

# The Changing Landscape of European Liberty and Security:

## Mid-Term Report on the Results of the CHALLENGE Project

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This paper reports on the results achieved by the CHALLENGE project for the period June 2004 through December 2006. Unless otherwise indicated, the views expressed are attributable only to the authors in a personal capacity and not to any institution with which they are associated.

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# Table of Contents

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A. Introduction .....	1
B. Illiberal Practices in Liberal Regimes.....	4
B.1. Radicalisation of violence, critical infrastructure vulnerability and threat assessment	4
B.1.1. Radicalisation of violence.....	4
B.1.2. Protection, critical infrastructure vulnerability, and threat assessment.....	5
B.2. Increasing suspicion, developing technologies of surveillance and their impact on freedom. ....	7
B.2.1. Logic of suspicion and practices of exception.....	7
B.2.2. Impact on the rights and freedoms of citizen and foreigners.....	9
C. The European Arena: The Effects of Suspicion and Exception on Liberty and Security.....	14
C.1. An ‘Area of Freedom, Security and Justice’? .....	14
C.2. The External Security Dimension: A Common Foreign and Security Policy and the European Neighbourhood Policy .....	15
C.3. New Frontiers: EU Border Law and Institutional Mechanisms.....	17
C.4. Enlargement and Frontiers: The Eastern and Southern European Borders.....	18
C.5. Immigrants and Islam: The Fear of the Enemy Within.....	21
C.6. European Governance and its Relation to the World Context .....	22
D. Set of Policy Recommendations .....	25
References.....	27
Annex 1: The CHALLENGE Consortium .....	34
Annex 2: Selected List of CHALLENGE Publications .....	36
Annex 3: List of Official CHALLENGE Deliverables .....	37
Annex 4: Selection of Recent CHALLENGE Events .....	44

# **THE CHANGING LANDSCAPE OF EUROPEAN LIBERTY AND SECURITY: MID-TERM REPORT ON THE RESULTS OF THE CHALLENGE PROJECT**

**DIDIER BIGO, SERGIO CARRERA, ELSPETH GUILD & R. B. J. WALKER\***

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## **A. Introduction**

The CHALLENGE project responds to widespread concerns about the resort to specific illiberal practices by contemporary liberal regimes. These practices are linked with the identification of increasing insecurities globally, insecurities that are widely interpreted as obliging sterner policies from the authorities and, consequently, new constraints on principles of liberty under law and presumptions about the innocence of individuals. Specifically, the project examines tensions created by claims that ‘security is the first freedom’ and that a new ‘balance’ has to be established to manage the global scale of contemporary dangers. The project focuses on the justification of these policies and constraints on grounds of emergency, necessity and prevention in a radically transformed global environment, and the impact these policies have on civil liberties, political rights and social cohesion.

Five years after 9/11, no one doubts that liberal polities have resorted to many illiberal practices, or that these practices have been legitimised by sweeping claims about global dangers. Their scale is both revealed and obscured by enquiries into the war in Iraq. Serious dangers are apparent, but who can now say that the connection between such dangers and the mobilisation of tougher practices of security and constraints on liberal freedoms is clear? The narratives of the intelligence services, security specialists and professional politicians more generally have been called into widespread doubt. They have been called into doubt not only in relation to their knowledge of the current situation but also to their knowledge of and capacity to anticipate the future with any accuracy. Such doubts extend beyond the conduct of this particular war. Indeed, the tendency to focus narrowly on the conflict in Iraq obscures a broader pattern of surveillance in which illiberal practices are being justified by a complex field of routinised transactions among many transnationally organised agencies, institutions and interests, one that also thrives on weak claims to knowledge and apocalyptic visions of a dangerous future.

There is also no doubt that liberal polities have long resorted to illiberal practices of government, policing and social control. Indeed, the alleged need to resort to illiberal practices has always generated difficult questions about the legitimacy of specific forms of liberal government, policing, social control and claims to authority. Security policy especially has been assumed to be at least partly beyond the reach of democratic participation. Hence, for example, the crucial role of the principle of the rule of law and formal declarations of war in the limitation

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of arbitrary decision under extreme conditions. Longstanding and very serious questions about the character of modern political life are at stake in this respect. Yet while highly generalised claims about security as the first freedom may remind us of a broader heritage of liberal achievements and their limits, they also suggest important changes in the way coercive and restrictive policies are now justified, both domestically and internationally. Both the scale and the strategies through which new illiberal practices generated by emerging European and transnational actors are now justified threaten to take us well beyond established trade-offs between liberal aspirations and illiberal necessities. They demand urgent attention and especially a more vigorous interplay between innovative forms of scholarship and public debates about appropriate policy. This is our objective.

To this end, CHALLENGE seeks to provide a critical assessment of the liberties of citizens and others living within the EU and how they are affected by the proliferation of discourses about insecurity and the exchange of new techniques of surveillance and control. In this way, it is concerned to facilitate a reconceptualisation of the transformation of the international order and the place of the EU within it, and especially to enable a broader range of perspectives about the conditions under which we are asked to make judgements about the need for severe limits on liberty and the rule of law and the legitimacy of new forms of institutional authority and technologies of social control. Specifically, so far the project has explored the following broad themes:

1. The apparent radicalisation of specific forms of transnational political violence and its effects on liberal policies.
2. The threat assessments produced through technologies of risk management and the development of new technologies of surveillance – prevention, profiling, data transfer, biometric identifiers – and the degree to which ‘security’ has been reduced to a need for surveillance and control.
3. The changing forms taken by logics of suspicion and practices of exception and derogation, especially in relation to established understandings of the rule of law, to the multidimensional and continuous reframing of the enemy, and to the practices enabled by this reframing that are used to exclude or otherwise target specific groups.
4. The impact on the rights and freedoms of citizens and foreigners.
5. The relation between the internal and external impact of illiberal practices, especially in the context of transatlantic relations but also of an increasingly interconnected world order, and the place of the European Union in this world.

This interim report provides an overview of the main research results achieved in the first two years and a half of the project. In addition, one of the main goals of this report is to further strengthen and expand its core theoretical and conceptual framework. As we will show, one of the core factors that characterise this project is its integrated nature. In each of the themes highlighted in this report there has been a direct contribution of various interdisciplinary perspectives by different teams. In fact, CHALLENGE shows both how partners engaged primarily in empirical research have been inspired and guided by those developing more theoretical assessments of the issues at stake and how more theoretical work has been reshaped by the enormous complexities revealed by empirical analysis. These processes of mutual exchange, collaboration and understanding have been a crucial feature of the integrative character of the project.

In addition, while the project was structured in empirical and theoretical terms, during the first two years and half most of its work packages (WP) have directly or indirectly responded to current policy dilemmas, and have provided a reflexive understanding of the actions to be

adopted with the EU. Our previous anticipation of well-defined and differentiated disciplinary dimensions has proved to be rather limited, and the pertinence of every WP to the policy arena has been one positive element that the project as a whole has become increasingly conscious of.

Of course we are a large and diverse group, so extensive discussion has revealed both a range of diverse interpretations of the overall situation and considerable common ground.

Everyone recognises that we confront significant transformations in practices of violence expressed most dramatically by the activities of Al Qaeda and similar networks. Everyone understands the pressures for practices of coercion and control brought by such violence, as well as both the necessity for specific responses and the way such responses involve profound choices involving fundamental social values. Everyone is familiar with various ways in which any responses to new practices of violence will be played out on a complex field of institutional interests, social forces and political judgements and will be subject to all the usual dynamics of incomplete knowledge, partial perspectives and unintended consequences. Everyone is also persuaded, to a greater or lesser degree, that recent responses to transformations in practices of violence have themselves generated a climate of fear, unease and suspicion at the transnational level in ways that raise very serious questions about a shift towards new illiberal practices within liberal societies. It is clear that contemporary forms of illiberalism are sustained not only by broadly accepted interpretations of new patterns of violence but also by a political culture of unease linked with new forms of collaboration between the bureaucracies concerned with security as well as with the development of a private industry concerned with new technologies of surveillance. What is not clear is how we are to come to informed and reasonable judgements about an appropriate proportionality between the dangers and risks posed by new practices of violence and the intensity of practices of coercion, surveillance and control they require. Unsurprisingly, perhaps, questions about such judgements have been at the heart of our discussions, which have especially turned on different assessments of the degree to which new historical and structural conditions have provided opportunities for political, institutional and commercial advantage that have helped to shape and intensify a new politics of fear and unease at the cost of entrenched liberal principles.

For some among us, many recent trends can be explained as a consequence of various opportunistic instrumental moves taken by some governments for ideological reasons to transform class and race relations in their countries in alliance with the interests of that fraction of capitalism whose interests are linked with globalisation. For others, such trends are less the consequences of intentional action than of the more generalised effects of the climate of fear generated after 9/11, which produced a dynamics of 'insecuritisation' that has paralysed various mechanisms of checks and balances within liberal democracies. Some invoke broad historical patterns tending towards a global empire and generalised forms of exceptionalism. Others identify significant changes in governmental regimes and state institutions, but feel that while liberal democratic norms are being stretched they remain remarkably resilient. We also differ in the relative significance we attribute to conscious ideological intentions and to broader historical and structural forces. That is to say, as a group, we encompass many if not most of the scholarly traditions now struggling to make sense of a transnational political environment that clearly exceeds the grasp of any single scholarly perspective, and much of the strength of the project has come from a shared willingness to work across these traditions.

## **B. Illiberal Practices in Liberal Regimes**

### ***B.1. Radicalisation of violence, critical infrastructure vulnerability and threat assessment***

#### ***B.1.1. Radicalisation of violence***

The monopolisation by governments of the means of violence has long restricted major forms of violence to state authorities and their military capacities for international wars. Small wars, especially guerrilla operations, have been present, but they have often followed the Clausewitzian matrix involving the polarisation of conflict between two enemies and a strategy for conquering hearts and minds among the population understood as a third party. From the mid-1970s, researchers in polemology and conflict studies have shown that whether identified as guerrilla war, nationalist struggles or terrorism, a ‘capillarisation’ of violence has occurred (Dal Lago, 2006a, b & c; Bigo, 2006a; Jabri, 2006a & c; Olsson, 2006; Dillon, 2007). Capillarisation refers here to a reversal of the conventional geopolitical process through which populations are homogenised and enemies are expelled from a home territory. Lines of political violence do not follow the demands of state formation and national frontiers, but become ‘transversal’.

Under such conditions, spatial proximity inside state territories ceases to be a factor limiting hatred and violence and generating solidarity. Such proximity may even be an aggravating factor, as when a private enemy is turned into a public enemy by competing political leaders; conflicts following the break-up of Yugoslavia offer many examples here. Under such conditions, also, attacks by small organised groups can destroy larger targets through technological processes involving the miniaturisation of violence so that the problem for governments becomes less a military problem concerning the accumulation of sufficient forces and a capacity to destroy the adversary, than a detective problem of locating the enemy that is small enough to hide easily. This tactical capacity for the invisibilisation of clandestine actors has created a complex situation requiring a different frame of mind than that recommended by traditional principles of military strategy and has significantly transformed the task of combat into a set of tasks involving information gathering, prevention and punishment.

From the 1970s onwards, these attacks were often more symbolic than military in character. They were especially deployed in relation to forms of intersubjectivity generating violent struggles for the recognition of symbolic values and memories of the past. Such conflicts were more concerned with recognition and memory than about material interests or a will to take over political power; the Armenian and Kurdish cases of the 1980s were exemplary in this respect. In most cases of this sort, governments and military experts have overestimated the capacities of these organisations, and confused their symbolic impact with their effective power (as subsequent judicial trials have shown years later). We are now perhaps on the verge of a major change, in that some small groups have become less interested in convincing third parties to join their cause in order to take over the political power or to negotiate internationally and are ready to use large-scale violence against the third party itself (Scandamis, 2006; Bigo-Hermant, 2005; Duclos, 2006).

The terminology of ‘radicalisation of violence’, which has come to have almost unchallenged status in the identification of the problems we all face, tries to capture the motivations of the actors or the structures of the process that seem to be leading to a change in the scale and targets of the violence deployed by small political organisations. But this carelessly over-generalised characterisation of ‘radicalisation’ has too often been used rhetorically to disconnect specific forms of violence from its specific roots and to associate it with a particular sub-culture of radical Islam understood as fundamentalist or as a political doctrine of ‘Islamofascism’. A

refusal to look at the broader transformation of social conflicts was already a factor in the way strategic studies and security experts were led to similarly simplistic culturalist views in the mid-1980s. The failure to understand the different strategies of voluntary death in combat in order to maximise the killing of third parties can be explained in much the same way (Duclos, 2006; Conflitti globali, 2006). Many other factors must be considered in any attempt to explain changing patterns of violence: the sacrificial dimension of certain strategies; the delocalisation of conflict; technologies of information, control and killing at a distance limiting the face to face relations between the combatants; the changing role of the mass media with respect to the speed of communication and framing of the enemy; new relations between spatial vicinity and enmity; and the failure of strategies of counterterrorism or anti-subversion which contribute directly to the prolongation and sometimes the success of the small groups being fought.

This failure to understand the transformation of contemporary political violence – its banality, its capillarisation, and the turn from military combat to ‘policing’ – has created paralysis and anxiety among the government leaders of the Western societies when dealing with these forms of violence. It has been vaguely understood that traditional forms of war-making offer not a solution but the continuation and development of the problem. Many governments have warned the US and the ‘coalition of the willing’ that war against states considered to be ‘sponsors of terrorism’ could worsen the situation. In any case, clear alternative strategies have not been forthcoming and supposedly new doctrines coming from the military, the police forces and the intelligence services about preventing terrorism and the expansion of democracy have been more or less ineffective. Consequently, beyond the split over Iraq and the inadequacy of the rhetoric of the ‘war on terror’, we have seen a new global common sense emerging predicated on a belief that technologies of surveillance orchestrated, at a minimum, at the transatlantic level, is the only way to solve problems posed by a ‘stealth’ enemy that is quite impossible to ‘detect’. It is in this context that we can begin to understand recent appeals to the notion of the ‘protection’ of critical infrastructures as well as the traditional market approach of risk reformulated into threat assessment against terrorist activities.

### **Policy Recommendation:**

Careless rhetoric affirming a polarisation into two camps has practical consequences for the radicalisation of small groups and helps them in their recruitment. Similarly, the idea that everything is radically new blocks the possibility of learning effectively from the past, including from past mistakes. Extremist claims about both friend and enemy and novelty and convention have been substituted for careful analyses of specific situations, the consideration of third-party points of view, and a willingness to consider the reciprocities between and responsibilities of both parties. Actions have been taken as if it is possible to exonerate oneself from well established principles of conflict and peace resolution. Questions about political responsibility have long been at the heart of traditions of political realism and security analysis and must have priority over the clichés and caricatures that have been so influential in both recent public debate and policy formation.

#### ***B.1.2. Protection, critical infrastructure vulnerability, and threat assessment***

The notions of ‘protection’, ‘homeland defence’ and the ‘vulnerability of critical infrastructures’ largely predate September 11, both in US military doctrine and in Europe, at least in France and the UK (Waeber, 2006; Burgess, 2006a; Huysmans, 2006). They were developed during the latter stages of the Cold War and held special appeal to military forces confronted with discourses about a ‘peace dividend’ after the fall of the Berlin Wall (Bigo, 2006a & b). They carry the message that even if the Soviet threat is over, many other threats remain, small but interconnected, and perhaps even more dangerous than the visible threat of the Soviet military.

By the mid-1990s, different military doctrines had already integrated ideas about ‘networks’ in ‘warfare’ and revived biological metaphors about the body of the nation state (Dillon, 2007). Nevertheless, they continued to assume that only enemies with advanced technologies (whether missiles, weapons of mass destruction or hackers on the internet) could harm the Western countries (Bonditti, 2005). Consequently, they continued to act well within Clausewitzian traditions of strategic warfare. Even when military forces became interested in low intensity conflicts and terrorism, they sought to maintain sharp differences between their own role and the role of intelligence services and especially of police forces. They were ready to integrate them but not to collaborate with them. Further, military professionals continued to insist on the need for advanced technologies, especially on technologies for checking information and gathering multiple layers of data as the key to winning against an ‘invisible’ enemy. Military industries linked with the Cold War have also ‘reconverted’ techniques developed for ‘Star Wars’ against the Soviet threat by emphasising their usefulness in the war against drugs and in border controls against illegal migrants (Dal Lago, 2006a & c).

In Europe, the dynamics of enlargement and recognition of the freedom of movement of persons, including third country nationals already there, has profoundly limited this traditional vision of a static and clearly bounded homeland security. An alternative approach has been developed through a policing approach to the management of people and their mobility (Guild, 2005a). The Schengen Information System has epitomised both the originality and the difficulties of this approach (Brouwer 2006). The management of EU border controls has been different from the US and the concept of protection itself has consequently come to have different connotations than in the US. Specifically, the technologically driven US vision of military security diverges from the policing of risk approach of the EU, an approach that has had practical effects on relations between borders and identity (Huysmans et al., 2006).

Nevertheless a common tendency to turn the referent object of security towards the ‘self’ rather than to an unknown enemy has been central to policies adopted both in the US and in the EU concerning critical infrastructure vulnerability and claims about the weaknesses of Western democracies. Traditional sovereign acts of making society secure are being reoriented towards domestic rather than international spaces, changing both the practice and rationality of security (Søby Kristensen, 2005). Consequently, national security is increasingly conflated with personal security and internal (in)security is increasingly conflated with external (in)security.

Many accounts of recent US policy have been given. Most agree that after September 11, the shock of being attacked by a small group using low levels of technology to achieve major levels of violence created waves of fear, uncertainty and revenge which have been framed and conceptualised through a combined faith in advanced military technology and a simplistic cultural account of a divide between the West and the rest, especially radical Islam (Burgess, 2006b & c; Huysmans, 2006; Cesari, 2006a & b). In relation to the effects on threat assessment and critical vulnerability, this faith has led to a worst-case scenario approach and the justification of tougher controls on borders, especially for some specific nationalities. The creation of the US Homeland Security Department has reconfigured the relations between different institutions and authorities, and has given the intelligence services a crucial role in coordinating information coming from the military, police, and border agencies both inside and outside the scope of the Homeland Security Department (Bonditti, 2005).

This reliance on worst-case scenarios, of practices of risk assessment that are effectively freed from any careful analysis of probabilities and primed to register maximum dangers from single instances is increasingly at the heart of the policies of management of fear and unease in the Western democracies (Bigo, 2006b; Guild, 2006a; Loader, 2005). Connected with the negative dynamics of war abroad, and the tendency to believe in technology as a solution, this approach to risk has had major consequences: it has raised levels of suspicion; justified declarations of



emergency rules and derogations of the rule of law; destabilised the importance of human rights conventions at the international level; justified the development of technologies of mass surveillance at the transnational level and massive exchange of individual data; enabled the merging of the roles and missions of military, police and intelligence services; and encouraged zealous visions of democracy that have been difficult to distinguish from an ideology of empire, and have generated criminal policies inside and outside the battle field (Jabri, 2006a; Bergalli and Rivera, 2006a & b; Dal Lago, 2005; Bigo, 2006b; Guild, 2006a; Dieben and Dieben, 2005).

### **Policy recommendation:**

The integration of internal and external security discourses and practices in the name of a fight against global danger is destabilising the boundaries between the institutions of police, intelligence services, military forces, borders and immigration services. This has long term implications for constitutional and democratic principles. It is important to hear the voices of the judges, lawyers and civil NGOs drawing attention to the risks involved here and to avoid the maximum-security solution to a potential worst case scenario. The core problem involves an always difficult relation between security and liberty, and it is entirely irresponsible to listen only to those concerned with security especially when security is itself framed in terms of worst-case scenarios that have profound implications for established accounts of the relationship between liberty and security.

## ***B.2. Increasing suspicion, developing technologies of surveillance and their impact on freedom.***

### ***B.2.1. Logic of suspicion and practices of exception***

The impossibility of knowing where and against whom to fight back has led to increasing unease about the identity and the location of the enemy. Consequently, suspicions have been generated towards anyone who seems to share characteristics associated with the perpetrators of violence: a certain gender, a certain nationality, a certain age group, a certain religion, a certain profession (Cesari, 2007; Scandamis, 2007; Lianos, 2005; Jabri, 2006b & c; Bigo et al., 2006; Burgess, 2006a & b; Pap, 2005).

While everybody recognised that suspicions exist, and have become a paradigmatic feature of post 9/11 antiterrorist policies, the question of the degree to which this suspicion is based on legitimate grounds has divided researchers. Some have argued for the right of the government to use derogatory and emergency measures in confronting such a threat. However, the large majority have considered that claimed threats cannot be assessed naively and need to be discussed in terms of the proportionality of the response and legal norms about the presumption of innocence (Guild, 2006a; Jabri, 2006a; Szikinger and Tóth, 2006). This has generated a common research agenda among the different workpackages on the conditions of emergence of a climate of suspicion and practices of exception through: an inventory of the practical measures taken by the different services in some countries (Bigo 2006a; Olsson 2006); the use of databases; limits posed by the judiciary; and changes in both in legislation and the justification of legislation on grounds of emergency and state of exception (Guild, 2005a; Jabri, 2006b; Huysmans et al., 2006; Aradau, 2004 & 2007; Walker, 2006a & b).

The rise in the level of suspicion and the way certain groups have been profiled has been analysed in France, Spain, UK and at the EU level. Comparisons have been made with the US situation. As a result of these investigations, it has become clear that the practices of policing have been partly freed from judicial controls, and that this has enabled more possibilities for control and surveillance for the police and intelligence services (as well as for some private

security providers) beyond the limits of what was considered to be 'normal' before 11 September. The key question for all the services, both in the US and in Europe, has been: how to deploy suspicion broadly enough to catch unknown people while not suspecting everybody. The different professionals of security certainly have different proposals and rely on different resources. For some the recruitment of people capable of infiltrating the enemy is crucial in order to provide good intelligence. For others, this is insufficient and too late, so that suspicion needs to be deployed beyond the reach of the actual knowledge of the services. It needs to be helped especially by resources provided by existing technologies of surveillance that have not been applied before.

After the anthrax scare, the US government hesitated between two strategies. One focused on the enemy within. One, provoking memories of McCarthyism, involved a generalised suspicion, an insistence that every US citizen may be a terrorist, and a strategy of naming an external but potentially internalised enemy, the radical Muslim. It is at that time that the US government decided not only to launch the war in Afghanistan but also to target Iraq in order to both externalise the threat and to concentrate on specific groups inside the US, with a major reinforcement of the control of people on the move and in transit. This tendency has been paralleled by the 'data mining' of all persons, including citizens, and the adoption of specific policies oriented towards foreigners and particular religious and national minorities, both at the borders and inside the US. Officially, this second policy has been presented as a 'balanced' situation, even if many analysts, and especially many lawyers, have complained about this vision of 'balance'-- a vision that in fact involves a major shift from individual freedoms to preventive and coercive measures.

Moreover, and more informally, it seems that some services have also continued with the first strategy and have designed large schemes for accessing data-bases, a data mining process that also includes any travellers to the US and the possibility of creating a *de facto* national registry of all US citizen and their criminal records as well as their beliefs and preferences.

In this very specific context of uncertainty and unease, suspicion has been justified as long as its object has been understood to be more or less limited and the principle of presumed innocence considered to be naïve and inefficient in a time of serious emergency. It has created a form of phobia about everything that may be considered as a national disloyalty, and has contributed to an ultra-patriotism, one with a disturbingly vengeful tone.

In Europe, tensions have been less extreme, even after the bombings in Madrid and London, and the idea that *habeas corpus*, obligations linked to international conventions, and the national rule of law can be discarded has not really flourished, except partly in the UK with the provisions to derogate from the European Convention of Human Rights (Neal 2006; Guild 2006a). But while the quasi-totality of the EU countries has not formally declared situations of emergency or a state of exception, the societal climate against migrants and foreigners, especially those coming from Islamic countries, has contributed to support of the US position in many political circles, especially those which have seen opportunities for justifying more general measures against migrants and refugees (Palidda, 2006a; Fernandez at al., 2007; Lock, 2006; Balzacq and Carrera, 2005; Vlcek, 2006). Suspicion has then also emerged as a paradigm enacting specific illiberal practices, although the judges, lawyers and NGOs have shown some capacity to openly contest what has been going on (Brouwer 2005; Szikinger and Tóth 2006). Here suspicion has not converged with an ultra patriotism; for example, the Aznar's government, which tried to duplicate the Bush strategy to mobilise the country, suffered severe electoral defeat. Nevertheless, even if it has been more moderate in Europe, suspicion has still become a routinised practice of the intelligence services and the police. Moreover, in many countries the legal context has been changed in order to alleviate judicial controls, giving more freedom (that is, the possibility of discretion, if not arbitrariness) to these services. It has created

the conditions for a transnational exchange of information that is already stored in data-bases and pleas for more collaboration as a ‘natural’ move towards greater efficiency (Guittet, 2006a).

### **Policy Recommendation:**

It is important not to be driven by forms of suspicion generated by specific technologies linked with new private-public partnerships in military and policing intelligence spheres. Arguments for greater European rather than American control over security and surveillance industries must not become a justification for the erosion of ethical commitments or the development of practices on the margin of the law infringing fundamental rights of citizen and foreigners. The use of specific technologies and the need for collaboration must be proportionate with the scale of the actual danger, based on accumulated knowledge. It must not be usurped by worst case scenarios that have no limit other than the political imagination of experts who can presume to be acting beyond the limits of political responsibility.

#### *B.2.2. Impact on the rights and freedoms of citizen and foreigners*

Everyone agrees that the development of a climate of suspicion has opened the way for specific techniques of group profiling. These vary from local and national detective stories stored in data-bases and exchanged between the ‘competent authorities’ to transnational exchanges of data in order to monitor the possible actions of violent groups and to establish profiles of their potential future acts. Such profiling involves an analysis of how is it possible to prevent human violence by small groups, and of how to determine whether the human knowledge coming from a detective approach is sufficient for prevention. If technologies of software simulation of possible futures are involved, how is it possible to model an uncertain future as an array of probabilities? The kind of risk assessment used for insurance purposes cannot work for an approach based on worst case scenario, so questions arise about the credibility and legitimacy of discourses concerning prevention of terrorism (Dillon and Reid, 2007).

This monitoring of the future in a desperate move to reduce uncertainty through technology and coordination has been called ‘prevention’ in the official language, but in fact works as a form of ‘anticipation’ (Bigo, 2006a; Guild and Van Selm, 2005). These two forms of profiling certainly need to be differentiated. The first one is based on substantiated facts and a criminal police approach. It often follows what had already happened in order to find the criminal before he repeats a crime. The second form is based not only on facts but even more so on conjectures and parameters given to specific software or analysts in order to help them to build scenarios of the future about people who are unknown to the detective services, and even to the intelligence services. The profiling is here independent of a criminal population and constituted by a category of individuals who have either crossed paths with an identified suspect and/or share some general characteristics with the supposed enemy. It is supposed to give the outline of an elusive enemy, to follow its traces and to anticipate its actions. But these predictions about the future movements and identity of the enemy cannot be prescient. They are full of uncertainty. The technical character of the data-bases in which they are stored cannot ascertain the quality of the information or the capacity of the model to project the past into a possible future that can be understood by the authorities. The image of technical efficiency and scientific objectivity masks a far murkier mix of questionable information and slippery logic. The uncertainty of the future cannot be reduced by the profiling of specific groups and/or by the maximum security scenario, and the commitment of the security discourses to protect effectively always tend to be exaggerated and misleading when the enemy is unknown or undetectable.

September 11 has perhaps opened a phase not of ‘hyper-security’ but one in which the meaning of security as effective protection and reassurance has been disaggregated. In this sense, we probably live in a post-national security era, one in which uncertainty plays an increasingly

multidimensional role in the structuring of a political life that is neither confined within the state nor organised globally (Walker, 2005). Many of the old categories of analysis are of little help in this context, not least in relation to questions about security. Nevertheless, this does not justify contemporary claims about the need for extreme forms of hyper-security or hyper-surveillance. These merely add new problems without resolving the core need to provide effective protection.

The development of forms of intelligence-led surveillance and specific logics of control has accelerated since September 11. 'Dataveillance', the multiplicity of forms of surveillance burgeoning from private companies that are partly driven by a desire to know more about consumers, has been considered to be both effective and a form of good management that can be transposed to public bureaucracies. It has created what has been called a 'surveillance assemblage' that was already emerging in decentralised forms before September 11 but is now the object of an attempt by the intelligence services to connect the different layers of information, especially between military intelligence services and the security industry. The judiciary has been highly resistant towards this move, especially in Europe (Guild, 2006a; Jabri, 2006c; Aradau, 2007; Neal, 2006; Szikinger and Tóth, 2006).

All the teams involved in our research have analysed this move from security to surveillance and the influence of the security industry in the framing of threat assessments and the vulnerability of society (Waever, 2006; Burgess, 2006a; Lianos, 2005; Bigo 2005; Bonditti, 2005). The technologies of computerisation of personal data, of software permitting the storage, exchange and transfer of such data in a securised and quick formula have been crucial in this respect. They have been combined with traditional forms of identification, through the inclusion of chips (or RFID) and are now burgeoning through visa applications, visas, passports, identity cards and passes for some specific areas. The competition between US and EU security industries concerning biometrics identifiers, software for data-mining, and the integration of data protection into these software and technologies is a key element, one that explains the efforts on both sides of the Atlantic to mobilise specific partnerships between public and private actors.

What is at stake here is the control of mobility under three categories: space, time and speed. Different formulations have been proposed to explain the logic of these transformations. One is the importation of the matrix of war inside society (Jabri, 2006a, b & c). Another is the development of a 'global policing using warfare' (Dal Lago, 2006b & c). A third is the restructuring of the *dispositif* of the Panopticon into a Banopticon (Bigo, 2006a). All of these hypotheses connect the development of specific technologies of surveillance, internally and transnationally with the form of warfare enacted in the name of peace and democracy abroad, and analyse the merging of internal and external feelings of unease and fear and their homogenisation through the naming of global terrorism. They describe and try to explain the routines of surveillance, the framing of the sovereign moment of exception, the symbolic politics that are at stake, and the effective capacity of struggles enacted by these tools.

As effectiveness in terms of protection is doubtful, many researchers have insisted on drawing attention to the role of the professionals of politics in providing 'reassurance' for the population and to the symbolic politics of counter-terrorism rhetoric. This has generated research on the importance of antiterrorist discourses and their successive or simultaneous deployments and conflicts around the notion of danger, emergency, security and freedom. Extending established critiques of the notion of a balance between security and freedom, some researchers have specialised in the analysis of the public sphere and the role of the media in this respect (Tsoukala, 2006a & b; Palidda, 2007 & 2006a; Bonelli, 2005) and have shown how the general suspicion and the development of technologies of surveillance is connected in public and media narrative. The discourses of 'reassurance' are limited in their long-term effects, even if the

discourse of mobilisation to war was effective at the beginning. The credibility of the authorities involved in the antiterrorist rhetoric is diminishing, especially but not only with the Iraq war.

In the face of this possibility of large-scale violence initiated by small clandestine groups, we see something like a *Mistigri* game in which nobody wants to take ultimate responsibility and is always ready to lend it to another 'authority' in order to dilute the possible error of those who were in charge during the moment of exception. Tensions between the professionals of politics and the media experts on one side and the professionals of security management on the other side have been especially profound, both during the framing of the threat and subsequently for the framing of who was responsible for knowing what was going on and how past failures are to be explained. Some important questions have emerged from the impossibility of resolving the crisis through a sovereign decision concentrated on one authority. One concerns how we are to cope with uncertainty, potential violence and a politics of prevention. Another concerns who has the capacity, and authority, to assess the truth and its verification process (Walker, 2006a & b; Bigo, 2006b).

The different work packages have tried to answer to these questions either by choosing to look at the local and national levels, for specific countries, or by trying to conceptualise the relations at the transnational level. Special attention had been given to the new member states joining the EU and to the Southern borders of the EU, in order to connect the local, national and regional levels – see part C (Fernandez and Ortuño 2006; Balzacq and Carrera 2005; Palidda 2007; Tóth 2006; Pap 2005; Szikinger 2005; Tchorbadjiyska, 2006; Weinar, 2006; Bonelli, 2005; Saari, 2006; Vlcek, 2006; Smith, 2006). The production of laws on antiterrorism and how they affect the rights of individuals, especially those suspected of 'terrorism', have been studied in detail. Analyses have also been made of the transformation of the criminal justice system and of free movement of persons in the framing of 'enemy' and 'invasion', and of the social and legal mechanisms that have contributed to these changes.

Such analyses suggest very serious problems for social cohesion. The individual who used to be seen as 'included' is now likely to be treated and qualified as 'the enemy' (Guild and Minderhoud, 2006). The case of Spain has here served as a good empirical example for the analysis of 'terrorist legislation', and the evolution and practices of penal agencies (Bergalli and Rivera, 2005, 2006a & b). In fact, in Spain a number of the Criminal Code reforms, procedural rules, police and prison regulations have been modified by the antiterrorism philosophy. We have seen how new indictable offences, penalties worsening, more police power and penitentiary restrictions have been introduced after 11<sup>th</sup> September 2001, and even more so after 11<sup>th</sup> March 2004. In the same vein, criminal justice agencies have played a major role in more severe violations of human rights than before.

Beyond such national examples, one of the key innovations of CHALLENGE has been to address questions about the role of the professionals of security management at the transnational level. It has suggested a different way of looking at the contemporary situation in this respect. The struggles and alliances between professions inside the field of the professionals of security management may have become more relevant for explaining some policies than the traditional approaches predicated on the national interests of the states or oversimplified conceptions of a homogeneous process of globalisation. Inside this transnational field of (in)security professionals, some continue to insist on traditional solutions and rely on local knowledge and a national security agenda in order to cope with danger. Here attention is focussed especially on border controls and sovereignty. Terrorism is then framed either as a defence and foreign affairs problem, especially when it is clear that specific groups have acquaintances with other governments or war-lord leaders outside the country, or a police problem, when it is an insider group. Another very different discourse on security insists on the novelty of the threat after 9/11, and pleads for a transnational coordination against danger through the exchange of data

concerning potential suspects. This crucial difference between two forms of security discourse becomes invisible once debate is reduced to a supposed balance between security and freedom, or when definitions of security are essentialised (as a common good, or as a right of citizen).

These struggles around the notion of security and the order of priorities in the management of threats have generated a field of professionals of security that is transversal to that associated with nation states. Discussions about the management of frontiers have been central to the consequent polarisation of conceptions of the best practices of control (territory or persons, public or private management, collective or individual security, human agents or technological equipment) and to the determination of what is now at stake under the terminology of security, which has come to refer mainly to practices of surveillance. The old game of national security and sovereign states and its constraints is still powerful, and acts against practices of collaboration between the authorities exchanging data. National interests and traditional military thinking have difficulties in coping with the logic of policing beyond borders, where all the coercive actors act against the same enemy, especially when this one is 'unknown'. They are dubious about the discourse about the imperative need for collaboration, and even more about the technological trends that the surveillance industry is promoting. For them the only clear knowledge is coming from human and local sources, and specific enquiries, not from data-mining and massive exchange of personal data. However, the trend privileged by the professional of politics has been mainly the opposite. Different governments, independently of their positions concerning Iraq, have put a lot of resources into a technological solution mixing private and public initiatives, and a vision of prevention, coupled with a surveillance of flow of persons, profiled in advance.

The existence of a field of professionals of (in)security at the transnational level, merging internal and external security preoccupations, as well as private and public references of management, has led to the creation and development of instruments of exchange of information and knowledge. These exchanges of information concerning personal data have been set up not only inside the European Union, and between liberal regimes (EU, US, Australia, Canada, etc) but also between any state that has information on terrorist activities. The French and Belgian teams have worked together in order to specify these elements at the EU level. They have begun a mapping of the relations between Europol, Eurojust, Eurodac, and Frontex to better understand how this network of European institutions is exchanging or not exchanging information, and of what kind. But the relation with the US and other third parties cannot be ignored as it is a central component of a broader pattern.

The CHALLENGE project has addressed in detail the issues related to the Passenger Name Records (PNR) Agreement passed between the EU and the US on the processing and transfer of personal data by air carriers to the US (Guild and Brouwer, 2006). On 30 May 2006 the European Court of Justice (ECJ) declared that this agreement was unlawful. At the heart of concerns about the data within the structure of EU-US relations is the justified worry about the capacity of the EU to protect its citizens' and residents' rights. The PNR-case manifested a clear deterioration of existing high level of personal data protection in certain member states. The lack of clear and accessible EU remedies for passengers against the transmission and use of their personal information is difficult to reconcile with the generally accepted principle that everyone whose rights under EU law have been violated should have an effective remedy.<sup>1</sup> The legal constraints of the EU, tied up with a European understanding of human rights as encompassing the right of the individual to control of his/her data, lead inexorably to conflict with the US authorities, which consider data as the property of the individual or authority which

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<sup>1</sup> A principle that has been repeatedly confirmed in the judgments of the ECJ and inserted in Article 47 of the EU Charter on Fundamental Rights.

collects them. Data have acquired a political life of their own, one that has opened new fissures in EU-US relations.

One of the key questions here concerns the boundaries of the field created by the technical devices permitting intelligence-led surveillance at the transatlantic level. Does such a field now exist? Is it useful? Is it dangerous for democracy? How should we cope with the search for ever more information, and with the existing boundaries between systems of information, not only between the EU, the US and Australia, but also between non-democratic and democratic regimes? Collaboration with states that have the information, which are often non-democratic, and the emerging logic of a stock-exchange of information at this level has become particularly worrying for NGOs interested in the violation of human rights. They are especially worried to the extent that antiterrorist policies promoted by liberal regimes may have a direct effect on the violation of human rights inside these countries, and may even create the conditions for democracies to turn a blind eye in order to continue to have access to information necessary for their own struggle. Moreover, this form of collaboration with dictatorial regimes poses questions regarding the reliability of their 'information' and the risks of accepting such information and its categorisations too easily.

Thus our research on the way suspicions have been articulated and the consequential development of specific technologies of intelligence-led surveillance, as well as on the impact of such technologies for established norms of freedom, suggests a significant recourse to specific illiberal practices. What is not yet clear is whether these specific illiberal practices are part of a broader restructuring of practices of (in)security at the transnational level. Many commentators have noted a tendency to work towards more porous accounts of what we mean by liberal democracy. Others have raised the possibility that we are entering an international, transnational, global or imperial order characterised by a permanent and general exception. Our research recognises the significance of this broader picture for the interpretation of specific practices of illiberalism, as well as the potentially momentous implications some versions of this broader picture have for established principles of freedom, the rule of law, and so on.

The technical forms taken by intelligence (as 'dataveillance'), through software profiling, data mining, large scale primary targets, and intrusive forms of invasion of privacy do not seem to be more efficient than the human forms of intelligence investigations. An accurate human investigation is possible, using detective methods and respect for the basic rule of law. The infringement of the rule of law in the name of technology and rhetorically resonant but weakly substantiated beliefs will produce predictions about the future actions of small groups that are not only largely inaccurate but counterproductive on the long run. This will be the case even if it seems useful to invoke derogation and exception at the beginning; such measures will be used by targeted groups to win sympathy to their cause and to attack the legitimacy of the governments tolerating such measures. The idea put forward by many professionals of security at the transnational level that we need to reduce what is first and foremost a political choice to use these technologies to an ethical choice within a specific use of technology is in itself an ethical problem. It masks the responsibility for decisions concerning exception and derogation and creates a temporal disjuncture between these actions and constitutional, parliamentary and popular controls. Even if these controls are not disappearing, some governments and people with responsibility in the surveillance industry have managed to take advantage the lag between decision and accountability, hoping that the moment at which knowledge of their illiberal practices becomes public can be delayed and that amnesia will soon take effect. The idea of speeding up processes of accountability must be discussed more openly (ELISE, 2006). The limits of data sharing must also become clearer: it is not the same thing to share data inside the EU, between democracies, or with every state that has interesting data about small groups using clandestine violence. Judgements about regimes cannot be erased for the sake of greater efficiency in the global war on terror. The key problem is not usefully identified by lazy and

propagandistic metaphor of a balance security and freedom. It is a matter of assessing who is responsible for the derogation of law in case of emergency and large scale danger as well as for identifying the procedures deemed to be appropriate, under which precise conditions and under what sort of control. Once these questions about political authority are posed more effectively and without mystifying rhetoric, our capacities for informed judgements about matters of great seriousness will become much clearer.

## C. The European Arena: The Effects of Suspicion and Exception on Liberty and Security

### C.1. An 'Area of Freedom, Security and Justice'?

Based on the foundations provided by the Amsterdam Treaty, the Tampere European Council of October 1999 gave political direction for the gradual development of an 'Area of Freedom, Security and Justice' (AFSJ).<sup>2</sup> 'The Tampere Programme' identified the creation of an AFSJ as a fundamental priority for the future of the European Union (EU), and set out the objectives for its first five years ending in 2004. 'The Hague Programme' agreed by the Council on November 2004 adopted a new five year policy agenda in these areas.<sup>3</sup> CHALLENGE has provided a reflexive examination of the main achievements of the AFSJ and its future ambitions. It has discussed the level of policy convergence<sup>4</sup> reached in these dimensions of 'Freedom, Security and Justice' (Balzacq and Carrera, 2005 & 2006). In general terms, the expected level of harmonisation, or Europeanisation, in some fields has not been successfully reached. Furthermore, an in-depth examination of the provisions included in the EU's legislative instruments reveals surprisingly low minimum standards which may endanger international and European human rights commitments. They also offer wide discretion for member states to apply national law and substantial exceptions to the common rules which both permit wide practical divergence and dispersion in the national arena.

A major weakness of the Hague Programme is the way in which 'freedom' and 'security' are presented as antithetical values requiring a balanced approach. This 'balance metaphor' mainly consists of the need to find the right equilibrium between freedom and security in the EU. In fact, its predecessor, the Tampere Programme, rejected this understanding of the relationship between freedom and security by advocating a "*shared commitment to freedom based on human rights, democratic institutions and the rule of law*" as the starting paradigm (CHALLENGE Response to the Hague Programme, 2004). Securing the rule of law needs to reside at the heart of the European integration project. The Hague Programme appears to marginalise the protection of fundamental rights and freedoms (liberty), the principle of equality and of democratic accountability and judicial control. The overall priority which guides the programme remains clear: strengthening security understood as coercion (Bigo, 2006c). The direct result is that the EU policy and regulatory framework do not offer the necessary mechanisms and venues for the creation of an AFSJ based on the liberty and equality of all.

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<sup>2</sup> Presidency Conclusions of the Tampere European Council, 15-16 October 1999, SN 200/99, Brussels.

<sup>3</sup> European Council, The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, 2005/C53/01, OJ C53/1, 3.3.2005.

<sup>4</sup> By policy convergence we mean not only the degree of harmonisation or level of 'Europeanisation' based on the number of legal instruments that have been adopted at the EU level, but also to the discretion left to member states in the application of a wide range of provisions incorporated in the EU laws examined.



This analysis is coupled with a scrutiny and mapping the different agencies and professionals in charge of security. CHALLENGE has addressed the antiterrorist activities carried out by police organisations, intelligence services, and military personnel in a selection of national arenas (France, Spain and UK) as well as at the EU level. Further, it is investigating the relationships and the porous boundaries between the professionals of security, the professionals of politics and of the media. The relations between the public bureaucracies and the private security industry working on the exchange of information through data bases and developing new technologies such as ‘biometrics identifiers’ are also subject to study. This empirical research indicates how the European field of professionals of security<sup>5</sup> links different services of law enforcement authorities, customs, intelligence and secret services in such a way that the professional solidarity between these services is giving birth to a general common sense about what is and what is not ‘security’ (Bigo, 2006a).

### **Policy Recommendation:**

The EU is rooted in the principle of freedom. Security is only a tool in support of freedom which must be applied through the rule of law and subject to human rights obligations. This conceptualisation of the changing relationship between freedom and security must inform any policy and law being presented and adopted in the areas covering the dimensions of ‘Freedom, Security and Justice’.

### ***C.2. The External Security Dimension: A Common Foreign and Security Policy and the European Neighbourhood Policy***

The European Security Strategy (ESS)<sup>6</sup> adopted in December 2003 by the EU heads of state and government affirmed that the post-Cold War environment is increasingly one of open borders and that the EU should progressively become more ready to share responsibility for ‘global security’. The ESS identified a number of global challenges and ‘key threats’ that the EU seems to be presently facing: ‘terrorism’ and organised crime, the proliferation of weapons of mass destruction and regional conflicts. CHALLENGE is addressing the emerging interface between internal and external security in Europe, and the implications of this changing relationship to liberty and equality.

Linking the discussion on ‘Exceptionalism’ with ‘(in)securitisation’ processes in our societies requires a sociological analysis of what is security today both ‘internally’ and ‘externally’. The relationship between freedom and (in)security must be analysed by looking at the various social practices of the different agents and the dynamic of transformation of their relations. For instance, through the involvement of the military in international police-operations in the ‘European Neighbourhood’, the relationship between state-violence and the law is also being deeply redefined (Guittet, 2006b; Guild, 2006a; Dieben and Dieben, 2005). The use of policing terminology in EU external military intervention in Afghanistan brings a language of legal legitimacy associated with peace to a situation of international conflict (Olsson, 2006). One of the main conclusions has been that the non-Clausewitzian character of 21<sup>st</sup> century armed conflict has paradoxically led to an interest in the political scripts and narratives of the potential

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<sup>5</sup> “Professionals of Security” are defined according to their capacity to produce statements on fear and unease and present solutions to facilitate the management of unease and the feeling to be protected or not, to live or not in a secure world. It structures a social space linking all the institutions regulating the life of the population in the name of protection and the institutions which can use legitimately the threat to kill and the power to control survival.

<sup>6</sup> A Secure Europe in a Better World, European Security Strategy, Brussels, 12 December 2003.

enemy,<sup>7</sup> while simultaneously de-politicising the relation to any form of military resistance. This paradox is all the more important to highlight as the importance of the relation between intervening forces and local populations has been emphasised by the shift from ‘wars between states’ to ‘wars inside states’. It also highlights the importance of politicisation/de-politicisation processes in wars in which the confrontation between external forces and local societies has been complexified by the network-centric dimension of military interventions.

In the same vein, the project has assessed the legal engagements which have been taken in the context of EU external security action by looking at the nature of the citizen, the foreigner and the state from the angle of security in the form of the monopoly of violence. Traditionally, the exercise of violence outside the state has not been subject to the same limitations as violence within the state. Those exercising violence outside – i.e. military personnel – are not constrained by the same rigorous civil liberties obligations. Rather the conduct of violence is regulated by the treaties on the conduct of war. Two trends are now challenging this traditional perception: First, EU military involvement is in the area of peace keeping, building and maintenance. In effect this has come to mean a form of ‘policing abroad’. The institutional discussions about the correct personnel to use for these purposes have given rise to some discussion in military circles in the EU. In particular, a new role for police with military status seems to be developing. The second trend is in respect of the obligations on military personnel in action abroad. The European Court of Human Rights has been required to consider whether breaches of human rights contained in the ECHR by European military abroad constitute violations of the European state’s duties under the convention. These decisions on this issue exemplify the centrality of supranational law as mechanism of governance and of determining entitlement to exercise violence anywhere. This centrality changes substantially the meaning of sovereignty.

The EU’s increasing responsibility for peace-keeping missions throughout the world has also raised a number of open questions, such as to what extent the development of EU military power will compete with or complement the actions of other international organisations such as NATO. On the other hand, it is not determined whether the emergence of the military dimension will strengthen or not the EU’s ‘soft power’. CHALLENGE has assessed the extent to which potential EU military intervention shapes the international system. The interactions between EU and NATO have been analysed through the cases of civil crisis management and ‘the fight against terrorism’. In the light of this, it has been argued that ‘enlightened Atlanticism’, which would reconcile the interests of the EU together with those of its major allies, allows for a mutually beneficial political, military and institutional system of continuing relations between both structures (Barbé, 2005).

The ESS identified as a strategic objective the need to build security in the neighbourhood. In May 2004 the EU acquired not just ten new member states but also several new ‘neighbours’. At about the same time, it began to flesh out a European Neighbourhood Policy (ENP), to bring some order to the EU’s relations with its old and new neighbours and to ensure that the newly enlarged Union would be surrounded by a ‘ring of friends’. While the ENP does not resolve the basic dilemma of how large the EU should become, it does provide additional tools in its hands for the relations with the neighbours. In fact, it requires much of the neighbours, and seems to offer only vague incentives in return. The hovering ghost of enlargement will not vanish if the commitment to extent to the neighbours all the freedoms of the internal market but without institutional participation. The member states will need to be more serious about setting clear benchmarks and offering concrete incentives if the ENP is to meet its core objectives (Smith, 2006).

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<sup>7</sup> Clausewitz C. v., *On War*, Princeton University Press, 1976.

Further, the EU neighbourhood is quite a variegated place (Guild, 2005b). For instance, when one examines the provisions on movement of persons one has the impression that the neighbours are extremely different even when they border one another. In addition, its instruments related to ‘mobility’ may be considered of repressive nature. Looking at the example of ‘irregular migration’, the emphasis seems to be centred on placing obligations on the neighbours to act as the buffer between the EU and other third countries. The staples of the ENPs in this area are mainly about the exchanges of information, monitoring irregular migration flows and readmission agreements. The consequences of this approach are likely to harm the neighbours’ relations with their respective ‘neighbourhood’ beyond the EU as they will be required to take coercive action against these nationals. Instead of reinforcing solidarity in the region such an approach is likely to create more dividing lines, tensions and instability.

### **Policy Recommendation**

The EU is also based on the principle of the rule of law which must apply both internally as well as externally in the context of the Common Foreign and Security Policy (CFSP) and the European Neighbourhood Policy (ENP) (Kienzle, 2006; Sabote, 2006). The human rights of the persons affected by EU’s activities must represent the framework within which all these policies and actions are developed. Within EU law the protection of human rights involves not only the assessment by the authorities carrying out police objectives, but also the individual’s rights to seek a judicial remedy in respect of a human right violation.

In the area of peacekeeping missions the added value of EU’s engagement is the commitment of the rule of law and human rights which must not be undermined by any arguments linked with ‘Exceptionalism’.

### **C.3. New Frontiers: EU Border Law and Institutional Mechanisms**

CHALLENGE is addressing the shifts in governance that have occurred with respect to the competence over external borders control in the light of the protection of internal and external security. It is doing so with particular regard to their consequences in terms of accountability and the position of individual citizens towards competent public authorities. Two particular issues stand out which result from the various shifts between competent levels of government: on the one hand, the possibilities of political accountability, control and legitimacy through representative assemblies and other alternative forms, and on the other hand, the position of individual citizens, particularly consequences for legal protection of individual citizens.

The current phase of the ‘EU model of border control’ has recently experienced a series of major substantial and institutional developments: The entry into force of the Schengen Borders Code,<sup>8</sup> the transformation of the common visa list and the institutional outputs of the EU common borders strategy. In particular, the project is assessing the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU (FRONTEX) and its relationship with the EU borders law as codified in the Schengen Borders Code.<sup>9</sup> The research is addressing the overall coherence between the borders law and the FRONTEX Agency. The impacts of this relationship in terms of legality, legitimacy,

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<sup>8</sup> Regulation (EC) No 562/2006 *establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)*, 15 March 2006, OJ L 105/1, 13.4.2006.

<sup>9</sup> Council Regulation of 26 October 2004 “*establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*”, Brussels, OJ L 349, 25.11.2004.

democratic and judicial accountability, as well as for the status of the individual are therefore at the heart of the analysis.

The communitarisation of part of the Schengen *acquis* into the EU legal framework has involved a series of processes of securitisation around the individual and his/her liberties. The Schengen common borders regime and the dismantling of internal borders control inside Europe led to many fears about a potential increase of ‘insecurity’ referring to concerns around issues related to ‘irregular immigration’, ‘transnational organised crime’ and ‘terrorism’. The lifting of the internal border controls has therefore implied both a reinvigoration of the territorial control over the common external border, and a reconfiguration of the deterritorialised control around the individual and the free movement of persons. These processes of control have positioned ‘liberty’ more at risk at the expense of the security guarantees and the ‘compensatory security measures’ deemed as necessary in order to ensure the exercise of the ‘freedom to move’ inside ‘Schengenland’ (Bigo & Guild, 2005).

In fact, the development of technology of surveillance and control, as explained in Section B of this report, has direct implications for the legal protection and status of the individual. The way in which the individual is traced by the state and other supranational authorities, for instance the transformation of population registers and the so-called ‘Schengen Information System’ (SIS) is new. A central question has also been whether the rights and civil liberties of third country nationals seeking to cross Europe’s external borders are in an appropriate way balanced against the legitimate need of governments to control their external borders and to protect the internal security. The availability of legal remedies and the scope of judicial review for third country nationals who are entered on the basis of Article 96 of the Convention Implementing the Schengen Agreement of 1990 into the SIS urgently needs reinforcement (Brouwer, 2006).<sup>10</sup>

### **Policy Recommendation**

EU borders law and its institutional mechanisms must be tight together in a firm legal framework where bodies of the Union such as FRONTEX ensures the compliance of the former in practice, and ensures that the individual has access to the right of appeal in case of refusal of entry in the territory of a Member State. The actions being carried out by FRONTEX need to be subject to democratic and judicial accountability.

### **C.4. Enlargement and Frontiers: The Eastern and Southern European Borders**

The medium and long-term impact of enlargement processes on issues of external and internal security with regional contacts, especially in the context of partial accession of States in the EU, is central to understanding the changing relationship of liberty and security in the Europe. CHALLENGE is assessing the experiences by some of the 2004 Member States in the processes

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<sup>10</sup> Art. 96.2 of the Convention says that “2. *Decisions may be based on a threat to public policy or public security or to national security which the presence of an alien in national territory may pose. This situation may arise in particular in the case of: (a) an alien who has been convicted of an offence carrying a penalty involving deprivation of liberty of at least one year; (b) an alien in respect of whom there are serious grounds for believing that he has committed serious criminal offences, including those referred to in Article 71, or in respect of whom there is clear evidence of an intention to commit such offences in the territory of a Contracting Party.* 3. *Decisions may also be based on the fact that the alien has been subject to measures involving deportation, refusal of entry or removal which have not been rescinded or suspended, including or accompanied by a prohibition on entry or, where applicable, a prohibition on residence, based on a failure to comply with national regulations on the entry or residence of aliens*”.

of Europeanisation (Tóth, 2006; Weinar, 2006) and how enlargement is (or is not) increasing the safety and stability in a 'Wider Europe' amongst its members (old and new) and in its 'circle of friends'.

The 'Schengen' project has high significance for the EU as a whole specially since 1<sup>st</sup> May 1999 when the *acquis* was incorporated into the EU. It is exerting crucial effects over the relations of the different parties involved, separating, filtering and linking current Member States with pre-accession and candidate countries. When looking at the processes of enlargement and its impact in the East and the North, we perceive a dynamic consisting of a shared rejection of the transformation of 'foreigner'/'neighbour' into a 'foe'/'enemy'. There have been a series of political considerations and policy initiatives intending to prevent the reframing and tightening of the movement of persons in relation to the Member States of Eastern and Central Europe. A number of mechanisms fostering dynamism and liberty in the common area of mobility have been introduced at the national and EU level. The direct consequences of this alternative approach towards enlargement can be seen, for instance, in the European Commission's proposal for regulation on border traffic at the external land borders<sup>11</sup> which aims at blurring the rigid border control of the Schengen *acquis*, and to normalise and liberalise the free movement of people from the neighbourhood at the East and the North (Balzacq and Carrera, 2005; Tchorbadjiyska, 2005).

If we take into consideration the national experiences of some of the new member states in their processes of alignment with the Schengen *acquis*, the EU mandatory visa policy could have caused the most significant problems in Hungary, because of the large number of ethnic Hungarians nationals of states on the EU visa black list living in the cross-border regions of 'the neighbourhood'. Notwithstanding, penetrability and mobility in general have been safeguarded by a national flexible Hungarian visa regime coupled with the EU regulations on 'local border traffic' (Baranyi, 2006). Similarly, in Poland the visa policy has been adopted to keep up the volume of border crossings and the mutual contacts on the both side of the territorial border (Weinar, 2006). As a result, there has been no decisive increase in the immigration flows to Poland through other legal or irregular channels. Previous research indicates that a harsh border policy can boost the numbers of undocumented migrants and undocumented workers in the country, therefore it seems that Polish policy makers may have chosen the right path. Of course, the real long-term consequences of the full implementation of the Schengen *acquis* remains unclear as the situation could still change drastically (Tchorbadjiyska, 2005).

In contrast with the strategies and policies implemented at the Eastern European common borders, controls at the Southern European border are having cataclysmic results as regards movement of persons and the respect for human rights. Two different dynamics can be distinguished around the treatment of 'the foreigner' in Europe which are fundamentally antithetical to one another: one aims at not creating 'new lines', alleviating the effects of the EU common external border and increasing the stability and safety (processes of inclusion toward the Eastern and Northern neighbours), while the other promotes the idea of 'Fortress Europe', instability, friction and puts at risk the rights of the individual (the Southern and Euro-Mediterranean dimension).

In the context of the changes in 'the fight against illegal immigration' in the Euro-Mediterranean area and in Euro-Mediterranean relations, the cases of Italy and Spain deserve particular attention (Palidda, 2007; Conflitti globali, 2007; Bergalli, 2005). Our research has found that neither restrictive immigration policies nor tightened and delocalised border controls

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<sup>11</sup> Proposal for a Regulation, laying down rules on local border traffic at the external land borders of the Member States and amending the Schengen Convention and the Common Consular Instructions, COM(2005) 56 final, Brussels, 23.2.2005.

result in a reduction of the phenomenon labelled as ‘illegal migration flows’, in the dismantling of organised crime in the field of trafficking and smuggling of immigrants, or in a decrease of casualties involving irregular immigrants on their way to Europe. On the contrary, migration movements do not decrease, they may change routes, which become longer, more difficult and dangerous, thus increasing both the turnover of criminal organisations and the death risks for migrants. Therefore the actual result of the delocalisation of European southern border controls to North Africa seems to be the delocalisation of the above mentioned ‘side-effects’ of restrictive immigration policies which could have a long-term impact on the political conscience of European civil society.

While Euro-African cooperation increases and migration controls in North Africa are tightened, a further state restriction step consist of the pressure to push asylum determination across the Mediterranean through the setting up of EU approved procedures to be carried out outside EU borders, whereby temporal and spatial limitations on protection granted undermine the very concept of protection itself. Additionally, the EU is urging North African countries to enhance their own asylum systems, which in itself is most laudable. The problem arises when the improvement in the asylum procedures of neighbouring countries is used, within the EU as an excuse for refusing protection responsibility to persons who are travelling through these countries. Asylum in the EU territory becomes de facto impossible. The Euro-Mediterranean Partnership instead of leading to a Euro-Mediterranean free-trade area which broadens the EU internal market become for immigrants and refugees the moat of the ‘Fortress Europe’.

The development of a common immigration policy has been constantly referred to at official level as a priority for the Union’s future. However, Member States continue to share competences over immigration and the Europeanisation process in these areas is still in its infancy. Most importantly, a common approach to immigration for the purposes of employment activities (labour immigration), and its multidimensional implications, is still lacking (Carrera, 2007). CHALLENGE has focused on how undermining the working conditions for a small group of the national labour force – those qualified as ‘irregular immigrants’ – places this particular category of people under an unacceptable status of vulnerability in relation to the employer, the citizen and the State (Lock, 2006). The need to build in common measures to reduce the risk of abuse has been also acknowledged by the Commission Communication on Policy Priorities in the fight against illegal immigration of third country nationals 2006/402.<sup>12</sup> Our research will continue looking at alternatives to the current EU system in the field of employment and immigration which too often results in the theft of labour and exploitation of the individual.

In the same context, in the EU the Member States retain competence to define their social security systems. The Member States use this power to make social security an instrument of immigration policy. Unwanted immigrants are excluded from branches of social security and social assistance benefits (Minderhoud, 2007). The last few years there has been some improvement in the social security protection of immigrants in EU legislation. If EU legislation fails to provide sufficient protection, European human rights laws may provide the instruments to combat the refusal of social security rights, which is based on discrimination by nationality.

### **Policy Recommendation**

The justification for the differential treatment between the North/Eastern and the South European Borders as regards the movement of persons should be re-examined and re-conceptualised. The non-facilitation of entry and the qualification of those willing to do so from

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<sup>12</sup> Commission Communication on Policy Priorities in the Fight against Illegal Immigration of Third-Country Nationals, COM(2006) 402 final, Brussels, 19.7.2006.

the South as illegal is counterproductive with the very fundamentals of avoiding a Fortress Europe and fostering the freedom, security and justice for all. The EU needs to develop common immigration rules which liberalise the admission of immigrants for employment and self-employment purposes. Regulatory mechanisms to liberalise the movement of persons from the Southern border are urgently needed in order to diminish the phenomenon of irregular immigration.

Social security systems should be designed with great care in order to ensure the inclusion of immigrants who are already participating in the receiving society irrespective of holding the status of irregulars or regulars according to law.

### ***C.5. Immigrants and Islam: The Fear of the Enemy Within***

Migratory waves result in multicultural societies which challenge some traditional ideas about identity. The illusion of living in a homogeneous society disappears leaving awareness that difference is an inevitable (whether or not desirable) characteristic (Fernández Bessa and Ortuño, 2006). In this regard, CHALLENGE has reviewed integration programmes and legislation for immigrants in a selected group of EU member states (Carrera, 2006a & b). The main trends and similarities are assessed and compared. In the national arena there appears to be a distinct move 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 a secure legal status. However, the link made between the social inclusion of immigrants and the juridical framework on immigration and integration may at times conflict with human rights considerations, and endanger the interculturalism and diversity that are inherent to the nature of the EU as recognised in Art. 151.1 EC Treaty.<sup>13</sup> The increasing establishment of a juridical framework on integration may have counterproductive effects by preventing the social inclusion of the immigrant (Besselink, 2006a & b). Some EU states may need to adjusting their conceptualisation of identities from one that emphasises a mythical national homogeneity to another one that is heterogeneous, diverse and intercultural.

At the same time, CHALLENGE is analysing ‘the exceptionalism’ of Islam and Muslims in European political discourse and policy-making at both the national and European Union levels, and identifying changes in the orientations and content of policies after the 11<sup>th</sup> September 2001. The consequences of these changes on the processes of Muslim integration into European societies in terms of social situation, citizenship, political participation and religious recognition is central to social cohesion. A comparative analysis has been completed on anti-terrorism laws and their consequences on the protection of religious freedom and immigration and nationality laws in France, the UK, Germany, Italy and Spain (Cesari, 2006b). The term ‘islamophobia’ encapsulates a modern and secular anti-Islamic discourse which intensifies after 9/11. The term has been used increasingly in political circles and the media, and even Muslim organisations. However, academics are still debating the legitimacy of the term and questioning how it differs from other terms such as racism, anti-Islamism, anti-Muslimness, and anti-Semitism. The term of ‘islamophobia’ does serve ideological purposes in Europe, especially the interests of some political parties and Muslim activists.

Moreover, Muslim integration in Europe is occurring under the international constraint of the fight against ‘Islamist terrorism’. Over the last several years as states have responded to the threat of terrorism, most have strengthened their security and anti-terrorism laws while placing

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<sup>13</sup> Art. 151.1 EC Treaty provides that “The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore”.

further restrictions on immigration. It often appears as if immigration, and internal and external security policies are conflated. Since 11<sup>th</sup> September 2001, in EU Member States more than 20 times the number of terrorist suspects have been arrested than in the United States (Cesari, 2007). This gives rise to a perception of threat which categorises domestic Muslims as ‘foreign enemies’, which in turn is used to justify lower level of legal and social rights. Finally, the research has shown that aside from anti-Muslim sentiment, the primary factors driving discrimination in Europe are the policies towards ethnic minorities in general, anti-terrorism policy and legal changes in the immigration and naturalisation frameworks. This discrimination can culminate in physical abuse but also entails political, media and intellectual discourse and obstacles to religious practices.

### **Policy Recommendations**

The traditional EU approach to integration as the right of the immigrant to equal treatment provides the only legitimate approach for the EU to adopt in this field. This was rightly emphasised in the Tampere Programme of 1999.

Social cohesion in the Member States depends on an understanding of integration as a right for the migrant to equality rather than the obligation to abandon her/his identity.

A mainstreaming European religion must be avoided at all costs. The EU must always guarantee the respect of Art. 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; the freedom of thought, conscience and religion.

The scapegoating of a religious community on dubious security grounds can only lead to political and social exclusion, to the fracturing of social cohesion and to social conflict.

### ***C.6. European Governance and its Relation to the World Context***

CHALLENGE is addressing the institutional and normative patterns of European Governance (Scandamis, 2006 & 2007). The duality of European Governance refers, on the one hand, to the institutional patterns of a meta-national system of governance (institutional aspect) and, on the other, to the set of liberal principles in the internal market and the area of freedom, security and justice (substantial aspect): in other words, the ‘normative Code’ of liberalism as laid down in the founding Treaties with a view to operating at a transnational level. Such duality functions by means of a series of interactions between the set elements of the EU constitutional scheme and the grown elements relating to the emergence of a self-regulating European market (‘the set and grown binary’).

Security as a practical rationality is inherent in the production of all rights; liberty and security denotes a coupling with unavoidable interplay. Pluralism of values being the essence of liberalism, ‘rival freedoms’, thus, refer both to the formulation of any right as a bundle of potentially competing interests and values and to the conflicts between different rights. Pluralism generates rivalry not only in terms of rights but also, most critically, in terms of security of rights.

The crucial question which arises in this respect is about criteria for assessing and, if possible, resolving such conflicts in the context of European Governance, especially EU networks of control. Traditional debates about Pluralism or Rules-Consequentialism are revived under a different light in the framework of European Governance. Thus, an urgent need arises for devising tools for resolving conflicts between values, principles and interests underlying the rivalry of rights when actually exercised -for instance, the relationship between security and privacy in the context of the free movement of personal data-, given the very large scale at which liberties are exercised in the European context.



Our research aims at investigating whether there can be traced, on the basis of the founding Treaties and/or the envisaged EU Constitutional Treaty<sup>14</sup>, any structural preferences which underlie European Governance, such as the fundamental freedoms of movement and/or certain rational justification procedures for the resolution of conflicts which may be reasonably applied by the judiciary, EU networks or other law-enforcement agencies.

This has been linked with an investigation of liberal constitutionalism within the meaning of EU law and the construction of a common identity in the EU. In this regard, considering first the source of civil liberties and human rights – from revolutions to international conferences – the subject of rights moved from the citizen to the human being. In the Constitutional Treaty, both sources of rights are to be found deriving from the constitutional traditions of the Member States and the ECHR. As regards the protection provided, the Constitutional Treaty appeared to have followed more closely the approach of international treaties than national constitutional settlements. The individual who is protected is, as regards the large majority of rights, the human being rather than ‘the citizen’.

Furthermore, the project has offered a discussion about the implications that the Constitutional Treaty would have brought in the field of internal and external security. In this regard, the Constitutional Treaty would have positively revisited the foundations and prospects of the EU’s AFSJ and proposed a far-reaching reallocation of competencies in the area of security. First, most of the complex institutional and legal frictions that currently characterise cooperation in these sensitive policies would have been substantially solved. Secondly, it would have provided a uniform juridical framework facilitating efficiency and legal certainty, and overcoming the current democratic and judicial deficit that characterises policies dealing with ‘Freedom, Security and Justice’. Thirdly, by collapsing the current pillar structure, the Constitutional Treaty would abolish the EU Third Pillar, which is the intergovernmental dimension from which the most far-reaching policies dealing with ‘security’ emerge. Finally, the Constitution, and particularly the Charter of Fundamental Rights of the European Union inserted as its Part II, would guarantee the accountability of the legal measures adopted and their full compliance with the rule of law and fundamental rights. On the other hand, we have seen how the ratification crisis of the Constitutional Treaty has created a new situation concerning the Common Foreign and Security Policy (CFSP), where it has become uncertain whether the legal base will be reformed (Tekin and Diedrichs, 2006). In this regard, it becomes clear that the Constitutional Treaty has been useful and damaging at the same time: useful as it prescribed an institutional macro-structure of CFSP for the next decade and included some clarifying provisions on the relationship between CFSP and ESDP, but also damaging, as it narrowed the debate on the fundamentals of CFSP and overlooked the institutional potential and options that exist even without the Constitutional Treaty.

As regards the AFSJ, the research has raised concerns that in its current form it does not provide a sufficient level of ‘transparency’ (Lodge, 2006b). Progress in this respect requires constant and careful attention. Active citizenship and a constant effort at all governance levels to inform and explain their actions to the public are therefore needed. It is necessary to make sure that the legitimacy of the decisions taken will erode goals, intentions and measures communicated effectively and accountably to the public. This calls for an open political culture, transparent procedures and practices, a commitment to openness that is entrenched through institutional accountability.

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<sup>14</sup> *Treaty Establishing a Constitution for Europe*, as signed in Rome on 29 October 2004 and published in OJ C/310 on 16 December 2004. See Article I-3.2 (The Union’s Objectives) which stipulates that ‘The Union shall offer its citizens an area of freedom, security and justice without internal frontiers’.

The AFSJ currently straddles between the First and Third Pillars of the Union. The dismantling of the current pillar structure is a prerequisite for comprehensive, legitimate, efficient, transparent and democratic responses to the dilemmas posed by the Europeanisation processes in the fields of security and liberty (Carrera and Guild 2006). The AFSJ should be therefore be consolidated in the EC First Pillar. Following a similar line, the European Commission has already suggested in its Communication 2006/211 on *A Citizens' Agenda: Delivering Results for Europe*<sup>15</sup> that it will make a proposal under Article 42 of the Treaty on European Union (TEU) to this effect. A concrete policy recommendation was presented to the Finnish Presidency for adoption, which did not take place notwithstanding concerted political efforts by the Presidency.

These institutional discussions in the EU have been dogged by the tension between the Community method and intergovernmental methods of cooperation, and a societal (expressed as judicial) disquiet regarding the protection of constitutional rights in the field of security. One illustration of the first tension is well illustrated by the 'Treaty of Prüm', signed originally between seven Member States of the EU on May 2005.<sup>16</sup> This Treaty is a practice of resistance against the EU's AFSJ and the processes of Europeanisation. CHALLENGE research has shown that these sorts of practices fundamentally weaken the EU and undermine EU's initiatives such as 'the principle of availability'<sup>17</sup> by permitting national security agencies to retain the sovereignty over the information deemed necessary for security purposes (Balzacq, Bigo, Carrera and Guild 2006; Geyer and Guild 2006). An example of the second tension has been the use of the principle of mutual recognition in the field of judicial cooperation in criminal matters and one of its first fruits, i.e. The European Arrest Warrant (EAW). The failure to provide sufficiently clear rights for the individuals subject to an EAW has given rise to a series of judgements of the supreme courts of a number of Member States (in particular, Cyprus, Finland, Germany, Poland and Belgium) challenging the constitutionality of some part or parts of implementing legislation by which the EU Framework Decision on the EAW as transposed into national law (Guild 2006b).

### **Policy Recommendation**

The EU needs a solid constitutional framework which is coherent and based on the Community method. The current constitutional structure which is characterised by obscurity and the use of exceptions and deviations is not anymore valid in order to achieve the various integration projects that the EU is currently pursuing. Most important, any attempt to harmonise principles and conditions for deciding issues of conflicts of liberties (e.g. current proposal on the protection of personal data in the third pillar) should rely on workable conceptual tools and procedures adapted to the specific context of European Governance.

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<sup>15</sup> Commission Communication, *A Citizens' Agenda: Delivering Results for Europe*, COM(2006) 211, Brussels, 10.5.2006.

<sup>16</sup> 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 (Germany), 27 May 2005, Council Secretariat, 10900/05, (Brussels, 7 July 2005).

<sup>17</sup> European Commission, *Commission proposal for a Framework Decision on the exchange of information under the principle of availability*, COM (2005) 490, (Brussels, 12 October 2005).

## D. Set of Policy Recommendations

The research already done is suggestive of a broad range of implications for a number of policy areas:

1. The principle of freedom is central to everyone's aspirations for the future of Europe. Security is a tool in support of freedom which must be applied through the rule of law and consistent with European and international human rights obligations. This conceptualisation of the relationship between freedom and security must inform EU policy. The areas covering the dimensions of 'Freedom, Security and Justice' must seek to achieve the freedoms which are at the heart of the EU deploying security in aid of them.
2. Consequently, the rule of law is central to the future of Europe and must apply both internally as well as externally in the context of the Common Foreign and Security Policy (CFSP) and the European Neighbourhood Policy (ENP). The human rights of the persons affected by EU's activities must represent the framework within which all these policies and actions are developed. Within EU law the protection of human rights involves not only the assessment by the authorities carrying out police objectives, but also the individual's rights to seek a judicial remedy in respect of a human right violation.
3. Policy needs to be guided not only by sensitivity to immediate dangers but also by the historical experience within which claims about immediate dangers have justified dangerous forms of exceptionalism.
4. The integration of internal and external security discourses and practices in the name of a fight against global danger is destabilising the boundaries between the institutions of police, intelligence services, military forces, border and immigration services. This has long term implications for constitutional and democratic principles. It is important to hear the voices of the judges, lawyers and civil NGOs drawing attention to the risks involved here and to avoid the maximum-security solution to a potential worst case scenario. The core problem involves an always difficult relation between security and liberty, and it is entirely irresponsible to listen only to those concerned with security especially when security is itself framed in terms of worst-case scenarios that have profound implications for established accounts of the relationship between liberty and security.
5. It is important not to be driven by forms of suspicion generated by specific technologies linked with new private-public partnerships in military and policing intelligence spheres. Arguments for greater European rather than American control over security and surveillance industries must not become a justification for the erosion of ethical commitments or the development of practices on the margin of the law infringing fundamental rights of citizen and foreigners. The use of specific technologies and the need for collaboration must be proportionate with the scale of the actual danger, based on accumulated knowledge. It must not be usurped by worst case scenarios that have no limit other than the political imagination of experts who can presume to be acting beyond the limits of political responsibility.

### *Specific Policy Contexts*

6. The EU needs a solid constitutional framework which is coherent and based on the Community method. The current constitutional structure which is characterised by obscurity and the use of exceptions and deviations is not anymore valid in order to achieve the various integration projects that the EU is currently pursuing. Any attempt to harmonise principles and conditions for deciding issues of conflicts of liberties (e.g. current proposal on the

protection of personal data in the third pillar) should rely on workable conceptual tools and procedures adapted to the specific context of European Governance.

7. Social cohesion in the Member States depends on an understanding of integration as a right for the migrant to equality rather than the obligation to abandon her/his identity.
8. The traditional EU approach to integration as the right of the immigrant to equal treatment provides the only legitimate approach for the EU to adopt in this field. This was rightly emphasised in the Tampere Programme of 1999.
9. Social security systems should be designed with great care in order to ensure the inclusion of immigrants who are already participating in the receiving society irrespective of holding the status of irregulars or regulars according to the law.
10. EU borders law and its institutional mechanisms must be tied together in a firm legal framework where bodies of the Union such as FRONTEX ensures the compliance of the former in practice, and ensures that the individual has access to the right of appeal in case of refusal of entry in the territory of a Member State. The actions being carried out by FRONTEX need to be subject to democratic and judicial accountability.
11. The justification for the differential treatment between the North/Eastern and the South European Borders as regards the movement of persons should be re-examined and re-conceptualised. The non-facilitation of entry and the qualification of those willing to do so from the South as illegal is counterproductive to fostering freedom, security and justice for all. The EU needs to develop common immigration rules which liberalise the admission of immigrants for employment and self-employment purposes. Regulatory mechanisms to liberalise the movement of persons from the Southern border are urgently needed in order to diminish the phenomenon of irregular immigration.
12. In the area of peacekeeping missions the added value of EU's engagement is the commitment of the rule of law and human rights which must not be undermined by any arguments linked with 'exceptionalism'.
13. A mainstreaming European religion must be avoided at all costs. The EU must always guarantee the respect of Art. 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Freedom of thought, conscience and religion need to be duly protected and promoted at EU level.
14. The scapegoating of a religious community on dubious security grounds can only lead to political and social exclusion, to the fracturing of social cohesion and to social conflict

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## ANNEX 1: THE CHALLENGE CONSORTIUM

CHALLENGE, '*The Changing Landscape of European Liberty and Security*', is a research project analysing the illiberal practices of liberal regimes and challenging their justification on grounds of 'emergency' and necessity. It is reframing the security framework in Europe starting with liberty (civil liberties, human rights and social cohesion) as its point of departure.

The project is funded by Sixth Framework Research Programme of the Directorate General for Research of the European Commission for a period of five years. CHALLENGE has currently arrived at its mid-term phase of life, therefore this is a good moment for gathering and synthesising the main interim results of the research carried out two years and a half since its starting date on 1<sup>st</sup> June 2004.

The nature of the project is enriched by the coexistence of various disciplines across the social sciences which are here intertwined with a shared theoretical understanding of the issues at stake, and who focus on 'the state of exception' as illiberal practices of liberal regimes and the consequent tensions between security and liberty. CHALLENGE brings together an innovative network of 23 universities and research centres from 14 different countries across Europe. The consortium is composed of scholars who have already played a formative and pivotal role in reconceptualising and analysing many of the theoretical, political, sociological, legal and policy implications of new forms of violence and political identity.

CHALLENGE has already generated a broad array of research resources in the general areas of sociology, law, criminology, security, civil society, religion, citizenship and human rights. The rich diversity of interdisciplinary perspectives which are present in this project is progressively pushing these resources out of their more familiar settings in a way we judge to be appropriate for emerging policy challenges in the EU and international arenas. The project has already produced a prominent list of publications which include among others books, collective volumes, special issues in academic journals, academic articles, etc, and has additionally organised a wide range of related events and training activities (See Annexes 2 and 3). The website and the Observatory ([www.libertysecurity.org](http://www.libertysecurity.org)) have been successfully set up and are being constantly improved in order to facilitate an informed analysis of developing patterns of 'exceptionalism' in the European public sphere. Both tools are providing an increasing amount of policy relevant documents and consolidating a networked database from which more sustainable research can proceed into core public policy dilemmas based on intellectually rigorous scientific research of an applied nature.

1. Centre for European Policy Studies (CEPS)	Belgium	Sergio Carrera/ Elspeth Guild	Workpackage (WP) 5
2. Fondation Nationale des Sciences Politiques (FNSP)	France	Didier Bigo	WP2
3. King's College London	UK	Vivienne Jabri	WP1
4. University of Keele	UK	Rob Walker	WP1
5. University of Copenhagen	Denmark	Ole Waever	WP3
6. European Association for Research on Transformation, EART	Germany	Peter Lock	WP4
7. University of Leeds	UK	Juliet Lodge	WP6
8. University of Genoa	Italy	Alexandro dal Lago/Salvatore Palidda	WP8
9. Central University of Barcelona	Spain	Iñaki Ribera	WP9
10. University of Szeged	Hungary	Judit Tóth	WP7
11. Groupe de sociologie des religions et de la laïcité	France	Jocelyne Cesari	WP10
12. Université of Rouen	France	Michalis Lianos	WP11
13. University of Athens	Greece	Nicholas Scandamis	WP12
14. University of Utrecht	Netherlands	Leonard Besselink	WP13
15. University of Nijmegen	Netherlands	Elsbeth Guild	WP14
16. Stefan Batori Foundation	Poland	Jacub Boratynski	WP7
17. University of Malta	Malta	Henry Frendo	WP7
18. European Institute	Bulgaria	Angelina Tchorbadjjyska	WP7
19. London School of Economics	UK	Karen Smith	WP2
20. University of Cologne	Germany	Wolfgang Wessels	WP12
21. Autonomous University of Barcelona	Spain	Esther Barbé	WP5
22. Centre d'Etudes sur les Conflits	France	Anastasia Tsoukala	WP2
23. PRIO, International Peace Research Institute Oslo	Norway	Peter Burgess	WP3

## ANNEX 2: SELECTED LIST OF CHALLENGE PUBLICATIONS

- E. Guild (Ed) (2006), *Constitutional Challenges to the European Arrest Warrant*, Centre for Migration Law, Wolf Legal Publishers: Nijmegen.
- T. Balzacq and S. Carrera (eds) (2006), *Security versus Freedom? A Challenge for Europe's Future*, Ashgate: Hampshire.
- D. Bigo, L. Bonelli, E. Guittet, C. Olsson and A. Tsoukala (2006), *Illiberal Practices of Liberal Regimes: The (In)security Games*, Centre d'Études sur les Conflits, L'Harmattan: Paris.
- Cesari, J (2007), "The Hybrid and Globalized Islam of Western Europe", in Yunas Samad and Kasturi Sen (ed), *Islam in the European Union, Transnationalism, Youth and the War on Terror*, Oxford University Press, Karachi, pp.108-122
- E. Guild and P. Minderhoud (eds.) (2006), *Immigration and Criminal Law in the European Union: The Legal Measures and Social Consequences of Criminal Law in Member States on Trafficking and Smuggling in Human Beings*, Martinus Nijhoff Publishers.
- S. Carrera (2006) (ed), *The Nexus between Immigration, Integration and Citizenship in the EU*, Collective Conference Volume, CHALLENGE Series, Centre for European Policy Studies (CEPS): Brussels.
- D. Dieben and T. Dieben (2005), *When does war become crime? Aspects of Criminal Case against Eric O*, Centre for Migration Law, Wolf Legal Publishers: Nijmegen.
- D. Bigo and E. Guild (eds.) (2005), *Controlling Frontiers: Free Movement into and within Europe*, London: Ashgate.
- T. Balzacq and S. Carrera (2005), *Migration, Borders and Asylum: Trends and Vulnerabilities in EU Policy*, Centre for European Policy Studies: CEPS, Brussels.
- R. Bergalli and I.Rivera Beiras (2005) *Política Criminal de la Guerra, Desafío (s) n.1*, Anthropos Editorial: Barcelona.
- R. Bergalli and I.Rivera Beiras (2006) *Torturas y abuso de poder, Desafío (s) n.2*, Anthropos Editorial: Barcelona.
- R. Bergalli and I.Rivera Beiras (2006) *Emergencias Urbanas, Desafío (s) n.3/4*, Anthropos Editorial: Barcelona.
- Conflitti globali, «Internamenti» (*Internments*), Volume 4, December 2006
- Special Issues and articles in Academic Journals: *Conflitti Globali, Central European Political Science Review, Quarterly of Central European Political Science Association, European Journal of Migration and Law, Security Dialogue, European journal of Crime, Criminal Law and Criminal Justice, Journal of International Migrations, Encyclopedia of Religion and Politics, Theory and Politics in Organization*, etc.

## ANNEX 3: LIST OF OFFICIAL CHALLENGE DELIVERABLES

### 1. Workpackage 1 - *The New State of Exception: The political and Social Implications of Globalised Insecurities*

- 1.1 Working Paper on the State of the Art on the review of the literature on the “state of exception”
- 1.2. Working Paper on “*Law Transformed: Guantanamo from exception to nomos*”, Claudia Aradau.
- 1.3. Working Paper on “*Ambiguous Liberty: from the excess of liberty to the proper use of freedom*”, Claudia Aradau.
- 1.4. Special Issue of “*Security Dialogue*”, Volume 37, Number 1, March 2006.

### 2. Workpackage 2 – *Securitisation beyond borders: Exceptionalism inside the EU and impact on policing beyond borders*

- 2.1. Working Paper on the State of the Art on “Policing beyond borders: the transformation of military and police-related practices in external operations”
- 2.2. Six Working Papers:
  - “Policing at distance, Detention of foreigners, State of exception, and the social practices of control of the Ban-opticon”, Didier Bigo
  - “Defending the *Homeland*. Networking antiterrorism”, Philippe Bonditti)
  - “External interventions and the concept of the political: conceptualising political interactions between external forces and local societies”, Christian Olsson
  - “Military Activities Inside National Territory: The French Case”; E. P. Guittet
  - “Intelligence, exception and suspicion after September 11th 2001 and March 11th 2004”, Laurent Bonelli
  - “The defining of the Terrorist Threat in the UK. An analysis of the Reported in the Press Discourses: September 2001 – March 2005”, Anastassia Tsoukala
- 2.3. Working Paper on “*Balancing between inclusion and exclusion: The EU’s fight against irregular migration and human trafficking from Ukraine, Moldova and Russia*”, Sinikukka Saari.
- 2.4. Working Paper on “*European measures to combat terrorist financing and the tension between liberty and security*”, William Vlcek.
- 2.5. Working Paper on “*Integrating the Bulgarian Security Sector in Euro-Atlantic Structures: Post-1989 Reforms in a Changing Landscape of (In)Securitisation*”, Victor Bojkov.
- 2.6. Working Paper “*Mapping of the field of the professionals of security at the European level*”.
- 2.7. Working Paper, *Protection, Security, Territory and Population*, Didier Bigo.
- 2.8. Book. D. Bigo, L. Bonelli, E. Guittet, C. Olsson and A. Tsoukala (2006), *Illiberal Practices of Liberal Regimes: The (In)security Games*, Centre d’Études sur les Conflits, L’Harmattan: Paris.

2.9. Working Paper, *Under Construction: ESDP and the “Fight Against Organized Crime”*, Felix Berenskoetter

2.10. Working Paper, *Development v. Terrorism – migrant remittances or terrorist financing*, William Vlcek

### **3. Workpackage 3 – Securitisation, Technology and the Transformation of Warfare**

3.1. Working Paper on the State of the Art, New technologies, new wars and new world order. Security and Technology, Mikkel Vedby Rasmussen

3.2. Working Paper, Security and the Public Sphere - Security and Democracy in the Era of Terrorism, Ola Tunander

3.3. Working Paper, *Security: A Conceptual History for International Relations*, Ole Waever.

3.4. Brief Report and bibliography on *Critical Infrastructure Protection*.

3.5. Working Paper, *The Dual State and the Sovereign: A Schmittian Approach to Western Politics*, Ola Tunander.

3.6. Working Paper, *Precautionary Principles*, Mikkel Vedby Rasmussen.

3.7. Working Paper, *Critical Infrastructure Protection and the Practice of Sovereignty*, Kristian Soby Kristensen.

3.8. Working Paper, *Terrorism, Securitization and a Unipolar World Order*, Ola Tunander.

3.9. Working Paper, *From Coalition to Collision: Neo-conservatives, Terrorism and Transatlantic Relations*, Ola Tunander.

3.10. Working Paper, *War on Terror and the US Transformation of World Order*, Ola Tunander.

3.11. Working Paper, *European Security Identity*, Peter Burgess.

3.12. Special Issue of “*Security Dialogue*”, Volume 37, Number 1, March 2006.

3.13. Working Paper, “*How to Securitise a Community of Values: Meta-ethical Assumptions for Implementation of the Hague Programme*”, Peter Burgess.

3.14. Working Paper, *The Ethical Transformation of Risk*, Peter Burgess.

3.15. Working Paper, *Social Values and Material Threat: The European Programme for Critical Infrastructures Protection*, Peter Burgess

### **4. Workpackage 4 – Economic Factors of Conflict and Violence**

4.1. Working Paper, *Data Collection on Crime and Migration in Selected Countries*, Peter Lock.

4.2. Working Paper, *State of the art: Shadow economy and globalisation*, Wolfgang Schreiber.

4.3. Working Paper, *Anti-terrorism and Effects on Freedom of Movement: Assessing the Concept of Progress in the Fight against Terrorism*, Peter Lock.



## **5. Workpackage 5 – *The Changing Dynamic of Security in an Enlarged Europe***

- 5.1. Working Paper on the State of the Art on Changes in Concepts of Security and the JHA Agenda
- 5.2. Book on “*Migration, Border and Asylum: Trends and Vulnerabilities in EU Policy*”, Thierry Balzacq and Sergio Carrera.
- 5.3. Working Paper, “*Security and the Two-Level Game: The Treaty of Prüm, the EU and the Management of Threats*”, Thierry Balzacq, Didier Bigo, Sergio Carrera and Elspeth Guild.
- 5.4. Working Paper, “*The Pragmatic Act of Security: An Analytical Matrix*”, Thierry Balzacq.
- 5.5. Working Paper, *EU-NATO Relations Today: Power Sharing or Shifting Responsibility?*, Co-authored by Thierry Balzacq, Esther Barbé and Elisabeth Johansson-Nogués.
- 5.6. Working Paper, *Syllabus of EU Security Agencies: Institutional Settings, Competences and Responsibilities*, Thierry Balzacq, Sergio Carrera, Elspeth Guild and Viktoriya Khasson.
- 5.7. Working Paper, *The CFSP of the ENP: Getting the Global Order Right?* Esther Barbé and Elisabeth Johansson-Nogués.
- 5.8. Working Paper, “*A Comparison of Integration Programmes in the EU: Trends and Weaknesses*”, Sergio Carrera.
- 5.9. Collective Volume “*The Nexus between Immigration, Integration and Citizenship in the EU*”, Sergio Carrera et al.
- 5.10. Working Paper, “The European Union as a Security Provider in its Neighbourhood: The Case of Non-proliferation of Weapons of Mass Destruction in the Mediterranean”, Benjamin Kienzle, Observatory of European Foreign Policy 72/2006, Institut Universitari d’Estudis Europeus.
- 5.11. Working Paper, “When ESDP Confronts ENP: Security Sector Reform as a Bridge in the EU’s Foreign Policy”, Maria A. Sabiote, Observatory of European Foreign Policy Working Paper 71/2006, Institut Universitari d’Estudis Europeus.
- 5.12. Book, T. Balzacq and S. Carrera (eds) (2006), *Security versus Freedom? A Challenge for Europe’s Future*, Ashgate: Hampshire.

## **6. Workpackage 6 – *Accountability, Responsibility and Transparency in an Enlarged Europe***

- 6.1. Working Paper, State of the art on security and transparency: what is transparency?
- 6.2. Working Paper, “*Five Dilemmas of eJudicial Cooperation*”, Juliet Lodge.
- 6.3. Working Paper, “*Transparency procedures: Theory and practice*”, Juliet Lodge & Bruno Fransen.
- 6.4. Working Paper, “*Communicating Security - a failure of public diplomacy?*”, Juliet Lodge with Bruno Fransen.
- 6.5. Working Paper, *Communicating In(security): A Failure of Public Diplomacy?*, CHALLENGE Research Paper No. 3, Juliet Lodge
- 6.6. Working Paper, *Security and Privacy in Estonia*, Terry Mayer & Juliet Lodge

6.7. Working Paper, *‘MAKING Security: Citizenship, Public Sphere and the Condition of Symbolic Annihilation*, Katharine Sarikakis

### **7. Workpackage 7 – *The Changing Relationships between the Accession Countries and their Neighbours in the Changing Landscape of Liberty and Security***

7.1. Working Paper, State of the Art “*Enlargement and new challenges for neighbourhood, liberty and security*”

7.2. Working Paper, “*Efforts for building lawful enforcement, security and balance in public law of Hungary*”, Szikinger, István and Tóth, Judit.

7.3. Working Paper, “*Irregular Migration to Poland before and after accession*”, Agnieszka Weinar.

7.4. Working Paper, “*An Assessment of the Destruction of Rogue Civil Aircraft under International Law and Constitutional Law*”, Gábor Sulyok.

7.5. Working Paper, “*Ethnic Discrimination and the War Against Terrorism – The Case of Hungary*”, András L. Pap.

7.6. Working Paper, “*The Police Act and the National Security Act in Service of the Fight Against Terrorism*”, Istvan Szikinger.

7.7. Working Paper, “*Towards a joint sweeper of illegal migrants*”, Judit Tóth.

7.8. Working Paper, “*Short-term impacts of enlargement in the Romanian and Hungarian border crossing*”, Béla Baranyi.

7.9. Working Paper, *Law versus Policy: Rule of Law in the Area of FSJ*, Tóth, Judit.

7.10. Working Paper, “*Impacts of enlargement on trans-border relations*”, Béla Baranyi.

7.11. Working Paper, *The consequences of aligning visa policy in the process of accession: the case of Bulgaria*, Angelina Tchordadjyska.

7.12. Working Paper, “*Europeanization of Polish immigration policy 1993-2003*”, Agnieszka Weinar.

7.13. Working Paper, *The Border Guards’ Preparedness to the Schengen Regime*, János Sallai

7.14. Working Paper, Short-term impacts of enlargement in the Romanian and Hungarian border crossing, Béla Baranyi

7.15. Special Issue of REGIO, Minorities, Politics, Society, Volume 5 & 6, 2006.

7.16. Special Issue of FUNDAMENTUM, HUMAN RIGHTS QUARTERLY, 2005.

### **8. Workpackage 8 – *Effects of Exceptionalism on Social Cohesion in Europe, and Beyond***

8.1. Working Paper on the State of the Art of the literature, interviews, analysis of media and focus groups.

8.2. Working Paper, “*The practices of the everyday war against migrations (and its paradoxes)*”, Salvatore Palidda.

8.3. Working Paper, *Securitarianism, reproduction of disorder and erosion of democratic rule of law*, Salvatore Palidda.

8.4. Working Paper, *Analysis of statistical data from 1990 to the present day about immigration and income distribution, work market, housing situation, and informal economies*

8.5. Working Paper, *The changes in the fight against illegal immigration in the Euro-Mediterranean area and in Euro-Mediterranean relations*, Paolo Cuttitta

8.6. Working Paper, *Hybridization of controls in “post-modern” disorder*, S. Palidda

8.7. Working Paper, *Peurs, sécuritarisme, autoritarisme et érosion de l’action politique des dominés*, S. Palidda

## **9. Workpackage 9 – Exceptionalism and Its Impact on the Euro-Mediterranean Relations**

9.1. Working Paper on the State of the Art on the research and interviews carried out in Spain

9.2. Working Paper, *“A Common Foreign and Security Policy: Immigration as an Excuse for much more Security: The case of Spain”*, Roberto Bergalli, Observatori del Sistema Penal i els Drets Humans.

9.3. Working Paper, *“Analysis of Terrorist Legislation, evolution and practices of Penal agencies”*, Mónica Aranda and Iñaki Rivera, Observatori del Sistema Penal i els Drets Humans.

9.4. Working Paper, *“Spanish immigration policies and legislative evolution in that field as a new exceptional framework”*, Cristina Fernández Bessa & José María Ortuño Aix, Observatori del Sistema Penal i els Drets Humans.

9.5. Working Paper, *“On regulations against incivilities”*, Cristina Fernández and Roberto Bergalli, Observatori del Sistema Penal i els Drets Humans.

9.6. Working Paper, *Deprivation of Liberty and Human Rights in Spain*, Iñaki Rivera, Francisca Cano, Alejandra Manavella, Cristina Fernández and Jose Maria Ortuño, Observatori del Sistema Penal i els Drets Humans.

9.7. Report *on the analysis of the effects of terrorist legislation on criminalization/victimization of immigrants and people suspected of terrorism*, Cristina Fernández, Alejandra Manavella and José María Ortuño, Observatori del Sistema Penal i els Drets Humans

## **10. Workpackage 10 – Securitisation and Religious Divide in Europe after 9/11**

10.1. Report on the State of the Art of knowledge on the current social, economic and political situations of Muslims in Europe

10.2. Report of the transnational team on Comparative Islamophobia in Europe. (ed) Jocelyne Cesari, 1 June 2006.

10.3. Preparation of a Collective Volume, *“Muslims in Europe and in the United States and the Security Issue post 9/11”*, Jocelyne Cesari.

**11. Workpackage 11 – *Fears, Unease and Threat/Risk Management and an Assessment of Vulnerabilities of Different Social Groups in Acceptance and Resistance to Exceptionalism***

- 11.1. Working paper on the combined effect of different types of uncertainty, insecurity and vulnerability and the conceptual framework to link these with IP.
- 11.2. Working Paper “*Insecurity in Late Modernity: A Conceptual Framework*”, Michalis Lianos.
- 11.3. Working Paper “European Insecurity: An Exemplary Power Knowledge Field (Input to WP2)”, Michalis Lianos

**12. Workpackage 12 – *Normative Parameters of Exceptionalism: Community Governance Patterns in the field of Security and Its Implications for the Future of Global Governance as Responding to the Internal Rules of Globalisation, Existing or to Be***

- 12.1. Working Paper: State of the Art on normative patterns of globalization.
- 12.2. Working Paper, “*Conceptualising globalisation in view of a balance between liberty and security: normative patterns in constituting subjects in a global context*”, N. Scandamis.
- 12.3. Working Paper, “*CFSP after the Constitutional Treaty: The Stakes for the Future*”, F. Tekin and U. Diedrichs.
- 12.4. Working Paper, *Set and grown elements in European integration*, N. Scandamis

**13. Workpackage 13 – *The Relation between National, European and International Law with Respect to European Borders***

- 13.1. Working Paper, “*The fight against terrorism. The lists and the gaps*”, Imelda Tappeiner.
- 13.2. Working Paper, “*Unequal Citizenship: Integration Measures and Equality*”, L. Besselink.
- 13.3. Working Paper, “*Security in European Union External Border Law*”, Aliza Tekofsky.
- 13.4. Working Paper, *Expulsion and integration: Erecting Internal Borders within the Kingdom of the Netherlands*, Leonard F. M. Besselink

**14. Workpackage 14 – *Securitisation, Liberty, and Law***

- 14.1. Working Paper, State of the Art on the four projects: 1. Citizenship, Identity, Constitutionalism and EU Law; 2. Schengen Information System; 3. Social Protection and Security inside and out; and 4. Constitutionalism and civil liberties.
- 14.2. Two books and five Working papers:
  - Elspeth Guild, *The Legal Elements of European Identity: EU Citizenship and Migration Law*, Kluwer Law International, 2004.
  - Elspeth Guild, The variable subject of the EU Constitution, Civil Liberties and Human Rights in *European Journal of Migration Law* Vol. 1 March 2005.
  - Elspeth Guild, Joanne Van Selm (eds.), *International Migration and Security: Opportunities and Challenges* (London: Routledge, 2005).

- Elspeth Guild, *Citizenship and Human Rights*.
- D.J.H.M. Dieben and T.H.O.M. Dieben, *Aspects concerning the criminal case against Eric O*.
- Evelien Brouwer *Access to Europe, access to justice: effective remedies for third country nationals*.
- Evelien Brouwer, *Data surveillance and border control in the EU: balancing efficiency and legal protection of third country nationals*.

14.3. Working Paper, “*The judicialisation of armed conflict Transforming the twenty-first century*”, Elspeth Guild.

14.4. Working Paper, “*The EAW and the Polish Constitutional Court decision of 27 April 2005*”, Kazimierz Bem

14.5. Working Paper, “*Data surveillance and border control in the EU: Balancing efficiency and legal protection*”, Evelien Brouwer.

14.6. Working Paper, “*Effective Remedies for Third Country Nationals in EU Law: Justice Accessible to All?*”, Evelien Brouwer.

14.7. Working Paper, “*The “Other” EU Security: Social Protection*”, Paul Minderhoud.

14.8. D. Dieben and T. Dieben (2005), *When does war become crime? Aspects of Criminal Case against Eric O*, Centre for Migration Law, Wolf Legal Publishers: Nijmegen – Deliverable No. 68.

14.9. Special Issue of European Journal of Migration and Law, Vol. 7, No. 3, 2005.

14.10. Book, E. Guild (ed) (2006), *Constitutional Challenges to the European Arrest Warrant*, Centre for Migration Law, Wolf Legal Publishers: Nijmegen – Deliverable No. 94.

## ANNEX 4: SELECTION OF RECENT CHALLENGE EVENTS

- **Lunch-time meeting**, “*The Hague Programme: a partnership for a European renewal in the field of Freedom Security and Justice*” with Mr. Franco Frattini, Vice-President of the European Commission and European Commissioner for Freedom, Security and Justice, 14 July 2005, Centre for European Policy Studies, CEPS, Brussels.

- **Workshop** “*Critical Infrastructure Protection*” in September 12, 2005 at the University of Copenhagen. The aim of the workshop was to investigate the concept and to engage the practice of critical infrastructure protection both critically and from various perspectives.

- **Conference** “*Enlargement of the EU - A Challenge for What?*” in 29 and 30 September 2005 in Budapest (Hungary). The event covered the work carried out by Workpackage 7 of the project, which includes scholars of research institutes from Hungary, Poland, Bulgaria and Malta covering the short-term and long-term impact of enlargement on regional and neighbourhood contacts, public order, security issues, as well as national identity aspects. The event provided a direct exchange of views on methods and analysis of effects, selection of data or a debate on existing research results.

- **Conference** “*Migration, Asylum and Security - Border Challenges in an Enlarged EU*” in 9<sup>th</sup> and 10<sup>th</sup> December 2005, University of Malta. This event represented a unique opportunity to discuss the relationships between the Accession Countries and their Neighbours in the Changing Landscape of Liberty and Security.

- The **First Training School and Expert Roundtable on “European Neighbourhood Policy”** took place on the 21 and 22 April 2006 at CEPS in Brussels. The two-day Training School examined various aspects of the European Neighbourhood Policy (ENP) in the domains of visa policy, illegal migration and readmission agreements, asylum and cooperation over international security issues. It involved experts from both academia and policy making world.

- **Seminars Series** organised by the Centre for Migration Law (Radboud University of Nijmegen) and the Centre for European Policy Studies (CEPS) in Brussels:

1. “*Immigration, Integration and Citizenship: The Nexus in the EU*” on 25 January 2006, CEPS. This seminar discussed the nexus between immigration, integration and citizenship. The objective was to look at how the three policy issues have recently come together under a common EU policy on immigration, and to evaluate this development with regard to intrinsic criteria such as effectiveness and proportionality as well as extrinsic criteria such as legitimacy, non-discrimination, fundamental rights and social cohesion.
2. “*Constitutional Challenges to the European Arrest Warrant*” on 13 February 2006, CEPS. The seminar looked at the decisions of constitutional courts in Germany, Poland, and Cyprus challenging the compatibility of national provisions transposing the EAW Framework Decision with the constitutional law of these Member States.
3. “*War or Crime? Military Action in Peace Keeping and Legal Responsibility*” on 3 April 2006, CEPS. The seminar was designed to examine some of the issues and problems which the intersection of military action and criminal law present and to enable an informed debate and discussion among experts on the subject.
4. “*Enhancing EU Cooperation in Security: The Treaty of Prüm and the Principle of Availability*”, 21 June 2006, CEPS. The seminar examined the Treaty of Prüm in the context of the EU measures and proposals.

- **Seminar** “*Mapping the Field of Security in Europe III*” on 22 February 2006, and “*Mapping the Field of Security in Europe IV*” (Sociology of Europe: methods and proposals), the 9<sup>th</sup> May 2006 in Paris.
- **Conference** “*Law, politics and the challenge of exceptionalism post-9/11*” in the Department of War Studies, King’s College London on 5 and 6 May 2006. This conference attempted to question the separation of law and politics that leads to a critique of exceptional practices in the name of the ‘rule of law’ or to a critique of law in the name of politics. It brought together (legal) practitioners and academics to discuss the theoretical and practical stakes of the limits of law and the limits of politics under a ‘state of exception’.
- **Workshop** “*Thinking wars: Armed conflicts and contemporary cultures*” in 28<sup>th</sup> and 29<sup>th</sup> April 2006 in Genoa. The event proposed an interpretative and analytical perspective on wars and armed conflicts from the point of view of the sociology of culture.
- **Workshop** on “*Trends and Developments in European Union External Border Control*” in the 2nd June 2006, University of Utrecht, the Netherlands. In the field of European external border control new laws and institutions are being planned and implemented with constant fervor. The purpose of this round table was to discuss the recent trends and developments both on an institutional and substantive level.
- **Annual Conference** “*Illiberal Practices of Liberal Regimes*” at the Centre d’Etudes et de Recherches Internationales (CERI), Paris, the 9 June 2006.
- **Seminar** “*El papel del Parlamento Europeo y de la Unión en el mundo,*” Oficina del Parlamento Europeo en Barcelona, 19 October 2006.
- **Conference** “*Freedom, Equality and Exception in Market Economies*”, 9 and 10 November 2006, University of Athens. The proceedings covered a large area of topics through the specific prism of the relationship between liberty and security, as it is conceptualised in the light of current terrorism-related concerns and associated policies in the framework of European liberal regimes, and the tensions underlying European Governance and its institutional structure (pillar division) in the area of freedom, security and justice.

## About CHALLENGE

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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](http://www.libertysecurity.org)).

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