WARLIKE OUTLINES OF THE SECURITARIAN STATE. LIFE CONTROL AND THE EXCLUSION OF PEOPLE

Edited by
GABRIELA RODRÍGUEZ FERNÁNDEZ
CRISTINA FERNÁNDEZ BESSA
IÑAKI RIVERA BEIRAS
HÉCTOR C. SILVEIRA GORSKI

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PREFACE and ACKNOWLEDGMENTS

GABRIELA RODRÍGUEZ FERNÁNDEZ, CRISTINA FERNÁNDEZ BESSA, IÑAKI RIVERA BEIRAS AND HÉCTOR C. SILVEIRA GORSKI

The present book collects some of the thoughts developed during the 5 years (2004-2009) of work in the frame of the CHALLENGE project, "The Changing Landscape of European Liberty and Security"[1]. The project has related academic knowledge and research with the analysis of the policies and practices of the member States of the European Union [EU] around the couple liberty and security. These two concepts, which sometimes are understood as alternative, even as opposite, have been part of the policy debates at the EU and the member States' Parliaments.

With the effort of the 14 research workpackages [WP] from 23 universities and research institutes of different European countries[2], the project seeks to facilitate a more responsive and responsible assessment of rules and practices of security and of the measures that restrict fundamental rights. The project analyses the so-called illiberal practices of liberal regimes and challenges their justification on grounds of emergency and necessity, in the context of an asymmetric globalization process.

The objectives of CHALLENGE have been:

- To understand the merging between internal and external security and evaluate the changing character of the relationship between liberty and security in Europe.

- To analyse de role of the different institutions in charge of security (police, intelligence services, military forces and private agencies) and they current transformations.

- To facilitate and enhance a new interdisciplinary network of scholars who have been influential in the re-conceptualising and analysis of many of the

1. Funded by Sixth Framework Research Programme of the Directorate General for Research of the European Commission (CTI1-ct-2004-506255).

2. CHALLENGE consortium is integrated by: Centre for European Policy Studies (Belgium); Fondation Nationale des Sciences Politiques (France); King's College London (UK); University of Keele (UK); University of Copenhagen (Denmark); European Association for Research on Transformation (Germany); University of Leeds (UK); University of Genoa (Italy); University of Barcelona (Spain); University of Szeged (Hungary); Groupe de Sociologie des Religions et de la laïcité (France); University of Caen (France); University of Athens (Greece); University of Utrecht (Netherlands); University of Nijmegen (Netherlands); Stefan Batory Foundation (Poland); University of Malta (Malta); European Institute (Bulgaria); London School of Economics (UK); University of Cologne (Germany); Autonomous University of Barcelona (Spain); Centre d'Etudes sur les Conflits (France); PRIO International Peace Research Institute Oslo (Norway).

theoretical, political, sociological, legal and policy implications of new forms of violence and political identity.

- To bring together a new interdisciplinary network of scholars in an integrated project focusing on the state of exception as enacted through illiberal practices and forms of resistance to it.

The Observatory of Penal System and Human Rights of the University of Barcelona (OPSHR) has participated in the WP 9 entitled "Exceptionalism and its impact on the Euro-Mediterranean relations". Its main objective has been to analyse the impact that exceptional policies have upon liberties and security of citizens and to underpin to what extent South-European States are breaking citizen liberties and security when using emergency policies. Initially, Professor Roberto Bergalli was the responsible of leading the work and then Iñaki Rivera meet this commitment. Together with them, Jose M. Ortuño, Cristina Fernández and Alejandra Manavella carried out the research of the workpackage; in the last period, Héctor Silveira and Gabriela Rodríguez joined the team; and it also counted on the collaboration of other young researchers of the OPSHR[3].

During these five years the research team of the OPSHR has analysed immigration policies, the everyday life control in the urban areas, antiterrorist policies and the institutional violence that occur in some Euro-Mediterranean countries. This research has materialized a collection of working papers which is available in the website of the OPSHR (www.ub.edu/ospdh) and it constitute the backgrounds of some of the papers of this volume.

Our participation in CHALLENGE has also involved the organization of several national and international conferences and workshops to exchange ideas and discuss some of the key questions of the project (exceptionalism, war, emergency culture, camp, human rights and migrations, etc.). There, different partners of the project have put forward their views and professionals, civil servants or members of the organized civil society have shown us their practices and experiences regarding these topics. The dissemination of the results of the research has been guaranteed with the publication of the working papers in the CHALLENGE website (www.libertysecurity.org), in some books and with the six monographic numbers of *Desafio(s)[4]*, a periodical publication coordinated by *Roberto Bergalli* and *Iñaki Rivera*, on the framework of the publishing project *Utopías del control y control de las utopías*, between the OPSHR and Anthropos Publishing House.

Now, after five years of the beginning of CHALLENGE, we could state that the crisis of welfare culture has produced deep transformations on

3. Mónica Aranda, Pablo Ceriani, Alejandro Forero, Gemma Ubasart, Aura Roig, Valeria Picco, Andrés di Masso, Marta Puig, Marta Cals, Maria Acosta, Francisca Cano, Luis Rodeiro and Ignasi Bernat.

4. The titles of the monographic are the following: "Política Criminal de la guerra" (n.1), "Torturas y abuso de poder" (n. 2), "Emergencias Urbanas" (n. 3/4), "Jóvenes y adultos el difícil vínculo social" (n.5), Poder académico y poder legal (n.6), y "Género y dominación. Críticas feministas del derecho y el poder"(n.7).

different spheres of public policies. Specially after the attacks of 9/11, 2001 the sensation of constant fear and social insecurity has increased and several measures guided by the security obsession have been deployed in a great part of Western countries. The state of "global war", which before 2001 was not such explicitly recognized involve "preventive" attacks, in the military field and also in the citizenship one, with policies of recognition, surveillance and attack; these are the "warlike outlines" that are the framework of the militarization of the penal system, the practice of torture and its transterritorialization, the fight against "illegal" migrants and the spread of fear and emergencies feed back demands for harder policies. The mentioned global war lead to the "need" of securing the threatened cities, to control everything that happens there and the people who stay, enter or get out them. Therefore, public spaces (from the city to specific places of transit like airports or border posts) but also individuals are the centre of the proliferating mechanisms and strategies of control which become "normal" for the citizenship. As we will see in some of the texts of this volume practices of institutional violence are an aspect of exceptional/ emergency policies; today this violence is justified in the existence of threats and public fears that the governments have to face.

In this context, we could assert that in the field of the management of migrations, specially through the penal system, in the regulation and control of the everyday life, as in the field of antiterrorist policies, exceptional practices has settled in the Euro-Mediterranean area. This settlement is not something new: the stark return of torture and on the whole, institutional violence and the violation of fundamental rights show the re-emergence of the Leviathan which is in permanent tension with the current legislation. A legislation that sometimes is useful to restrict its effects, to negotiate them, and other times, to hide its consequences or even to legitimate practices which are inadmissible under the Rule of Law.

In this frame we aim to contribute to the culture of Human Rights, much threatened nowadays by processes and policies of exclusion and discrimination, and also by the construction of social concern regarding the raise of criminality, violence and insecurity suffered by modern societies.

This book wants to be a step in this way. Its three parts deal with institutional violence, everyday life control and the legal obstacles for human mobility in the Euro-Mediterranean countries; the 11 contributions that it contains express different opinions and theoretical approaches and they discuss among them composing a diverse but sound volume

For the preparation of the book we have counted on the contributions of some of the partners of the CHALLENGE project and other professors and researcher who have participated in some of the workshops or conferences organized by our workpackage. Didier Bigo, scientific coordinator of the project (and member of the WP 2: "Securatization beyond borders: Exceptionalism inside the EU and impact on policing beyond borders") has introduced the volume, with a thoughtful and controversial point of view on some of the topics included on it; the colleagues Salvatore Palidda and Gabriella Petti from the

University of Genoa (members of the WP 8: "Effects of exceptionalism on social cohesion in Europe and beyond") have contributed with two articles in different chapters of the book; and Mauro Palma, Nicolas Fischer and Stefano Rodotà have collaborated again with our work with their knowledge. Finally the present CHALLENGE research team of the OPSHR has closed its participation in the project with four contributions in different fields. The editors appreciate the time dedicated to the epilogue of this work that Roberto Bergalli has taken from his retirement.

The translation to English of some of the papers that we offer here[5] has been the result of a joint work among the translators -mainly, Alejandro Piombo, who also made a final revision of the papers- and a group of students of the Master in Criminology and Sociology of Criminal Law of the University of Barcelona. Alejandra Manavella, Paula Vázquez, Gonzalo Penna, Ignasi Bernat and Maximiliano Postay have done a particularly thorough work with the papers of the authors; they not only put every effort into the task but they also worked with insight in order to learn. The editors are very grateful to them.

We hope that this book that we offer to the readers could be useful to a reflection, started some years ago, which should be continued: to know how, when and where it is necessary to fight for everybody's rights.

The editors
Barcelona, May 2009

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5. A hard copy of the Spanish version of this e-book will be published by Anthropos Publishing House.

INTRODUCTION

Global Counter-Terrorism: From war to widespread surveillance*

DIDIER BIGO AND ROB B.J. WALKER

1. The Global Counter-Terrorism Regime

After the terrorist attacks that shook the United States in September 11th 2001 and those that followed in Bali, Spain, Turkey, Morocco and Great Britain, many observers pointed out that the world has entered a new era: that one of the transnational "hyper-terrorism", which is local and at the same time articulated globally through the central figure of Al-Qaida and its boss, Bin Laden. Governments, the media, think tanks and numerous scholars agree on this radical novelty: this would be due to the activities of certain clandestine organizations –mass murder, indiscriminate attacks, suicidal behaviour, political and religious motivations, global action– and its ability to question the attempt of the United States to have a monopoly on the exercise of violence.

From that point on, the ability of the United States to prevent the retaliation and revenge cycles between the various groups would diminish. They would no longer be the "protectors" facing the emergence of powerful internal enemies and communal confrontation, and an eventual re-appearance of religious wars on a global scale. The widespread of capillary violence would give the clandestine organizations a strategic advantage, given its will to do damage and its ability to act undercover. We would have entered a world of terror and a world in war against terror, to which one would have to adapt and it would not be a State product but a "terrorist" one. The future would be an Armageddon schematized by the image of a miniature atomic bomb inside the bag of a suicidal candidate, a little more or a little less fanatic.[1]

* Translation from the Spanish version by Alejandro Piombo.
1. See Heisbourg (2002); or, on the contrary: Paye (2004).

2. To prevent the "worst case scenario"

To prevent the "worst case scenario", governments should take urgent measures declaring the State of Exception and to increase the suspicion about the activities of individuals in certain groups that are potentially dangerous. The counter-terrorism itself should be constructed on a global scale, putting an end to national selfishness, justified by discourses about national sovereignty, and be open to an alliance between police, intelligence and defence forces, not only in every State, but also on a global scale. This would change the structure of the international order opposing, on the one hand, the terrorists and their allies (the "renegade States") and, on the other hand, all the other States. Global counter-terrorism would be a new "international regime", with the object of guaranteeing peace and order, but destabilizing the States' sovereignty, alienating them around a protective empire, and limiting the individual liberties of the people involved in suspicious groups. They would found a new international "community", brought together by shared values and not by interstate agreements.

This counter-terrorism "regime" would certainly have an extraordinary character, where the exception would be the rule. However, this counter-radicalization of violence would be the only way to eradicate terrorism in all its forms, with the purpose of finding peace again and liberal state order, whose objective would be to spread out to all the States allied in the counter-terrorism mission (including Libya, Saudi Arabia, Pakistan…). While we wait for this eradication of global terrorism, it would be necessary to rethink the relation between danger, security and freedom: it would be necessary to sacrifice in the interest of collective security, which would be the first of all the liberties among other liberties of minor importance –such as liberty of religion, speech and movement–, and the right to be presumed innocent and to a fair trial.

After 2001, the United States took this sacrifice logic a little too far, with torture practices, detentions with no grounds for arrest, disappearance and "extraordinary renditions" (that is the official name for extrajudicial transfers) of suspects. The European supporters of the counter-terrorism alliance were more moderate and denied any sort of torture within their territory, but kept their complicity regarding extraordinary renditions, arresting suspects without any charges for longer periods, hardening the existent arsenal of antiterrorist measures and regarding the access to a given territory of foreigners in irregular situation (Bigo, Carrera, Guild & Walker 2007). However, to those in favour of the counter-terrorism alliance, that brings together a lot more States that the one that led to the war in Iraq in 2003, the situation should not last longer than the time it takes to win the war against terrorism. We would immediately go back to normal, even if the war may be long, because the enemy has "changing faces" and acts "stealthily", like those undetectable F117 Night Hawk airplanes, product of the cold war. It is this stealth quality of the enemy what causes the main difficulties, since uncertainty would rule, and they would not be discovered in time. We would then need more information in order to control the enemy successfully. The victory would depend on the knowledge of

the individuals and their networks, to anticipate their actions with the purpose of preventing what is "irreparable".

Counter-terrorism would not only try to punish the guilty but also prevent the attacks in order to protect the population. It would then need to anticipate and simulate the future, turning it into almost certainty. From this point of view, the data base technology, together with biometric identification of the individuals and the profiling software, would help prevent the terrorist actions of unknown individuals, identifying their malignant intentions thanks to a small insight into their behaviour: in order to be efficient, counter-terrorism would need to be able to obtain information from any person at any place. It would not be able to work if the States' sovereignty and the typical legal and judicial mechanisms to protect liberties were obstacles to it. The choice would no longer be a proper election, since a small inefficiency would lead to the risk of crumbling down in the face of enemies impervious to negotiation, dialogue or reason.

Summarized like this, the central argument that justifies counter-terrorism sounds similar to that of a "republican Roman dictatorship" whose purpose is to protect democracy by means of establishing extraordinary processes during the course of transitional dangerous periods. Whether it is implied or explicit, we can find it in the discourses of leaders and the scholars and media that support them, while it manifests in different ways. We must help the police catch the culprits, the military to make the external war against enemies' bases, help the investigation services to accumulate and handle information with the purpose of preventing a catastrophe. Each individual is responsible for the protection of everyone. The mobilization is patriotic and in the interest of humankind's well-being. We must "face" terrorism. The policy to fight terrorism is certainly exceptional, but legitimate and proportional to the unlimited danger ahead of us. Sometimes the responsible political leaders have to act against the sensibility and comfort of the citizens in order to protect them efficiently. They must "decide": who the enemy is and how to fight it. They should not "doubt", but on the contrary, reassure. They should act like leaders.

The description of the counter-terrorisms and exception policies adopted by the United States, Australia, Great Britain and, at a more general level, the European Union and its member States evokes the name of the German philosopher Carl Schmitt (the author of the controversial thesis about the role in politics of the friend/enemy distinction), the parallelism with the 1930s and the need to control the increasing revolutionary mobilizations and disorder. These references are evoked to justify these policies in the name of the new situation demanding an international order beyond the rivalry between sovereignties; and to criticise them in the name of the dangers of an increased fascism in democratic societies, which can be summarized in the battle of the modern State to strip individuals from their qualities and reduce them to "bare life"[2]. In both cases (support or criticism), we stress the relationship

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2. See, Agamben (2003); Diken & Laustsen (2004:89-113); Schmitt (1972); Walker (2005: 13-51).

between terror policies and the novelty of the phenomenon. In the end we will notice that these analysis, as much interesting as they may be, while putting the stress on the insecurity as terror, they leave out the part of this insecurity phenomenon as a daily concern. However, before getting there, we need to establish what practices of violence, coercion, detention and surveillance are used as counter-terrorism measures and to which extent they can be justified by their global character and urgent necessity.

3. Terror policies and exceptional illiberal practices

The global counter-terrorism regime, facing what represents itself as a strict description of reality and an irrepressible argument, the global counter-terrorism sounds convincing. And we need to bear in mind that, except for Jose Maria Aznar in Spain, the citizens themselves were the ones to re-elect the responsible for this policy –like George Bush in the United States, Tony Blair in Great Britain and John Howards in Australia. Therefore, it is difficult to think about a radical rupture between the ruling elite and the civil society: the support to these policies is really strong and the criticism was mainly focalized in the war in Iraq but never in the whole set of practices.

Nevertheless, what can we say when we have the feeling that something is not working properly, when a certain amount of measures in the interest of the antiterrorism fight are antidemocratic and "illiberal" (in the anti-libertarian sense)? Does the antiterrorism fight justify these measures in the name of a higher necessity as we are made to believe in? Doesn't the discourse about antiterrorism war put the sight on a series of ethical and political dilemmas, in practices that are oppose to its arguments (the war in Iraq and the attacks in Great Britain for example), while on the other hand, it links them with no real justification (terrorism, organized crime, cyber delinquency)? Could we or should we believe in this worst-case scenario (which in the end is the monotheistic argument of punishment in the event of disobedience)? What is our ability to judge, most of all in the face of experts and the facts that they assure they know, but must keep secret (for our own good)? Can we and should we accept the fact that they know the situation better than us and can decide by themselves instead of proposing a democratic debate, most of all when this involves State violence (external war, arrests with no grounds and torture, extrajudicial transfers of the suspects, phone tap and invasion of privacy, profiling techniques that are discriminatory to certain population categories, collection of information on a large scale and use of it for other reasons than the one it was collected for, reconsideration about national population)? How can we appreciate the proportionality of actions taken in these cases? Are the responsible politicians the ones who decide or do they base their decisions on the opinion of their security experts and their belief in technology? Can they exonerate themselves from decisions taken under the pressure of urgency? Does the novelty of the situation only have to

do with the action of clandestine organizations or also the excess of certain "responses"?

These questions make you consider real consequences, wanted or not, of violence and surveillance practices that the liberal regimens found in the name of global counter-terrorism. These practices also kill. In addition, they can generate or accelerate a self-destruction process of representative democracies and misplace values and institutions; they can multiply the issues without solving the problem of a political violence that takes erratic forms on a transnational scale. Thus, it is necessary to draw up the list of counter-terrorism practices in order to understand whether they are legitimate or at least proportional to the predicted danger and what principles they are jeopardizing.

Some will oppose to this stand because it would imply a critique to those who are doing the best they can to protect us and may weaken this protection giving room to doubt. What is worst, it could be used by the "enemy's propaganda". The argument of treason in an environment of mobilization between two war fields is always very strong. However, it requires a full involvement of the entire world in this war atmosphere and the insecurity policies, which is surely excessive: it is not only possible, but also legitimate, to exclude oneself from this insecurity atmosphere that imposes itself as a "*doxa*" in an almost consensus way.

In our opinion, the critique is legitimate when it is not trying to justify the violence of clandestine organizations, but dares to question the State, the government, the transnational organizations and the many others involved in the mechanisms of its own violence, even if it is identified, as our security. It is then a question of breaking with the magical thought that the counter-violence would be purified as long as it is dealing with impure violence. It is all a question of reasoning as a third party and not as a combatant mobilized by one field or the other.

3.1. Is war the solution?

As we all know, the day following the attacks of 9/11 George W. Bush together with his team decided to go to war without declaring the war –against the advise of the military and his Secretary of Defence Colin Powell–, they retaliated immediately against the Taliban in Afghanistan for the attacks executed by the Arabian, and denied the non Afghan prisoners in Afghanistan the status of prisoners of war as it was established by international conventions (or otherwise the status of criminal as designed by the national legislations). This way they invented an illegitimate category (enemy combatants) to imprison them indefinitely and put them in a state of complete sensory deprivation in Guantanamo camp.

These unprecedented decisions developed a vindictive ultra-patriotism in favour of the military option, which left a deep mark on the United States' citizens, but also on its foreign policies, allies and the whole world. From the very first day, this created a specific counter-terrorism strategy, excluding

the traditional options of antiterrorist fight carried out by the police: naming investigators and attorneys that demand an international rogatory commission, the use of liaison agents of the FBI and other external police agencies to put pressure on foreign governments, some through undercover death threats (such as Clinton did after the first attacks to the Twin Towers in 1993). This excluded the possibility of a petition to have this form of terrorism recognised as a crime of war and to be pursued by the International Criminal Court, as it was suggested by many members of the UN: or even react imposing economic sanctions against those "renegade" governments that support terrorists and put them under diplomatic pressure (as it would be done later on the case of North Korea and Iran).

The arguments of a legitimate defence and the possibility of launching, without the authorization of the UN, a retaliatory attack under the form of a war that has the purpose of overturning a regime, are a matter of legal discussion. However, under no circumstances are these arguments a license to except oneself from the legal regulations controlling international relations and the local jurisdictions making up *ad hoc* terminologies to justify the exercise of violence at the expense of detained people. This does not justify the invasion of States that had been linked before to clandestine organizations or to consider the local population as potential enemies, while at the same time pretending to do exactly the opposite assuring them that they are coming to free them from a dictatorship.

The argument of a legitimate defence would fail three years later: the reports sent in 2004 by investigators in the parliamentary commission would convince the American majority that the justification for invading Iraq based on the presence of weapons of mass destruction and elements of Al-Qaida was all a fabrication.[3] But this did not completely question the issue of legitimacy of the decision, since other reasons had been declared in advance: the liberation of the Iraqi population from the dictatorship of Saddam Hussein, the need to "re-balance" the Middle East promoting regimes more favourable to the United States (and Israel), anticipating the rise of a potential competitor to the United States –China– and securing the supply of petroleum in the long term. So many well versed and cynic arguments, about the "right" of the United States to an hegemonic world position, were able to convince part of the electorate that the lies behind the war were more or less of the same nature that the ones Bill Clinton said about his extramarital affairs… In addition, today we are still hearing the Congress asking for explanations regarding George W. Bush's initial allegations. In Great Britain, Tony Blair had a lot more difficulties and even a televised fiction showed him as condemned for "war crimes" –nevertheless he was not prosecuted for this.

3. *The 9/11 Commission Report. Final Report of the National Commission on Terrorist Attacks upon the United States*, Norton, New York, 2004 ; *The 9/11 Commission Report. Review of Aviation Security Recommendations*, Chamber of Representatives, Washington, August 15th 2004.

If its legitimacy is questionable, was the war option at least efficient? Was it capable of reducing the terrorist threat as it was promised? Whether we are talking about Iraq or Afghanistan the answer is far from being positive. Since, in both countries, the military process of counter-terrorism was renewed by the forms of "counter-insurrections" from the colonial period (like the French period in Algeria) and post-colonial (like the Americans with Vietnam): the anti-subversive doctrines of yesterday were fully applied, with the same counterproductive effects resulting in more important resistances of entire segments of the population. But also causing a worsening of the terrorist actions in Spain, Great Britain or Morocco –countries in which the government made an effort to deny, against all evidence, the link between their participation in the Iraq war (and Afghanistan) and the attacks or attempts committed in their territory.

As they went along, by the end of 2007, the United States and its allies were facing a huge dilemma: whether to extend the war to other countries (Iran, Syria, Sudan, Pakistan, Palestine…) maintaining the policy to eliminate every "renegade State"; or to accept certain diplomacy questioning the initial options and reinstating the national sovereignty game in the international sphere. The second option would imply a retreat leaving in these territories an allied government in a good position but also recognizing that the reality of the war against terrorism was a lot different from the one the dominant "information" led to believe. From this point of view, without a doubt, we were able to see the lexicon evolving: kamikaze terrorist, isolated fanatics in the middle of a population strongly in favour of the coalition troops were many times named as "insurgents" in view of the amount of connections they had with local communities and their relative successes. In addition, the colonial vocabulary that refers to the "battle for the hearts and spirits" resurfaced again.

The tension between western politicians and the generals in those countries (in Afghanistan as much as in Iraq), caused by a possible defeat or at least a forced retreat, focussed the attention on the ambiguity of the "war against terrorism" discourse: on the one hand, it tried to minimize the reality of the continuity of the war abroad and its colonial vices, as long as they did not have to give credit to the idea that the terrorist suspects arrested in Europe were "combatants" that wanted to give the western population "a taste of what war is like"; and on the other hand, it multiplied the anxiety about the possibility of a domestic war brought by "home grown terrorists" (the terrorists that were born within the country). The meaning of this war –transformed into operations of "peace keeping" abroad (despite the great amount of violence) and into a general suspicion atmosphere in the interior (despite the decrease on the amount of victims of attacks)– was changed to the point of getting mixed up with that of the antiterrorist police fight. This gave way to the abolishment of the frontiers between the internal and external and to talk about a "global terrorism" that needs global answers, all this covering up the responsibilities of this response to terror that provoke also numerous civil victims, but out of our sight.

3.2. The global cooperation between police service and intelligence

The consequences of an international cooperation in a global counter-terrorism regime were a lot less discussed than the consequences of the war in Iraq and Afghanistan. The cooperation between governments, police forces, justice administration and intelligence services, was free of the secrecy imperative related to the national interest. Direct collaboration platforms were established or reinforced. Coordination services and cells were created (linking in most cases the services of border control, customs, immigration, territorial police forces, magistrates police and even military intelligence services and the military itself), on a national level (starting with the creation in the United States in 2002 of a "super-ministry", the Department of Homeland Security) as well as on a transnational one.

In the heart of the regional interstate organizations, the development of this cooperation was more or less important according to its institutionalization degree, going from the simple exchange of information to the complete sharing of their information thanks to the inter-operable technical platforms, to which every member State can resort to –as it is the case of certain fields in the heart of the European Union. Certainly, not every State has resigned to the preservation of the exclusive property of information –for example, as it was illustrated on the European Union level, by the difficult extension in 2007 of the regulations of the Prüm treaty–[4] and several regional groups settled for informal exchanges of information, strictly bilateral on a fair's fair basis. The foundation of a global counter-terrorism regime generated the creation of hundreds of new information channels between services on a global scale (Bigo 2005: 53-101).

After it was put in practice, the discussions were more about its impact on the national sovereignty than about the risks it represented to the fundamental rights. The discussions were almost exclusively devoted to data exchanges between democratic states. The European Union estimated that its specialized agencies (Europol for the police coordination, Eurojust for the legal cooperation, Frontex to fight illegal immigration) or its analysis centres (such as Sitcen, an intelligence agency that consists of military and civil people in charge of evaluating security risks) may contribute with an added value regarding recollection, exchange and analysis of information. The discussion gain intensity when it came to the point of dealing with the transatlantic exchange of personal information, since the North American system of independent control of these data was always less supported than it was in Europe. More over, the United States had a much more "exceptionalist" attitude since 2001: they considered that their services had all the right to the information considering they were dealing with national security, even to the

4. It is an International police co-operation agreement, signed on May 27th 2005 by Belgium, Germany, Spain, France, Luxemburg, Holland and Austria; in June 2007, its main regulations were integrated within the legal framework of the European Union, applying to every Member State.

point of not respecting the rules established by their European equivalent (no respect for treaties regarding the transfer of PNR –Passenger Name Records– data of the passengers in European airlines), intervening in the territory without authorization (kidnapping suspects) or even investigating financial information (through the agency of financial coordination, Swift).

We obviously do not have that much reliable information available regarding secret agreements between intelligence services. The hyperactivity on the part of the Israeli services is quite notorious, but poorly documented: there was evidence of this in July 2005, after the death in the London underground of a young man from Brazil mistaken for a terrorist suspect and killed during a police operation, we knew then that the British antiterrorist services had been trained in Tel-Aviv following a "shoot to kill policy". We know that the surveillance networks via satellite that monitor the telephone networks that link the United States, Great Britain, Australia and other countries of the Commonwealth, formerly known as Echelon, gathered and exchanged millions of data, saturating the computers from time to time and creating multiple errors on the list of suspects. The G8 that consists of the wealthiest countries in the planet made its contribution: the specialized groups created beforehand to fight organized crime (the Lyon group) and to fight terrorism (Rome group) intensified the identification of the illicit financial flows and exchanged information regarding Islamic terrorism.

On the other hand, the intensification on the international antiterrorism cooperation has allowed many dictatorships or non-democratic regimes, whose information was requested in the process of collecting data regarding suspected terrorists, to strengthen their repression against their political opponents or against certain ethnic or religious minorities. Such is the case of Libya, Egypt, Algeria, Tunisia or Nepal, but also Vladimir Putin's Russia. The request for cooperation has given these regimes the possibility of turning their fights against their opponents into a new element on the global war against terrorism. By calling "terrorists": the Chechens, the Muslim Brothers, the Maoist guerrilla or the migrants passing through their territories, these States were able to impose their point of view to the westerners, in exchange for their involvement in the fight against radical Islamism and its networks. They quite down the critiques of their politicians or at the very least they managed to limit the effects of such critiques, since western governments turned a lot less sensitive to the reports made by the international NGOs that defend human rights.

3.3. Terror stock market: the market of the "suspect" lists
Global counter-terrorism created a real exchange "market" of insecurities and forms of terror. The transactions were not limited to collaboration between democratic regimes. The intelligence services, on the contrary, tried to develop exchanges with those they had more to learn from; and certain "remorseful" States like Libya, have hard-foughtly negotiated the provision of their information about networks in exchange for their international

reinsertion. These transactions were developed trough the recognition of lists of "suspicious" individuals and clandestine organizations: each service had to acknowledge the list established by a specific State in order to get the acknowledgment of its lists by the other ones. Since 2001, this bargaining of lists were constant and had little to do with the information regarding criminals, since they were mainly "suspect" lists, a lot longer than those of wanted people from the criminal police. Each one included finally the individualized enemies of the others accepting to classify them as "terrorists".

Nevertheless, the system has its limits. The diplomatic, the military and the judges had something to say about this "transactions". The sovereignty game of the States and the different regimes were certainly affected, but never eliminated. There was no unification or centralized rationalization. The diversity of interest at stake has prevented the creation of a consensus definition of terrorism by the UN, and even of a common list accepted by every one. The discussions have been hard-fought, and the priority was given to the regional associations and the bilateral agreements, mainly to those that were more discreet. All of them gathered groups of experts whose primary purpose was to build the lists. The G8 has its list. The United States has a list. The European Union has several –depending on whether they want to intercept financial transactions or incriminate individuals. Many European countries have also their own lists, unpublished most of the times. And to these official lists, or at least known, must be added other lists, longer but also more confidential, since they widen the range of suspects (thus they are considered better lists).

But, *de facto*, the American no-fly lists (lists of the people that are banned from taking flights within or destination the United States), generated after 2001 from the addition of all the data (based on a logic described by the Total Information Awareness project, renamed in 2003 as Terrorism Information Awareness), are evidence of the inconsistency of information, rumours and misinformation gathered from individuals, their name or pseudonym. These lists of suspects, far from having the coherence of proper knowledge, are more similar to a poem of the surrealist *Prérvert* inventory where: a boy of 18 months can be considered a dangerous international terrorist and, hence, detained at the airport with his mother for eighteen hours under the pretext of sharing with another individual the same name, the same surname and two other behaviour characteristics, which are confidential. The main purpose of these lists is to give more substance to the idea of a global terrorism that includes all the individuals and clandestine organizations that violently oppose to their States, and that would have Al-Qaida and Bin Laden as their leader, even if they are members of ETA that had been wanted for years or young people that recklessly visited a mosque qualified as "radical" by the intelligence services.

The market, in which information about fear is being exchanged, has a kind of "stock-market places", where the different actors are in competition against each other, according to the classic neoliberal logic. For this reason, the CIA took some distance from the Department of Homeland Security. So

did the Europol and Sircen that belong to different "pillars" of the European Union (third pillar or Justice and Home Affairs regarding Europol; second pillar or Defence and External affairs regarding Sitcen), elaborating jointly a state of threat, but they instantly disagree on the rank of this threats and the strategies to follow. Interpol reinvented itself with a new information network faster and more efficient than others, and set up for terrorism suspects. The OTAN also got involved in counter-terrorism. Russia, China and Central Asia countries understood the need to build their own exchange market, and to include in it for example the name of some providers of services of private military companies in Iraq: this would give them a bargaining tool at the time of removing people from other lists.

Global counter-terrorism is not free from the transaction logics of the States; they have even been activated in unforeseen sectors. It did not create reciprocal confidence between intelligence agencies, adding to this that the area to collect data expanded. Talking about "trust" has turned into the *leitmotiv* of every collaboration speech, given the fact that the practices collide with the socialization of distrust and the logics of not doing anything for nothing. The "market" (the terror one) does not work based upon the trust between the participants but based on their transactions and competition.

Surrounding this stock market a network of professionals in the management of insecurities linked to terror was consolidated, that has become more or less independent from the national governmental logics; and has started a struggle with politicians with the purpose of demanding the truth about threats and about who the enemy was and how to fight against him. This network already existed, but was divided in different areas: the area of internal security professionals grouping networked police; the military and external affairs area structured by the OTAN; and the other Anglo-American networks around the world. The military and police areas did not have a good relation and did not like each other, tending to compete against each other. However, since then they have fallen in interdependency chains that have forced them to work together, since the liberation of missions that do not respect the separation between that which is internal for the police and external for the army.

The intelligence services, each one determined according to national interest but already used to working jointly in the context of alliances in the cold war, reinforced their connections at an international level –giving way to the access of new member to the existing "clubs"– such as the connections between police and military services on a national level (which occasionally could imply even their merging). They accessed almost every informal network that groups criminal police and they wanted access to its information channels, extending the request to the customs and immigration services. Supported by politicians that only cared about technology and the maximum amount of information gathered to control the danger of the furtive enemy that attacks whenever and wherever he wants, they restructured this universe of professionals of (in)security on a transnational scale, turning into the active centre of this universe and minimizing the imperative to respect legality and the

judges role, despite the resistance of the latter. The spreading of the activities of these professionals in the management of anxieties, whose sphere also includes more and more private actors, created a qualitative leap that allows them to have considerable influence on our lives[5].

3.4. Secret detention, torture and inhuman treatment: extracting information from human beings

The role of the prediction of future behaviours of potential terrorism suspects by the intelligence services was the heart of the reconfiguration of limits between people's fundamental rights and the agencies' powers. In the interest of prevention, the right to act before a criminal act is committed; the focus went from the territorial police investigations or the military repressive action to the collection of information, its storage and classification to simulate possible future trajectories using elements from the past.

Somewhere between science and prediction, this reference to the future of potential criminals that must be arrested and stopped before they have committed the crime, organizes the whole rationality of the worst-case scenario. It is never disputed, because it is founded on the idea of a secret knowledge leaders have that would make their decisions informed decisions, with no room for arbitrariness, "there is no smoke without fire", and where it is considered that a detained person is there for a reason. But the analysis of the mistakes in the reasoning made by the governments and intelligence services since 2002 shows that this claim to have knowledge about uncertainty, about enemy's behaviour and the ability to localize them in time, it is at the very least, debatable. It is more similar to an astrology that looks for signs in the body and human behaviour than a scientific technique founded on the analysis of rational risks. The novel by Philip K Dick "Minority Report" that inspired the film with the same name directed by Steven Spielberg is without a doubt noteworthy of this dream of an absolute preventive policy that turns into a nightmare in a society under surveillance.

It is this will to prevent that explains the arguments that justify torture, detentions, the absence of a fair trial and all the practices that challenge fundamental rights. It is all a question of "extracting information", make the individuals talk and, if they do not talk, make their bodies talk. Numerous places were used for this "extraction of information" which always includes degrading and inhuman treatments: Abu Ghraib in Iraq, Guantanamo Bay, but also a whole archipelago of secret detention places all over the world, connected by the network of American military bases and of the OTAN (Diego Garcia in the Indian Ocean, Camp Bondsteel in Kosovo and so many other places that the parliamentary reports discover from time to time).

The military staff on these bases has been trained in specific interrogation techniques by the operational responsible of the intelligence services: they have been taught how to weaken the individuals' resistance, with the purpose

5. See dossier *Suspicion et exception*, *Cultures & Conflits*, n. 58, 2005.

of being able to "extract the information" themselves through cracking the will. This goes hand in hand, as it is always the case when authorities have justified several forms of cruelty, with individual manifestations of sadism, tolerated or not, without the intention of getting any information; when this has been sanctioned, it allowed the action against certain individuals, without questioning the whole system.

Five years after these devices were set in motion, it is clear that the psychological war that tries to avoid the international prohibitions regarding torture has failed. It failed in the legitimacy field, since the court houses refuted distinctions of this sort and maintained the *jus cogens* (the imperative regulations of International Law established by the Vienna convention in 1969) of the individuals to be protected against any form of torture and inhuman or degrading treatment. It also failed in the effectiveness field, in the sense that the degrading and inhuman treatments to which suspects are subjected to in all these bases did not result in valid information or well-founded accusations.

Regarding Guantanamo, most of the times we are dealing with "common" people victims of the circumstances and paying the price of these indefinite detentions. About those who were freed we know that most of them were foreigners arrested in Afghanistan (that had gone there to assist a wedding, for tourism purposes, religious and, some, for political motives), that were sold out to the Americans by the local communities, since they had offered rewards for each foreigner that was taken. So, the communities, –to get the rewards– accused unjustly some foreigners of being Al-Qaida combatants. It would have been a lot more efficient to use from the beginning the rules of the process leaving the defence to do its job, and concentrate on the people that were responsible. However, the logic of suspicion produced the inverse effect, prolonging to the absurd the circle of potential culprits. The information had to be extracted, make the person recognize his mistakes, sound out his kidneys and soul (just like the Inquisition demanded). Even worst, after a while, it seamed like the inhuman treatments had continued on a daily basis, without new questionings. They fell on the arbitrary rules of this concentrationary universe.

What might even be more shocking in the field of the liberal principles, is that the American government not only practiced tortures and inhuman and degrading treatments, but it –and its supporters– tried to justify them and let some images spread out (like the case of the terrible photographs of Abu Ghraib). In January 2002, for example, the American lawyer Alan Dershowitz tried to justify "legal" torture evoking –as it had been done before by French military during the war for independence in Algeria– the scenario of a terrorist that knows where the bomb that is about to explode is and refuses to talk; not a very realistic scenario, but the mere mention of it was enough to legitimize the use of the practices we mentioned before, where the information that needs to be "extracted" is "unknown" and, sometimes, not even with the purpose of knowing but as a simple routine.

What is true is the counterproductive effect of these counter-terrorism processes. They made the best propaganda in favour of Al-Qaida increasing the amount of suicidal combatants, radicalizing sectors of the Muslim world population that, before, were not as hostile to the Americans. They also tore down the image of the United States as the country that has the most advanced democratic values; and, leaving aside Bush's administration, it is the image of the western diplomacy in its whole (including the NGOs) that is in danger of suffering this set back, even though there was a refusal by the European to participate in some of the worst practices it did not stop certain type of complicity.

3.5. European reluctance and complicity

It is clear that Washington's logic of exception to justify counter-terrorism did not work as well in Europe. The possibility of a sanction to those governments that violated fundamental rights played an important part. The European Court of Human Rights and the European Court of Justice played a moderator's role that the Inter-American Court of Human Rights (no sanction ability) and the Supreme Court of the United States –which did not intervene except in minor cases and in order to protect judges power before the executive one more than to protect fundamental liberties– did not have.

In Great Britain, on the contrary, the House of Lords, so easily accused of being too conservative in the past, played a central role in order to block the initiatives of Tony Blair's government: a political game developed between the judges and the will of the British government to break the European Convention on Human Rights and the principles of *habeas corpus*. One by one, they invalidated the arguments and measures that violate those rights: the undefined detention of non deportable foreigners in the maximum security prison of Belmarsh (in the context of the antiterrorist law of 2001), the use of the Anti-social Behaviour Orders, ASBO, or the attempt to extend preventive detention with no charges for more than twenty eight days.

No national European government had been submitted to the exception decision without their sovereign control: they were cornered about the regulations of the European Union (Guild 2005: 183/204). The same thing happened with the exchange of information regarding personal data: the intelligence services of European countries were willing to cooperate with their American equivalents and they did in many occasion in an official way; but the European authorities that control personal data, as well as the European Parliament, exerted so much pressure on the governments, the Council and the Commission, that they had to elevate the level of requirements and oppose to the demands of the Americans. The debate surrounding the transfer of PNR data and more generally of transatlantic exchange of data put the focus on a subject that the ruling classes wanted to keep confidential. It did not stop these practices from happening, but it made them illegitimate, made them less often, and prevented the excess. The idea of a control carried out by independent authorities that verify the facts the intelligence services provide, made its

way and reached in 2006 the United States, where the ACLU (*American Civil Liberties Union*) was making a campaign regarding this issue by reflecting on the European experience.

From this point of view, those who are watching us should also be controlled, as well as those who decide, even if the control is done afterwards. It should be able to sanction them. The urgency argument is not enough anymore, no more than the "worst case scenario" one. There is a need to explain, give legitimate reasons for the suspicion and concrete elements of appreciation, preferably to the judges. It is not a question of blindly trusting in the information gathered by the transnational networks of information or the declarations made by politicians, whether they are home secretaries or prime ministers. Certain proportionality between threat and answer is necessary. The discourse about preventing actions before a virtual irreparable damage is not acceptable: the worst-case scenario must be seen for what it is: a paranoid logic with no other limit than the one imposed by the person who announces it. The focus is again on the criminal police and the information handled by police services about known perpetrators, and not on the extraction of information and profiles made from the crossing of the greatest amount of information possible and the simulation of the future.

The sometimes resentful speeches of British home secretaries or Italian ones, about judges who would not let them proceed the way they wanted to and would call them irresponsible are proof of the tensions that global counter-terrorism provokes in the heart the European Union. The institutional mechanisms of resistance were more elaborated, based on public opinions that were not convinced by the "need" for the derogation of the law, exceptions and war logic. They also took advantage of the lack of unity in the European government, –which could not be reduced to only one institution– a unity that it is necessary for Schmitt's argument of the sovereign decision of exception: multiplicity and diversity of the European Union, so frequently criticized, were the key elements in its ability (involuntary?) in order not to follow the United States.

The argument of exception did not do well in Europe. It is what partially explains why practices which were less violent and coercive than in the United States have been strongly criticized. The arrest with no charges or preventive detention in terrorist matters and its duration whether in the British accusatory system or in the inquisitive continental system puts the right to a defence and the idea of a fair trial in danger, as well as the status of presumption of innocence. However, these forms of detention bear no comparison to the incommunicado detentions, kidnappings, and disappearance of people in the archipelago of secret prisons of the OTAN and its allies, or with the undefined detentions in Guantanamo, even with the requirement finally imposed by the Supreme Court of the United States on how to conduct the processes, after the civil society and the American liberal judges struggles. The European system continued to base in police logic. Of course, there are some exception magistrates and infiltration activities of the intelligence services, but the system

has not connected (yet) with the logic of the military intelligence services and the technology praised by the Americans.

The transatlantic information channels do exist, but they are at the same time elements to fight and objectives to be controlled, for its content as well as for its form. Some are disappointed and accuse the European of not understanding the new challenges, of being an "old" Europe (including certain pro-Bush European scholars); others on the contrary see the resistance as hope and accuse the American government of being tempted by the "orwellian" tide (including activists and anti-Bush American scholars).

The reports announced to the public in 2006 and 2007 by the European Council (Dick Marty reports 2006/2007), the European Parliament (reports by Claudio Fava, 2006/2007), and by the Council of Human Rights of the UN (report by Martin Scheinin, 2007) analysed these contradictions in the attitudes of the governments of the European Union and its intelligence services: they refused to practice tortures in their territory, although they were (active or passively) accomplices in the kidnapping of people in European territory by the American services, as well as the authorization of air traffic to planes transporting suspects in order to send them to secret prisons outside the Union. Apparently some European governments tolerated with knowledge this type of activities, like Rumania, while others were kept in the ignorance by their own intelligence services, collaborating on their own behalf with the American services, such is the case of Italy.

We need to emphasize that the work of these informants collided with the obvious lack of will to cooperate from the group of questioned services and its governments. Because of this, they could not establish whether these tortures were committed in the European Union's territory or in the candidate States to access to the EU (leaving aside, maybe, the American base Camp Bondsteel in Kosovo and the area handed over to the CIA by Rumania, near Tulcea). The European Union cannot redeem itself that fast from the illiberal practices. Even though it did not participate in the extreme acts, some of the States that are part of the Union did take part in the war actions in Iraq and certain war crimes, and participated as well in the actions that took part in Afghanistan and in the information exchanges by the military phone taps (Dieben & Dieben 2005). France, hardly involved in Iraq's war, collaborated through DST *[Direction de la Surveillance du Territoire]* agents and antiterrorism judges, in the interrogations that took place in Guantanamo. It also provided several lists of suspects that linked the Algerian GIA, supposed Chechen subsidiaries and Al-Qaida.

But if the two shores of the Atlantic join forces, it is mainly in the development of illiberal practices more ordinary and less spectacular.

4. Restlessness policy and ordinary illiberal practices

We have described the typical practices of a global counter-terrorism regime, focusing on the action of western governments, transnational

networks of insecurity management, particularly of intelligence services. However, the root of illiberal practices on liberal regimes is not explained by terrorism and exceptional reactions of the western States: the tendency to a silent acceptance of these practices by the society is based on a feeling of insecurity that it is not reduced to terror. This feeling is also an expression of a more diffuse concern, generated by the confusion between ordinary bureaucratic policies concerning both "excluded" and "included": citizens tend to be treated as foreigners, regular travellers as migrants. This evokes our individual responsibility for these policies as well as those responding to "great events" provoked by international terrorism[6].

We cannot understand the relation proposed between citizens of western societies and the detention of foreigners and their difficulty to mobilize while facing illiberal practices such as those in Abu Ghraib, Guantanamo or Belmarsh, if we do not relate them to other practices. Practices like the treatment given by their States to the foreigners demanding asylum while they wait the procedure of their files, or to people whose trips have been interrupted because they are missing a document, quickly qualified as irregular or illegal by the press, but also by the police stations and even public prosecutors. If we do not come to understand the situation these people have to go through in detention centres or in the waiting zones of the airports, with our implicit acceptation we are justifying the unjustifiable, losing sight of a central dimension of these practices: presented as exceptional, when they were elaborated to be ordinary.

The political game about criminalization of migrants, and more generally about the instrumentalization of the connexions between terrorism, foreigners, Muslims, migrants and young citizens products of immigration, are part of the reason why the concerns increase: they give the rivalry an intimate quality, creating an environment of suspicion in which the people "without papers", religious, unemployed and that have acceded irregularly to the country become the members of clandestine organizations. All this despite the fact that the sociological profile of bombers elaborated on an investigation made by the police regarding the "Islamic terrorism" in Europe, revealed that they have completely different characteristic: regular access to the country (even born in Europe), not a very strong religiousness but a profound feeling of injustice, uncommon job qualifications but real (usually in the service sector). But in the name of antiterrorism fight, the members of parliament everywhere accept without questioning all the restrictive measures concerning irregular immigration (and regular), the conditions of family reunification and the principles of right to asylum. It is an obvious green light for the Home secretaries and the police to spread with these measures their leeway and an incentive to limit the judicial controls placed upon them.

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6. We have analized these issues in various places: Bigo (1998: 13-38; 2002: 63-92; 2005: 53-101; 2007). In the same sense see: Huysmans (2005); Ceyhan (2006: 11-32); Lyon (2006).

We can always reproach governments or members of parliament, but numerous private and public speeches evidence that many of our contemporaries do not ignore their actions and they even tolerate and approve them. This cynicism, mixed with certain disgust for politics in general, reinforces the tendency to "sacrifice somebody else's freedom in other to protect our own security" (Cole 2003). Even though the repressive measures only seem to affect specific categories of people, determined by global counter-terrorism, the concern is limited. It is not expressed until the repression is openly manifested on a daily basis, like the arrest of children with no papers in the French schools in order to expel them (we can observe, for example, the amazing mobilisation since 2006 done by the parents of students of *Réseau education sans frontières*[7]). It only becomes a real concern, when certain privileged groups are turned abruptly into the object of control, because they share parameters with "abnormal" populations and they highlight what the individual security may lose when it collides with the imperatives of national security. When arbitrariness comes from the police or the State, it is when people notice how the legal guarantees to know the reason of an internment, to have the right to a lawyer and a fair trial, are central issues. This is why the American no-fly-lists are every time more questioned.

This is even more blatant in the identity controls done by the police and the private surveillance mechanisms: citizens do not rebel against these mechanisms until they realise the information they are gathering can be used years after it was taken, in different social contexts and according to interpretations far from the moment it occurred. It is interesting to emphasize that societies that still have the memory of a dictatorship, are more reluctant to abandon their right to certain lack of transparency when the police checks out their intimate activities (intimate being the most exact definition of the term privacy), their reading material, correspondence, or movements.

We are left with the essential: the daily indifference –even more the explicit approval– regarding the new forms of surveillance explains the simplicity with which young people of popular classes (and even more of ethnic groups stigmatized as different) are not seen as scum from which society has to protect itself from with security measures, where the only role of prison is to keep them on the sidelines, if not indefinitely at least for as long as possible (Bonelli 2008; Garland 2001). These behaviours, together with the counter-terrorism discourse and the demand of derogation of some legal guarantees on behalf of urgency and danger, set the structure for the rules and of what is considered admissible or not. Reflecting on the concern policy leads us to question ourselves about our own responsibilities –and not only those of our leaders– for the mechanisms of an insecurity management of insecurity in which we actively participate, and usually with more willingness than we would like to admit.

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LIST OF CONTRIBUTORS

Roberto BERGALLI is President of the International Scientific Committee of Observatory of Penal System and Human Rights [OPSHR] of the University of Barcelona. He is currently (retired) professor of Criminology at the University of Barcelona. He has been the Head of the Criminology and Criminal Policy Studies, Director (founder) of the European Master on "Penal System and Social Problems" of the University of Barcelona, and also coordinator of the Speciality in "Sociology of Criminal Law of the Doctorate in Law of the University of Barcelona, but he was previously the Scientific Director of the Oñati International Institute for the Sociology of Law and guest Professor at several European and Latin American Universities. He is co-editor with Iñaki Rivera of the publishing project "Utopías del Control y Control de las Utopías" (Anthropos) and of the review "Desafío(s)".

Didier BIGO is visiting professor at King's College London department of War studies for 3 years and Professor of International Relations (Maître de conférences des universités), at Sciences-Po Paris, Researcher at CERI/FNSP. He is the scientific coordinator of the European project *The Changing Landscape of European Liberty and Security* (CHALLENGE) funded by the EC Commission) He is also responsible for the team organising the website of the project: http://www.libertysecurity.org. He is Co-editor with Rob Walker of the new ISA journal International Political Sociology, published by Blackwell; director of the Center for Study of Conflict and Editor of the quarterly journal «Cultures & Conflits» published by l'Harmattan and edited once a year in Alternatives (Lynne Rienner ed). He works on critical approaches to security in Europe and the relation between internal and external security, as well as on sociology of policing and surveillance. He analyses the relations and tensions between international relations, politics and sociology.

Cristina FERNÁNDEZ BESSA is researcher of the OPSHR. She is graduated in Law by the University Rovira i Virgili (Tarragona, Spain). She holds a Diploma in International Critical Criminology from the Common Study Programme on Criminal Justice and Critical Criminology and a Master in Penal Systems and Social Problems from the University of Barcelona. She is PhD candidate in Law, speciality in Sociology of Criminal Law at the same University with a scholarship of the Catalan Government (2006-2009). She participates as a researcher at the Workpackage 9 of Challenge project. She is secretary of the editorial staff of the Review Desafío(s) (Antrhopos/OPSHR). Her areas of interest include: migration control policies, Criminal policies and Human Rights, and the management of urban spaces.

Nicolas FISCHER holds a Phd in Political Science from the Institut d'Etudes Politiques de Paris. He defended in 2007 a dissertation on "Administrative

Detention in a State of Rule of Law: Genesis and Practice of the Control of Detention Centers for Deported Foreigners in Contemporary France". He now works as a postdoctoral student at IRIS at the *Ecole des Hautes Etudes en Sciences Sociales*, and is part of the program "Beyond the 'Immigration Issue'. The new boundaries of French Society". His working interests include the study of immigration detention and immigration control, with a particular interest for the sociology of law and the ethnography of state legal practices.

Alejandra MANAVELLA SUAREZ is researcher of the OPSHR. She is graduated in Law and in Notary public by the University of Costa Rica. She holds a Diploma in International Critical Criminology from the Common Study Programme on Criminal Justice and Critical Criminology and a Master in Penal Systems and Social Problems from the University of Barcelona. She undertakes doctoral studies in Sociology of Criminal Law at the same University. She participates as a researcher at the WP9 of CHALLENGE project. She is secretary of the editorial staff of the Review Desafío(s), (Antrhopos/OPSDH). Se has been academic coordination assistant of high education at University of Barcelona and project manager of the Penal Reform project in Latin America. She is author of several articles in specialized national and international reviews.

Iñaki RIVERA BEIRAS is Director of the Observatory of Penal System and Human Rights of the University of Barcelona**.** He is also Director of the official Master's degree in "Criminology and Sociology of Penal Law" of the same University. He is reader in Criminal Law at the University of Barcelona and he has been Guest Professor at several Universities in Europe and in Latin America. He is leading the Workpackage 9 of the CHALLENGE project. He is author of several books and papers about Penology, History and Sociology of Prison and Criminology and Criminal Policy published in academic works in Spain, Europe and Latin America.

Salvatore PALIDDA is Professor of sociology, sociology of deviancy and social control, sociology of human mobilities at Faculty of Educational Sciences of Genoa University; He is doctor in Sociology and European Studies of the Ecole des Hautes Etudes en Sciences Sociales of Paris-F and since 1989 he is expert of OECD (migrations studies). He has been evaluator for the research projects of 5th and 6th Framework programmes, TSER-DGXII of the European Commission. From 2002 to 2004, he has been co-responsible for the Italian group in the project "Thematic network of the European Research Centres in the Social Sciences on the Euro-Mediterranean region" (REMSH), financed by the DGXII of the EC. At present, he is co-responsible of the workpackage 8, "Effects of exceptionalism on social cohesion in Europe and beyond" of the Challenge project and he is in charge of the Genoa Team in the network of excellence "Assessing Deviance, Crime and Prevention in Europe". He is author of a grat number of chapters and articles in scientific journals. His last

book is *Mobilità umane. Introduzione alla sociologia delle migrazioni* (Cortina, Milano, 2008).,

Mauro PALMA is President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), of the Council of Europe (2007-2010). He is Founder and Honorary President of Antigone (an Italian association which promotes rights and safeguards in the criminal justice system); Chairman of the Italian Prison Observatory and Human Rights Advisor to the Italian Parliament and the Lazio Regional Assembly. He has been invited professor at the University of "La Sapienza" –Rome-, The University of Florence and the University of Bologna, among other Italian institutions. He has been also invited professor at the University of Barcelona. He is author of several articles and book chapter about the prison and humans rights.

Gabriella PETTI is Lecturer of Sociology of delinquency and social control at the University of Genoa, where she also carries out research at the Department of Anthropological Sciences. She is member of editorial board of the journal Conflitti globali. She is the author of articles and book chapters on the role played by institutions in criminalization processes and shows special interest in immigrants and juvenile matters. In 2004 she wrote: *Il male minore. La tutela del minore straniero come esclusione sociale*, Ombre Corte, Verona.

Stefano RODOTÀ is Professor of Law, at the Università di Roma "La Sapienza" and at the Institute for Human Sciences, Firenze. He is chair of the Scientific Committee of the Fundamental Rights Agency of the European Union and of the Internet Governance Forum Italy. He has made lectures and seminars in many European universities, in the USA, Canada, Australia and Latin America. He is author of: *Tecnologie e diritti*, Bologna, 1995; *Tecnopolitica*, Roma-Bari, 2004; *Intervista su privacy e libertà*, Roma- Bari, 2005; *La vita e le regole. Tra diritto e non diritto*, Milano, 2006; *Dal soggetto alla persona*, Napoli, 2007

Gabriela RODRÍGUEZ FERNÁNDEZ is researcher of the OPSHR, where she coordinates the research area of "Resolution of penal conflicts". She is graduated in Law by the University of Buenos Aires (Argentina) and she is Phd candidate with her dissertation: "Punishment, social control and distopic imaginary: a cultural perspective of the social discipline". She participates as a researcher in the research project "Conflict and urban landscape" (University of Lleida/ University of Barcelona) and in the European project CHALLENGE (work package 9). She has published several articles and book's chapters, and has edited three books regarding conflict, literature, social control and urban landscape where she has analyzed the shaping of the social imaginary of control. She has studied social control as a phenomenon of the 20th century

and its connexion with the utopian and distopic literature, in the George Orwell and Aldous Huxley's works.

Héctor C. SILVEIRA GORSKI is Assistant Director of the research group Observatory of Penal System and Human Rights of the University of Barcelona where he also coordinates the research area of "Migrations, Law and systems of control". He is reader in Philosophy of Law at the University of Lleida. He is author of several publications on migration policies, internment and expulsion of migrants and biotechnology and bioethics. He is author of: *El modelo político italiano (Un laboratorio: de la tercera vía a la globalización)*, Eub, Barcelona, 1998; *Tecnología, intimidad y sociedad democrática*, with A. Sanchez and M. Navarro, Icaria, Barcelona, 2003; *Bioética y Derecho*, with V. Méndez, UOC, Barcelona, 2007; *Immigració i Ciutadania. Els reptes de la Catalunya del futur*, with Q. Novelles and L. Juberías, Fundació Pere Ardiaca, Barcelona, 2006 and *El derecho ante la biotecnología. Estudios sobre la nueva legislación española en biomedicina*, Icaria, Barcelona, 2008.