



CENTER FOR TRANSATLANTIC RELATIONS

COOPERATIVE SECURITY PROGRAM

OPINIONS

**Civil Liberties and Counter-Terrorism:
A European Point of View**

Dr. Anja Dalgaard-Nielsen

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A European Point of View**

Dr. Anja Dalgaard-Nielsen

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The program is one of the CTR's projects that explore the crossover between transatlantic politics and global issues. The Program addresses the widening gap between legitimacy and legality in international action against global threats, such as terrorism. Our point of departure is that cooperative security is increasingly perceived and shaped as a two-faced coin in which the interaction of state and non-state actors is both part of the problem and part of the solution. On the one hand, there is an urgent need to redefine strategies and re-tool responses to address transnational threats posed by rogue governments, non-governmental forces, and international networks. On the other, effective and sustainable solutions to this challenge require partnerships of states, civil society, and international organizations.

FOREWORD

In *Civil Liberties and Counter-Terrorism: A European Point of View*, Dr. Anja Dalgaard-Nielsen tackles the thorny issue of how counter-terrorism measures affect civil and human rights, and whether governments and the general public can find a balance between the imperatives of protecting open societies while maintaining their transparency and freedoms.

Dr. Dalgaard-Nielsen compares the evolution of homeland security concepts on both sides of the Atlantic. She explores US and European reactions to the September 11th attacks and examines different threat perceptions. These differences in approaches and responses, Dr. Dalgaard-Nielsen points out, are certainly due to diverse historical experiences, but also to the mutations of the terrorism threat over the past three decades.

Civil Liberties and Counter-Terrorism: A European Point of View, the second Cooperative Security Program *Opinions* piece, also discusses one of the central tenets of cooperative security: the need for civil society to be both engaged and vigilant regarding the development and applications of those exceptional measures that exceptional times might dictate. Dr. Dalgaard-Nielsen concludes that transparency and an inclusive debate represent not only governments' responsibilities towards their communities, but also key elements to achieving both legitimacy and effectiveness in states' responses to the threat of terrorism.

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Anja Dalgaard-Nielsen has published extensively on homeland security, counter-terrorism, German foreign policy, Italian politics, transatlantic relations, and American foreign policy. She is currently editing the book *Transatlantic Homeland Security—Protecting Society in the Age of Catastrophic Terrorism* (fall 2004), and is a frequent commentator for the Danish national media.

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LIST OF ACRONYMS

CIA	Central Intelligence Agency
EC	European Commission
EU	European Union
FBI	Federal Bureau of Investigation
UN	United Nations

Introduction

“The Constitution is no suicide pact,” remarked American Supreme Court Justice Arthur Goldberg in a widely quoted ruling from 1963.¹ The implication of this ruling was that a democratic country, which permits extremists, shielded by civil rights protections, to cultivate hate and violence is digging its own grave.

Policy-makers on both sides of the Atlantic seem to have been of the same mind in the weeks after the catastrophic September 11th, 2001, terrorist attacks on the US. New anti-terror legislation entailing tougher penalties for terrorist crimes and enhanced powers conferred to law enforcers and intelligence services to monitor, detain, and prosecute terrorist suspects were adopted at extraordinary speed in the weeks and months following the attacks. Concurrently, international cooperation in the field of intelligence, justice, and law-enforcement was intensified and further expanded.

Proponents of these measures claim that they represent crucial steps in the effort to protect civilians against international terrorism, which has demonstrated its ability to strike anywhere and cause a high number of civilian casualties. However, critics point out that some of these measures’ broad scope imperils basic civil liberties, including the right to privacy. Politicians, these critics claim, have failed to realize the importance of another of Justice Goldberg’s insights. In his 1963 ruling, Justice Goldberg emphasized that it is precisely during times of crisis and war that the protection of fundamental rights, such as the right to due process must stand their test.

Governments are therefore, facing a dilemma. On the one hand, when the potential victims of terrorism can be counted in the thousands, traditional mechanisms for handling the consequences of an attack and measures to identify and hold perpetrators accountable are no longer sufficient. Consequently, preventive measures are increasingly being regarded as a central tenet of states’ responses. Well-functioning, close cooperation between national and international intelligence services and police agencies is an important facet of this preventive approach. On the other hand, these measures come at a price, and if they go too far, there is a clear risk of undermining the liberal and democratic foundations of our societies, as well as setting back the effort against international terrorism in other fields. Pro-active law enforcement and suspects’ profiling not only carry the danger of alienating minority groups whose cooperation is crucial in the domestic counter-terrorism effort, but they may also hinder governments’ ability to create broad international anti-terror coalitions. By the same token, the erosion of domestic civil liberties may undermine western allies’ moral authority and leverage to pressure others to adhere to international norms and standards.

This opinion piece will briefly outline the main changes which were introduced on both sides of the Atlantic in the aftermath of September 11th, discuss advantages and pitfalls of these changes, and explore options for maintaining a balance between security and civil liberties in the fight against terrorism.

¹ US Supreme Court (1963), *Kennedy vs. Mendoza-Martinez*, 372 US 144, available at <http://laws.findlaw.com/us/372/144.html>.

Legislative Changes

The 1993 attack on the World Trade Center in New York, and the 1995 Oklahoma City bombing generated a heightened awareness of the threat from terrorism in the US, but did not substantially undermine the notion—and comfort—of a secure homeland. As a result, on September 12th, 2001, the US was faced with the challenge of rethinking the architecture of its domestic security system and the legislative framework in which such a system would operate. Under this pressure to act, US lawmakers passed the extensive *Patriot Act* within only six weeks from the terrorist attacks and with scant public debate.² The Act entailed tougher penalties and enhanced powers for law enforcers, prosecutors and intelligence services to detain, investigate, and prosecute suspects. Moreover, it increased Federal Bureau of Investigation (FBI) surveillance powers, and the possibility of exchanging and coordinating information among authorities, such as the Central Intelligence Agency (CIA) and FBI.

The situation was somewhat different in Europe. Cooperation between secret services and police agencies inside individual European countries had improved over the 1970s, 80s, and 90s, as waves of terrorist attacks hit France, Germany, Italy, Spain, and the United Kingdom. In these countries, police and magistrates acquired the power of detaining terror suspects for longer periods of time than ordinary criminals, as well as the power to collect, process and exchange information about suspects among various government agencies.³ Moreover, the European Union (EU) equipped itself with a number of coordination mechanisms aimed at fighting trans-national crime, including terrorism. In 1976, the so-called Trevi-group was set up with a goal of strengthening cooperation on internal security in the European Community (EC).⁴ Almost a decade later, Belgium, France, Germany, Luxembourg and the Netherlands strengthened practical collaboration, as well as the exchange of information between national police authorities, with the 1985 Schengen Agreement, which envisaged the gradual abolition of checks at the five signatories' borders, but made entry into these countries more difficult for non-Europeans. The agreement included measures, such as access by all Schengen countries to the Schengen Information System providing personal identity and other data throughout the Schengen area; close police and judicial cooperation; and joint efforts to combat drug-related crime.⁵ In May 1999, the Schengen Protocol to the Treaty of Amsterdam of October 2, 1997, incorporated Schengen cooperation into the framework of the EU.⁶

² Harry F. Tepker, "The USA Patriot Act," *Extensions*, Fall 2002; Lee Tien, *Foreign Intelligence Surveillance Act*, Electronic Frontier Foundation, September 27, 2001; and Jim McGee, "An Intelligence Giant in the Making: Anti-Terrorism Law Likely to Bring Domestic Apparatus of Unprecedented Scope," *Washington Post*, November 4, 2001.

³ Oliver Lepsius, "The Relationship Between Security and Civil Liberties in the Federal Republic of Germany after September 11," in *Fighting Terror: How September 11 Is Transforming German-American Relations*, (Washington, DC: American Institute for Contemporary German Studies 2002), p. 85; and Jeremy Shapiro & Benedicte Suzan, "The French Experience of Counter-Terrorism," *Survival*, 45:1, Spring 2003, pp. 75-77.

⁴ The group was composed of the then EC members, France, Germany, Italy, and the Benelux countries. Denmark, the UK, and Ireland joined in 1973, and Greece in 1981.

⁵ The Schengen Agreement and the Convention Implementing the Schengen Agreement, available at <http://europa.eu.int/en/agenda/schengen.html>.

⁶ Malcolm Anderson & Joanna Apap, *Changing Conceptions of Security and their Implications for EU Justice and Home Affairs Cooperation*, CEPS Policy Brief, no. 26, October 2002, p. 4.

In the aftermath of September 11th, legislation was tightened further at the national level by France, Germany, and the United Kingdom. A number of other countries, which previously had no special anti-terror laws, such as for example Denmark, enacted special statutes.⁷ These new laws typically involved tougher penalties for crimes related to terrorism, criminalization of indirect support of terror, as well as enhanced powers of investigation for national police authorities in cases concerning terrorism. Moreover, just one week after September 11th, the European Commission presented a proposal for a common definition of terrorism, which was later adopted. It included acts to:

...(i) seriously intimidating a population, or (ii) unduly compelling a Government or international organisation to perform or abstain from performing any act, or (iii) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation: (a) attacks upon a person's life which may cause death; (b) attacks upon the physical integrity of a person; (c) kidnapping or hostage taking....(e) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss..."

This agreement was particularly significant because in those very same months, efforts to reach consensus on a common definition for an international comprehensive convention on terrorism failed at the United Nations.⁸ More importantly, the definitional agreement contributed to pave the way to the adoption of the EU warrant of arrest, which represents an unprecedented departure from traditional interpretations of trans-border law enforcement. The warrant entered into force in January 2004, but the idea had been discussed since the 1999 EU summit in Tampere (Finland). However, it had gained political traction only after al Qaeda's 2001 attacks on the US. Based on the principle of mutual recognition of decisions by EU judiciaries, the warrant effectively allows any member state to enforce a sentence or obtain an individual's arrest and extradition from any other EU state with minimal formalities and within 60 days from the extradition request.⁹

Against this background, a decision was made regarding harmonization of criminal codes, a topic that until 2001 had been extremely controversial. Furthermore, the EU drew up a common list of specific terrorists and terrorist organizations, which the member countries

⁷ Erik van de Linde, Kevin O'Brien, Gustav Lindstrom, Stephan de Spiegeleire & Han de Vries, *Quick Scan of Post 9/11 National Counter-Terrorism Policy-Making and Implementation in Selected European Countries* (Leiden: RAND Europe 2002), p. 4-6; these legislative measures included: law on changes in the criminal code, the *Administration of Justice Act*, law on competition and consumers' conditions on the market for telecommunications, law on arms, law on procedures of extradition of criminals to Finland, Iceland, Norway and Sweden, Law no. 378, 06/06/2002 (currently in force); international documents on fighting terrorism and the "antiterrorism package" available at <http://www.menneskeret.dk>.

⁸ See Loretta Bondi, *Legitimacy and Legality: Key Issues in the Fight Against Terrorism* (Washington, DC: The Fund for Peace 2002) pp. 24-28.

⁹ Center for Transatlantic Relations, Cooperative Security Program, *Shoulder to Shoulder: Views From Governments and Civil Society on Cooperative Security*, 1:7, Washington, DC, December 2003.

pledged to investigate and prosecute by close collaboration between law enforcement authorities.¹⁰

In short, a number of European countries were able to build on their experience with terrorism and enhance their legal and law enforcement responses to the threat. The EU also equipped itself with sharpened instruments to combat this scourge. Although European counter-measures might at first glance appear less sweeping than those adopted by the US, change in a number of areas was no less drastic.

In addition to stimulating security awareness and tougher laws on both sides of the Atlantic, the September 11th attacks also triggered a considerable expansion of transatlantic cooperation in the areas of law enforcement and intelligence. An agreement was reached about practical collaboration and exchange of information between Europol—the European police office headquartered in the Hague—and US authorities, supplementing existing bilateral channels for law enforcement cooperation.¹¹

Moreover, on June 23, 2003, the EU and the US reached agreement on extradition and judicial cooperation in criminal matters aimed at expediting and simplifying procedures.¹² These agreements are groundbreaking. They are the first of their kind to be successfully negotiated between the EU and a third party. Given the divergences in European and US legal systems concerning the death penalty, as well as standards in sentencing and for the protection of personal data, these agreements would have been a political impossibility prior to the September 11th attacks.

Pros and Cons: “Never again September 11th” vs. Orwell’s 1984

The waters have been parted in Europe as well as in the US over whether these anti-terror measures and legislative changes were necessary or, on the contrary, far too extensive.

Those advocating the new laws and international agreements typically point out three circumstances, which made these changes imperative: the extreme violence of the new terrorism; its use of the newest technology for communication and organizational purposes; and the threat’s transnational character.

¹⁰ “Conclusion and Plan of Action of the Extraordinary European Council Meeting on 21 September 2001,” SN 140/01, pp. 1-3; Council Document 12608/02; “Declaration by the Heads of State or Government of the European Union and the President of the Commission, Brussels, 19 October 2001,” SN 4296/2/01; “Eurojust – Helping the EU’s legal systems to combat cross-border crime,” Justice and Home Affairs, Brussels, December 14, available at

www.europa.eu.int/comm/justice_home/news/laecken_council/en/eurojust_en.htm; European Union Council Decision 2002/475/JI; Council Document 14867/1/01REV 1.

¹¹ Merle D. Kellerhals, “Global Alliance now Fighting Terrorism, Ashcroft Says,” United States Mission to the European Union, February 10, 2003.

¹² The agreement on legal cooperation implies increased exchange of information between police authorities and the possibility of establishing common investigation teams. The extradition agreement simplifies the procedures and widens the possibilities for surrender of suspects, although only if the US gives assurances that the death penalty will not be imposed, or if imposed, it will not be carried out; see General Secretariat of the Council of the European Union, *European Union Factsheet, Extradition and Mutual Legal Assistance*, Bruxelles, June 2003; and Center for Transatlantic Relations, Cooperative Security Program, *Shoulder to Shoulder: Views From Governments and Civil Society on Cooperative Security*, Washington, D.C., 1:2, June 2003, p. 1.

First, these advocates point out, the new terrorism is different from both common criminal activities and the kind of political terrorism, which ravaged Europe in the 1970s and 1980s. The “old” terrorism used violence selectively to bring attention to a political cause, or to obtain political concessions. Extreme violence was regarded as counterproductive, since it might have provoked a public backlash and a crackdown by state authorities. In contrast, the new terrorism aims at maximizing casualties. The strikes against the US with their death toll of 2,986 in New York, Pennsylvania, and Washington DC have left no one in any doubt of the terrorists’ indiscriminate strategy. Should organizations such as al Qaeda succeed in their reported goal of obtaining weapons of mass destruction, the number of victims might be considerably higher. Therefore, it is argued, responses should be tailored to prevent such catastrophic attacks and foil plots before they are realized.

Furthermore, advocates claim, technological development has overtaken existing law. Mobile phones and the Internet necessitate an update of the legal instruments available to monitor suspects. These instruments include roving wiretaps to keep track of communications through cells and disposable phones, and the authority to seize electronic correspondence. Finally, it is pointed out, terrorists operate transnationally. Thus, international cooperation in law enforcement, intelligence, and justice is necessary even when this implies that the authorities of several countries gain access to personal data about individuals who might never intend to, or commit a criminal act.¹³

For their part, critics of the new measures maintain that authorities have gone too far in their attempt to shore up national security at the expense of basic civil rights. Furthermore, it is argued, there is little democratic control over the implementation of both new national laws and international agreements.

To be sure, responses to the new and more violent terrorism require that extra resources be allocated to prevent attacks. However, it is pointed out, the new possibilities to monitor and detain suspects, as well as seize, compile, and share information about citizens are compromising the inviolability of individual liberty, due process guarantees, the right to a speedy and fair trial, and the protection of private spaces, as well as the secrecy of mail, telecommunication and telegraph-services.¹⁴ Critics argue that the absence of a broad international consensus as to what constitutes an act of terrorism should prevent states from adopting such sweeping measures. In Europe, where definitional agreement was forthcoming, the broad scope of the definition has been criticized. Similar criticism also regarded measures adopted by individual EU member states. Underpinning this criticism are concerns over the broad criminalization of indirect support for terrorist activities, and over

¹³ John Ascroft, *Securing Our Liberty: How America is Winning the War on Terror*, American Enterprise Institute, August 19, 2003, p. 2; Dan Eggen, “Ashcroft Defends Anti-Terrorism Law,” *Washington Post*, August 20, 2003; Andrew Kramer, “Case Against Five Suspected Members of Terrorist Cell Tests Government’s New Spy Powers,” Associated Press, February 24, 2003; “Statement of Viet D. Dinh, Assistant Attorney General, Office of Legal Policy, Department of Justice, before the Committee on the Judiciary, US Senate,” December 4th 2001; and Ditlev Tamm, “Den usynlige stat,” *Razon*, August 13, 2003.

¹⁴ We find these rights laid down, for example, in the Danish Constitution *Grundloven*, §§ 71 and 72, the *Constitution of the United States of America*, appendix IV and VI, and the *United Nations Universal Declaration of Human Rights*, articles 9 and 12.

what would be deemed legal and what would constitute an offense under these provisions.¹⁵ For example, critics noted that it might be arduous to judge whether support for, and by humanitarian organizations in the West Bank and Gaza would be regarded as financing terrorism. By the same token, uncertainties surround the status of a number of Muslim charity organizations in the US and elsewhere, which might be subjected to a too-pervasive and even indiscriminate scrutiny of their activities.

Arguably, the nature of the current crisis compounds the problem. There are historical examples of how civil rights have been temporarily limited during a national security crisis.¹⁶ These rights were fully restored with the cessation of hostilities. The open-ended outcome of the war on terrorism, however, casts a long shadow over the duration of rights curtailment. Terrorism has been around for hundreds of years, and arguably there will always be groups of people who—either rightly or wrongly—feel unfairly treated to such an extent that they resort to the use of extreme violence to further their cause. According to the rationale of curbing civil rights in the name of national security, current tougher provisions could, in principle, be upheld indefinitely.

Whereas the US Congress included a “sunset provision” in the *Patriot Act* by which the legislation expires by 2005 unless re-enacted, such “sunset provisions” are not widely used by European countries. One example is the Danish “anti-terror package,” which has no expiration date.¹⁷ It is thought-provoking that a number of the special laws and provisions introduced in Germany to fight domestic terrorism in the 1970s have never been repealed, despite the fact that Germany by the mid-1990s, had practically eradicated domestic, politically motivated violence.

A final cause for concern is the fact that intensified and expanded legal collaboration at the international level is an area where there is little democratic control over the implementation of such cooperative measures and the exercise of new powers. There are simply no established and effective channels for democratic debate and scrutiny at the supra-national level. At the moment, a number of cases challenging the new anti-terrorism powers of US authorities are awaiting decision by US courts. Moreover, a series of alleged abuses of the

¹⁵ “Action Against Terrorism Must Not Undermine Human Rights, Say High Commissioner for Human Rights,” Council of Europe and OSCE,” Press Release, Geneva/Strasbourg/Warsaw, November 29, 2001; Oliver Lepsius, “The Relationship Between Security and Civil Liberties in the Federal Republic of Germany after September 11th,” in *Fighting Terror: How September 11 is Transforming German-American Relations*, p. 86. See also “Blunkett Terror Plans Under Fire,” *The Guardian*, May 12, 2003 (compiled by staff and from agencies reports).

¹⁶ Phillip B. Heymann, “Terrorism and America: A Commonsense Strategy for a Democratic Society,” BCSIA Studies in International Security, 1998. For special legislation in the UK, see *Prevention of Terrorism (Temporary Provisions) Act 1989* (c.4), available at http://www.hms.gov.uk/acts/acts1989/Ukpga_19890004_en_1.htm. See also “Beyond Collusion: The UK Security Forces and the Murder of Patrick Finucane,” Lawyers Committee for Human Rights, at <http://www.ireland.com/newspaper/special/2002/finucane/finucane.pdf>.

¹⁷ As noted previously, this “package” includes changes in the criminal code, the *Administration of Justice Act*, law on competition and consumers’ conditions on the market for telecommunications, law on arms, law on the release of, and extradition of criminals to Finland, Iceland, Norway and Sweden, Law no. 378, 06/06/2002 (currently in force).

new authority to detain suspects have made US politicians demand increased oversight over the Department of Justice.¹⁸

Systematic and continuous democratic control of Europol or the envisioned common European-American investigation teams will probably prove more complicated. Officials point out that these teams will only aim at the coordination of investigations, which take place in two countries about the same crime or related crimes. The terms and operating procedures of these teams will be determined on a bilateral basis. The same officials are also confident that whatever concern may arise will be subject to negotiations and agreement to mutual satisfaction.¹⁹ However, EU parliamentarians and others contend that oversight of these operations has no parliamentary monitoring component. Concerns regarding future practice, these critics note, stemmed from the fact that the judicial cooperation agreements between the EU and the US were negotiated away from the public eye and without extensive consultation with parliaments. They concluded that compounding these problems is a lack of common established practices at the EU level, let alone among transatlantic partners, which, in turn, would make both the applications of, and independent scrutiny over, EU/US cooperation hard to sort out.²⁰

Conclusion: Dealing With the Dilemmas of Liberty and Security

The open, complex and interdependent western societies have countless vulnerable points. It is practically and economically impossible to protect all potential targets against all types of attack at all times. Arguably, an intensified and internationally coordinated effort by intelligence services and law enforcement agencies is the best way to protect civilians against terrorist strikes—an assessment which is supported by experiences from a number of countries engaged in a long-term fight against faith-inspired terrorism and suicide attacks.²¹

But obviously, going too far means destroying exactly what we are trying to protect—our democratic and liberal societies. Moreover, enhanced security measures may cause “collateral damage” leading to less, not more security in the long run. The already strained relationship between immigrant groups and police forces in a number of major European cities would hardly improve as a result of the recently toughened measures. Any further alienation of Europe’s sizeable Muslim minorities would not only expand the recruitment pool for organizations such as al-Qaeda. It could also make it easier for international terrorists to establish logistical bases and recruitment networks in European countries and

¹⁸ Department of Justice, *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*, Office of the Inspector General, Washington, D.C., June, 2003.

¹⁹ Center for Transatlantic Relations, Cooperative Security Program, *Shoulder to Shoulder: Views From Governments and Civil Society on Cooperative Security*, Washington, D.C., 1:2, June 2003, p. 4.

²⁰ *Ibid.*, p. 3.

²¹ Paul K. Davis & Brian Michael Jenkins, *Deterrence & Influence in Counterterrorism: A Component in the War on al Qaeda* (Santa Monica, Calif.: RAND 2002), p. 37; Thérèse Delpech, *International Terrorism and Europe*, Chaillot Paper no. 56, 2002, p. 7; Brian Michael Jenkins, *Countering al Qaeda* (Santa Monica, Calif.: RAND 2002), p. 28; Peter Finn, “Sting Hints at U.S. Tactics on Terror,” *Washington Post*, February 28, 2003, p. 14; Richard Norton-Taylor, Colin Blackstock & David Teather, “Agencies Unite against Global Threat,” *The Guardian*, August 13, 2003; Jeremy Shapiro & Benedicte Suzan, “The French Experience of Counter-terrorism,” *Survival*, 45:1, Spring 2003, p. 77; and Jonathan B. Tucker, “Strategies for Countering Terrorism: Lessons from the Israeli Experience,” *The Journal of Homeland Security*, March 2003, p. 3.

build the structures and the web of complicity they need to plan and carry out attacks in Europe or elsewhere.²²

Finally, it might also become difficult for countries in the anti-terror coalition to uphold the moral high ground internationally, if their own counter-measures result in a decisive shift in the balance between security and civil liberties at home. The situation of the approximately 600 prisoners being held at Guantanamo base, as well as plans to try the detainees at special US military tribunals, gives the western world's rhetoric of freedom and justice a hollow ring.

There is no simple solution to the dilemma of striking the right balance between security and freedom. In theory, the danger of terrorist attacks should, at least up to a point, decline in inverse proportion to the amount of resources and power given to intelligence services and police agencies, as these authorities become more effective. But we would hardly wish to be secure in an Orwellian world of surveillance and control. The political challenge is finding a socially acceptable balance, which necessarily will vary from country to country and will depend on different circumstances, as well as on the development of threats and threat perceptions. Therefore, a continuous democratic debate is indispensable. Until now, this debate has been more intense in the US than Europe, partly because European reactions to September 11th on the surface seemed less drastic than the American, and partly because many European countries lack the strong US tradition of institutional "checks and balances," and civil society's scrutiny.

The fight against international terrorism presents western democracies with a number of difficult questions and challenges. One of the greatest among them is for consensus-oriented European societies to engage in, and maintain a broad democratic debate over the proper balance between security and liberty in light of the new terrorism's threat. Such a debate represents the best guarantee that tougher security measures and enhanced powers conferred upon intelligence services and police-forces —measures which might be necessary and acceptable in certain situations—will be implemented without automatically resulting in permanent restrictions of civil rights and with public consent.

The European experience, in turn, indicates that Americans are well-advised to keep insisting on incorporating sunset provisions in terror-related legislation, lest emergency measures silently become a permanent part of US domestic security framework.

²² Desmond Butler and Don Van Natta, "Europe-wide Network Enlists Fighters for Iraq," *International Herald Tribune*, December 6-7, 2003.

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Roberto Aliboni, *The Euro-Mediterranean Partnership: Regional and Transatlantic Challenges*, January 2004.



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