

The Changing Dynamics of Security in an Enlarged European Union

Elsbeth Guild, Sergio Carrera and Thierry Balzacq

Abstract

The relation between liberty and security has been highly contestable over the past 10 years in the EU integration process. With the expansion of the EU's powers into domains falling within the scope of the Area of Freedom, Security and Justice, liberty and its relation to security has brought a new range of issues, struggles and debates. Acts of political violence labelled as 'terrorism' and human mobility at the European and international levels have justified the construction of these phenomena as threats to the security and safety of the nation state. They have legitimised the development of normative responses that go beyond traditional configurations and raise fundamental dilemmas for the security and liberty of the individual. This paper assesses the ways in which the notions and perceptions of security and insecurity in the EU have evolved as political values and legal/policy goals, and how they are being transformed. It aims at synthesising the results of the research conducted since 2004 by the Justice and Home Affairs Section of CEPS through the CHALLENGE project (*Changing Landscape of European Liberty and Security*). The research has been premised upon one basic, but determining question: To what extent has the evolution of the international context altered the dynamics of liberty and security in the EU?

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THE CHANGING DYNAMICS OF SECURITY IN AN ENLARGED EUROPEAN UNION

ELSPETH GUILD, SERGIO CARRERA &
THIERRY BALZACQ*

Introduction

The intersection of liberty and security in the EU integration process has been a highly contestable area over the past 10 years. This situation is problematic as the EU was founded on the principle of inalienable freedoms (the much-vaunted four freedoms). The EU's construction required that wherever member states sought to interfere with one of those freedoms that interference had to be justified on the very narrow grounds permitted by the Treaties, which in turn were jealously guarded by the European Court of Justice (ECJ). With the expansion of the EU's powers (particularly after 1999) into justice and home affairs, liberty and its relation to the concerns of some member states' ministries of justice and interior over security has brought a new range of issues, struggles and debates in the field of European integration. In this context, acts of political violence commonly labelled as 'terrorism' and increasing human mobility at the European and international levels have justified the construction of these supranational phenomena as threats to the security and safety of the nation state. In this respect, they have legitimised the development of normative responses that go beyond traditional configurations and raise fundamental dilemmas for the security and liberty of the individual subject to these processes.

This paper assesses the ways in which the notions and perceptions of security and insecurity in the EU have evolved as political values and legal/policy goals, and how they are being transformed. It aims at synthesising the results of the research conducted by the Justice and Home Affairs Section of CEPS through the CHALLENGE research project (Changing Landscape of European Liberty and Security) during five years of work. The research has been premised upon one basic, but determining question: To what extent has the evolution of the international context altered the dynamics of liberty and security in the EU?

Part I of the paper begins by examining three mechanisms underpinning the transformation of the EU Area of Freedom, Security and Justice (AFSJ), each attending to a specific phase of the policy process: the discursive construction of threats, the development of technological tools as solutions to any security issue, and the tension between the intergovernmental and communitarian methods of decision-making. Part II then goes on to discuss the implications these forces have had for the design and evolution of the AFSJ. We conclude by addressing a fast growing trend, that is, the external dimension of the EU AFSJ. As we argue, this is where substantial challenges to the EU's credibility and integrity are bound to emerge afresh.

* Elspeth Guild is a Professor at the Centre for Migration Law of the Radboud University of Nijmegen (the Netherlands) and a Senior Research Fellow at the Justice and Home Affairs Section at CEPS. Sergio Carrera is the Head of Section and a Research Fellow of the same section at CEPS. Thierry Balzacq is a Professor of Political Science at the University of Namur and an Associate Research Fellow at CEPS. He is the Co-director of the JHA Research Programme at the Centre for European Studies, Sciences-Po, Paris.

I. Theoretical schemes and policy preferences

The EU AFSJ is now nine years old, and it has been the subject of very concerted EU law-making and increased institutional pluralism. Policy fields that lie at the heart of traditional conceptions of nation-state sovereignty and that have been shaped by administrative law – including phenomena often qualified as immigration, asylum, borders, policing, judicial cooperation in criminal matters and counter-terrorism – have been at the core of frequent disputes since the first harmonised steps were taken at the EU level after the entry into force of the Amsterdam Treaty in 1999. What have been the forces and mechanisms underpinning the institutionalisation of the EU AFSJ? Three processes have been decisive in its design and evolution. First is the discursive construction of wider categories of persons and practices as threats – securitisation. Second is the resort to technology as the ultimate solution to any issue constructed as threatening. Third is a bias towards intergovernmentalism, conceived as the best decision-making procedure for responding to common security problems.

1. Securitisation and the making of the ‘security continuum’

The political structuration or securitisation of certain persons and practices as ‘threats’ can be better understood through the concept of a ‘pragmatic act of security’. As Balzacq (2006) has argued, the processes of securitisation are rather a “pragmatic act” (a pragmatic model of security) consisting of

- (i) a relatively stable system of heuristic artefacts or resources (metaphors, image repertoires, stereotypes, emotions), (ii) discursively mobilized by an agent, who (iii) works persuasively to prompt a target audience to build a coherent network of implications (feelings, sensations, thoughts, intuitions) that concurs with the enunciator’s reasons for choices and actions, by (iv) investing the referent subject with such an aura of unprecedented threatening complexion that (v) a customized political act must be undertaken immediately to block its development within a specific space-time continuum or a social field.¹

From this perspective, the pragmatic act of security aspires to determine the strategic and tactical uses of language to attain a certain aim, while looking at the consequences of ‘saying security’. By doing so, it creates a more solid approach to securitisation. At the same time, it is essential to take into account the audience and the social context of the EU. In fact,

- [a] scheme [that] seeks to promote an understanding of discourses of security as actions must be committed to recover not only the text, but also other temporally embedded variables such as agents’ capabilities, the ontology of their relations and the social field in which rhetorical games take place. Arguably, this position prevents discourse analysis from being regarded as a practice “that is divorced from the real world” (Balzacq, 2005, p. 16).

A logic of converging (in)securitisation has affected particular thematic policy issues, such as irregular immigration, borders and the integration of immigrants, and it has framed them as ‘threats’ or insecurities for the EU and its member states. The ‘undesired’ form of human mobility often called ‘irregular immigration’ is being subsumed into a European legal setting that treats it as a crime and a risk against which administrative practices of surveillance, detention,² control and penalisation are necessary and legitimised. EU law and policy has also

¹ See T. Balzacq, “The Three Faces of Securitization: Political Agency, Audience and Context”, *European Journal of International Relations*, Vol. 11, No. 2, 2005, pp. 171–201.

² See E. Guild, *A Typology of Different Types of Centres in Europe*, European Parliament Briefing Note, IP/C/LIBE/OF/2005-167m, DG Internal Policies, Brussels, 2005; see also M. Bietlot (2006), *Centres for*

developed a security nexus between irregular forms of human mobility and border security (Carrera, 2007a and 2007b; Carrera and Guild, 2007). This has been the case with respect to the implementation of the integrated border management (IBM) strategy and its relationship to a common EU policy on irregular immigration. The guiding principle seems to be that border management must be ‘integrated’ and cover all border-related threats that the EU is supposed to be facing. The phenomenon of irregular immigration represents the target against which “the EU border” and its multilayered components as framed by the IBM have been conceived.³ Indeed, one of the more important objectives of EU border management is the building of a common immigration policy that ‘manages comprehensively’ and ‘fights against’ the sort of mobility negatively qualified as ‘illegal’. In the same context, it is also critical that the EU continues using the expressions ‘illegal immigration’, the ‘fight against’ and ‘combat’ when dealing with this phenomenon. The negative implications inherent in the use of these terms attributes to the person concerned a status that imputes suspicion and criminality (Balzacq and Carrera, 2005b; Balzacq and Carrera, 2006).⁴

Both the integrated and the global approaches constitute an innovative discursive and political strategy at the EU level, whose real purpose is to present in a more ‘fashionable’ manner the vision according to which more security measures for the common external borders are the more plausible ‘solution’ to the challenges and dilemmas the EU appears to be facing. Moreover, this is sold at the official level as the pivotal ingredient of a so-called ‘comprehensive policy on irregular immigration’. The logic of the converging (in)securitisation over human mobility needs to be subject to contestation. The EU should instead treat the dilemmas posed by the phenomenon of human mobility as an employment and social-related issue, framed by a common policy ensuring equal treatment and non-discrimination of those not falling within the privileged category of EU citizens (Carrera, 2007c).

Another example of this logic of converging securitisation is the nexus between immigration, integration and citizenship. This nexus is becoming the norm in a majority of the national legal systems as well as at the EU level (Carrera, 2006). Integration, or rather the lack of or failure of integration, of those qualified as third-country nationals has been framed as an insecurity issue. In the national arena, there appears to be a distinct trend towards integration programmes with a mandatory character. Obligatory participation in such programmes is now a regular feature of both immigration and citizenship legislation, and a precondition for having access to rights and a secure juridical status (Carrera, 2006a and 2006b). The notion of integration is becoming restrictive in nature and mostly related to cultural aspects. Current policy, institutional and juridical frameworks in some EU member states demand that the non-national abandon her/his own identity in favour of the dominant, mainstream societal model and, so the argument runs, the homogeneous identity of the receiving state. Only in this way will the state offer the non-citizen this privileged status, with the attendant security of residence and protection. The link made between the social inclusion of immigrants and the juridical framework on immigration

Third Country Nationals, European Parliament Briefing Note, IP/C/LIBE/FWC/2005-22/SC2, DG Internal Policies, Brussels, 2006.

³ See European Commission, Communication on Policy Priorities in the Fight against Illegal Immigration of Third-Country Nationals, COM(2006) 402 final, Brussels, 19 July 2006, in which “secure borders” and “an integrated management of the external borders” are considered a key policy priority for “a comprehensive EU approach to combat illegal immigration”.

⁴ See also E. Guild, “Who is an Irregular Immigrant”, in B. Bogusz, R. Cholewinski, A. Cygan and E. Szyszczak (eds), *Irregular Migration and Human Rights: Theoretical, European and International Perspectives*, Leiden: Martinus Nijhoff, 2004, pp. 3–28; and also T. Balzacq and S. Carrera, “The Hague Programme: The Long Road to Freedom, Security and Justice”, in T. Balzacq and S. Carrera (eds), *Security versus Freedom: A Challenge for Europe’s Future*, Aldershot: Ashgate Publishing, 2006.

and citizenship, which is now being transferred to EU law, may conflict with human rights and endanger the interculturalism and diversity that are intrinsic to the EU.

2. Technology as the ultra-solution to threats

The AFSJ is being driven by robust confidence in security technology. Technology for enhancing control and surveillance is presented at the EU official level as the solution to every security dilemma and ‘threat’ identified, and as being essential to the establishment of the EU as a common AFSJ.⁵ It is held to be the “ultra-solution to the permanent state of fear”, without reflection that it may end up creating more insecurity for the individual.⁶ Indeed, Europeanisation processes are fostering the belief that technology is the most plausible tool to face any imagined insecurity, without duly considering that it could engender more insecurity in terms of data protection, fundamental rights and liberty. Also, a certain tension arises between security technology in its various forms (large-scale centralised EU databases, biometrics and so forth) and the rule of law.

The EU continues to have or has proposed to develop a wide array of EU databases and systems of information exchange, such as the Schengen Information Systems I and II (SIS I and SIS II), EURODAC, the Customs Information System (CIS), the Europol Computer System, the Eurojust files and the Visa Information System (VIS). These systems are supplemented by other methods of direct information exchange among law enforcement authorities, including data on the results of DNA analysis, football matches, terrorism, passport information, criminal records and money laundering (Hobbing, 2006; Geyer, 2007 and 2008b). The content, structure and way in which these insecurity technologies are used in practice as well as their ethical implications give rise to a number of questions. It should first be stressed that extended access does not always yield improved use of the data available. Furthermore, persistent cross-pillar complexity highlights the difficulty of technical harmonisation, which does not simultaneously address legal incoherence. Improving interoperability and synergies should not be reduced to linking the network of surveillance and casting the net of control so wide as to include reputable citizens. Indeed, perhaps one of the most compelling risks is that of “function creep” (Hobbing, 2006).

One also wonders whether the individual has any chance of finding out that her/his data has been introduced to or now forms part of any of these databases, and if so, contesting it. The current shape of these instruments is insufficient for establishing how personal information has actually been used or interlinked, and among which authorities it has been exchanged. Thus, there is a considerable deficit of common standards on data protection. This problem partly seems to stem from the lack of an EU ‘third pillar’ measure on data protection (Geyer, 2008b) comparable to the first pillar Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.⁷

In the same vein, on 13 February 2008 the European Commission presented its ‘border package’, setting out its vision of how to foster the further management of the EU’s external

⁵ See Council of the European Union, *A Secure Europe in a Better World, European Security Strategy*, presented by Javier Solana, Brussels, 12 December 2003.

⁶ See D. Bigo and S. Carrera, “From New York to Madrid: Technology as the Ultra-Solution to the Permanent State of Fear and Emergency in the EU”, CEPS Commentary, CEPS, Brussels, 2004.

⁷ The European Commission’s 2005 proposal on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters intended to remedy this situation, yet there has been no progress within the Council. See European Commission, Proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters, COM(2005) 475 final, Brussels, 4 October 2005(a).

border (Carrera, Guild and Geyer, 2008a; Carrera, Guild and Geyer, 2008b).⁸ One of the key elements of this package is a Communication aimed at establishing an EU entry/exit system registering the movement of specific categories of third-country nationals at the external borders of the EU. It also recommends the establishment of an automated border-control system for the verification of a traveller's identity (for both EU and non-EU citizens alike) based on biometric technology, as well as an electronic travel-authorisation system that would oblige non-EU travellers to provide personal data for a pre-departure online check. These "securitizing tools"⁹ would imply the creation of yet another EU-wide database and its interoperability with those that already exist. There is a critical relationship between these initiatives and the set of mechanisms and general principles on the rule of law and fundamental rights. These measures are neither necessary nor suitable, nor are they consistent with EU data protection rules, fundamental rights and the principle of proportionality.

3. Lack of trust and intergovernmentalism

The third aspect is one that could perhaps be called the logic of intergovernmentalism. There is a high degree of competition, fuelled by a certain lack of trust, among the member states when negotiating, adopting and implementing substantial and institutional developments related to an AFSJ. There is continuing competition among member state authorities and networks, which still see themselves as rivals. This competition becomes most active in relation to the exchange of information among (in)security professionals at the EU and national levels. Competing strategies are also evident in the interplay between the Community method of cooperation and the intergovernmental one. There is a difficult relationship between EU and intergovernmental processes in the area of security policy, which is primarily manifested in the form of challenges to the EU 'from below' by certain member states.

An excellent illustration of this phenomenon is the Treaty of Prüm,¹⁰ originally signed by seven EU member states on 27 May 2005 (Balzacq et al., 2006a; Balzacq et al., 2006b; Guild and Geyer, 2006; Guild, 2007b). The original objective of the Prüm Treaty¹¹ was to

further [the] development of European cooperation, to play a pioneering role in establishing the highest possible standard of cooperation especially by means of exchange of information, particularly in combating terrorism, cross-border crime and illegal migration, while leaving participation in such cooperation open to all other Member States of the European Union.¹²

The Prüm Treaty is not merely a technical attempt to accelerate the exchange of information among the participating member states. It is rather a countervailing political force against the EU's AFSJ. The Prüm Treaty has weakened the EU more than it has strengthened it. First, Prüm has created a hierarchy and a multilevel game within the EU. Second, by focusing on data exchange, the Convention has provoked competition with the 'principle of availability'

⁸ See European Commission, Communication on Preparing the Next Steps in Border Management in the European Union, COM(2008) 69 final, Brussels, 13 February 2008.

⁹ On this concept, see T. Balzacq, "The Policy Tools of Securitization: Information Exchange, EU Foreign and Interior Policy", *Journal of Common Market Studies*, Vol. 46, No. 1, 2008.

¹⁰ See the Convention between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping-up of cross-border cooperation particularly in combating terrorism, cross-border crime and illegal migration ('Prüm Convention'), (Prüm, 27 May 2005), 10900/05, Council Secretariat, Brussels, 7 July 2005.

¹¹ Throughout this paper, the terms Prüm Convention and Treaty of Prüm are used interchangeably.

¹² See the Preamble to the Prüm Treaty, p. 3.

proposed by the Commission and The Hague Programme.¹³ Third, by reverting to an intergovernmental arena, it excludes the European Parliament at a time when its role in democratic scrutiny is critical. Fourth, by developing new mechanisms of security that operate above or below the EU level (or both), it has dismantled trust and confidence among member states. Finally, by establishing a framework whose rules are not subject to parliamentary oversight, the Prüm Treaty impacts on the EU principle of transparency (Guild, 2007b).¹⁴

II. Implications for the design and evolution of the EU security landscape

What has been the impact of Europeanisation processes in the field of internal security on the structures, methods and contents of policy-making in justice and home affairs (JHA)? To address this question, we think that while special attention needs to be paid to multi-annual programmes involving the AFSJ, we need to start from the Treaty of Amsterdam if we are to grasp the overall normative setting of the EU AFSJ. This context, and the events that have shaped it, have generated one of the most troubling tensions of our times, namely that between freedom and security. In many ways, this tension helps us weigh the policy achievements and deficits of the AFSJ.

4. The normative framework and its constitutive tension

4.1 From the Treaty of Amsterdam to The Hague Programme

The entry into force of the Treaty of Amsterdam in May 1999 constituted a historic step in the normative and political configurations of liberty and security in the Union. The transfer of competence in the domains of immigration, asylum and borders (Title IV of the Treaty Establishing the European Community – TEC – “Visas, Asylum, Immigration and Other Policies related to the Free Movement of Persons”) to the European Community (EC) meant a stronger role for the EU institutions thanks to the expansion of the Community method of cooperation. Furthermore, it facilitated the emergence of a stronger political impulse for the development of common supranational responses on policy and judicial cooperation in criminal matters (Title VI of the Treaty on European Union – TEU – “Provisions on Police and Judicial Cooperation in Criminal Matters”).

The Treaty of Amsterdam also meant the creation of the first-/third-pillar Treaty divide on security and liberty. Numerous have been the deficits inherent to the EU’s legislative foundations, engagement and institutional framing of freedom, security and justice (FSJ)

¹³ More specifically, the European Commission’s Proposal for a Council Framework Decision on the exchange of information under the principle of availability, COM(2005) 490 final, Brussels, 12 October 2005(b), states:

Under the latter principle, the authorities of any Member State would have the same right of access to information held by any other authority in the Union as applies to state authorities within the state where the data are held. Thus the element of the national settlement on the collection, retention and manipulation of data expressed in national constitutions is transformed into an EU-wide right of use of data. The national border is removed from the principle of data collection, retention and use. By contrast, Prüm created a database whose use was going to be restricted to the seven signatories.

¹⁴ On the initiative of Germany, part of the Treaty of Prüm will be Europeanised after the adoption of a Council Decision on the stepping-up of cross-border cooperation, particularly in combating terrorism and cross-border crime. See R. Bellanova, “The Prüm Process: The Way Forward for EU Police Cooperation and Data Exchange?”, in E. Guild and F. Geyer (eds), *Security versus Justice? Police and Judicial Cooperation in the European Union*, Aldershot: Ashgate Publishing, 2008, pp. 203–221.

(Balzacq and Carrera, 2005b and 2006; Guild and Geyer, 2008; Guild, 2008). The third pillar has been affected, for instance, by a large democratic deficit (the limited role of the European Parliament – consultation) and weak judicial accountability (limitation to the jurisdiction of the ECJ), and its legal instruments and decision-making procedures have brought about a number of externalities including the lack of transparency, coherence and legal certainty.

The Treaty of Amsterdam opened the way for the progressive construction of the AFSJ and for its Treaty-based objectives increasingly to be developed.¹⁵ Since then, the political agenda structuring EU action on issues has been organised in the form of multi-annual (five-year) programmes offering general orientations, specific objectives and timetables. Two are noteworthy. The first is the Tampere Programme (1999–2004), adopted by the European Council meeting of 15–16 October 1999.¹⁶ The Tampere Programme also saw agreement on a number of milestones that would guide the overall agenda. The first milestone stated:

From its very beginning European integration has been firmly rooted in a *shared commitment to freedom based on human rights, democratic institutions and the rule of law*. These common values have proved necessary for securing peace and developing prosperity in the European Union. They will also serve as a cornerstone for the enlarging Union. (Emphasis added)

The second, more decisive framework for the development of the AFSJ is The Hague Programme, agreed by the European Council on 4–5 November 2004.¹⁷ The Hague Programme constituted the second multi-annual programme adopted by the Council concerning the AFSJ. In replacing its predecessor of Tampere, it provided a new legislative timetable and policy roadmap for the expected attainment of its goals between 2005 and 2010. Unlike the Tampere milestones, The Hague Programme started from the following ideological premise:

The security of the European Union and its Member States has acquired a new urgency, especially in the light of the terrorist attacks in the United States on 11 September 2001 and in Madrid on 11 March 2004. The citizens of Europe rightly expect the European Union, while guaranteeing respect for fundamental freedoms and rights, to take a more effective, joint approach to cross-border problems such as illegal migration, trafficking in and smuggling of human beings, terrorism and organised crime, as well as the prevention thereof... The programme... seeks to respond to the challenge and the expectations of our citizens. (Emphasis added)

The general conceptual bases characterising The Hague Programme may therefore be summarised in the following manner.¹⁸ First, it presents a blurring of the scope and division between measures dealing with FSJ. Second, it advocates an expansion, predominance and strengthening of the security dimension over the other two rationales. Finally, it provides a critical understanding of security according to which the security of “the European Union and

¹⁵ The objectives of the first pillar are stipulated in Art. 61 of the TEC and those pursued by the third pillar are presented in Art. 29 TEU.

¹⁶ See European Council, Presidency Conclusions of the Tampere European Council of 15-16 October, SN 200/99, Brussels, 1999.

¹⁷ See European Council, The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, OJ C 2005/C 53/01, 3 March 2005; see also European Commission, Communication on The Hague Programme: Ten priorities for the next five years – The partnership for European renewal in the field of Freedom, Security and Justice, COM(2005) 184 final, Brussels, 10 May 2005(c); and also T. Balzacq and S. Carrera (eds), *Security versus Freedom? A Challenge for Europe's Future*, Aldershot: Ashgate Publishing, 2006.

¹⁸ See the UK Parliament, House of Lords European Union Committee, *The Hague Programme: A Five-year Agenda for EU Justice and Home Affairs, Report with Evidence, 10th Report*, HL Paper 84, Session 2004–05, House of Lords, London, 23 March 2005, pp. 11–13 and p. 34.

its Member States” takes precedence over the liberties and security of the individual, and it is this last understanding that functions as the guiding value (Bigo, Carrera, Guild and Walker, 2007).

The Hague Programme has also involved a major transformation in the conceptual setting underpinning the policy and political framework of the AFSJ. As Bigo (2006) has argued, the meanings and functionalities of the terms ‘freedom’ and ‘justice’, where introduced within its text, have been reconfigured as lower values compared with the priority of security (understood as coercion) and through use of a “balance metaphor” for freedom and security.¹⁹ But in practice, the balance has tilted in favour of security. In fact, the concept of freedom has been profoundly transformed. The way in which The Hague Programme understands “Strengthening Freedom”²⁰ allows, for example, coercive practices of surveillance (biometrics and information systems), management and control (visa policy, return and readmission, border checks and the ‘fight against illegal immigration’) without taking into account their actual and potential impacts on liberty, fundamental rights and the rule of law (CHALLENGE Paper, 2004). The special context that it has given to the dimensions of freedom, security and justice has also been recognised by EU institutional actors such as the European Economic and Social Committee (EESC).²¹

4.2 Freedom vs. security: On the balance metaphor

The relation between freedom and security has been depicted, in institutional terms, as an epitome of a well-crafted ‘balance’. The concept of a balance is no more than a smokescreen. It could be argued that the (ab)use of the metaphor of a balance between security and freedom has undermined the legitimacy of the EU AFSJ. It entered the EU’s discourse after 11 September 2001 and it was incorporated into the second five-year work programme that commenced in 2004.²² The constitutive problem of the metaphor is the belief that freedom and security are analogous concepts, and thus can be compared with and weighed against each other. This belief is difficult to uphold. Freedom, and its more concrete formulation as liberty, is a central value that can be found at the heart of not only the EU treaties but also of all international human

¹⁹ See D. Bigo, “Liberty, whose Liberty? The Hague Programme and the Conception of Freedom”, in T. Balzacq and S. Carrera (eds), *Security versus Freedom? A Challenge for Europe’s Future*, Aldershot: Ashgate Publishing, 2006, pp. 35–44.

²⁰ See the Specific Orientations of The Hague Programme in point III.

²¹ The EESC stated:

[T]he Hague Programme confuses aspects relating to “security” with aspects relating to “freedom”. Policies directly relating to security clearly take priority and interfere with aspects concerning freedom and justice. This is the case for instance with initiatives based on the introduction of biometrics systems and new technologies, the interoperability of databases, greater control of internal and external borders and more effectively fighting irregular immigration, all of which are paradoxically included under the heading “Strengthening Freedom”.

See the Opinion of the EESC on the Commission Communication, *The Hague Programme: Ten Priorities for the Next Five Years – The Partnership for European Renewal in the Field of Freedom, Security and Justice*, COM(2005) 184, SOC/209, Brussels, 15 December 2005.

²² In particular, in the section entitled “Strengthening Freedom”, The Hague Programme states:

The European Council requests the Council to examine how to maximise the effectiveness and interoperability of EU information systems in tackling illegal immigration and improving border controls as well as the management of these systems on the basis of a communication by the Commission on the interoperability between the Schengen Information System (SIS II), the Visa Information System (VIS) and EURODAC to be released in 2005, taking into account the need to strike the right balance between law enforcement purposes and safeguarding the fundamental rights of individuals.

rights treaties. In its most essential form, it is contrasted with its opposite – detention or imprisonment. The individual is either free or detained (as for instance in Art. 5 of the European Convention on Human Rights (ECHR)). If one then takes the metaphor of freedom and security as a balance and applies it to a specific individual, the balance is between liberty and detention. Of course, other forms of liberty may be subject to limitations of other kinds (for instance, the right to family life is a liberty in respect of which the state may interfere on limited grounds and in accordance with the procedures set out in the ECHR). What is common to all the understandings of liberty is that it is the defining value: democracy, the rule of law and fundamental rights are designed to protect the liberty of the individual within the society.

Security, on the other hand, is not a value as such. Although some forms of security, such as social security as a kind of economic redistribution, are capable of being so categorised, coercive security by state officials is very difficult to render capable of entry into the category. Attempts to categorise coercive security as a public good are beset by difficulties, which are immediately evident the minute one takes an example of the individual. For whom is coercive security a public good? Can the individual who is falsely imprisoned be the recipient of a public good? Or is such a person rather the object of interference with his or her right to freedom? In order to seek to define coercive security as a public good one must accept that the recipient of the public good is the public. But that public is composed of many different individuals, families and groups. Economic and social disparities among them mean that access to public goods, and this is particularly true of coercive security, is far more available for the protection of some individuals and groups and their property than it is for others.

The precedence of liberty as a value that must be protected by all states, EU institutions and mechanisms is key to ensuring that security in its coercive form is used only as a tool to support freedom and is subject to its priority. Hence, the individual is entitled to freedom and any interference with that freedom must be justified by the state on limited grounds and be subject to the important procedural requirements set out in European and international fundamental and human rights instruments. Somewhat controversially, the ECJ has confirmed that the fundamental freedoms of the EU (including freedom of movement) take priority over fundamental rights where they enter into competition. While fundamental rights may pose an obstacle to the exercise of a fundamental freedom, this must nonetheless be justified. The justification, even when on fundamental rights grounds, must conform to the principles on which fundamental freedoms can be limited.²³

The EC Treaty has always recognised the priority of freedom, particularly in the form of free movement of persons, over coercive security claims. Where a member state seeks to expel from or refuse to admit a national of another member state to its territory, the only grounds on which this obstacle to free movement can be justified is public policy, public security or public health. The meaning of these three terms of exception is strictly controlled by the ECJ.

The exclusion of the state from control functions that, in the name of security, limit or prevent the exercise of free movement rights by individuals can be seen as a mechanism of de-securitisation. The EU has moved rapidly since 1999 towards the elimination of state coercive controls at the intra-member state borders. At the same time, the EU has enlarged twice – first in 2004 to include five countries in Central and Eastern Europe, the three Baltic States and two Mediterranean islands. In 2007, the EU enlarged again, this time to include Bulgaria and Romania. In respect of all the new member states' nationals, the right to free movement of persons in all capacities as tourists, students, visitors, service providers or recipients and for self-employment was immediate. The only exception was in respect of the free movement of workers, whereby the pre-2004 member states were allowed to make an exception for all

²³ See Case C-341/05 *Laval*, 18 December 2007.

(except nationals of the two islands) where the workers were not already part of the labour force of the member state. The delay is staggered: in the first two years, the member state can apply the exception; then in the next three years, the state must notify the Commission that it intends to continue to apply the exception. Finally, there is a two-year period in which the member state must justify a continuation to apply the exception to the right of free movement of workers. While many member states exercised their right to apply the delay in 2004, by 2008, almost all member states have lifted the exception for those countries that entered the Union on 1 May 2004.

Nonetheless, the right to move freely is a right for all citizens of the Union irrespective of their country of origin. That there are periods during which this right is less respected as regards the nationals of some member states is a sad reflection of the political opportunism of some state leaders and their civil servants.

The post-1999 period of EU policy on the movement of persons has been much marked by the obligation to abolish intra-member state border controls on the movement of persons first agreed by the member states in 1987 to take place at the latest on 31 December 1992. The end of bipolarity and its consequences for the movement of persons across the EU meant that politically the deadline shifted as did the legal mechanisms by which the lifting of controls on the movement of persons took place. It gave the EU the concept of 'Schengen', which by now has become an almost mythic word that opens borders or closes them. The lifting of intra-member state border controls first took place on 25 March 1995, and although some member states have reapplied intra-member state border controls from time to time, borders have remained remarkably control-free since that time.

In policy terms, an important challenge for the EU has been how to extend the control-free borders to include the 10 plus 2 new member states. This extension has since happened with a surprisingly low degree of opposition as regards 9 of the 10 member states that acceded in 2004 (the exception being Cyprus, which has particular issues concerning its external borders). The lifting of controls at the intra-member state borders took place first along the land borders on 21 December 2007 and then the air borders at the end of March 2008. Although the director of FRONTEX, the EU's external border agency, expressed his deep concern about the security threats that the lifting of the controls at these borders would entail, the political will to complete the process of freedom of movement was sufficiently strong that even his concerns did not delay or stop the lifting of the controls (Faure Atger, 2008). Although a number of member states have instituted police checks within their borders – in respect of which there are concerns as to whether they are in fact replacing border controls (in which case they are against EU law) – these appear to be a minority. Pressure to comply with EU law may be hoped to encourage and in the end force those member states that may not be fully compliant to bring their practices into line.

The abolition of border controls shows that the metaphor of a balance between freedom and security does not work. The EU adopted the Schengen Borders Code, which came into effect from 13 October 2006. It is in the legal form of a regulation, which means it has direct legal effect in the member states. It determines how the external borders of the EU must be controlled. At the insistence of the European Parliament, the Code is detailed – setting out more clearly than any national law has done before the rules on admission (and refusal of admission) at the external borders of the EU. For those who are refused admission there is the right to a written notice of refusal; the refusal must be motivated by clear and precise reasons; the motivation must conform with the regulation; there must be a right of appeal against the refusal; the member state must provide information on how to exercise the right of appeal and how to obtain legal assistance in order to do so. Furthermore, the exercise of border control must respect the dignity of the individual; officials carrying out the controls must not discriminate on

the basis of race, religion or other grounds (other than nationality). In comparison with the formal rules regarding the crossing of the external borders of the EU, the member states' national rules provided a much higher degree of discretionary action for officials than the Schengen Borders Code.

To summarise, the changing dynamic of security has been accompanied by a changing dynamic of liberty in the EU. In this regard, two core aspects deserve mention: first, the AFSJ *acquis* suffers from the lack of a consistent and harmonised EU policy on fundamental rights; second, that notwithstanding, liberty has been subject to substantive and institutional steps forward, which call for its further integration, consolidation and reinvigoration.

Concerning the first of the elements, while most of the EU's normative instruments include express references to fundamental rights and to the wider, international human-rights obligations of the member states, their insertion in the actual contents of the instruments is still lacking and they are at times rather vague in nature. The tension inherent in the use of 'minimum standards' and 'lowest common denominators' as mechanisms of law-making is that when dilemmas arise about the compatibility of certain provisions of these acts with fundamental rights, all too often the EU institutions wiggle out of the problem by stating that these are only minimum standards, and it is for the member states to apply the necessary (read higher) ones required by fundamental and human rights concerns (Balzacq and Carrera, 2005b and 2006). The predominance of this legal technique leads to difficulties for the attainment of a consistent, unified and identifiable transnational policy on fundamental rights. It also allows for the existence of a dispersed and fragmented response in relation to the degree of 'liberty' that the individual enjoys within the Union (Carrera and Guild, 2006b and 2006c).

Finally, while when comparing the logics driving insecurity with those affecting liberty, one can argue that the latter is rather weak. It is also necessary to acknowledge the existence and ongoing development of legal and institutional supranational mechanisms at the EU level addressing the changing landscape of liberty in the EU, as well as its internal and external dimensions. As long as internal security is subject to processes of externalisation and Europeanisation, so too is liberty. This has been the case for instance in relation to the increasing institutional pluralism thanks to agencies such as the Fundamental Rights Agency and the European Data Protection Supervisor. These institutional structures should also be further integrated and their cooperation reinforced (Bigo, Carrera, Guild and Walker, 2007). There needs to be an increase in the level of policy convergence and Europeanisation in this dimension. This should be accompanied by an increasing judicialisation of AFSJ-related policies in relation to the general principles of EC law and fundamental rights (Carrera and Guild, 2006c; Carrera and Geyer, 2008b).

Security justifications always require substantial amounts of official discretion. Once transparency and clarity apply, the scope of application of security exceptions diminishes exponentially. Thus, the EU's external borders are in the process of becoming, as the Schengen Borders Code gradually becomes accepted as the governing law in this respect, an area governed by clear laws that provide individuals with a legitimate expectation that if they fulfil the requirements they will not be impeded at this boundary. At present, however, there is much concern that the Borders Code is not (yet) being properly applied. Not least at the Mediterranean borders, it does not appear that individuals who seek to arrive are being informed of their rights and if refused admission provided with the detailed forms and reasons, let alone advised of their right to appeal against refusal. Nevertheless, this will come with time. Member states have often had delays in correctly implementing EU laws as their officials only gradually become aware of their content. The importance of the function of EU rules is sometimes delayed for these officials. Still, with some assistance from the courts and the ECJ, compliance has become the EU norm even in highly contested and political fields.

5. Policy achievements and deficits

The analysis of the main policies and legal responses developed in the context of an AFSJ in relation to liberty and the rule of law brings at least two new features to the fore (Balzacq and Carrera, 2005b; Balzacq and Carrera, 2006; Guild and Geyer, 2008). First, there has been an unsatisfactory level of ‘policy convergence’ in relation to policies dealing with or affecting the dimension of ‘freedom’. Second, a majority of the policy and legal responses presented or adopted entail low minimum standards (some of them posing human rights concerns) and provide wide discretion to the member states when applying exceptions to the general rules and derogations to rights. Factors that might explain the current obstacles and deficiencies in EU policies on an AFSJ can be summarised as follows:

- 1) diverging operations and diverse approaches on the part of national legal systems and practices of member state authorities in areas such as police and judicial cooperation in criminal matters (Guild and Geyer, 2008);
- 2) a profound mistrust or lack of confidence in supranational cooperation when this begins to have a real impact at the national or local level as regards the rights of individuals; there is also resistance by the ministries in some member states to the loss of discretionary power and competence in these areas (the prevalence of the principle of subsidiarity);
- 3) an unsatisfactory institutional setting (first/third pillar) as well as decision-making process (with consultation applicable to the area of regular immigration, visa-related policies and the third pillar); and
- 4) a predominantly intergovernmental approach even concerning those areas where the EU has recognised competence (Apap and Carrera, 2004; Balzacq and Carrera, 2005b; Carrera and Guild, 2006b).

The Europeanisation of fields that come into the sphere of an AFSJ has also led to a new institutional setting, which has been dependent upon and affected by the first–third pillar divide. On the one hand, the European Commission (DG Justice, Freedom and Security) has acted as one of the main motors of European integration over these areas within the scope of the first pillar. On the other hand, the European Parliament has become an increasingly involved and powerful actor in European cooperation in these domains. This has especially been the case in those fields falling within the scope of the first pillar and now benefiting from the co-decision procedure.²⁴ In order to ensure the necessary democratic accountability and transparency of EU policies on security and liberty, the European Parliament needs to be recognised as one of the key actors in the institutional landscape of FSJ cooperation in the EU (Carrera and Guild, 2006a). In addition, the role that has been played by the Community courts, and more particularly by the ECJ and the Court of First Instance, has been impressive in terms of liberalising current legal constraints and the normative ghettos presented by current Treaty configurations.²⁵ Their case law has also been decisive at times of interpreting and restricting

²⁴ See Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure set out in Art. 251 of that Treaty, OJ L 396/45, 31.12.2004. The Presidency Conclusions of the Brussels European Council of 4–5 November 2004 (SN 14292/1/04, REV 1, 8 December) state: “The European Council asks the Council to adopt a decision based on Art. 67.2 TEC immediately after formal consultation of the European Parliament and no later than 1 April 2005 to apply the procedure provided for in Art. 251 TEC to all Title IV measures to strengthen freedom, subject to the Nice Treaty, except for legal migration.”

²⁵ Recent rulings have entailed major implications for the classical principles and legalistic structures comprising the EU AFSJ, in such cases as the following: Case C-540/03, *European Parliament v. Council* of 27 June 2006 dealing with the Council Directive on the right to family reunification 2003/86; Case

exceptionalism in the hands of public authorities, these being at the level of the member states or the EU, in relation to acting within the scope of EU law. The increasing judicial control and proactive judicialisation of FSJ are of central importance for ensuring the rule of law. Indeed, the current limitations of the ECJ's competence,²⁶ and especially to reviewing and interpreting third pillar-related issues, are critical for guaranteeing the necessary jurisdictional control of the actions of public authorities and judicial protection of the individual in the EU (Carrera and Guild, 2006b; Carrera and Geyer, 2008a; Carrera and Geyer, 2008b). There is, moreover, an increasing institutional pluralism in aspects related to security (Europol, FRONTEX, SITCEN, etc.) and justice (Eurojust). A whole host of EU-level agencies and Community bodies has emerged over the last few years, which has greatly transformed the landscape of the AFSJ.²⁷ Increasing levels of democratic (at both the EU and national levels – an excellent example being the UK Select Committee of the House of Lords) and judicial control is of utmost relevance in order to guarantee the principles of legal certainty, lawfulness and proportionality of their activities, as well as the respect of fundamental rights.²⁸

After the negative results of the Irish referendum of 13 June 2008, the destiny of the Treaty of Lisbon remains uncertain.²⁹ The AFSJ is actually among those policy dimensions most affected by the Treaty (Carrera and Geyer, 2007, 2008a and 2008b). The formal abolition of the legal duality of the pillar approach and the legally binding nature of the Charter of Fundamental Rights would be among the key relevant changes. A renewed legal setting would in this way address many of the current institutional and decision-making weaknesses. Yet, at the same time the Treaty of Lisbon would also institutionalise and reinforce mechanisms that allow member states far too much flexibility and too many exceptions to EU cooperation in sensitive areas through enhanced cooperation, emergency brakes and wider opt-outs. There is a risk of an incipient exceptionalism and differentiation that could have critical implications for the construction of a *common* AFSJ. Too much flexibility might lead to too much complexity, paralysing the practical cooperation of national authorities on the ground. Differing areas of freedom, security and justice might furthermore endanger the status and legal safeguards of EU citizens, who could find themselves caught in the gaps of this patchwork.

133/06, *European Parliament v. Council* of 6 May 2008 dealing with the Council Directive; Case C-77/05, *UK v. Council* dealing with FRONTEX; Case T-228/02, *Organisation des Modjahedin du peuple d'Iran v. Council of the European Union*, 12 December 2006 dealing with the Council's 'terror lists'; Case C-354/04 P, *Gestoras Pro-Amnistía, Juan Mari Olano and Julen Zenarain Enarrasti v. Council of the European Union* of 27 February 2007, in which the ECJ opened up the possibility for national courts to ask the ECJ for a preliminary ruling in matters referring to third-pillar fields; and Case C-440/05, *Commission v. Council* of 23 October 2003, in which the ECJ found the use of criminal law sanctions in pursuit of Community law objectives to be lawful. See Guild (2008).

²⁶ See in particular Art. 68 TEC and Art. 35 TEU.

²⁷ See D. Bigo et al., *The Field of the EU Internal Security Agencies*, Collection Cultures & Conflits, Centre d'Etudes sur les Conflits, Paris: L'Harmattan, 2007.

²⁸ See for instance Balzacq, Carrera, Guild and Khasson (2006c), Carrera (2007a and 2007b) and Guild and Geyer (2008).

²⁹ See the "Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community" ('Treaty of Lisbon'), (Lisbon, 13 December 2007), 2007/C306/01, OJ C306/01, 17.12.2007; see also UK Parliament, House of Lords European Union Committee, *The Treaty of Lisbon: An Impact Assessment*, 10th Report of Session 2007–2008, Vol. I: Report, House of Lords, London, 2008.

III. Externalisation: The new frontiers of the EU AFSJ

AFSJ-related policies are increasingly subject to a whole series of processes and strategies of externalisation or extra-territorialisation. They are formulated and framed in the context of external relations with third countries and in the scope of the European Neighbourhood Policy.³⁰ There is an impressive expansion of the ‘external dimensions’ of the AFSJ that use these areas as tools of a series of externalisation processes moving ‘outside’ the confines of the common EU territory, and as an instruments of the Union’s neighbourhood and external relations policies. Two case studies can be identified with respect to the implications of this approach for liberty and the rule of law: the joint operations of FRONTEX and ‘extraordinary renditions’.

The joint operations coordinated by FRONTEX involve an external dimension that entails the extra-territorialisation of control³¹ and the prevention of mobility from outside the common EU territory. The external dimension³² is one of the key ingredients of the EU’s “four-tier border control” and is now viewed at the official level as one of the most important prerequisites for an efficient IBM.³³ Within the context of FRONTEX, this dimension consists of partnerships allowing for a “functional cooperation with partner countries in terms of identification of their nationals, readmission of own nationals and readmission of third country nationals”.³⁴ Moving border management outside the EU results in two negative effects: first, it leads to human rights considerations in relation to respect for the principle of *non-refoulement* and the Geneva Convention on the status of refugees of 1951; and second, pre-border surveillance prevents the applicability of Community governance and the regime of protection provided by the Community border and the Schengen Borders Code (Carrera, 2007a and 2007b).

Furthermore, EU member states have not resisted the temptation of taking advantage of extraordinary renditions and unlawful detentions. This tendency is exemplified by recent examples of ‘profiteering’ with respect to interrogations at Guantánamo Bay and other detention centres as well as information exchange with foreign services under circumstances of questionable legality (Geyer, 2007). For instance, whether these services have used torture or other inhumane treatment to obtain the information remains unclear. The absolute nature of the prohibition of torture and other inhumane treatment as enshrined in many human rights treaties of international law needs to be stressed. The interrogation of an individual who is unlawfully detained or who has been subject to extraordinary rendition not only appears hypocritical from a political point of view, but also to be on the legal borderline and most probably beyond it

³⁰ See T. Balzacq (ed.), *Construire le Voisin: Pratiques Européennes*, Cultures & Conflits: Sociologie Politique de l’International, Paris: L’Harmattan, 2007.

³¹ See J.J. Rijpma and M. Cremona, *The Extra-Territorialisation of EU Migration Policies and the Rule of Law*, EUI Working Papers, Law 2007/01, European University Institute, Florence, 2007.

³² See S. Lavenex, *Safe Third Countries: Extending the EU Asylum and Immigration Policies to Central and Eastern Europe*, Budapest: CEU Press, 1999, pp. 29–38 and 73–102; see also S. Lavenex, “EU External Governance in ‘Wider Europe’”, *Journal of European Public Policy*, No. 11, 2004, pp. 680–700; and S. Lavenex, “Shifting Up and Out: The Foreign Policy of European Immigration Control”, *West European Politics*, Vol. 29, No. 2, 2006, pp. 329–350.

³³ See European Commission, Communication on a Strategy on the External Dimension of the Area of Freedom, Security and Justice, COM(2005) 491, Brussels, 12 October 2005(d); see also Council of the European Union, Strategy for the External Dimension of the Area of Freedom, Security and Justice, Doc. 14366/3/05 JAI 417 RELEX 628, Brussels, December 2005; and Council of the European Union, *Progress Report on the Implementation of the Strategy for the External Dimension of JHA: Global Freedom, Security and Justice*, 15363/06, Brussels, 20 November 2006(a).

³⁴ See Council of the European Union, *Integrated Border Management: Strategy Deliberations*, Strategic Committee on Immigration, Frontiers and Asylum/Mixed Committee EU/Iceland-Norway-Switzerland, 13926/3/06, Brussels, 21 November 2006(b).

(Geyer, 2008b).³⁵ An imminent, inherent risk for the EU and its counter-terrorism strategy in this regard is the use of information obtained by foreign sources through torture. Attention to this issue is particularly important given that the European AFSJ aims at making relevant security information freely available. Even if some member states and their services strive to move closer to the spirit and intentions of the UN Torture Convention and human rights obligations by establishing clear agreements for cooperation and intelligence-sharing with foreign services, such efforts would eventually be undermined by the fact that other member states might cooperate less carefully with foreign services. This area is perhaps where robust yet fair policy engagement is required and more research is needed.

³⁵ Geyer (2008b, p. 13) goes on to state:

Furthermore, concerning the use of information the following points have been stressed: First, as a rule, the use of foreign torture information is inadmissible. Only in exceptional circumstances, i.e. to avert imminent threats to life, might it be acceptable; second, security services must under all circumstances avoid making themselves complicit in torture, let alone get directly involved; third, security services are not allowed to be passive consumers of foreign torture information but are under an obligation to reduce the need to use such information and must establish minimum standards for the exchange of information with foreign services; fourth, a certain degree of formality in the making of liaison arrangements with foreign services and the independent scrutiny of these arrangements are deemed crucial.

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About the Team

Work package 5 (WP5) of the CHALLENGE project has drawn together two teams: the Justice and Home Affairs (JHA) Section of CEPS and the University Institute of European Studies (IUEE) of the Autonomous University of Barcelona. The IUEE has focused on the external security and foreign policy dimensions. The JHA Section at CEPS has studied the internal security dimension and the foundations, developments and institutional framing of an AFSJ. Both sides have collaborated on one specific deliverable (Balzacq, Barbé and Johansson-Nogués, 2006). CEPS has taken an active part in other work packages of the project, especially in WP2 (Sciences-Po and the Centre d'Etudes sur les Conflits) and WP14 (the Centre for Migration Law and Radboud University of Nijmegen). CEPS has additionally served as an umbrella organisation for the work of other teams. These efforts have materialised in the publication of various collective volumes that bring together the work of different CHALLENGE partners (see the List of WP5 Official Deliverables and Publications).

The methodology applied by the JHA Section of CEPS has been interdisciplinary in nature. While most of its representatives have a legal background, WP5 has greatly benefited from input from the fields of political science and theory as well as the sociology of law. Moreover, our work has been positively influenced by the theoretical framework developed in WP1 and WP2. It has also benefited from the conceptual setting provided by the *Mid-Term Report* published in February 2007 and agreed upon by the CHALLENGE project partners.³⁶ In particular, WP5 has studied the legal and policy elements of the AFSJ by examining primary sources (EU law and policies related to the AFSJ) and by undertaking a large number of interviews and discussions with policy-makers and other key stakeholders at the EU and national levels. Furthermore, special attention has been given to the nature and implications of current institutional and decision-making procedures surrounding our areas of interest (the divide between the first and third pillars). This has been accompanied by an exhaustive review of relevant academic literature assessing the issues at stake, not only covering law, but also key references from other related disciplines of the social sciences and humanities.³⁷

³⁶ See D. Bigo, S. Carrera, E. Guild and R.B.J. Walker, *The Changing Landscape of European Liberty and Security: Mid-Term Report on the Results of the CHALLENGE Project*, CHALLENGE Research Paper No. 4, CEPS, Brussels, February 2007.

³⁷ See J. Apap and E. Barbé, *Changes in the Security Concept and the JHA Agenda, State of the Art*, CHALLENGE, WP5, CEPS, Brussels, 2004.

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About CHALLENGE

The familiar world of secure communities living within well-defined territories and enjoying all the celebrated liberties of civil societies is now seriously in conflict with a profound restructuring of political identities and transnational practices of securitisation. **CHALLENGE** (Changing Landscape of European Liberty and Security) is a European Commission-funded project that seeks to facilitate a more responsive and responsible assessment of the rules and practices of security. It examines the implications of these practices for civil liberties, human rights and social cohesion in an enlarged EU. The project analyses the illiberal practices of liberal regimes and challenges their justification on the grounds of emergency and necessity.

The objectives of the **CHALLENGE** project are to:

- understand the convergence of internal and external security and evaluate the changing character of the relationship between liberty and security in Europe;
- analyse the role of different institutions in charge of security and their current transformations;
- facilitate and enhance a new interdisciplinary network of scholars who have been influential in the re-conceptualising and analysis of many of the theoretical, political, sociological, legal and policy implications of new forms of violence and political identity; and
- bring together a new interdisciplinary network of scholars in an integrated project, focusing on the state of exception as enacted through illiberal practices and forms of resistance to it.

The **CHALLENGE** network is composed of 21 universities and research institutes selected from across the EU. Their collective efforts are organised under four work headings:

- *Conceptual* – investigating the ways in which the contemporary re-articulation and disaggregation of borders imply a dispersal of practices of exceptionalism; analysing the changing relationship between new forms of war and defence, new procedures for policing and governance, and new threats to civil liberties and social cohesion.
- *Empirical* – mapping the convergence of internal and external security and transnational relations in these areas with regard to national life; assessing new vulnerabilities (e.g. the ‘others’ targeted and critical infrastructures) and lack of social cohesion (e.g. the perception of other religious groups).
- *Governance/polity/legality* – examining the dangers to liberty in conditions of violence, when the state no longer has the last word on the monopoly of the legitimate use of force.
- *Policy* – studying the implications of the dispersal of exceptionalism for the changing relationship among government departments concerned with security, justice and home affairs, along with the securing of state borders and the policing of foreign interventions.

The CHALLENGE Observatory

The purpose of the **CHALLENGE** Observatory is to track changes in the concept of security and monitor the tension between danger and freedom. Its authoritative website maps the different missions and activities of the main institutions charged with the role of protection. By following developments in the relations between these institutions, it explores the convergence of internal and external security as well as policing and military functions. The resulting database is fully accessible to all actors involved in the area of freedom, security and justice. For further information or an update on the network’s activities, please visit the **CHALLENGE** website (www.libertysecurity.org).

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