (Ackers 2005). On the question of appeals procedures, the general approach even introduces the obligation to ensure an effective remedy before a court or tribunal, which goes beyond the standards in the Handbook. It is vital to note at this point that the Handbook is only soft-law in international law, and thus left to the individual interpretation of domestic courts, which can vary significantly across the EU.

Finally, Ackers (2005) argues that several member states will have to raise their standards to comply with the provisions in the general approach. Thus, a framework which requires higher standards than the previous practice of member states can hardly be described as a breach of international law – certainly not of customary international law. Fullerton (2005) fully agrees with this view. In her article, she analyses the asylum situation in Spain and Portugal. Although the Iberian Peninsula is closer to regions of conflict and migratory routes than most European Union states, the numbers of asylum seekers registered in Spain and Portugal are far lower than in other member states of comparable size and economic development (Fullerton 2005: 659). While multiple factors deter refugees from seeking asylum in Spain and Portugal, their inadmissibility procedures are the most important. Both states employ an inadmissibility procedure which results in the rejection of a substantial majority of applicants for asylum prior to any hearing on the merits.

The Asylum Procedures Directive limits the grounds for rejecting a claim as inadmissible, whereas the Spanish and Portuguese procedures dismiss asylum applications on far broader grounds. Consequently, they will contravene the Procedures Directive. As a consequence, an asylum procedures directive that increases the number of asylum seekers who will be able to apply for refugee status in a number of member states - such as Spain and Portugal - is a clear legal advance for refugee rights.

In conclusion, this section has demonstrated that the CEAS has brought very clear legal advances in terms of refugee protection. The CEAS has produced harmonising effects in national legislations, and, with agreed common minimum standards, it is likely that this will prevent a 'race to the bottom' between national legislators. Moreover, the CEAS is also of importance for the EU as it opens up the road to the communitarisation of asylum policy, which signifies transfer of national sovereignty to the EU level. Thus, the legal doctrines of the direct effect of EU law and its supremacy will apply to the area for the first

time. Therefore, individual asylum seekers can take states and individuals to the domestic courts. In the next two sections, it will be argued that the European Commission played an important role in the legal advance. The next section will provide the theoretical framework for this analysis, while the subsequent section will provide the empirical evidence for this theoretical suggestion.

The European Commission as a Supranational Policy Entrepreneur (SPE)? The case of the CEAS

It is important to evaluate the role of agency in this significant process of European integration in an area so close to the very essence of the nation state. The debate over agency in European integration (and thereby regarding the EAW) falls within the dispute between intergovernmentalists (Hoffmann 1966; Moravcsik 1993), supranationalists (Haas 1958; Stone Sweet and Sandholtz 1997, 1998; Stone Sweet *et al.* 2001), and institutionalists 'somewhere in between' (Beach 2004a, 2004b, 2005a, 2005b; Kaunert 2005, 2007; Pollack 1997, 2003) concerning the role of supranational institutions in the process of European integration.

This article suggests a reconceptualisation of the framework of supranational policy entrepreneurs (SPE), which is often referred to by the academic literature that discusses the role of agency in European integration (Beach 2005a; Moravcsik 1999a; Pollack 1997, 2003; Stone Sweet and Sandholtz 1997, 1998; Stone Sweet *et al.* 2001) when analysing the political role of the European Commission. The concept of a political entrepreneur is grounded in the works of Kingdon within the context of US politics. Kingdon (1984: 173) suggests a policy-making model starting with the identification of a problem (first stream), which is then followed by a search for alternative solutions (second stream) and a decision among these alternatives (third stream). On some occasions, a 'policy window' opens for the adoption of certain policies. Policy entrepreneurs, "advocates [...] willing to invest their resources – time, reputation, money" (Kingdon 1984: 188), stand at this window in order to propose, lobby for and sell a policy proposal. However, this conceptualisation needs to be extended by using constructivist insights of norm construction and entrepreneurship (Kaunert 2007).

Why is this important? At the political bargaining stage (the politics stream), where decisions amongst different alternatives are taken, the EU is dominated by member states preferences and interests. In principle, this would indicate the benefits of a liberal intergovernmental analysis for the policy area. In this view, European integration can best be explained as a series of rational choices made by national leaders and dominated by national interests (Moravcsik 1991, 1993, 1998, 1999a, 1999b). But where do member states' national interests and preferences come from? Moravcsik (1998) assumes national interests to be exogenous of the EU process. The interests of the member states are stable before they come to the bargaining table. However, is it reasonable to assert that preferences are exogenous? The EU has created a system whereby member states continuously interact at different levels. The claim that this would not change preferences over time appears doubtful. Even within the context of the international system with less social interaction amongst states, Katzenstein (1996) has demonstrated convincingly how norms and values shape national interests. Constructivist literature clearly showed how these norms change over time (Finnemore 1996a, 1996b; Finnemore and Sikkink 1998).

Yet, if national interests and preferences are shaped by different norms and values, as argued in this article, this implies that a fourth stream – the norm stream – is underlying the three other streams. Norms consequently influence the definition of political problems, the search for policy alternatives, and finally the national preferences in the politics stream where decisions are taken.

How can norms be constructed and how can they be observed? Firstly, actors provide reasons for action. The SPE constantly pushes for his reasons for action to become accepted as a norm, albeit in competition with other actors. This is the first stage of norm creation in the norm life cycle as described by Finnemore and Sikkink (1998), and is followed by the norm socialisation stage. Eventually, a norm becomes the dominant norm. Consequently, SPEs are important in the social construction and reconstruction of norms that steer the political movement of the other streams.

This article will assess the extent to which the European Commission has been able to play the role of an SPE with regard to the CEAS. Asylum policy is a very difficult field with complex decision-making rules (Noll, 2000). Article 63 TEC sets out a framework agenda for the transitional period of five years; it requires the Council to adopt a variety of measures within 5 years. However, it is striking that the majority of measures contain the mandate of minimum standards. Article 63 TEC asks the Council to adopt the following four measures 'within a period of five years after the entry into force of the Treaty of Amsterdam':

1. 'criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States;
2. minimum standards on the reception of asylum seekers in Member States;
3. minimum standards with respect to the qualification of nationals of third countries as refugees;
4. minimum standards on procedures in Member States for granting or withdrawing refugee status;'

However, according to article 67 TEC, "during a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament". It is only after this period of five years that the Commission gains its usual sole right of initiative. While this article is often seen as a 'break' on the Commission in order to curb its legislative powers, in practice, as the subsequent section shows, this has not had this effect necessarily. In fact, it encouraged the Commission to have the most competitive proposals, which in the area of the CEAS meant that no member state actually thought it was able to present better proposals than the Commission.²

The legal instruments available to the EU pre-Tampere used to be very weak with little legal effect - mainly conventions, which had to be ratified by each member state individually. These were replaced with new instruments (directives) in 1999. Nonetheless, during the Tampere programme from 1999 to 2004, the decision-making procedure was based on the so-called 'consultation procedure'. This meant that the European Parliament only had to be consulted, but was left with no decision-making power. The sole legal decision-maker was the Council of Ministers, which had to vote by unanimity. Very clearly, this meant that every proposal by the Commission has to be negotiated upon, and often this involved significant changes (Batjes 2006; Lambert 2004), which could appear to limit the argument that the Commission would play a significant role in the CEAS.

Yet, the next section argues that despite this institutionally weak(er) position by the Commission, compared to the first pillar, it managed to significantly influence the policy shape of the CEAS. Institutionally, it possesses the key role as political 'monitor' and legal 'enforcer' of the law in the asylum area. The Commission has the legal power to investigate

² This information came from a range of 26 interviews carried out with individuals from the various Permanent Representations of the Member States and the Missions to the EU of Candidate Countries, carried between 1 April 2004 and 1 August 2004,

claims that member states are failing in their EC law obligations and to bring them before the European Court of Justice (ECJ) for such alleged failures. While this formal instrument also remained largely untouched, the Commission nevertheless managed to shape the policy direction through a series of soft law measures over a prolonged period and through consensus-building by developing and funding pro-migrant organizations.

Kaunert (2005, 2007) conceptualises the ways in which political entrepreneurs can achieve this in the following:

1. First mover advantage: SPEs need to come in faster with their proposals than their rivals.
2. Persuasion strategy: As suggested above, in order to achieve acceptance, other actors need to be convinced by the reasons for the action suggested.
3. Alliances: It is vital for the SPE to form initial alliances with other powerful actors to create a bandwagon effect, whereby more actors will join the 'winning team'.

Evaluating the normative construction of the Common European Asylum System by Commission: To what extent was it an SPE?

The following section will analyse the normative construction of the Common European Asylum System. In the preceding two sections, it has become clearer that the CEAS is an area of 'normative construction'. How has the analysis of this normative construction of the EU asylum policy been operationalised? Firstly, norms are defined as: "written and non-written rules which are reasons for action of different orders. They enable, restrain, or constitute different actions by providing a standard of appropriate behaviour for a particular reference group" (Kaunert 2005: 462). Secondly, it is essential to examine the complimentary underlying normative question of the rule around which the political 'grand debates' are structured, i.e. the official and unofficial political discourses between actors in the policy-making environment.

How far can one attribute changes in the norm stream, if any, to the supranational policy entrepreneurship of the European Commission? This section will demonstrate how the European Commission has acted to initiate and push this process of normative change, which is part of its role as a supranational policy entrepreneur, and enables a political adoption process. It constructs the political environment in which a policy is adopted – and thereby sets the agenda (Kaunert 2007), which means it also fulfils its legal role as the 'engine' or 'motor' of European integration.

The Commission as a strategic first mover: EU asylum becomes connected with the Internal Market and international humanitarian norms

The Commission's strategy was two-fold: firstly, 'a persuasion strategy' as a 'first mover' in order to get the foot in the door. It socially constructed the functional link between a 'moving policy train' – the single market – and EU action in asylum matters. It pushed for this starting in the 1970s, throughout the late 80s and early 90s. It published communications that became the reference points for later legislation in the CEAS. Secondly, the Commission also constructed EU asylum action into the international prevailing norms on refugee protection - the Geneva Convention - which gave it more legitimacy as an actor. Norms only develop gradually, and therefore the Commission would have to act pragmatically in the meantime. The following section will demonstrate both of these aspects.

The first serious attempt to shape the EU asylum agenda was the Commission's famous 'White Paper' (COM (84) 310 final) on the completion of the Internal Market in 1984

(Geddes 2000: 70; Mitsilegas *et al.* 2003: 28; Mitsilegas 2009). It is significant for this research as it represents the origins of the Commission's attempts to gain competences for the EU in asylum policy. The document proposed the abolition of all internal border controls, but also provided a link between the former and economic growth, as well as a whole range of compensatory measures – such as immigration, asylum, external border controls, and policies on visas and drugs, and crime. Yet, none of the asylum proposals made succeeded due to the gradual nature in which norms often develop (Geddes 2000: 71; 2001: 24). Yet, member states accepted the link between the internal market and the EU asylum policy – and in time the success of the single market would drag along the EU asylum policy – as long as the European Commission kept pushing.

In 1991, the Commission took the next steps in its persuasion strategy – constructing the link to both the single market and international refugee norms. The communication from the Commission (SEC (91) 1857 final) acknowledged the fact that the political and social importance of the right of asylum had increased in Western Europe (see Commission of the EC 1991). It was claimed that, as a consequence, individual states were less able to deal with the problem caused by the increased influx of asylum seekers. However, the Commission insisted that humanitarian standards would need to be maintained, and took the 1951 Geneva Convention as a starting point. The communication also underlined the humanitarian objectives of the Convention.

The following common actions were envisaged in the short term in order to cope with the increase in asylum seekers (Commission of the EC 1991):

- speeding up administrative and judicial decision procedures
- harmonisation of the conditions under which people can be turned down at the external borders
- effective return policy of the rejected asylum applicants
- exchange information procedure

The following actions were envisaged with regards to the harmonisation of asylum law in the internal market (Commission of the EC 1991):

- harmonising the national criteria and practices regarding the determination of refugee status
- harmonising the rules with regards to the stay of “de facto” refugees (those who do not qualify for Convention refugee status)
- harmonisation of the reception conditions for asylum seekers

These suggestions are already exceptionally close to the objectives of the Tampere programme of 1999. The communication in 1991 even includes its outcomes in 2004 – the directives on asylum qualification, asylum procedures and reception conditions. The suggestions by the Commission had no clear legal basis in the Treaty of Maastricht in 1992 and certainly not before Maastricht in 1991, and were extremely ambitious. While not being pursued in policy terms, they clearly did affect the norm environment of decision-makers. The issues never slipped off the agenda from the day of this communication – which the Commission ensured with future communications.

The communication in 1994 (COM (94) 23 final) represented another important step in the persuasion strategy (see Commission of the EC 1994). With a view to stimulate discussion and debate, it followed on from the earlier document of 1991 (also referred to in COM (94) 23 final: 23-27). It built on the suggestions made in 1991. The communication called for the following measures:

- a harmonised application of the definition of a refugee in accordance with article 1 a of the Geneva Convention
- the development of minimum standards for fair and efficient asylum procedures
- the elaboration of a convention on manifestly unfounded asylum applications
- the harmonisation of policies concerning those who can be admitted as refugees, but may be in need of help
- a measure harmonising schemes of temporary protection
- a European fund for refugees

These measures all represent the basic foundation of what became the Tampere programme in 1999, and, finally, the outcomes of it in 2004 - the directives on temporary protection, asylum qualification, asylum procedures, and reception conditions, and even other adopted instruments, such as the European Fund for Refugees. Indeed, all of the aforementioned communications display the determination of the Commission to drive forward the process of EU integration in EU asylum matters. Yet, an efficient EU asylum policy would only be possible with a major treaty change (Gradin 1999). Therefore, it was implicit in the strategy of the Commission that it could compromise as long as the goal of full communitarisation was reached.

Connecting the asylum policy to International Human Rights norms in the face of the 'war on terror'

In the previous section, it was demonstrated how the European Commission managed to connect the EU asylum policy to the single market. Acceptance of this fact led to increasing dynamics in the area. Yet, it was equally important for the Commission to link asylum policy to the Geneva Convention. This was particularly important after 9/11 - the terrorist attacks on New York and Washington.³ The following section will demonstrate the strategy used in this endeavour - divided into two parts: (1) the anchoring of EU asylum policy before Tampere 1999 by relying on civil society and NGOs, and (2) the continued insistence on international human rights standards after 9/11, despite shifts in rhetoric to accommodate the 'war on terror'. This is in contrast to the area of criminal justice, where the 'war on terror' was pushed strongly as a reason for action (Kaunert 2007).

Firstly, when the Commission started to construct a role for the EU into national asylum policy, it had decided to link it to both the single market - to push the project - and the internationally prevailing refugee protection norms - to gain legitimacy. The latter is particularly important as the Commission has been frequently attacked for not being democratic since the 1990s. The essence of its legitimacy problem is that the 'unelected' Commission is widely perceived as detached from the concerns of EU citizens. Thus, its own legitimacy needed to be increased through the legitimacy of other actors in the field - the UNHCR, NGOs, and the European Parliament. The literature has established that the Commission often aims to use NGOs to improve its own legitimacy (Greenwood 2003). Both Hix (1999) and Geddes (2000) have pointed out their importance for the Commission, particularly in the areas of asylum and migration.

Yet, European integration always remains the most important objective above all for the Commission. Geddes (2000: 134) suggests the success of this strategy. While NGOs criticise current EU policy, the answer to the problem tends to be more, not less, 'Europe'. This was

³ Nonetheless, it needs to be acknowledged that there has been a tension between refugee rights and terrorism since the beginning of JHA intergovernmental cooperation in the 1970s and 1980s. It could even be argued to have been a key driver of cooperation which preceded even the single market and was edging the European Community into a policy sphere designed to track 'others' - primarily refugees and asylum seekers under the Dublin programme (see Lodge 2004, 2007).

confirmed throughout interviews.⁴ There was widespread support for a communitarisation of asylum matters in particular. As described by Geddes, the mood of NGOs was one of frustration because of the lack of what they perceived to be progress in the asylum policy. At the same time, they did not attribute the blame on the European Commission, which was perceived as an ally. The blame was usually attributed to the Council of Ministers and member states.

Some NGOs were under no illusion of their own ability to influence the Commission, asserting that they were mostly utilised by the Commission when it was useful to do so⁵ – to gain information and legitimacy. Despite this realisation, they represented an important ally for the Commission, being useful on two fronts (Geddes 2000: 136): (1) they push for asylum solutions based on the Geneva Convention, and (2) they implicitly support European integration by operating at the EU level, thus making the political issues *de facto* ‘problems of Europe’.

It is important to note at this point that the Commission partially created this useful ally (Geddes 2000: 143). A significant number of NGOs indicated that the Commission was actively involved in the creation of their EU structures or their organisation in general, and continues to finance the majority of them.⁶ These findings also confirm Geddes’ suggestion of some ‘top-down’ influence of the Commission on pro-migrant groups (Geddes 2000: 143).

Secondly, the anchoring of the EU asylum policy within the international prevailing refugee rights norms became vital after 11 September 2001. At this point, norms could have easily shifted towards a securitisation of asylum – the construction of asylum as a security threat. Yet, from the documentary and interview evidence presented below, it is clear that the Commission took the political decision at that time to not link the asylum issue to the ‘war on terror’.⁷

Van Selm (2003: 143) describes it as remarkable that the Commission’s proposal for a Framework Decision on combating terrorism made no mention of refugees, asylum, or the exclusion of any person seeking refugee status. In her view, this was particularly remarkable as the Geneva Convention did provide grounds for exclusion from refugee status for terrorists. Yet, the Commission decided not to link the issues of asylum and terrorism.

Nonetheless, in agreement with the NGOs’ views⁸, the war on terror did influence the policy area (Boswell 2007, 2008). The conclusion of the 20 September 2001 meeting reflected mainly judicial and criminal co-operation, but also asylum matters (Van Selm 2003: 145). The conclusions, amongst others, invited the Commission to examine the relationship between safeguarding internal security and complying with international protection obligations and instruments. This is of particular importance. It appears as an attempt by member states to put internal security above international protection norms, and thus effectively to securitize asylum.

⁴ This information came from a range of 11 interviews carried out with individuals from various Non-governmental organisations (NGOs), carried between 1 April 2004 and 1 August 2004,

⁵ This information came from interview (number 2) of a range of 11 interviews carried out with individuals from various NGOs, carried between 1 April 2004 and 1 August 2004,

⁶ See note 4.

⁷ This information came from two interviews (numbered 10 and 16) carried out with 25 individuals from the European Commission, carried between 1 April 2004 and 1 August 2004,

⁸ See note 4.

Yet, in the end the Commission managed to keep the policy anchored within international norms, and thereby prevented a shift into security (see Commission of the EC 2001). Consequently, in the working document entitled, *The relationship between safeguarding internal security and complying with international protection obligations* (Commission of the EC 2001), the Commission did not advocate any change in international refugee protection, and bases the Geneva Convention at the heart of any response. This was written in response to the Council conclusion mentioned above.

There are two main premises of the Commission working document: (1) bona fide refugees and asylum seekers should not become victims of the recent events, and (2) no avenues should exist for the supporting of terrorist acts. The document made it clear that a scrupulous application of the exceptions to refugee protection available under the current laws is the appropriate response. It was therefore an outright rejection of placing security in contradiction to existing refugee protection instruments. This was confirmed in an interview with the author of this document.⁹ Moreover, while the Commission acknowledged that terrorists might use asylum channels, it considered this as not likely, as other channels would be more discreet and more suitable for criminal practices.

It was suggested for the member states to use existing legal instruments (Commission of the EC 2001) - based on the Geneva Convention - such as:

- Article 1 (f), the exclusion clause, should be used within the asylum procedure in order to avoid refoulement
- if sufficient grounds are known for exclusion, an accelerated procedure should start

There were suggestions for the following policy alterations (Commission of the EC 2001):

- the creation of EU level guidelines on the use of exclusion clauses
- the proposal on minimum standards for asylum procedures should include provisions for the cancellation of status on the grounds of information coming to light after processing of claims

In essence, this document followed up on the somewhat harsher language of the 20 September 2001 conclusions of the European Council. Yet, contrary to the initial demand which seemed to indicate an attempt to present asylum as a security threat in the war on terror, the working document did not deviate from accepted international norms. In fact, it demonstrated the legal value of the Geneva Convention, and thereby strengthened it. It resisted the temptation to move an issue into the security area when it was perceived as a human rights issue. In fact, the Commission rescued this political perception by trying to reconcile the demands for greater security with the international refugee protection norms.

It would have been difficult for the Commission to do otherwise, as it had consistently anchored the EU asylum policy in international refugee norms. Consequently, it could have been perceived as inconsistent and thus less credible. It would have lost legitimacy in the eyes of the NGOs, who have been supporting the Commission in its efforts to create an EU asylum policy. Any deviation from this established position would have damaged the Commission politically. Yet, the demands by member states seemed to go into that direction - attempting to place security above refugee protection. In the end, the Commission managed to please both by presenting harsher rhetoric using the language

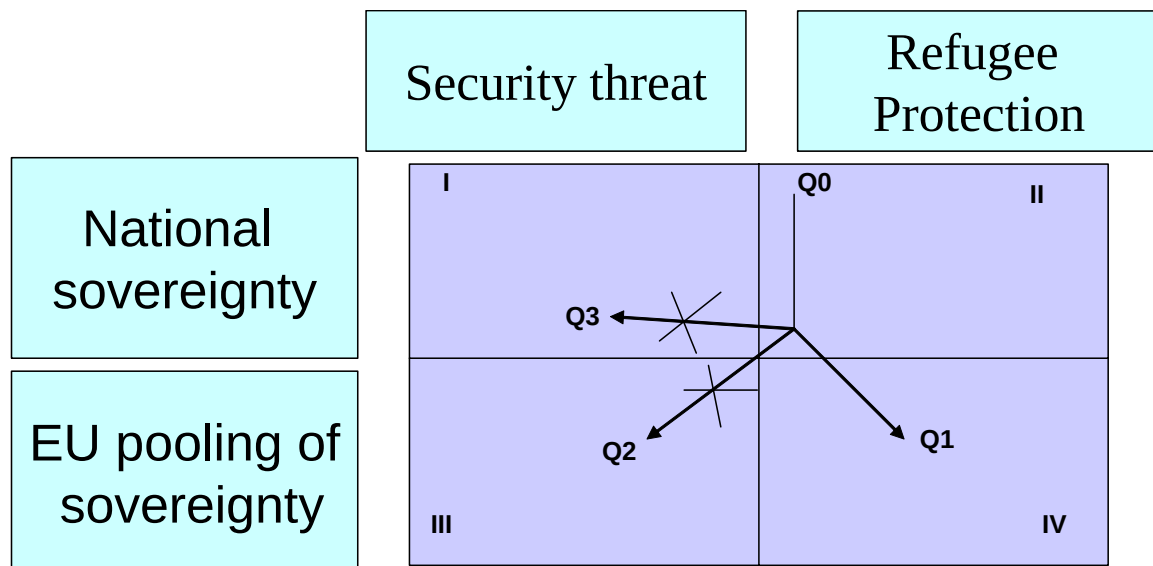
⁹ This information came from interview (number 16) of a range of 25 interviews carried out with individuals from the European Commission, carried between 1 April 2004 and 1 August 2004,

of security, while maintaining the Geneva Convention as the bedrock of the EU asylum policy.

Conclusion: Which way should the EU go? – Communitarising the EU asylum policy as the main strategic goal

Table 1 (below) provides a map for the development of norms in the area of asylum during the Tampere programme, summarising the main developments of the two previous sections. Initially, EU co-operation on asylum before the Tampere programme had been mainly in quadrant II of the matrix. It was characterised by an anchoring in the internationally prevailing norm on national sovereignty and the refugee protection norm - the Geneva Convention. At this point, there were three different possibilities for norms to develop if there was any change at all.

Table 1: The EU at a normative crossroads –developments in the EU asylum policy



Firstly, the policy could develop from Q(0) to Q(3). This change would imply that national sovereignty would remain the bedrock of asylum policies in Europe, and thus there would be no movement on the axis of whether the EU should be legislating in the area of asylum. In fact, this would imply that no EU legislation would be possible, or indeed the legislation efforts would be meaningless.

The second alternative would have been a development from Q(0) to Q(2). This change would imply that a Supranational Policy Entrepreneur had managed to persuade the European member states to pool national sovereignty in the area. However, the implications of 11 September 2001 would have been used in such a way as to construct asylum as a security threat in order to achieve this goal. In some sense, this is the most likely scenario, as it is similar to the area of counter-terrorism where European integration was pushed forward in the wake of the terrorist attacks on New York (Kaunert 2007).

Nonetheless, it is the third alternative that the Commission managed to achieve, which involved movement from Q(0) to Q(1). This implies that the Commission managed to persuade member states of the pooling of national sovereignty at the EU level. At the

same time, this pooling is firmly anchored in international refugee protection norms – especially the Geneva Convention.

Norms changed very significantly during the Tampere programme - and the Commission was clearly significant, as the aforementioned evidence suggests. It played the role of a strategic first mover in order to shape the debate in a way that placed the EU at the centre of the policy. Yet, in the area of asylum, these norms developed incrementally. In fact, the Commission had started to push in the 1980s, and managed to construct the area normatively to the single market. At the same time, the Commission had anchored it in the internationally prevailing norm of refugee protection - the Geneva Convention. Yet, the norm of national sovereignty still remained very sticky and difficult to change.

In fact, this had changed by the end of the Tampere programme, and the first phase of the EU asylum policy has been established. It was a significant success and the main goal of the Commission - the full communitarisation - had been achieved. Nonetheless, contrary to expectations, this had not been achieved by going from Q(0) to Q(2), but rather to Q(1). In fact, the Commission had never attempted to construct an EU asylum policy based on the perception that it was a security threat. Even after 11 September 2001, it pushed for the fulfilment of international obligations under the Geneva Convention.

Even under difficult circumstances, such as September 11, it pushed to include refugee rights under the Geneva Convention, and opposed the perception of asylum seekers as a security threat. In the end, this strategy paid political dividends. In fact, all four asylum directives actually increased the legal value of the Geneva Convention. This also implied the fact that the EU asylum policy had been cemented in this norm more strongly than it had before. As explained, the legal value of EU law is much harder than international law, which means that it has actually given the Geneva Convention 'extra teeth'. At the same time, the Commission managed to maintain, in principle, the support of the UNHCR, the NGOs and the European Parliament, and thus maintained its own legitimacy in the process. This makes its success all the more remarkable.

This confirms the suggestion by Boswell (2007), that asylum policy was not securitized at the EU level after 9/11. This does not mean that it is not restrictive in some dimensions; yet, it is progressive in other dimensions, notably in its increase in legal value of the Geneva Convention. As suggested at the beginning of the article, it seems counter-intuitive that the EU would 'securitize' the EU Asylum Policy, and goes against several academic arguments that were often made about asylum cooperation in Europe (Boswell 2003a, 2003b, 2007, 2008; Ellermann 2008; Freeman 1998; Geddes 2000, 2001; Guiraudon 2000, 2001, 2003; Joppke 1998, 2001; Lavenex 1998, 1999, 2001a, 2001b, 2004, 2006; Occhipinti 2003; Stetter 2000, 2007; Thielemann 2001a, 2001b, 2004, 2005, 2006; Thielemann and Dewan 2006). If national policy-makers are perfectly able to circumvent national pressures in order to restrict immigration and asylum at the EU level, why should they securitize the issues in order to achieve what they are already achieving? And why would European institutions join in this process, in which they stand to lose credibility and legitimacy in the eyes of their allies, the NGOs and the UNHCR? The answer is such that they are not taking part in this process; in fact the European Commission has done its utmost in the first phase of the CEAS to prevent such developments. Yet, without a doubt, this does not mean that member states may not try again in the future, especially in times of recession and depression. We will need to see to evaluate any further development of EU asylum policy with the future 'Stockholm Programme', which will succeed to the Hague programme after 2009/10.

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The EU Migration Regime and West African Clandestine Migrants

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Abstract

This article examines the relationship between the EU migration regime and clandestine migration from West Africa to Europe. A review of the development of EU border and immigration policy reveals significant and sustained moves towards securitisation of migrants and the externalisation of border controls to countries of origin and transit. This emphasis on repression limits the scope of cooperation with 'third countries' (those outside Europe) in co-development, labour mobility, sea patrols and repatriation, which are examined separately as deterrents to uncontrolled emigration. This paper then analyses the motivations and intentions of Senegalese youth around the Cap Vert peninsula. This analysis includes the role of emigration in development and more recently, the impact of human losses and repatriations resulting from the clandestine journey by *pirogue* (open fishing boat) to the Canary Islands. This article argues that in this case, youth are excluded both from labour and asylum policies and instead are managed as a security threat, contradicting the factors driving this journey.

Keywords

AFSJ; Amsterdam Treaty; border security; JHA; labour mobility.

THIS ARTICLE EXAMINES THE OBJECTIVES AND OUTCOMES OF EU MIGRATION POLICY and of West African clandestine migration.¹ The first section will review developments in European migration policy from the mid-1980s to 2005. The Treaty of Amsterdam in 1997 incorporated the Schengen Agreements into the EU structure, leading to an incremental dismantling of Europe's internal borders and a stronger focus on external control. The control emphasis deepened as part of the general securitisation of policies that followed the events of 11 September 2001. The second section will examine the EU's Global Approach to migration, adopted in 2005, which combines development and security. The Global Approach has a particular emphasis on Africa and the Mediterranean and paves the way for further cooperation with third countries (countries outside the EU). This second section looks at co-development, labour mobility, FRONTEX² sea patrols and repatriation agreements as methods of deterrence to potential immigrants. EU policies seek, as part of the Global Approach, to address the root causes of migration, but the motivations and intentions of migrants are not referred to and could be of practical value to an

¹ The author thanks Khady Niang Gueye for her research assistance in Senegal.

² Frontières extérieures: European Agency for the Management of Operational Control at External Borders of Member States of the EU

immigration policy which is not dominated by the self-perpetuating logic of securitisation. These motivations and intentions are briefly outlined in the third section; with the purpose of the third section being to highlight the exclusion from labour, visa and asylum policy which West African youth face, and how they are forced into the category of 'illegal immigrant' and securitised before leaving African shores. In conclusion, the outcome of the Atlantic journey for different actors is considered.

Section I: Development of EU migration policy

The Schengen Agreement, initially involving France, the Federal Republic of Germany and the Benelux countries, was established in 1984. It establishes an area of free movement and has provided the basis for deeper EU cooperation on immigration and asylum. The Schengen *acquis*, which incorporates the agreements, now includes all member states with some exceptions. The UK and Ireland have partial participation in the *acquis* (they participate in police and judicial cooperation but separate visas are needed for visitors from outside Europe), and Denmark can opt-out of certain measures under Title IV of the EC Treaty. Adherence to the external border control *acquis* is a requirement, however, for accession states. The 1986 Single European Act further provided for the free movement of people, services, goods and capital within Europe. This dismantling of intra-European border and migration controls left a 'security deficit' as institutions of border management and immigration were abandoned, moving the focus to their external borders (Den Boer 2001: 296; Huysman 2000: 759). European states had become more restrictive in their immigration policies following the oil price hikes in 1973. The security emphasis in European consolidation, however, would intensify the inequality between Europe and Africa. Europeans could easily enter Africa but Africans would need to fulfil increasingly prohibitive criteria in order to enter Europe.

'Unwanted' migration was framed as a threat in the development of EU immigration policy. The Dublin Convention in 1990 sought to establish a standardised asylum procedure within the EU and move towards the development of new forms of restriction on asylum such as the rejection of applicants from 'safe' third countries and fast-track rejection for "manifestly unfounded" applicants (Geddes 2001: 24). In the case of Africa to Europe migration, the Dublin Convention resulted in sending asylum-seekers to the southern European countries of entry. The Maastricht Treaty on European Union in 1992 sought to formalise immigration and asylum within an intergovernmental pillar dealing with Justice and Home Affairs (JHA) issues. This 'third pillar' supported the EU 'roof' along with the central Community pillar and the Common Foreign and Security pillar. As a result, the Commission, the European Court of Justice and European Parliament were largely excluded from this area and the Council was the focus of decision-making. Legal output was limited, but there was significant development of a security-oriented understanding of immigration and asylum (Geddes 2001: 25; Huysmans 2000: 751).

The 1997 Treaty of Amsterdam, and the incorporation of the Schengen Agreements into the EU framework as the Schengen *acquis*, moved the management of the EU's external borders from the third pillar to Title IV and a 'slimmed down' pillar concerned with judicial and police cooperation. Concerns about the incorporation of the Schengen Agreements are based on their opaque construction, which took place outside of the democratic and legal framework of the EU. JHA became an 'area of freedom, security and justice' (AFSJ). Guild *et al.* (2008: 2) note three processes which have been decisive in the construction of the AFSJ; firstly, securitisation, "the discursive construction of wider categories of persons and practices as threats"; secondly, the application of technology to resolve issues constructed as threatening; and thirdly, a move towards intergovernmentalism as a response to common security problems. The Schengen Information System (SIS), central to the Schengen mechanisms, was adopted; a system of information exchange between

border authorities that gives access to reports on persons and objects. This system, followed by SIS II, further Customs and Visa Information Systems (CIS and SIS) and Europol systems are one component of the technological approach. Data protection issues have arisen as a result of the 'cross-pillar complexity' of the Amsterdam Treaty (Guild *et al.* 2008: 4).

Following the Amsterdam Treaty and the incorporation of the Schengen *acquis* into the EU, the Tampere summit on 15 and 16 October 1999 called for a common immigration and asylum policy with a root causes approach (Geddes 2005: 797). This was reinforced in the Seville European Council in 2002, where emphasis was placed further on the root causes of migration and the impact of migration processes on the EU and countries of origin. (Balzacq 2008: 18). The process of 'communitarisation' following Amsterdam has raised concerns because it would strengthen the role of states' executive actors and produce a framework of control. The basis for decision-making would remain intergovernmental and thereby exclude parliamentary approval and consultation (Geddes 2001: 25-6; Jeandesboz 2008: 2). The Treaty also extended Community powers to external relations, leaving the Community in a position to create agreements between member states and third countries (Mitsilegas *et al.* 2003: 39). These mechanisms for external relations have supported the intensification of 'policing at a distance'. Furthermore, agreements between member states and sending countries have been markedly focused on the objective of excluding unwanted third country nationals from entering member states' territory. The 'root causes' approach is, therefore, limited in scope because the objective is predetermined and inflexible. This article will return to these limitations in its analysis of the management of clandestine migration from West Africa, which orients policy measures towards exclusion and repression.

Balzacq (2005: 177) describes security as a 'self-referential practice'. This is evident in a discourse in which the problem with illegal immigration is that it challenges states' abilities to maintain their borders and to regulate the number of people entering the country. Furthermore, illegal migrants are expensive to process and provide for (Mitsilegas 2003: 42). The current era of securitisation, however, is perhaps best described by Bigo and Guild (2005: 259) as having "meaningless" intentions, but where "the social effects are meaningful". 'Hypertechnologisation' is not expected to stop unwanted immigration but is useful in order to obtain finance, social power and legitimacy for European forums on immigration (Bigo 2005b: 78). If the objective of security is to perpetuate itself, Treaty of Amsterdam reforms, which have also given higher jurisdiction powers to the Court of Justice, (Mitsilegas 2003: 36) provide mechanisms with which to 'reason' with its dominance over migration policy. There is continuing competition among member state authorities and networks, however, for example in the Treaty of Prüm, signed on 27 May 2005 initially by seven member states. This treaty has the objective of furthering EU cooperation in exchange of information, particularly in combating terrorism, cross-border crime and illegal migration. Guild *et al.* (2008: 5) argue that Prüm has created a hierarchy and a 'multilevel game' and that its intergovernmental arena excludes the European Parliament, thereby lacking democratic scrutiny and transparency.

This short analysis of the development of European immigration policy in its present form demonstrates that the events of 11 September 2001 did not change the direction of policy, but it did lead to a "state of exception" in which the rights of foreigners could be subsumed by constructed security imperatives (Bigo 2005b: 72). The Hague Programme, agreed by the European Council on 4-5 November 2004, referred to a "new urgency" of security in the EU and its member states following 11 September 2001 and the Madrid bombings on 11 March 2004, and states the continuation of firmer establishment of the AFSJ (Council 2005). Under the Finnish Presidency, the Council agreed on the common definition of Integrated Border Management (IBM). On 4-5 December 2006, the Justice and

Home Affairs Council defined the IBM model as comprising: (1) border control, including border checks and surveillance, risk analysis and gathering of intelligence; (2) detection and investigation of cross-border crime; (3) a four-tier access control model, including measures in non-EU countries, cooperation with neighbouring countries, border controls and controls within the area of free movement; (4) interagency and international cooperation for border management; and (5) coordination and coherence among the member states and with EU bodies. The IBM aims to 'fight against' illegal migration, but also discusses cooperation and building links with third countries. Unlike other migration-related documents, there is no mention of fundamental human rights and freedoms (Jeandesboz 2008: 3). The First Generation of IBM adopted the Schengen Borders Code and further developed the *acquis* on internal and external borders, including the establishment of FRONTEX, which I will return to later on in this paper. Carrera (2007a: 71) argues that the Schengen Borders Code demonstrates the involvement of European Parliament in decision-making procedures and includes "a wider set of guarantees and rights in the event of refusal of entry onto EU territory". Repatriation agreements, however, remove these rights as the responsibility of refusal is shifted to the home government or governments in countries of transit. Refusal of entry carries political and social implications that will be examined with reference to West Africa. In late 2005, Moroccan forces shot at Africans attempting to enter the heavily militarised Spanish enclaves of Ceuta and Melilla. The next section examines the EU's Global Approach to migration, which originates partly in this violence.

Section 2: The Global Approach: security, development and labour mobility

The European Council adopted the Global Approach to migration in December 2005, with a focus on Africa and the Mediterranean. This focus has been catalysed by pressure from EU southern member states, which lobbied for more financial and human resources after becoming the frontline of clandestine immigration (Wolff 2008: 257). Irregular migration to Spain, via Morocco or the Atlantic, was recorded at 2506 people in 2002, increasing to 19,176 in 2003, of which 76.6 percent were Senegalese (ACCEM 2006: 13). The Global Approach combines development and security and has been reinforced by Franco Frattini (2006), European Commissioner for Justice, Freedom and Security, who stated that "we need to address legal migration, combat illegal migration and deal with subjects covered by the migration and development agenda". The declaration of the Euro-African Ministerial Conference on Migration and Development was adopted in Rabat on 11 July 2006 and committed participating states to:

...work together following a comprehensive, balanced, pragmatic and operational approach and respecting the rights and dignity of migrants and refugees. (UNHCR 2008: 1)

The paradox of fighting against illegal migration and protecting the human rights of migrants, when the organisers are the migrants themselves, pervades West African-European migration management. With often tragic results, responsibility of protection is transferred outside European boundaries, resulting in an *Afrique humiliée* (Traoré 2007a). In the Communication on 'the Global Approach to Migration one year on', the objective is set to agree 'Mobility Packages' with third countries, which would enable third country nationals better access to the EU (Commission 2006: 7). These packages, which changed to 'mobility partnerships' in 2007, are strongly tied to the continuation of the EU security agenda and to the banning of south-north migration. The partnerships are to be tailored to the specific needs of each third country, to the ambitions of the country concerned and of the EU, and to the level of commitments that the third country is ready to take on. These commitments from third countries, in a typical mobility partnership, include: identifying and readmitting its own nationals; readmitting third country nationals and stateless

persons who arrived in the EU through its territory; initiatives to discourage illegal immigration; efforts to improve border control and/or management, supported as appropriate by operational cooperation with Member States and/or FRONTEX; improving the security of travel documents with biometrics where appropriate; exchanging information with relevant authorities in EU Member States; and initiatives to combat migrant smuggling and promotion of productive employment and decent work. Along with these commitments, the labour mobility in these partnerships is based on the labour market needs of EU Member States and emphasises the mobility of students, researchers, young professionals and volunteers (Commission 2007a).

The interim progress report on the Global Approach to Migration referred to several meetings and summits in Rabat, Tripoli and Lisbon, between the EU and the African Union, the Economic Community of West African States, and the countries of Cape Verde, Ghana, Mauritania, Senegal and Ethiopia. The Migration and Development Agenda aimed to integrate migration issues and concerns in Poverty Reduction Strategies and to establish micro-projects aimed at the use of remittances for income generation. Border controls, at the same time, were to be stepped up and the Rapid Border Intervention Team (RABIT) Regulation was adopted on 11 July 2007 (Commission 2007b). External border protection was a priority of the German Presidency for the first half of 2007. RABITS were introduced as a means of providing rapid assistance to Member States facing 'urgent and exceptional' pressure at the external borders, to be managed by FRONTEX. The management board will decide by a three-quarters majority on the profile and number of border guards (Monar 2008: 115).

The French Presidency built on the Global Approach with the European Pact on Immigration and Asylum, adopted by the European Council on 15 and 16 October 2008. The Pact has five key elements: (1) to organise legal immigration to take account of the priorities, needs and reception capabilities determined by each member state; (2) to control illegal immigration by ensuring the return of illegal immigrants to their country of origin or a country of transit (strengthening cooperation between countries of origin and transit); (3) to make border controls more effective – *by which cooperation with countries of origin and transit will be intensified to enable them to improve control of their own borders*, (4) to construct a Europe of asylum, (5) to create a comprehensive partnership with countries of origin and transit to encourage synergy between migration and development (Ministère de l'Immigration, de l'Intégration, de l'Identité Nationale et du Développement Solidaire, France 2008 – italics added). The Pact and EU strategies are in conflict, where the Commission calls for "clear and transparent rules for the entry and residence of third country nationals" and for fair treatment of migrants; both excluded in the Pact (Carrera and Guild 2008: 7).

Returning to the italicised Part Three of the Pact, Bigo and Guild (2005: 234), in their examination of European controls, note that the frontier "relates more and more to the act of leaving one's country of nationality than getting into another". They argue that dangers for civil liberties are located less and less at the state borders:

...they are less visible and they structure the world into two spheres: one composed of people allowed to travel and a second one, of people who are banned from it without any possibility to protest since they have no appeal against the decisions and are miles away from the border because they cannot even board a plane or leave their own country. (Bigo and Guild 2005: 235)

In 2008, meetings on legal migration, combating illegal migration, and migration and development were held in Rabat, Ouagadougou and Dakar respectively. Agreements simultaneously offer the provision of visas for labour mobility, co-development and protection of asylum, whilst controlling illegal immigration. The next sections examine

separately co-development, labour mobility, FRONTEX and repatriations as means of controlling migration.

Development as deterrent

This paper will illustrate in the final section that migration to Europe is not desirable for many clandestine migrants and that in turn, clandestine migrants are undesirable in European policy discourse. Co-development is an approach that encourages potential migrants to stay in Africa and can thereby potentially reconcile these mutual aims. One undervalued issue that arises in the use of development as a deterrent is the often explicit and insensitive goal of preventing Africans from reaching Europe – a rejection that is common knowledge amongst households in Senegal, Mali, Burkina Faso and other West African countries, which have a history of mutual dependence with Europe on labour migration. Linked with this, the condition of stepping up security in order to receive development aid challenges democracy and the aims of development. A third issue is the distribution of development aid and whether or not this reaches the potential clandestine migrants.

Emanuelle Bouilly's study in Thiaroye-sur-Mer, a suburb of Dakar that is traditionally a fishing community, shows an intriguing analysis of the Collective of Women for the Fight Against Clandestine Emigration (2008: 16). In March 2006, 162 youths died at sea in two pirogues. After supporting the departures by pirogue, sometimes by selling jewels and other valuables, these mothers of disappeared youth carry the anti-migration discourse of the north and raise interest from the media and actors of development. The Collective has become the central office for arranging visas granted by the Spanish government, and the Senegalese state, having been reticent, signed an agreement of migration management with Spain. This agreement includes the reinforcement of FRONTEX controls, repatriation of clandestine immigrants, granting of 4000 work visas for targeted employment between 2007 and 2008, and 13 million francs CFA (€19,818) for Senegalese agricultural development (Bouilly 2008: 29). In 2006, 4000 Senegalese migrants were repatriated (BBC 2006c) but the target of 4000 visas was not reached and legal options have diminished whilst controls have expanded. Locally, however, connections made with President Wade and his son Karim, through the 'political labour' of the women, attracted development aid (Bouilly 2008: 29). The Comisión Española de Ayuda al Refugiado (Spanish Commission for Assistance to Refugees) was one donor to the association, illustrating the blurring between humanitarian crisis and labour migration in this village community. Conflicts arose about the use of this aid, between the mothers and the repatriated youth. The importance of political connections in Senegal is clear when, in asking the youth about visas, the response is frequently that you need 'long arms' (friends in high places) in order to benefit.

France has a history of co-development that began at the end of the 1960s. The aim was to develop export sectors in the targeted countries, in favour of the paying countries. Initiatives for aiding the return of migrants began in the 1980s. In 1994-5, the PDLM (Programme Développement Local Migration) was launched in Mali, Senegal and Mauritania. The programme financed micro-projects in regions of strong emigration around the Senegal River valley, and was criticised for its coincidence with reform of the French office for protection of refugees and stateless persons (Ofpra) and a hardening of the politics of asylum (Gubert 2008: 49-50). This approach to development aid to curb migration was reinforced by French Foreign Minister Bernard Kouchner in 2007, but has met with concerns in part because it has been seen as a continuation of clientelist relations described as 'Françafrique' (Economist 2007). Furthermore, French President Nicolas Sarkozy is strongly associated with *refoulement* after returning African immigrants on 'Sarkozy charters' as Minister of the Interior. France already has bilateral agreements with Senegal, Gabon, Congo-Brazzaville, Benin, Tunisia, Mauritius and Cape Verde that

involve the hindrance of illegal migration to Europe. The Malian government has not as yet cooperated with France in deportation agreements, which would include delivery of development aid and labour contracts (BBC 2009). The remittances gained from Malian emigrants are of too much importance for their government to rush this politically sensitive issue. This highlights the unequal trade-off of carrots and sticks that guides European-African migration management.

Labour mobility: what provision for labour migrants?

Legal migration is not as Europeanised as other policy areas: it is subject to unanimity rule and consultation with the European Parliament. Within the Community framework, labour migration is based on the principle that the individual has the right to choose whether or not to migrate for economic reasons (Guild 2005: 127). External labour migrants, in contrast, are subjected to the requirements of the labour market. There was a 'golden age' of European recruitment, in which guest-worker rotations in Austria, Germany and Switzerland or neocolonial worker regimes in the UK, France and the Netherlands, guided labour migration during the 1950s and 1960s. States recruited labour in Spain, Portugal, Greece, Turkey and the Maghreb countries (Samers 1999: 187; Guild 2005: 103). The recessionary impact of the oil price crisis, and deindustrialisation associated with the completion of postwar reconstruction, led to a decline in foreign workers and the start of 'Fortress Europe' in 1974. In Germany and France, the number of foreign workers fell by less than half a million in each from 1973 to 1980 (Sassen 1999: 102).

Following the restrictions on immigration that have been consistent since the mid-1970s, immigrant labour can be characterised by recruitment to the upper and lower extremes of the labour market (Guild 2005: 114). On one hand, therefore, have been concerns about 'brain drain', especially concerning medical professionals at the upper end, and on the other, exploitation of cheap labour. It is observed by Amin and El Kenz (2005: 119) that Europe has sought an 'immigrant labour force' but not an 'immigrant society', leading to the establishment of quotas and seasonal contracts. This is evident in the Blue Card proposal of 27 October 2007, which is aimed at highly skilled immigrants and provides enhanced freedom to access labour markets. In contrast with the US Green Card, it can be withdrawn, however, if the member state decides to give priority to EU citizens as a result of changes in the labour market (Niessen 2008: 56).

In December 2005, the Commission issued a Communication on a Policy Plan on Legal Migration that would divide economic migrants into categories of highly qualified workers, seasonal workers, remunerated trainees and intracorporate transferees. For seasonal workers, it proposed the provision of a residence/ work permit allowing the third country national to work for a certain number of months per year for four to five years. The report states that:

...even in presence of high unemployment, this category of immigrant workers rarely conflicts with EU workers as few EU citizens and residents are willing to engage in seasonal activities. (Commission 2005: 7)

The legal logic for the EU visa follows a principle in which no third country national can access EU territory if considered a risk to a member state. National police databases, Interpol and the Schengen Information System (and linked database of Sirene) contain information about people who have tried to enter the EU or are 'undesirable' for other reasons (Bigo and Guild 2005: 238). The first commitment of the European Pact on Immigration and Asylum is to organise legal immigration to take account of the priorities, needs and reception capabilities determined by each member state (Ministère de l'Immigration, de l'Intégration, de l'Identité Nationale et du Développement Solidaire

2008). Spain signed an agreement with Senegal in March 2007 to grant temporary visas for Senegalese workers in the fishing and farming sectors. Visas have declined, however, as a result of the global economic downturn (IRIN 2008b). Despite this decline, EU policy of expulsion of illegal immigrants has contravened the interests of southern European countries, which have large informal economies and depend on migrant labour (Baldwin-Edwards 2005: 5). Dependence on 'irregular' immigration in southern Europe can be expected to continue throughout the economic downturn which began towards the end of 2008, although more of this labour force will be unemployed. The next section examines the most repressive restrictions on migration in the form of FRONTEX and repatriation.

FRONTEX (frontières extérieures), refoulement and West African migrants

In November 2006, the European Commission called for reinforced management of the EU's southern maritime borders and to maximise the capacities of FRONTEX. Established as an Agency in May 2005, FRONTEX tasks are governed by a Management Board, in which delegation members are all border chiefs or in a similar position. Its purpose is linked with the prevention of tragedies at sea, leading to calls to gear up the patrols and enhance the capacity of third countries, "from which unseaworthy, overloaded boats set sail for the Canary Islands, Greece, Lampedusa and Malta" (Bertozzi 2008: 1). Although the UK can opt-out of aspects of the Schengen *acquis*, it contributes funds, security staff and airport facilities to FRONTEX. This is on the basis of the UK's leadership role in strengthening border control by:

...creating a new offshore line of defence, by checking individuals as far from the UK as possible and through each stage of their journey, using new technology, particularly biometrics and new approaches to managing risk and intelligence. (Home Office, Border and Immigration Agency 2007: 4)

"Border security is a constant compromise between the freedom of movement of EU citizens and third-country nationals who enter the EU", argues Lt. Gen. Minze Beuving, the FRONTEX Management Board Chairman (Beuving 2008: 4). This highlights the tension and contradiction between freedom of movement within the EU and *refoulement* of those wishing to enter; their processing at the borders constitutes a threat to ease of movement for EU citizens. Neal argues that FRONTEX is not a product of securitisation, but on the contrary aims to harmonise and regulate the border practices of member states. The development of a core curriculum for border guard training and the Common Integrated Risk Model illustrates a technocratic "move away from the political spectacle of the security emergency" (Neal 2009: 348). Carrera (2007: 27), however, argues that FRONTEX is overly-politicised and that "compliance with the principle of legality may be open to debate". Legal issues with FRONTEX accord with Bigo's description of post-11 September securitisation, which "constructs a group as abnormal, justifying the solution of changing the law, and affecting justice, citizenship and the norms of liberal regimes" (Bigo 2005a). The Agency is an institutionalised and formalised securitisation measure, which is increasing its ability to take the exceptional measures that are linked with securitisation. It is, in another sense, apolitical, aiming "to prevent illegal border crossings regardless of the motive" (Beuving 2008: 8).

The prioritisation is placed on reinforcement of security at common EU external territorial borders (Carrera 2007a: 68). The European Border Surveillance System (EUROSUR) proposal, following two feasibility studies conducted by FRONTEX, sets out the long-term objective of developing common tools and instruments for border surveillance, with a particular focus on the southern maritime borders of EU member states. It sets out several options, however, which range from maintaining the status quo, to interlinking existing

surveillance systems, and further to developing new technologies such as unmanned aerial vehicles and earth observation, and establishment of a “common pre-frontier intelligence picture”, which reinforces externalisation and bilateral agreements with non-EU countries. (Jeandesboz 2008: 10). The development of EUROSUR and the expansion of FRONTEX’s competences would change the scope of FRONTEX activities: the Agency would participate in the Schengen evaluation mechanism and be able to run pilot projects with non-EU countries, giving more autonomy to the EU’s external relations and within the common foreign and security policy (Jeandesboz 2008: 11-12). The implications of this enhanced role for the fundamental values of the EU are challenging, as reflected in FRONTEX joint operations in the Canary Islands described below. The number of pirogues entering Spain is relatively small, despite an emphasis upon this type of migration in FRONTEX operations. Between 1990 and 2007, 3,641,669 immigrants entered Spain, of which 34,915 arrived by pirogue (Institut Nacional d’Estadística 2007a). Most illegal immigration in Europe is via airports. The importance of this clandestine entry is not, however, ‘created’ (See Carrera 2007b, Jeandesboz 2008). An ignored dimension is the socio-political importance of clandestine emigration in West Africa, where it has profoundly affected sending districts and is problematic if Euro-African international relations are to be strengthened, an aim of Euro-African agreements.

Operation HERA I was based on a request from Spain and started in July 2006. It aimed to determine the countries of origin of ‘irregular’ migrants, with experts from France, Portugal, Italy and Germany, and two subsequent groups. HERA II ran from August to December 2006 and aimed to facilitate technical equipment for border surveillance. In the zone between the Atlantic coast and the Canary Islands, the pirogues were to be intercepted, and then the authorities of the sending country would deal with the immigrants and their return: the boats would only be escorted to the Canaries if they were intercepted over 24 miles away from the West African coast. Operation HERA III was announced in February 2007, combining the first two operations of identification and interception. This represents, therefore, the externalisation of EU border control with a legal basis in bilateral agreements between the EU member state and third countries in Africa, in this case between Spain, and Mauritania and Senegal. These agreements have been secret, thereby challenging European principles of democratic scrutiny and transparency, embodied in the First Pillar under which FRONTEX was created (Carrera 2007b; Jeandesboz 2008). 2006 is also a year of tragedies associated with pirogue migration. About 6000 African migrants died at sea or went missing on the journey to Canary Islands, and 600 bodies were picked up on their shores. 31,000 migrants reached the islands, more than six times as many as in 2005, and fewer than 5000 were intercepted. Almost as many Africans reached the Canaries as the last 4 years combined according to Spanish immigration officials (BBC 2006a). In the same year, Spanish authorities and the Mauritanian government installed a detention centre in Nouadhibou for illegal immigrants, which came to be known as ‘Guantanamo’. Food and other support, such as access to telephones, is provided by the Red Cross of Spain and Red Crescent of Mauritania. Between October 2006 and June 2008, 6745 people were held in the centre (Lamazou 2008). Aminata Traoré, former Malian Minister for Culture and Tourism, has argued that Africa is becoming a prison in which violence is subcontracted to countries of origin and transit (Traoré 2007b). These more repressive measures of keeping Africans within their own borders, seen in the enclaves of Ceuta and Melilla, the Mediterranean and the Atlantic and in detention centres, depict a fortress in North and West Africa.

Routes of migration have dispersed, however, challenging this fortress. As patrols close in on Senegal’s beaches, migrants will go further afield, to Gambia or Guinea, and the journeys become more perilous. In October 2006, boats were leaving from the Gambian beach of Tanjeh after Senegalese and Mauritanian beaches were patrolled (BBC 2006b). Boats still continued to leave Senegal in small numbers, however, in 2008; once from

Yarakh beach in July, despite Spanish reports that Senegalese migration has ceased. The next section examines repatriation agreements as another tool of migration prevention.

Repatriations

The April 2004 Council Decision, to coordinate joint removals by air of migrants who are the subjects of individual removal orders, was also adopted by the UK and Ireland. Readmission agreements are a key part of the Schengen *acquis* and of the conditionality applied to candidate states. The agreements oblige the contracting states to readmit their nationals if they do not fulfil the conditions for entry, presence or residence. The meeting of the Council in Seville in June 2002 called for a speeding up of readmission agreements, and readmission became integral to the comprehensive plan to combat illegal immigration (Balzacq and Carrera 2005: 30-31).

Spain has signed agreements with Cape Verde, Gambia, Guinea Conakry, Guinea-Bissau, Mauritania, Nigeria and Ghana for readmission (IOM 2008). The repatriations, either to transit countries or countries of origin, have not evidently reduced migrations by sea. There have additionally been concerns raised by Human Rights Watch and Amnesty International about the repatriation of minors, in Spanish bilateral agreements with Morocco and Senegal. The agreements leave a lack of legal representation and include Spanish funding for a reception centre in Morocco (Human Rights Watch 2008). The use of elbow and wrist x-rays to determine osseous age has also been questioned as a method of identifying minors. The Dublin II Regulation and the EUODAC regulation add to the indignity of being an irregular migrant. Dublin II, adopted on 18 February 2003, modifies its predecessor by placing the responsibility upon member states where the first claim is lodged, rather than the first state of entry. This supposedly lessens the burden for frontier states (Balzacq and Carrera 2005: 44). EUODAC is a computerised database that holds information, such as fingerprints, about any individual applying for asylum, irregularly crossing borders, or staying illegally in a Dublin II country, which includes the UK and Ireland. The fingerprints are sent to the EUODAC central unit, which is managed by the Commission Directorate-General for Justice, Freedom and Security and expected to link up with the SIS II, raising questions about data boundaries and fundamental freedoms (Balzacq and Carrera 2005: 45-6). Under the Dublin Convention II, Spain transferred 266 migrants in 2005, mainly to France and Germany (Comisión Española de Ayuda al Refugiado 2007: 244)

Table 1 shows that a large proportion of migrants embark on the journey to Spain in transit countries (Mauritania, Morocco and other North African countries).

Table 1: Immigrants to Spain by place of departure and type of transport since 1990

Origin	Number of people	Of which pirogue	Of which pirogue from country of transit as distinct from place of birth
EU27 excl. Spain	1,246,101	258	258
Morocco	415,451	27,587	21,435
Rest of African countries	134,342	7070	6118

Figures from Institut Nacional d'Estadística 2007b

Repatriation is therefore a misnomer, unless we consider Africa to be a country. Senegal's repatriation agreements with Spain and Mauritania have led to the 'return' of West

Africans who are not Senegalese, often at the Senegal-Mauritania border town of Rosso on the Senegal River. The following description illustrates the messiness that occurs in dealing with migrants between northern and southern countries:

When we were in Morocco, the Spanish signed an accord with Morocco on taking charge of the clandestines. But since there was no plane, they decided to lead us to the Mauritanian border. During this time, the Mauritaniens refused then we were returned again to Morocco... they brought coaches to return us to Morocco. For our return to Senegal from Morocco, things started truly to drag out, Morocco decided finally to lead us to Senegal. (*Repatriated Senegalese fisherman, 7 June 2008, Thiaroye-sur-Mer*)

As this article discussed earlier, repatriation responsibilities have been transferred to countries of origin in exchange for development aid and labour contracts. Migrants in Senegal consider that President Wade has requested their return, distancing them from the state. Repatriation, particularly after considerable resources have contributed to the migration, leads to financial difficulty and depression.

Section 3: Motivations and intentions of West African clandestine migrants

Some of the illegal immigrants, some of them have been to Spain and they have been repatriated 4 times, some of them have had accidents, the others died...even if they construct a wall, if they want to enter Europe they will pass...they take a route, they go one week, they lose fuel and everything and they die. (*Ghanaian migrant in Nouadhibou, Mauritania. 17 May 2008*)

I tried to go twice. I sold my livestock in Mali. I returned to Senegal to get to Nouadhibou...we had problems at sea. We returned to Nouadhibou to repair the pirogue. We stayed 2 days for the repairs and when we returned, the guy had disappeared with our money. I paid 400,000F [€609.80]. I returned to try a second time. I sold the rest of the livestock at 350,000F [€533.57] to go from Mauritania. I redid the same thing. I paid 325,000 [€495.46]. (*Failed migrant 3 March 2008 Thiaroye-Sur-Mer*)

Irregular, transit and asylum migration can be approached as a continuum. People in need of international protection increasingly take the irregular route, entering the country illegally and aiming to apply for asylum, and may remain undocumented if this is rejected (Papadopoulou 2005). This distinction blurs in Mauritania, where in the busy markets of Nouakchott, migrants from both 'conflict' and 'labour-exporting' countries can be found operating small businesses such as restaurants, barbers and textile manufacturing. Women constitute half the migrant labour force in Mauritania but only a third of asylum seekers; this is because asylum is an insecure route and it is safer to draw on contacts and associates. In addition, there is no state provision for refugees in Mauritania, although there is a framework for asylum application (UNHCR interview). After the military coup in Mauritania on 6 August 2008, there was a reported increase in departures by pirogue. The heavily guarded port, where sub-Saharaners enter fish processing work in zones divided into different West African nationalities, experienced a security gap after the change of government. On 13 August, more than one hundred African migrants reached Tenerife beach, bringing the total to more than four hundred arrivals in that week (IRIN 2008a).

In the 14th ECOWAS (Economic Community of West African States) – EU Ministerial Troika Meeting of 23 November 2008, the following statement was released:

Turning to country specific situations in West Africa, the parties discussed the consolidation of peace and democracy in Côte d'Ivoire, Guinea, Guinea Bissau and the Sahel region. In a number of these countries scourges such as terrorism, organised

crime, trafficking of drugs and small arms as well as human trafficking are causing growing concern. (Council of the European Union 2008)

The crime which has been associated with the securitisation of migration as a means of justification, therefore, is connected with the countries that have experienced conflict and serious refugee and humanitarian crises - not Senegal, which is the source of over half of the clandestine migrants in Spain. On the continuum of irregular and forced migration, however, this journey to the Canary Islands moves towards forced migration. The forced element of this journey arises because there is a lack of alternatives to the decision to emigrate, the place to emigrate to, and how to reach this destination.

The following list of drivers of Senegalese clandestine emigration from communities around the Cap Vert peninsula, where Dakar is situated, reveals a distance from the organised crime and trafficking networks that are supposedly being fought against.

Firstly, Senegal has a history of seasonal migration rooted in colonial regimes of labour. Senegalese historian Cheikh Anta Diop's (1960: 114-5) description of colonial plantation workers claimed that they did not constitute a class, but "represented a transitory stage in the life of a young unmarried man, who would engage in this monotonous seasonal work in order to return and marry". This echoes in contemporary analyses of Senegalese migrants, in which the description of the journey as *l'aventure* (Ba 2005) implies a rite-of-passage under social pressures and is still overwhelmingly dominated by young men, despite a general feminisation of migration elsewhere.

However, as the second driver, poverty is also a strong force and married men are leaving their wives and children behind at great risk. Poverty as a driver is distinct from *l'aventure*: rather than a rite-of-passage, poverty introduces a forced element, returning to the problem of how to classify the migrants. Although it is often argued that the poorest people do not migrate and that 'economic migrants' have already achieved some form of mobility, for the fishing communities around Dakar, St Louis or the Casamance region in the south, the journey is on the migrants' doorstep. It is free if they can offer navigation skills, assemble passengers or are a friend of the organiser, and therefore in sight. It is not a naïve optimism which drives many Senegalese to the European 'El Dorado' but the common knowledge that it is possible to earn €600 per month in Europe, a wage which is practically unreachable in Senegal's traditional communities and can sustainably transform the lives of whole families there. Some of the pioneers of this Atlantic route are now legally living and working in Spain, and sending regular payments to their relatives. The migration is economically-driven, but not based on the 'pull factors' of Europe. On the contrary, migrants do not consider staying where they are to be an option.

Here, if youth leave clandestinely for Spain it's because there's no work here and people who lead us don't take responsibility, otherwise young people wouldn't try *l'aventure*. No clandestine wishes to leave in these conditions. But the situation obliges it, to take a wife, to start a family and to meet the needs of our relatives...nothing is more beautiful than leaving the house in the morning and going to work. (*Brother of clandestine emigrant at sea. 24 June 2008. Rufisque, Senegal*)

The individual can only bloom in his country of origin. And if we travel to Europe it's because we don't have a choice, because emigrating is not an easy thing...we are obliged to leave in order to have a good future. (*Returned migrant. 24 June 2008. Rufisque, Senegal*)

Linked to this motivation to migrate is the intention to return once sufficient funds have been earned to sustain families, and there is a lack of attention to this in policy discourse. Bigo (2005b: 69) points out the 'Europe narrative' in which "globalisation and unequal

distribution of wealth in the world push the poor to immigrate to prosperous countries and to remain there". The assumption of migrants wishing to remain in Europe runs through different policy areas, despite overwhelming evidence to the contrary in West Africa. The implications of these short-term aims are that migrants who reach Europe and cannot find work are, due to their illegal status, trapped inside the 'Fortress'.

Third, Senegal's demographics also help to explain emigration. 43.6 percent of Senegalese of working age are unemployed. In addition, the population is young: the average age is 21.8 for men and 22.6 for women (DPS 2004).

Fourth, prices of food and oil rose steeply in Senegal following the devaluation of the franc CFA in 1994, and in the months preceding the global economic downturn towards the end of 2008. Between 2006 and 2008, the local purchase price of rice rose by 74 per cent (IRIN 2008c).

Fifth, locations in West Africa for labour migrants are limited. Côte d'Ivoire has the largest stock of migrants in sub-Saharan Africa, at 2,371,000 in 2005, yet the collapse of the state in 2002 led to a large exodus (IOM 2008: 407). While migration within West Africa is significant, there are no magnets to attract labour migrants to the scale of Ghana, Nigeria and Côte d'Ivoire in the 1960s and 1970s.

Sixth, the reduced availability of legal routes to Europe has led migrants to the Atlantic coast instead, departing from the peninsulas of Nouadhibou in Mauritania, Dakar in Senegal and Bissau. In 2003, Spain launched the SIVE (Sistema integrado de vigilancia exterior), which halted clandestine migration in the Straits of Gibraltar and was strengthened in 2004 after cooperation with Moroccan mixed patrols. In September 2005, thousands of West and Central Africans approached the Spanish enclaves of Ceuta and Melilla in northern Morocco, where Moroccan security forces and the Spanish Guardia Civil were deployed. On 29 September in Ceuta, bullets were fired and 5 migrants reported dead, and similar events occurred in Melilla in the night of 5-6 October (Traoré 2007a: 118).

Seventh, the 'pirogue phenomenon' is largely connected with the fishing industry. A decline in profits has led fishermen to enter the more profitable enterprise of smuggling, to attempt to enter Europe along with the passengers, or to sell their pirogues. There has been an increase in the number of foreign ships which freeze fish for better profits and keep their fleets in the Senegalese waters, leading to collapse for the artisanal fishermen (Mbow 2007: 5-6). Studies undertaken in Saint Louis and M'Bour in Senegal, by Sall and Morand (2008), also connect the dynamism of artisanal fishing with the migration phenomenon. Between 1950 and 2000, the number of pirogues multiplied six times to 20,000 on West African coasts, and the number of fishermen grew by 4-5 percent annually, compared to a growth in rural populations of between 1.7 and 1.9 percent. 15 percent of the active population in Senegal is linked with fishing (Sall and Morand 2008: 34).

Everything has become expensive and all sectors, agricultural, fishing, factories are touched. Line fishing and net fishing have difficulty because of the big boats – the fish have fled because of the noise. (*Fisherman, 5 June 2008. Thiaroye-Sur-Mer, Senegal*)

Diokoul is a traditional Lebu district and it's because of this that many young people have had the ability to get to Spain by pirogue. People often advise [against this] but here there is no work activity that can retain them. (*Imam, 8 July 2008. Rufisque, Senegal*)

The Lebu is a Wolof-speaking ethnic group that is concentrated in the *quartiers traditionnels* of Thiaroye-sur-Mer and Rufisque. This community is strongly linked with fishing. The ability which the *imam* is describing refers to fishermen's knowledge of the sea and its conception as an area without boundaries.

Conclusion

While there is a lack of uniformity and cohesion in European immigration policy and an emphasis on state decision-making rather than a superstructure, there has been a fast and continuous growth of mechanisms that formalise and reinforce the ban on south-north movement. These mechanisms have included the deployment of patrols to intercept clandestine migrants, restrictive visa and asylum policies, agreements with sending countries for repatriation and the prevention of emigration through development. The objectives of these measures are linked to the demands of security institutions, and in this sense the securitisation is successful, especially as support for FRONTEX and new technologies has expanded. This securitisation, however, causes dangers and indignities as a result of detentions, longer sea journeys to avoid patrols and 'repatriation' to transit countries. The discourse in which the freedom of EU citizens requires security from threats, such as unwanted immigration, sidelines justice in the AFSJ, posing a serious challenge to the EU institutions of justice and democracy.

The intentions of clandestine migrants have received little attention from policy makers, who assume a longer-term move to Europe. Pressure on southern European countries to control migration has diminished opportunities for seasonal work, and this has been exacerbated by the economic downturn that began in autumn 2008. Pressure from southern European countries on controllers of migration has, in turn, increased the risks of clandestine journeys. Repatriation often amounts to the loss of significant investments in the journey from families or the individual, and longer journeys make failure and tragedy more probable.

Policy and practice related to labour mobility is in favour of the needs of member states and has not been sufficiently connected with fundamental rights. A rights-based approach to labour migration could help to address clandestine migrants' disjuncture from the criterion and expectations of both economic migration and asylum. In the case of the migrants who attempt to reach the Canary Islands by pirogue, there are issues with classifying this migration: irregular migration is strongly connected with trafficking and organised crime, but this type of mobility has little relation to crime networks. Furthermore, refugee and labour movements have merged. This places the prevention of emigration by African governments, a component of the European Pact on Immigration and Asylum, in contravention with the Geneva Convention and with the fundamental human rights values of the EU. European-African cooperation that takes a realistic and flexible approach to clandestine migration and addresses the root causes of European immigration policy, instead of pursuing a pre-determined set of restrictive measures, could bring the JHA regime and migrants closer to their objectives.

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The Discursive Construction of EU Counter-Terrorism Policy: Writing the 'Migrant Other', Securitisation and Control

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Abstract

This article argues that the EU counter-terrorism policy reflects a deep-rooted mistrust or fear of the 'migrant other'. The first half of the article focuses on the discursive construction of terrorism and the concept of securitisation. Drawing on Foucault and in line with scholars such as Campbell (1992), Milliken (1999) and Hülse and Spencer (2008) the concept of discourse advocated here is one that is above individual discourse participant; the EU is a place where power/knowledge meets and is refracted back into social and political life. An alternative conception of securitisation is offered in order to demonstrate the processes involved in the discursive construction of the 'migrant other' as a security threat. The second half of the article will identify two meta-narratives linked to the construction of the 'migrant other' within the EU counter-terrorism policy. The first of these narratives constructs the 'terrorist other' as a threat to the globalised, 'open' society of the EU. This has the implicit effect of constructing and conflating the 'migrant other' with the threat of terrorism. The second meta-narrative that will provide the focus of analysis is a contingency-based discourse that constructs the 'migrant other' as in need of control in order to prevent the *possibility* of future terrorist attacks. Having identified these two narratives they will then be subject to a first and second level critical discourse analysis in order to analyse how discursive practices work internally within the EU counter-terrorism policy texts; and the broader political and ethical consequences of the discursive representations identified within the texts. The article concludes by arguing that the impact of the discursive construction of EU counter-terrorism policy is the securitisation of migration and asylum policy and the normalisation of the 'migrant other' as a security threat.

Keywords

Biopower, Critical Discourse Analysis, EU Counter-Terrorism Policy, Governmentality.

THE TERRORIST ATTACKS OF 11 SEPTEMBER 2001 HAVE BROUGHT THE SPECTRE OF insecurity and uncertainty to the forefront of public anxiety in Western societies. In particular this is a result of the fear of the danger/risk/threat of another such attack: a fear confirmed by further terrorist attacks on European soil in Madrid (March 2004) and London

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(July 2005).¹ This fear however is not a natural or neutral reflection of the reality or statistical probability of being affected by instances of terrorism. For Ulrich Beck (2002) the events of September 11, 2001, stand for the 'complete collapse of language' in that the concepts we use to describe those events are incapable of grasping what happened then. The attack was not an act of war, it was not a crime, or even terrorism as it is familiarly known. What has followed is an "explosion of silence" (Beck 2002: 39). It is in that silence, that collapse of language, that fear of the unknown, that a condition of insecurity and uncertainty has been generated. It is in this silent void left by the 'collapse of language' that the discursive construction of the United States so called 'war on terror' and the European Union's (EU) 'fight against terrorism' has occurred.

In the immediate aftermath of the events of 11 September 2001, the members of the EU called an extraordinary meeting of the European Council in which they stated that 'terrorism is a real challenge to the world and Europe. The European Council has decided that the fight against terrorism will, more than ever, be a priority objective of the European Union (European Council 2001). Claudia Aradau and Rens van Munster (2007) have argued that the world of IR has sought to mould the dramatic events of 11 September 2001, to fit its pre-existing tools such as just war, pre-emptive action, or even clash of civilizations. The range of measures and practices that have developed across and between Western governments, since the events of 11 September 2001, demonstrate however that both the 'war on terror' and 'the fight against terrorism' are much more complex discursive and institutional formations than such theories have been able to account for. The introduction of policies and measures such as the legitimisation of recourse to war in Afghanistan and Iraq, the creation of the status of enemy combatants, extraordinary rendition and Guantanamo Bay, the strengthening of external border controls, the introduction of biometric passports and increased surveillance, are implicitly linked to this condition of insecurity and uncertainty. This article focuses on the way in which the EU's counter-terrorism policy discourse, 'the fight against terrorism', has played a constructive role in "the return to a politics of fear and everyday insecurity that appears to be characteristic of contemporary social life in the era of the global war on terror" (Debrix and Barder 2008: 1). Although the EU discourse on terrorism does not use fear in an instrumental manner in order to legitimise its counter-terrorism policies; the discourse itself is constructed on the basis of a deep-rooted fear of the 'other' as a source of the insecurity and uncertainty that is seen as endemic within Western society in the early 21st century.

There have been numerous historical and legal analyses of the main developments in EU counter-terrorism policy (Den Boer and Monar 2002; Den Boer 2003; Monar 2007; Wouters and Naert 2004; Wilkinson 2005) as well as a growing literature on implementation and governance in this policy area (see Bossong 2008; Den Boer, Hillebrand and Nolke 2008; Edwards and Meyer 2008;). However, beyond Richard Jackson's (2007c) intriguing comparison of the similarities and differences in EU and US counter-terrorism discourse, less attention has been paid to the discursive construction of counter-terrorism policy particularly within the EU.

The first half of the article focuses on the discursive construction of terrorism and the concept of securitisation. The article first examines the new research programme of critical terrorism studies and advocates a focus on the terrorism discourse as the subject of analysis. One argument that is put forth therefore is that in the discursive construction of

¹ Throughout this article I will resist the temptation to refer to the events of 11 September 2001, as 9/11. Nor will I refer to the Madrid or London attacks as 3/11 or 7/7 respectively. As Richard Jackson (2005) has argued shortening the dates of these attacks is neither natural or without consequence. The effect of such a practice is to erase the history and context of the events whilst simultaneously turning their representation into a political-cultural icon where the meaning of the dates becomes assumed and open to manipulation.

EU counter-terrorism policy the socially constructed threat of the 'terrorist other' is being conflated with the threat of the 'migrant other' leading to the securitisation of migration and asylum policies. However, the understanding or conceptualisation of securitisation offered here is very different to that of the traditional conceptualisation of securitisation. This line of argument needs unpacking and will therefore be explored in greater detail.

In the second half of this article a critical discourse analysis of a selection of the EU's main counter-terrorism policy documents will be carried out.² It would be impossible here to consider all of the different discourses at work in the EU's counter-terrorism policy documents. I will therefore limit the analysis to just two meta-narratives that supports the claim that the discursive production of the EU's 'fight against terrorism' is based upon (or reflective of) a deep-rooted fear of the 'other', as a source of insecurity and uncertainty, in relation to the production of EU counter-terrorism policy. The first of these meta-narratives constructs terrorism or the terrorist 'other' as a threat to European 'identity', 'civilization' or 'society', which is in itself inextricably linked to the risk represented by 'globalisation' or the 'openness' of European society, and has the implicit effect of constructing the 'migrant other' as an interlinked security threat. The second meta-narrative that will provide the focus of analysis is a contingency-based discourse that constructs the 'migrant other' as in need of control in order to prevent the *possibility* of future terrorist attacks. The EU counter-terrorism policy documents discursively link a series of increasingly sophisticated measures designed to 'control' immigration to preventative counter-terrorism responses.

The Discursive Construction of Terrorism: Critical Terrorism Studies

Recently a group of scholars have advocated the development of a critical terrorism studies research programme designed to provide a challenge to orthodox terrorism studies and offers a conduit through which to challenge dominant discourses on terrorism (Blakely 2007; Breen Smyth 2007; Breen Smyth *et al.* 2008a; Breen Smyth *et al.* 2008b; Gunning 2007; Jackson 2007b; McDonald 2007; Richard Jackson (2007a) has identified two developments within contemporary research into terrorism that have provided the foundations and necessitated the development of an explicitly 'critical' turn within terrorism studies. The first is the proliferation in terrorism related research and teaching post-11 September 2001. Terrorism studies has been transformed from a minor subfield of security studies to a standalone field and is now one of the fastest expanding areas of research within Western social sciences. Secondly, there has been a growing dissatisfaction with the state of the field and the output by many of the leading scholars. He argues that much of what passes for terrorism research lacks rigorous theories and concepts, is based primarily on secondary information, lacks a historical context and is heavily biased towards Western and state-centric perspectives. Furthermore, related to

² Pre-11 September 2001, the EU's focus was on the 'fight against crime' and the development of the Area of Freedom, Security and Justice which would form the basis of an internal security policy. The key policy document at this point was the Presidency Conclusions from the Tampere European Council (European Council 1999). Post-11 September 2001, a whole raft of policy proposals were put forward by the European Council that would form the basis of the EU's counter-terrorism strategy. These documents include, the Conclusions adopted by the JHA Council in response to terrorism (Council of the European Union 2001a), the first Action Plan on Combating Terrorism put forward at the Extraordinary European Council Meeting (European Council 2001), the Anti-Terrorism Roadmap (Council of the European Union 2001b) and the European Security Strategy (European Council 2003). Post-Madrid, 2004, the EU put forward a Declaration on Combating Terrorism (European Council 2004), The Hague Programme (Council of the European Union 2004), The Strategy for Combating Radicalisation and Recruitment to Terrorism (Council of the European Union 2005a), The European Union Counter-Terrorism Strategy (Council of the European Union 2005b), A Strategy for the External Dimension of JHA (Council of the European Union 2005c), the report on the Implementation of the Strategy and Action Plan to Combat Terrorism (Council of the European Union 2008) and the revised European Security Strategy (European Council 2008).

this is an academic unease about the direction of domestic-counter terrorism policies and the prosecution of the 'war on terror'.³

In keeping with a 'critical' approach to an understanding of terrorism Rainer Hülse and Alexander Spencer (2008) have argued for a constructivist approach to the study of terrorism. While still welcoming the number of valuable criticisms of conventional terrorism studies that are offered by the critical terrorism studies group of scholars, Hülse and Spencer feel that critical terrorism studies suffers from a focus on what they consider terrorism research greatest problem: a preoccupation with the terrorist actor. They contend that if terrorism is a social construction then the terrorist actor can no longer be the primary source for analysis.⁴ The terrorist is a consequence of discourse not vice-versa. This leads them to advocate a position that "the primary source of terrorism research must be the discourse in which the social construction of terrorism takes place, that is, the discourse that constitutes a particular group of people as 'terrorists'" (Hülse and Spencer 2008: 576). They further argue that it is only critical terrorism scholars that can be in agreement with their constructivist interpretation of terrorism for the reason that they interpret terrorism as a 'social fact' and not a 'brute fact'. For Hülse and Spencer what matters is what we make of the terrorist; not what the terrorists makes of themselves. The understanding of discourse analysis developed here draws on Michel Foucault and is similar to that put forward in international relations (IR) by scholars such as David Campbell (1992) and Jennifer Milliken (1999) and by Rainer Hülse and Alexander Spencer (2008) in their research on the social construction of terrorism. Discourse is conceptualised as being 'above' individual discourse participants; as such the EU is a place where discourses of power and knowledge meet and are reconstructed and refracted back into social and political life.

Securitisation

The securitisation thesis, developed by the 'Copenhagen School' of security analysts and best represented by the work of Ole Wæver (1995) and Barry Buzan *et al.* (1998), has been acclaimed as one of the most prominent and influential of new approaches to international politics and the field of security studies (Huysmans 1998; Williams 2003).⁵ Ken Booth (2007: 163) has described their approach as a "curious theoretical mixture of liberal, poststructural, and neorealist assumptions." 'Security' is not treated as an objective condition which can be achieved; instead analysts view it as the outcome of a specific social process. By examining securitising 'speech acts', the securitisation framework attempts to analyse the process through which threats become recognised, by whom and the consequences of such moves. These 'speech acts' do not simply describe an existing security situation; they constitute that situation as a security situation, they bring it into being, through successful representation as such. For the Copenhagen School 'security' is not simply a discursive act, a speech act. It is a specific type of discursive act, a speech act that constructs an issue as an 'existential' threat. By labelling something as a 'security' issue gives it a certain sense of importance and urgency that legitimises the use of extraordinary measures beyond the norms and practices of everyday politics. A successful securitisation attempt does not simply require the discursive act of presenting something as a security issue, this is a securitising move, it requires that the actor has the authority to make such a claim but furthermore that this securitising claim (about an existential threat to a referent

³ For further reading on this research programme including its epistemological, ontological and methodological commitments see the journal *Critical Studies on Terrorism*.

⁴ Following Hülse and Spencer (2008) this article does seek to deny that terrorism exists only that the process by which an individual or group comes to be defined as 'terrorist' is subjective and that the actions of those defined as 'terrorist' is subject to a process of interpretation.

⁵ It was Bill McSweeney (1996) who used the title Copenhagen School for the work being done by Buzan, Wæver and others.

object of security) is accepted by the relevant audience.⁶ The focus of securitisation studies then is “to gain an increasingly precise understanding of who securitises, on what issues (threats), for whom (referent objects), why, with what results, and, not least, under what conditions (i.e., what explains where securitisation is successful)” (Buzan *et al.* 1998: 32).

Andrew Neal (2009) has argued that securitising moves in the EU cannot be considered in the same way as securitising moves in national political contexts. Statements in a national political context are more widely reported in the media and thus more extensive public debate can occur. He points out that “although the statements and discourses of the EU institutions may be identifiable as securitising moves, the relationship between that discourse and the reception, discussion, legitimation and actualization of policy proposals and changes is less clear” (Neal 2009: 336). Neal expands on this point in several ways. First securitisation focuses on discourse and acceptance of that discourse by an audience. In the national context, statements of political leaders and ministers are widely reported and debated, yet in the EU context, communication and statements are less widely reported. They are less widely debated and normally aimed at a very narrow specialist audience. Although communication and statements play a key role in EU policy making the absence of an accepting public audience is a problem within a securitisation framework. Neal argues that this is for two reasons. One is that identifying the key securitising speakers in the complex institutional field of EU politics is extremely difficult. The other is that the EU polity is fragmented; European political identity is largely interpreted through national perceptions.⁷ Again this poses problems in relation to how one might identify the audience of an EU securitising discourse and the role they play in the legitimisation of policy changes. The other question Neal raises is whether the EU institutions have the constitutional, institutional, political or legal capacity to “use extraordinary means” or “violate rules that otherwise would bind” (Neal 2009: 337). Can the EU decide on the exception? Given that the EU creates binding laws for its member states, which are ultimately ruled on by European courts, would this be a positive development anyway? Neal responds to this by arguing that it can only be answered in a plural way. In one way, EU institutions and agencies cannot decide on the exception *per se*; instead they make up for it with an extensive capacity for institutionalisation, normalisation and regulation. In another, some member states seem intent on reasserting their sovereign right to “declare exceptions and construct emergencies” (Neal 2009: 351).

Given the problems with applying a traditional conceptualisation of securitisation to the institutional framework of the EU this article offers a (re)conceptualisation of securitisation based upon Michael Dillon and Julian Reid’s (2004) (re)problematisation of the concept of security. For Dillon and Reid, the history of security is not about the pursuit of an ideal or universal value, by pre-formed subjects (individual or collective); it is about the changing problematisation of what it is to be a political subject and to be politically subject. Although security is ordinarily examined as part of a state-sovereignty perspective; Dillon and Reid (2004) argue that it is as much a biopolitical imperative as it is a geo-political imperative.⁸ It can therefore be stated that “changing problematisations of security have

⁶ It should be noted that a successful securitisation attempt does not require the implementation of the accompanying emergency measures for that securitising move to be deemed successful. Copenhagen School security analysts also seek to ‘desecuritize’ threats by bringing them into the sphere of ‘ordinary’ politics; in order to avoid the militarisation of issues through the process of securitisation.

⁷ Nevertheless, he points out that there is no methodological prescription that the ‘audience’ must be public. In relation to the EU it might consist of member states, bureaucrats, national or European politicians, or even academics.

⁸ Dillon and Reid (2004) refer to biopower or biopolitics, this is a Foucauldian notion that is tied into understanding global liberal governance as a complex regime of power that’s founding principle is the administration and production of life. Foucault calls this power, power/knowledge that seeks to foster and promote life, biopower and its politics biopolitics. Dillon and Reid are concerned like Foucault to draw

always been comprised of complex terrains of practices involving deeply imbedded discourses of danger said to be foundational to individual welfare, social formation and political order" (Dillon and Reid 2004: 51). These problematisations of danger/risk/threat are allied to discourses of fear and are the means by which specific programmes of social formation and political order are introduced, circulated, reproduced and enacted. This then is a complex understanding of the discursive process of securitisation. For Dillon and Reid, it is concerned with making life accessible to different social technologies.⁹ These technologies are the processes whereby life is rendered into some kind of determinate material, raw life, in need of being secured from the threats and fears to which discourses of danger say it is prey.

This conceptualisation of securitisation ties into the work of Didier Bigo (2005; 2008) on discourses of global 'in-security'. Bigo (2005) identifies what he calls an emergent 'field' of unease management professionals, security 'experts' or professional who are helping to blur the distinction between defence and internal security. Bigo labels this 'field' a 'governmentality of unease' which is characterised by three criteria; practices of exceptionalism; acts of profiling and containing foreigners; and a normative imperative of mobility. Bigo shows how banal the process of securitisation can be through analysing processes that result in the normalisation of the statistical majority and abnormalisation of migrants. Using the EU as an example of how this field works Bigo demonstrates how the discourse within the EU that is associated with the suspension of controls to 'freedom of movement' has been miscalculated. He emphasises that this supposed freedom of movement for all that reside within the EU is a fallacy. Those controls continue inside, at the external border and even outside the EU itself. Aradau and van Munster (2007) develop the concept of 'precautionary risk' as a *dispositif* to govern social problems. This interpretation of risk builds on Bigo's analysis of how the managers of unease use the authority of statistics to classify, prioritise and determine what constitutes a security threat. It conceives of securitisation as "not only about the exceptional, that which threatens survival and goes beyond normal politics, but about everyday routines and technologies of security professionals" (Aradau and van Munster 2007: 98). They argue that "between exceptional measures and the immediacy of action on the one hand and the ordinary administrative, police or insurance measures on the other, the 'war on terror' spans the whole space between the two definitions of securitization" (Aradau and van Munster 2007: 98). This application of securitisation is more appropriate than the traditional securitisation framework for analysing the discursive construction of the EU's 'fight against terrorism'.

Critical Discourse Analysis

The focus of critical discourse analysis is on social problems and the role that discourse plays in the reproduction of power, abuse and/or domination. In particular it does so from a perspective consistent with the best interests of dominated groups. Norman Fairclough and Ruth Wodack (1992, 1996) suggest the following definition of discourse as a form of 'social practice'. By 'describing discourse as social practice implies a dialectical relationship between a particular discursive event and the situation, institution and social structure that frame it: the discursive event is shaped by them, but it also shapes them' (Wodack 1996: 15). This approach offers a technique through which one can analyse specific texts

attention to the peculiar ways in which biopower deploys force and violence. This is for two reasons. First, biopower hides its violent face and gives power to inflict legal punishment in a context where it appears to be free of all excess and violence. Second, biopolitics operates as a strategic game in which the principles of war are assimilated into socio-economic and cultural networks of biopolitical relations. This means biopolitics is the pursuit of war by other means. The conceptualisation and practice of war change via the process of its assimilation into biopolitics.

⁹ Technology in this sense refers to complex techniques and relations of power in conceiving government as administration and ordering of life, rather than the politics of free people.

and speech acts but also form an understanding of the relationship between discourse and social and political phenomena. There are two levels at which critical discourse analysis works. The first level involves a direct engagement with specific texts in order to discover how discursive practices work linguistically within the texts. The second level focuses on a wider interdisciplinary, contextual and social analysis of the texts because independent analysis of each text is not sufficient on its own to shed light on the relationship between discourse and social practice (Jackson 2005).

Critical discourse analysis provides a suitable method for analysing the EU counter-terrorism policy documents because it can help to illuminate the processes involved in the construction of a series of meta-narratives that reconstructs preventative counter-terrorism policy through an implicit fear of the 'migrant other' as a source of insecurity and uncertainty. If one starts from the basis that speaking or writing is never a neutral act then it follows that language can never be used objectively. This approach is concerned with how language and discourse play a role in the maintenance of power; it is 'critical' in that one of its central aims is a normative commitment to social change. As Richard Jackson (2005: 25) argues, critical discourse analysis can play a role in "facilitating the emergence of more effective and long term solutions to the problem of political violence."

This next section will engage in an investigation of what the EU counter-terrorism policy documents actually say. Two meta-narratives will be identified. The first of these narratives constructs the 'terrorist other' as a threat to the globalised, 'open' society of the EU. This has the implicit effect of constructing and conflating the 'migrant other' with the threat of terrorism. The second narrative explicitly links migration and asylum policy to counter-terrorism policy through the construction of a discourse of control. The EU counter-terrorism policy documents continually advocate the use of ever increasingly sophisticated policies, practices and measures aimed at the control of the 'migrant other' as part of a preventative strategy designed to counter acts of terrorism. The two meta-narratives will then be summarised and a critical discourse analysis conducted. Both meta-narratives will be subject to a first-level and second-level critique in order to analyse (1) how discursive practices work internally within the EU counter-terrorism policy texts; and (2) the broader political and ethical consequences of the discursive representations identified within the text.

Narrative 1 – The threat posed by Globalisation, an 'Open' Society

Before the events of 11 September 2001, the construction of the immigrant 'other', as a *potential* threat to European society and therefore European identity, was a central theme within the EU's internal security policy.¹⁰ The Tampere Conclusions which set out the basis for the creation of the EU's Area of Freedom, Security and Justice (AFSJ) argues that "European integration... [is] rooted in... a shared commitment to freedom based on human rights, democratic institutions and the rule of law', as well as 'common values', 'securing peace' and 'developing prosperity" (European Council 1999: paragraph 1). As such the very existence of the EU "acts as a draw to many others world-wide who cannot enjoy the freedom union citizens take for granted" and it would therefore go against European traditions "to deny such freedoms to those whose circumstances lead them justifiably to seek access to our territory" (European Council 1999: paragraph 3). The document describes the main aim of the Tampere Conclusions as "an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other

¹⁰ It should be noted here that the concept of European identity is extremely ambiguous and that assuming European identity equals European society is not unproblematic. The point here then is that in the discursive construction of EU counter-terrorism policy the construction of a terrorist threat to society that is interlinked with the constructed threat of the 'migrant other' plays a role in the constant reconstruction of European identity.

relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity" (European Council 1999: paragraph 4). However the syntactic ordering of sentences implies that the aim of 'openness', 'openness' being a characteristic of European society itself, also represents a risk to security and therefore a threat to identity.¹¹ The semantic structure of the entire document continually focuses on the threat posed by 'serious organised and transnational crime' and 'illegal immigration' as interlinked internal and external security threats to the EU: terrorism appears at this point to be an afterthought.

This discursive construction of the 'openness' of European society as a security threat continued to be strengthened in the immediate aftermath of the events of 11 September 2001. The threat of terrorism shifted from an afterthought to a priority. The extraordinary meeting of the European Council defined the attacks as "an assault on our open, democratic, tolerant and multicultural societies" and as such a "challenge to the conscience of every human being". The EU promised to "cooperate with the United States in bringing to justice and punishing the perpetrators, sponsors and accomplices of such barbaric acts" whilst simultaneously respecting "the fundamental freedoms which form the basis of our civilization" (European Council 2001: 1). In this initial phase the attacks were claimed as an attack on all countries with those similar values of openness, democracy, tolerance and respect for all cultures

The European Security Strategy builds on this discursive construction by arguing that the environment of which the EU is part of is "one of increasingly open borders in which the internal and external aspects of security are indissolubly linked" (European Council 2003: 3). Those who engage in acts of terrorism seek 'to undermine the openness and tolerance of our societies'. Globalisation is presented as both an opportunity and a threat to Europe, in that "flows of trade and investment, the development of technology and the spread of democracy have brought freedom and prosperity to many people". However there is also a negative side in that "others have perceived globalisation as a cause of injustice" (European Council 2003: 3).

The EU interprets the process of globalisation as having "increased the scope for non-state groups to play a part in international affairs" as the document argues "they have increased European dependence – and so vulnerability – on an interconnected infrastructure in transport, energy, information and other fields" (European Council 2003: 3). The very openness of European society is once again being constructed as a threat to security. There is however a move away from the discursive construction of the terrorist threat as defined by the civilized/barbarian dichotomy to the policy discourse now focusing on terrorism as a threat to society. This subtle shift from civilisation to society is important in that by portraying the threat of terrorism as an extreme threat to European society, and thus European identity, the discourse normalises the whole range of policy responses that the EU has sought to implement as appropriate methods to combat terrorism. In the immediate aftermath of the Madrid train attacks the European Council released its Declaration on Combating Terrorism containing the Strategic Objectives to Combat Terrorism (or the Revised Plan of Action). The shift from terrorism portrayed as a civilisational threat to a societal threat is completed with the document stating that the "callous and cowardly attacks served as a terrible reminder of the threat posed by terrorism to our society" and that acts of terrorism "are attacks against the values on which the Union is founded" (European Council 2004: 1).

¹¹ Terrorism is mentioned only once in the presidency conclusions. It is the discursive construction of a 'fight against crime' that provides legitimacy for the measures agreed at Tampere.

The EU Counter-Terrorism Strategy, launched in November 2005, continues to define terrorism in relation to identity, as a threat to “the values of our democratic societies and to the rights and freedoms of our citizens” (Council of the European Union 2005b: 6). It reinforces the discursive construction of the ‘openness’ of the EU area as problematic; as an environment which terrorists use advantageously in order to pursue their objectives. The document states that the “European Union is an area of increasing openness, in which the internal and external aspects of security are intimately linked”, this environment is described as “an environment which terrorists abuse to pursue their objectives” (Council of the European Union 2005b: 6). In particular terrorists are described as willing to engage in ‘indiscriminate’ targeting of ‘innocent people’. This needs to be understood in the context of earlier EU pronouncements on terrorists as actors “willing to use unlimited violence to cause massive casualties” (European Council 2003: 3). The EU Strategy for Combating Radicalisation and Recruitment contributes to this narrative by stating that there are several practical steps one must take for an individual to become engaged in terrorism and that “the ability to put ideas into action has been greatly enhanced by globalisation: ease of travel and communication and easy transfer of money means easier access to radical ideas and training” (Council of the European Union 2005a: 3). The new Security Strategy continues to reinforce these discursive constructions emphasising that “globalisation has also made threats more complex and interconnected” (European Council 2008: 1). It also focuses on European ‘society’ as increasingly ‘vulnerable’ and the need to “protect our societies against terrorism” (European Council 2008: 4).

Narrative 2 – A Discourse of ‘Control’

This ‘openness’ that is characteristic of European society had necessitated the EU, even before the terrorist attacks of 11 September 2001, to (1) “develop common policies on asylum and immigration” and (2) focus on “consistent control of external borders to stop illegal immigration and combat those who organise it and commit related international crimes” (European Council 1999: paragraph 3).

The policy response to the events of 11 September 2001, by the key institutions of the EU, made the first clear discursive links between the danger/risk/threat of terrorism and migration, asylum and border control. On 20 September 2001, the conclusions of the JHA Council were released, they focused on the ‘heinous acts’ and the ‘seriousness of events’ as reasons for the ‘speeding up’ of the ‘process’ of creating the ASFJ (Council of the European Union 2001). The document itself focused on seven key ‘measures at borders’. The language of these measures has played an important role in the discursive construction of the immigration, asylum and human rights regime, as well as the immigrant (him or herself), as a security threat. In response to the terrorist threat, the document argues for measures to “strengthen controls at external borders”, “strengthen immediately the surveillance measures” provided for in the Schengen agreement, “exercise the utmost vigilance when issuing identity documents”, as well as “examine urgently the relationship between safeguarding internal security and complying with international protection obligations and instruments” (Council of the European Union 2001: 8-9, paragraphs 24-30).

The conclusion of the JHA policy document focused on the exchange of information between member states in order to ‘combat terrorism’ including “controls at airports, cross-border controls, controls at express roads, controls at the external borders of the European Union” (Council of the European Union 2001: 7).

The post-Madrid Declaration on Combating Terrorism (European Council 2004) contributes to this construction of a discourse of control through the discursive linkage of the danger/risk/threat of terrorism and security, migration, asylum and border control. There is the assertion that “improved border controls and document security play an

important role in combating terrorism". The syntactic ordering of sentences links 'combating terrorism' to a series of measures designed to ensure tighter border control. These include the establishment of "a European Borders Agency", "incorporation of biometric features into passports and visas", as well as developing a common EU approach to "the use of passenger data for border and aviation security", including for "other law enforcement purposes" (European Council 2004: 7-8). Objective Four of the Revised Plan of Action is even more explicit in discursively linking counter-terrorism policy to border control in that its stated aim is: "to protect the security of international transport and ensure effective systems of border control". Indeed it seeks to "ensure the integration of counter-terrorist consideration into the work of relevant EU bodies (transport, border controls, identity documentation etc)" (European Council 2004: 15-16). The discursive construction of measures of control at borders, as being central to counter-terrorism responses, gains ever more traction in the post-Madrid environment.

The Hague Programme continued to reify the discursive link between the regulation of "migration flows", the aim to "control the external borders" and the need to "repress the threat of terrorism" (Council of the European Union 2004). The document itself contains three sections; strengthening freedom; strengthening security; strengthening justice. The section on freedom is the longest and seems to be given the most importance. The document states that "freedom, justice, control at the external borders, internal security and the prevention of terrorism should henceforth be considered indivisible within the Union as a whole" (Council of the European Union 2004: 4). The document interprets the concept of 'freedom', a concept defined in previous counter-terrorism documents as an intrinsic value of the EU, as best served through restrictive immigration practices that are constructed as central to ensuring the security of the Union. Every measure proposed under the 'strengthening freedom' section of the Hague Programme relates to immigration policy, border control and security with the implicit assumption that these measures will provide protection against the possibility of further terrorist attacks.¹²

Migration, in particular border control, is dealt with under the 'Protect' objective of the Counter-Terrorism Strategy. The document contributes to the continuous construction of border controls as one of the most appropriate responses to the terrorist threat. It focuses on a "need to enhance protection of our borders to make it harder for known or suspected terrorists to enter or operate within the EU" (Council of the European Union 2005b: 10). Simultaneously, it continues to reinforce the link between a series of measures designed to enforce migration and asylum control with the desired policy response to terrorism. The use of new technologies already advocated in earlier policy documents are constructed as indispensable in the 'fight against terrorism'. For example, "the capture and exchange of passenger data" and the "inclusion of biometric information in identity and travel documents" it is argued, will play a role in improving "the effectiveness of our border controls and provide greater assurance to our citizens" (Council of the European Union 2005b: 10). Migration continues to be linked to terrorism and constructed as a security problematic with the assertion that "The European Borders Agency (Frontex) will have a role in providing risk assessment as part of the effort to strengthen controls and surveillance at the EU's external border" (Council of the European Union 2005b: 10).

This discursive construction has continued and gained ever more complexity throughout the historical development of EU counter-terrorism policy. The latest report, the Implementation of the Strategy and Action Plan to Combat Terrorism continues to focus

¹² These include Article 1.1 which refers to 'Citizenship of the Union', Article 1.2 which refers to 'Asylum, migration and border policy', Article 1.3 which focuses on the development of 'A Common European Asylum System', Article 1.5 which advocates the 'Integration of third-country nationals', and Article 1.7, the 'Management of Migration Flows, which includes Article 1.7.1, 'Border Checks and the fight against illegal immigration and Article 1.7.2, 'Biometrics and information systems.'

on border control (Council of the European Union 2008). It restates the second objective of the Counter-Terrorism Strategy and reinforces this discursive linkage between security and asylum migration policy "to protect citizens and infrastructure and reduce our vulnerability to attack, inter alia through improved security of borders, transport and critical infrastructure" (Council of the European Union 2008: 6, paragraph 1). The document links the Schengen Information System (SIS II) to terrorism through a proposal to establish "a system for early detection of persons suspected of activities related to terrorism or organised crime, with the help of SIS alerts" (Council of the European Union 2008: 6, paragraph 4). Again it discursively links the counter-terrorism strategy to a series of ever increasing complex measures at borders as well as explicitly linking the CT strategy to migration and asylum policy documents: the European Commission communication on "Preparing the next steps in border management in the European Union", as well as the European Pact on Immigration and Asylum.¹³

Summarising the Discursive Construction of the 'Migrant Other' in the Counter-Terrorism Policy Documents

The Tampere Conclusions and subsequent internal and external security documents, including specifically the counter-terrorism policy documents, have discursively constructed the 'openness' of European society as part of a security problematic. Constructing the 'openness' of European society as an environment which the terrorist(s) abuses to pursue their own objectives, has the implicit effect of conflating the threat of terrorism with the 'problem' of migration. This discourse plays a formative role in constructing the 'migrant other' as a *possible* threat; in particular and given the nature of the policy area, a *possible* terrorist threat. Allied to this initial discursive formation then is the second discursive formation that one can identify, which is mutually constitutive and is central to what has become a counter-terrorism, security based response, to the 'migrant other'. This second discourse constructs the 'migrant other' as in need of 'control' in order to prevent the *possibility* of future terrorist attacks. The EU counter-terrorism policy documents discursively link an ever growing range of increasingly sophisticated control-based policies, practices and measures for the control of immigration to counter-terrorism responses.

Summarising the above one can say that the meta-narrative of the *possible* threat of the 'migrant other' within the EU counter-terrorism policy discourse contains several key features:

- (1) European identity is defined through a shared commitment to a number of values including freedom, respect for human rights, democratic institutions, respect for the rule of law, as well as peace, prosperity and tolerance. Terrorism is constructed as a threat to these values and as such a threat to European society.
- (2) Globalisation is constructed as a positive process which has had the unintended consequence of making European society more vulnerable to a series of new and interlinked threats. The 'other' is constructed as having 'mis-perceived' this process.
- (3) The 'openness' of the globalised European society is presented as a possible threat; the 'open' environment of European society one which terrorist 'abuse' in order to pursue their objectives.

¹³ The Communication includes proposals for the introduction of an entry/exit system, allowing the electronic recording of the dates of entry and exit of third country nationals into and out of the Schengen area; proposals to facilitate border crossing for bona fide travellers, through the introduction of automated border crossing facilities for EU citizens and certain categories of third country nationals; and parameters for the possible introduction of an Electronic System for Travel Authorisation (ESTA).

- (4) The 'terrorists' are constructed as representing a 'new' threat in that they target the innocent indiscriminately and are committed to 'maximum violence.'
- (5) A number of counter-terrorism measures linked to immigration and asylum policy which explicitly link the 'migrant other' to preventative counter-terrorism policy are constructed as the most appropriate method through which to stop the 'abuse' of the 'open' European society by terrorists.
- (6) The Hague Programme constructs 'Freedom' as a value which can be realised through the introduction of restrictive immigration and asylum policies; this has the implicit effect of constructing the 'migrant other' as in need of 'regulation' or 'control'.
- (7) The link between terrorism and this contingency-based discourse of 'control' of the 'migrant other' is continually reified throughout the discursive production of EU counter-terrorism policy; implicitly constructing the 'migrant other' as a security threat.

First-Level Analysis

This first-level critique analyses the discourse on its own terms demonstrating that it is predicated on a number of assumptions that are susceptible to a critical analysis.

The threat posed by Globalisation, an 'Open' Society

The use of the words barbaric and civilisation in the early stages of EU counter-terrorism policy conjured up the image of an ongoing struggle between civilization and barbarism which in terms of European identity is inextricably linked to Europe's Graeco-Roman heritage and in particular is associated with a conflict between Christendom and the Islamic world (Guerrina 2002). The meta-narrative of this struggle also has a long genealogy in international relations (Jackson 2005; Salter 2002). The image of the terrorist as today's barbarian, as a danger/risk/threat to Europe's 'open' society, is a particularly powerful one. Richard Jackson (2005: 48) argues that in another sense globalisation has come to be seen as the late-modern, sociological term for the 'civilising process' and in that respect "terrorism, as a form of barbarism, can be seen as a challenge to international order and the civilising process of globalisation".

Notice also the way in which the 'other' is constructed as having explicitly mis-'perceived' globalisation as a 'cause of injustice'. This narrative implies that globalisation has essentially positive effects with the way in which it claims 'development', 'democracy', 'freedom' and 'prosperity' as central to processes of globalisation. It also serves another function in that it simultaneously denies space within the narrative for the negative effects of globalisation, such as underdevelopment and an increasing gap between rich and poor societies, through the assertion that the other has inaccurately 'perceived' globalisation as a cause of 'injustice'. The narrative that constructs the threat of the terrorist 'other' as a threat to the 'open' and globalised societies of the West is thus strengthened. It also plays a role in constructing the terrorist as backward, irrational or reactionary in that they seek to challenge or undermine a process (globalisation) that is portrayed as an extremely positive process.

In Richard Jackson's (2005: 53) analysis of the US counter-terrorism discourse he argues that this interpretation of the terrorist other as a threat to globalisation was not inevitable and that a different rendering of globalisation could have explained the terrorist attacks of 11 September 2001, as "a manifestation of globalisation's dark side: the attackers, representing a constituency blighted by the global economic system, attacking the symbols of that system by turning the vulnerabilities of a globalised society against itself."

This criticism can also be applied to the discursive construction of globalisation in the EU counter-terrorism policy discourse. In support of this line of argument one should consider Asafa Jalata's (2005) study of state terrorism in Ethiopia and Sudan in which he reveals how Western governments have demonstrated a degree of hypocrisy in terms of support for an Ethiopian regime, that has engaged in acts of state terrorism and massive human-rights violations, while simultaneously supporting the struggle for self determination by non-state actors in southern and western Sudan. These acts of violence are not only tolerated through the political support of Western governments but through the continued financial support of the Ethiopian government by international organisations such as the World Bank and the International Monetary Fund which embody the principles of globalisation that the EU argues are central to its conception of freedom, peace and prosperity.

A Discourse of 'Control'

This discourse of control is constructed on the basis of an assumption that the immigration or asylum regime of the EU is (or could be) taken advantage of by potential terrorists. If one takes the example of The Hague Programme this document demonstrates the pervasiveness of this discourse of control and its impact on the concept of freedom. As Didier Bigo has acknowledged, a closer look at the document reveals something in the equilibrium of the titles that does not add up: the second section on strengthening security has in fact infiltrated and contaminated the other sections on freedom and justice. This has led Bigo (2006: 35) to argue that "we need to adapt the titles to their actual content by renaming the three parts: (1) strengthening security, (2) strengthening security, (3) strengthening security". Freedom is conceived of as a series of restrictive immigration and asylum policies. Freedom in this programme is understood not as the right to act but instead freedom is understood as the right to be protected. It is not without irony that this conception of freedom means that in order to be free one must also be secure. The perceived threat of terrorism has provided the catalyst for the development of a "concept of freedom that has become more dangerous for the fundamental rights of individuals than even traditional security measures [could be]" (Bigo 2006: 38). This tendency towards securitising other policy areas, through their discursive construction as important elements in the EU's wide ranging counter-terrorism policy responses, is reflective of the direction of EU counter-terrorism policy in general.

Andrew Neal (2009: 339) has argued that the language used by the EU in the early stages of the production of counter-terrorism policy was representative of a traditional 'securitising' move emphasising that it demonstrated "an assumption that the human rights and asylum regime is being abused or taken advantage of by actual or potential terrorists, and is an immediate externalisation of threat which is by implication foreign".¹⁴ Certainly, one can detect the first instances of the discursive construction of 'control' emerging as a central element in terms of EU responses to terrorism and the threat represented by the 'migrant other'. However there is little empirical evidence to prove this assumption that the immigration and asylum system within the EU was (or still is) being taken advantage of by actual or potential terrorists. The latest TE-SAT report for the period 2008 (Europol 2009) demonstrates a trend of decreasing incidence of acts of terrorism (down 24 percent from 2007). The document argues that the 'perceived' threat of 'Islamist terrorism' remains the gravest threat to a minority of member states; in particular there is an assertion that "the number of persons associated with 'home-grown' Islamist terrorist groups is rising in the EU" (Europol 2009: 7). Regardless of this perception the empirical

¹⁴ Neal demonstrates that the creation of FRONTEX represents a failure of traditional securitising moves. Instead he argues that it is representative of a 'governmentality of unease' that traverses the two definitions of securitisation.

evidence demonstrates that actually ethno-nationalist inspired terrorism remains the type of terrorism which affects the EU most (397 attacks and 4 deaths in 2008). With the focus of the TE-SAT report being on the perceived threat of 'home-grown' terrorists and the statistically verifiable threat of ethno-nationalist terrorism by EU citizens, the need for increased border control which is a central element of EU counter-terrorism policy and the discursive linking of migration to terrorism seem dubious assertions at best. Beyond some vague suggestions that countries on the Eastern border of the EU may provide transit for terrorists to reach their targets, no figures are offered relating to migrants or asylum-seekers engaged in acts of terrorism within the EU.

Second-level Analysis

This second-level critique uses a wider contextual and inter-disciplinary analysis of the processes involved in the discursive production of counter-terrorism policy

The threat posed by Globalisation, an 'Open' Society

This discursive meshing of globalisation with unlimited violence and extremist or religiously inspired terrorism cannot be considered here in great detail. However, in terms of the EU's discursive construction of the 'openness' of a globalised society interlinked with the threat of terrorism there is a point to be made. Adrian Guelke (2006) highlights the argument that is sometimes made by policy-makers, officials or political leaders, which one can detect in the EU counter-terrorism policy documents, that perpetrators of terrorism seek to engage in acts of unlimited violence, fails to take into account the relationship between the scale of violence a sub-state group may seek to inflict and its political goals. For Guelke, the process of globalisation and its influence has been greatly over-exaggerated, noting that human beings continue to live in societies that are relatively independent of one another, consequently most sub-state political actors, including sub-state actors engaged in terrorism or political violence, seek primarily to influence events at that level. The construction of terrorism as an external threat to a political community is not new. As Guelke points out "the attribution of responsibility for acts of violence to outsiders is to be found throughout the history of violence" (Guelke 2006: 15).

Similarly, this narrative of the threat posed by globalisation and an 'open' society within Europe cannot be understood outside of a number of pre-existing discourses associated with the 'resident' or 'migrant other'. Following Peter van Ham's (2001: 194-195) assertion, one can argue that "Europe's narrative identity is not authored by 'Europe' alone, but is written and continuously rewritten and reread by ordinary people and political elites both 'inside' and 'outside' Europe's fuzzy boundaries." European identity is constructed and reconstructed through contact and interaction with the 'other'. Ham argues that the millions of (illegal) immigrants and denizens within Europe, that constitute a great number of the many minority groups within its borders, have been perceived as injuring the cultural and social cohesion of Europe itself. The 'resident other' or 'immigrant other', is not quite comfortably enough, spatially distant. They can live in close proximity to 'us', confronting 'us' with different ideas and values, and challenging the dominant hegemonic cultural patterns of the host population: "immigrants, refugees, and asylum seekers are the new 'peripheral peoples' of Europe; they can be ex-colonials, usually second-class citizens, who are adding to 'the cultural hybridness of western nation-states'" (van Ham 2001: 195). These immigrants have continued to settle in post-imperial Europe, often assuming dual-citizenship as permanent residents or naturalised citizens, whose "experience of citizenship remains ambiguous and who have mixed the liberal democratic narrative of political and civil society with their own often confused and confusing experiences and cultural backgrounds" (van Ham 2001: 195). For some their presence raises serious

questions about pluralism and representation within Europe and helps to instil doubts about already established frameworks of civil society. Carl Levy (2005) explains that this reality helps to explain the fraught European Union policy of promoting the freedom of movement whilst simultaneously seeking to create a harmonized system of asylum and refugee policy based on 'restrictionist' first principles. It also helps to explain why these discourses associated with the construction of the 'migrant other' as a threat have found themselves reproduced in the EU counter-terrorism policy.

A Discourse of 'Control'

The vociferousness with which the policy continually links the control of the 'migrant other' to counter-terrorism policy is matched only by the silence of the 'in-security' professionals and politicians on how those activities linked to the control of the flows of people have not only extended their reach but been strengthened by the adding of extra imperatives to the security agenda. By extending internal security into a wide range of disparate phenomena (terrorism, drugs, organised crime, immigration) that are constructed as mutually constitutive; extending the control of the movement of people (transnationally) be they migrant, refugee, asylum-seeker or other border crosser; or even more generally extending control to any citizen who does not correspond to the social image that one holds of his national identity (Bigo 2005). The effect is control goes beyond the parameters of conventional control measures and policing of foreigners to include persons deemed at 'risk', who are put under surveillance because they correspond to an identity or behaviour more likely to make them predisposed to that risk: the 'migrant other' then as *possible* terrorist threat.

This interpretation of migration has a real impact. In his research on migration between Sub-Saharan Africa (SSA) and the EU, Robert Dover (2008) suggests that fewer controls on the flow of people would have a positive impact on the individual migrants themselves as well as economic benefits for both the African and European in economies. Dover argues in spite of the fact there is 'very little evidence that migrants from SSA present a terrorist threat to the EU... the changes to how migrants enter the EU have been informed by these beliefs and the counter-terror agenda. The racial profiling that typifies these procedures constitutes a form of unacknowledged and systemic racism throughout the European policy sphere' (Dover 2008: 127).

This discourse of control is continually reinforced through the linking of preventative counter-terrorism measures to ever more sophisticated measures, policies and practices designed to control the movement of the 'migrant other'. Central to this has been the development of biometric measures of control. Juliet Lodge (2004) has drawn attention to this by arguing that the creation of an EU 'homeland security agenda' and its associated biometric instruments signal not only an increasing securitisation of the EU generally but also challenges the EU's commitment to the principles of freedom, security and justice as well as compromising the privacy of citizens and non-citizens alike. The result of the application of biometry, to service immigration and internal security concerns (such as the 'fight against terrorism'), may instead "compromise rather than strengthen EU legitimacy" (Lodge 2004: 254). With this in mind, Bigo's assertion that there exists a 'governmentality of unease' which has the implicit effect of profiling and containing foreigners seems apt. As a manifestation of what Walters (2002) has called the 'biopolitical border', Louise Amoore (2006) has argued that biometric borders now extend into the governance of mobility regulating aspects of everyday life: "subject to biopower, the crossing of a physical territorial border is only one border crossing in a limitless series of journeys that traverse and inscribe the boundaries of safe/dangerous, civil/uncivil, legitimate traveller/illegal migrant" (ibid: 338). It is not the emergence of these borders which is necessarily the problem but the performance of the idea of the biometric border that tells us something

about the EU's 'fight against terrorism'. As Bigo (2001 cited in Amoore 2006: 338) argues immigration and the terrorist threat become combined as a problem "not because there is a threat to the survival of society" but because "scenes from everyday life are politicized, because day-to-day living is securitised". The introduction of measures at borders is not so much about the 'new' threats at the borders as it is identifying and separating out the "safe from the dangerous at multiple borders of daily life" (Bigo 2001 cited in Amoore 2006: 338).

Conclusion

In this article an attempt to provide a discursive analysis of how the meta-narrative of the 'migrant other' has been central to the construction of EU counter-terrorism policy has been made. It has been argued that a critical discourse analysis of EU counter-terrorism policy helps to draw out the different narratives surrounding the 'migrant other'. Specifically, how the focus of the counter-terrorism policies on the threat of a globalised or 'open society' has the implicit effect of constructing the 'migrant other' as part of a security problem; but also how the focus of the counter-terrorism policies on control of migration at the EU border has the explicit effect of constructing the 'migrant other' as a security threat. Unlike institutional, implementation or governance approaches to EU counter-terrorism policy critical discourse analysis allows one to challenge the assumptions, the beliefs, the knowledge that are central to the constitution and construction of EU counter-terrorism policy; furthermore it also allows one to draw out the ambiguities, misconceptions and fallacies within the discourse itself.

The main thrust of the argument put forth here has been that in the discursive construction of EU counter-terrorism policy the socially constructed threat of terrorism has been conflated with the threat of the 'migrant other' leading to the securitisation of asylum and migration policy. The type of securitisation that it is argued is occurring here is however different from a traditional conceptualisation of securitisation. It is a more banal form of securitisation in that its impact is less the creation of special measures in exceptional circumstances (that threaten the survival of a society) and more the introduction of mundane policies and practices, technologies of security that in this case result in "normalising the statistical majority and abnormalising the migrants" (Bigo 2008: 108). It is not just practices of exceptionalism that drive this process but these everyday routines of technologies of security, as Neal emphasises "much of what is being done in the name of security is quiet, technical and unspectacular, in the EU intensely so, and just as much again does not declare itself to be in the name of security at all" (Neal 2009: 352). The impact of the discourse is as such a normalisation of the policies and practices, the technologies of security that construct the 'migrant other' as a threat, rather than a legitimisation of the EU counter-terrorism policy response. An interesting avenue for future exploration then is to what extent this discourse has an effect in the bureaucratic processes of the EU. That is what role it plays in the relationship between the political language of EU leaders and the technical language of bureaucratic policy formulation.

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Migration and Security in the EU: Back to Fortress Europe?

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Abstract

An analysis of the linkages between immigration and security must consider three basic issues and tasks. First of all, it must look at the definition of the concepts in use: threat, referent object and the logic or rationale that brings both concepts together. Secondly, the framing of immigration within the discourse on security issues is to be tackled. And thirdly, it must take into account the measures and public policy instruments related to that framing. This article focuses on these three interrelated issues and explores those questions with particular reference to the EU area. The first part reviews the scholarly literature that explores the linkage between migration and security in order to identify what is known as the 'threat', the referent object and the rationales established in discourses since the 1990s. During this decade the EU began to develop its 'common' immigration policy, while at the same time critiques of the emerging securitisation of migration were developed. The second part of this research traces the effects of the terrorist attacks of 11 September 2001 on discourses and public policies in the EU. The analysis of post 9/11 developments in the EU provides evidence to deny on the hand, that EU institutions' discourses on immigration policies consider this phenomenon as an existential threat and, on the other hand, to reject that extraordinary measures or courses of actions had followed those terrorist attacks. A global approach towards migration is underway although in need of political impetus.

Keywords

European Union; Immigration; Public Policy; Security.

SOME ESSENTIAL QUESTIONS HAVE TO BE ANSWERED IN ORDER TO CLASSIFY A phenomenon as a security risk. First of all, the threat has to be thoroughly defined and characterised. Secondly, the referent object of security (i.e. that which is in danger or being threatened and thus in need of protection), must also be clearly identified. Thirdly, the logic that links the threat and the referent object must be plainly stated so that the chain linking the causes (threat) and consequences (to referent objects) is traceable. In one way or another, all those concepts need to be at least tacitly expressed within an analysis of migration discourses. In terms of discourse, the framing of an issue as a security matter occurs when a discourse takes the form of presenting something as an existential threat (Buzan *et al.* 1998).

Another key question is whether a phenomenon such as immigration is properly typified within that paradigm of security or not (i.e. is framing immigration as a security issue necessary?). As Collyer (2006) notes, the question lies in whether potential dangers of migration should be explored within a security framework or viewed as simply 'problems' to be addressed. It is also important to identify what the framing of immigration as a

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security issue is trying to achieve (Collyer 2006: 256). In line with Austin's (1962) seminal work on "speech acts" or "illocutionary acts", Wæver *et al.* (1993) point out how presenting a public issue as a serious security threat means elevating this issue to an absolute priority, so that the logical consequence will be to take emergency measures or an exceptional course of action (see Wæver *et al.* 1993; Buzan *et al.* 1998). Natorski and Herranz (2008: 74) assure that in the case of the essential sector of energy, "employing security discursively is considered a politically-laden act", and moves towards securitisation can lead to success "only if the relevant audience agrees with the given security discourse and its policy consequences".

This article analyses three interrelated tasks: the definition of basic concepts and rationales on migration and security across time, the political discourses, and the measures and course of action in regards to the EU immigration policy after 11 September 2001 (9/11). The first part reviews the scholarly literature that explores the linkages between migration and security in order to identify the 'threat', the referent object and the rationales created since the 1990s. This decade provided the context for the EU's development of its 'common' immigration policy, as well as the context for some important critiques about the securitisation of migration. The second part of the article pays particular attention to the two latter tasks: the implications of those terrorist events for the recent discourse and policy developments on EU 'common' immigration policy.

The linkage between migration and security in developed countries. From the threat of political violence to problems of internal stability

Despite the fact that some scholars linked immigration and security long ago (Miller 1998: 18) or even perceived security rationales as the backdrop for most countries' restrictive immigration legislation, it was not until the 1990s that the migration-security pairing was more widely addressed. Myron Weiner (1993; 1995) led the way in the study of the immigration phenomenon from a security/stability framework, paying particular attention to immigrants' involvement in political violence.¹ He analyses some associated 'threats': when immigrants and/or refugees (1) are armed and become involved in activities related to the traffic of weapons or drugs, (2) ally with opposition and oppose the receiving country's regime or (3) oppose the regime of their home country from the receiving one (Weiner 1993; 1995). Thus, the foreign population is understood as a risk regarding internal stability and security, as well as an international security threat (among states).² Another example of such 'immigrant threats' relates to when they are involved in activities perceived as social burdens due to their implications for crime and delinquency. In this case, these illegal activities are thought to worsen crime rates or delinquency records.

Several other referent objects related to stability and governance were specified in the academic research within this decade, particularly in two domains: economy, and identity and cultural practices. In the economic domain, the analyses of the impact of immigration mainly referred to two aspects. On the one hand, the labour market and the competition for scarce resources (Borjas 1996; Ullman 1995; Alvarado and Creedy 1998; Money 1999) and on the other hand, the sustainability of welfare states in developed countries (Freeman 1986; Stolker 1994; Razin and Sadka 1995; Baldwin-Edwards 2002). A second

¹ Some other scholars from international relations also began in the 1990s to analyse the security dimensions of migration and refugees in the context of globalisation, for example Miler (1997, 1998), Jessen-Petersen (1994) and Zimmermann (1995).

² In the field of security studies, the 1990s provided an opportunity for redefining security in a post-Cold War context. Redefining security gave rise to a debate on the incorporation of new threats, not only of military nature but also 'soft' threats, new referent objects and new rationales for linking new threats and referent objects. The Copenhagen school specially contributed to broaden the understanding of referent objects with new concepts such as 'societal security' (Buzan 1991 and 1993; Buzan *et al.* 1998; Wæver *et al.* 1993).

realm is that of identity and cultural practices. Globalisation debates in the area of international relations emphasised the transnational and trans-border character of movements of people that are analysed by their effects in cultural terms. In that sense, Weiner points out that “migrants can be perceived as a threat to the major societal values of the receiving country” (Weiner 1993: 103). New characteristics of migrants and refugees seem to challenge identities of citizens settled in receiving societies, and as a consequence their newcomers’ values and cultural practices are perceived as a risk or cultural threat to social cohesion and shared security (Schieffer 1997: 97; Sartori 2001).

These initial classifications of risks and referent objects have posed some problems (Bermejo 2005: 271). Most of the analyses lacked a precise definition of the threat and there was no clear explanation of the link between threats and referent objects (i.e. how those threats were to affect particular referent objects in danger is frequently not stated). Their identification of risks and referent objects lacked a clear and precise definition of the threat due to the use of vague and broad concepts (immigrants or/and refugees or demographic threats). Besides, not all of the activities identified as threatening considered the same number of immigrants. For example, there is no distinction made between the risks posed by a large number of immigrants versus the risks posed by small but well settled and organised groups. This broad identification may lead to problems of criminalising or securitising large groups of people. In order to avoid that inexactness, the focus should be on the activities, and not on groups, of populations. In addition, Brochmann points out a tendency in most receiving countries to highlight flows of people rather than individuals. The perception of immigrants as representing flows rather than individual human beings “reinforces the threat images of immigration, and has contributed to a tendency of *politization* of immigration” with the utilisation of metaphors like ‘flood’, ‘invasion’, ‘hungry hordes’ that play on people’s fears and insecurity (Brochmann 1999: 331).

A second group of critiques comes from the characterisation of receiving societies (referent objects). Not only are receiving societies not homogeneous but also when immigrants are perceived as a cultural or social cohesion problem the cultural values of both immigrants and receiving populations are thought to come into conflict. Thus, the degree and scope of problems will depend on factors such as the distance and difference between cultures and practices (Miller 1998: 19). Furthermore, the perception of immigrants as economic or welfare burdens depends on the receiving society’s economic situation. In a prosperous and growing economic time, the ‘same immigrants’ who are seen as welfare burdens can be perceived, instead, as necessary for the maintenance of economic growth.

Among the more determined critics over securitising discourse, Huysmans has highlighted the dangers of securitizing societal issues such as migration (Huysmans 1995; 2000; 2006). In this same vein, Geddes (2000) draws on Wæver’s ideas on framing migration as a security issue, arguing that:

...security discourse is characterised by dramatizing an issue as having absolute priority...‘Security’ is thus a self-referential practice, not a question of measuring seriousness of various threats and deciding when they ‘really’ are dangerous to some object.... It is self-referential because it is *in* this practice that the issue becomes a security issue. (Wæver in Geddes 2000: 26)

This discourse seems to produce a ‘self-fulfilling’ prophecy: “once turned into a security problem, the migrant appears as the other who has entered (or who desires to enter) a harmonious world and just by having entered it, has disturbed the harmony” (Huysmans 1995: 59). This author rejects the concept of ‘societal security’ to distinguish the referent object from those of ‘hard’ threats, and also criticizes attempts to balance the

securitisation discourse with a discourse that highlights the benefit and profits that migrants bring to receiving societies.

The EU's fortress and its critics

Geddes' research on the evolution of the European integration process focused on the development of EU immigration and asylum policy to point out the rhetoric of restrictions that have underpinned EU policies about immigration matters since the initial EU debates, negotiations and activities regarding immigration. A "strong security rationale" is related in part to patterns of internal security co-operation, to the search for new roles for security agencies and to liberalisation of movement. In this sense, Geddes assures that "processes of securitisation and the control of population are the foundation stones of liberalisation with the effect that migration becomes a part of the security issue" (Geddes 2000: 26-27).

The initial EU activities and intergovernmental structures in the field of migration included: the TREVI group from 1976 onwards, the Working Group on Immigration from 1986 onwards and from 1989 the Co-ordinator's Group of civil servants that prepared the 'compensatory measures' to response to the more immediate 'threat' posed by the dismantling of border restrictions under the 1992 Single Market Programme. All those series of developments are perceived as responding or purporting to "respond to external threats and dangers" (Walker 2004: 11).³ These intergovernmental steps started in the context of fighting international crime and terrorism and contributed to the linking of immigration to issues of domestic and international security (Guiraudon and Joppke 2001: 15). Huysmans perceived the Schengen Agreements, the setting up of the Third Pillar within the Maastricht Treaty, and the Dublin Convention on refugees as part of the development of a "restrictive migration policy and the social construction of migration into a security question" (Huysmans 2000: 753).

From a legal point of view, Walker notes a "pattern of threat and response in major institutional developments of the 1990s" (Walker 2004: 11-12). Those institutional developments include: (a) the establishment of a Third Pillar in 1992 Maastricht Treaty that introduced Justice and Home Affairs matters within the official European Treaty structure; (b) the beginning of Third Pillar's 'communitarisation' at the Amsterdam Treaty in 1997 that launched the Area of Freedom, Security and Justice (FSJ); and (c) the following Tampere common policy programme in October 1999. Regarding all these institutional steps, Walker (2004: 12) assures that,

...in each case, the development of institutional strength and policy capacity in FSJ was preceded, accompanied, and endorsed by a policy attitude and language that sought to address or contain new or extended threats to the security of the European Union in the form of new types or intensities of transnational crime and new 'push' and 'pull' factors in the sphere of immigration and asylum.

However, Huysmans assures that the discourse on 'fortress Europe' performs a specific function: the presence of 'bogus' refugees and irregular immigrants seemed to be enough to pose a challenge to European security/stability and the aim of that discourse is to increase community cohesion and the construction of the referent object as societal security itself (Huysmans 2000). For Guiraudon and Joppke (2001: 15) "there is a principal reason for linking migration and security: to the degree that immigration is unwanted, and immigration policy becomes 'control' policy, immigration is likely to be addressed in negative terms, as a 'threat' to the receiving society". In this way, securitisation seems to be

³ In contrast, Huysmans circumscribes the process of securitization to the mid-1980s onwards as a consequence of a politicization of immigration and asylum issues. In that context, migration is no longer considered in the context of social and economic rights (Huysmans 2000: 755-756).

the concluding result of a desire of avoiding immigration and not the pre-condition that allows restrictive and 'control' policies towards migrants.

But there also seems to exist significant but unintended consequences of the discourse linking migration and security issues within the European Union. Emphasizing restrictions and controls in itself implies a negative portrayal of groups of migrants and that discourse can lead to xenophobic or discriminatory ideas or practices among an 'ignorant' or 'easily persuaded' public (Collinson 2000: 302; Huysmans 2000). At the same time, securitisation makes the inclusion of immigrants in European societies more difficult while further diminishing the chances of promoting multicultural policies (Huysmans 2000: 753; Papademetriou 2003). Some radical parties may take political advantage of the discourses on the securitisation of migration, but in general terms this approach to migration has a negative effect on immigrants and the receiving societies.

Those analyses show a clear division in the academic work on the issue of the securitisation of immigration and asylum policies within the EU area. For some authors, the process of securitising discourse seems to be an unintended and involuntary consequence of the cooperation and integration process in other matters such as the Single Market project. However, another approach portrays the discourse of security as prior to immigration policy developments, objectives and structures within the European arena. That is particularly important in terms of the discourse's intention. For example, an issue may be securitised in order to introduce exceptional measures which would otherwise encounter greater resistance.

Whatever the origin of the linkage between immigration and security in the EU, another question needs to be asked: What does 'fortress Europe' mean? ⁴ What is its relationship with securitising migration? Geddes relates the concept of 'fortress Europe' to European integration processes and the patterns of inclusion and exclusion. The outcome of the process of supranational integration seems to be a 'fortress' constructed on tight external frontier controls and the exclusion of settled migrants. 'Bogus' asylum seekers and undocumented migrant workers are among the perceived threats to EU security (Geddes 2000: 6 and 172). The increasing numbers of both classes of 'undesirables' seem to affect two referent objects: public order and domestic stability (Lodge 2007). In addition, Huysmans assures that those 'undesirables' are perceived as a burden for European welfare states and for the cultural composition of the nations due to their effects on the weakening of national traditions and societal homogeneity (Huysmans 2000).

In sum, most of the theoretical work in the 1990s focused on intentions and desires that stemmed from a narrow view of migration that considered it as a phenomenon that affected external borders. That theoretical work on 'fortress Europe', along with previous work on the securitisation of immigration, lacks a clear description of the rationales that seem to link threats and referent objects in receiving societies. In this case, as long as the EU policy on immigration stems from a connection between economic liberalisation and a Single Market, there seems to be no requirement for other measures than those linked to border control (Geddes 2000: 171). As a consequence, in the 1990s there was no need, or political desire, for elaborating another discourse on immigration in order to advance a different policy at the European level. Thus, the 'fortress Europe' concept relates to the character of the European Union due to its exclusionary practices towards non European nationals; the concept was opposed to an 'open' or 'welcoming Europe'.

⁴ There are references to 'fortress Europe' in the academic research since the beginning of the 1990s.

A revival of the agenda for fortifying 'fortress Europe'?

In 2000 and 2001, some Communications issued by the European Commission on asylum policy, immigration policy, and on the co-ordination of national migration policies promised a more balanced policy than before, which included greater openness to immigration. Were these proposals abandoned or watered down due to the terrorist attacks? Geddes (2003) analysed European immigration policy after a few months of the terrorist events⁵ to clarify whether those 2000 and 2001 proposals signified a move towards a common European immigration policy and assured, not very optimistically, that "the parameters of a common policy have begun to emerge, with some Commission prompting, but questions remain about the political will of member states ...; policy development has so far been deficient" (Geddes 2003: 142).

In this context, two questions are worth to be analysed. First, how those terrorist incidents influenced the European discourse and policy on immigration? Second, has the European Union followed a renovate agenda for fortifying 'fortress Europe' after 2001?, i.e. Is there a securitisation of migration in the European Union after 2001 events? Several authors have analysed the effects of the terrorist attacks in the process of EU immigration policy building. Some have concluded that there has been an effect of securitisation of migration (Bigo 2002; 2008; Luedtke 2009) but others do not characterise the post 9/11 EU immigration policy as a security policy (Boswell 2007, 2009; Neal 2009). The present section analyses that previous academic work related to the effects of those attacks and moves forward to some examples and instruments adopted in the European context after those attacks in order to evaluate whether a securitisation of migration has taken place. Discourse and policy instruments are separated with an analytical purpose.

11 September 2001: the impact on immigration policies

The linkage between the US attacks, foreignness, and terrorist organisations located outside US borders has led to claims that as long as the terrorist threat is characterized as external and not associated with immigrants or refugees, the overall environment for immigrants has remained relatively hospitable in the United States; more than in Europe (Prizel 2008). At the same time, it is worth noting that debates on both sides of the Atlantic raise the question of sovereignty and efficiency in controlling flows across borders. Due to the insecure international environment, governments seem to have attempted to increase their citizen's feelings of security by enhancing border controls.

Guild analyses post- 9/11 views on foreignness and assures that "the principle reason behind the arguments for closure of borders is related to national security" (Guild 2003: 395). As a consequence foreigners are represented as threats. Considering the implication for policing measures of framing these people as threats, "crossing the border puts the individual into the category of persons who are suspected of possible participation in criminal acts" (Guild 2003: 396).⁶ While that assessment can be linked to illegal migration in some cases, the reality is that the role of border control is to prevent the entrance of criminals and terrorists. The policing of borders becomes greater in a context in which borders have been demilitarised and economically liberalised (Andreas 2003: 78) and the

⁵ The Commission published a biennial 'scoreboard' specifying the progress towards the attainment of Tampere objectives and in its summary of developments in the second half of 2001 it pointed out some positive developments towards the Tampere programme such as the European Refugee Fund, the directive on Temporary Protection and the setting up of the Eurodac system (cited in Geddes 2003: 139). Nevertheless, Eurodac is also perceived as highlighting the "restrictive and control-oriented basis of the Dublin Convention" (Huysmans 2000: 756).

⁶ But also immigrants involvement in crime inside the receiving country has been analysed in order to determine whether they are a security threat (Guiraudon and Joppke 2001: 16-19; Quassoli 2001).

enhancement and enforcement of policing at the borders tries to contribute to the individualization of threats and surveillance and detection of 'potential' dangers.

Thus, the attacks seem to have different impacts depending on the dimension of immigration policy examined. On the one hand, those immigrants who live inside the territory do not seem to suffer exclusionary practices. On the other hand, those who try to cross the borders are perceived as a threat. This article proceeds separating those two areas or dimensions in the EU policy. As it was stated above, the concept of a 'fortress Europe' was based not only on the control policy at borders but also on the absence of measures to include immigrants; exclusion of those settled. As Geddes (2000: 6) defined 'fortress Europe', the notion implies two things: "first, tight restriction of those forms of immigration deemed to constitute a 'threat' in economic or 'racial' terms to the EU member states, second, the social exclusion of settled migrants". 'Control' and 'integration' are commonly purported as different dimensions of immigration policies.⁷

What seems to be undeniable is that the new environment has made an impact on EU policy while the discussion of its effects -their new or old character in the securitisation of immigration and the scope of those effects- is much more open. Below, in the area of discourse two different effects are considered. First, the literature has identified a broad effect in debates that means more time devoted to terrorism within the JHA debates and the increasing relevance of area of Freedom, security and justice in the European policies. Second, the analysis of the discourse and rationales for that development shows the absence of an intention of securitising immigration as a consequence of the terrorist attacks.

EU debates and discourse on 'controlling immigration' in the aftermath of 11 September 2001

Walker assures that "the latest and largest security threat to mobilize development in FSJ is of course, the destruction of the Twin Towers at the World Trade Center, New York on 11 September" (Walker 2004: 12). Luedtke (2009: 132-136) distinguishes between direct and indirect effects. For example, a direct effect would include the rise of terrorism on the EU's Justice and Home Affairs agenda. As Luedtke (2009) cites, this effect was pointed out by Monar (2002) on the basis of the analysis of the first post- 9/11 European Council meeting in which terrorism and judicial cooperation in criminal matters received the most time and attention. So, the standstill in regards to immigration policy seems to be based on the time allocated for debates, while measures on terrorism and judicial cooperation were given more time and agreements were reached (Monar 2002 in Luedtke 2009).⁸ Thus, part of the academic analysis on the effects of terrorist attacks focuses on the attention received by that policy area instead of others.

Nevertheless, that reaction is not securitising an issue such as migration as far as this phenomenon is not identified with terrorism. European Union policies before and after 11 September 2001 have been particularly careful in separating immigration and terrorism. The discourse of the European institutions has evidently differentiated both phenomena. For example, in terms of strategies, there are detached strategies to cope with immigration dilemmas and terrorist threats. No mention of migration is contained within the EU

⁷ In Hammar's seminal work they are different policies or dimension in the regulation of migration. Immigrant policies cope with flows and control and immigrants policies deal with integration matters (Hammar 1985).

⁸ The Extraordinary Justice and Home Affairs Council Meeting of 20 September 2001 was a product of the tragic events of 11 September in the USA, and the European Commission recognises that some subsequent actions relied on the conclusions agreed there. A chapter of the Conclusion dealt with "measures at the border" that included issues such as border control, issuing of identity documents, residence permits and visa, and the functioning of the Schengen Information System (SIS). Among the aims was pre-entry screening and the detection of those suspected of terrorist involvement at an early stage.

Counter-Terrorism Strategy⁹ which set out a framework to prevent radicalisation and the recruitment to terrorism, to protect citizens and infrastructure, to pursue and investigate terrorists, and to improve the response to the consequences of attacks.

As in the 1990s, most of the examples used to sustain the securitisation of migration are related to discourses on borders. Neal (2009: 339-340) singles out the wording of the Conclusions of the European Council of Laeken of 14 and 15 December 2001¹⁰ or the 15 November 2001 Communication by the European Commission on a common policy on illegal migration¹¹ as examples of securitisation of migration after the 9/11 attacks. The former states that:

Better management of the Union's external border controls will help in the fight against terrorism, illegal immigration networks and the traffic in human beings. The European Council asks the Council and the Commission to work out arrangements for cooperation between services responsible for external border control and to examine the conditions in which a mechanism or common services to control external borders could be created.

However, this paragraph needs to be analysed in its context (i.e. as part of the ideas related to "more effective control of external borders"). The aim of that conclusion is to ask the Member States to set up a common visa identification system and to consider the possibility of setting up common consular offices. So, this paragraph is part of the increasing concern on the permeable character of borders that are not only crossed by immigrants or business men and women in the contemporary globalised world but also by criminals or terrorists.

When this European Council analyses the Union's counterterrorist action following the 9/11 attacks in the United States, it identifies two types of actions: fight in Afghanistan and combating terrorism. Immigration is absent in this context. In addition, this is the same meeting in which the European Council (2001) calls for a broader view of the immigration issue within the EU: a "true common asylum and immigration policy" that implies an array of instruments:

- The integration of the policy on migratory flows into the European Union's foreign policy. In particular, European readmission agreements must be concluded with the countries concerned on the basis of a new list of priorities and a clear action plan. The European Council calls for an action plan to be developed on the basis of the Commission communication on illegal immigration and the smuggling of human beings;
- The development of a European system for exchanging information on asylum, migration and countries of origin; the implementation of Eurodac and a Regulation for the more efficient application of the Dublin Convention, with rapid and efficient procedures;
- The establishment of common standards on procedures for asylum, reception and family reunification, including accelerated procedures where justified. These standards should take account of the need to offer help to asylum applicants;
- The establishment of specific programmes to combat discrimination and racism.

In this context, the linkage between migration and borders and its prominent role within the immigration policy is still unavoidable due to the process of creation of the EU. As Lodge (2002: 65) assures "it is impossible to disaggregate them [asylum and immigration]

⁹ Council of the European Union, *The European Union Counter-Terrorism Strategy*, Document no. 14469/4/05 REV 4, Brussels, 30 November 2005, pp. 3-4.

¹⁰ Presidency Conclusions, Laeken European Council meeting of 14-15 December 2001, SN/300/1/01 REV 1.

¹¹ COM (2001) 672 final, 15.11.2001 on a common policy on illegal immigration.

from the wider issue of border control around the EU's external, leaky and vulnerable external perimeter, especially to the east". Nevertheless, EU borders management and common asylum and immigration policy are separated in the EU discourse and the deepening and enlargement of the EU regime on border controls is related to a wider range of problems, such as organised crime or drugs trafficking.

Besides, this discourse is not a whole new discourse; it is not a direct effect of the 11 September 2001 events. Those authors who defend the idea of securitisation of migration due to a linkage between crime and immigration are also aware of the fact that that discourse clearly pre-dates 9/11 (Baldaccini 2008: 32). The aim of enhancing external border controls had already been related, in the pre-11 September context, to the abolition of controls at the internal borders in the 1980s, to the completion of the Internal Market in the 1990s and to the eastern European enlargement in the 2000s (Monar 2006; Sie Dhan Ho 2006). Immigration, and particularly illegal immigration, is not seen as a threat to European societies in this discourse but a problem for the management of borders (referent object) that lead to an intensification in the degree of cooperation among states.

EU measures and instruments on 'controlling immigration' in the aftermath of 11 September

The use of the discourse on border controls has been again differently evaluated. Sometimes the use of the language of security is thought to be necessary in order to "accurately describe such phenomena or as the best instrument to capture the dynamics of existing sentiment and interests at play in policy formation" (Rudolph 2006: 203). Thus, the use of a security framework in the discourse is claimed to be descriptive. But sometimes is also claimed to be strategic. As it has been pointed out, then discourse is a formula to introduce extraordinary measures otherwise unpalatable to public opinion.

Once it is clear that the EU discourse has focused on border problems but has not securitised the whole immigration phenomenon, there is a need to clarify whether securitisation has taken place in the field of actions and policies. As it has been stated above, the securitisation of an issue implies the adoption of measures or policies deemed extraordinary and otherwise considered illegitimate. Those who support the idea of securitisation of migration within the EU focus on the increased interest in the policing of external borders and on the attention to different threats, defined as external, that include irregular migration or irregular entries after the terrorist attacks of 11 September 2001. Nevertheless, two examples can illustrate the argument that most of migration policy aims and measures pre-dated 11 September attacks. So, they are not an extraordinary consequence of those attacks. Together with those terrorist incidents, other factors such as the enlargement process have created a window of opportunity to rescue 'old' proposals or to lead to a consensus in previous controversial ones.¹²

The idea of a window of opportunity to urge measures on borders was observed during the Spanish Presidency of the EU in the first semester of 2002 (Luedtke 2009: 135-136). During that legislature, Spanish immigration policy was based at the Ministry of Interior, and as it has been recognised by several Spanish decision-makers, the Ministry developed a leading role in the establishment of the Presidency's priorities and agenda.¹³ On the one hand, the 9/11 attacks are not particularly pointed out by Spanish authorities as influencing the issues included in the agenda, however Spain tried to find international approval and help for the fight against nationalist terrorism (ETA organisation) and used the Presidency to boost international cooperation. On the other hand, a second motive for

¹² Interview with a Spanish police officer, expert in EU cooperation (July 2005).

¹³ Interview with some senior civil servants, Madrid, April to June 2004.

the Presidency's focus on immigration issues was the national governmental discourse on diminishing and 'fighting' illegal immigration and being tough with illegal arrivals and migrants. For these reasons, the Seville Summit in June 2002 led to the allocation of more resources for border controls in South-European countries, the arrangements for a Joint Border Police Agency (FRONTEX), and EU task forces to combat human trafficking.¹⁴ Some interviewees recognise that the international context of terrorist attacks in the US made it easier to quickly secure some agreements and measures on illegal immigration that were on the table long before, such as the set up of FRONTEX.¹⁵

As far as most of the measures adopted after 9/11 were under scrutiny long before those attacks it is quite difficult to defend that those measures devoted to improve the security of identification documents or the set up of FRONTEX are extraordinary instruments. The first example is FRONTEX. As it has been said above, the Laeken Council in December 2001¹⁶ is perceived as the cornerstone for border management and for the following Action Plan on combating illegal migration passed in 2002¹⁷ and the Action Plan for the management of the external borders of the EU.¹⁸ Those post-11 September decisions are presented as the origin of the 'integrated border management approach' (IBM) that was pioneered by the European Commission on its Communication "Towards Integrated Management of the External Borders of the Member States of the European Union".¹⁹ Interestingly, those documents and actions are regarded as the embryonic basis of FRONTEX (Neal 2009: 340).

However, an institution of this kind had long been debated in the EU as the European Border Police (or European Border Guard). As Monar (2006) argues, the origin of that project can be tracked back to the Schengen Agreement in the 1980s and the 1990s with the Tampere European Council of October 1999. Especially relevant to that aim was the launch of the 'Odysseus' programme. This programme adopted by the EU Council of Ministers on 19 March 1998 was a programme of training, exchanges and cooperation in the fields of asylum, immigration and crossing of external borders.²⁰ The Odysseus programme, which was budgeted 12 million Euros, covered the period 1998-2002 and it "allowed for common training measures, exchanges, and studies in the area of external border crossings and controls [thus] marked a further step toward a common EU approach beyond the limits of the Schengen group" (Monar 2006: ch. 10).

The second report²¹ (European Commission 2001) on the implementation and evaluation of the Odysseus and Falcone programmes covers the financial year of 1999 and defines as traditional actions on the scope of the programme:

- Preventive actions, co-ordinating advisers on documentary fraud within both transit countries or countries of origin of illegal migration. These advisers will participate in training and preventive actions for staff in Member State

¹⁴ As part of those plans, in early 2003 the European Union launched "Operation Ulysses": Europe's first collaborative maritime effort to intercept migrant smuggling vessels in the Mediterranean.

¹⁵ Most of the research on the degree of agreement to develop FRONTEX it is related to public opinion willingness at national levels (Luedtke 2009) and European levels (Lodge 2002: 41).

¹⁶ Presidency Conclusions, Laeken European Council meeting of 14-15 December 2001, SN/300/1/01.

¹⁷ EU Action Plan to combat illegal immigration and trafficking on human beings in the EU, Council 28.02.02 (DOCE 14.06.02).

¹⁸ EU Action Plan for the management of the external borders of EU, Council 13.06.02 (OJ C 142, 14.06.2002).

¹⁹ COM (2002) 233 final, 7.5.2002, Towards Integrated Management of the External Borders of the Member States of the European Union.

²⁰ Joint Action 98/244/JHA, OJ L99, 31.3.1998.

²¹ Commission Staff Working paper SEC (2001) 903, Fourth report of the Commission to the European Parliament and the Council on the implementation of the Grotius, Stop and Oisin programmes and third report of the Commission to the European Parliament and the Council on the implementation of the Odysseus and the Falcone programmes (2000).

consulates, as well for staff of the main aircraft companies and, possibly for local police forces, in order to successfully tackle the illegal immigration at external EU borders. Participants are *inter alia* Germany, the Netherlands, France, Spain and Portugal.

- A study on politics and practices on readmission. The conclusions will be presented in a seminar co-organised with France.
- Renewing actions in co-operation among the Member States, exchange of civil servants, or training sessions on the fight against the documentary fraud.

Another political boost for the European Border Guard and the FRONTEX agency was the incorporation of the Schengen system into the EU through the Treaty of Amsterdam and the Tampere European Council of October 1999. Monar's assessment of the political background of the European Border Guard points out that "the Treaty also offered extended possibilities for the Union to act on external border issues. Yet there were also other favourable factors such as the increasing inclusion of external borders into EU strategies for the fight against cross-border crime and from the Tampere European Council onwards" (Monar 2006: ch. 10).

At this point in time, enlargement was also an impetus for the European Border Force. Bilateral cooperation was frequently part of the news on the EU. Some national governments were working on co-ordinated actions to fight crime and illegal immigration with their view on protecting their borders, external borders of the EU, once Poland, the Czech Republic and Slovakia joined the union. A group of Interior ministers from Greece, Italy and Albania agreed on 10 October 2000 to set up a centre in Albania to combat all types of trafficking. In mid-October 2000, as part of the German-Italian initiative, Italian helicopters began patrolling the Albanian coast. During 2000 and 2001, German border police was to set up in Italy's Adriatic coast and Italians on the frontiers of Poland; Germany and Italy began to exchange border troops to serve as a vanguard of an EU-wide integrated border police.²²

The second extensively used example to call for an extraordinary course of action that indicates a securitisation of migration in the EU post-September 11 context is the concern for the security of identification documents (Baldaccini 2008). Again, the origin of EU actions on this area can be tracked back long before the beginning of the 21st century. In the mid-80s, the SCENT (System Customs Enforcement NeT) information network that interlinked customs headquarters and border crossings all over the Community and allowed for speedy exchange on fraud cases and risk assessment was set up (Hobbing 2003: 9). Monar points out that the 1990s were also years of agreements on a number of common EU texts on external border issues, including provisions of forgery detection equipment at borders in 1998 (Monar 2006: ch.10). The EU's work aimed to avoid fraud in documents before September 11 included the European Fraud Bulletin and the Handbook of Genuine Documents and some actions to increase the speed and accuracy of reproduction, such as the use of a computerised image archiving system²³ in the 1990s. So, the EU actions against fraud of the identification documents used in crossing the borders began some decades before the 21st Century and they have progressively embraced the use of available technology.

Despite the fact that the emphasis on reinforcing border control and attacking illegal immigration was well underway before the events of 2001, improving mechanisms for

²² See "EU plans border force to curb crime and migrants," *Daily Telegraph*, October 12, 2000; "Germany joins Italy in border patrol," *The Times* (London), October 12, 2000, "EU: Third-Country Migrants", Migration News, Volume 6 Number 4, available at: http://migration.ucdavis.edu/mn/more.php?id=2236_0_4_0, accessed 14 January 2009.

²³ Joint Action of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the setting up of a European Image Archiving System (FADO) (98/700/JHA).

border control is perceived as an efficient measure to selectively identify potential criminals or terrorists and deny them territorial access. This public policy goal has led to the development of new and more sophisticated surveillance technology at borders and investment in information technologies as well as better cooperation among agencies, polices and states (Bermejo 2007). The question of sovereignty is related to the permeability of borders on the one hand, and to efficiency in border controls on the other. In Andreas' characterisation, the CTAs (Clandestine Transnational Actors) are defined as the 'new' security threats and in this sense provide a rationale for more expansive border controls and policing powers, giving rise to law enforcement concerns (Andreas 2003: 82) and new unrestrained powers within the executive branch (Friman 2008).

A related debate, although beyond the reach of this study, is on ethical questions and the balance between civil liberties and security. New policy goals led to greater investment in surveillance and information technologies and cooperation. And at the same time, new powers for detention, deportation, mandatory interviews and registration were incorporated. Thus, doubts about the compliance with legislation on liberties and invasion on individual rights have arisen (Bigo 2002; Sasse 2005; Sales 2005; Lodge 2007).

So, despite the lack of securitisation of migration, what cannot be denied is that some areas of the FSJ area received much more attention than others; becoming top-issues in the following years' agenda. Thus, within the area of immigration the attacks caused a revision of policies on border surveillance and cooperation (Bermejo 2007). Some say that these developments are again a consequence of September 11, what Pastore calls "a 'race' to achieve technical and organizational innovation within the EU entry control system" which began in the autumn of 2001 (Pastore 2004: 115). But new restrictive measures cannot be considered exceptional measures related to a securitisation of the discourse on migration; they may also be explained by the relative ease of securing agreements on these kinds of measures and instruments. By this token, 11 September 2001 is seen as "the most vivid and recent example of a trend rather than as a radical departure" (Walker 2004: 12), given that the agreement on measures and instruments were long seen at the national level as necessary. As many scholars have stated, the trend has been accelerated and expanded in the post-attacks environment, in which border security has taken on new political urgency (Andreas 2003: 108).

EU policy on 'integration' in the aftermath of 11 September 2001

How did the terrorist attacks affect the inclusion/exclusion processes related to the 'fortress Europe' concept? Another way of securitising a phenomenon is to cope with it from a restricted view or approach that remarks security implications. A narrow approach towards the immigration phenomenon is partly the origin of the critics related to the creation of a 'fortress Europe' in the 1990s. That 'fortress' seemed to come to an end with the Commission Communications of 2000, but have the 9/11 attacks overturned that pace? The answer is no.

The new century has brought a renewed debate on models for accommodating foreign populations as well as a broad debate on the failure or success of integration policies for immigrants and their descendants in European countries. Within the EU arena, the 'partial' empowerment of the European Commission under the Treaty of Amsterdam and the Tampere programme led to a hope of a more balanced common immigration policy. The first two directives issued in 2000 covered the principle of equal treatment irrespective of race or ethnic origin and the establishment of a general framework for equal treatment in employment and occupation. Particularly on integration, the Commission issued the Communication on a common EU immigration policy in November 2000 that was followed by its Communication on an open method of coordination in EU policy on

immigration in July 2001. After 9/11 some different projects focused on integration, such as the Communication on immigration, integration and employment on 3 June 2003. The need for a better inclusion of immigrants and refugees pre-dated the terrorist attacks.

Some authors have portrayed September 11 attacks as increasing the connection of previously separate agendas of integration and migration control in Europe (Carrera 2006; Joppke 2007: 8). Debates on accommodation may have been deepened and speeded up by the information on Madrid and London bombings. It has been said that the conclusions of the investigations on the Madrid and London bombings in 2004 and 2005 which found that the attacks were perpetrated by long-term resident immigrants highlighted a failure in integration policies in these countries. Those results led to policy convergence on the need to better integration across European countries and direct to new arrangements in the EU. An example is the European Council's agreement in November 2004 on 'common basic principles' of immigrant integration policy (Joppke 2007). In this sense, similar concerns to those stated on border crossing (i.e. that migration flows provide conduits for the spread of international terrorism), are implicit in the increased attention paid to integration of newcomers and second and third generations of migrants.

Some authors pointed out that the referent object is again the identity of 'Europeans' and their welfare. In Guild's words, foreignness appear to be "an identity threat which expresses itself as requiring the integration of foreigners so that they will be more like us and less like 'them' which is a dangerous category" (Guild 2003: 395-396). The threat they pose inside receiving society also extends to the social welfare arena. Guild (2003: 395-396) highlights how "foreigners seeking to cross the borders are a threat to the social welfare systems to which they seek access" One of the aims of the renewed interest on integration seems to be a desire of increasing community cohesion and the construction of the referent object of societal security itself (Rudolph 2006). Integration is related to accommodation of differences. Critics have pointed out cultural identity and cultural security as key issues in the EU securitisation of migration. This has occurred in a discourse in which immigrants, asylum-seekers and refugees are present and represent a cultural danger by challenging the myth of cultural homogeneity (Huysmans 2000).

Nevertheless, a new Global Approach to Migration was officially adopted by the European Council in December 2005. The Presidency Conclusions defined it as "a balanced, global and coherent approach, covering policies to combat illegal immigration, in cooperation with third countries, harnessing the benefits of legal migration".²⁴ That level of cooperation would require dialogue and the European Union's commitment to support development efforts of countries of origin and transit.²⁵

Critics, such as Carrera, claim that this Global Approach to Migration "aims to ensure a multifaceted response covering all the dimensions relevant to migration" despite the fact that the EU immigration policy prioritise borders and pays particular attention to irregular mobility by third country nationals. So, Carrera (2007:1) characterised the EU policy as "based on two distinct approaches: on the one hand, an integrated approach to the management of common territorial borders, and on the other hand, a global policy covering migration".

That global policy has raised a number of concerns on the basis of its focus on irregular migration. However, the strategy and policy priorities in the fight against illegal

²⁴ Council of the European Union, Presidency Conclusions, 15914/1/05 REV 1 CONCL 3, p.2.

²⁵ A part of the implementation of this approach is the initiative on Integrated Border Management that includes FRONTEX development and tries to maximise its capacities; it also includes the idea of a permanent Coastal Patrol Network but those are not the only type of measures included in this Global Approach. But counter-terrorism policies are clearly separated from those responses.

immigration of third-country nationals is part of the EU's comprehensive and structural approach towards effective migration management. That approach included previous and subsequent work by the European Commission on the Communication on Migration and Development COM(2005) 390, 1 September 2005, the Communication proposing a Common Agenda for Integration COM(2005) 389, 1 September 2005²⁶ and the Policy Plan on Legal Migration (COM(2005) 669, 21 December 2005).

It is clear that there are different ingredients in the immigration policy. One is a comprehensive policy on illegal immigration that has changed the discourse and measures devoted to control borders to one that includes integrated management of borders, enhancing dialogue and cooperation with the countries of origin and transit of immigrants, but the discourse and measures implemented within the framework of the European immigration policy include other areas or dimensions: legal migration, integration and a renewed emphasis on the link between development and migration.

In sum, a global and comprehensive analysis of the discourse and practices of the EU makes difficult to defend that the migration policy has been securitised after the 9/11 attacks. It is difficult to maintain such a claim if the discourses and measures on borders are analysed in the context of a wider policy on asylum and immigration. In addition, those authors who claim that a securitisation of migration in the EU is a consequence of the 9/11 attacks focus on the debates and actions taken in the remaining months of 2001 (Bigo 2002 and 2008; Neal 2009) but are aware of the difficulty of sustaining the claim of securitisation from late 2001 onwards. In terms of policy instruments, the measures effectively implemented are exceptional at all. Two examples: biometric controls at borders were being studied for long as well as the possibilities for a European Border Guard.

Conclusion

A huge amount of academic work has analysed the immigration and security nexus before and after 2001. For some authors the 9/11 terrorist attacks have consolidated the shift towards linking immigration with security. Terrorism is thought to threaten identity, society, and safety, and consequently justifies exceptional measures implemented across the world to increase security. However, at the same time, it is also commonly agreed that most of the measures adopted in the field of immigration after terrorist attacks did not entail a shift in paradigm since most of the policy aims pre-dated those events. The United States have implemented a whole range of exceptional policies, particularly those included in the 'war on terrorism', but that is not the case of the European Union. In the European context, great changes in the discourse linking immigration and security have been absent and at the same time, one important and positive change has been the individualisation of threats at points of entrance through work on improving surveillance and checks at borders as opposed to the characterisation of undefined flows and groups of immigrants and refugees as the 'threat' to keep out from 'fortress Europe'.

In terms of discourse, the developments analysed above, show that the discourse on immigration control in the European Union has surprisingly remained untouched by the antiterrorist agenda. European Union's policies before and after 11 September 2001 have been particularly careful in separating immigration and terrorism. Nevertheless, two components seemed to relate both phenomena. Firstly, a conclusion of the research carried out over those attacks in the United States pointed out that control, surveillance and checks at borders needed to be improved as far as some of the terrorists who attacked

²⁶ COM (2006) 402 final, 19.7.06, on Policy priorities in the fight against illegal immigration of third-country nationals.

the north-American soil crossed the borders of the state just in order to perpetrate their attacks. Secondly, in 2004 and 2005, the Madrid and London attacks highlighted the key importance of working on the prevention of radicalisation and recruitment inside European countries and the need to seriously tackle the causes of radicalisation.

Based on the previous analysis, some conclusions can be drawn in the field of measures and instruments. The events of 9/11 sparked new policy developments and it has been assumed that some policy measures in Europe after the attacks were impelled as a consequence of those events. But at the same time, it is also commonly agreed that most of the measures did not entail a shift in the course of action and no extraordinary developments have been followed after 9/11 as the examples of FRONTEX and identity documents show.

Despite the fact that antiterrorist policies have surged to the top of the agenda, claims on the securitisation of discourse contrast to recent developments in immigration policies in Europe, which have moved in a direction that could not have anticipated: inclusion and expansion rather than exclusion (Schain 2008; Boswell 2009) and a global approach to migration. In this sense, the revival of 'fortress Europe' might only be related to an increase emphasis in controlling and policing external borders. Thus, despite the absence of clear progresses towards a common immigration policy, that cannot be directly linked to the terrorist threat but to states' reluctance to develop it.

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Setting Priorities: Functional and Substantive Dimensions of Irregular Immigration and Data Protection Under Co-decision

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Abstract

During the months leading to the end of the transitional period (January 2005), most academics and actors involved in the Area of Freedom, Security and Justice (AFSJ) expected the introduction of co-decision as the normal decision-making procedure in this area to change the balance between security and liberty. The involvement of the European Parliament as a co-legislator was thought to be a positive aspect, since this institution had persistently adopted a pro-civil liberties stance. Since then, this question has not been systematically tackled in the literature and consequently the impact of co-decision on the AFSJ remains unclear. However, in 2007, Maurer and Parkes looked at the securitised policy-image governing European asylum policy in order to understand why the European Parliament had been unable to redress the balance and establish civil liberties as a priority. Following their line of reasoning, this paper develops the functional and substantive dimensions introduced by these scholars, in order to explain why the European Parliament, and especially the LIBE committee, has been equally unable to change priorities in the fields of irregular immigration and data protection. I argue that the persistent weakness of the European Parliament in the functional dimension, i.e. the need to legitimise its presence in negotiations dealt with under co-decision, has made changes in the substantive dimension difficult to attain. In those areas where the substantive dimension is weak, as was the case in the *Returns* directive, the need to legitimise the presence of the EP creates more polarisation among the members of the LIBE committee. In those cases where there is a strong substantive alternative in the LIBE committee, as was the case in the *Data retention* directive, change is hindered by the Plenary, which establishes the strengthening of the functional dimension as a priority for the institution. In both cases the introduction of co-decision led to the persistence of a securitised policy-image and the impossibility of engaging in conflict expansion.

Keywords

Data protection; *Data retention* directive; Justice and Home Affairs; irregular immigration; policy-image; *Returns* directive; Area of Freedom, Security and Justice.

THE AREA OF FREEDOM, SECURITY AND JUSTICE (AFSJ) AND THE EUROPEAN PARLIAMENT (EP) have often been partners at odds. Until recently, this area was characterised by a predominance of intergovernmental methods that left the EP with little to say. The third

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pillar as created in the Treaty of Maastricht only gave the EP the power to give its opinion, which was more often than not ignored by the Council of the EU (hereafter 'the Council') (Kostakopoulou 2000: 498; Peers 2006: 26). Although the Treaty of Amsterdam transferred some of the issues to the first-pillar, in this period the EP grew used to being sidelined in negotiations and this opened up the opportunity to create dynamics of conflict with the Council. The EP enjoyed the inter-institutional battles, especially because they bore no consequences for the institution and its members. In consequence, in front of a Council often perceived as an instigator of restrictive policies (Geddes 2003: 5; Kostakopoulou 2000: 498; Uçarar 2001: 14), the EP constructed itself as a defender of civil liberties.

The Treaty of Amsterdam also provided for a transitional period of five years after which all issues except for police and judicial cooperation in criminal matters, family law and regular immigration would be transferred to the first pillar. This meant that a large set of issues would thereafter be dealt with under co-decision, thus giving Parliament the power to legislate jointly with the Council. Article 67 EC¹ stipulated the areas that fell under the transitional period. After 1 May 2004, these areas would have to be transferred to the first pillar following a unanimous decision taken by the Council, which eventually established the end of the transitional period on 1 January 2005 (Council of the European Union 2004c). As a consequence, all matters in Title IV EC would have to be legislated using co-decision and qualified majority voting in the Council. As mentioned above, presently the only exceptions are family law and regular immigration, both of which are considered too sensitive for member states and national judicial cultures to be dealt with under the community method. Logically, those issues that remain in Title VI EU, police and judicial cooperation in criminal matters, continue to be ruled mostly by unanimity in the Council in consultation with the EP. Given the dynamic existing between the two institutions, the end of the transitional period in January 2005 raised high expectations among those academics and practitioners wanting to see a more balanced approach to policies in the area of Freedom, Security and Justice (Grabbe 2002; Guild & Carrera 2005). Therefore, creating "more not less Europe" (Geddes 2003: 7), that is to say extending the powers of the European Parliament together with the Court of Justice, was believed to be the best way to overcome the existing rationale of fortress Europe (Geddes 2000).

Since then, few authors have tried to evaluate whether these prospects have been realised. Consequently, the impact of co-decision on the AFSJ dimension is still unclear, although the first attempts to plunge into the question seem to discredit the capacity of the European Parliament in balancing civil liberties and security. In this sense, Andreas Maurer and Roderick Parkes (2007) have attempted to explain why the Commission and the European Parliament have failed in their effort to redress the balance between security and liberty. They argue that although the institutional rules have changed and offered more possibilities to modify the content of policies, the lack of an alternative to the security-led proposals has made finding a balance more difficult. The Commission and the EP have been unable to convince other policy-makers and outsiders that another kind of policy is possible.

A set of interviews carried out during January 2009 with different actors involved in the AFSJ supports Maurer and Parkes' claim that the EP has been unable to introduce a more balanced outlook in terms of civil liberties and security. The interviews, with members of

¹ There were two exceptions foreseen in the Treaty to article 67 EC. Article 67.3 EC allowed for visa policies to be adopted by qualified majority voting and consultation with the EP. Article 64 EC also laid an exception for emergency measures, when the Council could also use QMV. The Treaty of Nice modified Article 67 EC, allowing for co-decision in civil law matters (except for family law) and in all those asylum issues that were not related to burden-sharing. A declaration annexed to the Treaty of Nice extended co-decision and QMV to short-term freedom to travel for third-country nationals and irregular immigration from 1 May 2004 (Peers 2006: 23-25).

the European Parliament (MEP, official and political advisor) and officials from both the Council and the Commission, have focused on two case studies: the *Data retention* directive, regulating the retrieval of telecommunications data for the purpose of investigating serious crimes, and the *Returns* directive, establishing common standards for the voluntary or compulsory return of irregularly staying third-country nationals. Although most of the informants were selected due to their involvement in both negotiations, the interviews tried to raise more general issues concerning the effects co-decision has had on the European Parliament and the involvement of the latter in the AFSJ. The information given by interviewees has been contrasted, whenever possible, with other sources such as debates in the EP or interviews given to the press.

The data from the interviews develops Maurer and Parkes' analysis by questioning two of their assumptions. First, the authors assume that the counterbalancing force against the Council is the European Parliament as a unified actor. In this article, I argue that this assumption is no longer accurate. Currently, we see instances of divergence between committee and plenary interests. Under consultation, the European Parliament had only the right to give its opinion. This meant that for the Plenary nothing was at stake and thus it did not hesitate to ratify the opinion given by the committee on civil liberties and justice and home affairs (LIBE). However, under co-decision, the priorities might diverge. Plenary and committee do not always agree on points either of substance or form and therefore we have to distinguish between the interests and priorities set by the LIBE committee and those set by the Plenary.

Secondly, this article will also argue that the experience of these last four years has shown that in spite of an institutional change giving more opportunities to the EP to change the substance of policies in the area of Freedom, Security and Justice, the European Parliament is still regarded as a newcomer and thus suffers from a lack of legitimacy. We can therefore say that the functional dimension is still weak and that this weakness makes it more difficult to operate changes in the way the AFSJ is perceived by those involved in the policy process. Essentially, I argue that the EP's search for legitimacy is undermining its capacity to create a new ground for legislative texts giving priority to civil liberties over security concerns.

In order to illustrate this, I will first discuss the framework offered by Maurer and Parkes and link it to existing literature on securitisation and co-decision. Secondly, I will expose how functional weaknesses have made change in those areas where there is no alternative to existing policy, such as irregular immigration, even more difficult. Finally, I examine how these difficulties persist even in those areas, such as data protection and discrimination, where there is a strong substantive alternative. The examples used in both sections will also illustrate the mismatch of interests between the Plenary and the LIBE committee.

Policy-images: functional and substantive dimensions in the AFSJ

The concept of policy-image has been developed as a way to understand change in policy-making. Policy-images are defined as perceptions or understandings of factual information. In consequence, in policy-images the empirical information is mixed with emotive appeals offering a frame of reference to actors involved in policy-making (True *et al.* 2007: 161-162). As a result, depending on how much the policy-image is shared by these actors, stability or change will predominate in a specific policy area. In those areas where the understanding of a problem and the way to handle it is widely supported by policy-makers and public opinion, stability will predominate. Conversely, if important sectors involved in the definition of the problem have alternative views on how to define and how to manage the issue in question, change will be more probable. Those actors advocating a different policy-image will try to find alternative points of access or venues to

introduce and expand their ideas, entering into a process of conflict expansion. The success of a strategy of conflict expansion depends both on how the alternative is framed – whether the solutions offered are convincing or not – and on the specific institutional framework and decision-making rules offered to the actors engaging in such a strategy (Princen 2007: 30). Here, Maurer and Parkes' modification of the concept to discern between a substantive and a functional dimension of policy-images is particularly heuristic. The substantive dimension reflects the willingness to legitimate a particular understanding of a problem, while the functional dimension reflects the search for legitimacy of those actors involved in the policy process. Only when both dimensions are present and strong, will actors be successful in their strategy of conflict expansion (Maurer & Parkes 2007: 177-178).

The use of policy-images is especially relevant in the area of Freedom, Security and Justice. Actors involved in the policy process have successfully redefined this area to create a very specific policy-image. In this strategy technical and emotional elements have been successfully mixed in order to legitimise both the substantive and the functional dimensions of the policy-image. Firstly, the substantive dimension has been recreated in terms of a process of securitisation, where the constitutive elements of the policy area have been approached from the perspective of security. In this process, elements such as migration and borders have been initially inserted in the realm of politics and later they have been addressed in the public debate as elements of security (Buzan *et al.* 1998: 23). The result of the process is a strategy of securitisation, where elements previously disconnected from security, such as immigration or asylum, become involved in the same policy-image as hard security issues, for instance terrorism or organised crime. The substantive dimension of the policy-image governing the AFSJ works around the idea of a security-continuum, where security has to be managed inside and outside borders in order to control any threat related to trans-border activities, be them terrorism, organised crime or migration (Bigo 1994). The appeal to security has been thus a powerful legitimising tool, especially after the terrorist attacks of 11 September 2001, and it has successfully mobilised both its technical and emotional aspects. On the one hand, technical issues such as the removal of internal borders have been used as reasons to create a common area of Freedom, Security and Justice. Achieving safety inside the Schengen area requires common standards on external borders to make sure that every member state protects the others at an appropriate level (Monar 2001). This rationale has been used to increase the security elements of this new common area in order to achieve a 'safe' inside.

On the other hand, emotional appeals have reconstructed the objects of the policy area especially since the 1990s. After an era of clear threats provided by the Cold War, the 1990s opened a time of uncertainty where security actors had to find new objects of security. In this sense, the increase in asylum-seekers in some European countries served as a reason to recreate migrants as the new objects of security. Discourses appealing to the economic burden and the rise of crime created support from the public towards this new policy-image, which resulted in the securitisation of the AFSJ (Geddes 2000; Huysmans 2006). The terrorist attacks of 2001 onwards have only reinforced these emotional appeals and provided a higher support from the public. Therefore, the policy-image is well established in this area and it is shared by most actors involved in the policy process. The legitimacy of the policy-image is reinforced by its origins, dating back to the actual introduction and development of an Area of Freedom, Security and Justice. That is why those appealing to an alternative substantive dimension of the policy image have had so many difficulties in convincing actors involved in policy-making that an alternative policy-image is possible. The alternative proposed tries to balance the output of policies by giving a priority to civil liberties and human rights. In this sense, there is a willingness to treat home affairs issues as independent from security, with the intention of avoiding security concerns being used

as a legitimising tool for action. Among EU institutions, this substantive alternative has been mainly promoted by the European Parliament, and more specifically by the LIBE committee, which has tried to engage in conflict expansion via the use of opinions and reports, without much success. Here, the functional dimension comes into play, since, as previously stated, to be effective in conflict expansion actors need to legitimise not only the substantive dimension but also the functional dimension.

As Maurer and Parkes' have convincingly explained, the functional dimension in the AFSJ has been legitimised around the notions of expertise and cooperation. Experts and officials have successfully created a need for efficiency and technicality and have received the necessary support from politicians. The result is an area with a preference for minimum standards and extra-communitarian forms of decision-making, as the recent Treaty of Prüm, negotiated by only seven member states in order to make exchange of information, particularly in combating terrorism, cross-border crime and irregular immigration more effective, clearly shows (Maurer & Parkes 2007). This functional dimension is still present even in the aftermath of institutional changes modifying the decision-making rules. Although formally the European Parliament is now a co-legislator together with the Council, its legitimacy is still weak. As I will show below with the examples of the *Returns* directive and the *Data retention* directive, the EP has now engaged in a strategy of gaining respect and authority from the Council, thus complying with the current policy-image that privileges expertise and efficiency. In order to prove its capacity to adapt to the functional image shared by officials and experts, the EP has taken advantage of some tools provided by co-decision. It has understood that in order to have some influence and be effective, it has to engage itself in the early stages of the policy-making process (Farrell & Héritier 2004; Rasmussen 2007) and in parallel it has to prioritise those informal channels, such as trialogues, that are increasingly present in inter-institutional negotiations (Garman & Hilditch 1998; Häge & Kaeding 2007; Shackleton 2000; Shackleton & Raunio 2003). Co-decision has also changed the internal dynamics of the European Parliament (Maurer 2003). The procedure gives more influence to some actors such as rapporteurs, shadow rapporteurs and committee chairs (Benedetto 2005; Burns 2006; Neuhold 2001; Settembri & Neuhold 2009) and this creates more occasions for divergence of interests and strategies. Therefore, the example of the AFSJ shows that if under consultation we could talk about the European Parliament as a unitary actor engaging in conflict expansion, now we have to differentiate between different levels of decision-making in the EP. Under co-decision, the willingness to enter into conflict expansion and the purpose of the conflict can diverge between the committee in charge, in this case the LIBE committee, and the Plenary. While the LIBE committee may have an interest in mobilising and producing change in the substantive dimension, the Parliament may have broader long-term institutional interests, namely the extension of its decision-making powers (Priestley 2008).

In consequence, although there has been a functional change under the shape of an institutional modification of the decision-making rules, this change is rather formal and leaves the EP in a weak position in relation to the functional dimension, affecting its capacity to alter the substantive content of the policy-image. The following sections will show how a weak functional dimension hampers change when the substantive dimension is weak but also when it is strong and how co-decision has redefined the strategies and interests of actors inside the EP.

Irregular immigration: a weak alternative substantive dimension

The substantive dimension of irregular immigration

Since the early 1990s but especially since 2001, the EU has developed common migration policies with two specific focuses: asylum and irregular immigration. Although the legal bases are different (Articles 63.1 and 63.2 EC Treaty in the case of asylum and refugee

policies and Article 63.3 EC Treaty for irregular immigration), in both cases the emphasis has been on restriction, thus recreating third country nationals as the unwanted others. Maurer and Parkes have explained elsewhere the policy-image of European asylum policy, showing how since the waves of asylum-seekers coming to Europe during the early 1990s the concept of asylum has been progressively redefined from an issue of human rights to a threat to internal security (Maurer & Parkes 2006). In this process, policy-makers have highlighted the “politicised conception of asylum, citing the dangers it posed to internal security, society and the economy” (Maurer & Parkes 2007: 181). In parallel, immigration has been communitarised mainly in connection to irregular immigration; regular immigration (Article 63.3.a EC Treaty) is still dealt with under consultation and unanimity (Council of the European Union 2004c: recital 7). The result is that the most positive aspects of immigration policies, such as integration, are left to the initiative of member states and in consequence hardly ever dealt with at EU level.

On the other hand, irregular immigration has been dealt with mainly in two ways. First, a set of very diverse measures have been created to deter third country nationals willing to come to the EU. Crossing the borders of the European Union (and especially those of the Schengen area) is the first challenge that most third country nationals face when travelling to Europe. The EU has not only externalised border controls, bringing them closer to the country of origin (Melis 2001), but it has also privatised them, making transport companies responsible for carrying irregular immigrants (Council of the European Union 2001, para. 1). The emphasis put on Frontex, the European agency for the management of borders, is not accidental. Frontex’s operations in the Mediterranean and African maritime coasts - such as INDALO, MINERVA, HERMES or HERA (Frontex n.d.) - respond to this willingness to stop third country nationals before they even cross an - increasingly non-physical - border (Carrera 2007).

Secondly, once inside, irregular immigrants have to be kept under control and sent back to their countries of origin, sometimes even of transit, if possible. Indeed, here the policy-image dominating the AFSJ is clear: since immigrants are perceived as a security threat, they have to be separated from society, by being retained in special detention centres (although sometimes also in camps or prisons), and removed from the territory whenever possible. Since there is no point in sending back persons that will not be granted entrance in the countries of destination, the EU has tried to convince countries of origin or transit to sign readmission agreements. This means that once it has been proved that an irregular immigrant comes or has been present in a third country, readmission agreements ensure that member states can send the person back and that they will not be refused entrance (Bouteillet-Paquet 2003; European Commission 2006: 8).²

The Returns directive: the failure of the LIBE committee to present an alternative

The result is that irregular immigration policies have achieved a circle of exclusion where entrance is pre-empted and expulsion promoted. This has constituted the rationale, or policy-image, of those policies. Since most of the measures have been taken under consultation and unanimity, it is a good starting point to test whether the instruments agreed since 2005 with co-decision have been able to change the substantive element of immigration policies.

² Following the latest Commission’s report, between 2005 and 2007 over 1.5 million migrants received a removal decision but only half of them have been carried out (data does not include Denmark and Luxembourg). The ‘effectiveness rate’ between 2004 and 2007 is estimated to be between a half and one third of all the removal decisions (European Commission 2009: 34-35).

In order to do so, I will examine the case of the *Returns* directive, agreed in June 2008 between the European Parliament and the Council (European Parliament & Council of the European Union 2008). The directive is based on Article 63.3.b of the EC Treaty and thus falls under one of the communitarised areas of the AFSJ. Its main objective is the harmonisation of national conditions dealing with the voluntary or compulsory return of irregular immigrants, that is, the periods of time during which irregular immigrants may voluntarily decide to go back to their country of origin as well as the stipulations to issue removal decisions, forcing third country nationals to leave the country. The directive also regulates the conditions for detention while awaiting removal in cases where it is suspected that the person will abscond. The directive deals thus with one of the core subjects of EU irregular immigration policies: removal from the territory. It is thus the last step of the long circle of exclusion.

However, despite being a central topic, the LIBE committee has never had a strong position on these issues. Under co-decision, LIBE members have become increasingly polarised and acted following more consistent partisan lines than they used to do under consultation. In reference to immigration control policies, Lahav and Messina (2005: 870) have argued that, “as the EP has gained greater policy-making authority, the abatement of external struggles may have liberated European parliamentarians to think more ideologically and act on their natural partisan impulses”. This argument does explain the voting behaviour of the political groups in LIBE during the negotiations of the *Returns* directive, yet, as I will show in the next section, it does not explain negotiations dealing with data protection and discrimination.

What was seen in the *Returns* directive was a classic left/right divide. In the final votes, the right-wing and the liberals voted in favour of the agreement reached between the rapporteur, shadow rapporteurs and Council at first reading (367 votes), while the left voted largely against (206 votes) although some of its members decided to abstain (109 votes). Two points have to be underlined in relation to the votes. First, the ALDE group broke the tradition of voting in the AFSJ dimension together with the left-wing parties. However, as I will show later, this was not a question of substance, but rather of form. Some members of the ALDE group accept that although the directive helps to solve some problematic issues, the outcome is not completely to their liking (A. Alvaro, interview, January 2009). Therefore, they did not vote in favour because they were convinced by the contents of the agreement but, as I will show, because they wanted an agreement. Secondly, the socialist group was divided between those, like some members of the French delegation, who wanted to oppose the directive because they did not agree with its point of departure, namely the necessity to return irregular immigrants, and those who believed that the agreement reached was better than not having any legislative text at all (M. Speiser, interview, January 2009; European Parliament 2008b). In fact, some argue that those socialist delegations that were more positive towards the text were at the brink of voting yes but, in order to keep some consistency inside the group, they decided to abstain (EP official, interview, January 2009; European Parliament 2008c).

The result was that the LIBE committee was unable to present a common front and a substantive alternative to the Council. The EPP-ED group approached the matter as a question of being realistic. This idea of being realistic refers to the ability to put the directive into practice and implement it effectively. In consequence, the result has a closer resemblance to the policy-image developed by the Council and the Commission than to the alternative views that some committee members may have had. For instance, the left-wing groups in the LIBE committee wanted to include those individuals retained in transit zones or rejected at borders into the scope of the directive. This means that those persons awaiting return after having been denied entrance or stay in a member state could still benefit from some standards of protection. However, the rapporteur, Manfred Weber

(EPP-ED), shared the opinion of the Council that it is the right of member states to decide who crosses the border and who does not, and in consequence who can and cannot receive benefits and safeguards (European Parliament 2007: 28). As Michael Speiser (interview, January 2009), political advisor to the EPP-ED group, has clearly explained it, “[they] have to make sure that [the directive] does not just apply to anyone who is five kilometres away and waves his [sic] hands and says ‘I want to fall under this directive’. Either you are in or you are out”.

In short, the political groups in the LIBE committee were far too polarised to share a substantive policy-image that could convince the Council to change the substantive track abruptly. Rather, some of the members, and most importantly the rapporteur, shared the substantive policy-image of the Council, making it even more difficult for the left-wing groups to engage in conflict expansion. Having more power to co-decide did not provide more opportunities for those at the margins to introduce an alternative policy-image.

Legitimising the LIBE committee: why the functional dimension stopped policy change

As noted when explaining the motivation for the final votes, the lack of a shared alternative to the existing substantive dimension of the policy-image does not explain single-handedly why some groups preferred to vote for the first-reading agreement. In theory, rejecting the first-reading agreement was not equivalent to losing the chance to have a *Returns* directive. The groups that hesitated, such as ALDE and parts of the socialist group, could have forced a second reading by dismissing the first-reading agreement, and thus forced continuation of negotiations with the Council. It would certainly have been more difficult to reach agreement between the EP groups, since the EP needs a majority of its members to pass amendments and not just a simple majority of the members present. In spite of this caveat, how do we explain the final commitment to the first reading agreement and their refusal to continue the proceedings?

The answer is two-fold and linked to the functional dimension of the policy-image. First, there was an agreement at first reading because MEPs knew that the Council had almost no interest in having a *Returns* directive (Council official, interview, January 2009). In fact, the Council had always called the proposal a ‘right to stay’ directive, instead of a *Returns* directive, consistent with a more negative approach to irregular immigration (M. Speiser, interview, January 2009). In consequence, political groups such as ALDE decided to go along with the first-reading agreement, since for them the most important thing was to have a legislative text dealing with this issue, even if they felt blackmailed when the Council gave very clear signs that “if there [was] no first-reading agreement, [the EP should] forget the whole thing” (A. Alvaro, interview, January 2009).

Secondly, the EP was severely pressured to reinforce the functional dimension, in the sense that it had to prove a valuable partner when negotiating with the Council under co-decision. Taking both elements into account, it meant that the LIBE committee had to be flexible enough to convince the Council first that it was worth having a directive on *Returns* and second that the committee was a serious, committed partner that would work towards finding an agreement that would satisfy both the majority in the EP and member states (Dragutin Mate in European Parliament 2008b). Therefore, as M. Speiser (interview, January 2009) openly expressed it, the rapporteur of the LIBE committee realised that they could not start negotiations with the same radical posture that they used to have under consultation because in that situation the Council would say: “listen if you are coming with such unrealistic proposals and unrealistic demands, we just give up on it because the current situation is not problematic for us, we do not need at all price this European harmonisation. We keep people in prison as long as we like, we send home who we like

and in which way we like and as long as this is in accordance with our own constitutions, don't bother us'''.

Therefore the result is "bittersweet", as one Council official has put it (interview, January 2009), even though the flavour seems to be more bitter for some of the political groups. There is a general consensus on the need to sacrifice the substantive elements of the negotiation in order to strengthen the functional dimension of the committee, a consensus that fits the long-standing battle of the EP to widen its decision-making powers (Priestley 2008). However, putting the functional element of the policy-image as a priority makes conflict expansion more difficult. This conflict of interests is still more poignant in those cases where there is a well formulated substantive alternative, as we will see with the case of data protection.

Data protection: a strong alternative substantive dimension

The substantive dimension of data protection

Contrary to irregular immigration policies, data protection and discrimination have been central issues in the development of the LIBE committee. One could say that they are the issues around which the committee has constructed its policy-image. Since the late 1990s, the LIBE committee has been very active and effective in convincing other decision-making actors that it had a role to play in issues such as access to documents, protection of personal data, transparency and gender discrimination, for instance by organising public hearings dealing with these issues, especially on data protection. These issues have also been open to judicial control and the EP has not hesitated to involve the Court of Justice. In consequence, members of the LIBE committee share an understanding of the functional, but also the substantive role that the committee has to play in this area. They share a common culture that has allowed them to be regarded as a powerful committee both inside and outside the EP, since their protection of personal data and their fight against discrimination has gained the respect and support both of other EU institutions and also societal actors.

A long standing fight of the committee exemplifies the existence of an alternative substantive dimension in data protection. The *Passenger Name Records* (PNR) refers to the information provided by individuals to airline companies when buying an airplane ticket. The content and extent of the information varies, but usually PNR contain not only objective data obtained from passports – advanced passenger information – but also data provided by the passenger, such as home and work addresses or special meal requirements. Since the events of 2001, this background information is not just used to provide information to book a flight, but also to check if the person is allowed to cross the borders (Hailbronner *et al.* 2008: 189) and, even more importantly, it can also be used for the purpose of profiling, that is finding correlations among data that show suspicious patterns or links among persons considered a threat (Brouwer 2009: 2).

In the aftermath of 11 September 2001, the United States extended the requirement to provide passengers' information to international airlines. These requirements left European companies in an impasse: if they failed to provide this information, they would not be allowed to fly to the USA, but if they did give the information, they would be breaking European data protection law. In order to find a solution for European airlines, the Commission decided to negotiate a bilateral agreement with the USA (Council of the European Union 2004a), even though it was clear that the data protection standards in the United States did not reach the requirements of EU law (Hailbronner *et al.* 2008: 189). The result was an obvious opposition from the European Parliament, which filed a case to the Court of Justice contesting both the legal basis of the agreement and its capacity to

protect fundamental rights (Joined Cases C-317/04 and C-318/04 Parliament v Council and Commission [2006] ECR I-4721). The allegations made by the EP reflect well the willingness to change the policy-image in data protection both in its functional and substantive elements. The disagreement about the legal basis turned around the interest of the LIBE committee to lead the discussion. The agreement had been decided upon the basis of article 95 EC (i.e. in relation to transports policy), but the LIBE committee wanted to change the legal basis because it considered that the measure dealt primarily with data protection. In 2004, the EP was waiting for the end of the transitional period and trying to convince member states to expand the powers of the EP in the area of Freedom, Security and Justice. Therefore, it was in its interest to reaffirm its functional dimension in this area. On the other hand, the willingness to enter into conflict expansion in relation to the substantive dimension is clear. The LIBE committee argued that EU law did not permit the transfer of personal data to a third country if it could not ensure an adequate level of protection. Although the Commission had issued an adequacy decision, the EP and the European Data Protection Supervisor continued to believe that the level of protection was not sufficient and that the amount of data required was excessive (Saxby 2007: 295).

The decision of the Court failed to deal with the substantive claims of the EP because it annulled the agreement on the basis of an invalid legal basis. However, the result was not as the LIBE committee expected: the Court agreed with the EP that the object of the agreement was not transport policy but it also considered that it should have been dealt under criminal law (i.e. under the third pillar), giving an exclusive right to negotiate the agreement to member states. This decision forced the Council, instead of the Commission, to reach an agreement with the US in the name of all EU member states (European Union 2007). Although the number of items required diminished, this was the result of simply merging different categories (Brouwer 2009: 13). The result is that the LIBE committee is still very sensitive when dealing with PNR and it has not failed to demonstrate how central this issue is to its committee culture. For instance, in November 2007, the Commission issued a proposal aiming to introduce a Council framework decision on the use of Passenger Name Records for law enforcement purposes (European Commission 2007). Since the proposal falls under the third pillar, the LIBE committee only has the right to issue an opinion. The Resolution adopted by the LIBE committee concerning the proposal is very critical (European Parliament 2008), but it gives the Council a chance to address its concerns before issuing the EP formal opinion (European Parliament 2008: 3). The LIBE committee has again highlighted the problems concerning individual rights and committee members have also agreed that such a framework directive might be uncalled for, since there might be no need for a European-wide passenger name records system (A. Alvaro, interview, January 2009).

The PNR case shows the consistency and long-term engagement of the LIBE committee towards data protection. It can therefore be said that the LIBE committee has an interest in maintaining such a shared common culture around data protection and discrimination issues, since it is the source of its good reputation (EP official, interview, January 2009). In consequence, one should expect that for LIBE members it would be easier to continue their conflict expansion when dealing with data protection and discrimination, especially under new decision-making rules that give them more potential to shape the substantive element of policies.

The Data retention directive: the attempt of the LIBE committee to present an alternative

The *Data retention* directive (European Parliament & Council of the European Union 2006) was one of the first instruments to be dealt with under co-decision. The directive stipulates that national authorities, such as police forces, can keep information on calls or internet communications for a certain time with the intention of using this information in cases of

criminal investigations, though only for those offences considered as serious.³ The proposal was first proposed as a third-pillar instrument by France, Ireland, Sweden and the UK (Council of the European Union 2004b), but the Commission argued that the categories of data covered by the proposal affected first pillar competences. Therefore, it was decided that the Commission would issue a proposal under Article 95 EC, as a single market measure and thus falling in the first-pillar where co-decision applies, taking advantage of the end of the transitional period. Therefore, the LIBE committee found itself with a perfect window of opportunity to enter into conflict expansion in order to change the policy-image dominating the AFSJ via its most cherished topic: data protection.

Indeed, the rapporteur, Alexander Alvaro (ALDE), engaged the committee in a thorough revision of the proposal and, by the end of the negotiations at committee level, he was convinced to have achieved a good cross-party agreement reflecting a balanced outcome (A. Alvaro, interview, January 2009; European Parliament 2005a: 35). The report introduced a much higher standard of data protection, making reference to case law from the European Court of Human Rights and European data protection legislation (European Parliament 2005a). There were some details, such as the period of retention or the definition of serious crime, that were made stricter in his report. In reference to the length of data retention, the Commission had proposed one year for all types of data, while the LIBE committee preferred six to twelve months. Regarding the definition of serious crime, although the Commission already specified that it could not be used for any crime, the LIBE committee proposed to link the definition of serious crime to the European Arrest Warrant, where member states had agreed on a list of serious offences (Council of the European Union 2002). However, more importantly, the rapporteur did introduce an important difference in his report. The Commission was relatively vague in relation to the purpose of the directive. Article 1 stated that the “data is available for the purpose of the prevention, investigation, detection and prosecution of serious criminal offences” (European Commission, 2005, art. 1). This meant that data stored in national databases could be used not only when there was a suspicion but also for other purposes, such as profiling (see above in relation to PNR). Alvaro was opposed to this use and wanted to make sure that the data would only be used in cases of suspicion (Commission official, interview, January 2009). Therefore, the LIBE committee proposed to delete the word prevention, considering it too vague, and introduced an extensive and detailed new article on access to retained data. Article 3a.1.e clearly specifies that access “does not include large-scale data-mining in respect to travel and communications patterns of people unsuspected by the competent national authorities” (European Parliament 2005: 15-16).

By the end of the negotiations UK Home Secretary, Charles Clarke, met the LIBE committee on 13 July 2005 and most of its members criticised the insistent pressures of the Presidency to force them into an agreement. This resistance to Clarke shows that they had initiated a strategy of conflict expansion and that it was being relatively successful, since the UK Home Secretary acknowledged that the EP was now in a legitimate position to co-decide and to block negotiations if it wished to do so. This realisation culminated with retaliation from Clarke, who threatened the EP with abandoning the negotiations on the directive and opting for the conclusion of the third pillar framework decision previously proposed. The EP responded to the threat with another threat, warning Clarke that it would not hesitate to bring the matter in front of the Court of Justice (EDRI 2005a). Why then, with such a clear willingness to bring the matter further and not yield to the pressure exerted by the presidency, did the EP agree to follow most of the Council preferences and reach a first-reading agreement?

³ The definition of serious crime is left to the discretion of member states.

Legitimising the European Parliament: the functional dimension as an obstacle for policy change

The situation during the last stages of the negotiation on the *Data retention* directive was therefore very different from the *Returns* directive. There was a clear conflict of interests between the LIBE committee and Council, both parties embracing very different substantive positions. The LIBE committee was not interested in reaching an agreement at all costs. Following the above-mentioned meeting with Clarke, Alvaro affirmed that “the LIBE Committee was not to be pushed into blind obedience by the UK” (EDRI 2005a). The conflict was still standing on 12 October 2005, when the JHA Council meeting took place, but on 20 October the leaders of the political groups had decided to comply and reach a first-reading agreement with the Council (EDRI 2005b). What were the reasons behind the UK presidency insistence on reaching an agreement and why did EP group leaders from the EPP-ED and PES follow the lead?

The reasons behind Clarke’s behaviour are easy to understand. The UK was among those member states that had proposed the third-pillar framework decision. Therefore, they were already fairly unsatisfied with having to include the Parliament in the negotiations, especially when the LIBE committee turned out to have very different ideas about data retention. Clarke faced two more pressures. First, the UK wanted to reach agreement before the end of its presidency. As with most presidencies, they had an interest to claim success for an important and highly controversial piece of legislation. Yet, on this occasion, there was a second reason that made an agreement all the more important. On 7 July 2005, just some days after the start of the British presidency, London was affected by a set of simultaneous bombings. The terrorist attack came just over one year after a set of similar attacks in Madrid. The general ambiance in the Council, especially amongst those member states that had suffered or that thought themselves more at risk, was of a growing electoral pressure to act against terrorism. The expectations put on Clarke were extremely high. He wanted to make sure that he could go back to UK citizens with as many results as possible, showing his clear commitment to the fight against terrorism. The result was that most of the pressure and the rush to find a first-reading agreement came from the UK, and especially from Clarke himself (A. Alvaro & Commission official, interviews, January 2009).

The reasons behind the group leaders’ behaviour are clearly located in the functional dimension of the policy-image instead of the substantive dimension. Although a majority in the Parliament might have followed the alternative substantive dimension that the LIBE committee offered, they prioritised the functional dimension (i.e. the search for institutional legitimacy), for two different reasons. The first reason relates to the necessity of the European Parliament to show its engagement in negotiating effectively under co-decision. In a sense, it reflects the same pressure the EP felt while negotiating the *Returns* directive. Since, the *Data retention* directive was among the first pieces of legislation to be agreed under co-decision in the AFSJ, the group leaders from the largest political parties felt the necessity to show their ability to compromise and to be responsible. They were afraid that failing to find an agreement that would make the Council, and especially the Presidency, happy would translate into a long-term conflict with member states, which could block the capacity of the European Parliament to participate effectively in the development of the AFSJ. Clarke very bluntly affirmed that “if parliament failed, he would make sure the European Parliament would no longer have a say anymore on any JHA matters” (ECRI 2005b). After so many years of waiting to expand their powers in the AFSJ, group leaders probably did not want to jeopardise future negotiations. Making sure that the Council perceived Parliament as a serious partner was a way to strengthen the functional dimension, reassuring them that their claims of being a legitimate actor in the area of Freedom, Security and Justice were correct and that member states could trust Parliament to behave responsibly.

Secondly, this necessity to act responsibly was also a result from a parallel strategy from the Council. During the last stage of the negotiations, the Council assured political groups' leaders that, if they were consensual and showed a mature behaviour in this case, they would make use of the passerelle clause in order to extend co-decision to some of the issues still in the third-pillar (A. Alvaro, interview, January 2009). Ultimately the discussions in the Council lingered until the end of 2006, but it was quite clear that the shift to co-decision would be almost impossible to achieve, especially given that some large member states such as Germany opposed the use of the passerelle clause, for which unanimity was required (Monar 2007: 120-122). Alvaro, who in spite of being the rapporteur was marginalised during the negotiations between Clarke and the group leaders, still fails to understand what happened exactly and "why group leaders were so naive to believe this argument" (A. Alvaro, interview, January 2009).

The result was an agreement very much to the liking of the Council. For instance, they kept, as desired, the period of retention between six months and two years and the definition of serious crime was left to member states. Also, in reference to the purpose of the directive, although the mention of prevention of crime was deleted, article four concerning access to data is reduced to the strict minimum and contains only vague references to the necessity and proportionality of access (European Parliament & Council of the European Union 2006). Since the agreement had been negotiated by the two largest groups of the chamber, the rapporteur, from ALDE, could not gather a majority to support his report and withdrew his name from it (European Parliament 2005b: 31). Plenary voted the amendments proposed by the political groups and the result was a large majority in favour (378 votes, mostly from the EPP-ED and PES, 197 against and 30 abstentions).

Apart from opening important questions in terms of democracy and transparency issues, the agreement on *Data retention* illustrates the long-term engagement of the European Parliament towards the expansion of its institutional powers. Clearly, in front of a dilemma opposing the interests of the LIBE committee – that wished to engage in a strategy of conflict expansion to change the policy-image in data protection – and the largest interests of the European Parliament, group leaders did not hesitate in opting for the latter, making sure that the EP was regarded as a reliable and, following the words of the Council, *mature* institution that could offer an added value to decision-making in the AFSJ. Therefore, with or without a strong alternative in the substantive dimension, the functional dimension continued to be a priority for the EP, rendering conflict expansion an unviable option.

Conclusion

The aim of this article was to assess the capacity of the European Parliament to influence policy change in the area of Freedom, Security and Justice. After the institutional changes introduced in 2005, the EP was given the right to co-legislate with the Council in those issues transferred to the first pillar (i.e. all the issues included in the AFSJ except for police and judicial cooperation in criminal matters, family law and irregular immigration). It was expected that in this upgraded position the EP would be able to engage in substantive policy changes, transforming the policy-image in order to balance security and liberty and to give priority to the latter. The empirical evidence shows that these expectations have not been realised and that the Parliament has been unable to change substantively the policy-image governing the AFSJ. Securitisation is still the priority and continues to mobilise public support.

The article has also sought to develop Maurer and Parkes' functional and substantive dimensions. The concepts have proven to be relevant and heuristic in the AFSJ. The

substantive dimension combines strong elements of technicality and emotional appeal and has been constructed in very confrontational terms. As explained by the authors, the functional dimension has been almost solely responsible for the institutional change, offering new decision-making rules to the area. Yet, the empirical evidence shows that this change cannot be taken for granted. Although the formal shift in decision-making has been successful in giving powers of co-decision to the European Parliament, the functional dimension is still weak, since the EP is not yet regarded as a fully legitimate and efficient actor in the decision-making process. Besides, the shift to co-decision in the area of Freedom, Security and Justice weakens the assumption of a unified European Parliament. The gain in responsibility and the feeling that what the EP decides with the Council will have a direct impact on citizens (i.e. voters) has created a breach separating the interests of the LIBE committee from the wider interests of the European Parliament.

In consequence, the desire of the European Parliament to strengthen its functional dimension has become a priority that works against the potential to change the substantive dimension of the policy-image. In those cases where the LIBE committee is polarised and does not have a clear alternative to the substantive image presented by the Council, the willingness to portray itself as a reasonable and *mature* institution capable of reaching inter-institutional compromises blocks any capacity of minority actors to convince the other members of the committee to engage in conflict expansion. As explained earlier, during the negotiations on the *Returns* directive, the left-wing was unable to convince the committee that fighting for a particular conception of returns was more important than obtaining a directive at any price. Even more interesting is the effect of a weak functional dimension on those areas where an alternative substantive dimension exists. Here, strengthening the functional dimension has not only made strategies of conflict expansion more difficult, but it has also created a dilemma between the LIBE committee's substantive interests and the EP's functional interests. As a result we see that broadening the powers of the European Parliament is perceived to be a long-term strategy and thus a more important objective than ensuring a substantive change in a specific policy area.

However, the long-term perspectives for both issue areas, irregular immigration and data protection, are very different. In the event that the European Parliament could effectively strengthen the functional dimension in the AFSJ, the capacity to engage in conflict expansion is much higher in those issues where a substantive alternative exists. Therefore, the LIBE committee might have more opportunities for conflict expansion once the group leaders are convinced that the Council has accepted their presence in negotiations in the area of Freedom, Security and Justice. If in the future the Council comes to trust the Parliament and perceives it as a cooperative and helpful partner, then the LIBE committee might be able to convince the enlarged Parliament (i.e. the Plenary), to defend substantive issues that are of core importance to the committee. Once its position is secured, the committee might also be able to engage the EP in inter-institutional battles by challenging the substantive dimension in the European Court of Justice. If the Treaty of Lisbon comes into practice, these possibilities for conflict expansion may potentially include those areas that are now still part of the third pillar, since the pillar structure will formally disappear and the community method will apply to most issues related to police and judicial cooperation in criminal matters. Indeed, with the introduction of the Lisbon Treaty, issues such as data protection, PNR, discrimination or access to documents, which are now dispersed between the first and the third pillar, will have a higher potential to be substantively changed⁴ and judicially challenged in the mid-term compared to asylum, irregular immigration or border policies. The latter will probably turn out to be an area of

⁴ See for instance the allusion made to future changes in the EP resolution on data protection (European Parliament 2005c)

conflict inside the committee, very much dependent on political majorities and personal behaviour of core actors, especially rapporteurs.

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De/Securitising the 2007 Schengen Enlargement: Austria and “the East”

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Abstract

Drawing on the concepts of securitisation and desecuritisation, the article argues that the construction of security threats does not necessarily have to relate to their threat potential, but can be instrumentalised and utilised by competing actors for specific aims. Using the example of the Austrian Ministry of the Interior and the Austrian tabloid press, the article scrutinises how West-European security-political and media actors reacted to the challenges of the 2007 Schengen enlargement. With reference to Balzacq’s “three faces of securitisation” it shows that the tabloids’ securitising strategy proved to be more successful than the ministry’s desecuritising strategy, because the newly emerged context did not support a congruence of the audience’s frame of reference and the ministry’s speech act.

Keywords

Austria; Balzacq; Schengen; securitisation; Eastern Europe.

OVERNIGHT ON THE 20 AND 21 DECEMBER 2007, LAND AND SEA BORDERS BETWEEN THE Schengen area and the eight Eastern European countries that acceded to the European Union in May 2004 were abolished. The border controls at international airports followed in March 2008. The full implementation of the Schengen *acquis* had fuelled hopes and fears on both sides of the former Iron Curtain. Particularly in the “West”, however, fears of a suspected increase in cross-border crime from “the East” prevailed and superseded many of the advantages of borderless travel inside the enlarged Schengen area.

For the EU states that represented the pre-2007 Schengen eastern frontier, the abolition of controls at the borders with their eastern European neighbours is indeed not only a technical but also a highly emotional matter. The strongly rooted image of the “East” as untrustworthy, threatening and fundamentally different from an imagined “Western” community is sufficiently pervasive to mobilise objections. Simultaneously, the issue attracts actors and interest groups from various backgrounds who aim at instrumentalising it by establishing their own narrative as the dominant one.

This article examines the Austrian political and media discourse before and after the Schengen enlargement in 2007. Austria is a special case among the EU-15 in many respects, making the impact of the Schengen enlargement particularly visible. Austria is the “old” EU member with the most East-European neighbour states, namely four (Czech

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Republic, Hungary, Slovakia and Slovenia).¹ No other incumbent member state shares borders with as many new EU members. This geopolitical position exerts an impact on fears of the “East”, with the “East” being a diffuse and threatening bogeyman, firmly rooted in collective memory, luring right beyond the border. It is exactly this image which serves as a frame of reference for actors who aim at instrumentalising anxieties.

As this article will show, since the end of the Cold War, and particularly during EU and Schengen enlargement, Austria’s post-socialist neighbour countries have increasingly been referred to in terms of security in the realm of home affairs (this is, however, not true for economic relations). Drawing on insights of security studies, predominantly the Copenhagen School and its critics, the discursive connection that is established between security and the “East” can be considered an act of securitisation; “the intersubjective establishment of an existential threat with a saliency sufficient to have substantial political effects” (Wæver 2004: 9). Securitisation was put forward predominantly by right-wing political actors and the tabloid media, predominantly *Österreich* and *Kronen Zeitung*. It proved to be successful, since it did not refer to particular neighbours, but to the concept of the “East”, and as such to a firmly rooted cognitive pattern. Furthermore, it became hard to reverse when political actors sought to desecuritisise the issue in order to legitimise the decision to enlarge the Schengen area to the East in 2007. Thus, the sudden and purposeful downplay of the “East” as a security risk did not find its expected repercussions in public and media discourse.²

The first section introduces and discusses the concepts of securitisation and desecuritisation, using Balzacq’s (2005) “three faces of securitisation”: (1) The context, (2) the audience and (3) political agency. As a contextual framework, Austria’s geopolitical and historical position is also introduced. The audience is the public of the referent country, which expresses its assent (for example, in the amount of read newspapers or of votes for particular parties). The Austrian ministry of the interior and the Austrian tabloid media are depicted as actors, who, in their own special ways, sought to win the audience’s assent.³ The text concludes by arguing that the political actors – the ministry – found it hard to desecuritisise the Eastern neighbours in the course of the Schengen enlargement. With the enlargement, the ministry’s context suddenly differed from the audience’s frame of reference; hence the new context did not support a congruence of the audience’s experiences and the actors’ speech act. Thus the actors discussed (tabloids and politicians) did not behave homogeneously, and the tabloids strategy suited the frame of reference of large parts of the audience.

The Logics of Securitisation and Desecuritisation

The Copenhagen School (CS) developed a social constructivist concept of security that is nested between the poles of militarily defined security on the one hand and a wide notion

¹ Although the Czech Republic and Slovenia geographically are not in the East of Austria, the geopolitical and mental label of “the East” applies to them as well.

² The theoretical and descriptive parts of the text are complemented by empirical research collected in 2008 during four months of field research in the Austrian ministry of the interior, the Federal Criminal Police Office and other police and security units in the Austrian *Bundesländer*. I conducted qualitative interviews and informal conversations with political actors and practitioners in the security field, all of whom were concerned with different aspects of the 2007 Schengen enlargement. All interviews have been anonymised. In analysing the impact of the Schengen enlargement through the eyes of Austrian bureaucrats, I follow Burawoy’s “Extended Case Method”, which “adopts a situational analysis but avoids the pitfalls of relativism and universalism by seeing the situation as shaped from above rather than constructed from below” (Burawoy, 1991: 276).

³ This article focuses on the discourse emerging within Austria. How the new members themselves evaluate the current situation and their relationship towards the old members can only be subject to speculation and must be the aim of future research.

of security as everything people can worry about on the other hand. Three ideas are central to the CS: securitisation, sectors and regional security complexes. *Sectors* refer to the distinction between political, economic, environmental, military and societal security. The idea of *security complexes* “suggests an analytical scheme for structuring analysis of how security concerns tie together in a regional formation” (Wæver 2004: 9). This paper focuses on *securitisation*.

For the CS, “security is a practice, a specific way of framing an issue. Security discourse is characterized by dramatizing an issue as having absolute priority. Something is presented as an existential threat: if we do not tackle this, everything else will be irrelevant (because we will not be here, or not be free to deal with future challenges in our way)” (Wæver 1996: 106). By declaring something a security issue, the speaker entitles himself to enforce and legitimise unusual and extreme measures to fight this threat and thus achieve a higher aim: “The necessity of an existential quality (‘survival’) follows from the function of security discourse as *lifting* issues to urgency and necessity above normal politics” (Wæver 1996: 107 [emphasis in original]).

If the audience that the actor addresses accepts and supports this *securitising move*, the securitisation can be considered successful, and thus the securitising actor acquires social power, resources, and legitimacy. To declare something a security issue in the view of the CS does not entail any information about its actual threat potential; such a labelling should rather be understood as a self-referential practice.

The concept of securitisation and the widening of the classical notion of security have provoked a lively debate, and faced criticism from a number of authors (see *Cooperation and Conflict* 1999, volume 34: issue 3). For the purpose of this article, Balzacq’s (2005) critiques are of particular importance. He argues that security as a speech act “overlooks the external context, the psycho-cultural orientations of the audience, and neglects the differential power between the speaker and the listener” (Balzacq 2005: 174). Instead he suggests analysing securitisation as a strategic practice, focusing on three factors: political agency, audience and context; the efficacy of securitisation is contingent upon the congruence of these three factors. Securitisation, he argues, is not a self-contained and self-referential process, as proclaimed by the CS. Every securitisation is, in his view, “a historical process that occurs between an antecedent influential set of events and their impact on interactions” (Balzacq 2005: 193), and as such its analysis cannot be restricted to a single factor, like the rules of the speech act.

Desecuritisation

Although the authors of the Copenhagen School dedicate much time and space to the discussion of securitisation, they prefer to opt for the contrary, since “security should be seen as negative, as a failure to deal with issues as normal politics” (Buzan *et al.* 1998: 29). Desecuritisation, as they label it, entails “the shifting of issues out of emergency mode and into the normal bargaining process of the political sphere” (Buzan *et al.* 1998: 4). Another option would be to “try to keep issues de-securitized” (Wæver 2000: 253); in other words, not to securitise them in the first place, hence there would be no need to desecuritize. Roe (2004: 285) argues that this suggestion should rather be described as “non-securitization, where there is simply no security to begin with”. A third option to desecuritize is, in the view of Wæver (2000: 253), “to keep the responses in forms that do not generate security dilemmas and other vicious spirals”. Securitised issues can, according to Roe (2004: 285), be managed or be transformed. To manage them is however not the same as to desecuritize them, since they are not moved back to normal politics, but are still framed in terms of security.

It can be questioned to what extent the strict differentiation into “schools” is useful (see c.a.s.e. collective 2006), since the different approaches not only share distinctive features (Wæver 2004: 13), but can be vividly combined and thus need not be treated entirely separately. Accordingly, from the CS I borrow the concept of securitisation and the idea that it can refer to different sectors in a given society, in this case predominantly the societal sector. Furthermore, I use the speech act approach for the purpose of this article, but I also share Bigo’s (2002) opinion that securitisation manifests itself in institutionalised practices and the *habitus*’ of the actors in the security field. However, since the effects of this specific social field are not in the centre of this article, this issue will not be elaborated further, but should nevertheless be kept in mind as an underlying presumption.

Context: Austria and the Schengen enlargement

“Security” does not mean the same for every audience, but can differ among social groups or also among nation states. According to Balzacq (2005: 184) “[t]he configuration of securitization evolves within a symbolic context of forces that define what a conceptual event (security) is for an audience, and when the use of that concept resonates with the context in order to increase or win the support for the enunciator’s policy”. This article divides the context into three elements: (1) the Schengen enlargement, i.e. a political decision taken top-down and exerting an impact on all members of the Schengen area, (2) the concept of the “East”, i.e. a mental category rooted in collective memory, and (3) the country case study of Austria. The key question here is: to what extent did the Austrian context prepare the grounds for a successful securitisation and/or desecuritisation of the Schengen 2007 enlargement? Effective securitisation becomes more likely the more the audience accepts the speaker’s depiction of an alleged threat. While the Copenhagen School in this point relies on the power of the utterance of security itself, Balzacq (2005: 181) opposes this view arguing that “language does not construct reality; at best, it shapes our perception of it”. What is missing in this equation is the question, to what extent the external context affects the efficacy of securitisation. To be successful the actor’s securitising move has to relate to the audience’s perceptive reality, it has to trigger fears and anxieties, in short: it has to appeal to the actual situation and developments as well as the audience’s collective memory in order to win its assent. Both textual and cultural meaning that are specific for a given community “form a frame of reference through which security utterances can be understood” (Balzacq 2005: 183).

Enlarging Schengen to the “East”

“Schengen” has been the most successful example of European politics in the realm of Justice and Home Affairs to date, and it has become a core element of European integration and the Area of Freedom, Security and Justice. Schengen divided the European borders into two categories – internal and external. At the internal borders, stationary border controls were abolished in favour of mobile controls, increased cross-border cooperation and surveillance, while the rather “traditional” border controls were moved to the external borders of the EU.

The prospect of eliminating border controls, however, can easily raise feelings of insecurity in a given public, for “the politics of border controls are located precisely at the point of intersection between issues of security and identity” (Walker 1998: 170). Visible border controls are still perceived as highly efficient by the public, even though many practitioners doubt their effectiveness when it comes to anything more than petty crime and instead favour investigative and surveillance policing measures.

The enlargement of the Schengen area in 2007 was a direct consequence of the EU enlargement in 2004, and as such it proved to be a highly emotional matter for all the parties involved. The accession of the East-European countries to the EU in 2004 had been presented in the EU-15 as means of self-protection (Higashino 2004). Following this argument, only successful integration could grant the continent's stability and prevent ethno-nationalist conflicts, such as those in the Balkans. The accession of parts of the former "enemy camp" to the EU, however, proved to be a great political and ideological challenge for the Union (Walker 2002: 26), and it raised severe concerns about the candidate countries' capabilities in crime-fighting matters. Thus, the debate oscillated between the two poles of "security" and "certain doom", with "the incorporation of former Warsaw Pact states being seen as *both* vital to European security *and* as a potential threat to it" (Loader 2002: 135 [emphasis in original]).

During the preparations for EU accession, the new member states, particularly those from Eastern Europe, found themselves in the role of "junior partners" who needed to prove their capabilities at being "good" Europeans (see Schwell 2008). With EU accession, these countries were, in effect, granted mere second-class membership, reduced to a buffer zone or *Cordon Sanitaire* between Schengen and the non-EU members (Gromadzki 2001: 48f.). Though the new East-European members who had acceded to the EU in 2004 already had accepted the Schengen *acquis* with EU accession, they did not fully implement it until the end of 2007. The process of preparing for the Schengen enlargement, however, did not only take place inside the candidate countries, and it was far from being a purely technical matter. Widespread mistrust, both in the political and the public sphere, engendered fears that the security of the community would be endangered by enlarging to the East.

The "East"

The EU enlargements to the South had similarly fuelled fears that turned out unjustified (see Hix 2005: 350). But the enlargement to the East, at least in mental categories, cannot be compared to those to the South. The North-South divide often is translated into differences of economic behaviour, but still the "laggards" engage the North's sympathy (Eder 2006: 263). The East, however, is an "Other" that is not regarded with that much favour: "This East appears as Russia, providing a referent for something that Europe is different from" (Eder 2006: 264). But the "East" did not exclusively refer to Russia. As Wolff (1994) shows, already in the 18th century Western Europeans constructed the image of an underdeveloped "Eastern Europe", in order to show themselves in a positive light.

The West's cultural concept of the "East" is a narrative of backwardness, insecurity, ambiguity and anxiety, strongly resembling the concept of Orientalism put forward by Said (1979). Furthermore, both Orientalism and the "East" are meant to construct alterity and "the other", which not only divides the social world into "us" and "them", but lets "us" (Westerners, EU citizens, etc.) stand out as better, morally superior, and progressive (see Wolff 1994; Buchowski 2006).

All collective identities are constructed in relation, and identity necessarily entails a boundary mark, creating through the mechanisms of categorisation and self-categorisation a differentiation between "us" and "them". There is, however, an important difference between a mere comparison and the depiction of "them" as a threat. In the latter case, difference becomes something negative; identity becomes pathologic (Delanty 1999: 268). Eastern Europe has long served as Western Europe's "other", and consequently the accompanying feelings of fear and mistrust are not quickly overcome. The mental boundary has not shifted eastwards at the same rate as the EU's and Schengen external border.

Austria: From the periphery to the centre

Austria is a special case among the "old" EU-15 for several reasons. The country joined the EU only in 1995. Prior to the transition to democracy in Eastern Europe, Austria had a neutral status between NATO and Warsaw Pact (Kořan 2006). However, the country ideologically considered itself both as part of Western Europe and as 'bridge' between East and West. Due to the changing security situation after the end of the Cold War and the mitigating conflict between East and West, neutral "bridge-builders" were less and less needed. As Ferreira-Pereira (2006: 111) points out, though, Austrian political elites have found it hard to abandon the "mental habit" of neutrality, not at least in order to satisfy the electorate: "Neutrality had become a question of identity and tradition for a population inclined to regard it as the originating source of the blessings the country had enjoyed since the end of the Second World War".

Austria was also particularly affected by the system change in Eastern Europe. Four of its eight neighbouring countries are post-socialist states: the Czech Republic, Slovakia, Hungary and Slovenia. Moreover, all of them were part of the Habsburg Empire. Due to this common heritage, Austrian politicians still feel responsible for these countries; this is an attitude that can quickly turn into paternalism. The geopolitical position also shaped Austria's security identity and perception. Immediately following the system change in Eastern Europe, there were fears that Austria could be directly affected by eventual political and/or ethno-national distortions in the neighbourhood. This concern particularly related to the conflict in the former Yugoslavia and prompted Austria to take charge of communication with Slovenia and Croatia and to become their advocate in the West. This interest, however, slowed down by the end of the 1990s to such a degree that leading representatives of Eastern European countries began to criticise Austria for not fulfilling its role as Eastern Europe's advocate and for lacking a well thought-out political strategy (Kramer 2006: 831). In recent years, however, Austria has repeatedly confirmed its support for an EU membership perspective of the Western Balkans (Pollak & Puntischer Riekmann 2007: 11f).

These factors form the frame of reference through which the audience interprets the security utterances of the actors made in the course of the EU accession of Austria's post-socialist neighbours in 2004 and the enlargement of the Schengen area in 2007.

Audience: a population under siege

Obviously, the success of securitisation is highly contingent upon the question, if the audience complies with and subscribes to the securitising actor's view. The actor's foremost aim, thus, is to win the target audience's support, both moral and formal, if possible. A successful securitisation relies also on the level of identification between a securitising actor and his target audience's experiences and life world. Balzacq (2005: 192) identifies the following components of the audience as a factor for securitisation: "(i) the audience's frame of reference; (ii) its readiness to be convinced, which depends on whether it perceives the securitizing actor as knowing the issue and as trustworthy; and (iii) its ability to grant or deny a formal mandate to public officials". The audience in this article is characterised by two factors: its self-perception as being a country under siege, and the mental category of *Austrochauvinism*.

The country "on the edge of a thunderstorm area"

The common history in the Austro-Hungarian Empire does not automatically entail a deep bond between Austria and its former compatriots. On the one hand Austrian politicians are anxious to fulfil the role as mediator and advocate of East- and Southeast-European

interests, while emphasising spatial but also explicitly historical proximity. Thus the relationship appears to be 'natural'. This, however, applies only to 'official' relations. It is apparently not reflected in any way in public, primarily media reception; this position to a large degree ignores historical proximities, but draws on issues of alterity and on micro-security.

The dominant discourse here is one of a country under siege. Security fears along borders that are marked by a decline in wealth are not unusual. Economically underdeveloped regions are particularly prone to insecurities resulting from change and moral panic, and the media is often all too eager to fuel the latter. Moral panic is defined by Hall *et al.* (1978: 16) as follows:

When the official reaction to a person, groups of persons or series of events is *out of all proportion* to the actual threat offered, when 'experts', in the form of police chiefs, the judiciary, politicians and editors *perceive* the threat in all but identical terms, and appear to talk 'with one voice' of rates, diagnoses, prognoses and solutions, when the media representations universally stress 'sudden and dramatic' increases (in numbers involved or events) and 'novelty', above and beyond that which a sober, realistic appraisal could sustain, then we believe it is appropriate to speak of the beginnings of a *moral panic*. [emphasis in original]

Ministry officials in the interviews often explained the allegedly widespread fears and anxieties among the population of the borderlands by arguing that the Austrian regions bordering on the post-socialist neighbouring countries until the demise of the Iron Curtain were, or rather: are imagined as, quasi 'crime-free areas'. The collective memory of large parts of the borderland population remembers and idealises pre-1989 as a time when nobody had to lock his door or car, for who should steal a car or break into a house in one of Austria's most remote and poor corners? One might presume that 20 years later a certain habituation effect might have occurred. As the interviewees state, inhabitants of border areas are voters as well, and hence their subjective feeling of safety is of high value for both local and national politicians.

But it is not only the inhabitants of the border area that feel threatened by the overwhelming amount of "East" behind their borders. Austria's position "on the edge of a thunderstorm area", as the former Austrian foreign minister Alois Mock put it (cited in Höll 2001: 462), was particularly suited to stoke fears in the Austrian population of an influx of organized crime, movement of labour as well as competition from low-paid workers and cheap products (see Wodak and Matouschek 1993).

Austrochauvinism

The electoral success of the right-wing populist *Freiheitliche Partei Österreichs* (FPÖ) in 1999 and its subsequent participation in the government met these concerns and led to protests all over Europe (see Happold 2000). Nevertheless the rise of the two right-wing populist parties FPÖ and BZÖ (*Bündnis Zukunft Österreich*) continues. In the national elections in 2008 the FPÖ gained 17.5 per cent (11.0 per cent in 2006), and the BZÖ 10.7 per cent (4.1 per cent), hence nearly one third of the Austrian eligible voters cast their ballot for right-wing populist parties. This is an increase of 13.1 per cent in only two years.

Their populist xenophobic and anti-Semitic programmes do thus not appear in any way questionable to large parts of society, on the contrary. Hence it seems to be more than a mere coincidence that Amnesty International (2009) only recently denounced the institutionalised racism among Austrian police officers. The late Jörg Haider already in his lifetime has been described as a master in the field of populism, as "a man of the people"

(see Gingrich 2006). The “Princess Diana”-like scenes which took place in his home *Bundesland* of Carinthia after he died in a car accident in 2008, both gave evidence of his overwhelming popularity and scared dissenting national and international observers.

This particular part of Austrian mind-set and self-perception has been aptly described as *Austrochauvinism*, which refers to an – allegedly specifically Austrian – cognitive pattern that is characterised by egocentricity and a strong feeling of superiority towards its neighbouring countries and its migrant population, but results from a trauma of the Austrian self-confidence. Mantl (1998: 55) dates the emergence of *Austrochauvinism* to the middle of the 1980s. He also observes the concurrent development of another mental habitus, the other side of the coin: “Austromasochism”, which he locates predominantly with Austrian intellectuals, despairing of their country and simultaneously succumbed to self-doubt.

Large parts of the audience are thus inclined to grant both moral and formal support to the securitising actors via votes. Concomitantly the cognitive pattern of *Austrochauvinism* frames the way they interpret the social world around them and thus prepares the ground for a successful securitisation by those who will be in the focus in the next section: the actors.

Agency: Instrumentalising (in)security

Agency is “the practical force of discourse” (Balzacq 2005: 186), since the perlocutionary effect of a discursive action is essential for a successful securitisation. Discourse and action are thus inextricably linked. The power of words’ agency depends on “(i) the context and the power position of the agent that utters them; (ii) the relative validity of statements for which the acquiescence of the audience is requested; and (iii) the manner in which the securitizing actor makes the case for an issue, that is, the discursive strategy displayed” (Balzacq 2005: 190).

Since the actors under scrutiny in this article are public officials and the tabloid papers, it is worth mentioning that Balzacq (2005: 190) attributes a particular favourable position for securitisation to the former, because they “hold influential positions in the security field based on their political capital, and have privileged access to mass media”. The audience’s insufficient access to information and its conviction that public officials must have “good”, i.e. objectively serious reasons to move an issue onto the security agenda, can indeed facilitate the work of the securitising actor. It should be added, however, that this may be the case only as long as their strategy and the strategy of the tabloids do not contradict each other. Certainly a ministry’s strategy would not be doomed to failure quasi-automatically, but without homogeneity, the ministry’s “pole position” is seriously endangered by the tabloid strategy.

Securitising the “East”

As Stabile (2001) shows in the examples of the Iran-Contra affair, the “War on Terror” and the criminalisation of the black civil rights movement, the political leadership often not only tries to direct media coverage, but the interests of both media and politics frequently go hand in hand and mutually strengthen each other. There are, however, other cases where the political leadership for some reason is explicitly not interested in the (continuing) securitisation of an issue. In such cases, desecuritisation rather than securitisation is preferred. This is exactly what can be observed in the case of the Schengen enlargement.

Before the enlargement the tabloids and the ministry of the interior were in line in their depiction of the security threats from the “East”. The fight against cross-border crime, organised crime and terrorism was heatedly fought, with the goal being to enforce increased competences, tightened laws and better equipment on the basis of the functional spill-over. Following this argument, a new threat or an increase in crime rates calls for enhanced or new measures in order to handle them effectively; this, in turn, can evoke measures in other policy fields. The state in this theoretical model appears as merely reactive (see Walker 1998: 171).

The ministry’s and the tabloid strategy complemented one another in the eyes of the audience, and the argument was presented as follows: The post-socialist neighbours and their abilities in crime-fighting matters cannot be trusted, since they are countries of origin and transit for (organised) crime and illegal migration. The demise of the Iron Curtain, the breakup of Yugoslavia and finally the relaxation of border controls led to a hitherto unprecedented influx of migrants, asylum-seekers and crime, all of which threaten both Austrian state and nation. Austria is “besieged”, it is depicted as “flooded” by migrants, particularly by those with Islamic background, who “make the Austrians feel foreign in their own country” and furthermore are put under general suspicion of terrorism. Asylum-seekers, predominantly those from African countries, are generally suspected of drug-trafficking, and of exploiting the Austrian welfare state. The image of the criminal can be attributed to migrants and asylum-seekers as well, but with the demise of the Iron Curtain a new type of criminal emerged: the tabloids invented the “Eastern criminal” (*Ostkriminelle*),⁴ who would quickly cross the border from any post-socialist neighbouring country, break into houses and steal cars, and then, again, disappear quietly behind the border.

The tabloids demanded deportations of suspects of foreign origin, closed borders and an Austrian withdrawal from the European Union, which was deemed responsible for every misfortune, and warned of a complete loss of Austria’s neutrality.⁵ Austria’s then Minister of the Interior, Günther Platter (ÖVP), though certainly not he alone in his actions, liked to present himself as standing in the first line of defence against these intruders. Since, as the idea of securitisation suggests, extraordinary threats need to be countered using extraordinary means, the Austrian ministers of the Interior implemented a number of actions. I will not go into detail here, but just to name a few measures: strategic multi- and bilateral cooperation in security and police matters, like participation in the treaty of Prüm, the invention of the “Forum Salzburg” (Bundesministerium für Inneres 2001), technical and training support for the new member states, and the disputed support deployment of the Austrian army.⁶ However, with the abolition of border controls, the political leadership quickly changed its strategy, shifting toward a purposeful desecuritisation of the issue.

The ministry’s strategy: desecuritising the neighbour

With the decision to enlarge the Schengen area in December 2007, the frame of reference for the ministry changed. Although the enlargement was a top-down decision that the ministry could hardly influence unilaterally, it had to publicly support it. The decision to enlarge, however, entailed an argumentative problem: the old strategy of presenting the

⁴ This notion is part of virtually every issue of the *Kronen Zeitung*; for a sketchy overview s. Rusch 2007.

⁵ The reference to neutrality and the simultaneous opposition against the EU, again, is a recurring motif in both *Österreich* and *Kronen Zeitung*.

⁶ The deployment on the borders with Hungary and Slovakia was introduced in 1990 to compensate for the putative security deficit that accompanied the system change in Eastern Europe. Initially it was planned to last no longer than ten weeks, but it is still in place, since the local population’s subjective feeling of safety allegedly longs for a prolongation of the deployment over and over again.

neighbours as a security threat could not be used anymore, because it would have been hardly credible to securitise those countries with which Austria was just about to abolish border controls. Thus, the changed context forced the ministry to alter its strategy in order to keep the audience's trust.

The argument that was made right before and after the Schengen enlargement so as to sell it to the public can be summarised as follows: The East-European member states were countries of origin and transit for cross-border crime in the past, and could indeed not be trusted, but thanks to Austria's strict controls and support they have improved, and since Austria's leadership can trust them now and enjoy the advantages that the enlargement entails, so can the Austrian public.

According to an internal strategy document (Bundesministerium für Inneres 2007a), the ministry's communication strategy stressed the following points:

- 1) to depict the abolition of the border controls as positive and emphasise the resulting advantages,
- 2) to avoid (or rather to correct) information deficits,
- 3) to inform the public about chances, risks and advantages of the abolition of the borders,
- 4) to inform the public about developments on EU level concerning security issues, and
- 5) to find a binding terminology for external communication.

The means employed to implement the strategy of fighting crime thus consisted of a predominantly discursive performance of efficiency, i.e. police measures that had been taken nationally and internationally were enumerated, an information brochure was disseminated (Bundesministerium für Inneres 2007b), and, finally, a public-oriented personal inspection was undertaken by the minister of the interior, who promised that without his close examination no state would be able to join the Schengen area. According to reports by interview partners, however, by this point the fact and the date of the Schengen enlargement had already been irreversibly decided at the EU level.⁷ This event underlines how important the performance of controlling the "East" was for the ministry.

The task of desecuritisating the "East" proved to be even more complicated since the EU requirements ran counter to the Austrian strategy. As interview partners report, the ministry was not enthusiastic about the overnight removal of the borders and had communicated this several times to the Austrian public. Austria had favoured a gradual abolition of border controls, as had been the case with the internal borders with Germany and Italy: first the small crossing points were abandoned, then the medium ones and finally the large ones. The foremost reason why the Austrian demands were not fulfilled relates to the new members' status as "junior partners". Having held out for years in the backyard of the European periphery, they were not willing to accept patiently any successive enlargement. On the Austrian side, however, it would be difficult to sell the sudden disappearance of controls to both the public and the tabloids, considering the relevance of the symbolic dimension of border policing.

Border controls can play the role of a link between political agency and the audience. The political instrumentalisation of the European Football Championship EURO 2008 in Austria provides a telling example. Border controls at the Schengen internal were temporarily reinstated in order to prevent the entry of violent football hooligans. The reinstatement,

⁷ Interview with ministry officials, Vienna, 26 March 2008.

however, was also ostensibly linked to the promise that Austria could resume its border controls as a measure of self-defence whenever it wished to do so. Thus, the argument went, if Austria's politicians discovered a security threat, or if the security threat from the East would prove to become uncontrollable, it would always be possible to reinstate border controls for as long as it would take to fight the threat. They did not tell the public that Austria's freedoms do not go as far as they pretended. Article 2(2) of the Schengen Implementation Agreement provides that a reinstatement of border controls "is allowed if public policy or national security so require, and for a limited period only. The checks at the internal borders should be 'appropriate' and the other Schengen states have to be consulted beforehand" (Groenendijk 2004: 154).

The temporary reinstatement of border controls without a specific aim is generally not suitable for fighting threats like organised crime and, in fact, tends to affect Union citizens and to delay their travelling (Atger 2008: 6), yet their symbolic importance should not be underestimated. For the ordinary citizen border controls are a nuisance and delay traffic, but they prove that something is done, that the state is active in preventing the intrusion of anything unwanted. Thus many, though not all, forms of visible control serve no other purpose than to strengthen the legitimacy, credibility and position in the social field of the political actors who are responsible in the eyes of the audience, i.e. the public.

The ministry had legitimised extraordinary measures with reference to an alleged extraordinary threat, and thus the audience and the ministry had been in accord. With the neighbours acceding to the Schengen area in 2007, the ministry's context and frame of reference changed. The public would identify the decision to enlarge with its political representatives. In the new reality, the neighbours could not anymore be depicted as laggards and paradise for criminals. In order to keep its legitimacy and credibility, the ministry had to divert its course. Large parts of the audience, however, did not follow.

The "East" is not less dangerous than before, but now it is better controlled. This summarises the ministry's new desecuritisising strategy. Desecuritisation here means not only, in the words of the CS, to shift issues back to normal politics. Extraordinary measures are still in place: compensation measures, the army's support deployment along the borders with Slovakia and Hungary, etc. The aim of the ministry's desecuritisising strategy, thus, is not to remove the extraordinary measures, but to distract the audience's attention and move it towards more prestigious issues. The security threats have thus not been transformed, but managed; they are still framed in terms of security (see Roe 2004: 285). This plan might have worked, if there had not been the tabloids.

The tabloid strategy

The strategy of the tabloid media *Österreich* and *Kronen Zeitung* immediately before and after the Schengen enlargement starkly contradicted that of the ministry. Certainly both tabloids aim at selling their papers and to shape public opinion. The *Kronen Zeitung*, however, constructs and follows a strategy that significantly moves beyond the mere interest of selling newspaper copies, but pursues a political agenda of its own that does not at all focus on reporting political events, but on influencing and making them (see Rusch 2007: 55-59). Some interview partners who were able to observe the media coverage from a distance were rather "amused" both by the misrepresentation of the Schengen enlargement in the media and by the ministry's helpless, and largely unnoticed, attempts to counter this depiction by the means mentioned above.⁸

⁸ Interviews with ministry officials, Vienna, 18, 20 and 26 March 2008.

It has already been argued that the securitisation of the Eastern neighbours stroke a chord in large parts of the Austrian population. In order to evaluate the tabloids' power position and the audience's readiness to accept their way of framing issues, I suggest using the media scope of the two large tabloid papers as an indicator. The daily *Österreich* reaches 10.0 per cent of the population, while the daily *Kronen Zeitung* is read by record-breaking 41.9 per cent (Media-Analyse 2009). Together the tabloids reach approximately half of the Austrian population; this is an extraordinary rate compared to newspapers in all other European countries.

The tabloids appealed to strongly rooted fears of crime from the "East" and warned that the opening of the borders would be almost irresponsible. Hence the headline on 21 December 2007 in the daily tabloid *Österreich* read: "We are borderless!" This joyful exclamation, however, was relativised by the subtitle: "The good thing: We have 80 million new neighbours. The bad thing: 22 per cent more home burglaries and 57 per cent more trucks" (*Österreich* 21 December 2007). The same newspaper shortly after warned of 6000 audacious Chechnyans who were suspected of driving from Poland directly "by taxi to the camp" (*Österreich* 3 January 2008); in other words, they were fleeing to the Austrian reception camps for asylum-seekers, which presumably were much more comfortable than the Polish ones, and were planning to live at the expense of poor Austrian citizens.

Hans Dichand, the publisher of Austria's largest tabloid *Kronen Zeitung*, wrote in his blog on 3 December 2007: "Sure, these submissive EU trucklers can even get excited about crime tourists, who will be 'presented' to us before the holidays. Then thieves won't be controlled anywhere" (Dichand 2007b). On 25 December he adds, that now, four days after the removal of border controls, in the region bordering on the Czech Republic cars are stolen "like cherries", but, he complains, official Austria behaves "as if everywhere was jubilation. Rarely ever before an increase in crime has been greeted in a country so stupidly..." (Dichand 2007a).

The tabloid strategy to appeal to an austrochauvinist audience that feels forced onto the defensive proved to be particularly successful, because it used the appropriate catchwords and key concepts: The tabloids divide the social world into "us", the community of good, honourable and hard-working Austrians, and "them", the diffuse bogeymen who are luring behind the border, waiting to come over and sell drugs to our children/rape our women/steal our cars/live at our expense. The Schengen enlargement did not force the tabloids to divert their strategy – on the contrary. With all border controls removed, the security threat was even more tangible; the appeal to the cognitive pattern of anxiety of the "East" appeared to be even more credible than before.

100 days later: strategy revisited

One hundred days after the abolishment of the Schengen internal border controls with the new members, Austrian crime statistics look positive. In fact, a remarkable decline of 9.3 per cent in the period from January to March 2008 is observable. For political and police representatives, these figures are objective proof of the efficiency of compensation measures. Their argument is that numbers don't lie nor are they subject to interpretation, as the Austrian minister of the interior claimed: "We are working on the basis of real facts and results, not of estimations, predictions or scaremongering" (Bundesministerium für Inneres 2008: 1). However, it must be mentioned that crime statistics tell little or nothing about the factual number and distribution of criminal offences in a given society. They rather distract attention from crime and focus it on police successes: "Questions about the actual amount of crime and the degree of control exercised are thus bypassed in favour of an index that offers great potential for organizational or bureaucratic control" (Manning 2005: 202).

For the Austrian Ministry of the Interior this means: the political and police strategy have worked out; compensation measures are successful, and thus legitimacy is based in efficiency. Some informants report, however, that the picture is much more differentiated than the sheer numbers suggest.⁹ Indeed, the overall amount of crime in Austria has decreased, and this is also valid for the *Bundesländer* that border on the new member states. However, some informants report that according to an internal evaluation of crime development by the Austrian Federal Criminal Police Office, a relocation of crime has taken place from the inland to the border. The main emphasis here is on home burglaries; in comparison to the previous year, districts directly bordering on the former Schengen external border showed a sharp increase since the abolition of border controls until the end of March 2008. Although it was not possible to identify significant tendencies and to establish a direct connection due to the short period since 21 December 2007, the possibility to fall victim to property offence since the abolition of the border controls seems to have risen the closer one lives to the border.

Accordingly, the tabloids still report home burglaries and car thefts in the border region and in Vienna, and they continue to stoke fears of the Eastern neighbours. But also the ministry, now with Maria Fekter (ÖVP) under new leadership, pursues its strategy of desecuritisating the Eastern neighbours; this, however, is not to argue that the ministry now follows an entirely new path. Rather, the focus is now directed increasingly towards those who do not yet make a change of plans necessary: the non-EU members.

Conclusion

The East-European member states have served as Western Europe's "other" for a considerable length of time, making this perception hard to change. This explains why the securitisation of the Schengen enlargement in Austria proved to be much more successful than its desecuritisating. The idea of the "East" as the "other" or even the "dark" side of the West has been inscribed into the collective identity of the "West". As Eder (2006: 265) puts it: "In this sense, the East reflects the ambiguity of the West regarding Europe". Hence, the securitisation of the "East" as a security threat is not only much easier to instrumentalise and utilise for political or other purposes, but it is also more convincing than its desecuritisating counterpart.

The desecuritisating strategy was a logical decision for the ministry resulting from the changing circumstances, according to the motto: "The 'East' is not less dangerous than before, but now it is better controlled". The tabloids countered with what may be summarised under the slogan: "The 'East' is as dangerous as before, but now it is not even controlled". Thus the ministry's and the tabloids' strategies, that before the enlargement had acted in concert, were no longer in accord. Furthermore, now the latter appealed much more to the audience's frame of reference than the former, since the new context did not support a congruence of the audience's experiences and the political actors' speech act. Accordingly, the political actors probably did not appear very credible to the public as they suddenly embraced those who they had shunned for years.

To what extent the geopolitical diminution of the East-West-asymmetry is reflected in a changing perception of the East-European member states as "post-socialist laggards", on the one hand, and as security threats for the old Schengen members, on the other hand, is contingent upon several factors. In the domain of public opinion and media coverage, certainly much depends on the question to what extent strategies and performances of security do not happen apart from the world of the inhabitants of the border regions. In the long run, the expected economic growth in the border regions should also entail an

⁹ Personal conversation with Federal Criminal Police officials, Vienna, 14 May 2008.

abolition of mental borders, which is not necessarily likely to produce but maybe to advance the development of integrated border regions.

The asymmetry of East and West in the long run will only be transcended if the "East" as a mental category is resolved and interaction can take place on an eye-to-eye level. However, one can assume that the development of a common European identity can only happen via excluding those who now, after the Schengen enlargement, find themselves on the other, even more "Eastern", side of the fence. Desecuritisation, it seems, can indeed be successful – at the expense of newly securitised "others".

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Living in Surveillance Societies: The Normalisation of Surveillance in Europe and the Threat of Britain's Bad Example

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Abstract

This article argues that surveillance is becoming increasingly normalised across Europe and that this is altering the landscape of liberty and security. It identifies this normalisation as a product of the globalisation of surveillance, the domestication of security, the desire of the European Union (EU) to create a distinct leading role in security, and the influence of the 'bad example' of the United Kingdom (UK). The article uses the two very different examples of video-surveillance and electronic public services in the UK to make this case and to argue for both stronger resistance to calls to make human rights more flexible in a risk and security-driven age and more detailed research into the differences between emerging surveillance societies in Europe.

Keywords

CCTV; Security; Surveillance; Surveillance Society

IT IS COMMONLY HELD THAT CONTEMPORARY CAPITALIST NATION-STATES ARE 'surveillance societies' (Lyon 1994, 2001, 2007). This usually refers to the fact that surveillance is a key mode, if not the principle mode, of organisation in those nation-states. It is no longer remarkable that this is so, and the naive phase of surveillance studies, in which we were 'surprised' by evidence of surveillance, is long past. But what does it mean to live in surveillance societies and what economic, political and social relations are produced? These are the key questions of a new pan-European research network called Living in Surveillance Societies (LiSS),¹ and this article will outline some of the background and reasoning behind it.

The key argument made in this article is that while it makes sense in academic terms to have abandoned any notion that we are still 'discovering' surveillance, the normalisation of

¹ Living in Surveillance Societies COST Action ISO807, funded by the ESF and the EU Framework programme and administered by COST (European Cooperation in the field of Scientific and Technical Research). Available at: http://www.cost.esf.org/domains_actions/isch/Actions/liss, last accessed 9 July 2009.

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Available at: <http://www.jcer.net/ojs/index.php/jcer/article/view/159/144/>

surveillance in social life has important ethical and political consequences which, although inevitable for everyday life, have to be called into question. The role of surveillance studies then, is both to detail the ways in which everyday life in surveillance societies occurs, but also to continually reopen the 'black-box' into which surveillance is vanishing, and to critically examine the increasingly coherent and stable surveillant assemblage (Haggerty and Ericson 2000). We need to make surveillance strange again, and therefore open to rigorous examination and possibly change.

Underpinning our argument is the simple proposition that technologically mediated surveillance practices raise significant questions about modern society, the nature of liberty and its relationship to security, and about relations between citizens, businesses and the state. Furthermore, a closer examination of the 'new normality' of everyday surveillance highlights the differentiated and diverse application of surveillance in modern European society. We argue that in the United Kingdom (UK), processes of normalisation of surveillance have gone much further than elsewhere, and with the UK currently considered a 'model' to be aspired to by security professionals, the 'threat of a bad example' to other European nation-states is real. Consequently, our view is that a better understanding, and enhanced societal awareness, of surveillance can lead to better informed public policy and practice.

This short article has three main parts. The first part looks at the ways in which surveillance has become a key part of the 'organisational package' that accompanies late or advanced capitalism. Contemporary globalisation involves the simultaneous spread and intensification of this particular mode of capitalism, but also forms of governmentality, state, social and personal organisation that accompany it and are held to flow 'naturally' from the adoption of these new relations of production and consumption. The second part will consider the ways in which this new normality is in no way 'natural' even within late capitalism, and in fact continually reinforced through the work of state and private sector actors and this always incomplete process is contested by others. It looks in particular at the example of video-surveillance in the UK as an area where the normalisation of surveillance has gone further than in most other countries. Part three considers the nature of modern surveillance for those living in surveillance societies. This is achieved by exploring dimensions of modern technologically mediated surveillance, dimensions which show that surveillance is not just ubiquitous; it is also subtle, deep, unobtrusive and selective. The concluding discussion pulls the core themes of the article together around an agenda for research into living in surveillance societies.

The Globalisation of Surveillance and the Domestication of Security

Modes of production and consumption have their own accompanying modes of ordering (Law 1992). Surveillance has become a key mode of ordering in late capitalism (Lyon 2007) largely through the affordances of particular sociotechnical developments: telecommunications, computing and the new verticality offered by access to orbital space. The organisational rationale for this has been the rise of risk-thinking (Beck 1992) and the spread of risk-management as being the predominant perceived job of any organisation, both internally and externally (Ericson and Haggerty 1997). The new technologies are placed in the service of this agenda: collecting and sorting data on people, things and events in order to produce categories of risk and profitability, which will enable foresight and anticipation of future risks and profits (Graham and Wood 2003). Many of these developments have taken place initially within military arenas; however, the globalisation of surveillance has also been accompanied by the domestication of security. As the 'risk-surveillance society' (Murakami Wood *et al.* 2006) has become the 'ideal-type' state of the Twenty-First Century, so its aims - anticipated and pre-managed risk, safety, control, security - are increasingly permeating policy and practice at every level. The relationship

of globalization and militarism has become an important area of research and polemic recently (see e.g. Hardt and Negri 2000), indeed Naomi Klein (2008) has controversially characterized the contemporary economy as one of 'disaster capitalism', in a post-modern and critical variation on Schumpeterian creative destruction. Regardless of whether one would go as far as Klein, it is rather less controversial that there is a military character to the forms of surveillance that are currently being globalized. One of us has elsewhere used the language of 'securitization' (Coaffee *et al.* 2009) but this should not obscure the fact that the flows go both ways. Militaries are increasingly influenced by models originating from outside the military. Mick Dillon (2002) has noted the influence of new biological and bioinformatic research on US military strategic thinking, and business style and discourse increasingly penetrate military style.

In the immediate post-Cold War period, there was a diversification of production in the military security sector, which led to large companies that had previously been almost exclusively military contractors adapting products for civilian markets (Coaffee *et al.* 2009). For example, as Jon Coaffee (2001) has noted, the Automatic Numberplate Recognition (ANPR) system installed in London in the early 1990s relied on technologies tested in the invasion of Iraq in 1991. Whilst this militarism may seem to have a strongly 'American' flavour, just as the current wave of capitalism does, the new mixed military-civil security and surveillance economy is not exclusively an American or Anglo-American development. Large companies all over Europe and the world maintain such diverse portfolios, for example, the French group Sagem, which makes everything from mobile telephones to Unmanned Aerial Vehicles (UAVs) - flying surveillance drones; or Nokia which has moved into collaboration with Siemens on the manufacture of new Intelligent Surveillance Platforms (ISPs) - off-the-shelf dataveillance systems able to handle everything from telecommunications capture to video images. However it is certainly the case that the surveillance surge that has overtaken the UK since the early 1990s has made Britain a lucrative marketplace for surveillance equipment.

The new surveillance economy has of course profited from the renewed hostilities that have gradually come to fill the perceived military vacuum left by the end of the Soviet Union and its satellite states. Indeed, along with the creation of new civilian markets for military surveillance equipment, the language of combat also became part of the lexicon of politics: wars on drugs; wars on crime; wars, as Ericson (2006) put it, on everything. However, with the war on terror(ism), and the invasions of Iraq and Afghanistan, there has been a renewed surge of military surveillance development. The new 'war' does not involve the massive, lumbering, 'baroque arsenal' (Kaldor 1981) but is a series of asymmetric conflicts seen as being fought much more through information and intelligence than through the threat of total annihilation (Metz 2000; see also Graham 2004). The transformation of crime and policing has been similar with information-led (and surveillance-saturated) policing to deal with flexible forms of crime that are not limited by traditional borders. The new forms of war and crime are also at once international, transnational and intranational; they do not fit either the old order of discrete nation-states connected by bilateral or international agreements and institutions, such as the United Nations or Interpol, and thus are seen to call into question the capacity of both those existing global institutions and individual states to deal with these issues internationally or within their own jurisdictions (Loader and Walker 2007). Hence the secret EU-FBI policing deals in the 1990s that have led to the opening of databases and the flow of personal information between a whole variety of US and European agencies² or the rise of the G7/8 as a place for the creation of new security and surveillance initiatives, as for example, with

² See the collection of documents accumulated by Statewatch on 'the EU-FBI telecommunications surveillance system' available at: <http://www.statewatch.org/eufbi/>, last accessed 10 July 2009; and the subsequent expansion of EU-US agreements on data-sharing available at: <http://www.statewatch.org/soseurope.htm>, last accessed 10 July 2009.

the new international passport standards, despite its relative lack of formal competence in this area (see: G8 2003, 2004; Statewatch 2004). The globalisation of surveillance depends to some extent on the spread of standards to allow interoperability of systems, which in itself is part of a globalization of governance, but this globalization is not based on the institutions of previous waves of internationalization but on a more exclusive, closed and secretive set of organisations.

It would be easy to put this down to a new American 'empire' in the manner of Hardt and Negri (2000) but, as with the economic expansion, this is too convenient and simple an explanation. The form of the globalization of surveillance and the new political economy that is evolving around it is as much a product of the practices of the European Union (EU). As the work of organisations like Statewatch³ and the CHALLENGE network⁴ have demonstrated, the new forms of international security co-operation, and the setting of surveillance standards are as much a product of the EU's experience of the creation and operation of its 'Fortress Europe' Schengen immigration controls (see Bigo and Guild 2005) and the way in which these agreements occur largely in secret and at an elite level, as much 'European' in character as American. It does not mean either that the EU is 'under the thumb' of the USA: the EU is quite capable, when it wishes, of carrying out development independent of or even in direct opposition to, the USA – as with the Galileo satellite project, which will create a direct rival for the US Global Positioning System (Lembke 2002; McDonald 2007). Frequently, the EU has also gone beyond the standards required by international agreements on surveillance and security as was the case with the new biometric passports (Bunyan 2005).

The creation of new modes of surveillant organisation and the expansion of military technologies into civilian markets has also led to a redefinition of the concept of security. It is undoubtedly the case that for many forms of surveillance, especially those associated with crime control and policing; one can see a domestication of military security rationality alongside the use, in many cases, of military technologies. As Coaffee and Murakami Wood (2006: 503) argued, "security is coming home". This domestication of surveillance technology occurs not just in the arena of urban security and surveillance but also in the practices of government. There has been a migration of technologies from military settings to civil settings driven by the expansion of e-government services and the need for more effective and efficient public services. The use of new ICTs has led to the emergence of large state databases, utilised for processing public service information, and the emergence of new transactional electronic public services, using a range of electronic service delivery mechanisms including, significantly, the Internet (Bellamy and Taylor 1998). The growth of computing power and indeed the new networked infrastructure that can join them together were both initially products of the US Cold War military research and development, and the attempt to create a 'closed world' over which the US military could exercise control (Edwards 1996).

Normalising Surveillance Society

The domestication of security and the globalisation of surveillance would be limited processes if their results did not become increasingly 'normal' and part of the experience of everyday life. In his ongoing expansion and critique of Foucault, Giorgio Agamben (2005) has described the way in which 'states of exception' spread and come to be expected forms of governmentality. What would in the previous mode of ordering be

³ Statewatch, the independent observatory of civil liberties in Europe. Available at: <http://www.statewatch.org/>, last accessed 9 July 2009.

⁴ CHALLENGE, EU Framework Program 6-funded research network on liberty and security. Available at: <http://www.libertysecurity.org/>, last accessed 9 July 2009.

regarded as temporary or even entirely unacceptable becomes unremarkable, mundane, normal and consequently may not even be challenged.

A key example is that of the spread of Closed Circuit Television (CCTV), or video-surveillance, in the UK (Webster 1996, 2004). Despite the existence of earlier experiments (Williams 2003, 2009), the history of state video-surveillance in the UK began in the late 1980s and went through a massive period of expansion from the mid-1990s and again in the early years of the 2000s (Webster 2009). However what is remarkable about this is the distinct lack of non-academic opposition to this spread, and indeed the popular enthusiasm for surveillance cameras and the demand for their installation in more and more places. This is all the more remarkable as independent and state assessments have repeatedly revealed that CCTV is extremely limited in its effectiveness in preventing crime (see Gill and Spriggs 2005; Welsh and Farrington 2002, 2008) and even solving crime (ACPO 2007). It has thus been criticised as an extremely inefficient use of public funds (Groombridge 2008) regardless of its effects on liberty and social trust (see Murakami Wood *et al.* 2006).

So why the lack of opposition to, or even enthusiasm for CCTV? There are several reasons. Firstly, it is about what they represent rather than what they do. We would argue that CCTV cameras are a visible manifestation of the state's concern about crime and security. They show 'something is being done'. This 'stage-set security' (Murakami Wood and Coaffee 2006) or 'security theatre' (Schneier 2008) gives us symbols of safety in a society in which everything is seen as a potential source of risk, and where fear dominates. It assuages our fear of the dangerous other and society as a space of negative possibilities in a risk society (De Cauter 2004). Theatrical security is to be found everywhere from the airport to the high street, from the demands to remove shoes for inspection to the increasing numbers of uniformed 'plastic police': Police Community Support Officers (PCSOs, in the UK), city centre and neighbourhood wardens, 'mall cops', private security and so on, who look like the 'real' police and may even have some direct connection to the police, but lack either their training or powers. They are simply symbols: performers in the 'security theatre'.

Secondly, there is a perception of the purposes and practice of surveillance that is not wrong as such but may not necessarily be appropriate in this case. David Lyon (2001) argued that the motivations for surveillance are usually as much about care as about control, and if CCTV cameras imply the idea of someone watching, for many people this means watching out for them. Of course we know that in practice those working in control rooms are as good or bad at their jobs as anyone else: there are examples of care, but there are also examples of bad practice that range from simple boredom and laziness to active abuse of the role, for example in the compilation of sexual images of women from recordings by male operatives (Norris and Armstrong 1999; Smith 2004, 2005).

Thirdly, CCTV very rapidly became part of the cultural landscape of Britain (Groombridge 2002). CCTV images were used right from the start in a new generation of television shows that used extreme examples of activities captured on CCTV for entertainment. Ostensibly about the police, many were even initiated by police forces, they were actually simply vicarious pleasures in the manner of short movies but with a greater feeling of immediacy and therefore more 'real' (Jermyn 2003). This kind of reality TV soon gave way to the next generation in which the set-up was far more artificial – a group of young people in an expensive studio apartment, or on a deserted island – but surveillance cameras allowed the viewing of these artificial set-ups not just in short segments now but potentially 24/7 (see Holmes and Jermyn 2003). Much like the operators in a CCTV control room, the millions of viewers in this 'synopticon' (Mattiessen 1997) watched these small groups of voluntarily incarcerated individuals in the generally frustrated expectation that *something* might

happen. It was banal, boring, normal, but utterly addictive: soporific even. However, there are more productive governmental aspects to this watching of surveillance images and both Gareth Palmer (2003) and Mark Andrejevic (2003) have drawn attention to different aspects of its political economy. Palmer describes this as a process of governance, Andrejevic as a kind of labour or at least a form of training for both participants and watchers. It is both. It is effectively helping us all to become not only used to surveillance, to experience it as an expected part of everyday life, but to enjoy it and to watch its products in a certain way: to train our eyes for surveillance. In this sense through reality TV, as much as through government exhortations to look out for suspicious activity, we all become potential agents of surveillance and spies (Coaffee *et al.* 2009). However this 'responsibilization' of citizens (Rose 2000) has its limits: although after the terrorist attacks of the early twenty-first century in Europe, governments at first encouraged citizens to take an active part in watching for signs of terrorism, there seems to be a limiting of such responsibilization now, at least in Britain. In the 2008 Counter-Terrorism Act, which came into force in February 2009⁵, there are powers available to the police to limit the ability of citizens to take photographs or video footage in public places. Taken along with the expansion of CCTV, it could be argued that there is a totalitarian direction emerging in particular groups within the British state to regulate the production of visual information *altogether*. This foregrounds the incompleteness of normalization processes and the conscious or subconscious anxiety that their potential failure generates in government. As Rose (2000) has argued, there is never a clear division between the three forms of governmentality set out by Foucault: moral regulation, surveillance and sovereign power, rather there is a constant movement between them akin to the 'modulation' identified by Deleuze (1990) as a key characteristic of the postmodern 'control society' (Coaffee *et al.* 2009).

Fourthly, and connected to this, is that CCTV gives a visual narrative to the incomprehensible. This is perhaps why the state has no objection to the public having access to the products of CCTV. People watch CCTV like a TV soap opera or a Hollywood movie, and whether there is narrative or not, they impose their own story complete with characters, settings and plot, as Gavin Smith (2008) has shown with regard to CCTV operators. More broadly, watchers invest what are often only retrospectively meaningful images with emotional content and personalise it. This of course can have a negative effect on critical judgement and politics. As Norris and Armstrong (1999) argued of the notorious James Bulger case in the UK, the CCTV images of a child being taken away by his killers helped create a demand for cameras even though what was being seen was a failure of CCTV: the presence of video-surveillance did not prevent the crime, and the analysis of the images for some time led the police to erroneous conclusions about the age of his abductors.

The important thing about this discussion is that none of these arguments have anything to do with either the technological properties of the cameras or the actual functioning of the systems *per se*. They are not about the exact number of cameras, their capabilities or, fundamentally, about whether the cameras *work*. Our argument instead is about how surveillance works at the level of emotion, symbolism and culture. The normalisation of surveillance can occur, then, when surveillance colonises these domains. The normalisation of surveillance is therefore also about far more than just the proliferation of a range of surveillance artefacts and technologies; it is about how these are embedded in the norms and institutions of society and how they are reflective of other aspects of modern society.

⁵ Counter-Terrorism Act 2008 (UK). Available at: http://www.opsi.gov.uk/acts/acts2008/ukpga_20080028_en_1, last accessed 10 July 2009.

There are other kinds of 'normalization' however, which are equally important. Perhaps the most significant are the alteration to routines of work practice and management, particularly in government bureaucracies and service delivery. The movement to the kind of computerised, networked, electronic public services, to which we made reference in the previous section, has been driven by cost cutting and efficiency agendas, partly because new informed services are replacing old paper-based manual services and partly because new electronic services allow citizens to access services from multiple locations at their own convenience. The potential to extend this form of service delivery is recognised in the UK with the Varney report (2006) which calls for greater information sharing and the development of extensive networked databases. A further aspect of electronic provision of public and democratic services is the emergence of citizen-centric or citizen-focussed services - i.e. where new technologies tailor information specifically for citizen clients. So, services are supposedly personalised around the discreet information and needs of individuals. Surveillance – or more accurately in this case, dataveillance, the management and categorisation of data derived from surveillance – is seen to be working to provide what citizens want – the efficient and convenient delivery of public services from health to education – and without it, these services would be put at risk. The functioning of the services they provide again reinforces the normality of the collection, storage and sorting of large amounts of personal data, and the privileged or protected access or even 'ownership' of personal data by the state or, increasingly, its private partners or subcontractors. The assumption of ownership of private data is certainly not normal across Europe, but is another 'bad example' from Britain, which can be seen in the proposal to fine or even imprison those who do not provide up-to-date information for the proposed new British National Identity Register (NIR).⁶ Other models exist in Europe, both of the greater assumption of 'data protection' for the citizen (*not* privacy) in Germany, and its opposite in the 'state-generated data is everyone's data' of Sweden, which allows even personal tax returns to be scrutinized by anyone who wishes (for a survey, see Bennett and Raab 2006).

So, electronic public services are key to developing a surveillance infrastructure, to populating it with information, and in addition, because of the universal and information-intensive nature of public services, bureaucrats, citizens and service users are all exposed to subtle surveillance practices through the everyday interactions that occur around information giving and service provision. It is not so much that social negotiations tend to be reduced to a series of binary possibilities as Michalis Lianos (2001) has suggested, however the range of possibilities are certainly reduced: interactions certainly become structured around surveillance relationships, and the new forms of social negotiation that emerge are no longer about what information one chooses to give but how that information is to be given (or taken).

Everyday Living in Surveillance Societies

Global surveillance, the domestication of surveillance and the normalisation of surveillance activity has led a number of authors to explicitly consider 'life' and everyday living in the emergent surveillance society (Aas 2008; Lyon 2002; Monahan 2006). The term 'surveillance society' is a term that has widespread recognition and which in recent years has gained considerable currency. However, it is also a bland term, which although recognises the widespread usage of surveillance technologies in society tells us little about how these technologies are felt, experienced or the different dimensions and deviations in surveillance practice. Surveillance in the most basic surveillance society perspective is seen to be ubiquitous and universal - everywhere - and mediated by new

⁶ Home Office ID Cards site, available at: <http://www.homeoffice.gov.uk/passports-and-immigration/id-cards/>, last accessed 9 July 2009.

sophisticated ICTs. Such a position masks the subtleties of modern surveillance and the different ways in which we experience everyday life under the scrutiny of surveillance. This line of argument is explored further in this section of the article through the identification and exploration of three dimensions of everyday surveillance, dimensions which reflect upon: firstly, our perceptions of surveillance, secondly, the 'depth' of surveillance and thirdly, our exposure to surveillance. We then problematize the term further with consideration of the very different national settings of surveillance activity in Europe.

Dimension 1: Contrasting perceptions of surveillance

The first dimension relates to the different ways in which surveillance technologies are perceived, both in their usefulness and their desirability. The term 'surveillance society' has embedded within it a sense of negativity, it is very subjective term and conjures up images of the Big Brother state of George Orwell's *Nineteen Eighty-Four* (1949) and constant threats to privacy and liberty (Garfinkel 2000). This is reflected in the discourses of anti-surveillance groups, for example No2ID⁷ in the UK, and also in official reports, for example, the European Parliament Scientific and Technological Options Assessment Committee Report on 'Technologies of Political Control' (STOA 1999) or the UK Information Commissioner's Office report on the surveillance society (Murakami Wood *et al* 2006). However, the deployment of surveillance technologies divides opinion and for many their introduction is heralded as valuable in delivering national security and in the 'fight against crime' and terrorism. An example of this is the support for CCTV mentioned above and demonstrated in public perception surveys (see Honess and Charman 1992). Additionally, vast quantities of personal information are collected, stored and exchanged by public services in e-government initiatives designed to make public services more efficient, accessible and effective (Cabinet Office 2005; Varney 2006). In this respect, technologies, like CCTV, ID Cards, offender tags, mobile phones, databases, the internet and satellite navigation (etc.) represent technologies for enhanced surveillance on one hand *and* technologies of efficiency, enhanced services and a better, safer society on the other. Taylor *et al.* (2009) go so far as to argue that these two positions, that is 'information capture' for enhanced services and 'information capture' for surveillance, are diametrically opposed perspectives on the same phenomenon - they call these two perspective the 'surveillance state' and 'service state' perspectives. This dichotomy raises questions about the intentions of technological uptake and about our perceptions of these intentions. So, following on from the argument brought forward by Taylor *et al.* (2009), the integration and networking of government databases could be seen as either effective 'joined-up' government or 'surveillance creep', depending upon which perspective you subscribe to. Although, these perspectives may seem diametrically opposed we would argue that they are in fact interlinked and interdependent, and that not only is it possible to deliver public service efficiencies, enhanced security and increased surveillance simultaneously, but this is what is happening in practice (when the technology 'works' which it frequently does not). Following this line of argument the adoption of sophisticated new technology does not imply a choice between the surveillance society or a safe efficient society, because both are perceived to be, or promoted as, happening at the same time.

Dimension 2: Depth of surveillance

The second dimension relates to the depth and intensity of modern surveillance. In the surveillance society perspective surveillance is seen as ubiquitous, it is everywhere and we are all subject to it on an ever increasing scale. However, we would argue that to merely

⁷ NO2ID, campaign against ID cards and the 'database state'. Available at: <http://www.no2id.net/>, last accessed 9 July 2009.

say surveillance is everywhere masks the extent and depth of surveillance that can be realised through new technology. Furthermore, surveillance is more subtle than this. More often than not we are not aware that surveillance is taking place and consequently the scope or scale of surveillance we participate in. Consider, for example, the spread of biometric ID cards or CCTV systems with facial recognition, both offer systems for electronic citizen identification, which can be networked to further databases to access a range of information about the citizen, potentially including information about their criminal, health, educational financial and/or employment histories. If the necessary political will is present (and this is certainly not a given), such information could be extended beyond public records to include intimate information relating to personal relations, political affiliations, travel history and sexual preferences (etc.) – as indeed was the case with the 'EDVIGE' database in France (see below). It is not what information is accessed, but our knowledge of the information sharing possibilities supported by discreet electronic interactions. Despite the apparently successful attempts of many European regulatory bodies to raise awareness of information rights (Kantor Management Consultants 2009), most people only become aware of the information held about them, or what information is shared between agencies, when media-publicised breaches or losses occur, as happened with some regularity in the UK in 2007 and 2008 (Poynter 2008). The scenario described here is only feasible with the emergence of large databases of personal information, and these databases exist in the public and private sectors. In addition to the records held by public service agencies the private sector keeps records about our credit history, our travel patterns (via GPS and mobile phones), telephone and email usage and our purchase patterns (via shop loyalty cards, 'air miles' schemes, and so on). Increasingly, this information can be used to 'profile' individuals so that products can be selected and tailored to their personal requirements. Participation in modern society necessitates a series of activities which leave a data shadow, trail, or electronic 'footprints', as we go about our everyday existence (Lace 2005). Many of these electronic interactions go unnoticed and are/seem perfectly normal. But they initiate the exchange of vast quantities of personal information, much of which we are oblivious to. In this respect surveillance is not just ubiquitous it is deep, unobtrusive and sophisticated.

Dimension 3: Exposure to surveillance

The third dimension relates to the extent to which we as individuals are the discreet targets of surveillance activity, in other words, the extent to which we are exposed to intense technologically mediated surveillance. Although the surveillance society perspective would suggest we are all exposed to increasing levels of surveillance much of our exposure is usually benign and unobtrusive. This is because the majority of our electronic interactions, when considered on their own, are relatively insignificant (beyond the initial transaction or purpose of the interaction) and consequently do not warrant further surveillance attention. For example, travel cards, such as the 'Oyster' card in London, may record our personal travel details but they also provide important information about general travel patterns, such as passenger numbers on a particular route, peak periods, typical journey length, and so on. For the latter our personal details are not of interest, the value of the information gained relates to a bigger picture, and in particular, how this information can be 'reflected back' and utilised to make adjustments to service provision in order to provide better more efficient services. Public administration e-government theorists refer to this as processes of 'informatization' (Frissen and Snellen 1990). In this scenario citizens and service users remain relatively anonymous, although they are surveyed, their personal details are not really utilised in any meaningful way. This may be the case for the majority, but there will be instances where the same technologies will be utilised to conduct intensive targeted personally focused surveillance. A case in point is the general use of CCTV in public spaces. Although such systems are commonplace in towns and cities across Europe (Webster 1996, 2004), their

deployment has led to diverse surveillance practices and differentiated levels of surveillance (Webster 2009). Most citizens will pass through CCTV surveyed areas relatively anonymously, unidentified and ignored. However, certain individuals will attract further attention, scrutiny and surveillance. They may be exhibiting suspicious behaviour, be known to the CCTV operatives, or just seem somehow different (Smith 2008). Such individuals may be surveyed more closely, their movements and activities more closely monitored and information cross-referenced and recoded for future use. They are not anonymous; rather they are being subject to targeted intense surveillance. It is relatively easy to see how such arrangements could be expanded to perpetually and intensively survey those in society who are perceived to be a 'risk' or 'at risk'. The key feature of this dimension then is that our exposure to surveillance is differentiated by who we are, or who we are perceived to be. Surveillance for one person may be unobtrusive, perhaps even key to helping them get access to the goods and services they need, yet for others it will be intense and pervasive. A further aspect of this argument relates to the vast quantities of personal data held. Individuals may not be 'live' surveillance targets but the trail of electronic interactions stored on databases mean that activities can be recalled at a later date if necessary. So, in time, given the right (or wrong) circumstances we can all retrospectively become suspects - which means that we are actually always already potential suspects. The movement of responsabilization identified above is almost always accompanied by a concomitant 'deresponsibilization' (Hunt 2003).

A surveillance society or surveillance societies?

The final point to make is that we very deliberately in this article and in the title of the COST action used the term 'surveillance society' in the plural. This is to emphasise something that is still under-emphasised in the literature (Murakami Wood 2009), which is the way that surveillance, despite its spread as a key mode of ordering in late capitalism, is always situated and varied depending on its application in different places - regions, states, cities (etc) - and in the responses and challenges posed to it by different cultures, constitutions, legal systems and institutional settings (etc.). For example, as Marianne Gras (2004) pointed out, the varying nature of constitutional protections for privacy across Europe has meant very different responses to surveillance. Bennett and Raab (2006) further develop a comparative perspectives in their exploration of the emergence of multiple privacy 'regimes', each embedded in its own national setting and history. A case in point is the divergent ways in which European countries have responded to the emergence of CCTV. The trans-European comparative *UrbanEye* study of city-centre CCTV showed remarkable differences in the implementation of, and both state and public attitudes to surveillance (Hempel and Toepfer 2004). For example, the German Federal Constitutional Court's decision of 1983 on the extent of privacy in Article 10 of the Basic Law has hindered the spread of open-street CCTV (Gras 2004) and allowed a campaign of opposition to build up against security rhetoric. However, in the UK, the lack of any real constitution, and the only recent incorporation of the European Convention of Human Rights in British law, has meant that attempts to challenge open-street CCTV on privacy grounds are already confounded by the 'facts on the ground' of millions of existing cameras. Germany also has the recent past of totalitarian rule and, for the former German Democratic Republic the experience of the intense attention to personal lives of the Stasi and their legions of informers. Britain never had this experience and perhaps there is a certain smugness about the impossibility of fascism in the United Kingdom ('it couldn't happen here'), which when examined is based simply in contingency rather than any supposed 'national characteristics' and is increasingly being undermined by laws like the Counter-Terrorism Act 2008 (mentioned above). This has led the ex-Head of the Security Service, MI5, Stella Rimington, who can hardly be dismissed as an alarmist or a radical, to claim that Britain is heading towards a police state (Whitehead 2009). This does not mean that Germany is by definition not a surveillance society and Britain certainly is, but it does

mean that they exhibit different surveillance characteristics; they are different kinds of surveillance societies. Experience of totalitarianism does not lead the same way in every European country either: whilst the Greek population generally appears strongly resistant to contemporary surveillance (Samatas 2004), the Poles and the Russians do not draw the same lessons.

However there are connections, even as there are differences. Britain has come to be regarded by those making security-based arguments for more surveillance anywhere in Europe, as an 'example' or a model to be aspired to. This will inevitably bring conflicts with the very different traditions of liberty. President Sarkozy of France was one of those who expressed admiration for Britain's CCTV networks, yet in the reaction to the 'Exploitation documentaire et valorisation de l'information générale' (EDVIGE) database⁸ of all those in positions of responsibility in organisations, clubs and societies, which included demonstrations and a fierce opposition campaign shows a rather stronger culture of defence of liberty than has yet been demonstrated in the UK. However with the Convention on Modern Liberty held across the UK in March 2009, a fragmented and still small but increasingly determined opposition is emerging.⁹

Concluding Discussion: Understanding and Challenging Surveillance Societies

The landscape of security and liberty in Europe is changing. Developments resulting from the simultaneous globalization of surveillance and domestication of security (Coaffee and Murakami Wood 2006), the creation of a distinctive security agenda and institutional landscape at the EU level (Bigo and Bonditti 2009) and the emergence of different surveillance societies in nation-states across Europe are leading to a variety of possibilities. It is certain that in contemporary European society surveillance is increasingly embedded in everyday life. We participate, often willingly, in surveillance and it is a lucrative business at a time when business in many other sectors is difficult, perhaps even because of economic pressures. The future of liberty and security in Europe is closely intertwined with the deployment of sophisticated technologically mediated surveillance technologies, which are introduced for a variety of purposes, many associated with enhancing the efficiency of public services, but which nevertheless implicitly result in more sophisticated ways of collecting and sharing personal data.

It could be argued, from a perspective of efficient government, that surveillance is a central part of modern society and intrinsic to ideas about delivering a secure, stable and competitive Europe. It is evident from the arguments brought forward in this article that a key feature of the emergent surveillance society is the centrality of the role played by government and public services. Information-intensive state activity has led to the development of large networked state databases, essential to the effective delivery of information age democracy and public services. Further to this, public policy has played a central role in bringing forward such systems in order to deliver internal and external security. Public policy and services are therefore inherently intertwined with modern surveillance practices. We would suggest that it is the information intensity of our relations with the state, embedded in and reflected by, the provision of new 'surveillance' technologies that determines and characterises the nature of modern society and the extent to which this society is dominated by surveillance relations.

⁸ Ministère de l'Intérieur, Décret n° 2008-632 du 27 juin 2008 portant création d'un traitement automatisé de données à caractère personnel dénommé « EDVIGE » JORF n°0152 du 1 juillet 2008, texte n° 3. Available at: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000019103207&dateTexte=&oldAction=rechJO&categorieLien=id>, last accessed 9 July 2009.

⁹ Convention on Modern Liberty. Available at: <http://www.modernliberty.net/>, last accessed 10 July 2009.

However, this article has also gone further and in noting the differences between European surveillance societies, we have posited the United Kingdom as a 'bad example' in several regards, and one whose replication represents a particular 'threat' to the constitutional, legal, and everyday concepts of liberty understood elsewhere in Europe: the most exceptional should not come to be seen as the most normal. At the same time, however, the EU itself in its enthusiasm to create internal 'social inclusion' and coherence is also in danger of embedding naive, security-driven and exclusionary policies into the heart of its project.

The changes must come from the demands of citizens and the work of those researchers and activists. We need to increase and deepen knowledge about living and working in European surveillance societies, to better understand the consequences of technologically enhanced surveillance for social questions, such as equity, cohesion and trust, so that surveillance theorists can better inform citizens and government, and influence future governance and practice, not to mention control and limitation of surveillance. We need to know far more about how surveillance is understood, lived with and resisted in the different countries of Europe, and to spread those lessons so that where surveillance has become normal, it can be made strange and questionable again, and where it remains unusual to keep it the subject of active political debate. Liberties must not be a matter for state manipulation and a constant shifting of the ground under our feet in the name of security. We need to demarcate limits and to resist the idea that living in a world of changing and flexible threats to security means that human rights are equally mutable and ephemeral.

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Energy Vulnerability and EU-Russia Energy Relations

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Abstract

The concept of energy vulnerability is reviewed and discussed with a focus on Russia's foreign energy relations, in particular those with European countries. A definition and a conceptual framework for quantifying energy vulnerability are proposed in the context of a review of recent research on energy vulnerability indices. In particular it is suggested that source country diversification should be reflected using the expected shortfall measure used in financial economics, rather than the Herfindahl-Hirschman or Shannon-Wiener indices, and that the former should then enter a calibrated function in order to yield expected economic loss. The issues of asymmetric failure probabilities and accidental versus intentional supply disruptions are then discussed with examples of recent Russian actions. Energy vulnerability measurement and modelling should ultimately inform policy. In particular, member states should legislate that no energy infrastructure project by one or more member states may increase the energy vulnerability of another member state. Additionally, European environmental policies, notably the EU ETS, should be amended so as to account for induced changes in energy vulnerability. Finally, member states should increase the level of transparency and disclosure with respect to gas import statistics and gas supply contracts.

Keywords

Energy policy; energy security; energy vulnerability; EU; EU-Russia relations; nationalism; natural gas; Russia.

EUROPE DEPENDS TO AN IMPORTANT DEGREE ON RUSSIAN ENERGY SUPPLIES. HOWEVER, broader EU-Russia relations are difficult, essentially because of Russia's current political orientation. Three negative forces interact with each other within what has been dubbed the vertical of power: the apparent willingness of Russia's current elite to stay in power for the foreseeable future, various blends of nationalistic worldviews and corresponding geopolitical ambitions, and substantial high-level corruption which risks skewing decision-making both inside and outside Russia.

Russia ranks 147th out of 180 surveyed countries in Transparency International's 2008 corruption perception index. This puts Russia on a par with Bangladesh, Kenya and Syria, and is a worse result than what could be expected given Russia's current GDP per capita. But another phenomenon is even more important, that of cross-border bribery, in particular bribery of foreign government officials and of foreign politicians. In a ground-breaking study, (Transparency International 2008), researchers surveyed 2742 companies in 26 countries and asked them how often they believed firms *from other countries* (chosen from a list of 22 countries that partly overlapped with the list of surveyed countries) resorted to bribery of government officials and politicians. Russia ranked highest in both

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categories by a substantial margin, with around 50% of respondents estimating that Russian companies *frequently* bribe *both* foreign officials and foreign high-ranking politicians. Bribery is a potential problem, because it means that Russia may be able to buy the acquiescence of European politicians for energy projects or transactions that are not in the public interest.

Shevtsova (2008) argues that Russia's elites have used nationalism as part of a calculated subversion of the domestic political discourse. This subversion, she argues, was designed to deflect criticism of the incumbent rulers by shifting attention towards "external enemies" (or domestic forces said to be associated with them) that in reality pose no threat to Russian national security. Other measures designed to skew the political process in favour of the incumbents have included preventing the registration of opposition candidates (see Kramer 2007; Harding 2008), using state control of leading television channels to grant disproportionately high and disproportionately positive coverage to the incumbents, and the use of implausible ballot counts (see OSCE 2004).

However nationalism cannot be dismissed as merely one of many domestic political tactics. Umland (2009b) argues that extreme nationalist thinking is increasingly penetrating the highest levels of Russian political and cultural life, with potentially worrying consequences for the future. One manifestation of this trend is the rise in prominence of the extremist ideologue Alexander Dugin (see Laruelle 2006).

Another manifestation of Russian nationalism, economic nationalism, is also in evidence and has implications for the energy security of Europe. Russian economic nationalism, notably the use of varying degrees of coercion on foreign countries, on foreign investors in the country, or on domestic private investors in order to gain (perceived) national strategic economic advantages, has been documented by several authors (Christie 2007; Kalyuzhnova and Nygaard 2008; Larsson and Hedenskog 2007; Liuhto 2008).

In terms of foreign policy, Russia's recent actions resemble a return to the grand chessboard of global competitive geopolitics of bygone eras, with energy resources in a key (but not exclusive) role. For example, Russia's ambiguous relations with Iran and its recent interventions in Central Asia (notably in Kyrgyzstan), seem at least in part designed to create leverage against the United States. The Medvedev Doctrine (see Friedman 2008) also clearly states that Russia has "privileged interests" in the affairs of its close neighbours, and that Russia reserves the right to protect the "dignity" of its citizens abroad, and to defend its business interests abroad. Finally, Russia's carefully prepared invasion (see House of Lords 2009: 6; Felgenhauer 2008) of Georgia in August 2008 and its de-facto annexation of territories south of the Caucasus mountain range point to an expansionist agenda (i.e. control of the South Caucasus region), as well as to a readiness to use military force. Further military action can therefore not be excluded, in the South Caucasus or elsewhere (see Umland 2009a; *Georgian Times* 2009).

In terms of external energy policy, it is remarkable that Gazprom, which has the monopoly right to export gas out of the Russian Federation, the country that has the world's largest gas reserves, is so keen to develop ties with virtually every other supplier of gas to Europe. Indeed, Gazprom has expressed interest in strategic partnering with Algeria, Libya, Nigeria, Iran, Qatar, Azerbaijan and of course the Central Asian states. Simultaneously, Russia's stagnant domestic energy production levels is well-documented and a vital element in the analysis of the overall picture. Unfortunately, the very real issue of potential supply shortages has clouded the energy security analysis. The insistence of certain analysts to zoom in on the seemingly most important energy security issue and to label it as "the core issue" has prevented a synthesis. In fact, the combination of scarcity of resources and high

and rigid market penetration (i.e. through control of the cross-border transportation channels) is the optimal way of obtaining pricing power over consumer countries.

In this article it is taken as given that it is rational for Europeans to understand Russia as an ambitious geopolitical player whose ruling elites are motivated by a combination of nationalism, domestic political survival and national economic gain. Much of the literature on energy vulnerability implicitly neglects the distinction between accidental and deliberate energy supply disruptions, while much of the literature that does deal with deliberate disruptions focuses on physical attacks on energy infrastructure on the part of non-state (e.g. terrorist) actors. In this paper I propose a number of possible extensions to the analysis of energy vulnerability of energy importing nations (e.g. EU countries) with a focus on the threats posed by a large supplier who resorts to deliberate and well-calculated acts of coercion.

Definitions and theoretical framework

The vulnerability of a system in a general sense can be defined as the degree to which that system is unable to cope with selected adverse events (Gnansounou 2008). However, energy vulnerability lacks a unified definition. Gupta (2007) for instance, while offering a valuable review of the literature on oil vulnerability indicators, does not offer an explicit definition of oil vulnerability, but nevertheless argues for a specific methodology to calculate oil vulnerability indicators. Percebois (2007) also refrains from offering a definition, and yet suggests a list of variables that should be considered as candidates for calculating an index. Gnansounou (2008) on the other hand offers a useful discussion on the difficulties of arriving at a satisfactory definition, given the large number of adverse events one should in principle consider, as well as difficulties in estimating the probability of their occurrence.

The difficulty many authors have with respect to definitions lies, as Gnansounou (2008) explains, in the multiplicity and heterogeneity of adverse events that may be of interest to policy-makers. Additionally, different types of adverse events are emphasised by policy-makers and academics depending on current risk perceptions, often based on recent events. Also, there is often a lack of clarity about the type of time horizon one is considering. It is therefore necessary to explicitly state the type of event one is concerned about in order to guide the analysis. I start from the assumption that we are analysing the energy component of national security and national economic security from the point of view of a State that is dependent on imports for at least a part of its energy supplies.

A country's national security strategy typically reflects the current government's values and capabilities, as well as the international and domestic security situations. France and the United Kingdom provide good examples of this. Both countries revised their national security strategies recently. In the UK case, the National Security Strategy (United Kingdom Cabinet Office 2008: paragraph 1.9) states that the overarching national security objective is "protecting the United Kingdom and its interests, enabling its people to go about their daily lives freely and with confidence, in a more secure, stable, just and prosperous world." The French strategy (French Ministry of Defence 2008) states that the aim is "to ward off the risks and threats detrimental to the life of the nation", and goes on to define threats as coming from "States or transnational non-State groups" and risks as arising from "natural or health disasters". The document clarifies that adverse events may come "as a result of hostile intentions or of accidental breakdowns".

This leads us to propose a general normative definition of national security for the purposes of the current research effort. National security policy should aim at reducing the probability, severity and potential impact of exogenous events that are detrimental to the

welfare of the nation's population and/or to the integrity of the State, its territory and its institutions. A definition of national vulnerability naturally flows from that definition: the extent to which the welfare of the nation's population and/or the integrity of the State, its territory and its institutions may be detrimentally affected by exogenous events. Narrowing down to the case of energy, a general normative definition of energy vulnerability is proposed, namely: the extent to which adverse exogenous events with respect to a country's energy supply system may detrimentally affect the welfare of the country's population and/or the integrity of the State, its territory or its institutions.

Naturally, this definition is still quite general; therefore it is necessary to specify some of the components further. Energy supply system refers to the supply chains made up of domestic *and foreign* production, transportation and distribution assets that enable energy products to be delivered to their final users in the country. This includes foreign oil and gas fields and the corresponding extraction facilities, as well as other assets used for production or transformation (e.g. nuclear, hydroelectric or thermal power plants, refineries), the transportation infrastructure (e.g. terminals, pipelines, pumping stations, tankers, power lines, interconnectors) and the domestic distribution assets (e.g. local gas and electricity grids). Exogenous events refers to events that are essentially exogenous to the country's executive (or other) powers, usually because they are the result of deliberate actions on the part of foreign State and/or non-State actors (including private corporations) that the country cannot control, or because they are the result of uncontrollable natural events. Welfare of the population refers to outcomes in terms of health, the ability to exercise basic rights, and socio-economic welfare. Finally, integrity of the State, its territory and its institutions, refers to the extent to which the State is able to continue to fulfil its primary functions, notably territorial defence, as well as the extent to which the elected government of the day may continue to rule according to its mandate and to the constitutional order.

Now that the general definitions have been established, it is necessary to formalise the concepts of vulnerability, events, and effects, in such a way as to make them usable for analysis. Haimes (2006) uses concepts from control theory and defines the vulnerability of a system as being the states of the system that are such that they can be exploited in order to damage it. In control theory, a system is modelled as sets of state variables, control (or input) variables and output variables which are related through a set of dynamic equations. Generally speaking, states fluctuate within certain value ranges and the satisfactory operation of a system requires that the control values are set appropriately depending on the desired outputs and the current states of the system. A simple example may be given in the case of gas supplies. Suppose country A imports all of its natural gas needs through a single pipeline from country B. For security reasons it installs a storage facility on its territory. As the imported gas comes in – the volume is a control variable of the overall system, but it is controlled by country B – country A chooses how much gas to store or withdraw from its storage site, and it distributes the net amount to the final users domestically. Country A's control variable is the volume of gas it chooses to store or withdraw from storage. The state variables are the amount of gas held in storage and the amount of gas demanded by domestic end-users. The output variable is economic welfare. To simplify, let's assume that economic welfare is constant provided gas demand is met, and let's assume that demand for gas is constant. However economic welfare falls (more) in case of a (larger) gas delivery shortfall.

Now country A's energy vulnerability should be assessed by the values of its state variables. If the amount of stored gas is very low, even a brief supply cut would translate into a shortfall in deliveries to consumers and to a loss in economic welfare. The less gas is stored, the more vulnerable country A is to a supply shortfall of a fixed volume and duration. Also, higher gas demand to sustain a given level of economic welfare implies

higher vulnerability in the face of an identical supply shortfall. To take a recent example, Bulgaria was hit particularly hard by the cut in Russian gas supplies of January 2009 because of a low stockholding of gas and higher demand due to cold weather. On the other hand, Austria was essentially unaffected given a more substantial stockholding and being able to rely on other countries for supplies as well.

This discussion illustrates what control and state variables would be in a simplified example. Let us now formalise this framework. An event is formalised as an information set including exogenously imposed shifts in one or more control variables, the type of cause (human, natural or technical failure), the identity of the actor (if applicable), and the duration of the shifts. Examples of what such a formalisation may resemble are given in Table 1. The first example assumes a terrorist attack which completely disables the connector between a natural gas storage facility and the rest of the gas transportation network. The change in the value of the control variable (how much the operator may choose to put into or withdraw from the site) is –100%, i.e. the site may not be used at all in either direction. It is assumed that it takes 10 days to repair the infrastructure. The second example assumes that a natural cause (e.g. an earthquake) destroys several consecutive pylons of a cross-border power line, forcing a complete interruption of electricity trade through that line until it is repaired, which is assumed to take 30 days. The third example assumes that a foreign supplier of natural gas reduces the supply flow by 50% for a period of 14 days. The fourth example assumes that OPEC decides to reduce total oil supplies to the world market by 2 million barrels per day for the next 45 days. The last example assumes that a cross-border natural gas pipeline suffers a technical failure which requires a complete shut-down until it is repaired and usable again 10 days later.

Table 1: Example of a formalisation of hypothetical events

Control	Value change	Type of cause	Identity	Duration (days)
Gas storage site connector	-100%	human	terrorist	10
Cross-border power line	-100%	natural	-	30
Cross-border gas pipeline	-50%	human	supplier	14
OPEC oil supply	-2 mb/d	human	supplier	45
Cross-border gas pipeline	-100%	technical failure	-	10

The output of the system is formalised as one or more variables that have higher values for more desirable outcomes from the point of view of national security. Vulnerability should be measured based on the values of state variables, such that its value is larger for larger losses to the output function when a comparison is made either between the losses of two different systems exposed to the same event, or between the losses a given system would incur if exposed to one event or to another event.

The analysis of the probability of events occurring should be made separately however. Then, an overall assessment of the risks to the output variable(s) can be made based on scenarios that simulate the occurrence of events based on assumed probabilities. Different scenarios should then be defined, as one may not be able to confidently assign specific probabilities (or probability distributions) to single or combinations of events. The analysis is then completed by defining *risk* as the expected loss to the output variable(s) given a scenario of events and their probabilities of occurrence. This definition is broader than the one proposed in Haimes (2006) which focuses only on events caused by deliberate human action. Also, the flexibility offered by the proposed framework enables the assessment of

the loss due to a specific event (by setting its probability of occurrence as 1), or of any combination of events.

Review of selected energy vulnerability indices

In Table 2 we review the main ingredients used by Gupta (2008) and Gnansounou (2008) for the computation of their energy vulnerability indices. As can be seen, there are certain differences notably due to different choices in terms of coverage. Gnansounou (2008) covers more energy products as well as more areas, while Gupta (2008) focuses strictly on oil and refined products at a national level. Both use what we choose to refer to here as the goalposts method in order to scale some of the chosen partial indicators so as to yield unit-less sub-indices that are strictly between 0 and 1.

Table 2: Methodological choices in Gnansounou (2008) and Gupta (2008)

Methodological choices	Gnansounou	Gupta
Coverage		
Fossil fuels covered	Oil and natural gas	Oil
Sub-sectors	Transport; electricity supply	-
Other dimensions	Greenhouse gas emissions	-
Variables		
<i>Fossil fuel supply</i>		
Own reserves	-	Reserves / consumption
Import dependence	Net (oil and gas)	Net (oil and refined products)
Diversification of suppliers	Weighted HHI	Weighted HHI
Political risk of suppliers	Author ratings by world region	Country risk ratings (ICRG)
Market liquidity	-	World imports / own imports
<i>Fossil fuel demand</i>		
Income per capita	-	GDP per capita
Energy intensity	TPES / GDP	Oil TPES / GDP (toe / USD)
Energy bill	-	Value of oil imports / GDP (%)
Energy product mix	Implicit to computation	Oil supply / TPES (%)
<i>Electricity supply</i>		
Import dependence	Net imports	-
Public disapproval measure	Threshold indicator	-
Primary energy diversity	Modified Shannon-Wiener Index	-
CO2 emissions	CO2 emissions / TPES	-
Diversity in transport fuels	Modified Shannon-Wiener Index	-
Computational choices		
Scaling of partial indicators	Goalposts method, other	Goalposts method
Computation of final index	Root mean square	Principal Component Analysis

The goalposts method is the method used by the United Nations Development Programme (UNDP) to compute the component sub-indices of its Human Development Index. For a given quantitative indicator X and a group of countries $j = (1, \dots, N)$, the corresponding scaled indicator is computed as shown in equation (1).

$$(1) \quad I_p = \frac{X_p - \min_j(X_j)}{\max_j(X_j) - \min_j(X_j)}$$

In order to account for diversity (of suppliers, of fuels), Gupta (2008) uses a weighted variant of the Herfindahl-Hirschman Index (HHI), while Gnansounou (2008) uses both a weighted HHI and a variant of the Shannon-Wiener Index. I label the former (in its classical form without weights) as HHI and the latter in the form used in Gnansounou (2008) as GSW. In each case the indices are computed based on the shares of each individual (supplier, fuel) with respect to the total as defined in (2). The formulae for the indices are given in equations (3) and (4).

$$(2) \quad S_j = \frac{X_j}{\sum_j X_j}$$

$$(3) \quad HHI = \sum_j S_j^2$$

$$(4) \quad GSW = 1 + \frac{\sum_j S_j \ln(S_j)}{\ln\left(\sum_j X_j\right)}$$

The values of these indices are shown in Table 3 for the case of two suppliers A and B with respective shares ranging from 10% to 90%.

Table 3: Example of HHI and modified Shannon-Wiener Indices

S(A)	S(B)	HHI	GSW
0.1	0.9	0.82	0.53
0.2	0.8	0.68	0.28
0.3	0.7	0.58	0.12
0.4	0.6	0.52	0.03
0.5	0.5	0.50	0.00
0.6	0.4	0.52	0.03
0.7	0.3	0.58	0.12
0.8	0.2	0.68	0.28
0.9	0.1	0.82	0.53

Both HHI and GSW are minimised if suppliers have equal shares, in other words if diversification is maximised given a fixed number of suppliers. It is easy to show that this

result holds for 3 or more suppliers. From the point of view of diversification both indicators therefore seem adequate and there is no *prima facie* case for favouring one over the other, unless one specifies an additional or different target function beyond the degree of diversification alone. This is what we will do now.

Connecting vulnerability measurement with potential economic loss

What matters for security of supply is to find the parameter values that are such as to minimise losses due to adverse events. But how that problem is precisely defined has consequences on the best choice for an indicator. In addition, adverse events will generally be associated with different probabilities of occurrence, and possibly with probabilities that vary through time. We start with the simplest case: two suppliers with equal but independent failure probabilities.

We note the shares of suppliers A and B as S_A and S_B , and assume that each supplier supplies its full share with probability $1-p$ and supplies nothing with probability p , and furthermore that the probabilities of non-delivery are independent. In that case, the expected level for the share of missing supplies, ms , is as given in (5).

$$(5) \quad E(ms) = p(1-p)S_A + p(1-p)S_B + p^2(S_A + S_B) = p(1-p) + p^2 = p$$

It is furthermore easy to show that this result holds for any number of suppliers. However the problem with this measure is that the values of the supplier shares have no impact. While the failure of neither supplier or of both suppliers have unambiguous outcomes (all or nothing is supplied), one would want to account for the fact that the failure of the larger of the two suppliers is more damaging than the failure of the smaller supplier.

One possibility is to use a non-linear loss function, such that larger losses are modelled as over-proportionately damaging. This may be done for instance with a quadratic loss function, leading to an expression for expected quadratic loss (EQL) as shown in (6).

$$(6) \quad EQL = p(1-p)S_A^2 + p(1-p)S_B^2 + p^2(S_A + S_B)^2 = p^2 + p(1-p)(S_A^2 + S_B^2)$$

Linking expected quadratic loss with the Herfindahl-Hirschman index yields (7).

$$(7) \quad EQL = p^2 + p(1-p)(S_A^2 + S_B^2) = p^2 + p(1-p)HHI$$

In other terms, HHI is the indicator of diversification which is consistent with a quadratic loss function. However there is a conceptual problem. There is no theoretical justification for any specific type of loss function, let alone a quadratic one. When comparing two events, the second representing a shortfall twice as large as the first, why should the incurred loss be exactly four times larger?

The approach preferred in this paper is to avoid arbitrary non-linearities in the loss function. Instead, it should be assumed that the sub-indicator we wish to define represents an expected lost value. In a potential second stage, that value may be chained with the

extent to which the national economy is dependent on the energy product being considered, possibly introducing (but only then) some form of systemic non-linear effect, e.g. to account for the impossibility to substitute towards other energy products if the missing level of supplies is too large and/or occurs too quickly.

Sticking to a linear transformation, we still wish to account for diversification. Our choice here is to use a comparatively recent measure of risk from the financial economics literature, namely the measure of expected shortfall, (see Acerbi and Tasche 2002).

With expected shortfall the idea is to focus not on the overall expected loss or gain, but on the expected loss of the worst cases. Such a measure is consistent with experimental data which shows that human agents do not seek to minimise overall expected loss, but instead also factor in a kind of “unacceptable loss”. In what follows I choose to focus on the set of cases from the worst possible case (all suppliers fail) up to but excluding the cases of the least important supplier failing and of no supplier failing.

For two suppliers A and B with shares as shown in (8), one finds the expression for the expected shortfall, $es(2)$, as shown in (9).

$$(8) \quad 1 > S_A \geq S_B > 0$$

$$(9) \quad es(2) = p^2 + p(1-p)S_A = p^2 + p(1-p)(1-S_B) = p - p(1-p)S_B$$

The confidence level associated with (9) is equal to the probability that one of the cases considered occurs. That probability is given in (10).

$$(10) \quad P(es(2)) = p^2 + p(1-p) = p$$

For three suppliers as defined in (11) the expected shortfall, $es(3)$, is shown in (12) and (13). The corresponding confidence level is given in (14).

$$(11) \quad 1 > S_A \geq S_B \geq S_C > 0$$

$$(12) \quad es(3) = p^3 + p^2(1-p)[(S_A + S_B) + (S_A + S_C) + (S_B + S_C)] + p(1-p)^2(S_A + S_B)$$

$$(13) \quad (12) \Leftrightarrow es(3) = p^3 + 2p^2(1-p) + p(1-p)^2(1-S_C) = p - p(1-p)^2 S_C$$

$$(14) \quad P(es(3)) = p^3 + 3p^2(1-p) + 2p(1-p)^2 = p + p(1-p)$$

Expected shortfall is minimised by maximising the share of the smallest supplier. With two suppliers the lowest expected shortfall is achieved when the smallest supplier has a 50% share (equal to that of the other supplier), while with three suppliers the optimal share for the smallest supplier is one third (equal to the shares of the other two suppliers). While those results are the same as those that hold for HHI and GSW, there is in the case of

expected shortfall no arbitrary non-linear transformation, save through the threshold effect of focusing on the cumulation of the worst cases.

For the construction of a usable vulnerability indicator, it is therefore proposed that the expected shortfall approach be preferred over HHI, GSW, or other modifications of the Shannon-Wiener index.

A country has a natural gas intensity of GDP equal to θ . The latter represents the physical volume of natural gas which is consistent with one currency unit of value added generation at the current level. A physical shortage will impede value added generation. While the latter relationship is complex and typically non-linear, the impediment to normal economic activity will depend positively on θ , on GDP, and on the size of the supply shortfall. Expected shortfall is a share of missing foreign supplies so it should be multiplied by net import dependence (NID) to yield the share of the shortfall for domestic end-users. A general form for expected economic loss, EEL, is shown in (15).

$$(15) \quad EEL = f(\theta, GDP, NID \cdot es(n))$$

The scaling of the indicator between 0 and 1 has naturally been dropped. An additional modification would be to account for the role of fuel storage. In the simplest form (15) may be modified and calibrated so as to represent a preset period, e.g. one year. One would then specify EEL as a function of the size of the expected shortfall rather than its share, from which one would subtract the storage volume.

Concerning the functional form and parameters of EEL, the most comprehensive approach would be to use a purpose-built calibrated general equilibrium model which would account for economic losses through various channels and industries. As for calibration, empirical findings from past supply cuts should be used. The January 2009 supply cut by Russia can teach us useful lessons if one focuses on the effects on Bulgaria which, as explained earlier, had very limited stockholdings. Preliminary estimates, see (RIA Novosti 2009), suggest that Bulgaria suffered an economic loss of around 250 million Euros as a direct result of the cut. It is not clear how this estimate was arrived at and whether it represents a fall in output or a fall in gross value added. However a rough estimate, taking Bulgaria's GDP for the whole of 2008, suggests a GDP loss of 0.9% for the year due to that incident. Bearing in mind that the supply cut lasted only around two weeks, this also implies that GDP formation in that two-week period fell by 23%, in other words a very substantial temporary shock.¹ Detailed research on this topic would be highly welcome, as it would enable a comprehensive specification of the expected economic loss function which could then be used to simulate the effects of future supply cuts, for Bulgaria as well as for other countries.

The discussion so far has followed what is usually done in the energy vulnerability literature by explicitly or implicitly assigning equal probabilities to supply failures, as well as by not addressing the issue of intentionality. The next section provides a few pointers for future research in that direction in general terms, drawing from various developments in energy relations between European countries and Russia.

¹ These estimates are based on GDP data from the Bulgarian National Bank accessed on 1 March 2009. GDP for 2008 is reported to have been 54.3 billion Leva, equivalent to 27.8 billion Euros. This suggests (very roughly) a normal level of GDP formation over a two-week period of 1.07 billion Euros.

Asymmetric probabilities and intentionality

Game theoretic approaches in reliability analysis allow for the modelling of the actions of intelligent actors. This is particularly useful for the modelling and simulation of intentional attacks on a system. Modelling intelligent actors in a one-step game is conceptually simple: the opponent chooses his target(s) as the result of a maximisation problem subject to feasibility constraints. In a multi-stage game, a government chooses the level and distribution of funds to allocate for protection of potential targets (i.e. pre-emption measures), as well as the nature and degree of retaliation that it signals it is committed to (i.e. deterrence measures). The opponent reacts by updating his evaluation of the costs and probability of success of various types of attacks. Such analyses have been made for the case of terrorist groups targeting Western countries (see Sandler and Arce M. 2003; Rosendorff and Sandler 2004). An excellent recent collection of similar contributions is Bier and Azaiez (2009).

A framework for integrating the insights from game theoretic analysis in reliability theory into the analysis of cross-country energy supplies could be the following. The target function of the supplier country is, in its strictly economic component, to ensure the maximisation of the present value of future profits from the sale of its energy products. Christie (2007) shows that this assumption alone can explain many of Russia's actions, including Gazprom's downstream investments in EU distribution and sales assets and its opposition to diversification of supplies on the part of the EU. However, as shown in Larsson and Hedenskog (2007), there is sufficient evidence of political or geopolitical considerations trumping profit maximisation (in certain cases) to specify a broader target function. One key empirical observation is that Russia seeks ownership stakes, if possible controlling stakes, in the energy infrastructure of its neighbours, of its main European partners, and of potentially competing suppliers. In other terms, the goal is to corner the European market, with particular focus on the countries located in the Central and Eastern parts of the European Union, as well as the countries that are located in the common neighbourhood of the EU and Russia. The empirical evidence also shows that Russia has used various types of pressures in order to obtain assets in a number of countries, most notably Georgia, Lithuania, Latvia, Belarus and Armenia, (see Christie 2007). Moreover, Russia has also cut supplies in cases where the only explanations that stand up to scrutiny are of a purely political or geopolitical nature. Two recent cases include the oil supply cuts to the Czech Republic in July 2008 (Dempsey 2008) and the destruction of gas and electricity connections to Georgia in January 2006 (BBC 2006).

A properly specified target function for the Russian Federation would therefore have to include those elements, and should in a general sense be modelled as a utility function which depends positively on state-owned corporate profits and on geopolitical interests, i.e. on the desire to exert influence and control over foreign countries. The range of means which should be modelled include supply cuts in various guises, but also softer methods, such as the use of complex corporate ownership structures in order to circumvent existing foreign regulations, (see Skorlygina 2006), and/or the use of direct payments to selected individuals in order to facilitate certain transactions.

Starting with the simplest representation, the problem of the supplier may be formalised as the maximisation of the utility function shown in (16).

$$(16) \quad U = \alpha \cdot \pi + \beta \cdot PC$$

Where π stands for the profits of the state-owned corporations (e.g. Gazprom or Rosneft) and PC stands for political control of the foreign country. While π may be positive or negative, PC may be defined as non-strictly positive. As for the coefficients, the most general case would be to assume that one of them must be strictly positive while the other may be non-strictly positive. In a typical case π and PC may be correlated with one another, as well as causally related. The maximisation problem should therefore be seen in a dynamic setting, so that the control variables of the supplier are set in such a way as to yield the optimal solution, subject to feasibility constraints. For instance, it may be preferable to favour legal corporate expansion, and hope for some political dividend at a later stage for some countries, while direct intervention in the other country's political equilibrium (e.g. bribery of politicians, supply cuts) in order to obtain higher profits at a later date may be preferred in other cases. Also, each of the two key variables may have positive or (at times) negative feedback effects onto one another, and indeed onto themselves. For the purposes of the current discussion, and in order to link the supplier's actions with the vulnerability indicators discussed previously, the following simplified framework may be proposed.

The supplier defines a specific goal, for example the ownership of a strategic energy asset in the consuming country. This is an interesting goal, because ownership of that asset would yield a higher profit flow, as the supplier country acquires a further component (downstream) along the supply chain. Political control would also be enhanced, as the strategic importance of the supplier country for the consuming country would also be raised. Thus utility as defined in (16) would rise. However, let us assume that the consuming country refuses to sell off the asset (for whatever reason). If the consuming country is vulnerable, for example because the supplier country is in a monopoly position, the supplier may opt for a deliberate supply cut, thus yielding an economic loss for the consuming country, or for the threat of a deliberate supply cut. Resuming supplies, or not carrying out the supply cut, may then be offered as a bargaining chip in exchange for the desired goal. The consumer country would be tempted to accept, if the economic loss from refusing the deal is strictly lower than the economic loss incurred as a result of the supply cut as defined in (15). On the other hand, the consumer country may also place value on political independence, so that the utility (or loss of utility) of the consumer country would depend on economic loss as derived from (15) as well as on additional factors, in effect a utility function similar to (16), but with domestic political control as the second variable. This simplified case may be seen as a formalisation of the Russian oil supply cut to Lithuania and the related issue of the ownership of the Mazeikiiai refinery (see Torbakov 2006).

Concerning the impact of the vulnerability of the consumer country, it is clear that the outcome desired by the supplier country will be more difficult to achieve with a supply cut if the consumer country can easily and cheaply diversify supply sources, and/or switch to other energy products. If vulnerability is lower, the supply cut would lead to a lower economic loss, potentially yielding an economic loss that would not lead to the consumer country accepting the bargain. In the latter case, the probability of the supply cut occurring would then fall to zero, if one assumes that the supplier country has full information and perfect foresight.

The approach described above offers a number of insights. First, the probability of a deliberate attack on a particular component should be modelled as a function of the expected gains that it will bring to the attacker, given feasibility constraints. Second, the expected gains depend positively on the level of expected loss of the target. Therefore the probability of an attack on a specific component depends positively on the vulnerability of

the component. In terms of countries, this means that an attack on a more vulnerable country is more likely, *ceteris paribus*.

Supply source diversification versus supply route diversification

Another insight from the game theoretic approach relates to the debate on supply *source* diversification versus supply *route* diversification. If one assumes constant levels of bilateral demand and supply, then intentionality of supply disruption is a key issue. Supply route diversification without supply source diversification, e.g. more pipelines from Russia to Europe but no other changes, is a good idea if the failure probabilities are independent from one another as well as independent from the actions of either the supplier or the final consumer. For instance, redundancy in supply routes is a worthwhile investment if there is a relatively high probability of failure due to technical or natural causes, or if there is a generally high probability of attack from an external actor, e.g. a terrorist group, whose goal would be to hurt both European and Russian interests. In that case, additional transport infrastructure may be worth the investment (depending on the level of threat and the size of the necessary investment). However this is not part of the debate as the probabilities mentioned above are considered (rightly) to be very low. Instead, supplies continue to come through a small number of lines, and natural, technical or terrorist attacks are cheaper to deal with by repairing the infrastructure after the event and relying in the short intervening period on other supplies and on storage.

In fact, the supply route diversification argument rests on the assumption that an entire corridor (i.e. consisting of one or more transit countries) presents a systemic risk to supplies. If, for instance, it could be shown that Poland repeatedly cuts the flow of gas between Russia and Germany, then the case for the Nord Stream pipeline (designed to link Northwest Russia directly to Germany) would be undisputable. However no such behaviour on the part of Poland has been observed. There is therefore no clear energy security argument in favour of Nord Stream. Instead, that project seems to be a complicated and costly way of supplying Germany with gas when an additional overland pipeline would be a cheaper solution, at least in terms of initial capital costs. Nord Stream AG has argued that lifetime operating costs for the projected line would be cheaper than with overland alternatives. This issue would naturally require independent evaluation. This is not currently possible due to commercial confidentiality restrictions. However, given the strategic importance of such projects, it would be in the public interest to lift those restrictions so as to enable a transparent verification exercise.

Turning briefly to the Ukrainian corridor, it is evident that the Russian Federation wishes to convince its European partners that Ukraine as a whole is not a reliable transit country. The latest gas crisis of January 2009 may well have damaged the reputation of Ukraine in this respect, and not entirely undeservedly – for a detailed early assessment of the crisis see Pirani *et al.* (2009). However, one should recall that it was Russia's decision to shut down *all* supplies, including those destined for European customers with whom Gazprom had no commercial dispute. In other terms, Russia voluntarily lost revenue (estimated at around 1.5 billion Euros) in order to try to inflict damage on Ukraine's reputation as a transit country and, quite possibly, on its economic and political stability. Shortly after the crisis, Russia resumed the promotion of its pipeline projects, Nord Stream discussed above, and South Stream, which would run from Russia's Black Sea coast, under the Black Sea, into Bulgaria and further into Central Europe and Italy. The key issue, as noted in Pirani *et al.* (2009), is which of the two countries (Russia or Ukraine) is considered to be the main security liability for European gas supplies. In the latter case, supply route diversification would be helpful. In the former case, supply route diversification would not help, and diversification away from Russia as a supplier would be the right course of action, i.e. supply source diversification.

Given available evidence, notably the fact that Russia has cut supplies multiple times to many different countries for a whole set of reasons, a rational policy on the EU side is to expect Russia to cut supplies in future, not only to Ukraine, but possibly to other countries. In this perspective, therefore, supply route diversification serves no useful purpose for the energy security of Europe. On the contrary, it would increase the likelihood of supply cuts, given that it would cost Russia less (in lost revenues) to cut supplies to specific countries if supplies to countries it is not targeting were less affected. For instance, the availability of Nord Stream would enable Russia to reduce supplies through the Belarus-Poland corridor (the Yamal-Europe pipeline) without substantially affecting supplies to Germany, and hence payments from Germany. It is easy to imagine that a dispute could arise between Russia and Poland, e.g. over the stationing of US or NATO assets, and that gas would be suddenly cut for 'technical reasons', in a manner reminiscent of the oil supply cut to the Czech Republic in 2008.

Vulnerable countries, geopolitics and the Russian national interest

Bulgaria appeared as a very vulnerable country in the wake of the January 2009 gas crisis. A much longer supply cut than was experienced would have caused much higher losses, but presumably below the estimated 23% of period GDP discussed earlier, as the affected country would then substitute towards other fuels and other sources. This would be very costly, but less costly than doing nothing. However, the preliminary estimates suggest that a relatively long supply cut (say, of a few months) would plunge a country like Bulgaria into a deep (if temporary) economic depression which could be sufficient to destabilise the country socially and politically. Clearly, countries like Bulgaria cannot afford to remain so vulnerable and should invest in storage and interconnection facilities with neighbouring countries, as well as shift their fuel mix away from natural gas. The same conclusion applies to other highly vulnerable states, notably the Baltic States, given high import dependence, reliance on a single source country, and lack of interconnections with other consuming countries. Indeed, certain analysts recommend that the Baltic States should stop using natural gas altogether (see Korski 2008).

While Bulgaria has apparently reached an agreement with the Russian Federation for compensation, the case of Ukraine is both fragile and strategically important from a European perspective. During the January 2009 crisis, Ukraine was able to operate its gas transit infrastructure in reverse flow, withdrawing stored gas from the facilities in the West of the country to send it to its Eastern regions (see Pirani *et al.* 2009). Ukraine's general economic and financial position is currently very difficult, but for its own purposes it needs to replenish those stocks in time for next winter. Also, Ukraine's storage capacity is potentially very interesting for the European Union, notably in light of the 23 March 2009 Joint Declaration between the European Commission and the Government of Ukraine which foresees EU assistance and investment in upgrading Ukraine's transit infrastructure. As a result, the satisfactory operation of Ukraine's storage capacity is in the joint interest of the EU and Ukraine, as this would make both Ukraine and the EU less vulnerable to future Russian supply cuts. Indeed Pop (2009) reports that Vladimir Putin has identified Ukraine's current vulnerability by stating that "gas must be pumped into underground gas reservoirs because with gas storage facilities empty, Ukraine's economy and community services will not be able to operate in the autumn-winter period". The correct course of action for the EU is therefore to ensure, with financial assistance if necessary, that Ukraine's storage capacity operates for the common energy security interest of the EU and Ukraine. Member states would be making a grave miscalculation if they refused to assist Ukraine, as a higher energy vulnerability of Ukraine would make supply cuts more likely rather than less likely. Renewed incidents, given Ukraine's current economic vulnerability, could have self-reinforcing effects, pushing Ukraine into an ever weaker bargaining position with Russia in other policy areas as well. Given Russia's geopolitical ambitions, this could cover

areas of strategic importance such as ownership of energy and other strategic assets, as well as foreign and defence policy concessions.

The EU's regulatory framework and some policy recommendations

The European Commission, several EU member states, and a large number of analysts have called for a fully integrated and liberalised internal gas market for the EU. A liberalised market would offer several energy security benefits. As argued particularly in Noel (2008), gas supply shocks currently do not translate into price shocks, so that there is no strong economic incentive to source more gas from other suppliers and to redistribute gas between member states. The absence of price signals also reduces incentives to invest in additional interconnection capacity. Gas supplies to the EU as a whole are quite diversified. However limited interconnection capacity implies fragmentation: the availability of North African gas for Spain and Italy did little to help Bulgaria in the recent crisis. Buras and Graetz (2009) come out in support of an integrated and liberalised internal energy market for the same reasons, and furthermore argue that such a course of action would strongly improve the scope for a unified EU external energy policy.

The European Commission has been keen to promote a number of reforms in that direction, notably ownership unbundling, the 'third country clause' (also dubbed the 'Gazprom clause'), as well as stronger energy solidarity mechanisms and more investment in storage and interconnection between member states. However a number of member states, in particular Germany, France and Austria, have opposed both ownership unbundling and the third country clause. This seems a paradox given that Russia had, in May 2008, introduced very stringent legislation regulating foreign investment in strategic industries. For a discussion on the new Russian legislation (see Liuhto 2008). As a result, what is happening is that strictly bilateral relations continue to be cultivated at the expense of a wider EU-Russia relationship, with the acquiescence of 'privileged' EU member states, e.g. Germany and Italy.

While this author shares and supports the ideas expressed in Noel (2008) and Buras and Graetz (2009), the positions of a number of key member states seem difficult to overcome. Other ways must therefore be explored in order to reduce the vulnerability of Central and Eastern European member states. I focus on that particular group of countries given that most of them have net import dependence rates of close to 100% for natural gas, in addition to sourcing virtually all gas imports from Russia, i.e. they are highly vulnerable. One preliminary idea for those countries would be the creation of an investment pool for shared gas and electricity interconnection, gas storage and LNG terminals, new nuclear power plants, and coordinated legislative reform. But an additional problem needs to be addressed. Natural gas is less carbon intensive than other fossil fuels. As a result, the EU's emission trading scheme, the EU ETS, will lead to a strong incentive for all member states to use a higher share of natural gas than they do at present. This runs counter to energy vulnerability reduction goals for the Central and Eastern European member states that should be reducing their dependence on natural gas. What would make sense in this particular instance would be to amend the EU ETS in order to take into consideration energy vulnerability issues. Ultimately a member state should have the right to define reasonable energy security red lines so that environmental policies do not have unintended consequences on national security.

One additional issue should be briefly addressed in this section. Gazprom negotiates bilaterally between itself and its corporate partners in the EU. That set-up is not particularly favourable for the EU as a whole. Bargaining power is naturally asymmetric in favour of Gazprom, notably due to information asymmetry, as Gazprom can centralise all the information about its separate negotiations, in addition to its private knowledge about its

future supply capacities. Individual European energy companies, on the other hand, effectively compete against one another with incomplete information about one another and about supply prospects. A relevant aspect in this regard is that member states have the right to partly conceal the value of gas imports in official trade statistics (as available from Eurostat's COMEXT database) by refusing to disclose the countries of origin of part (or all) of their imports. This means that implied bilateral import volumes and prices are not publicly available. A case could be made that it would be in the common European interest to disclose that information more widely, as this would improve the common information set available to European energy companies and governments. Other important information, such as the detailed clauses of existing and potential supply contracts could also be shared more broadly, again following the reasoning that this could benefit the EU in a collective sense and improve the average bargaining position of EU companies. Member states are currently considering the remit of a new EU body, the Agency for the Cooperation of Energy Regulators (ACER). The Commission could therefore assess whether ACER could serve a useful role as an energy information agency as well. The idea would be that ACER would centralise and re-distribute gas supply information between member states and the private sector. The optimal information sharing policy would of course have to be carefully studied, for example, based on models of strategic bargaining.

Conclusions

The preceding sections point to the need for a partly new approach to measuring energy vulnerability. The main suggestions for future efforts in this direction may be summarised as follows. First, rather than normalise indicators between 0 and 1 in order to rank countries (though that is also an informative exercise), it is preferable to construct a chained indicator that links failure events to economic losses. Second, while diversification of suppliers must be accounted for, this should not rely on arbitrary non-linear transformations such as required by the Herfindahl-Hirschman index or various forms of the Shannon-Wiener index as found in the existing literature. Instead it is preferable to use measures of expected shortfall from the financial economics literature. The latter then represents an actual volume of (expected) shortfall given a certain confidence level which can be directly chained with a country's fuel intensity of GDP. The latter can then be used as the core variable in a calibrated model of expected economic loss. Countries (or a given country over different time periods) may then be compared in terms of what would actually happen to their economies with a set confidence level. A shift term should also be added to represent the temporary reprieve offered by domestic fuel storage.

Also, it is implicit to the approach advocated in this article that each main type of fuel should be assessed separately, for example, crude oil, natural gas, coal. In addition, a set of modelling efforts are necessary in order to specify the economic loss functions in each case, as these should account for second-round effects, for example, economic effects of impeded transportation or of reduced electricity generation.

In a further stage, one idea would be to develop a sort of 'control panel' view of a country's energy vulnerability, enabling simulations of various scenarios under various assumptions on the probabilities and nature of specific exogenous events (including different time horizons), as well as on the values taken by additional state variables that cannot be easily included in the main measure of energy vulnerability, for example, increased supplies from suppliers that have not failed, subject to the situation in other consumer countries. Moreover, and this would require a somewhat novel research effort, the relationship between the probability of a supply cut and some of the state variables may be modelled, for example using a game theoretic approach. This requires taking into consideration the target function of the supplier. In the case of Russia, while profit maximisation is clearly in

evidence, geopolitical considerations need to be included as well. Also, other types of vulnerability, such as general economic, social or domestic political vulnerabilities may make supply cuts more likely, as in the case of Georgia in 2006.

Energy vulnerability measurement and modelling should ultimately inform policy. In particular, member states should legislate that no energy infrastructure project by one or more member states may increase the energy vulnerability of another member state. Additionally, European environmental policies, notably the EU ETS, should be amended so as to account for induced changes in energy vulnerability. Compensation mechanisms between member states should be set up in both instances. Additionally, member states should have the right to define and implement energy vulnerability red lines, within reasonable limits, for national security reasons. Finally, member states should consider expanding the remit of the planned Agency for the Cooperation of Energy Regulators (ACER) in the direction of an energy information agency that would collect and disseminate information on gas supply volumes, prices and contracts.

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Hot Under the Collar: Lessons from the 2003 Heatwave in France and the Security Implications for Coping with Environmental Threats in the EU

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Abstract

In the sweltering temperatures of August 2003 there were over 15,000 fatalities in France, the majority among the elderly. The heatwave (*canicule*) was the greatest natural catastrophe in Europe for 50 years. Political mismanagement contributed to the death toll and government initially sought to blame medical services. However, other politico-cultural, societal and psychological factors may have contributed to the failure to protect those citizens most vulnerable. This article identifies 20 obstacles ("pathogens") to ensuring effective response in the face of environmental or weather-related threats, distinguishing between state-institutional and individual-community barriers, most of which have a cultural dimension. These factors require greater consideration by policy-makers to improve preparedness for environmental threats in the EU. The case raises questions about crisis management and how best to reduce risk for elderly populations, illustrating the limits of the state in offering social protection through institutionalised solidarity mechanisms, and recognises calls to strengthen community capacity.

Keywords

Climate change; crisis management; France; heat wave; liberty; old age; political culture; political leadership; Raffarin; solidarity; welfare state.

IN RECENT YEARS, AS EUROPE HAS EXPERIENCED HOTTER SUMMERS, THE LIMITS OF THE traditional welfare state have become apparent. Political actors have sought to identify alternative solutions to guarantee the security of the population – not always successfully. EU member states, though well-equipped to cope on paper, found themselves under considerable pressure during the heatwave of August 2003. More than 80,000 additional deaths were recorded in 2003 in the 12 countries concerned by excess mortality, compared to the 1998-2002 period. Some 70,000 occurred during the summer, of which 45,000 were recorded in August alone (Robine *et al.* 2007). This article examines the situation in France, where during August 2003 the usual death toll was almost double usual figures, with an extra 15,000 deaths concentrated in a two-week period, mainly

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among the very elderly. The catastrophe represented a major failure of the traditional (and in this case, very generous) welfare state. Political elites were seen to be impotent. In the event, the healthcare system, with a skeletal medical staff available, was stretched to its limits.

As Boin *et al.* (2003: 1) assert in their writing on crisis management and public leadership, “age-old threats (floods, earthquakes, and tsunamis) continue to expose the vulnerabilities of modern society”, often leading to the failure of critical infrastructures (CIs) such as emergency and health care services. Indeed, heatwaves and acute cold spells threaten the most vulnerable groups of the population, including those in old age. As such, freak weather patterns – whether or not they are related to climate change – represent an ever present threat to the EU’s internal security, yet the issue remains to be tackled at the member state level. Such threats undermine the basic structures of the welfare state and expose weaknesses in structures for social protection, including community. European societies generally expect policy-makers to avert threats or ensure preparedness to limit their impact. Yet, political elites struggle to make sense of crisis, often engaging in a process of denial or blame-sharing. The degree to which political crisis management is successful, it is argued, may heavily influence the death toll.

In the aftermath of crises, political elites engage in reform processes, most often allocating greater budgets to state institutions and promising political support to create extra capacity. And that’s where it ends. Little attention is paid to the causes of the crises that reside within the system (Boin *et al.* 2003: 5) – these crises or “pathogens” go unnoticed, or policymakers fail to address them adequately. Similar problems can easily re-emerge during future crises where “seemingly innocent factors combine and transform into disruptive forces that come to represent an undeniable threat to the system” (Boin *et al.* 2003: 5). Given that the death toll in France alone was four times the human loss of 11 September 2001 (9/11), it appears rather strange (or perverse) that there has been such limited debate on the structural features that heighten internal security risks during extreme weather conditions.

Environmental threats pose particular problems for national security in terms of protecting the most vulnerable members of the population, such as the very elderly and handicapped. The welfare state is meant to provide services to remove hindrances such as poverty and disease and protect citizens from external enemies, be they human or natural threats. This has implications for the organization and structure of state welfare systems. Recent literature from social policy has referred a great deal to the ‘active welfare state’ (AWS) as being about promoting the full ‘responsibilisation’ of the individual, and by extension, of the EU citizen (Pestiaeu 2006). Yet the precise conditions for ensuring the active welfare state have not been made explicit. Recognising that traditional social protection does not encourage citizens to be active, social policy scholars (Ferrara 2005; Giddens 2007; Hantrais 2007) refer to a need to create a more effective social safety net, such as through “community capacity-building” to reinforce social capital (Craig 2007).

Much of the AWS literature refers to exclusion, and advocates strategies to secure employment rather than strategies to ensure self-protection. It addresses economically ‘active’ citizens rather than the ‘non-active’. The notion was first found in the UK Government’s Green Paper “New Ambitions for Our Country: A New Contract for Welfare (DSS 1998) in which Tony Blair advocated state welfare recipients “doing for themselves”, based on the recognition that vulnerability was partially socially determined. It implies less reliance on state institutions and more empowerment of individuals as part of a strong social fabric, whereby a community can act as welfare provider, and, in so doing, help overcome reliance on formal state structures. However, assuming that the individual’s responsibility is partially socially (and by extension, culturally) determined, when it comes

to engaging in a process of capacity-building for social protection, there may be barriers embedded within the society/polity which provide resistance. Such constraints are exposed during health or environmental epidemics, at times when the welfare state is put to the test and comes under close media scrutiny.

The aim of this article is to offer an empirical insight into a recent internal EU security threat – the 2003 heatwave in France. It seeks to understand why such a high death toll occurred. However, accepting that existing research analysis has recognized an apparent failure of critical infrastructures (CIs), it reflects on what this means for social policy change. Beyond the political mud-slinging – between those who blame ineffective political leadership and the failure of welfare institutions, and political elites who lament a failure of inter-generational solidarity or breakdown of the social fabric – the article identifies other “pathogens”, culturally and psychologically embedded within social and political life. It argues that these need greater political consideration in order to ensure better preparedness for environmental threats in the EU.

The case shows how the potential for individuals to engage themselves as an “active welfare state” resource is limited due to societal perceptions of risk, trust and responsibility. Much recent literature has addressed the way in which the management and communication of risk has become a key concern of public policy. The notion of risk is amplified and attenuated through its link and association with social and individual factors which may themselves heighten or dampen the perception of threat (Beck 1992; Slovic 2000; Pidgeon *et al.* 2003).

Insufficient attention has been paid so far to ways of engaging communities in mutual social protection, though solidarity mechanisms. Empirical evidence supports the view that scholars need a broader conception of security, which acknowledges non-military threats to population welfare, and a more adaptive notion of the welfare state, one which recognizes the population itself as a key resource. Ensuring security may require adapting the organization of political and social life, even though promoting “responsibilisation” may constrain the liberty of the individual. Are there limits to individual freedom when it comes to protecting vulnerable citizens?

This article reconsiders much of the academic output in the last six years from various fields of study (epidemiology, gerontology, public health, risk, contingency planning) but goes further by examining cultural stereotypes, attitudes and the organization of social and political life. It is meant as an empirical case study specific to France from which to reflect and discuss the potential lessons and implications for the EU, without claiming to offer policy recommendations as such.

The second section of the article reviews academic analysis of the French heatwave of 2003 to date. The empirical third part examines the factors that prevented active welfare and which may have contributed to such a significant death toll. It identifies 20 factors, distinguishing between structural, institutional and administrative barriers and how they are linked to political culture, and more deeply embedded sociological “pathogens” related to individual and group behavior and the organization of social and cultural life. Based on the experience of 2003 and the process of reform thereafter, the fourth section considers what we can learn from the case and what it means for our understanding of security and liberty, particularly regarding those “boundaries of welfare” (Ferrera 2005) that have been largely ignored in the relatively superficial, political process of reform.

Analysis of the 2003 French heatwave to date

2003 was Europe's hottest summer on record since 1540 when the Rhine was reduced to a stream. In France, where normally 22,000 deaths are registered every month, from early August when the heatwave struck, there were an 15,000 additional deaths in a two-week period (an increase of 70 per cent on normal annual figures), after which figures returned to "normal". As much as 82 per cent of the excess deaths were of people over 75 years old (Grynszpan 2003: 1169). On 1 August the record temperature of 47.3 degrees centigrade was recorded in Portugal. The immediate cause was a strong anti-cyclone in the Azores which led to abnormal intensity and duration (Black *et al.* 2004). Throughout August two-thirds of weather stations across France reported temperatures in excess of 35 degrees centigrade, while 15 per cent registered 40 degrees. For French meteorologists a heatwave is a period when maximum temperature increases above 30 degrees. Humidity, air motion and radiant energy also influence the heat stress upon human health. The 2003 heat wave was a "silent killer" (Poumadère 2005: 1489-91) or "stealth killer" (Lagadec 2004: 160). While the excess mortality rate was just 4 percent extra in the northern city of Lille, it increased by 142 percent in Paris (Vandentorren *et al.* 2004: 1518).

France is used to hot summers particularly in the Midi, with Languedoc annually basking in the high 30s. In fact, temperatures were only 3.5 percent above normal annual figures. What made the difference, however, was the wide geographical spread of the heatwave and its duration; never before had such a heatwave lasted for so long. For example, the city of Nîmes often experiences four or five consecutive days of extreme heat, but had 30 such days. The night temperature in Paris on 11-12 August stayed above 25.5 degrees as masses of hot air from below the Pyrenees effectively created an oven. Government later recognized catastrophe in 3,000 of the 7,000 *communes* that eventually declared a state of emergency (*Journal Officiel*, 1 February 2005).

More than 70 scientific papers and reports related to the European heatwave have been published. The EU recently financed a technical study covering 16 countries (Cheung *et al.* 2007; Robine *et al.* 2007). The most comprehensive articles on the French heatwave specifically, have provided useful insight from the fields of contingency and crisis planning (Lagadec 2004; Thirion *et al.* 2005) and risk analysis (Poumadère *et al.* 2005). Patrick Lagadec, Director of Research at the Ecole Polytechnique, has written extensively on crisis prevention and management. His extremely comprehensive analysis of administrative breakdown in this case offers a highly detailed, day-by-day account of the event and the way in which "a series of traps impeded adequate responses" (2004: 165). He identifies four layers of cultural gaps that help account for the inability to confront crisis and compares the event with the 1995 Chicago heatwave, drawing on the literature that emerged.

Jim Ogg's (2003) comprehensive investigation into the implications of the 2003 heatwave on behalf of the UK's *The Young Foundation* was made in the immediate aftermath. He claimed that the heatwave would leave an "indelible mark" on French society but concluded that it would be hard difficult to identify concrete areas that social policy could develop as a direct result of the lessons learned. What it would supposedly do was at least open up a "genuine" public debate on socio-demographic changes occurring in French society (Ogg 2003: 6). With more distance from the heatwave, this article discusses policy implications for both internal security and social policy, but doubts whether lessons were learned and if any significant public debate has really taken place.

Other scholars have addressed the general phenomenon of heatwave from specific disciplines such as gerontology (Langer 2004), public health (Vandentorren *et al.* 2006), emergency medicine (Vanhems *et al.* 2003; Davido *et al.* 2006), intensive care (Franklin 2004), weather (Black 2005), climate (Vescovi *et al.* 2005), the built environment (Wright *et al.* 2005) and national security (Busby 2005). Social relations and the links between

integration and mortality in France have been analysed across a wide range of societal groups (Berkman *et al.* 2004; Fuhrer *et al.* 2004).

Scholars addressing politics and policy relating specifically to the elderly in the period prior to the heatwave have focused largely on failed attempts at pension reform from 1997 to 2003 (Schludi 2003; Palier 2004; Natali & Rhodes 2004). Yet, literature addressing questions of citizenship and social exclusion in respect of older people “remains fairly thin at present” (Craig 2004: 98) and is grouped with disability, sexuality and ethnicity as one of many areas of study for social exclusion. However, the needs of the elderly with regards to social support and services have been examined through various empirical cases in epidemiology (Colvez *et al.* 1984; Cohen *et al.* 2005; Imbert *et al.* 2005), though none address the social protection of vulnerable populations in times of crisis, and the implications for EU policy.

Obstacles to welfare protection and crisis preparedness: emerging barriers, embedded ‘pathogens’

In August 2003, death certificates mentioned dehydration, hyperthermia and heat stroke: the direct killer was heat (Vandentorren *et al.* 2006). However, the behaviour and attitudes of French state institutions and society at large requires further examination. Exposing inherent normative, organizational and psychological barriers to welfare protection in France can provide lessons for EU internal security. The following section identifies 20 obstacles to effective response. First, it identifies embedded features of French political culture that hampered effective political and administrative management, and which can help explain the failure of critical infrastructures (CIs). Secondly, it examines more embedded features of French society and culture, including common attitudes towards the state, experts, heat, risk and the elderly.

a) Institutional and political barriers

1. **Political stonewalling:** It was a group of emergency physicians (*Association des Médecins Urgentistes*), the French weather station, (*Météo France*), emergency services (*sapeurs pompiers de Paris*) and undertakers (*pompes funèbres générales*) who gave the first signs of crisis, produced data, and made declarations. Prime minister, Jean-Pierre Raffarin maintained a “state of attenuation” with instructions to limit the dissemination of statistics of the death toll. Only after temperatures had lowered was an emergency response launched (Fleck 2003: 773). Raffarin only demanded the extension of the emergency plan (*Plan Blanc*) to the whole country at an inter-ministerial government meeting a week into the heatwave on 14 August. The initial response was “Deny, Deflect, Defend”, closely mirroring what Klinenberg (2002: 168) recognised in Chicago in 1995. As Lagadec (2004: 160-161) describes: first, hospital outcries of being overwhelmed are dismissed by political elites as recriminations against budgetary cuts; second, the media is blamed as sensationalist; third, government denounces “politically-motivated polemics”; fourth, the health minister reassures the country all is under control but as the death toll rises “basic stonewalling” is no longer sufficient. Political elites do not necessarily have the intellectual and practical frameworks to respond appropriately; under-declaration is the rule and leads to total negation (Hémon & Jouglé 2003).

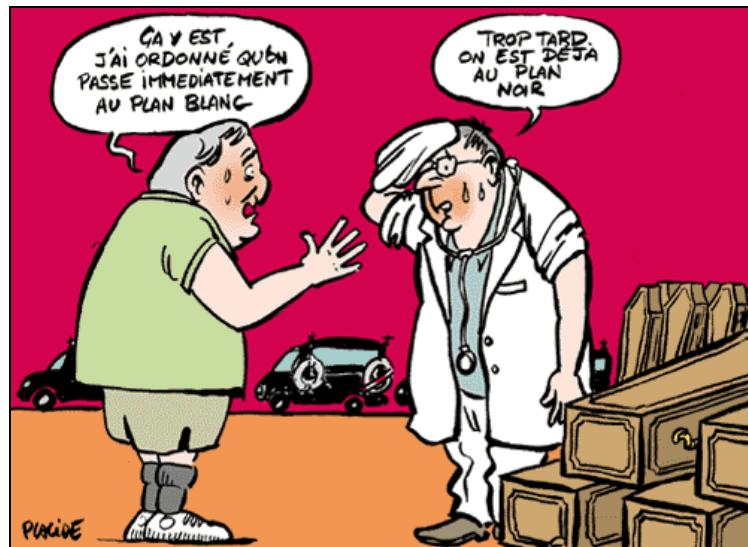


Figure 1: "It's done, I've given the order to immediately launch the White Plan"; "Too late, we're already using the Black Plan" (source: <http://www.leplacide.com>, 15 August 2003). Artist permission provided.

2. **Government communication:** Raffarin was eventually forced to face the media, while President Chirac remained mute until the end of August. Reporters headed south to hunt out politicians on vacation at their villas. Returning from his holidays in the Alps, Raffarin visited a retirement home and handed water to the elderly, a cynical political stunt for the camera crews. In short, the government's own news management strategy was inept, not in anyway way tailored to the "demands of a 24-hour rolling news media culture [...] it got it signals woefully wrong" (Kuhn 2005: 256). Media coverage was persistent and "therapeutic", meaning any public action was based on a response to recorded deaths (epidemiological data as *proof* of the phenomenon), rather than targeted broadcasts promoting preventative action.



Figure 2: After the hot air caused by the heatwave Raffarin pays a visit to the elderly: "Try not to give off too much warmth" (source: *Le Courrier International*, 19 August 2003, cartoon by Mix and Remix). Artist permission provided.

3. Media reporting: TV debate revolved around the great burden on hospitals and the failure of geriatric wards to cope, then the delay in registering deaths. This can perhaps be explained by the absence of any defining “triggering event” (Shrivastava 1992, in Stein 2004: 1243) and a time lag of up to three days between the start of the heat wave and the surge of deaths. The media had no momentous explosion or tsunami-style image to exploit. Sense-making could only be a slow and iterative process, with the full extent of the event as “catastrophe” only emerging through the successive build-up of images, during a “critical period” of several days. Only when temperatures lowered in the third week of August did the full picture begin to emerge.

4. Bureaucratic complexity: Whereas information on emerging infectious diseases tends to spread quickly, heatwaves induce bewilderment (Grynszpan 2003: 1170). The government’s inability to act was linked to systemic incapacity: directors were away holiday, dossiers built up progressively and it took days for data to be collected and statistics collated (Lagadec 2004: 162). Signals got lost in corridors, communiqué writing took days and the primary impulse of officials was not to seek extra information, organise meetings and set up networks in order to take decisions and act, although such administrative culture is not a French monopoly (Poumadère 2005: 1490). Some scholars argue that French politics is imbued with “elitist attitude of secrecy and a reluctance to share quantified information”, which prevents knowledge integration (Porter 1995).

5. Administrative culture: There was no spirit of emergency to scientific monitoring because of the specific cultural dimension in France to the way in which scientific studies have to be carefully launched. Lagadec (2004: 160-165) describes in depth how the “system” was unprepared for the challenge. He recognises a series of characteristic “visions and operational frameworks of reference”, explaining how French managerial culture is hierarchical and compartmentalised, comprises “a yes-or-no response culture” and operates with a “step-by-step, top-down, centralised approach” in a “stable and surprise-free world”, where disclosing information to the public is regarded as a “particularly high risk move”. He identifies complex ministerial structures with a “laborious mobilisation” of personnel, comprising “divisions, partitions and demarcations (wait-and-see defensive attitude)” and “vertical isolations (each layer protects itself)”, which commit “dramatic errors in communications” and engage in “scapegoat searching”. The problem is not unique to political administrations. As Thirion *et al.* (2005: 154) assert regarding hospitals, even supposedly “perfectly adapted services could not improve the prognosis of subjects who were already condemned [...] our exclusive and curative medical culture prohibited effective preventive action”; “the ‘system’ remained deaf to all this ‘noise’”. The head of the Union of Emergency Physicians, Patrick Pelloux, was dismissed as an “activist” and accused of failing to “wake up the system” - a system described by one analyst as “an arcane constellation of improbable organisations that could hardly be identified, charted, reached, and mobilised in a coherent and concerted way” (Lagadec 2004: 163).

6. Risk prevention: France had no emergency plan in place, as if climate change was “restricted to a distant or uncertain future” or to pre-industrial countries (Poumadère 2005: 1483). There had been no recent political action on heatwave impacts, despite two major related international reviews, one of which, in French (Besancenot 2002) had identified over 1,000 publications on heatwave impacts (most in English, eight in French), insisting on the “absolute urgency” of tackling risk prevention in the face of global warming (Poumadère 2005: 1489). In September 2003 the then health minister, Jean-François Mattéi, accepted the country had learnt little from the event, and that, despite the previous 1983 heatwave, it had “never calculated, evaluated or quantified [the deaths] on a national level” (Crabbe 2003: 10). One lesson, however, was the subsequent re-analysis of data by national health and medical research institute (INSERM), which uncovered more than 6,000 deaths during the fortnight of drought in 1976. These excess deaths had never

been politically acknowledged and had, in fact, been “hitherto denied” (Hémon & Jouglà 2003). Despite data being available for 27 years, attention at the time had focused on farmers’ agricultural losses, with a “drought tax” voted through by parliament, which distracted from the death toll. France is probably not alone. As Robine *et al.* (2007) assert, research on climate threats and security management across Europe has long been scant, generally resting upon poor data until 2003.

7. Pension reform: The French government had long sought to radically overhaul pensions, which in 2001 accounted for 44 per cent of social security spending (www.diplomatie.gouv.fr, 20 March 2007) but the political feasibility of policy adjustment and reform critically depended on the government’s ability to orchestrate a consensus with the opposition or trade unions – it could not (Schludi 2003: 199). “Blame sharing” governments have a strong incentive to forge stable political consensus on pension reform, involve other parties and trade unions (Palier 2003: 214). For Juppé (1995-1997), any plan to cut public pension was withdrawn due to mass social unrest and strikes. Neither the system of industrial relations nor the French party system was conducive to reform: “French trade unions could mobilize protest but had limited capacity for strategic action”; Jospin (1997-2002) dedicated the beginning of his mandate to reform but “procrastinated” (Palier 2003:214). He did, however, create a reserve fund in early 1999 of 2 billion francs (304 million euros), which had grown to 3.4 billion euros by 2001. Yet fund-raising alone was insufficient; structural changes had not been made.



Figure 3: “And what if we told them it was part of our plan to tackle the pension problem”, 12 August 2003 (source: <http://www.leplacide.com>). Artist permission provided.

8. Healthcare funding: France has “one of the most effective social security systems in the world”, covering healthcare unemployment, family policy and retirement pensions. The United Nations Development Programme (UNDP) places France at the top of all rankings (Pestieau 2006: 147). The system is “based on the principle of national solidarity and it covers all residents against the financial consequences of life’s misfortunes”, so the state would believe (www.diplomatie.gouv.fr, 20 March 2007). The country appeared well placed to cope with any national disasters or medical emergencies, yet the national health insurance system (*l’assurance maladie*) was floundering with a deficit of 11 billion euro in 2003 and 12 billion in 2004. As a result, many old people’s homes and care institutions

lacked basic air conditioning. The high death toll triggered angry debate over the inadequacies of the healthcare system (Ysmal 2004: 1008).

9. Le weekend: When *Météo France*'s first warning was published on 7 August 2003, emergency services were already feeling the strain given the huge forest fires in the south of the country. Yet the National Health Surveillance Survey put off the launch of a scientific survey until Monday 11 August because "no survey could possibly be launched on a Friday afternoon" (Lagadec 2004: 161). Though the president of the Trade Union of Hospital Emergency Services spoke out strongly to the media on 9-10 August, the government ignored his warnings. The death toll had grown dramatically by 14 August, when, just as the intense heat was ending, the prime minister mobilised all hospitals and a telephone hotline was set up.

10. Labour law: The 35-hour week may have contributed to severe staff shortages in the public health and age care systems during the country's summer vacation. Indeed, a Ministry of Health report accused a lack of anticipation, organization and coordination, recognising "poor communication between the various healthcare departments that prevented an early recognition of the problem, which was then 'strongly aggravated' by the seasonal reduction of medical staff" (Fleck 2003: 773). The problem may not be seasonal but weekly. Were a big freeze to occur in mid-winter, such as over the Christmas vacation, there may be similar failings in the system given the restrictions placed on individuals to work beyond 35 hours (since relaxed by Sarkozy), and the slow, rigid and complex, paper-heavy system of hiring temporary staff, whose contracts could only be extended once in the short-term, and then meaning interim agencies had to complete lengthy *dossiers*.

b) Sociological and cultural 'pathogens'

11. Heat as risk: Ministers in t-shirts failed to take heat seriously as a political issue. Even Bernard Kouchner, founder of *Médecins sans Frontières*, was reported as saying: "What society do we live in when people call for government help when it is hot or cold?" Natural hazards are not perceived to be as threatening as technological hazards (Slovic *et al.* 2000). Heatwaves are increasingly seen as a "normal" or expected part of summer. The positive connotation of summer heat may lead to individuals underestimating the danger (Thirion *et al.* 2005: 154). The general mindset is: "hot and sunny weather in the summer, where is the problem?" (Klinenberg 2002: 17). They receive little public attention because they don't lead to expensive property damage as hurricanes do. In the US floods, tornadoes and lightening get most TV coverage even though heatwaves are deadlier (Franklin 2003). Prior to 2003, doctors may have been implicit in the attenuation process, often failing to declare heat stroke as the principal cause of death, thus "significantly changing the normative structure of the medical causes of deaths" (Hémon & Jouglu 2003).

12. The cultural myth of summer: Social attenuation may also be fed on the cultural myth of summer. A year after Marseille's 1985 heatwave, came the release of two of French cinema's most immediate references to heat: firstly, Jean-Jacques Beineix's 1986 film *37.2°C le Matin*, which sees the tragedy of Beatrice Dalle's Betty with borderline disorder in scorching temperatures. Cedric Klapitsch's 1995 sentimental comedy, *Chacun Cherche son Chat* (*lit.* Everyone's looking for their cat; released in the US as "When the Cat's Away"), portrays quaint, harmless old ladies bored in the Bastille during the heat of summer, trying to help a young girl find her cat – as if to suggest summer in Paris is a harmless time for solidarity among those left behind to engage in neighbourly acts, looking out for each other with a unique *camaraderie* ("a spirit of friendly good-fellowship) among those left behind.

13. The August shutdown: Key government figures were on holiday, alongside doctors and nurses and the concierges of apartment buildings. Ministries were on “stand-down” mode (Kuhn 2005: 256). France “shuts down” in August; it is a time of relaxation and distant escape for Parisians and city-dwellers. Depopulation is clearly visible on the streets, public transport and within the workplace (Ogg 2003: 6). At this time many elderly relatives stayed at home or had been left behind. The summer break is a national institution that presents a major spatial and temporal boundary for welfare protection. Large distances from Paris to the beaches of the south (for example, 750kms or a full days drive to Montpellier), present an obstacle or disincentive for action. The opportunity cost of returning home is high. Time and money compete with a sense of moral duty. The welfare of a child (enjoyment), spouse (well-earned break) or couple (quality time alone or *en famille*) may ultimately be deemed more precious than the reassurance of an elderly relative’s well-being, who is, in the absence of any alarm, assumed to be safe. One might even complacently assume that prolonged leisure is an expression of liberty, guaranteed by the state and exempting the citizen from personal obligation.



Figure 4: Heatwave: France is shocked by its indifference. “I asked you to water Mummy over the holidays!” (source: *Le Courrier International*, 26 August 2003, cartoon by Herrmann, originally in *Tribune de Genève*). Artist permission provided.

14. Responsibility for protection: Cross-cultural research with the US suggests relatively high levels of fatalism in French public attitudes towards health risks and a belief that they should be handled by experts not lay individuals (Slovic *et al.* 2000): “when there is a really serious health problem, the public health officials will take care of it. Until they alert me about a specific problem, I don’t really have to worry” (Poumadère 2005: 1490). This indicates a belief in “the State” as nanny and provider of social protection – not that this is unique to France. But the State upholds this stance: according to the French Ministry of Foreign Affairs, the citizens of the French Republic are “ambivalent figures”, “elements in the single and indivisible people” and “administered subjects”, “only able to act through their representatives”. Its website explicitly acknowledges that expansion of the State into social and economic affairs changed the concept of public service, expanding it from that

of an administrative entity to one that plays a role in social security (www.diplomatie.gouv.fr, 20 March 2007).

15. Political trust: Poumadère *et al.* (2005: 1492) concluded the heatwave would have long-term consequences in terms of distrust towards politicians. Ambler (1975: 31) noted, almost 35 years ago, that conflict and instability in the French political system are “attributable, at least in part, to the pervasive mistrust which presumably characterizes social as well as political relationships”, asserting that political mistrust is “one facet of generalized mistrust in French culture”. On the other hand, it is held that French citizens do place enormous trust in public health experts. If political trust is positively related to “well-being, social capital, democratic attitudes, political interest, and external efficacy” (Catterberg & Moreno 2005: 31) – implying that trust responds to government performance insofar as it impacts upon the individual – then, in the absence of a national health epidemic, the healthy, economically and politically “active” individual has no reason to mistrust the public health expert. One may trust by default, based on a faith in the expert’s ability to protect in any hypothetical future incident.

16. Urban living. A first analysis of the death toll estimated that 80 per cent of those who died were aged 75 or older. This was particularly true in urban areas, such as Paris, where the heat wave struck the elderly in their own homes. The *Institut Médico-Légal* (IML) carried out post-mortems on 452 of 919 home deaths reported in Paris. Of those examined, 92 per cent lived alone and 41 per cent lived in a one-room apartment, 12 per cent with less than 10 square metres. Economic poverty was reflected in the living conditions of tiny urban spaces. Vandentorren *et al.* (2003) identify inadequate building isolation and poor urban planning as key factors determining high death rates. A higher number of rooms decreased risk, while more windows increased risk. Vegetation around houses acts as a protector. Air pollution was also a major factor with some 379 deaths attributable to high concentrations of ozone from 13-17 August (*Institut de Veille Sanitaire* 2003).

Just over half the victims lived on the two highest floors of Parisian buildings and, among them, more than one in three lived “under the roof in a room lit and ventilated by a skylight”- in other words, in traditional Parisian “service rooms” – commonly occupied by the elderly and by some of the heatwave victims younger than 60 years. In many reports, the primary response personnel (police, firemen) registered the suffocating temperature where the bodies were found, between 36°C and 40°C (Poumadère 2005: 1487).

17. Social exclusion. Analysts claimed the disaster “revealed cracks in the social foundation of urban communities” and that a breakdown in community services and neighborhood networks had ultimately “hastened the demise of vulnerable and ‘hidden’ elderly” who would otherwise have survived (Langer 2004: 275). However, Ogg (2005: 23) points at the absence of any reliable data to prove abandonment, stating that such a “perceived social ill” was at least evoked by politicians, health officials and the media. Nevertheless, 15 of 86 bodies went unclaimed, despite the assistance of professional genealogists. It outlined how vulnerable older ethnic minority men are to social exclusion (Ogg 2005: 15), as well as elderly women of low socio-economic status (Poumadère 2005: 1489). Social service files for 383 victims found that 337 lived alone, yet only one in four had no family or social link. The risk of death was six times higher for those with no social, cultural, religious or leisure activities. A greater degree of “independent” living lowered risk (Davido *et al.* 2006), yet the use of home helps, doctors, house cleaners or meal delivery actually heightened risk since individuals had a greater dependency on external social support (Vandentorren *et al.* 2006). Clearly, social relationships are significant predictors of mortality, social ties being important for well-being; connectedness and support are linked to physical/mental health as Berkman *et al.* (1989) found in a study of almost 20,000 employees of EDF-GDF.

18. Associational involvement. Was there a failure or absence of social collectivism, perhaps as expressed through voluntary associations looking out for the elderly? Low associational involvement implies low guarantees of extended personal commitment to the community. Scholars have generalized in their identification of weak social commitment (civic participation) in France and thereby concluded an absence of any strong enthusiastic form of social integration. Nevertheless, Vassallo (2004: 298) claims that strong associational involvement is unnecessary and does not prevent social or societal activism; there are always individual motives behind displays of (collective) political activism but nothing holistic. Historically, French individualism was criticized by de Toqueville. France was the country that, almost 40 years ago, defied social capital theory, where political and social individuality was supposedly based on egotism (Bourdieu 1972). It would be short-sighted, however, to assume France remains such an exception to other EU members.

19. The social stigma and denial of old age. French society was confronted in a "brutal way" with the social implications of ageing population and quality of life among the elderly (Ogg 2005: 4). On 3 September 2003 President Chirac and Delanoë, mayor of Paris, attended the funeral of 57 unclaimed corpses, the messages evoked being that society does not care. The media fed the notion of helplessness and abandon by its focus on a single victim, Marie France, herself an abandoned orphan, named by the French authorities, who remained unmarried and died at age 88 in a small flat near the railway station in Lyon (Ogg 2005: 15). In response, in *Le Monde Diplomatique* Martin Winckler asked "What does mean to die old in France today?" He asserted that no care institution could replace family and the social environment when it comes to elderly welfare: "society was sick and in denial of ageing and death, born of an anxiety that no tranquilisers, paid holidays, summer exodus could possibly appease". Moreover, the demise of the elderly is often taken for granted – death comes with old age. At home relatives are not surprised by the death of a sick or weak parent; death is isolated and "logical". Likewise, as Thirion *et al.* (2005: 154) assert, we accept old people's homes as places to go to die. In the West, youth and well-being are idealized and old age ignored, given the "stigma effect" of its social characteristics, namely that it targets the "widowed, isolated, sick and poor" (Poumadère 2005: 1489). The elderly are often social outcasts...from whom we customarily turn away" (Klinenberg 2002: 17). Moreover, the concept of elderliness is "fuzzy" (Thirion *et al.* 2005: 154). The fear of dying alone remains a major taboo in leisure societies with ageing populations (Ogg 2005: 16).

20. The cultural stereotyping of the elderly. TV's portrayal of the elderly may have influenced perceptions of old-age in the long-term. The media "fuelled the worst fears of old age as an inevitable state of loss and dependency" (Ogg 2005: 5). Destitution was evoked as a defining characteristic of old age and projected onto all victims. Such stereotyping is arguably rife in French cinema: Etienne Chatiliez's blackly comic *Tatie Danielle* (Auntie Danielle) from 1990 sees an 82-year old aunt abandoned in a Parisian apartment where a fire eventually breaks out, and is left to the mercy of a hired home help while the family head south. She is portrayed as cantankerous, odious, stingy, lying, capricious and unbearable, a burden, an anti-hero, an emotional blackmailer who over-dramatises her situation. Might this film provide some kind of comic, social judgement on the old, legitimising the practise of escaping the elderly over summer? *Tatie Danielle* was in some senses an update of René Allio's 1965 film *La Vieille Dame Indigne* (The Shameless Old Lady), about a lonely widow in Marseille, Madame Bertini whose sons try to kill her off. In highly esteemed literature such as Balzac's 1835 *Le Père Goriot* (Old Goriot), a retired baker and business man lives to support his two daughters but is essentially victimized by them in their pursuit of personal gain. In Zola's shocking novel, *Thérèse Raquin* (1867), the naïve elderly mother-in-law is left abused, despised, rigid and mute.

Crisis preparedness and social welfare: minimising risk, maximising responsiveness

The heatwave raises questions about individual and collective solidarity, given low levels of collective, associational involvement and responsibility towards both the self and others, in times of insecurity. French citizens are highly reliant on the state to ensure welfare, assuming that institutions can guarantee individual security. Notions of risk, trust and responsibility arguably require re-examination, so that social policy considerations regarding protection and welfare can be properly incorporated into climate change policy.

Research into the elderly in the US and Japan indicates a degree of “intergenerational ambivalence” regarding what is best for the elderly in terms of care - choices are often institutionally manipulated (Izuhara 2004: 663). When should concerns for an individual’s security favour dependency over autonomy? Should ensuring the welfare of “non-active” citizens encroach upon the liberty of the (politically and economically) “active”? French public health research based on 71,000 subjects in Alsace aged 75 years and more reveals the important commitment of family members and their close relationships towards the elderly. The demand for home help and social activities remains high among even the least dependent; a case study in Normandy shows demand was 3.5 times higher than supply (Imbert 2005). Welfare provision inevitably means placing security and liberty in a head-on collision – while 20 per cent of services go to those who state they do not want it, two-thirds deemed to need the service refuse it (Colvez *et al.* 1984).

Solidarity may be best expressed through seemingly minor, everyday acts of support, which can help bridge inter-generational divides and reshape perceptions of what it is to be old. Solidarity extends beyond mass protest against government. It is not an asset confined to the workforce to be expressed on a formal, procedural, mass-organized basis inside trade unions or professional collectives, but can equally be diffused organically across the generational divide through informal and *ad hoc* gestures by the individual in civic life. There is a need to educate citizens about simple and natural methods of caring for the most vulnerable (Thirion *et al.* 2005). Equality and liberty for many elderly citizens depends not on a guarantee of institutional solidarity but on the expression of fraternity, which is by its very nature more personal. Citizenship is a differentiated notion across the ages, with the degree of dependence on others on a continuum between the “active” and “non-active”. In 2020 as much as 10 per cent of the EU population will be over 75 years old.

Promoting inter-generational solidarity as a welfare resource beyond the state

Pestieau (2006: 146) claims that “responsibilising” welfare is an “apparent change in attitude and perspective that is unthinkable in France” because parties from both Left and Right have been equally conservative about social institutions and unable to modernize French society. Yet the case shows that complex institutional machinery cannot guarantee welfare, hence the urgency of breaking dependency on public transfers (Pestieau 2006: 147). Yet in this case, institutional solidarity was further expressed through traditional means, by providing extra financing for care institutions. Reforms were short-sighted and timid, an opportunity to appease those that had been campaigning for extra resources before the incident. Healthcare institutions used the disaster as a window of opportunity to secure greater financing after years of budgetary cuts.

State institutions may be fundamental, however, in providing structural and policy solutions for the problem of solidarity (Esping-Andersen 1990, in Rodger 2003: 404). The welfare state has a moral obligation to guarantee social solidarity; government is the manager of a set of institutions whose effective function it must ensure (Arts & Gelissen 2001: 283, in Rodger 2003: 404). Political institutions thus have a key role to play in cultivating social capital through social networks, cooperative norms and interpersonal

trust, since it makes us “smarter, happier, safer, richer, and better able to govern a just and stable democracy” (Putnam 2000: 290). This would empower citizens to “manage” their own welfare and be more resilient and resourceful in times of crisis. Effective contingency planning by government appears to be vital. Promoting the “subsidiarity of social action”, based on the participation of citizens at the local level, might prove a complementary value for a Fifth Republic, compatible with EU norms.

Refining social, economic and urban planning – in time and space

The effective “national closure” of many EU member states each summer, a socio-cultural and institutional phenomenon more prevalent on the continent than in the UK, may no longer be sustainable. Long hot summers are set to persist. One wonders whether the subsequent political move to place all vulnerable French persons on a town hall register would have any effect during a summer heatwave since those civil servants in charge of compiling and monitoring the register would most likely all be on holiday (Ogg 2005: 30). Just as employers encourage working from home (*travail à distance*) or flexible starting times, so the same “staggered” approach might be promoted for taking holidays. Dismantling the “herd mentality” towards summer holidays would save lives by cutting traffic incidents on the crowded motorway to the south (*autoroute du soleil*), while also reducing environmental impacts. It would ensure greater capacity in hospitals and administrations, enabling more rapid and effective response. EU member states boast generous welfare systems: France offers the most paid holidays, “compensation” days (RTTs) and national holidays in the EU. Leisure is an increasingly political commodity, paid holiday being part of social welfare provision, construed as a basic, non-negotiable employee right. Does liberty mean freedom to serve the interest of the individual at all costs? To what extent would constraints placed on *when* holiday is taken impede upon liberty?

In a future heatwave disruptions to electricity distribution could reduce hydroelectric production and impair the correct functioning of nuclear power plants that generate electricity. Moreover, hydroelectric stations may be unable to meet the shortfall, something which was only considered to be a mild threat in 2003 (Thirion *et al.* 2005). There are also long-term implications for architecture and urban planning: that the elderly were stuck in infernal, top-floor accommodation of tight proportions, be it *chambres de bonne* (formerly bedrooms used by the domestic staff of middle-class households) or pitch-roofed garrets, meant they were hidden from potential sources of welfare assistance. The case is highly relevant to the work of Ferrera (2005) who focuses on the ‘spatial’ challenges of national welfare, particularly the link between territory and how structural factors can determine vulnerability. Ensuring an urban fabric that decreases risk for the elderly would lower security threats and, in turn, enhance personal liberty and access to the external environment, thereby overcoming a significant boundary to both social welfare and crisis preparedness.

Concluding remarks: on liberty and security

The 2003 heatwave saw the failure of the institutional mechanisms that make up the traditional welfare state. The poor handling of the affair can be largely accounted for by systemic deficiencies and failed CIs. Contingency management was reactive, relying on statistics, data gathering and proposing therapeutic responses. Political and administrative culture was hierarchical and secretive, decision-making speeds low and time-lags high. The crisis was marked by serious media mismanagement, a failure to perceive the extent of the risk, a reluctance to listen to the medical community and general blame-deflecting tactics. Yet other socio-political and cultural factors enter into the equation: the August

month-long holiday, societal perceptions of risk, trust in politicians and health experts, images of the elderly and levels of individualism. Existing societal attitudes towards the elderly may have also hampered the protection of the most vulnerable. The media's portrayal of a destitute, socially-excluded and highly-dependent age group may have reinforced these stereotyped images further.

Security

Human security is no longer principally about military, but also environmental threats. Moves to broaden the security agenda in the US have “coalesced” into the concept of “human security”, an umbrella term that addresses largely non-military threats to human welfare (Busby 2003: 1). As the case shows, security (*sécurité*) is not just about guarding against terrorist threat. The notion must embrace social protection or even physical safety (*sûreté*). Defence against unnecessary, unexpected or premature death will increasingly have to be tackled via policy tailored to cope with environmental threats, be it heatwave or acute cold spells, the cause of which, for many climate change advocates, is a human one. Weather is a valid national, and by consequence, EU security issue.

Ineffective preparedness and response to oil spills, for example, has shown a lack of organizational flexibility and an absence of EU coordinated crisis management, but the Founding Fathers did not conceive a crisis management institute to tackle freak meteorological conditions – can one really blame them? (Thirion *et al.* 2005: 143). Despite the proliferation of new monitoring agencies that regulate safety and security the EU has no in-built organizational capacities to mitigate and respond to internal environmental crisis affecting the population.

Based on the “pathogens” exposed in this article, there is a clear case for scholars of crisis management and risk analysis to work more closely with social policy scholars to search out ways to increase community capacity and improve societal behaviour and response mechanisms beyond the traditional institutions of the welfare state, in the face of weather-related threats. The case suggests that crisis management preparedness, climate change policy and welfare reforms aimed at social protection should be developed hand in hand, with a view to increasing community-based capacity – recognizing the individual and community as basic critical infrastructures! As Craig (2007) underlines, this means not only promoting solidarity through action, but understanding the incentives that motivate its expression.

Liberty

Conceiving of liberty for the elderly population may require nuanced discussions about autonomy versus dependency: should social protection be institutionalized or community-based? Any discussion requires reconciling liberty with equity and wealth distribution (pension reform). Autonomy means the ability to live independent lives outside of state institutions wherever possible. Ultimately, however, *dependence* is political currency: it creates jobs in the care sector, props up state-run care institutions and provides an argument to generate tax-based revenues. A cynic might even point out that the loss of 15,000 pension recipients was an economic blessing for the state.

Enhancing liberty and security by promoting organic solidarity and a community-based strengthening of the social fabric would have little short-term, visible, quantifiable impact for political elites, thus remains elusive, far beyond the realms and ambitions of short-term party politics. Nevertheless, the potential for individual responsibility within the AWS – despite all the rhetoric – may be largely hindered by political unwillingness to invest in

strengthening the social fabric when more institutional means of welfare offer guaranteed visible (or at least accountable) outcomes that can be translated into, or help secure, political support.

Sovereignty may need to be reconsidered from a social policy perspective, as being related more to the welfare and protection of the individual than a high politics preoccupation with national borders or the freedom to determine interest rates – Ferrera (2005: 111) refers to “social sovereignty” as a contested concept across the EU. Alternatively, I suggest the term “individual sovereignty”, to imply a right to welfare and social protection but also a duty to assume a certain responsibility in that provision, both by the individual for his/herself as well as for community members. A greater “responsibilisation” of individual welfare within the AWS may only come about by assuming risk and explicitly acknowledging the limits of politically-driven, institution-based welfare systems and hence, a rational acceptance of the limits of the state.

Freak weather is an external threat to internal security. Action to reduce vulnerability in the long-term might concentrate on adapting politico-institutional structures to improve responsiveness, by refining the temporal/spatial organisation of society and, in so doing, minimise welfare risk. Systemic features of political, social and economic life are culturally-based, resting on deeply embedded normative assumptions and beliefs, which can be traced in the history, and hence path-dependence, of welfare institutions. Fundamental “pathogens” that heighten risk and constrain preparedness/responsiveness have been inadequately addressed – they may even have been purposefully overlooked, given their economic and political cost. Behind superficial policy reforms in the wake of crises soon forgotten, these structural, organizational and behavioural factors, though seemingly minor or trivial, remain impediments to guaranteeing the welfare of the most vulnerable citizens and persist as a threat to freedom and security across the EU.

*Les vieux ne bougent plus, leurs gestes ont trop de rides, leur monde est trop petit
Du lit à la fenêtre, puis du lit au fauteuil et puis du lit au lit
Et s'ils sortent encore bras dessus, bras dessous, tout habillés de raide
C'est pour suivre au soleil l'enterrement d'un plus vieux, l'enterrement d'une plus laide*

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Jacques Brel (*Les Vieux*)

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Most of the cartoons can be viewed freely at <http://www.leplacide.com>. Placide is an excellent diary of French political life through comic illustration with a keyword search.

Guest Commentary

Liberty, Security and Power: Some Reflections on Transatlantic Relations

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Keywords

Europe; EU; Liberty; Power; Security; United States of America.

THE LEITMOTIV OF THE TENSIONS BETWEEN SECURITY AND LIBERTY IS RECURRENT IN democratic debate – especially in connection with wars, but also in relation to other cases where internal or external threats are seen as requiring the sacrifice of liberty to guarantee survival. Such tension can hardly arise in non-democracies, where liberties are seen as a threat themselves by those in power, while a democracy cannot survive as such without safeguarding liberty – including to criticise and ‘send back home’ those in power. Following the terrorist attacks of 11 September 2001 the issue became especially acute, and heavily reflected on policies in the European Union (EU) as well as in the relation between the EU and the USA. The changes taking place in the USA with the election of President Obama and those, admittedly less visible, taking place in the EU – including the election of the new European Parliament and the fate of the Lisbon Treaty – provide an interesting occasion for some reflection on the kind of continuity or change that may be expected in EU-US relations in handling the relations between security and liberty.

The metaphor of the balance and taming power

The widely used – and often criticised – metaphor of the balance is borrowed from the imagery of justice to visualise the relations between security and liberty as an exercise of determining the relative weight of two connected but contradictory priorities, and do so according to some established rules. Whether one finds such a metaphor useful to illustrate a tragic dilemma experienced by democracies or misleading by posing liberty and security as alternatives, the issue of who chooses whether to use the balance and, if so, how to make it tip, is one that deserves serious attention. Who chooses is a matter of politics and power – with interests, partisanship and bargains that are very distant from the image of blind and impartial justice equal for all citizens; at the same time much of the debate on the nature of democracy itself is about how power is tamed by rule of law.

* The opinions expressed are those of the author and do not necessarily represent the views of the European Commission

In recent times, the issue of the relations between liberty and security, and the very working of democracies, has been experienced and debated in connection to the attacks of 11 September 2001 and the diverse responses to them, ranging from war to reinforced surveillance and from legal prosecution to torture and extraordinary renditions. What made the recurrent leitmotiv of liberty/security tensions especially acute and partly unique was its global dimension (no part of the world was spared by the discourses and policies that followed 11 September 2001 – with important asymmetries), a strong convergence on the selected aspect of response (namely on increased resort to surveillance) and, at the same time, the degree of polarisation between and within countries (with different positions among traditional allies, notably within Europe and between the EU and the USA, and mass demonstration against governmental policies in various countries).

The analysis of convergence and divergence of EU and USA policies in relation to security and liberty deserves attention as it is instrumental to the understanding of international trends and of the working of democracy in both contexts. Asymmetry is a core feature of international relations, as well as between the EU and the USA. Asymmetry also points to power relations and involves the question of whether the most powerful countries can or should be tamed. Again rule of law is invoked, this time at the international level, but the correlation one may expect between respect of international law and existence of domestic rule of law provisions is not always straight: some countries may apply the rule of law domestically but not feel bound to important aspects of international law (the debate on the International Criminal Court being a case in point), others may not apply the rule of law internally but invoke international law where they have a say (e.g. in the context of the UN and its Security Council), and at times exceptions to the rule of law are proposed as necessary both internally and internationally in face of threats considered exceptional (such as in the case of Guantanamo).

Power relations in the international as well as domestic sphere, and interactions between them, are the object of extensive literature ranging from the study of the sources (including various types of resources as well as the influence of ideas) and types (e.g. civilian, military, soft, hard, smart) of power. Among the aspects of power that shape the relations between liberty and security, and contribute in explaining EU and USA converging or diverging positions, the first and most obvious is the concentration or diffusion of power and the second regards the resources available to set own goals and set them for others.

Pluralism and its merits

In terms of concentration and diffusion of power, at first glance the difference between the EU and the US is clear. Who is in power in the USA is quite obvious: the President, with the concentration provided by the prerogatives of a strong presidential system, and the key figures and departments of the Administration; who is in power in the EU multilevel and multiplayer governance system is less straightforward and concentrated due to the mix of intergovernmental decision-making and Community competence in key aspects of the areas of justice, liberty, security and foreign policy. If one looks deeper at the nature of the polity however, a strong degree of pluralism is usually characterises the USA and is also significant in Europe – while in different forms and degrees in the different European countries. An aspect that made the case of the response to 9/11 striking was the reduction of pluralism and of the ‘marketplace of ideas’ in the USA – with the policy and ideological paradigm of the Bush Administration being strongly dominant, while under check of some minority voices from media, civil liberty organisation, think tanks and the intervention of the Supreme Court (notably on Guantanamo). In the case of the European Union, the diversity within and among member states proved challenging in terms of effective and ‘one voice’ decision-making, but had the merit of making the minority/majority dynamic,

vibrant (what was a governmental majority position in one country was a minority one in another, and public debate was quite strong everywhere, for example, on the war on Iraq) and of multiple cross-checks being provided through the inter-institutional debate between Council of Ministers, European Commission and European Parliament – eventually involving the European Court of Justice, as in the case of the EU-USA agreement on the Passenger Name Record (PNR). In such situations, some divergence emerged between the EU and the USA on the stand towards multilateral institutions, international law and the resort to force. While EU member states were divided on the war on Iraq and proved partly ambiguous on the stance towards extraordinary renditions (all EU countries condemning it, but some collaborating with the US on such practice), they were united on the condemnation of Guantanamo and on the preference for a legal prosecution approach to fighting terrorism. The USA and the EU converged, on the other hand, on the resort to enhanced surveillance, namely through the introduction of biometrics. This was the subject of strong debate, and even some inter-institutional clash in the case of the PNR agreement and the regulation on data retention, in the EU, but was perceived as being mostly within the scope of rule of law – differently from issues such as torture or extraordinary detention.

Knowledge and democracy

How a policy is made and whether it is socially accepted or otherwise is not only a matter of who can participate in its making and the degree of pluralism reflected in the policy process: it is also a matter of which resources can be mobilised. Concerning resources, attention is often, and understandably, focused on economic and, in the case of security and foreign policy, military resources. Explanations about wars being initiated to gain access to resources ranging from oil to minerals, land or water have been offered in past and present times and, on the positive side, the influence of economic development in mitigating some of the roots of violence have been also documented. An aspect that has been less focused on is the importance of another key resource: knowledge. One of the factors that may limit or facilitate the abuse of power – including in the form of undue exceptions – is the concentration of knowledge and its fencing off from contestation and verification. The amplification of some threats (e.g. the lies on Iraq's nuclear weapons) to justify a war or otherwise unacceptable restrictions of civil liberties, or, conversely, the unwillingness to hear early warning signals that may allow the prevention of violent conflict or other disasters (the financial crisis may be considered as one of such predictable disasters) point to the importance of a well-functioning 'marketplace of ideas' with different 'knowledge holders' to be able to cross-check and argue with each other. Indeed, knowing what one is talking about is usually considered a precondition for a person's credibility, and surely being able to master some 'basics' as well as the more complex technological, legal, economic, ethical, social issues pertaining to biometrics, PNR, profiling and other options under discussion is a pre-requisite for being able to participate in the policy debate concerning their robustness, usefulness, acceptability, effectiveness, proportionality, short and long-term impacts.

In both the EU and the USA contexts, the role of professionals involved in security-related issues (from intelligence to border management to technological development) proved important in handling knowledge. Expertise – that is, specialised knowledge with the function of providing advice to decision makers – is a crucial component of regulatory capacity and tends to be quite narrowly based; for example, with biometrics expertise based in some professional communities (e.g. IT specialists) plus some practical expertise (e.g. of border guards, police, airport personnel) in the public and private sectors. A broadening of expertise is however taking place in many areas, including on surveillance technologies, adding legal, social and other types of expertise to the technical one, with critical perspectives being developed within the technical expert communities and

'counter-expertise' being provided by non-governmental and non-industrial organisations. The case of threat assessment is also relevant : while its bulk is provided by secret intelligence agencies, the resort to open intelligence and the role of independent think tanks and research organisations in developing assessment techniques and in debating assessments by governmental organisations is becoming more visible. This broadening could allow a 'democratisation of expertise' – in the sense of pluralistic and open debate, and quality control, on the knowledge available – and mitigate the risk of unaccountable and secretive 'guardianship'. This is another important lesson from 11 September 2001: even in face of hard security issues, the number of those who have relevant knowledge to understand the problem at hand and the possible response options is larger than a small circle of professionals, and the latter should not be left acting without scrutiny and the confrontation of ideas.

Patterns of convergence and divergence: continuity or change?

To sum up, in the aftermath of the attacks of 11 September 2001 and related responses by the Bush Administration, both convergence and divergence framed EU/USA security related policies. A general convergence was related to broad features of threat assessment and the resort to surveillance as one of the means to tackle terrorism. At the same time, divergence occurred with regard to the stance towards multilateralism, the use of force and the protection of certain fundamental rights. As briefly discussed above, the degree of pluralism to be found in the USA and the EU post 11 September 2001 and knowledge, economic and other resources available, contribute to explaining both instances of convergence and of divergence. From a normative standpoint, some unsettling issues are raised for attention. These include the difference between exceptions granted by law and exceptions to law, and the risk these pose for the legitimacy of democracies, for their internal social cohesion and their external credibility. In addition, the implications for the international system are to be considered: a more stable international order can be expected by an increased convergence between the EU and the USA, but such order will only be legitimate if international law and the protection of fundamental rights are taken seriously.

With the election of President Obama in the USA, and his explicit distancing of his Administration from the Bush Administration with regard to the bulk of the response to 11 September 2001, a key change in the USA power structure took place. In the EU, the Lisbon Treaty (still pending at the time of writing) would tackle some of the questions on who is in charge – including on Common Foreign and Security Policy – and would enhance coherence and accountability in the field of justice and home affairs. Shall we then expect continuity or change in the above mentioned pattern of convergence and divergence between the EU and the USA on security/and liberty related policies?

Security has always been at the core of transatlantic relations. The end of the Cold War and related redefinition of geopolitics led to a change in how security cooperation is conceived, rather than to its decrease in importance: the responses to 11 September 2001 being the most prominent case in point. At the same time, transatlantic relations are also embedded in broader international cooperation on issues that range from trade to environment protection. All these cases have been analysed in depth by other authors, are reiterated at bilateral high level meetings between the USA and the EU and are recalled here as important contextual elements to avoid the risk of looking at 11 September 2001 and related developments as isolated or self-standing. For obvious reasons of space and focus they cannot be examined here. However, it is useful to note that transatlantic cooperation is punctuated by different perspectives on multilateralism and the role of international law in as diverse areas as environment, trade and security.

A change of discourse and style is taking place in the USA where the Obama Administration is explicitly calling for dialogue (including with former 'axis of evil' countries), for more inclusiveness in multilateral fora (including the expansion of G8 on financial issues), for a more constructive stand on international negotiations (notably on climate change) and for a clear refocusing on rule of law and respect for fundamental rights, exemplified by the immediate decision to close Guantanamo (even if the implementation of such decision is unlikely to be fulfilled by January 2010, as initially planned).

All these aspects point to more convergence with the EU, which strongly advocated the above. At the same time, the degree of such new convergence (or perhaps 'renewed', as some of such aspects partly build on the Clinton Administration) should not be overestimated. The willingness of the Obama Administration to nurture dialogue and multilateralism (the latter being hardly mentioned as such in the official discourse) and allegiance to international law is strongly articulated with two elements: leadership and effectiveness. Together with the sharp condemnation of the previous Administration's policies, comes the strong emphasis on the need for a new USA leadership in world affairs – and how much such leadership may be constrained seems to depend on the effectiveness in reaching certain goals: here the debate on Afghanistan (with the USA request for a stronger EU involvement) or on climate change (with the different emphasis on the need for binding international targets) can be seen as illustrations of the USA accepting being 'tamed' if this still enables it to reach its aims. This may seem to involve no major difference with a 'menu à la carte' approach to the UN framework – but a difference that seems significant is about the willingness to discuss aims and options with other countries and with an in principle allegiance to international law, and draw lessons from the past. From the EU side, the pride in some of its long-advocated positions being recognised needs to be linked to realism about its capacity to deliver. More clarity on the handling of Common Foreign and Security Policy, more accountability on this as well as in the field of justice and home affairs and a binding statute of the Charter of Fundamental Rights are expected with the ratification of the Lisbon Treaty, but some improvement in institutional engineering will not be enough to respond to citizens' expectations in these and other areas (the further decline in participation in the EP elections in 2009 being an important signal of the paradox of the increasing power of the EP and decreasing interest in it by the electorate). This is an element to be especially considered in times of the re-emergence of populist discourses and organisations that tend to manipulate fears and over-securitise the policy agenda –with important implications for the liberty/security tension discussed above.

In this respect, it is also important to note that both the EU and the USA are focusing on democracy as part of their own identity as well as a value to be further diffused in the world. Again, divergence on whether democracy can be facilitated or also imposed characterised the relation between the majority of EU countries – and official EU discourse – and the Bush Administration, and is an element of renewed convergence with the Obama Administration. This requires a sustained consistency in upholding the rule of law and respect for fundamental rights also under difficult circumstances. The infringement of fundamental rights by democratic countries calls into question their normative value base and internal social cohesion (with certain social groups submitted to profiling, stereotyping and discrimination on ethnic, religious, sexual or other grounds), and also their credibility in the eyes of people outside, including in those countries where democracy should be promoted, or to whom it should be 'exported'. The roles of international human rights law and criminal justice need to be strengthened to allow for the international, on top of national, rule of law to be applied, and exceptions or abuses limited or punished. It is to be hoped that the EU and the USA will be capable of standing firm on such task and able to persuade other international partners accordingly, starting

by example and avoiding double standards – a powerful reproach, even when issued by countries with a less than enviable record on respect for fundamental rights.

By way of conclusion, it can be argued that a more stable international order can be expected by an increased convergence between the EU and the USA, and that such an order will be more legitimate – and also more secure in terms of being less vulnerable to undermining democracy – by strengthening international law and the protection of fundamental rights.

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Commentary

The Lisbon Treaty and ESDP: Prodi and Howorth Compared

Matteo Pallaver

Abstract

The Lisbon Treaty, as it was first negotiated, is dead and the institutional stalemate has the potential to kill the entire integration process. European Security and Defence Policy (ESDP) needs effective institutions, shared rules and clear priorities: to this end both Professor Romano Prodi and Professor Jolyon Howorth think that some reforms are necessary, among others: the introduction of an 'exit clause' and the rationalization of the decision making process, with the abolition of the unanimity rule. As regards ESDP and the future of Europe as a reliable and effective player in world politics, Prodi and Howorth believe that the EU is heading in the right direction: more capabilities, more resources, clearer objectives and stronger alliances; this is the recipe that they suggest to increase the quality of the action of the European Union at the international level. Notwithstanding, Prodi and Howorth are well aware that institutions matter but political will matters more. In the field of security and defence the EU lacks political consensus, and this is going to limit the ambitions and aspirations of some important European states.

Keywords

ESDP; Lisbon Treaty, Jolyon Howorth; Romano Prodi.

THE PURPOSE OF THIS COMMENTARY IS TO DISCUSS THE FUTURE OF THE EUROPEAN Security and Defence Policy (ESDP) and, to certain extent, the future of Europe as a whole, with reference to two interviews. The first of these interviews is with Professor Jolyon Howorth, one of the most authoritative experts on the ESDP and the second is with Professor Romano Prodi, former President of the European Commission at the time when ESDP was launched, and former Italian Prime Minister.

The commentary compares their (sometimes) contrasting opinions in the light of political and institutional changes. It suggests that ESDP is becoming stronger, both politically and militarily and that in the mid-term the European Union will become a full global player owing to the rationalization of the institutions involved in ESDP through the Lisbon Treaty,

I would like to thank Professor Jolyon Howorth, Visiting Professor of Political Science at Yale University, USA and Jean Monnet Professor of European Politics at Bath University, UK; Professor Romano Prodi, former President of the EU Commission and former Italian Prime Minister. A special thank, for his advice and support, to Professor Sergio Fabbrini, Director of the School of International Studies, Trento University and supervisor of my Master's thesis entitled "European Security and Defence Policy: Beyond Civilian Power?".

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Available at: <http://www.jcer.net/ojs/index.php/jcer/article/view/149/145/>

the improvements in capability and deployment of resources and forces, and improvements in research and technology through the European Defence Agency (EDA). During recent years the member states set out milestones to be reached by 2010, including the establishment by 2004 of both the EDA and the Civil-Military Planning Cell (CMPC); the implementation of an EU strategic lift command by 2005; the ability by 2007 to deploy force packages at high readiness broadly based on EU battle-groups; the availability of an EU aircraft carrier and associated air wing and escort by 2008; and appropriate compatibility and network linkage of all communications equipment and assets by 2010. Furthermore, the EU's 'Headline Goal 2010', by focusing on small, rapidly deployable units capable of high-intensity warfare, successfully shifted the objective from quantity to quality.

Notwithstanding, some important issues remain on the agenda. These include (1) the fact that the major EU powers are still divided, though less than in the past, on the very role of ESDP in particular, and (2) of Europe as a full player in the international system in general. The relationship between EU-NATO and the US is particularly thorny and the Georgian crisis suggests a revision of NATO's structure and role is required. This is probably true also for EU-US relations: though some commentators and political leaders have seen the birth of ESDP as a good way for Europe to gain autonomy and independence from the US, but yet that cooperation is better than competition, particularly in a world where political, economic, financial and social problems are increasingly interrelated. The EU - through ESDP - and the US, should rethink the basis of their collaboration in order to better address the challenges of the 21st Century.

As regards the foreign, security and defence profile of the European Union, some scholars argue that the EU is moving away from a simplistic civilian or normative power model, and it is acquiring some features of "hard politics"; others argue the opposite. Theoretical debates are important, but probably these kind of disputes are - to certain extent - old-fashioned. "There is plenty of literature on this topic, but the debate on the profile of the EU in foreign and security affairs is a silly debate", states Prof. Howorth.¹ "The question," he argued, "is another one: what does military means mean?"; he went on to state that "prioritising crisis management rather than war fighting is a necessity, and it is also certainly comfortable with the kind of 'security culture' that is emerging in Europe". This is surely true: with the Georgian crisis, Russia is returning as a major power. "We are entering a new phase that I labelled 'Third New World Order' - argued Howorth - in which there is a stronger need for Europe". The structure of the international system has changed a lot in the last few decades, and probably will continue to evolve at a similar speed in the near future. This means that it is not particularly worthwhile for the EU to spend much time thinking about theoretical models for its foreign and security action. On the contrary, what is really important is to identify some key priorities. To this end the revision of the European Security Strategy (2009) should prove to be a good instrument for consensus building among the member states on a series of well-defined and shared political objectives. It is better to focus on a few priorities rather than wasting time and resources on grand plans of foreign policy that in the end, have little chance of success.

According to Howorth, "all the missions in which the European Union is involved have military and civilian components and Javier Solana is on the right path when he refuses to distinguish between them". The idea is that the EU wants to go beyond these old frameworks, in order to create and implement a new model of external action, based on the assumption that current international crises are more complex than those addressed a

¹ All direct quotes from Professor Jolyon Howorth are taken from an interview conducted on Wednesday 13 August 2008 in Paris. Anyone interested in reading the full interview with Professor Howorth can contact the author: matteopallaver@alice.it

decade ago. These new types of situations require a different approach, based certainly on military force, but also on civilian aspects. "I know," Howorth stated, "that some EU states, and France in particular, want to go beyond this model; for instance, I know that France would like the EU to develop the capacity to engage in expeditionary warfare if necessary, but at the moment it is really difficult to imagine the EU collectively agreeing on such foreign and security objectives". Professor Howorth believes that ESDP is heading in the right direction, because since 1998 the EU has considerably increased its capacity to act as a reliable player, both at the political and at the military level. The EU's 'capability gap' today is narrower compared with the level of capabilities and resources of some major international partners. Nonetheless, some key problems remain high on the agenda. These include, for example, the EU Headquarters and the idea of creating a sort of common defence budget. Another crucial problem is related to the new institutional framework agreed in the Lisbon Treaty, and that requires a good deal of innovation in the field of CFSP and ESDP. The most important innovations are: (1) the end of the rotational presidency in foreign relations, with some kind of role for the President of the European Council (appointed for two and half years, renewable once); (2) the creation of the 'double-hatted' High Representative, also appointed by the European Council (with the agreement of the President of the Commission) acting, if necessary, by qualified majority voting (QMV), and also subject to a vote of consent by the European Parliament; (3) the establishment of the new Foreign Affairs Council, separate from the General Affairs Council; (4) the establishment of the European External Action Service (EEAS); (5) the expansion of the scope of ESDP, now called Common Security and Defence Policy (CSDP), and of its missions,² including a 'solidarity clause' and a 'mutual defence' commitment, both with substantial qualifications and provisions and the possibility for the Council to "entrust the implementation of a task to a group of member states which are willing and have the necessary capabilities".³

According to Howorth, "institutions matter, but political will matters more". With reference to this formula Howorth described the stalemate in which the European integration process, and consequently also ESDP, finds itself since the failed ratification of the Constitutional Treaty following the French and Dutch referendums in May and June 2005 and the subsequent failure of the revised Lisbon Treaty to achieve ratification in Ireland following the referendum there in June 2008. In reference to this, Howorth stated very firmly that "even the Lisbon Treaty is dead"; the "Irish no" was a cold shower and a big paradox: one of the countries that has gained most, economically and politically, from integration, has now stopped the entire process. It is a paradox, because it reveals all the limits of "intuitional engineering", the fruit of costly and time consuming compromises at the level of member states.

Romano Prodi shares this view.⁴ He argued that the Lisbon Treaty is dead because the problem of the European Union is not simply to agree on a platform of new institutions, agencies, procedures, but rather to agree on a series of mid and long-term objectives. According to him, the problem is to change the rules and norms on which the process is based: abandoning unanimity and adopting a sort of "exit clause". "In my opinion – Prodi stated – the member states should agree at least on two basic reforms: the first issue is that, up to now, the decision making process has been too greatly constrained by veto powers. Moreover, too many subjects and competencies of the EU, including the Common Foreign and Security Policy and the European Security and Defence Policy, are subject to the unanimity rule. This is no longer acceptable because the unanimity rule is going to kill

² See articles 27 and 28, Lisbon Treaty

³ See article 29 on the Permanent Structured Cooperation mechanism, Lisbon Treaty; see also, The Treaty of Lisbon: Implementing the Institutional Innovations, November 2007, Joint Study EPC, EGMONT, CEPS

⁴ All direct quotes by Prof. Romano Prodi are taken from an interview conducted on Tuesday 9 September 2008.

the entire integration process". This is particularly true in the field of Foreign and Security affairs, in which the sovereignty of the member states is under constant pressure and for which there is an increasing need for the EU to speak with a single voice in world affairs. The credibility of an actor, at the international level, relies on the capacity that this actor shows to respond quickly and effectively to international crises. "Legally," argued Howorth, "the Lisbon Treaty is dead because in order to enter into force, it should be signed and ratified by all the 27 member states". The reasoning then went on: "there is nothing to stop the other 26 member states, getting ahead and signing a new treaty".⁵ But the problem, according to Howorth, is another: "I am concerned because the problem is not a legal, but political. It is a problem of political vision, of political direction. Member states no longer share a strong 'European vision', and this is particularly true in the field of foreign, security and defence affairs, where there is increasingly an attitude in some countries to think in terms of 'national interests'".

Romano Prodi expresses this idea more strongly: "It is useless for the 27 member states to begin another bargaining round for a new Treaty; after two failures (The Constitutional Treaty and the Lisbon Treaty) they are still unable or unwilling to recognize that the problems are the basic principles behind the negotiations. Unless and until unanimity is reduced to a minimum level and an 'exit clause' is introduced, the stalemate will persist", with heavy political consequences, both at the domestic level in terms of legitimacy, and at the international level in terms of effectiveness and credibility.

Prodi's two proposals are not new; unanimity is simply a political compromise to have some reluctant and non-integrationists states on board. If it was necessary for the founding six states in the first stages of the integration process, then for an EU of 27 members it becomes a serious problem that urgently needs to be addressed. The introduction of an 'exit clause' could be a solution to show the door to states that capriciously impede further or deeper integration, or stop the institutional reform process. The 'exit clause' is an instrument at the disposal of those willing to go ahead without fuss or veto powers. It is evident that this idea needs to be better developed, in order to avoid further problems; in particular some key elements need to be clarified: which bodies will be responsible for the implementation of this 'exit clause' procedure? A coalition of member states or the EU Commission, in accordance with the EU Council? What role, if any, should there be for the EU Parliament? What will be the majority of votes necessary to expel a state? In an 'exit clause' procedure, will the rule be qualified majority or unanimity? And, most importantly, what will be the degree of "gravity" of an action in order to begin this procedure? Notwithstanding, both Howorth and Prodi are convinced that EU institutions will never work well unless these questions are resolved.

The failure of the Lisbon Treaty also has important repercussions for ESDP; not only at the institutional level – we have already mentioned above the key institutional innovations of the Treaty – but also at the level of political cooperation in the realm of security and defence among member states. For example, the mechanism of the Permanent Structured Cooperation could have been an important instrument for deeper cooperation in this policy area. The idea of Permanent Structured Cooperation is close to the mechanism adopted at the time of the European Monetary Union (EMU). The idea is similar to enhanced cooperation, in that it would be set up by a Council decision which would identify the participating member states. It would be reserved to willing member states which fulfilled the criteria and have made the commitments on military capabilities predefined in a protocol in that regard. Its creation, by a qualified majority vote, was likely

⁵ The government of the Republic of Ireland undertook negotiations with other EU member states during 2009 with the aim of securing a range of guarantees to its sovereignty. This would allow Ireland to undertake a second referendum on the Lisbon Treaty during autumn 2009. If successful this would allow the treaty to enter into force.

to occur as soon as the Lisbon Treaty entered into force.⁶ Even on this point opinions diverge. Prof. Howorth, for instance, is not so convinced of the advantages of this mechanism: "I am not sure that the EU necessarily needs the innovation of the Permanent Structured Cooperation in order to persuade some states to take ESDP more seriously", he then went on stating that "the EU can use this mechanism even without the Lisbon Treaty, because there is no limit, upper or lower, to permanent structured cooperation; the idea is to encourage certain countries to contribute more rationally, more constructively to the overall potential of ESDP". Howorth argued that "any means which help to persuade even the reluctant member states to see a way in which they can play a role in ESDP is welcome and good".

Romano Prodi explained that when he was President of the EU Commission, he supported and encouraged collaboration among states to innovate in the field of defence and security: "partial cooperation is important, especially in the area of ESDP, in which it is much more difficult to reach a consensus at the level of 27 member states. In this sense the mechanism of structured cooperation is good. But, it is good only if its membership is open". The concern here is that, permanent structured cooperation, or what Prodi calls "partial cooperation" is not used by certain member states as a means to exclude others. "Partial cooperation, in whatever policy field, should be open to new membership; it should be used as a way to foster consensus, to implement initiatives, to increase membership". In sum "it should not be a political alliance of some states, maybe the most powerful, against others".

This concept is important, particularly in the light of some proposals on ESDP that were at the top of the French government's political agenda during the French EU Presidency in 2008. This includes among others the 'Big-6' project, which saw French President Sarkozy introduced the notion of a *Directoire* in ESDP between France, the UK, Germany, Italy, Spain and Poland. The idea is about a sort of "mutualisation" of forces between these countries, each contributing 10,000 men to a 60,000 strong strategic force, which will act as a "pioneer group".⁷ It is quite clear that this proposal is potentially divisive and, at the same time, potentially important for ESDP to increase its capacity to act autonomously and for the EU to define its foreign and defence profile, based on a strong agreement between key member states.

The evidence suggests that the future of ESDP and of the EU as a global player in world politics will be shaped by a series of factors, ranging from EU domestic institutional reforms to the changes in the international scenario. Surely, the most important challenge for the future of ESDP lies at the political level. And here come the problems. Member states, while agreeing on a platform of minor issues, are divided on the very strategic objectives the EU should pursue. Although a consensus is emerging between France, Germany and the UK on the need to increase the capabilities and the resources to effectively fulfil peacekeeping and crisis-management type missions, those same states – France and the UK in particular – are, at the same time, "profoundly" divided at the strategic level. The division is about the role of the EU and the relationship both with NATO and the US. Whereas France thinks in terms of 'autonomy' and 'independence', though with a reasonable degree of cooperation, the UK is more 'prudent', if not 'reluctant' to engage in this adventure. This difference of vision is not a nuance, because as Howorth stated very firmly "the UK is indispensable", or put another way "in order to develop a successful, coherent and effective ESDP, Britain should be on board".

⁶ On this topic see, *The Treaty of Lisbon: Implementing the Institutional Innovations*, November 2007, Joint Study EPC, EGMONT, CEPS

⁷ See, *The Future of the European Security Strategy: Towards a White Book on European Defence*, March 2008, Policy Department External Policies, European Parliament, Brussels

Howorth thinks that the EU can generate a strategic and political culture, and that ESDP is on the right path. "ESDP is what ESDP does!": this is the formula that he used to describe the process. And what ESDP 'does' are the missions in which it is involved. Howorth argued that "the divisions are not so profound and that ESDP will surely have a future, also because most of the defence and security related articles of the Lisbon Treaty, can be implemented and enforced in other ways". This means, again, that institutions and treaties matter but, as already mentioned, political will matters more, even though, sooner rather than later, the EU should resolve its embarrassing and dangerous institutional impasse. Romano Prodi also shares this view: "it is really of paramount importance for the EU to increase its capacity to act as an international actor. This means that more resources should be devoted to military capabilities, research, technology, training, logistics". At the same time he acknowledges that "I am aware that in the short and mid-term we should not expect the EU to become a fully fledged player". Moreover, "it will require years since the EU will be perceived as an actor able to deal with the most demanding tasks of world politics".

At the end of this brief commentary we can conclude that both Howorth and Prodi hope that in the near future the EU will be able to share its part of responsibility in dealing with the new crises of the 21st Century: the unresolved question of international terrorism, the ongoing war in the Middle East, civil and ethnic conflicts in Africa, the relationships with Russia and Asia. Both are convinced that member states should resolve the institutional stalemate that, at present, is paralyzing the entire process of integration. Prodi, in particular, proposes his recipe: less unanimity and more coherence, with the support of a mechanism to penalise free-riders. Both are confident that ESDP will become stronger in the near future, and that it will also contribute to foster the relations between certain member states.

Book Review

Andrew Geddes (2008)

Immigration & European Integration: Beyond Fortress Europe?

Manchester: Manchester University Press

Meng-Hsuan Chou

ARENA, University of Oslo

The second edition of *Immigration and European integration* by Andrew Geddes tackles a question central to the construction of a common European asylum and migration regime, namely, 'how have changed border relations within and between EU member states affected understandings of and policy responses to international migration in its various forms?' Geddes explains that the evolution of European cooperation is best seen as a process through which EU states confronted the diverse implications resulting from freer movement of persons, which remains a key objective of the market-building process that began more than fifty years ago. He argues that, whilst the move to the supranational level has indeed assisted the member states in resolving domestic conflicts and addressing issues related to growing interdependencies between them in the short- and medium-terms, the longer-term effect of European cooperation has led to policy convergence among them. Since the current work under discussion is an update, I will structure the review by identifying its new components before analysing how its contribution advances our understanding of European cooperation in these two fields and, European integration more generally.

A new analytical framework centred upon three distinct notions of 'borders' – territorial, organisational and conceptual – is at the heart of *Beyond Fortress Europe*. Geddes uses the concept of 'borders' to mean different 'zones of interaction' where the relationship between migrants and the societies to which they have moved is mediated. More specifically, territorial borders refer to the physical boundaries within which EU heads of state and government determine the entry and residence of non-nationals; organisational borders are defined as sites at which policy-makers decide migrants' access to the labour market, welfare entitlement and citizenship; conceptual borders concern notions of identity, belonging and entitlement. He maintains that organising the analyses according to different configuration of 'borders' will help us understand how the member states could simultaneously cede regulatory competence to the European institutions, which are not under their direct control, whilst strengthening their dominance in these very fields. The 'borders' analytical framework departs from the new institutionalist approach used in the first edition insofar as it is not anchored in the theoretical debate between neofunctionalists and intergovernmentalists, which Geddes deems limiting to account for the complexities inherent within EU migration policy-making processes.

The book is divided into nine chapters. In the first two chapters, Geddes provides an overview of European and EU migration developments, explains the futility of using 'immigration' to encapsulate all forms of people movement, and presents the analytical

framework outlined above. Chapters 3, 4, 5 and 6 constitute a historical narrative of developments since the Rome Treaty and up to the (failed) Lisbon Treaty. Chapter 3 examines how the progressive constitutionalisation of free movement rights for workers who held the nationality of a member state did not lead to closer cooperation in external migration, but it did generate questions concerning the entry, movement and residence of migrant workers. These questions were intensely scrutinised in the immediate period prior to and after the signing of the Single European Act, which is the subject of Chapter 4. Geddes demonstrates that aspirations to transform the European Community, as the EU was then known, into an area without internal frontiers resulted in 'boundary build-up', whereby the member states reinforced the external frontiers and stepped up efforts to control migrant population perceived as a threat. He explains that these developments were results of 'intensive transgovernmentalism', which refers to the increased density of high-level activities among member state officials happening alongside a continual exclusion of the central institutions in these very matters. Chapters 5 and 6 illustrate how the Maastricht and Amsterdam Treaties, respectively, formalised the 'intensive transgovernmentalist' form of decision- and policy-making and contributed to the member states adopting security-driven responses to migration issues. Geddes stresses that European developments must be understood as motivated by national concerns but also that these concerns are embedded within the supranational structure of objectives and meanings.

Chapters 7 and 8 shift the analytical focus to questions concerning migrant inclusion and the impacts that the formation of an 'external dimension' have on the then accession states and countries in and beyond the European 'neighbourhood'. In Chapter 7, Geddes explains that in stark contrast to security-driven responses pervasive in European cooperation thus far migrant 'integration' efforts revealed a different set of dynamics at work. More specifically, he shows that debates concerning migrant 'integration' have widened the scope of intervention for central institutions and increased the mobilisation of (legal) expertise in policy elaboration and legitimisation. Turning to recent developments and the intensification of 'boundary shift' facilitated by the implementation of the Amsterdam Treaty, Geddes identifies the two 'phases' of exporting European asylum and migration policies to non-EU countries in the penultimate chapter. Here he finds strong evidence of policy convergence; through the mechanisms of conditionality for the new member states (phase 1) and migration 'clauses' and readmission agreements for several key sending and transit third countries (phase 2). In the final chapter, Geddes concludes that the evolution of European cooperation is a series of transformative developments through which the EU 'makes sense of itself' and 'defines its relations with the rest of the world'.

Geddes articulates his arguments lucidly and convincingly in *Immigration and European integration*. The book should be required reading for both beginning and advanced students of European integration, practitioners in the field, and those who are curious or concerned with how the perceived and anticipated changes in migratory flows inform public debates and affect political agendas, which in turn determine the timing, form and content of public policies concerning these two fields. Migration and European integration scholars should welcome the differentiation between territorial, organisational and conceptual borders because of the analytical purchase it brings to an examination of the evolving European asylum and migration cooperation. Indeed, by moving away from the central debate constructed by the intergovernmentalist-neofunctionalist divide, the 'borders' analytical framework allows for the capturing of multidimensional complexity inherent within EU decision-making and for illustrating how these decisions can then shape the contours of future developments.

Book Review

**Stephen Castles & Mark J. Miller
(2009)**

The Age of Migration: International Population Movements in the Modern World (Fourth Edition)

Basingstoke: Palgrave MacMillan

Helena Ekelund

University of Nottingham

Migration is nothing new. The need to escape conflict and persecution or a desire to seek new and better opportunities elsewhere have always led people to migrate. Since 1945, however, migration has become increasingly global in character, involving all regions of the world. Technological advancements have made it easier to move between countries and many states have seen an increase in the percentage of their population that is foreign-born. As societies are becoming increasingly diverse, with a rising number of people holding loyalty to more than one state, and as states strive to retain control over migratory flows across their borders, issues of migration and their impact on nation state sovereignty gain political salience. This background serves as a starting point for Castles and Miller's eminent introduction to the topic of international migration and its effects on societies.

The objectives of the book are threefold. First, Castles and Miller aim "to describe and explain contemporary international migration" (p. 16). The second objective is "to explain how migrant settlement is bringing about ethnic diversity in many societies, and how this is related to broader social, cultural and political developments" (p. 16). Finally, the authors seek "to link the two discourses, by examining the complex interactions between migration and growing ethnic diversity" (p. 16). The conscious choice to study the entire migratory process rather than focusing on either patterns and determinants of migration or the incorporation of migrants in receiving societies sets this study aside from many other studies in the field, and contributes to its wide appeal.

The book follows a clear and logical structure. Each chapter ends with a concise conclusion where the key points are summarised, followed by a guide to further reading. After a comprehensive introductory chapter; which outlines the challenges of global migration, identifies trends in contemporary migrations, considers global governance of migration and discusses the effects of ethnic diversity on society; Castles and Miller proceed to present the reader with an overview of relevant theories. In keeping with the aim to consider the whole migratory process, the authors survey theories explaining determinants of migration as well as theories explaining the formation of ethnic minorities. They conclude that neoclassical theories and historical-structural theories alike

are too one-sided to capture adequately the complexities of the issues under analysis. Whilst the former pay insufficient attention to historical causes, the latter tend to overestimate the explanatory value of the interests of capital and downplay the role of human agency. Castles and Miller argue convincingly that issues of migration are better tackled by using an interdisciplinary approach and by drawing on migration networks theory and migration systems theory. The theoretical chapter is followed by two historical chapters which discuss linkages between migration, development and globalisation, and describe pre-1945 migration.

The empirical part of the study can, as the authors themselves suggest, be said to consist of three main parts. In the first part, Castles and Miller describe migratory movements within and between different regions in the world. They then proceed to consider “the international politics of migration”, which includes issues related to irregular immigration, the impact of regional organisations such as the EU and the linkages between migration and security (p. 17). The remaining empirical chapters analyse how highly developed states are affected by migration. After having analysed the role of migrants in the labour force (chapter 10), the authors conclude that advanced economies require economic migration and migrants have come to play “important but varied roles” (p. 243). Similar conclusions are reached following an analysis of migrants’ roles in politics (chapter 12). The book includes a significant number of interesting findings, but some of the more striking ones are to be found in the discussion of new ethnic minorities and society (chapter 11). After having found that permanent settlement of a number of migrants always follows temporary labour recruitment, Castles and Miller conclude that state actions during the early stages of migration play a role in the character formation of ethnic groups. “[T]he best way to prevent marginalization and social conflicts is to grant permanent immigrants full rights in all social spheres”, Castles and Miller argue (p. 274). In the final, concluding chapter, the authors sum up their key findings, consider current trends in migration and discusses challenges and opportunities arising from migration.

This fourth edition contains several additions. The analysis of the relationship between migration and security has been extended, and more attention has been devoted to analysis of the impact of migration on development in migrant sending countries. The fourth edition has also been complemented by a web site, which includes additional examples and information.

Overall, this book is an impressive achievement. The empirical detail is striking, the historical overview comprehensive and the theoretical overview clear and easy to follow even without prior sophisticated knowledge of the theories covered. As an overview to the field of migration studies, this well-written book more than serves its purpose, providing the reader with a breadth of knowledge and ample illustrative examples. Needless to say, it is not possible to analyse in detail all issues related to migration within one volume. Readers with special interests within the migration field may wish to look further for more in depth study of the particular area of interest. Castles and Miller are, however, well aware of the limits of their analysis, and point these out. The fact that the authors have succeeded in combining a clear and comprehensive overview of the subject with rigorous detailed empirical research makes the book appealing to a broad audience. Previous editions have been recommended as social science text books, and used by scholars, policy-makers and journalists. There is reason to believe that the same fate awaits this excellent fourth edition.

Book Review

Marie Fletcher, Robin Lööf & Bill Gilmore (2008)

EU Criminal Law and Justice

Cheltenham: Edward Elgar Publishing

Christian Kaunert
University of Salford

This book aims to analyse the institutional and legal developments in the area of EU criminal justice. It also examines the prospective changes to EU criminal law contained in the 'Lisbon Treaty' awaiting full ratification in the EU after the first Irish 'No' in 2008. It provides an important attempt to map out the developments in EU criminal law, which are generally supported by the authors, whilst suggesting a rethinking of the delivery of EU criminal law objectives in order to achieve a true 'Area of Freedom, Security and Justice'. In introduction of the book, Fletcher and Lööf put the area of EU criminal justice in context by focusing on the traditional link between state sovereignty and the provision of criminal justice. It is suggested that states have jealously guarded 'their exclusive right to exercise coercion to punish breaches of rules' (p.5) for a very long time. However, through the interaction of judiciaries with one another, this element of 'international relations' enters into conflict with the objectives of criminal justice – the conflict between individual interests in the criminal justice system and the national interest inherent in the political positions taken by states in their interaction at the international level.

The book is structured in the following way: (1) chapter one discusses the reasons for EU action in the field of criminal justice, (2) chapter two reviews the institutional competences and structures, (3) chapter three examines police cooperation in the EU, (4) chapter four analyses judicial cooperation, (5) chapter five discusses the external cooperation of the EU with the rest of the world on criminal matters, while (6) chapter six reviews the EU's efforts in substantive criminal law.

The book's contribution exhibits a number of strengths. Firstly, this is the first comprehensive attempt to analyse EU criminal justice developments specifically. The book is very well researched, and analyses all important EU instruments in the area. In this endeavour, the book engages successfully with elements of political theory in the introduction and chapter one in order to deepen the sophisticated legal analysis with political concepts; operating too much at the level of legal description could have been a charge made against it. It is very clear that the authors do much more than that – they go at great lengths to rethink the fundamental political concepts behind the establishment of the EU's Area of Freedom, Security and Justice. Thus, the project led by Fletcher is a potentially very significant contribution to the study of EU criminal justice in order to provide scholars with more analytical tools to explain the process of European integration in this significant area. This important effort notwithstanding, the use of concepts, such as 'security' could have benefited from some engagement with 'security studies theory', in particular the constructed nature of 'security'.

However, while this book exhibits a number of clear strengths, in particular its in-depth coverage of EU criminal justice, its very strengths can, at times, also create problems – some of which the author seems to be aware. Firstly, the author restricted the scope of the book to EU criminal justice. This limitation is defended on the grounds that the legislative achievements in this field ‘are now so significant both in scope and in depth’ (p.1). In this attempt to be specific and comprehensive, the authors significantly disconnect EU criminal justice from other parts of EU Justice and Home Affairs, which, in principle, is realistic and potentially beneficial. However, as a result of this disconnect the dynamics of actors and actions are under-analysed. This may or may not be a problem for the book, depending on which disciplinary position different scholars take. However, it is evident in the book that the authors are aware of the dynamics. The ‘*Directorate-General for Justice, Freedom, and Security of the Commission (DFFSJ) has a relatively high profile and active role in the field of EU criminal matters [...] the Commission has played an important role in managing and shaping policy direction (p.61).*’ The authors also comment on the role of the Council, and other groupings, such as the G6. For political scientists, these are very important insights, which are not sufficiently connected to the growing body of literature on the role of EU institutions in JHA. While this is not strictly speaking an objective of the book, from an interdisciplinary perspective, it would make the book an even more important contribution if this was teased out more.

Yet, in general, one needs to underline that the legal analyses exhibit state-of-the-art evidence, and provide an excellent analysis of the policy areas. The authors display an excellent command of the legal literature, and provide some very novel and significant conclusions, which coincide with the findings of my own research. In particular, I support the analysis of the growing importance of EU institutions in the area. I also support the broad objectives to analyse legal developments in the area positively, while being able to criticise many individual aspects. However, the statement ‘the actual framing of the AFSJ suffers from a failure to properly consider the theoretical implications of providing the good of criminal justice at the EU level’ underlines the importance of interdisciplinary work – this statement is a good starting point for a political science analysis of EU criminal justice. The ‘why’ question is unfortunately left unanswered.

However, this notwithstanding, this book provides an excellent read for many scholars of European integration in general, and EU criminal justice in particular. It is vital for students of EU JHA law, as the authors clearly make a case for the importance of EU criminal justice. Consequently, his book is a reminder to intergovernmentalists that, despite the continuing importance of member states, it would be careless to underestimate the importance of supranational institutions in JHA. Consequently, this book can only be recommended as very significant reading, and one of the more interesting contributions as of recently in the field of European criminal justice.

ANNEX

State of the Art

The Condition of Liberty & The Art of Objection

Artists: Charlesworth, Lewandowski & Mann
Charlie Coffey
Richard Hards
Ilias Poulos
Mark Titchner

Date: 18th - 28th May 2009

Venue: Berlaymont Building, Brussels

Curator: Sami Jalili

This exhibition forms part of and is supported by the European Commisison Framework 6 funded project, CHALLENGE: The Changing Nature of Liberty and Security in Europe and the project's partners, CEPS, Sciences Po, and the Department of War Studies, King's College London. Its focus is on the implications of security-centric policies for the liberal democratic polity, and more abstractedly the conceptual connotations of such processes. Its aim is not the dissemination of academic research through a simplistic aesthetic realisation of the problematique, but rather to reveal engagements with these issues in the wider public sphere of discourse.

The conventional tendency is to conceive of security and liberty in terms of a balance, a formulaic representation that often legitimises the curtailment of liberties in the name of security. The metaphor of balance also suggests that each element has a distinct and quantifiable value that may be directly measured against the other. Alternatively, the concepts of liberty and security might be conceived of as being mutually constitutive, so that neither has meaning without the other. Questions then arise about the 'politics' of security and about how it acquires contested meanings in the space of the public sphere. It is then no longer a given, taken for granted value, or even end-product, but is rather central to the formulation of politics, to the construction of threat, to the production of unease and anxiety and to the play of power within society.

The artists here seek to provide a space for exploring exactly the contested terrain on which we approach these issues in a context that is constantly being framed by discourses of threat and danger. Their contributions may not be seen as political in any conventional sense; there is no crude appropriation and politicization of the art form. Instead, the works pose abstract and hypothetical questions about the state of being and conditions of existence within the free world, and in turn about the production and nature of art and culture in such an environment. Through systematic repetition and semantic dilution the notion of liberty has been rendered anodyne. The aim of this exhibition is thus the exploration of new approaches to representing what is more than ever a fundamental concern, both in life and art.

Charlesworth, Lewandowski & Mann's bold and ramshackle watchtower stands conspicuously in the centre of the room, the harsh light thrown from its industrial lamps casting the other works into sharp relief, dividing the space into territories of light and darkness. As objects, watchtowers commonly exist in the zones in which two boundaries meet. They conversely protect those within from threats outside, and prevent those within from escaping to the outside world, sometimes preventing them from coming to harm, on other occasions ensuring that the individual remains captive within the territory demarcated by the tower's scope.

In its unoccupied state, the tower forces the viewer to confront not only the narratives of human interaction that brought the structure into being, but also to address the unanswerable question as to the purpose of such an observation platform; who is it watching, for what reason and under whose authority?

It further seeks to analyse the tension between freedom from harm to the nation and the freedom from (passive and active) interference with the individual. Its zonelessness proposes a re-interpretation of personal space, whilst its sheer presence asks us to take a side in a silent, unending and ultimately undefined war. It rejects authority. It becomes authority. The artists' accompanying text sheds light on this apparent paradox.

Charlie Coffey's installation is the culmination of a project based around the idea of a fictional micro-nation. Built entirely out of found materials and employing a scavenger aesthetic, the work comprises a series of drawings, maps and makeshift structures resembling an abandoned settlement. Drawing on the history of Esperanto and a host of now obsolete utopian enterprises, the work concerns itself with the sense of promise and nostalgia often imbedded in discourse on collective models of living. Ranging from flimsy cardboard simulations to sturdier architectural forms, the work is at once the relic of a failed venture and crude prototype for a future outpost of human settlement; a hybrid form caught between the artificial and the real.

Richard Hards' two-part installation incorporates a private residential closed-circuit television recording. The sound occupies an area and the video plays silently in another. The constant sound of children playing and static interference is threatened by the proximity of very real violence. Indeed it is the fact that the material is real which is perhaps the most disturbing element of the work, transfiguring this security-centric documentation into the realm of spectacle. Especially apt in an environment in which the idea of a surveillance society is discussed with the detachment of academia and policy-formulation, the work transforms its audience from passive cultural observers into voyeuristic spectators of an ultraviolence that otherwise only exists in statistics and hypotheses.

Ilias Poulos' has produced a series of portraits with an accompanying sound-piece. The audio work takes the form of readings selected to represent ideas in philosophy or fiction that capture or have shaped the reader's conception of freedom. These sombre, disembodied voices haunt the portraits, which have been biopolitically manipulated, mathematized into sets of biometric facial contours barely distinguishable from each other. As free as our abstracted and received notions of liberty may be, once grounded in the real world of regulated freedom, they become strained voices issuing from the confined spaces of social interaction.

Mark Titchner's bold banners restage in fragments the cannibalisation of revolutionary and liberating political and artistic languages. He draws on these covert reference points in a renegotiation with the progressive spirit of modernism. Art can be an instrument for transforming the larger culture - in the right hands. There is an overt recognition within Titchner's work that knowledge and power are inextricably bound. They are situated

amongst a cacophony of social practices and situations. Through the excavation of referential discourses an estranged epistemology is forged. Visual impressions succeed one another. Time becomes solvent. Everyone and everything is implicitly bound to grand narratives and specific ideologies. Exhausted political systems, tired revolutionary ideals and empty zealous doctrines mingle in a decisive provocation.

Brought together, these artists address the issues of authority, self-regulation and self-surveillance, biopolitical conformism and the retrograde co-option of what once constituted radical ideology. The problems surrounding the perceived tradeoff between liberty and security are not limited to policy formulation or ethical constraints, but are rooted in deeper discursive traps. At a time of such socio-political ambiguity, the paradoxical nature of our search for a free means of artistic expression must necessarily throw up work that eludes the traditional categorization of 'political art'. Through its self-awareness of the problems and contradictions facing artists working in the Liberal Democratic world, it is hoped that *State Of The Art* proposes an alternative and effective illustration of these dilemmas.

The following images are taken from the 'State of the Art' exhibition. Permission to use the images has been given by the various artists involved in the exhibition.



