

# EU counter-terrorism: security, justice, democracy and opportunity for all?

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JENNIFER LANG, AUG 14 2011

**The EU's counter-terrorism plans call for the vigorous promotion of security, justice, democracy and opportunity for all.**

**To what extent have such aims proved compatible and consistently pursued?**

“Strategic Commitment: To combat terrorism globally while respecting human rights, and make Europe safer, allowing its citizens to live in an area of freedom, security and justice”  
-European Union Counterterrorism Strategy (2005)

### Introduction

The European Union (EU) has been engaged in the fight against terrorism as far back as the 1970s, triggered by attacks at the 1972 Munich Olympic Games. However, it is undeniable that since the attacks on New York and Washington on September 11<sup>th</sup> 2001, and even more so following the Madrid and London attacks of 2004 and 2007 respectively, the EU has accelerated plans to combat the increasingly transnational terrorist threat to its member states. The 2003 European Security Strategy outlines the view that Europe is no longer susceptible to large-scale aggression from other states, but instead is becoming both a target and a base for terrorist networks that are global in scope, advising that “concerted European action is indispensable” (p.3). The 2008 Implementation Report on the Security Strategy re-emphasises the threat of terrorism to the Union and outlines programmes set up such as the 2004 Hague Programme; the 2005 Strategy for the External Dimension of Justice and Home Affairs; and the 2005 EU Counter-Terrorism Strategy, all of which are based on “respect for human rights and international law” (European Council, 2008a:4).

The EU Counter-Terrorism Strategy follows a four-pronged approach: preventing radicalisation and recruitment of potential terrorists; protecting potential targets; pursuing terrorists; and responding to the aftermath of an attack (2005:3). Although these aims are stated in the context of the Strategic Objective quoted at the beginning of this essay, it is debatable to what extent the promotion of justice, democracy and opportunity for all has been pursued and is even compatible with maintaining a secure European Area. Whilst the EU has grappled with a debate over what kind of power it will be (or already is), there has been a contradiction between normative objectives such as the promotion of human rights and democracy, and practice which has often fallen short of the rhetoric. EU Counter-Terrorist (CT) strategy is arguably the area where this contradiction is most visible.

The history of modern terrorism shows that a democratic government has never been toppled by such tactics however it remains at the forefront of United States and European threat perceptions and has in the past resulted in significant changes such as a new government in Spain following the Madrid bombings. In the United States policy has become militarised whereas the EU have turned towards defensive measures based on policing and intelligence. The shift in type of terrorism to a variety of religious groups who have used increasingly lethal tactics that have been aimed at causing high numbers of fatalities has contributed to a new securitised agenda across EU member states[1] replacing an agenda to promote justice, democracy and opportunity.

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This paper will look at three areas of EU policy which is either a major part of CT strategy, or that has been impacted upon by perceptions of the terrorist threat and an overall prioritisation of security. The legal framework of CT strategy is thus far inconsistent and detracts from the promotion of justice and opportunity; similarly internal policy of member states, namely, migration policy, has been securitised with a move away from the previous focus on encouraging freedom of movement. Lastly, external policy both at member state and EU level is now based on cooperation in the fight against terrorism with third countries, in place of the promotion of democracy, human rights and the rule of law. Although the argument clearly shows that the EU have not been persistent in pursuing the objectives outlined in the title, it is also evident that this is based on a false perception that security goals are not compatible with the promotion of justice, democracy and opportunity. In fact, this misperception may have contributed to an undermining of security for the EU and has discredited the EU as a normative power.

## **Background on EU Counter-Terrorist Strategy**

Sarah Wolff (2009) marks the 1972 Munich Olympic Games as “a critical moment during which Terrorist attacks were securitised and internalised by European leaders”, the uncertainty caused leading to national solutions under a trans-governmental framework as oppose to common solutions at this point (p.139). This included the formation of ad hoc groups such as the Police Working Group on Terrorism and TREVI as a result of the 1975 Rome Treaty, however focus remained on economic and trade aspects of issues such as migration and relations with third countries, with foreign policy remaining separate and progress stalling in the 1980s (Joffe, 2008:150). By the 1990s terrorism had become a domestic issue for EU member states, particularly France and Spain, whilst at the same time, an international discourse surrounding human rights and democracy promotion was emerging.

The end of the Cold war created a new international environment also contributing to the wider debate surrounding the nature of EU power, especially as it lacked a military force; Joffe states:

“[The EU] was able to develop a set of policy instruments and programmes based on normative power which subordinated – even substituted for – its overt security objectives and which was directed towards the introduction of universally-accepted norms of state and communal behaviour in its relations with third countries” (2009:152)

This was confounded in 1999 by the conclusions emerging from Tampere calling for an ‘Area of Freedom, Security and Justice’, also representing the first time in which the ‘external dimension’ of Justice and Home Affairs (JHA) had been mentioned in Council conclusions. A number of scholars have noted the post-Cold War shift towards a new security agenda in which the EU has focused on transnational organised crime, irregular migration and international terrorism – interlinking the three areas contributing to the subsequent blurring between internal and external security visible through the emerging external dimension of JHA in the 1990s (Lutterbeck, 2005; Bigo, 2006).

Already underway in the 1990s, the attacks of 9/11 accelerated this process resulting in a securitisation of policies such as migration and development aid to third countries – a clear shift from the normative agenda of the previous decade. Through drawing terrorism to the forefront of public opinion, as well as focusing political attention on the issue the 9/11 attacks have provided justification for policies that run contrary to the “the vigorous promotion of justice, democracy and opportunity” despite any clear evidence that shows these objectives are incompatible with security aims. Just days after the 9/11 attacks the European Council (EC) issued its ‘Action Plan on Combating Terrorism’[2], followed later by the establishment of a Counter-Terrorism Coordinator, currently held by Gilles de Kerchove, and the 2005 CT Strategy outlined in the introduction. Along with these documents, new institutional bodies have also been created or officially tied to the EU such as EUROPOL, EUROJUST and the EU Intelligence Centre (SITCEN), and legal mechanisms such as the European Arrest Warrant have been adopted despite widespread criticism surrounding their legal basis and impact on civil liberties.

Although some authors have applauded the swiftness of EU action following the various attacks on the West a number have criticised the way in which attacks have been used as “a window of opportunity to adopt long-standing proposals that were lying on the desk of EU officials” through the creation of an emergency discourse and amplification of fears (Wolff, 2009:140; Edwards & Meyer, 2008; Bossong, 2008). Bigo (2006) goes as far as refuting the opinion that 9/11 ‘changed everything’ and states that the resulting policies have been a result of “institutional

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games and practices of securitisation that define the importance of security as superior to sovereignty and freedom" (p385). He continues that the arguments from the security field that war and crime, and policing and defence should be assimilated, has serious ethical implications resulting in loss of liberty and democratic principles (ibid: 386). The extent to which this securitised approach is even successful in countering terrorism compared to a system which pursues security within a normative framework (as outlined by EU rhetoric) is unclear and may even undermine European security.

## Legal Framework

According to an Amnesty International (AI) report published in 2005 on EU CT strategy, the legal framework of policy is of crucial importance to the promotion of justice, democracy and opportunity. In particular it notes that the categorisation of acts as 'terrorist' creates the basis of what level states cooperate on as well as the types of legislation used to deal with such acts. This initial categorisation has severe implications for certain rights such as the right of access to a lawyer; inclusion on public lists identifying a person as a terrorist; invasion of privacy; and the use of secret evidence and incommunicado detention. In addition, it is not made clear as to why acts of terrorism are treated differently to criminal acts such as murder and kidnapping that are dealt with under the regular criminal justice systems of member states, for example, limiting rights to a fair trial which is a "fundamental concept of justice and the rule of law, its function being to protect against miscarriages of justice" (ibid: 8).

Not only do miscarriages of justice grant impunity to the real perpetrators of acts of terrorism but they also "undermine the public faith in the state's ability to guarantee freedom, justice and security" in addition to alienating minorities who are more likely to become victims of human rights abuses in connection with the fight against terrorism (ibid). Feldman (2002) outlines how the use of the criminal justice system requires the application of rules of procedure with a view to achieving equality of arms among the parties, which is essential to its legitimacy. He continues that the end result of using this system may be a conviction and sentence (the most legitimate way in which an individual can be punished by the state); however it may also result in an acquittal. In the case of an acquittal "the state's suspicions regarding the individual have not been transformed into punishment" plus the state is constrained from a second attempt to try the individual on the basis of the same suspicions (ibid: 302-257).

This argument helps to explain the legal justifications in separating terrorist acts from criminal acts but does not suggest that such acts should be considered completely outside any legal framework which becomes the case when legislation is vague as in the EU case. This clearly is not in line with the promotion of justice or security. Whereas these objectives are not incompatible it is debatable as to what extent the EU has pursued these aims in conjunction with one another, i.e. counter-terrorism underpinned by normative considerations. Whilst a thorough review of the legal complexities of EU CT is not within the scope of this essay, below two of the main issues that come into conflict with normative objectives will be discussed: the legal definition of a terrorist act; and the creation of terrorist 'blacklists' in conjunction with United Nations (UN) Security Resolution 1337.

## Legal Definition

Despite there being no universally accepted definition of terrorism, Edwards and Meyer (2008) argue that are common elements. Contrary to this, the AI report (2005) notes that due to ideological differences between EU member states there is no *precise* definition of terrorism within the Council of Europe Convention on the Prevention of Terrorism despite the requirement for state parties to criminalise provocation of and recruitment and training for terrorism. According to the report, this has resulted in the creation of a number of subsidiary offences whilst the primary offense – terrorism – remains undefined, and as pointed out by Casale (2008) "leaves room for opposite interpretation of the same fact" (p.162). Further difficulties arise as terrorism becomes more generally used as a synonym for political violence which has resulted in a post-modernist rejection of the concept altogether on the grounds that it is purely subjective, implying that there are no independent verifiable criteria to distinguish terrorism from other activities (Wilkinson, 2006).

The definition presented in the EU Council Framework Decision on combating terrorism (European Council, 2002) is fairly broad extending the notion of terrorism beyond acts (or attempts at such acts) to cause death or bodily harm, a

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much broader definition than that presented by the UN High Level Panel on Threats, Challenges and Change in December 2004 (AI, 2005:8). A 2008 Amendment on the Council Framework further extended the definition to include public provocation to commit a terrorist offence as well as recruitment and training for terrorism, adding that this is applicable also if it is carried out via the internet (European Council, 2008b).

In line with the criticism noted above, this wide legal definition has broadened the scope of acts that can be dealt with by terrorist legislation despite them not necessarily being perceived as such either domestically or internationally. For example, the riots that took place in a number of French cities in 2005 incorporated most of the main elements of the definition of terrorism as per the Framework Decision, i.e. intimidation of the population; the government being compelled to act; and the endangerment of social, political and constitutional structures. Despite this the riots were not perceived as acts of terror (Casale, 2008:62). Whereas some member states have not diverged significantly from their own national terrorism legislation, those who lacked such a basis in the first place have basically transposed the Framework Decision exactly into their national legislation – “failing to remedy the problem of vague definition” (ibid).

The European Arrest Warrant (EAW) “has further exacerbated the lack of legal certainty in the definition of ‘terrorism’ in practice” removing the requirement for double criminality (i.e. the offence is seen as such in both countries involved) which has the result of national definitions that apply in national law being applied in the application of the EAW – thus, national definitions are extended across the EU “without a clear picture of what those definitions might be” (ibid: 10). Because national legislation can go further than that of the EU, member states are now able to use the EAW to enable surrender of certain individuals from other states even if the activities of the individual or group are not considered to be terrorist in nature in that state – the surrendering state is not able to refuse on this basis under the EAW.

A main concern is that the EU definition does not comply with European Court of Human Right decisions such as that in the case of Kokkinakis[3] in which the Court found that there had been a violation of Article 9 of the European Convention on Human Rights (freedom of religion). In addition they state that mutual recognition instruments such as the EAW without a clear legal definition of terrorist offences “undermines the principle of legal certainty in the Area of Freedom, Security and Justice”. If it is accepted that a sound legal framework is necessary for successful prosecution of terrorists two conclusions can be drawn – firstly the aim to promote justice (and in relation, democracy and opportunity) is *not* incompatible with the promotion of security and secondly, thus far the EU have not been consistent in pursuit of these aims.

### *Terrorist Lists*

Elsbeth Guild (2009) describes the EU terrorist lists as one of the key measures in its fight against terrorism, especially in conjunction with the freezing of assets. She states that as it is heavily dependent on the pooling of intelligence by member states it is a *success* in terms of the EU as a security actor; however, it also has severe consequences for individuals and has raised serious questions of human rights compliance. Guild states that the lists have authority from member states but also remain consistent with EU-level decisions therefore key elements of liberal democracy are limited whilst at the same time national mechanisms of democratic and judicial control are also restricted (p.175).

It is clear that the identification of certain organisations or individuals as “terrorist” has severe implications for enjoyment of certain rights such as freedom of assembly and association, freedom of expression, the right to privacy, etc. In this respect it is of the upmost importance that evidence for such identifications is clear and capable of being challenged (AI, 2005: 11). The creation of EU terror lists is a result of the implementation of UN Security Council Resolution 1373 which sets out its own ‘blacklists’. The definition of terrorism for these lists is the same as that outlined in the EU Framework Decision on combating terrorism however is extended in that it is not limited to acts by or against EU citizens/residents or carried out on EU territory. The lists have been highly criticised for the lack of democratic scrutiny in their establishment and for the absence of judicial review regarding inclusion – both of which undermine their legitimacy and thus their “practical usefulness” (ibid: 12). In response to the establishment of such measures, the European Parliament issued the following statement stating that it:

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“Regrets that the measures adopted by the Council on 27 December 2001 by ‘written procedure’ constitute a legally complex construction which appears designed to circumvent the democratic scrutiny of the European Parliament” (EU Parliament, 2002)

Aside from the legal complexities of the lists, Marty (in Guild 2008) outlines how, the violation of fundamental rights of individuals placed on lists undermines the entire international fight against terrorism which in fact should be able to rely on “the widest possible support from the international community and public opinion”. Despite this widespread criticism though, some scholars and NGOs have begun to report some progress in the convergence of counter-terrorism legislation and the underlying normative principles that such legislation has the potential to impact upon. Guild (2008) states that:

“...there is clearly a transformation under way regarding the designation of individuals as suspected terrorists... Legal order is beginning to work its way into what appears to have been an arbitrary mechanism of designation. The Member States which have chosen to place individuals on the list will now have to provide information to the Council regarding the reasons for seeking to list the individual, in the knowledge that the information will be passed on to the individual and that the person will have the opportunity to challenge his or her treatment.”(p. 190).

NGOs such as Human Rights in Ireland have also reported progress, especially in the wake of the Lisbon Treaty. According to Cian Murphy (2010) the Lisbon Treaty offers new possibilities for EU member states, in particular outlining how the creation of the European External Action Service offers a mechanism to coordinate between internal and external policy instruments which will benefit the field of counter-terrorism. Murphy also notes the creation of the Ombudsman position that will assist in the review of listing decisions which has been called a “significant reform” although he also notes contrasting commentary from the academic and judicial fields. He also adds that the 2010 Action Plan acknowledges that the current process is “too cumbersome to allow the system to be used in a dynamic way to encourage changes in behaviour of listed groups” highlighting how policies stemming from false perceptions of how to deal with the terrorist threat (i.e. as a zero-sum game with normative objectives), has not contributed to a more secure Europe.

## *Extradition and Procedural Rights*

A third area where the legal implications of CT policy impacts upon the promotion of various EU objectives is extradition and procedural rights for suspected terrorists. In 1999 the European Council of Tampere agreed that mutual recognition should: “become the cornerstone of judicial cooperation both in civil and in criminal matters” leading to the establishment of the aforementioned European Arrest Warrant via a 2002 Framework Decision, as well as a 2003 Framework Decision relating to freezing of property or evidence. As already laid out, this would mean that a decision made by a judicial authority in one state would be recognised and exercised in all other member states. This strategy is aimed at overcoming the issue of differences between national judicial systems and according to the Commission outline is based on mutual confidence centred on respect for individual rights (European Commission, 2010).

This strand of EU policy has been subjected to harsh criticism from civil rights groups such as Amnesty International and Fair Trials International who have advocated the need for a level playing field across member states in terms of rights protection. This would then develop the principle of mutual trust through which cooperation will be enhanced as a belief is fostered that miscarriages of justice will not occur within the EU judicial space (AI, 2005:16). In 2009, Fair Trials International launched the campaign: ‘Justice in Europe’, dedicated to reforming the EAW and other mechanisms of mutual recognition. The programme is based on the assumption that the EAW was rushed as a result of the perceived terrorist threat following 9/11 and as a result political discretion and traditional legal barriers have been removed from the extradition process (Fair Trials International).

Whilst the new scheme does provide for a simplified extradition process between member states and a fast-tracking of requests for the arrest and surrender of persons present in other member states, it has significantly reduced grounds to resist extradition, even when it is clear that the evidence has been obtained via methods of torture or ill-treatment (Heard, 2009:1). Cases such as that of Andrew Symeou who was extradited to Greece under the EAW

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mechanism despite claims by the two witnesses who implicated Mr Symeou that they had been beaten by Greek law enforcement officers and forced to sign statements under duress have contributed to a growing critique of the legal mechanism (Booker, 2009). Admissibility of evidence due to allegations of it being received as a result of torture or other ill-treatment runs contrary to Article 6 of the Treaty of the European Union (TEU) and numerous international laws outside of the European Union framework.

It is clear that the use of torture to obtain evidence has severe implications for whether or not information will be used in court, and creates negative implications for public trust in law enforcement officers and the judicial system overall. This undermines the mutual trust necessary between member states to execute a successful CT strategy. In some cases member states have refused to extradite to other member states as a result of the varied national legislation and practice which has contributed to a breakdown in judicial cooperation and trust between states. This has been due to fears of violations of human rights both in the investigation period and the trial stage of proceedings against terrorist suspects. This emphasises how despite a widespread belief surrounding the treatment of suspected terrorists, i.e. they should not be afforded the same rights as other criminals, in fact not affording these rights may result in actual terrorists walking free as states refuse to extradite on human rights grounds highlighting how security, justice and opportunity for all are not incompatible objectives.

### **EU Internal Policy**

#### *Securitisation of Migration*

The securitisation of migration is probably the most visible aspect of internal EU policy by which the impact of a securitized JHA in general as a result of a shift in the security agenda has clashed with the pursuit of justice, democracy, and in particular: opportunity for all. Edwards and Meyer state that “the very fact that the fight against crime and illegal migration is framed as part of the fight against terrorism underlines the point that the politics of counter-terrorism have set the EU off on a widely contested course that could affect its role, functioning and claim to legitimacy” (2008:3). Similarly, Joffe (2008) states that the securitisation of these policies now means that migration itself has come to signify (in part) transnational terrorism (p.153). In particular the role of the media has contributed to the creation of an atmosphere of fear surrounding incoming migrants. The recent attempted terror attacks in Germany and the subsequent remarks by the German Interior Minister regarding Arab migrants within the neighborhood represent a vivid example of how this discourse is played out.

Although the “Fortress Europe” concept emerged in the 1990s, from 2001 onwards there has been a shift towards a “predominantly exclusive and defensive approach to European internal security” (Pastore, 2001:10). In particular the attachment of the Schengen acquis to the Treaty of Amsterdam has contributed to this view as candidate states are forced to adopt Schengen conditions in order to gain admission to the EU. For Central and Eastern European states this has resulted in negative economic outcomes as well as triggering political frictions at recent borders and heightening ethnic tensions (ibid:14). Whilst former JHA Commissioner Antonio Vitorino (2001) disputed the “Fortress Europe” concept in a speech claiming that “the reality is entirely different”, Balzacq (2008) outlines how the fight against terrorism has “transformed the Schengen Information System from a support tool for the free movement of persons and police cooperation to an investigative tool”, resulting in a wider collection and dissemination of personal data (p.84).

On the EU Southern Maritime Border a system originating from Israeli military technology to prevent Palestinian terrorists landing on Israeli beaches is installed consisting of a “vast system of radars, sensors and cameras to detect and intercept boats carrying irregular immigrants and drugs from Morocco” (ibid:235). In general, Lutterbeck (2005) notes that these are all characteristics usually associated with authoritarian regimes emphasising how EU policy is detrimental to the promotion of democracy. Member states have in essence been able to “go transnational with their control-oriented approach to migration management” bypassing constraints at the domestic level such as media scrutiny (Boswell, 2003:624). Externally, the EU have placed pressure on migrant-sending and transit countries to strengthen their own border controls basically externalising traditional EU tools as oppose to taking preventive measures, i.e. tackling root causes of migration.

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Despite this securitisation of policy which seems to be detrimental to the basic principles of democracy and opportunity, it is widely debated as to how effective the strategy has actually been in reducing migration and thus limiting the possibilities for terrorist attack. Placing to one side the vagueness of the links between migration and terrorism which are duly noted but not within the scope of this paper, one thing that is clear is that *illegal* migration has in fact increased despite the securitised policy. According to Boswell (2003), the policies have increased illegal migration due to individuals employing the help of traffickers which has also led to an undermining of member state's legal obligations to protect refugees who will be forced into using more dangerous routes into countries (p.620).

According to the International Organisation for Migration, thousands of migrants attempting to cross the Mediterranean from North Africa end up drowning with most going unrecorded. They report that in one accident alone in March 2009, over 300 Libyans were thought to have drowned after their boats were hit by sandstorms on their attempt to reach Italy (The Economist, 2009). In the same report it is noted that FRONTEX (the EU's border agency), have closed off safer and easier routes such as from Morocco to the Canary Islands, "forcing migrants to attempt more arduous routes" (ibid). Whilst the EU use FRONTEX and Naval patrols (often in joint operation with their North African counterparts) to prevent irregular migration, the reality that most illegal migrants enter the EU legally as tourists and then stay on is basically ignored. At the same time, the genuine plight of refugees fleeing war-torn countries who may be forced to enter the EU area illegally lack the protection afforded to them through international law.

In terms of the 'opportunity for all' objective that is at least on paper a part of the EU's CT strategy, the reality of a securitised migration policy is an increase in welfare chauvinism and promotion of "the idea that cultural homogeneity [is] a stabilising factor" – the implication of which is a failure to promote multiculturalism within member states through the distinct limitations placed on inclusion of immigrants/refugees/asylum seekers into European societies (Huysmans, 2000a). British Prime Minister David Cameron's recent speech outlining the view that multiculturalism has failed is an example of how there is a growing perception within member states that it has resulted in the emergence of 'home-grown terrorists' contributing to the view that minority groups are a threat to society.

This has been further exacerbated by media reports such as a recent Newsweek article which stated that "multiculturalism has radicalized second-generation immigrants" with British-born boys becoming involved in the Afghan insurgency and carrying out suicide bombings in Gaza (Hannan, 2011). At the EU level, member state perceptions of security threats are translated into policy. In an overview of how the discourse of terrorism has impacted upon the normative objectives of the EU, Richard Jackson (2011) states that "the EU still faces the problem that its policies are unlikely to deal effectively with the root political causes of terrorism – based as they are on a series of ill-informed assumptions and narratives" (p.243).

In a report published in 2010, Counter-terrorism Coordinator Kerchove acknowledged that whilst "it is too simple to say that discrimination and marginalisation lead individuals into terrorism: the processes at work are more complex", it could potentially reduce the pool of people more inclined to violence (European Council, 2010). As this highlights a seemingly disparate perception of migrants and minority groups between the EU and member state levels, the EU still need to make moves to implement policy that matches their rhetoric. This will certainly involve a shift in how threats are perceived and how security can be achieved before it is translated into action. Joffe (2008) notes that EU leaders and Commission officials draw no distinction between economic migrants from North Africa and individuals such as those who carried out the 9/11 attacks who had migrated to Europe for educational purposes. This has contributed to the growing fear of migrants – in particular, Muslims. Within the third countries the EU has sought to engage in its CT strategy there has been subsequent fear of the idea of "Islamic terrorism as its personification in migrant and minority communities" (ibid).

Aside from the fact that the reasons as to why individuals join terrorist groups in the first place is widely disputed[4], it is argued that the Europeanization of migration policy could in fact be a "window of opportunity to test the political and normative significance of the EU" through its articulation of respect for moral principles, human rights and democracy (Huysmans, 2000b:159). Through recognising that illegal migrants are in most cases the victims of human traffickers and crime organisations, and detaching them from the overall counterterrorism framework, refugees and migrants will be able to become members of the community, again highlighting how security and

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normative objectives are compatible but not currently pursued by the EU (Bort, 2002:191). Ugar (1995) gives a damning conclusion that although policy has moved to some extent to the EU level, it remains based on an elite trying “to construct an authoritarian European state” (p.966).

Looking at the 2007 Implementation report of the EU Strategy for Combating Radicalisation and Recruitment – initiatives that seem to have been most actively pursued by member states surround internet monitoring, prevention of radicalisation in prison, and attempts to influence education systems. This has been to the detriment of further measures set out in the report such as to “fight racism, xenophobia and anti-Semitism”, promote democracy in third countries and constitute an inter-cultural dialogue (Counter-terrorism Coordinator, 2007). On a more positive note, the 2011 Action Plan outlines plans for the European Network of Experts on Radicalisation (ENER) to conduct research on routes into violent radicalisation and recruitment as well as creating assessment measures (European Council, 2011) – both of which will contribute to a stronger prevention strategy that is well-informed and underpinned by actual evidence.

## **EU External Policy**

### *Human Rights Promotion Abroad*

In his 2010 CT discussion paper, Gils de Kerchove notes that in states such as Pakistan and Yemen terrorism is “directly challenging the state” and in the Sahel, “terrorists operate as if the states did not exist (Counter-terrorism Coordinator, 2010). Whilst the CT Coordinator continues that the EU objective is to “promote a distinctive approach to counterterrorism based on the rule of law” this is not elaborated further and despite a growing capacity to act at the EU level, cooperation on CT issues has remained on a bilateral basis (Wolff, 2008:138). France has continued to cooperate closely with Algeria, following the domestic threat it has faced from Islamic terrorists originating there, and has undertaken to promote close ties between the French intelligence service and its counterparts in North Africa more generally. Spain has also increased cooperation with Morocco, especially following the 2004 attacks in Madrid.

EU member states have aimed to engage third countries in the fight against terrorism via technical assistance, funding and training programmes, although this has been on a conditional basis. As noted in the aforementioned Economist article, European governments have struck deals with their counterparts in North Africa in which efforts to crack down on migrants are expected in exchange for aid and other assistance (Economist, 2009). This has resulted in the emergence of a “security rapprochement between the EU, North Africa and Middle Eastern capitals which presents a major problem as JHA is externalised to countries with weak rule of law (ibid:152).

In countries where there is no independent judiciary or police forces which respect human rights, the EU has found itself in a dilemma in which support for normative objectives is substituted for greater cooperation in the fight against terrorism. Arab leaders legitimised through their cooperation with EU partners, have been allowed to undertake arbitrary arrests and detention whilst placing restrictions on freedoms of opinion and expression (ibid: 152). It is clear that cooperation in fighting terrorism (i.e. security objectives) has replaced economic and political development and whilst the EU’s “normative rhetoric has not changed”, approaches to migration have been securitised and norms of democracy and human rights down-played (Joffe, 2008:147).

In terms of democracy promotion EU action has historically been weak. During the 1980s only brief pressure was applied to Morocco; despite a brief period of democracy (1989-1991) Algeria has remained under military rule; and until the recent revolution the Ben Ali regime was able to maintain power on the basis of claims of a resurgent Islamist movement. Joffe states:

“Despite its rhetoric the Euro-med partnership had little effect in altering these realities, not least because of French reluctance to engage in activities which Paris believed might endanger regional security” (2008:156)

The recent revolutions in both Tunisia and Egypt emphasise the disparities between EU rhetoric and member state perceptions of security. French President Sarkozy’s statements in the run-up to Egyptian President Hosni Mubarak’s resignation were in stark contrast to those of EU High Commissioner Lady Ashton’s who made a clear pro-



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democracy statement in support of the protesters highlighting how it is not necessarily a real incompatibility of objectives of security and justice, democracy and opportunity that has led to the latter not being pursued; but a perception at member state level that these objectives are incompatible which has been translated into EU policy.

The EU have had major problems in the implementation of policy (as well as formation) due to a failure to develop a strategy towards political Islam, especially in how to distinguish between the inclusion of minority communities and the sanctioning of political extremism (Joffe, 2008:161). These problems have also been reflected in the failure to accept moderate Islamic movements as potential negotiating partners on issues such as political reform and civil society. Wolff (2006) outlines how the EU has not been clear in adopting a position towards movements such as Hamas in Palestine or the Muslim Brotherhood in Egypt, who could provide access to parliaments and local councils. She states that in the case of Egypt "it is indeed revealing that the EU did not protest to the postponing of local elections by [former] President Mubarak who was afraid of a landslide of the Muslim Brotherhood" (p.5).

The position of the EU in refusing to recognise the government of Hamas in Palestine following its first democratic elections provides a further example of the failure in pursuit of its objectives, particularly democracy promotion. By placing perceived security objectives as the number one priority at the detriment of its normative agenda, the EU has as such made the decision that these objectives are incompatible despite the fact that there is no evidence thus far to show that Europe is more secure as a result. It is also important to note that as EU officials have at least on paper emphasised social and democratic reform to governments of North Africa and the Middle East, they have failed to persuade leaders that these goals are worthwhile "and should not be pursued solely as part of a counterterrorism strategy" (Keohane, 2008:142). Overall, Edwards and Meyer (2008) state that short-term assistance offered by the EU to governments "with dubious human rights and governance records" has come in place of a coherent and effective policy that promotes "good governance, democracy and development" (p.20).

## **Conclusions**

In reality, the EU have made little progress in terms of developing an integrated approach in response to the CT threat, largely a result of continued disparities between member states and EU officials, but also between the EU institutions themselves. The resignation of the first Counter-terrorism Coordinator, Gijs de Vries, is testament to this problem, his main grievance being that too little was possible in an atmosphere of entrenched viewpoints. Views within member states are greatly varied in terms of how big the threat of terrorism is; who it is perpetrated by; and how it should be dealt with, especially significant to countries such as France and the UK who have historically dealt with a terrorist threat (Edward & Meyer, 2008:8). Combined with the events of 9/11 and the subsequent bombings of Madrid and London this has led to a securitised approach to internal security and relations with third countries that has been formulated and implemented on an uneven basis.

The perception (more so at member state level than at EU level), that security objectives are not compatible with justice, democracy and opportunity has led policy at the EU level despite a continued rhetoric stating the opposite. This has raised overall questions about the democratic nature of the EU itself, especially as external policy has been increasingly void of accountability and legitimacy which has not been filled at the national level, having the potential to increase the risk of abuses of power with the potential of undermining the quality of implementation highlighting how this false perception has not resulted in a safer Europe.

Although the Lisbon Treaty has the potential for increased involvement of the European Parliament in some aspects of CT policy, thus far the current situation is that "the EU can neither guarantee its citizens protection nor guarantee that security governance is properly scrutinised and does not infringe on individual rights" (ibid:20). The task of reversing this pattern will rely on a tightening of the legal framework which should guarantee the rights of all individuals; a shift in the perception that migration is a security threat; and a return to promoting economic and political development in third countries: the critical factor being the willingness of member state elites to promote and implement a new agenda.

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[1] For a full overview of the changing nature of terrorism see: Hoffman, 1998.

[2] The Action Plan is reviewed and updated regularly the most recent of which having been released 17<sup>th</sup> January 2011

[3] The Case of Kokkinakis: For a full overview

[4] For an overview of debates on why individuals become terrorists see: Horgan 2005; Bjorge 2005; Ranstorp 2007; Krueger 2007; Silke 2003; Smelser 2007

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Date written: March 2011