

ELISE

European Liberty and Security

ELISE

**EUROPEAN LIBERTY AND SECURITY:
SECURITY ISSUES, SOCIAL COHESION AND
INSTITUTIONAL DEVELOPMENT OF THE EUROPEAN
UNION**

ELISE Final Synthesis Report

1. Introduction

1.0. ELISE – *European Liberty and Security: Security Issues, Social Cohesion and Institutional Development of the European Union* – is a research project funded by the Fifth Framework Research Programme of the DG for Research of the European Commission for three years (beginning 1 October 2002). This report presents the main research findings, outlines some of the policy implications of these findings and offers policy recommendations.¹

1.1. Our starting point is the contention that the liberal and democratic traditions of modern European politics hinge on aspirations for both liberty and security, although the relationship between these two values has had a long and often very troubled history. We have thus sought to understand recent concerns about security among EU citizens while bearing in mind the concern not to undermine civil liberties, human rights and social cohesion. We have done so initially by seeking to place contemporary dilemmas in a

¹ The ELISE consortium was composed by: *The Centre for European Policy Studies, CEPS*, Prof. Elspeth Guild, Dr. Thierry Balzacq and Mr. Sergio Carrera; *Sciences Po, Institute d'Etudes Politiques*, Prof. Didier Bigo, *National Capodistrian University of Athens*, Prof. Nicholas Scandamis, *Radboud University of Nijmegen (Centre for Migration Law)*, Prof. Elspeth Guild, *University of Genoa*, Prof. Salvatore Palidda and Prof. Alessandro Dal Lago, *University of Keele*, Prof. Rob Walker, and *King's College London*, Prof. Vivienne Jabri.

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broader context, which enables a wide range of scholarly traditions to engage in productive research over areas of common concern.

1.2. The problems we address are the multiple challenges to the principles, institutions and practices through which claims to reconcile liberty and security are made. Some of these challenges have been driven by the emergence of the EU as a novel form of political organisation. Some have resulted from broader forms of economic, cultural and technological developments that have come to be identified as globalisation. Some have come from the intensification of worries about new forms of violence associated with the attacks of 11 September 2001 and with various responses to these attacks. And some are linked to perceptions of the nature of sovereign states and of the relations between these states.

1.3. In part, this task has involved looking back several centuries in order to understand how the relation between liberty and security has been articulated both in the modern state and in the modern international system. In part it has also involved looking at the multi-faceted changes affecting contemporary EU security policy, including the enlargement process, agreements about common EU external frontiers, and new strategies developed to combat terrorism at the national, EU and international levels. Finally, it has involved a critical assessment of what is at stake in the seemingly common sense idea that it is necessary to strike an appropriate ‘balance’ between the claims of security and the claims of liberty.

1.4. The metaphor of a balance captures many popular assumptions about the place of legitimate violence in modern political life. It also promotes a profoundly misleading account of the social forces, institutional practices and legal principles at work in contemporary democratic societies, most especially when questions about liberty and security are involved. The ELISE project has sought to untangle the many different and often conflicting dynamics that are obscured by this metaphor so as to offer a richer account of what is at stake when we are asked to make some kind of trade-off between established freedoms and principles for security in a moment of emergency. If difficult decisions are to be made, they need to be understood not in relation to fuzzy and depoliticising metaphors of balance but to hard questions about what it means to make an exception to the normal expectations of liberty, equality, democracy and the rule of law in modern political life.

1.5. Against the easy assumption of a need to strike a balance, the ELISE project has worked with more technically precise accounts of a politics of the exception.² These accounts speak to the intellectual roots of security analyses grounded in traditions of political realism, to legal traditions concerned with the limits of the rule of law, and to historical accounts of liberal and democratic societies confronted with pressures to become more illiberal and more authoritarian. The ELISE project has thus been concerned to examine precisely how a new politics of the exception is being constructed as a response to claims about new forms of insecurity and to evaluate their broader implications. Against this background, particular attention has been paid to potential conflicts between civil liberties/human rights, specific security measures and the effects

² See WP1, 2, 4 and 6 reports.

of such measures on the overall socio-economic fabric of the EU.³ Attention has also been paid to the potential conflict between technically efficient security measures and threats of disaffection on the part of targeted population groups.

1.6. In general terms it would be fair to say that participants in the ELISE project are persuaded that many recent policy responses constitute cures that are quite as worrying in the long term as the disease to which they respond. This is partly because they trigger memories of the way claims about immediate dangers have led to the erosion of liberalism and democracy at other moments of European history. It is also partly because it is fairly clear that there is an increasing discrepancy between the organisational capacities devoted to security on a global scale and the increasingly fragmented resources available for sustaining liberties under democratic conditions.

2. Scholarly Orientations

2.0. The research carried out during the three-year duration of the project has been organised around two main scholarly axes. The first has been a process of refining the concepts relating to security at the national, EU and global levels. The second has been a process of developing an analytical framework to evaluate and test policy responses to future security challenges, particularly those involving acts of political violence officially labelled as ‘terrorism’, and building into this framework criteria relating to civil liberties and social cohesion.

2.1. In both contexts, the ELISE project has built upon a broad acknowledgement of the limited perspective that traditional accounts can offer on contemporary dilemmas, offered from either a view that is defined in purely national security terms in relation to an external or international sphere or from a purely national arena of freedom under the law of particular states. The very idea of ‘Europe’, like the awkward label of ‘globalisation’ and the extremely contentious notion of a ‘war on terror’, attests to the need for some quite profound rethinking of the most basic principles through which we have come to understand ourselves as free citizens under law yet also as secure in the possibilities of a collective existence that is not exhausted by claims of the sovereign state.

2.2. In the first instance, therefore, the ELISE project has sought to become sensitive to the depth of the challenges to fundamental principles of liberty and security that have resulted from contemporary developments. It has also sought to bring both transnational and transdisciplinary perspectives to bear on what these challenges might mean for the formation of complex judgements about what ought to be done about problems that so clearly elude the capacities of established scholarly literatures. The project has thus had to engage not only with the different forms of knowledge arising from various scholarly traditions among the ELISE team, but also with questions about the authority of various agencies claiming to be able to make judgements about the seriousness of various acts of violence and about the consequences that must necessarily follow.

2.3. Bringing different modes of thought within the same debate, such as national security discourse on the one hand and political and sociological discourse about citizenship on

³ See WP3 report.

the other, illustrates the difficulty and complexity of the issues confronted by the team. On a different level, taking account of the extraordinary complexity of contemporary legal and administrative practices, which have blurred old boundaries, poses new problems unexpected by traditional ‘internationalists’ and ‘integrationists’ alike.

2.4. Debates about ‘theory’ and abstract principles formed a part of the work undertaken. But we were also concerned to illustrate how laws and principles are moulded by ‘micro-practices’.⁴ These set processes in motion, establish practices and introduce rules of behaviour (sometimes by functional agreements); short-term expedience mutates into entrenched routines, and, not infrequently, laudable intentions generate negative effects.⁵ An overall objective has been to place the stakes in the multiple dramas unfolding in the past few years in a broader historical and comparative perspective, while paying equal attention to the precise details of practices and events. These latter aspects produce new understandings of and responses to the relation between liberty and security – sometimes responsibly, sometimes not, and often in ways that raise basic questions about claims concerning political responsibility in contemporary Europe.⁶

3. The Objectives

3.0. In bringing such questions about principle into specific policy arenas, the ELISE project has stressed three general objectives.

3.1. First, it has sought to develop a better and more comprehensive understanding of contemporary security challenges. Building on the wide range of literature that has emerged since assumptions about ‘national security’ and ‘political realism’ lost credibility with the end of the cold war, under this objective the ELISE project has aimed at:

- working with a variety of political, sociological and legal research communities;
- thinking about the implications of notions of ‘good governance’ for claims about security;
- resisting the metaphysical claims about a universal ‘power politics’ through a careful assessment of the specific techniques through which power is exercised in modern societies;
- assessing the work that is done through the deployment of specific conceptions of terrorism;
- understanding the implications of attempts to constitutionalise security policy; and, perhaps above all,
- coming to some considered judgement about the implications of the changing relationship between claims about liberty and claims about security for what it

4 See WP4 and 5 reports.

5 WP1 report.

6 See WP6 and 1 reports.

means to speak of the EU as a site of political legitimacy grounded in claims about the rule of law.⁷

3.2. Second, it has sought to develop a detailed account of the development of security policies at both the national and EU levels – especially in the aftermath of events such as those of 11 September 2001 – and of their impact on EU societies and their cohesion.⁸

3.3. Third, it has sought to identify the primary institutional challenges now confronting both member states and the EU as a consequence of the many forces that are reshaping the relation between liberty and security in many different contexts.⁹

3.4. ELISE has thus been a very broad project, combining a strong sense of the need for conceptual innovation at the level of principle with a desire to pay very close attention to what has been going on in very specific sites, policy arenas, legal contestations and executive decisions. As such, it has affirmed the need to counteract the professionalised specialisms that produce privileged perspectives named as security, or law, or criminology, or civil liberties; indeed, it is increasingly clear that the greatest challenges before us arise at the boundaries and interstices of these familiar fields of expertise.

3.5. The ELISE project has managed to work across some of these boundaries, while recognising that any possible EU future will still involve boundaries of some sort and those that lie between the demands for freedom and the demands for security will continue to frame the possibilities of any claim to an EU that is somehow still liberal and democratic, legitimate and authoritative. Moreover, the common concern with boundaries and limits at the heart of any consideration of the relation between security and liberty has sustained a rather surprising level of understanding and communication among different disciplinary divisions, most notably those involving political theory, sociology, criminology, international relations, law and policy analysis. A mutual interest in identifying the problems has proved to be more powerful than any differences in the methodologies informing the work of different researchers.

4. Continuity and Change: The Exaggeration of Novelty

4.0. The main results achieved during the three years of the ELISE project clearly differ from the narratives that have been presented by many politicians, by large sections of the mass media and by some forms of academic research grounded in nationalist accounts of friend-enemy relations. Nevertheless, these results seem to be corroborated by an emerging consensus across a broad spectrum of contemporary scholarship and informed opinion. Two general conclusions seem especially uncontroversial, both of which lead to concerns about premature judgements about the novelty of the present situation. Accounts of the radically new are all too easily transformed into accounts of the radically dangerous.

7 See WP6, WP4 and WP1 reports.

8 See WP1, WP2, WP3 and WP4 reports.

9 See WP3 and WP5 reports.

4.1. First, it is clear that 11 September cannot be considered to be an ‘unprecedented event’ that radically changed the face of the modern world, even if it was a tragic moment. It did not mark the birth of a new age of terrorism, or hyper-terrorism, or mega-terrorism, or some third type of terrorism. The transnationalisation of political violence by clandestine organisations has been a long process, with roots that go back at least as far as the decolonisation processes of the 1950s, the hijacking of the aircraft of third parties in the 1970s, the development of killing at a distance through technologies of remote bombing in the 1980s, the radicalisation of conflicts in Lebanon and Palestine and the resurgence of suicide bombers against French and US armies. To the extent that novelties may be identified, they involve new combinations of traditional forms of action, and not, as so many official accounts have implied, some grand new force combining weapons of mass destruction with fanatical and irrational clandestine organisations.¹⁰

4.2. As far as it is possible to judge from the available evidence, contemporary clandestine organisations have not tried to use weapons of mass destruction. The use of anthrax does not seem to have been related to al-Qaeda, for example, although fears about biologically-based weaponry are now widespread. Links between Saddam Hussein’s Iraq, weapons of mass destruction and transnational clandestine organisations were strongly alleged, but were, notoriously, unconfirmed. On the other hand, it is reasonable to suspect that many political professionals have developed a strong fear that their longstanding claim on a monopoly of violence within a specific national territory is coming to an end. Moreover, one of the strongest arguments for traditional claims to a monopoly of violence within a specific territory has been a claim that the only alternative is some kind of apocalyptic nightmare, the loss of all political control under conditions of revolution of the kind threatened by Lenin and the chaotic condition in which much of Europe found itself at the end of the First World War. This is an alternative that has long made the monopolisation of power by the modern state seem more or less reasonable, the obvious ground for the kind of political realism that was largely constructed in the aftermath of revolutionary threats in order to affirm the modern nation state as the natural site of all political possibilities.¹¹

4.3. It is this kind of alternative that again seems to haunt many political professionals who have come to take the state for granted as the only possible source of contemporary political authority and as the necessary site of all decisions about the legitimacy of violence. It reappears now as fear of an Armageddon created by small groups of fanatics, religiously motivated, and with weapons of mass destruction readily to hand: a combination, perhaps, of the Aum sect in Japan and the organisational resources of al-Qaeda networks.

4.4. Whatever the precise explanation for the way so many political professionals have been so quick to over-interpret totalising accounts of a new threat environment from empirical evidence that demands rather more circumspect judgements, it is clear that a fear of the future has become a significant feature of contemporary political life. This fear has especially been played up by some members of the US administration. It has been used to elevate the attacks of 11 September to a threat to the very survival of the US,

¹⁰ See WP1, WP3 and WP4 reports.

¹¹ See WP1 and WP6 reports.

thereby generating powerful narratives that give legitimacy to claims about an emergency situation, about the need to suspend the conventions of a politics as usual, about the necessity to wage a war, about the need to engage in a new confrontation between friends and enemies – although friends and enemies are not easily mapped onto competing national sovereignties within an international system.

4.5. The precise processes involved here are no doubt enormously complex, but the consequence has certainly been a powerful attempt to cultivate an ultra-nationalism predicated on a strong desire for revenge – an attempt that has required the creation of sharper and sharper distinctions between friends and enemies in some new world of inter-civilisational conflict. The dangers of rhetorical excess in this context have been widely remarked, but the rhetoric can become extremely effective when claims about threats, dangers and terrors intersect with longstanding claims that the only alternative to the modern security state is some kind of apocalyptic collapse. Many political professionals are susceptible to this way of thinking and are easily swayed by talk of radically new dangers. More sober assessment requires attention to continuities and relatively subtle adjustments and to the playing down of events such as 11 September as a key moment in a narrative of an onrushing apocalypse¹²

4.6. Further, just as 11 September does not mark a major break from the old and the entry of the radically novel in relation to forms of terrorism, neither does it mark any such break in the practices that are used to respond to terrorism. The appeal to some declared or undeclared condition of extreme danger is surely one of the most fundamental resources available to all statist governments and has a long history in the practices of both statecraft and constitutional law. The use of derogatory measures in relation to human rights and privacy rights was already well-developed in Algeria towards the end of the 1950s, and has recurred in Brazil, Argentina, Uruguay, Chile and other Latin American states, as well as in liberal states such as Germany (against Baader Meinhof), Italy (against the Red Brigades), Spain (against ETA), France (after 1986) and especially the UK (against the Provisional IRA in Ulster).

4.7. Even in the US, antiterrorism policies after 11 September have followed proposals set out in 1999 and adopted by the Clinton administration. Such measures have been shaped by organic adaptations to existing bureaucratic orders. They also continue trends already expressed in such responses to attacks against the Americans in the early 1980s (in Lebanon and Berlin) as the strike against Libya and, later, the setting up of the Central Command in the Pentagon. All the key debates since 2001, in the EU and the US, whether about reorganising and coordinating intelligence structures, about Homeland Security or about the US Immigration and Naturalization Service and border guards, as well as the priority given to military measures, follow the pathways inscribed by these older logics.

4.8. More to the point, what was proposed in the immediate aftermath of 11 September was a series of measures that had already been envisaged in practical terms before 2001 but had often been rejected as unacceptable in principle. It is the willingness to accept the previously unacceptable that gives special cause for concern.¹³

¹² See WP1, WP3, WP4 and WP6 reports.

¹³ See WP1, WP2 and WP4 reports.

4.9. The adherence to older logics partly explains why much current antiterrorist policy is so technologically driven, so preoccupied with the use of data surveillance, biometrics, the transnationalisation of intelligence and police information, and appeals for greater collaboration between the police organisations under the lead of US intelligence services. Policy in the EU has been even less innovative. The EU framework includes a range of measures concerning information exchange, police and judicial cooperation, the security of travel documents, money laundering, the freezing of assets, specific instruments such as the European Arrest Warrant and the EU evidence warrant. Further, it includes the setting or reinforcement of specific institutions such as Eurojust, the new powers given to Europol, the automation and acceleration of procedures, reinforced control over the Internet, enhanced surveillance of mass demonstrations and the launch of routinised discussions between the intelligence services.

4.10. None of these measures can usefully be understood as a speedy reaction to 11 September or to subsequent US pressures. They were very largely the outcome of a long trend of proposals that can be traced from the beginning of the Trevi and Schengen groups in the mid-1980s – proposals that were partly resisted at Amsterdam and Tampere but which came to be the dominant trend after Genoa.¹⁴

4.11. So again, continuity has been more significant than practical innovation, although the boundaries of what has been considered to be acceptable have clearly shifted. There has also been a significant transformation in the overall articulation of what security means. Despite renewed recourse to nationalist rhetorics, claims about a purely national security no longer monopolise professional or public discourses. With the establishment of institutional networks of control in particular, the EU has developed what amounts to a form of market security: a set of institutions and procedures concerned with the management of the population and commodity flows so as to protect the efficient operation of the market and its human, institutional and technical infrastructures.¹⁵

4.12. This form of security reflects the widely noted shift away from welfare states of the kind associated with national governments and neo-Keynesian economic regulation and the emergence of new forms and techniques of governance across many formal jurisdictions. In this sense, concepts of security have come to be associated with concepts of economic prosperity and thus to encompass any threats potentially endangering market-oriented conceptions of welfare. In this sense, also, Genoa may come to be seen as a more important turning point than 11 September, although the latter has certainly changed many relations of power and enabled the US to become a more powerful player 'inside' EU debates, encouraging more coercive and more proactive measures and diminishing the importance of safeguards for privacy, data protection and *habeas corpus*. The 2004 joint EU-US Declaration on Combating Terrorism, especially in the field of countering terrorist financing through the first ad hoc, informal EU-US partnership on the prevention of terrorist financing, which included all three pillars, offers an important example in this respect.¹⁶

14 See WP1, WP2 and WP3 reports.

15 See WP5 and WP6 reports.

16 WP2, WP3, WP4 reports.

5. Five General Grounds for Concern

5.0. These judgements about the need to stress continuities as well as innovations in the assessment of contemporary terrorist acts and of responses to them have emerged from a genealogical and multidimensional analysis by ELISE researchers of transformations in the use of political violence on the part of clandestine organisations as well as through antiterrorist strategies. In practice, the ELISE project has focussed primarily on the second of these. It is quite impossible to know seriously and independently what is going on with al-Qaeda networks and the related situations in, for instance, Saudi Arabia, Yemen, Indonesia, Afghanistan, Palestine and Algeria. Nevertheless, it is possible to evaluate the ways in which antiterrorist strategies have tried to understand contemporary forms of political violence and to respond to them. In this context, there are at least five grounds for concern.

5.1. First, the primary political narratives about al-Qaeda and other such organisations tend to repeat, as if by mimesis, the specialised and de-contextualised forms of knowledge produced by the intelligence services. These forms of knowledge are artificially free from either any democratic accountability or critical assessment by other institutions. Knowledge produced by the intelligence services has a sort of privileged status in this respect, but it is a status that depends on the absence of precisely the kind of open critique that is said to be the crucial condition under which knowledge may be distinguished from dogma. Unsurprisingly, the narratives produced under such conditions have been strongly shaped by experiences in the 1970s, maintaining much the same sort of analytical structure except for the crucial addition of a strong technological determinism. Most of the main 'solutions' informed by these narratives are in fact rooted in very old visions. Very often they even express a backlash against the more complex and subtle analyses that were becoming more influential in the mid-1990s. In a familiar pattern, complexities and subtleties have been trampled by the clarity afforded by older simplicities, which are then used as a basis for uncritical obsessions with technological innovations.¹⁷

5.2. Second, claims about the need for new forms of security have begun to work as claims about the need for new forms of governing – or 'governance' as it is now called by those who understand the limited reach of state governments, or 'governmentality', as it is called by those who understand the ways in which people are shaped to govern themselves rather than simply to obey the commands of some government. Especially when new technologies are treated as mere additions to established political processes, specific techniques and strategies are allowed to generate new forms of social control. Forms of accountability that have been associated with modern forms of government are gradually subverted by the procedures of social control. It is in this context that there is clearly a need for greater attention to what used to be called the 'unintended consequences' of political action – in this case consequences that lead to the erosion of political accountability through the attempt to provide security through technologies that have come to be understood in a political vacuum.¹⁸

¹⁷ WP1, WP3, WP6 reports.

¹⁸ See WP2 and WP5 reports.

5.3. Third, in keeping with both the value placed on new technologies and a tendency to see some sort of apocalyptic chaos as the only alternative to the monopoly of violence in a specific territory, narratives about security are increasingly articulated in terms of a capacity to control the future. Many old-fashioned worries arise in this context, not least about an over-reliance on worst-case scenarios or hubris, or again, unintended consequences. There is further reason to be concerned about the extent to which claims about security can now be invoked so as to control populations not only in relation to dangers that at least have some concrete and tangible reference but also in relation to speculative, abstract and explicitly metaphysical ideas about futures that can only be imagined – and imagined on the basis of out-of-date ideas about what friends must do to enemies. The so-called ‘doctrines of preventive war’ and proactive policing both express disturbing tendencies in this direction. Moreover, political professionals and members of intelligence and security services have been increasingly in competition to assess not only what has happened but what will happen; at the EU level, for example, the European Council assesses threats on the basis of the work of the Situation Centre.¹⁹

5.4. Fourth, claims to knowledge advanced by the intelligence and security services are often given privileged status in relation to claims made by other political actors. This is in part a consequence of the way in which the mass media are attentive to the voices of specific elites. For example, analysis of press-released statements by domestic political actors in the UK and France between September 2001 and June 2003 has shown that the defence of emergency rules is widely covered by the press, largely because it is supported by several political leaders, but does not receive the open support of the majority of domestic political actors. On the other hand, the defence of human rights is adopted by fewer political leaders but enjoys broader support among the general public (Tsoukala).²⁰

5.5. Fifth, as a study of the Italian case shows especially well, claims about security are open to considerable abuse through the superimposition of totalising categories of friend and enemy onto many other forms of political difference. In the Italian case, claims about difference are mainly linked to the role of the country as the southern ‘limit’ of Europe. Whether in journalistic or press discourse, political debate or the common knowledge of Italian prosecutors, the so-called ‘invasion’ of ‘illegal migrants’ is frequently translated into terms that are synonymous with terrorist dangers. Two local factors are involved here: the traditional criminalisation of migrants as dangerous aliens; and the alleged weakness of Italian borders to terrorist infiltration. Although there is no evidence of connections between terrorism and illegal migration, it has now become normal to search for terrorists among migrants, especially those coming from Muslim countries. This tendency has led to several trials in which individuals have been charged but eventually acquitted. Nevertheless, the social construction of migrants as potential terrorists has been effective. It has enabled a strategy of internment and easy expulsion that eventually provoked the indictment of Italian authorities for human rights violations by international courts.²¹

19 See WP1 and WP3 reports.

20 See WP1 report.

21 See WP1, WP3, WP4 reports.

6. Security, Liberty and Challenges to Democracy

6.0. These five general grounds for concern ultimately draw attention to the uneasy status of contemporary forms of democracy. As has been broadly remarked, recent concerns about security have intensified the very old dilemma of how to defend democracy without destroying it in the process.

6.1. Symptomatically, analysis of the Italian press shows the absence of any significant debate on the implications of contemporary security policies. Closely linked to the specific configuration of the domestic political field, this is partly explained by the fact that the legal provisions that were extended to terrorists were already in force in relation to organised crime. Placing specific differences into a highly charged framework of security against terror is often sufficient to silence all discussion.

6.2. At the EU level, the analysis of the debates of the European Parliament on combating terrorism (again in the period September 2001 to June 2003) also suggests that questions about the issue of invocation of emergency rules were hardly considered before the 11 September terrorist attacks. When such questions did become prominent in the aftermath of these attacks, the need for emergency-rule derogations was defended by only a very small minority among the EU deputies, most of whom strongly defended principles of human rights. It is not possible, however, to find such a clear-cut position within the representatives of the EU institutions. While the representatives of the Council have never defended the need for emergency rules, but on the contrary have argued in favour of the need to defend human rights, the prevailing sentiment has been to support the seemingly moderate but in practical effect illiberal thesis that a ‘balance’ must be struck between security and human rights. With respect to the representatives of the Commission, support for a balanced position is further reinforced by explicit statements about the dangers of infringing civil rights and liberties. Yet at the same time, the possibility of adopting emergency rules as a necessary step to protect the internal security of EU countries and the rest of the world is clearly left open.²²

6.3. One of the most powerful and consequential responses to recent acts of terror has been to try to seal the borders, in order to:

- create an EU Homeland Security (even when the leading motto of EU governance continues to invoke the need to keep markets open and facilitate freedom of movement);
- introduce new technologies for tracing individuals;
- reinforce the filters for people willing to enter;
- incarcerate the potential suspects;
- use the military and intelligence services to ‘police’ inside a country; and
- argue about the necessity of derogatory measures in the name of a cataclysmic future.

²² See WP4 and 6 reports.

Again, none of these measures are especially novel, although they have usually been blocked by the rise of a political culture celebrating civil rights for citizens and foreigners in the 1970s and by the development of legislation guaranteeing better data protection. There is a clear link between the national security strategy of the colonial and neo-colonial powers (Trinquier, Kitson and the Panama School) and the internal security strategies of today. This perhaps goes some way towards explaining why some actors have reverted to justifications for the severe and prolonged interrogation (as distinguished from torture) during the 'dirty wars' in Algeria, Burma and Vietnam. It has created struggles within different armed forces as many were revolted by and rejected the kinds of justifications they once knew so well.

6.4. The success of discourses about the reintroduction of a military-war state of mind inside a country as well as of justification of the diminution of civil liberties in the name of some emergency is strongly connected to the struggles between security professionals at the transnational level. This is clearly shown in Dal Lago's research on the genealogy of strategies of prevention and their effects on contemporary politics. Similarly, Bigo has shown how the transnational field of the security profession has been organised in accordance with different securitisation discourses; that is, not only in relation to one security discourse that is in profound tension with claims about liberty but also in relation to a large number of competing security discourses.²³

6.5. In this context it is useful to recall that during the cold war, the highest professional ranks, the generals, were always drawn from the strategists, the specialists in deterrence, and not from the specialists in asymmetric wars or peripheral wars, or low-intensity warfare as these were known at the time. Yet after 1979 and the Iranian revolution, and even more so after the end of bipolarity and the first Gulf war, the specialists in asymmetric warfare were more and more eager to move up to the top level, arguing that they were dealing with the real wars and terrorism. The events of 11 September have since reinforced their rhetorical influence. More ominously, at least in relation to the understanding of borders and boundaries that has been central to modern understandings of political possibility, this shift away from strategy has led to the deployment of police forces beyond the borders of domestic jurisdiction. In fact, police forces have tried to transpose their technologies of domestic policing outside, in the name of consolidating peace. Predictably, this has led to competition with militaries abroad.

6.6. To be sure, struggles to control and reduce violence have been central in Kosovo, Afghanistan and Iraq (Olsson) among other places, as well as inside many countries trying to deal with (im)migrants and citizens of foreign origin (Bonelli, Palidda). Yet such struggles, while often understandable, have created confusion about the status of war in comparison with internal struggles and class conflicts within society. No doubt the theme of the 'enemy within', the 'stealth enemy' or the 'infiltrated enemy' has always been salient in the discourses and practices of intelligence services. Since 11 September, however, it has risen to the top of the agenda of many political professionals. This poses many questions: Do we have a war inside our societies or not? What is the status of the 'national emergency'? To what extent can we consider that terrorist attacks are a threat to the survival of the nation state? Is the EU level of authority assuming a comprehensive

23 See WP1 and WP3 reports.

protection and promotion of liberty (for the individual as an agent, for data protection and freedom of movement, for civil aviation, as well as for Charter as a general regime of protection) while increasing technologies of security to struggle against specified threats? Different bureaucracies have different answers to such questions – answers that are closely linked with their main interests and norms.

6.7. What is pivotal in all this is that security, perhaps the most-contested field of politics, has come to saturate all political discourse. It is an arena of struggle *par excellence*. This is the battleground on which a specific meaning of politics emerges. In this light, the agenda of security is, therefore, the result of sustained social interactions among various stakeholders, the aim of which is to win the appropriate political mandate and obtain resources for targeted action. To oversimplify, but also to underline a crucial point, two discursive logics compete today. On the one hand, the police and judiciary, while acknowledging that terrorism is a crime, even a crime against humanity, oppose the argument that terrorism is a war inside society. By contrast, intelligence services and the partisans of asymmetric warfare champion the idea of a war against terrorism inside society. This point must not be underestimated, and ought to resonate with anyone who is familiar with the history of struggles to resist many other forms of illiberalism, because it provides grounds for a politics of the exception and for the curtailment of the rule of law.²⁴

7. A New Politics of the Exception

7.0. From the Antiterrorism, Crime and Security Act in 2001 to the Prevention of Terrorism Bill in 2005, to take the case of the UK as an example, changes in legislation and administrative practices across Europe provide all too many illustrations of a politics of exception and permanent danger. From the clearly defined temporal and spatial remit that the sovereign capacity to declare an exception once had in the modern state, the declaration of exceptions now occurs in some other spatiality and some other temporality. Some analysts go so far as to suggest that the entire world has been internalised, and a capacity to declare exceptions has been generalised. Others think contemporary political life is rather more complex. Both positions have found expression within the ELISE project, as in debates about terrorism, globalisation, unilateralism and empire more generally. Nevertheless, contemporary claims about a war against terrorism have clearly been iterated in ways that exceed the spatiotemporal boundaries of the modern sovereign state coexisting in a system of sovereign states.²⁵

7.1. The implications of this excess can be felt in the tensions of liberal democratic polities that consider themselves to be in a state of permanent war (rather than the permanent state of ‘liberal democratic peace’ so widely celebrated only a decade ago). The generalisation of claims about a state of emergency as the defining moment of political life raises fundamental questions about the basis of legitimate authority, about peoples’ democratic ability to contest the claims of the state and its articulations of singular sovereignty within a specific territory, and indeed about the very possibility of

²⁴ See WP1, WP2, WP4, WP6 reports.

²⁵ See WP6 report.

political agency. More than any other sphere of modern political life, security practices work, in part, by seeking to protect themselves from the normal operation of political contestation while at the same time claiming to be able to protect a sphere in which political contestation may be conducted. Consequently, to focus on the implementation of security practices, and specifically on the implementation of anti-terrorist legislation, is to engage with political agency not only in relation to rights, but also in relation to the contestation of the claims about the conditions under which political authority is now considered to be legitimate. Any attempt to remove security practices from political contestation necessarily directs attention to the very possibility as well as the limits of political action, most notably in relation to the judiciary and civil society²⁶

7.2. That governments tend to justify their security policies in the name of protecting their citizens is one of the most broadly recognised truisms of political analysis. Moreover, as the writings of Michel Foucault have affirmed for more recent generations, the protection of populations is necessarily the protection of specific categories of persons to the exclusion of others. More particularly, as much of the research conducted by the ELISE team suggests, the redrawing of boundaries expressed through many contemporary claims about security has resulted in the targeting of specific categories of the population, in ways that are culturally and racially marked.²⁷

7.3. Traditional liberalisms have long distinguished categories of population, largely in relation to claims about differing capacities of people to manage their own freedom, but they have also devised strategies for social integration within a national space: within a communicative public sphere, on the basis of equal claims to citizenship rights, through welfare policies and principles of distributive justice. With contemporary re-articulations of a politics of exception that works somewhere other than on the borders of those states in which integrative practices might be cultivated, difference, otherness and exclusion are threatening to become the primary grounds on which political relations are organised and legitimised. This has implications for the way liberal societies respond to claims about diversity, for the way individuals are taken to express cultural and racial identities, and for the way in which many long-standing antagonisms between liberal principles and democratic practices are being stretched to breaking point.

7.4. Indeed, one of the striking features of recent claims about a new security environment has been a return to several classical intellectual traditions that have tried to think about what happens at the limit of modern political life in order to justify derogatory measures and their subsequent routinisation. Thomas Hobbes is perhaps the most important thinker in this context, not because of his well-known cynicism about human nature and the anarchical quality of life among free and equal individuals but because of the way he framed an account of a sovereign power capable of constituting legal authority and of defining the limits of this authority. The reputation of Carl Schmitt, the German constitutional theorist forever tainted by his fascist tendencies, is even darker, perhaps as dark as it is possible to go while still maintaining at least some credibility as a serious thinker. It is in relation to Schmitt in particular that most contemporary thinking about what it means to treat sovereign authority as a capacity to

²⁶ See WP6 report.

²⁷ See WP1, WP3, WP4, WP6 reports.

make exceptions may be traced. Similar lines of thought have looked at the tendency for liberal and democratic societies to degenerate into various forms of authoritarianism; the basic idea can be found in classical accounts of cycles of corruption, but again 20th century European history offers many salutary experiences for contemplation in this respect.

7.5. The basic reason these sorts of thinkers still generate contemporary interest is that they illuminate the way even the most liberal societies are far from immune from illiberal practices and the way even the most democratic societies have authoritarian potentials. Conventionally, of course, authoritarianism and illiberalism are regarded as limit conditions, that is, as evils that can only be tolerated under conditions of emergency, of war, when the norms of everyday conduct must be suspended in order to ensure the very survival of the state. In other words, the capacity to decide where and when exceptions must be made, when limit conditions have been reached, rests precisely with deciding when and where the claims of liberty must give way to claims about security.²⁸

7.6. Some are interested in such thinkers because they offer a powerful way of justifying the need to suspend civil liberties in the face of danger. This is the basic dynamic expressed in the traditions of political realism that inform most discourses about national security. It is also the dynamic that is reproduced in a new form in many contemporary claims about the threat of terrorism. Others are interested in such thinkers because they show how an uncompromising attachment to sovereign nation states will eventually lead to the dire necessities demanded at the limit, a situation that they consider must be resisted through a clear understanding of how easy it is to destroy freedoms in the name of some state of emergency. Much of the political imaginary that gave rise to the European Union as so much more than a system of nation states came from precisely such a revulsion against the nationalistic exceptionalism that thrived in the 1920s and 1930s.

7.7. Now the EU is beset with demands for new forms of exceptionalism – not articulated in nationalistic terms to be sure – but certainly demands that lines be drawn between the possibilities of liberty and the necessities of security. The balance, it is said, must tip towards security and away from liberty. Or rather, an exception must be made. Norms must be suspended. Freedoms must be curtailed. In a converse dynamic, much of the resistance to the unilateralist imaginary that has been cultivated by the Bush administration arises from the judgement that any state that treats itself as an exception is always likely to promote its own values as universal rather than international, and thus to simplify the world into binary categories, to celebrate the analysis of worst-case scenarios and to create a climate of suspicion destroying social cohesion in the name of patriotism.

7.8. The capacity to decide exceptions is a serious business, as many of the classical traditions of military thought have long insisted. Much of the analysis of contemporary security problems has lost touch with such traditions and is all too willing to treat every threat, actual or predicted, as evidence that limits have been reached, that a state of emergency exists, that freedoms must be curtailed and that norms must be suspended.

28 See WP4, WP6 reports.

7.9. Such extremist reasoning is not only dangerous, but also unnecessary. It finds little if any support in the relevant scholarly communities, for example. It is, rather, the product of specific and clearly identifiable circumstances involving the behaviour of political professionals and the relation they have with security and intelligence agencies. Not least, some players have been able to further their interests by transforming a fluid situation with many possible outcomes into a *fait accompli*. In one of the great paradoxes of our time, security has mutated from being a matter of uncertainty and contingency, of careful judgements about the unpredictable, of a politics of responsibility, into a professionalised and institutionalised capacity to know, with certainty, with all the advantages of science and technology, who is a friend and who is an enemy.²⁹

7.10. For example, the decisions to invade Afghanistan as the appropriate response to al-Qaeda, to prioritise the Pentagon and the defence industry, to build up a Department of Homeland Security, to avoid the kind of judicial and policing approach adopted by the Spanish after the Madrid attacks of 11 March 2004, have been shaped by a specific and even idiosyncratic unilateralist vision of the world. These were not the only possible responses. Indeed, they were resisted by most of those who specialise in the demands of an international or multilateral political order. Still, these decisions have been taken, and their consequences are unfolding. Initial feelings of commonality with the victims of 11 September have given way to deep suspicions and resentment at the way a specific act of terror was amplified: first, into a state of national emergency, and then into a rationale for the wholesale restructuring of large parts of the world contrary to established principles of international order. There is, of course, almost infinite scope for disagreement about the judgements and decisions that were at work as this process unfolded. Two large points should not be forgotten, however. First, these specific decisions were generated through a politics of exceptionalism involving claims about a state of emergency – claims that were so easily and so effectively deployed not only to curtail liberties but to justify an attempt to rewrite the entire basis of the global political order. Second, other responses were possible, but their very possibility was quickly eradicated through claims about military necessity and to a knowledge that legitimised a declaration of war. Very serious dangers arise, however, when specific agencies and professionals are enabled to tell us when necessity must take over our lives and freedoms.

7.11. One of the most worrying expressions of the way these specific political choices were made has been the extraordinary willingness to treat ‘enemies’ as inhuman, especially given that the framing of enemies has been shaped by claims about the defence of civilisation. Abu Ghraib and Guantanamo Bay are significant here, as is the willingness to target entire populations as potential enemies given the difficulties of distinguishing ‘terrorists’ from ‘civilians’, and the indifference with which the scale of civilian casualties in Iraq has been received in many quarters. Troubling though these specific expressions are, however, we should not lose sight of the way they are expressions of deeply rooted tendencies that reach right into the fabric of modern liberal democracies.³⁰

²⁹ See WP1, WP6 reports.

³⁰ See WP1, WP2, WP3, WP4, WP6 reports.

7.12. It may be that the unilateralism of the first Bush administration is over. Greater coordination with the EU is now being envisaged, with greater emphasis on policing and the judiciary. Already vivid debates about the relation between the EU and the US will no doubt continue and intensify. In this context, it is extremely important that discussions about the best common security policy do not become channelled exclusively into questions about better forms of cooperation without serious consideration of the impact of such cooperation on civil liberties. It is important not only for the obvious reason that the US remains hegemonic even if not unilateral, but because cooperation involves less any traditional relations among sovereign states than the effective globalisation of techniques and agencies concerned with surveillance of people on the move. What is at stake in claims about the need for greater cooperation among security agencies and intelligence services is nothing less than the construction of new ways of shaping societies and their democratic possibilities – or impossibilities.

7.13. The debate on what democracy we want today, what freedom we are effectively sacrificing in the name of future freedoms and the eradication of terrorist dangers, has not been on the top of the agenda recently. Indeed, for all the rhetoric about the need to secure democracy, the extent to which democracy remains a viable political aspiration under contemporary conditions is hardly discussed among the elites or mass media who can afford to take their place in the world more or less for granted. This is no doubt linked to the way in which the security industry and those interested in economic cooperation among EU members or in competition with the US industry have been able to assume priority over those engaged in debates about civil liberties and social cohesion. Nevertheless, liberty and social cohesion are closely related, on a judicial level to juridical control over complex and diverse systems of power, and to the political and administrative means for the implementation of legal provisions over issues of discrimination.³¹ As long as such issues are swamped by the perceived necessities of certain kinds of cooperation on matters of security and economic interest, democratic energies will continue to atrophy. Much of the research conducted by the ELISE team suggests not only that freedom and basic human rights have indeed been compromised by the all-pervasive character of security discourses, but that such discourses have made it much more difficult to treat claims about democracy as anything more than a rhetorical trope to be used to discriminate between ourselves and others.

7.14. Many other dynamics within the EU give cause for concern about the possible direction of EU-US cooperation. Even if the fear of terrorism and claims about links with weapons of mass destruction have been less important in the EU, there has been a resurgence of the forms of insecurity generated in the mid-1980s in the name of a struggle against the free movement of people and fear of migrants ‘invading’ the West. In the EU, as in the US, powerful discourses have connected terrorism with migration as well as with Islam. Many politicians, in classical populist style, have deployed such discourses for re-election purposes, thereby helping to create a ‘siege’ mentality, especially where people have little contact with other peoples or other places and feel insecure about other ways of life.

³¹ See WP2 and WP4 reports.

7.15. Even though the EU as a whole has tried to build an alternative vision of security in the project of enlargement (extending to the Balkans), for example, or managed to prevent excessive prejudices against Muslims, or privileged justice and police cooperation at the world level as the main solution against political violence, or tried to improve economic stability in the Middle East, it is nevertheless the case that some institutions have played a very different strategy, reproducing at the EU the assumptions and procedures of their US partners. For example, some actors inside Justice and Home Affairs have tried to push the agenda for more controls of migrants in the name of the struggle against terrorism and organised crime. They have criminalised migrants and securitised asylum seekers. They have considered themselves in a war on terror extending to illegal migrants and radical Muslim believers, especially imams.³²

8. Challenges to the Rule of Law

8.0. All these concerns are in some sense distilled in the tensions that can be observed between the political class and the judiciary, particularly in relation to respect, or otherwise, for the rule of law. The emergence of indefinite detention of persons suspected of terrorist activity has been at the heart of the discussion both in the US in relation to foreign nationals detained indefinitely at the US bases in Guantanamo Bay and in the UK in relation to the 2001 Antiterrorism, Crime and Security Act permitting the indefinite detention of foreign nationals who were arrested and mainly detained at Belmarsh prison. The ELISE project has examined these tensions in some detail, focussing especially on indefinite detention, the rule of law and the role of the judges faced with the executive powers of the government and the administration.³³

8.1. According to this analysis, the rule of law has been called upon as a principle capable of compensating for weak democratic control over the legislative and executive processes in the protection of the individual's right to liberty. The conditions necessary for the judiciary to carry out this highly controversial role have included the possibility of access to the supranational courts, particularly the European Court of Human Rights but also the possibility of the involvement of the European Court of Justice (ECJ). This has been central as the mechanism by which judges may perceive themselves as less dependent on national legislation and legislatures. Further, judges are already required to apply supranational law in the national domain by the legislature and thus are entitled to protection from the charge of usurping the role of the legislature. For example, the ECJ has used principles of market freedoms as specified under the EC Treaties, that is, freedom of movement in the sense of access to the single market, as a counterbalance to claims about general interest specified in national terms. The position of the rule of law as an organising principle in the EU goes some way to explaining some of the differences between the indefinite detention of foreigners in Belmarsh prison in the UK and the case of the US bases at Guantanamo Bay.

8.2. This struggle around the rule of law at the EU level is crucial. This is not to deny or underestimate the fact that our societies have reacted with some strength against past

³² See WP2, WP3, WP4 reports.

³³ See WP4 report.

experiences of highly coercive techniques against subversion, particularly in the 1950s and 1960s in France and southern Europe but also more recently, in the 1970s and 1980s, in the UK, Germany and Italy. Whether these took the form of dirty wars, suppression of opposition groups under dictatorships or antiterrorism measures, there is a history in Europe of tension between the law and state violence that has been searing for the populations involved. The use of the notion of a state of exception as an explanation for the suspension of the rule of law in certain discrete areas (either geographical or juridical) has been accompanied by the idea that some periods of exceptions may be prolonged and routinised until they become normal. They have been slowly but surely incorporated into the rule of law, not only into our understanding of the boundaries of normality but also into the professional consciousness of the judiciary as well. Indeed, the importance of the rule of law in respect of the actions of the administration has been partly undermined by the multiplication of sources and scope of the derogations available for use in everyday life. There is, for example an exception applicable to the legal status of irregular migrants, along with an exception, in practice, shaping the treatment of young persons from different ethnic origins living in deprived areas, while the detention of foreigners in airport zones or in transit camps has paved the way for the acceptance of indefinite detention in Belmarsh prison or at the US bases in Guantanamo Bay.³⁴

8.3. The climate of unease and fear towards some foreigners has fostered the belief that there is a connection between the practices of Islam and doubtful allegiance to the state. Even where individuals have become citizens, their religious affiliation makes them suspect as a possible ‘fifth column’ representing ‘the enemy within’. In practice, it is often a question of how an individual is perceived. If a child is first and foremost a foreigner before he or she is a child, the principle, contained in national, EU and international human rights legislation that the priority must be given to the best interests of the child in any treatment of him or her will take second place. The expulsion of the foreigner (albeit a child) takes priority over the protection of the child (albeit a foreigner). The possibilities of electronically tagging a young person for civil disorder and for generalising the procedures of control have also connected these two dimensions of the normal and the exception in a paradoxical way. On the one hand, the exception invades the normal and changes what is considered as normal; on the other a new tolerance for further exceptions is created. A climate of fear, even a permanent state of emergency has been created, so that the way an individual behaves is shaped by the conviction that we live in a time of war. For instance, can anyone in London or Paris still ignore an abandoned rucksack sitting on a train or bus?

8.4. The effect has been to reinforce what Bigo in 1998 termed a “governmentality of unease” or “ban-opticon”, in which there is a framing of certain persons who are then categorised as subject to a sovereign exception, to exclusion and ban on the basis of the threat they represent. For them, there is a normalisation, and imperative, in the curtailment of some forms of freedom, most graphically freedom of movement. Their boundaries are delimited by the securitisation of everyday life and the rise of intolerance, even the designation of zero tolerance. The events of 11 September have exacerbated the ban-opticon by making more visible many of the technologies and rationalities at work . In particular there has been an acceleration of the move away from the control of people

³⁴ See WP1, WP4, WP5 and WP6 reports.

on the territory or by means of their territorial designation to a control at a geographical distance through the traces they leave. This is why biometric technologies have become so central to security. Yet, people are also monitored by reference to the future, by what they may or may not do in the future based on what is known about them from the past. This is why data-mining and profiling have also become so central to security.³⁵

8.5. The response to challenges to the rule of law so far has been mixed. Although there have been some robust ripostes to some measures, such as that by the UK House of Lords to the indefinite detention of foreigners, legislation they found contrary to the European Convention on Human Rights, and that by the French *Conseil d'Etat*, which found the detention of French nationals in Guantanamo Bay to be illegal in international law, there has been silence on a number of critical issues. The function of the rule of law to protect the individual has not yet found its place with respect to the collection, retention and use of massive amounts of data on the individual. The collection and use of biometric data on individuals remains a field in which administrations are claiming a wide scope of manoeuvre, with only silence so far from the judiciary.³⁶

8.6. The progressive development of an Area of Freedom, Security and Justice has been especially affected by all these developments. While 'security' has clearly acquired a predominant value, 'liberty' has been relegated to a secondary role. Ever since the Amsterdam Treaty (1999) first transferred polices dealing with elements of freedom, security and justice to EU competence, there has been a tendency, in both discourse and policy, to strengthen and unify transnational cooperation on security. Security understood as protection of the internal order has become the most essential component of EU citizenship in the area of 'Freedom, Security and Justice'. This policy area has been based on both the Community and the intergovernmental methods, and is gradually leading to new sources of discretionary power through the emergence of EU-wide networks of control. In effect, by providing for common normative parameters and operational coordination in the fight against crime and terrorism, EU governance works so as to reinforce national policies against security threats faced by state governments.³⁷

8.7. The official Declaration on Combating Terrorism of 25 March 2004 represented another step towards a common approach to a highly contentious package of restrictive proposals aimed at fighting everything deemed to be a 'terrorist activity'. Similarly, the development of a Visa Information System (VIS), the second generation of the Schengen Information System (SIS II), as well as the use of biometrics and new technologies of surveillance in such identification documents as visas, residence permits, passports and travel documents, continues to be at the top of the EU policy agenda. The structural coherence and potential effectiveness of all these pro-security policies, and their compatibility with EU and international human rights standards, data protection legislation and the rule of law for EU and non-EU citizens is open to very serious question. There is a worrying lack of transparency to the adoption of all these measures, not least to their real scope and limits and to their relation to the so-called 'principle of

35 See WP1 and WP6 reports.

36 See WP4 report.

37 See WP2, WP4 and WP5 reports.

availability' affording information-sharing between security agencies all around the European Union.³⁸

9. The Metaphor of Balance and the Politics of the Exception

9.0. Looking at the broad array of initiatives that have been mobilised in relation to claims about a new security environment, ELISE project researchers are largely persuaded that the application of security measures in relation to social mobility, immigration and asylum policies, and indeed to all social fields in which the status of freedom is at stake, has been over zealous. This is in no way to dismiss claims about the dangers posed by the resort to violence in the contemporary world, but it is to challenge the way many such claims are produced on the basis of artificially over-stimulated, narrowly focused and institutionally self-interested accounts of what it means to make judgements about a state of emergency warranting the derogation of liberties, rights and democratic responsibilities.

9.1. In general terms, this judgement is perhaps not surprising, whether historically or comparatively. The capacity of political agents to invoke claims about impending dangers in order to justify restrictions on peoples' lives is perhaps one of the most longstanding themes of political commentary. It has been central to the stories about the origins of the modern state in some sort of social contract, and it has been central to the way modern states have understood the relationship between peace at home and war broad. Some would even say that what has been happening is more or less natural and only to be expected. This, too, is part of what has made it relatively easy for many people to accept claims that a privileging of the necessities of security over any guarantees of liberty is perfectly acceptable.

9.2. Yet the appearance of necessity, inevitability and apparent naturalness is precisely only an appearance, an effect of specific, concrete and identifiable practices in many arenas. Many claims have been made about the dire threats posed by terrorist activities and the necessity of exceptional measures to deal with them, but these claims have emerged from specific agencies and professional groups, with their own interests, rivalries and myopias. They have been able to make their claims to knowledge largely away from any critical public arena and to create an environment in which knowledge about security matters is both distinct from and much more important than knowledge about liberty, social integration, rights, or the rule of law. Security matters are important. Acts of terror are not trivial. Yet the claim to know precisely how important, and to know to what extent they are sufficient to justify the forms of exceptionalism that have become widespread over the past few years, is not something that can be taken out of the realm of democratic accountability without serious damage to the expectations we have of democratic societies.

9.3. An important characteristic of contemporary debates about the relationship between claims about security and claims about liberty is the resort to the metaphor of striking a balance between liberty and security. It is a comforting metaphor. It suggests, not least, that someone is in a position to judge when a proper balance has been reached. Thus it is

³⁸ See WP2 and WP5 reports.

a metaphor that disables any understanding of how the relationship between these competing claims is, in practice, structurally one-sided. Some voices are in a much stronger position to speak and be heard than others, just as some bank balances are considerably more impressive than others. Balance, in this case, suggests a situation of preponderance, not of equality. It is also a metaphor that discourages people from thinking about the way in which any possible judgement about when a balance has been reached will be made by agents who are very closely connected with security agencies, even though this is, after all, what is meant by accounts of the sovereign state as having a monopoly over violence in a particular territory. On the contrary, it encourages people to think about politics as a matter of simple choices, as if one can choose liberty or security, rather than as inseparable values that are always in potential conflict. The use of the cosy imagery of a balance in this context works precisely so as to deflect attention to what is at stake in the idea of the exception, in claims about the need for some sovereign decision to be made so as to suspend established norms and freedoms in the name of security in a state of emergency. The metaphor of a balance, in short, detracts attention from all the hard questions about responsibility, about judgement, about who gets to decide that an act of violence warrants military action or legal action, derogations of the rule of law or responsibility under the rule of law, about whether suspects are to be treated as humans or as something else entirely.

9.4. Not the least reason to be sceptical of this metaphor under contemporary circumstances lies in the degree to which discourses about security are increasingly framed as a matter of cooperation and unification while discourses about liberty are framed in relation to fragmented jurisdictions severely constrained by law and regulations. Security is now considered as a value without frontiers. Cooperation is seen as the key to efficient and centralised information, for anticipating events and profiling who is and who is not dangerous, who is and who is not suspect. European Union agreements have been pushed forward, especially by Spain, so as to structure an EU identity as a democracy struggling against the same terrorist enemies. The US wishes to have even more cooperation at the transatlantic level, but under its own strategic direction. Internal and external securities are being merged, in complex ways that certainly do not fit with conventional accounts of a 'security dilemma' between states, but which have been examined in some detail by the French, Belgian and Greek teams of the ELISE project.³⁹ On the other hand, the spaces for liberty have been carefully distinguished, especially in relation to freedom of movement and the crossing of borders.

9.5. The challenge before us does not lie in the mysterious task of identifying some acceptable balance between claims about security and claims about liberty. It lies in the need for much more rigorous scrutiny of the conditions under which claims about security warrant the suspension of liberties and freedoms. It requires much more sustained attention to the ways in which the restructuring of political life in response to many different forces is being especially shaped, and distorted, by agencies capable of converting serious threats requiring democratically considered responses into extreme states of emergency requiring military responses, new modalities of social control,

³⁹ See WP1 and WP5 reports.

intensified forms of surveillance and exclusion as well as unwarranted assaults on the most basic values of liberalism, democracy and the rule of law.⁴⁰

10. A Politics of Accountability

10.0 The broad perspective sketched here, along with the more specific research projects that inform it, suggests an urgent need for much more robust resistance to the marginalisation of claims about liberty whenever the necessities of security are invoked. In general terms it might be said that where the possibilities of political liberty are currently being constrained by forms of structural and institutional fragmentation, they ought to be nurtured by imaginative forms of cooperation across existing jurisdictions; and where the possibilities of cooperation and unification are being sought in order to control human populations on a global and indeed imperial scale, they ought to be subject to greater scrutiny and control by many different democratically accountable communities and institutions.

10.1. In relation to the institutions of the European Union, this implies not least a need to enhance the capacity of agencies charged with ensuring greater protection against new sources of discretionary action. The so-called ‘democratic deficit’, chronic across so much of the EU, is an especially serious problem in this context. Thus it is possible to envisage an independent agency of fundamental rights capable of concentrating an administrative power of inspection across the security agencies; or a process of enlarging and unifying the different agencies concerned with data protection; or specific missions to inspect various transnational European bodies and groups, including a special surveillance of intelligence and police activities, especially when they are operated by agents beyond their state borders; or new powers to enable inquiries into the behaviour of specific security agencies, whether public or private, perhaps with the help of networks of NGOs and academics of different disciplines; or new obligations on the part of member states, as well as all third parties who share data with the EU, to be liable for their use of data, ultimately before the European Court of Human Rights. Other proposals of this sort are outlined in many of the texts produced by specific work packages in the ELISE project, most explicitly those involving the Greek and Belgian teams, but also those that have looked at emerging procedures in the fields of migration, citizenship, policing and law.⁴¹

10.2. In one way or another, however, such institutional initiatives need to be driven by a renewed commitment to a politics of accountability: that is, a willingness to resist seductive claims about the necessity for overriding liberties in the name of security and to ensure that exceptions to the normal expectations of liberty, equality and democracy under the rule of law are made only under sustained and multidimensional evaluation. There is no reason to abandon the achievements of modern political life to those who have been enabled to speak in the name of security and nothing but security, but there is very good reason to suspect that much too much ground has already been ceded to agencies and institutions that have become used to speaking in this way. Although threats

⁴⁰ See WP4 and WP6 reports.

⁴¹ See WP2 and WP5 reports.

ELISE Final Synthesis Report

of violence and terror may continue, the potential excesses of a new politics of exception must also be dealt with. This is not simply a matter of 'civil liberties'. It is a matter that cuts right to the most fundamental principles of modern political life. In the end, it is not a matter that can be left safely in the hands of the security professionals, nor even the political professionals. Given the crisis provoked by negative public responses to the proposed European Constitution, this is a particularly good time to establish discussion on a much broader basis