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## 7. The European Union: new threats and the problem of coherence

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### I. Introduction

The events of 11 September 2001, and the policy challenges posed by the United States' reactions to them, had an impact on a European Union (EU) already in the midst of historic change. The successful introduction of the single European currency and the first steps towards a European Security and Defence Policy (ESDP) had created new momentum in the monetary and security fields. Today, the admission of 10 new Central European and Mediterranean members to the EU in the spring of 2004, and two additional members in 2006, are set to bring 100 million new citizens into the Union, creating new borders, new neighbours and new priorities.

Even before the attacks of September 2001 made the world seem a more threatening and demanding place, EU leaders were grappling with the longer-term implications of enlargement, and with the question of how the EU could live up to its new potential and meet its new responsibilities. Concern about the effectiveness of EU governance and decision making prompted the decision to hold an independent European Convention in 2002–2003 to debate the future of the Union, and to follow it up with an Intergovernmental Conference (IGC), *inter alia* to consider a new Constitution for Europe. It was hoped that the constitution would be adopted by 2004.<sup>1</sup>

There was also a more specific debate within the EU about its ability to ensure European and world security and of the instruments it can wield directly towards that end. The original 'big idea' of European integration had been to work for peace and to build security indirectly, through the inextricable economic and social integration of former enemy states in Europe. Yet for decades the EU and its precursor organizations had focused on essentially domestic goals. Efforts to establish the EU as an international actor had begun by the 1970s and accelerated particularly after the end of the cold war. Much was achieved regarding the reach, salience, instruments and procedures of Europe's international policy,<sup>2</sup> but critics argued that there were still basic flaws of both a political and an institutional nature. EU member states

<sup>1</sup> On the European Convention and for the Draft Treaty establishing a Constitution for Europe, presented to the European Council on 18 July 2003, see the Convention Internet site at URL <<http://european-convention.eu.int/bienvenue.asp?lang=EN>>.

<sup>2</sup> For a description and critique of these developments see Cameron, F., *The Foreign and Security Policy of the European Union: Past, Present and Future* (Sheffield Academic Press: Sheffield, 1999); and Everts, S., *Shaping a Credible EU Foreign Policy* (Centre for European Reform: London, 2002).

regarded the sensitive areas of foreign, security and defence policy as central to their notion of national sovereignty. They resisted the same kind of pooling of sovereignty that had long been seen within the economic and other internal fields, or in foreign trade. They were particularly allergic to placing any control of the resources devoted to security, or of specific operational decisions, in collective European hands. Another problem was the significant differences in foreign policy culture, experiences and expectations within member states as well as between them and the European Commission.<sup>3</sup>

At the institutional level, a succession of treaty changes during the 1990s left the EU with a Byzantine system of differentiated decision making. Neither a state nor an international organization, it has defied simple definition, although the characterization of the Union by Jacques Delors, former President of the European Commission, as ‘an unidentified political object’ captures the continuously open-ended nature of the European project.<sup>4</sup> As a result, some matters directly relevant to the security of the EU’s common territory and assets (such as intelligence collection and sharing, and the running of police forces, military and civil defence and disaster response, not to mention armed forces) have remained a purely national responsibility, while those matters which come within a collective EU framework can be handled in at least three significantly different procedural contexts.<sup>5</sup>

The historic European Community (EC)—the ‘first pillar’—covers those areas where member states have ceded sovereignty to the Union. In relation to security threats and peace building, the most important areas are those relating to trade, external economic and financial programmes and assistance.

In the Common Foreign and Security Policy (CFSP)—the ‘second pillar’—member states coordinate policies but retain national sovereignty over decision making in most areas. This is the area of activity which has developed rapidly in recent years, especially in the security field through the development and deployment of new police and military crisis-management instruments following the institution of the ESDP in 1999.<sup>6</sup> Most of this new activity has been in the Western Balkans, although the deployment in June 2003 of Operation Artemis in the Democratic Republic of the Congo (DRC) is an indication of the EU’s more global ambition.<sup>7</sup>

<sup>3</sup> For a description of foreign policy cultures and the role of national foreign ministries in EU affairs see Hocking, B. and Spence, D. (eds), *Foreign Ministries in the European Union: Integrating Diplomats* (Macmillan: Basingstoke, 2002).

<sup>4</sup> Delors, J., ‘Where is the European Union heading?’, Presentation in the United States on 20 Mar. 2001, available at URL <<http://www.notre-europe.asso.fr/fichiers/DiscoursIV01-en.pdf>>.

<sup>5</sup> For a detailed analysis of the 3-pillar system see Demaret, P., ‘The treaty framework’, eds D. O’Keeffe and P. Twomey, *Legal Issues of the Maastricht Treaty* (Chancery Law: London, 1994), p. 3.

<sup>6</sup> Helsinki European Council, Presidency Conclusions, 10–11 Dec. 1999, Annex IV: ‘Presidency reports to the Helsinki European Council on “strengthening the common European policy on security and defence” and on “non-military crisis management of the European Union”’, available at URL <<http://ue.eu.int/en/Info/eurocouncil/index.htm>>.

<sup>7</sup> Operation Artemis (also known as the Interim Emergency Multinational Force, IEMF) was deployed in Bunia, capital of Ituri Province, DRC, on 12 June 2003 for a period of 3 months, later extended to 15 Sep. 2003. See ‘EU launches the Artemis military operation in the DRC’, 12 June 2003, URL

Justice and Home Affairs (JHA) activity—the ‘third pillar’—provides a framework for cooperation between Ministries of Justice and the Interior and police forces. It has a front-line role in combating organized crime and terrorism within the European Union, but it is also the most complex area of cooperation, partly because of the reluctance of governments to agree to policies which risk undermining national legal systems and procedures, potentially placing their overall security at stake.

During the 2002–2003 European Convention, a lively debate developed over how each of these instruments should be sharpened to tackle the relevant aspects of security, and over whether and how they could be wielded by some kind of single decision-making centre in the EU and under stronger and more consistent leadership. The repercussions of the September 2001 terrorist attacks brought urgency to this debate and linked it to the larger question of the EU’s mission in the world. The attacks were a reminder that external enemies could strike from within, that even the richest and most peaceful ‘homelands’ were not immune, and that defence could not be achieved with the classic, state-level tools of security alone. The USA’s forcible reactions put pressure on the EU to demonstrate its own seriousness and efficiency in tackling the new mass-impact terrorism—the transnational character of which made Europe a key theatre for corrective action—and forced European states to confront possible differences of analysis, priorities and even values between themselves and the USA over the exact nature of the threat and how to handle it. By 2003, the USA’s decision to launch military action against Iraq without a United Nations mandate and only a limited coalition of partners had exposed the EU to its most painful political split for many years. The question thus became not only what Europe should do to tackle terrorism and related challenges in its own and its future members’ interests, but also where it should take its stand in relation to the USA and other potential partners. Europeans of several different schools of opinion came to believe that the only way forward was to be a great deal clearer about Europe’s own security philosophy and policy, as well as a great deal more effective in pursuing it.

The EU Security Strategy, prepared by the High Representative for the CFSP Javier Solana and adopted by the European Council in December 2003,<sup>8</sup> was one of the first fruits of this realization. The strategy document identified terrorism as a key threat facing the European Union and as one of the first fields for follow-up action. It also linked terrorism to other key threats, including state failure, regional conflicts, proliferation and organized crime.

<<http://europa-eu-un.org/article.asp?id=2428>>; and Dwan, R. and Wiharta, S., ‘Multilateral peace missions’, *SIPRI Yearbook 2004: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, forthcoming 2004).

<sup>8</sup> European Council, Solana, J., ‘A Secure Europe in a Better World: European Security Strategy’, Brussels, 12 Dec. 2003, URL <<http://ue.eu.int/solana/docs/031208ESSIEN.pdf>>. The initial report was presented by Solana to the European Council at Thessaloniki, Greece, on 20 June 2003; see URL <<http://ue.eu.int/pressdata/EN/reports/76255.pdf>>.

Terrorism puts lives at risk; it imposes large costs; it seeks to undermine the openness and tolerance of our societies and it poses a growing strategic threat to the whole of Europe. Increasingly, terrorist movements are well resourced, connected by electronic networks and are willing to use unlimited resources to cause massive casualties.

The most recent wave of terrorism is global in its scope and is linked to violent religious extremism. It arises out of complex causes. These include the pressures of modernisation, cultural, social and political crises, and the alienation of young people living in foreign societies. This phenomenon is also a part of our own society.

Europe is both a target and a base for such terrorism: European countries are targets and have been attacked. Logistical bases for al Qaeda cells have been uncovered in the UK, Italy, Germany, Spain and Belgium. Concerted European action is indispensable.<sup>9</sup>

## II. The EU's policy responses to the September 2001 attacks

The immediate response of the European Union to the September 2001 attacks was one of strong political support for the United States. Through a succession of meetings, the EU lobbied other governments to ratify a number of United Nations conventions, to implement UN Security Council Resolution 1373,<sup>10</sup> and to support a comprehensive convention against terrorism. There was also strong support for the military operations in Afghanistan which began on 7 October 2001, based on Security Council Resolution 1368.<sup>11</sup> Individually, EU member states contributed to the US effort to combat the al-Qaeda network and to end the Taliban regime in Afghanistan.<sup>12</sup>

This political response broadly reflected public opinion across Europe. Ever since 1996, surveys have shown a slow but steady increase in feelings of insecurity across the EU. For most Europeans, maintaining peace and security, combating terrorism, and fighting organized crime and drug trafficking are priorities which come close in order of importance to tackling unemployment and poverty.<sup>13</sup> A survey of EU and US opinion in the autumn of 2002 showed little difference between British, French, German, Italian and US respondents when it came to their concern about the possibility of terrorist attacks in their countries.<sup>14</sup>

<sup>9</sup> 'A Secure Europe in a Better World' (note 8).

<sup>10</sup> UN Security Council Resolution 1373, on threats to international peace and security caused by terrorist acts, 28 Sep. 2001, available at URL <<http://www.un.org/Docs/scres/2001/sc2001.htm>>. See also chapter 5 in this volume.

<sup>11</sup> UN Security Council Resolution 1368, on threats to international peace and security caused by terrorist acts, 12 Sep. 2001, available at URL <<http://www.un.org/Docs/scres/2001/sc2001.htm>>.

<sup>12</sup> On the war in Afghanistan see Cottey, A., 'Afghanistan and the new dynamics of intervention: counter-terrorism and nation building', *SIPRI Yearbook 2003: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2003), pp. 167–94.

<sup>13</sup> See European Commission, *Eurobarometer: Public Opinion in the European Union*, Report no. 58 Mar. 2003; and *Eurobarometer 59*, July 2003, both available at URL <[http://europa.eu.int/comm/public\\_opinion](http://europa.eu.int/comm/public_opinion)>.

<sup>14</sup> See Pew Research Center for the People and the Press, 'Americans and Europeans differ widely on foreign policy issues: Bush's ratings improve but he's still seen as unilateralist', Washington, DC, 17 Apr. 2002, 'URL <<http://people-press.org/reports/print/php3?ReportID=153>>.

In preparing a policy response, the EU faced the challenge of bringing together a wide array of possible instruments from its various pillars against what was then clearly seen as a strategic threat. In the aftermath of 11 September, EU activities were reviewed in each of these fields in a succession of council meetings involving foreign, interior, finance, transport and telecommunications ministers.

The resulting EU and national action to combat terrorism, both internationally and within the European Union, extended across a very broad spectrum and underlined the multifaceted nature of this security threat. Work was undertaken on implementation of UN Security Council Resolution 1373; the execution of orders to freeze property or evidence; stepping up mutual assistance between police and justice authorities in the member states; bilateral cooperation with the United States; the introduction of anti-terrorism clauses in agreements with third countries (see below); better cooperation between the European police (Europol) and judicial (Eurojust) agencies, updating the list of terrorist organizations;<sup>15</sup> activities to combat bio-terrorism; possible improvements to the Schengen Information System (SIS);<sup>16</sup> and cooperation with external partners.

All these lines of action were grouped together in what became the EU Plan of Action to combat terrorism.<sup>17</sup> A 'road map', based on the Action Plan and comprising some 70 areas of implementation of the action plan, was drawn up. The European Council has periodically updated the Plan of Action. While these updates have been largely of a technical nature, the Plan of Action is currently undergoing a thorough review.

The broad objective was to ensure effective coordination of the EU response to terrorism: to provide a specific EU response in areas falling within EU competence; to extend and enhance the anti-terrorist coalition through political dialogue with other states and in multilateral forums; and, perhaps above all, to strengthen the EU partnership with the United States. In functional terms, the main lines of action could be broken down into four: (a) measures aimed at detaining and prosecuting terrorists; (b) those aimed at denying them financial and material resources; (c) those aimed at encouraging, supporting and technically assisting third countries in tackling terrorism; and (d) those aimed at addressing the social and political resources drawn on by terrorist and criminal networks.

<sup>15</sup> See 'Council Common Position 2003/651/CFSP of 12 September 2003 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2003/482/CFSP', *Official Journal of the European Union*, L 229 (13 Sep. 2003), pp. 42–45, available at URL <<http://europa.eu.int/eur-lex/en/index-list.html>>. See also chapter 5 in this volume.

<sup>16</sup> On the SIS see URL <[http://www.europarl.eu.int/comparl/libe/elsj/zoom\\_in/25\\_en.htm](http://www.europarl.eu.int/comparl/libe/elsj/zoom_in/25_en.htm)>.

<sup>17</sup> See 'Conclusions and Plan of Action of the Extraordinary European Council meeting on 21 September 2001', Brussels, URL <[http://europa.eu.int/comm/external\\_relations/110901/actplan01.pdf](http://europa.eu.int/comm/external_relations/110901/actplan01.pdf)>; and Presidency Conclusions, Seville, 21–22 June 2002, Annex V: 'Declaration by the European Council on the Contribution of the CFSP, including the ESDP, to the fight against terrorism', URL <<http://ue.eu.int/en/Info/eurocouncil/index.htm>>.

## Measures in the field of internal security

The opening of intra-European borders, global markets and global communications have facilitated the activities of both criminal and terrorist networks, enabling people and goods to move with growing ease. The 1997 Treaty of Amsterdam<sup>18</sup> provided for closer police and judicial cooperation against organized crime—although crime within national borders remains under national responsibility. The terrorist attacks of September 2001, subsequent attacks on European targets in Istanbul (Turkey), Morocco and Saudi Arabia, and planned attacks within the European Union have accelerated police and judicial cooperation between member states against all forms of cross-border crime, including terrorism.

The most significant developments include: (a) agreement and legislation on a European Arrest Warrant, adopted on 27 December 2001,<sup>19</sup> which will dispense with traditional extradition procedures and expedite the arrest and transfer of suspects (although it has yet to be implemented); (b) agreement on a common definition of terrorist offences for criminal law purposes; (c) provision for improved joint investigation between national police forces, the creation of an anti-terrorism unit within Europol<sup>20</sup> and strengthened cooperation between anti-terrorist units; (d) improved cooperation between the Judiciary and Prosecutors' offices; (e) measures to give the intelligence services access to parts of the data of the Schengen Information System, and simplification of procedures to improve use of the SIS in the fight against terrorism; (f) enhanced cooperation between member states on a common list of terrorist organizations (Article 4 of the Common Position on terrorists lists),<sup>21</sup> on strengthening external border checks, on exchange of information on visas and on strengthening internal security; and (g) closer cooperation with Canada and the United States, including the appointment of liaison officers to the EU from both countries and mutual visits between Eurojust and Canada and the USA. Europol signed a Strategic Cooperation Agreement with the United States on 4 December 2001 and negotiated a second agreement with the USA on 20 December 2002, allowing for the transfer of personal data.<sup>22</sup> The USA has pushed in general for a 'single-stop shop' where it can coordinate with the Brussels authorities on all these matters, and some progress has been made.

<sup>18</sup> The 1997 Treaty of Amsterdam Amending the Treaty on European Union entered into force on 1 May 1999. For the treaty see URL <<http://europa.eu.int/abc/obj/amst/en/>>.

<sup>19</sup> On the European Arrest Warrant see Laeken European Council, 'Extradition will no longer be necessary between EU member states', URL <[http://europa.eu.int/comm/justice\\_home/news/laecken\\_council/en/mandat\\_en.htm](http://europa.eu.int/comm/justice_home/news/laecken_council/en/mandat_en.htm)> and European Union Factsheet, 'The fight against terrorism', URL <[http://europa.eu.int/comm/external\\_relations/us/sum06\\_03/terror.pdf](http://europa.eu.int/comm/external_relations/us/sum06_03/terror.pdf)>.

<sup>20</sup> See the Europol Internet site at URL <<http://www.europol.net>>.

<sup>21</sup> Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism', *Official Journal of the European Communities*, L 344 (28 Dec. 2001), pp. 93–96, updated in Council Common Position 2003/402/CFSP, 5 June 2003, *Official Journal of the European Union*, L 139 (6 June 2003).

<sup>22</sup> See United States Mission to the European Union, 'US, Europol to sign cooperation agreement', 4 Dec. 2001, Brussels, URL <<http://www.useu.be/Terrorism/EURResponse/Dec0401Europol/Agreement.html>>.

In some cases, such as the European Arrest Warrant, preparatory work had been done prior to 11 September. In fact, this work was accelerated and repackaged in the weeks following the attacks and further work is under way. Work on the future requirements of SIS II (the next-generation system) includes a new, simpler consultation procedure, in the context of combating terrorism, for alerts issued pursuant to Article 99 of the 1990 Schengen Convention;<sup>23</sup> the possibility of running searches on the basis of incomplete data; access for public authorities responsible for vehicle registration; extended access for the authorities which issue residence permits; and access for Eurojust and for Europol and security services to the SIS.

Other measures related to blocking the international movement of guilty persons and protecting that of the innocent have proved more problematic. To take the case of aviation security, the EU had no trouble in backing the initial US pressure, for example, for better baggage security and passenger screening, which many people felt had already been raised to a higher level in Europe than on most US domestic flights.<sup>24</sup> However, when airlines were hit by rocketing insurance premiums and sought help effectively in the form of reinsurance from national governments, the European Commission was concerned to make sure that any such support measures were time-limited and kept to the minimum to avoid their taking on the character of hidden or competitive subsidies. The Commission also watched carefully to ensure that any European airlines driven to the point of closure by their losses were not bailed out improperly.

By late 2003 the US demands on countries enjoying visa-free access for their citizens to the USA to introduce machine-readable passports with bio-data were causing practical problems for many European governments.<sup>25</sup> US proposals to place armed ‘air marshals’ on flights and to transfer large quantities of personal data on passengers for US intelligence screening were seen by many as objectionable in principle as well. These issues remain sensitive, and European states have increasingly seen the sense of maintaining a common front through the EU to protect their interests when dealing with them. However, as concern grew within the US aviation sector that business was being adversely affected by tighter aviation restrictions, the US pressure on Europe was softened. Meanwhile, within the EU itself there are debates in progress on land border controls—prompted not just by concerns about terrorist infiltration, but also by illegal migration and the growing flow of asylum seekers—that continue to divide the European countries because of the values and principles involved as well as the practicalities.

<sup>23</sup> On the 1990 Schengen Convention, which entered into force in Mar. 1995, and for the signatories see URL <[http://europa.eu.int/comm/justice\\_home/fsj/freetravel/frontiers/wai/fsj\\_freetravel\\_schengen\\_en.htm](http://europa.eu.int/comm/justice_home/fsj/freetravel/frontiers/wai/fsj_freetravel_schengen_en.htm)>.

<sup>24</sup> European Commission, Directorate-General for Energy and Transport, ‘Air safety & air security’, URL <<http://europa.eu.int/comm/transport/air/safety/index.en.htm>>. See also the Introduction and chapter 19 in this volume.

<sup>25</sup> See the US-VISIT Program, URL <[http://www.dhs.gov/dhspublic/interapp/editorial/editorial\\_0333.xml](http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0333.xml)>. See also the Introduction and chapter 15 in this volume.

In the area of consequence management after terrorist actions, there are already a number of proposed or existing Community programmes which take into account the need to maintain and restore vital services in situations of crisis affecting the EU itself. Examples are in the sector of transport and energy, the general issue of security of supply and energy stock reserves,<sup>26</sup> the proposal to improve the use of civilian and military airspace in Europe under the concept of a Single European Sky, and the introduction of a European global positioning system (GPS) using the GALILEO satellite system.<sup>27</sup> In these sectors, and perhaps even more so in the information-technology (IT) sector, the issue of protection of critical infrastructure such as telecommunications and the Internet (cyber crime) has been the subject of increasing attention.<sup>28</sup>

### **Addressing the financial and material resources of terrorism**

The European Union accounts for 40 per cent of world gross domestic product and a high proportion of global financial transactions. Tighter controls on these transactions can make a significant contribution to cutting off the financial resources of terrorism. In this field, the EU largely supports the United Nations. In 2001 the Financial Action Task Force on Money Laundering (FATF) of the Organisation for Economic Co-operation and Development (OECD) extended its remit beyond money laundering to include measures against terrorist financing. The FATF Eight Special Recommendations required governments to ratify and implement UN instruments, criminalize the financing of terrorism and associated money laundering, freeze and confiscate terrorist assets, report suspicious transactions, assist third countries with implementation, and review and upgrade domestic legislation in certain areas.<sup>29</sup>

The most important contribution the EU can make is to ensure ratification and implementation of all relevant UN instruments and decisions by its own members and others, and to implement the FATF Recommendations. In this respect, its record is respectable but not exemplary. By mid-2003, only two of the EU's 15 current members were in full compliance with all the FATF Recommendations, a further 11 member states were in full compliance with six recommendations, one was in full compliance with four of the recommendations, and another was in compliance with only one recommendation.<sup>30</sup> Much of the non-compliance is related to a failure to implement UN instruments.

<sup>26</sup> See European Commission, *Green Paper: Towards a European Strategy for the Security of Energy Supply*, 9 Aug. 2002, available at URL <[http://europa.eu.int/comm/energy\\_transport/en/lpi\\_lv\\_en1.html](http://europa.eu.int/comm/energy_transport/en/lpi_lv_en1.html)>.

<sup>27</sup> On the Single European Sky see European Commission, URL <[http://europa.eu.int/comm/transport/air/single\\_sky/index\\_en.htm](http://europa.eu.int/comm/transport/air/single_sky/index_en.htm)>.

<sup>28</sup> European Commission, 'Activities of the European Union Information Society', URL <[http://europa.eu.int/pol/info/index\\_en.htm](http://europa.eu.int/pol/info/index_en.htm)>; and see chapters 16, 17 and 18 in this volume.

<sup>29</sup> See Financial Action Task Force on Money Laundering, 'Special Recommendations on terrorist financing', URL <[http://www1.oecd.org/fatf/SRrecsTF\\_en.htm](http://www1.oecd.org/fatf/SRrecsTF_en.htm)>; and chapters 4, 5 and 8 in this volume.

<sup>30</sup> Financial Action Task Force on Money Laundering (FATF), *Annual Report 2002–2003* (FATF: Paris, 20 June 2003), available at URL <[http://www.fatf-gafi.org/pdf/AR2003\\_en.pdf](http://www.fatf-gafi.org/pdf/AR2003_en.pdf)>.



That said, the EU rate of implementation compares well with that of other states, including the USA, itself not in full compliance with all the regulations. Of greater concern is the fact that several EU applicants assessed for the report showed slow progress towards implementation, and some had severe shortcomings with compliance.

Nonetheless, there has been significant progress, not only towards implementing decisions of the United Nations and the FATF, but also in corresponding measures at the EU level. The November 2001 EU Directive on Money Laundering was upgraded to include terrorist acts, and a regulation regarding the freezing of funds of terrorist organizations was adopted in December 2001.<sup>31</sup> It also made provision for an additional Protocol on mutual assistance in respect of money laundering and financial crime. On 28 February 2002 the Justice and Home Affairs Council reached a common understanding on the draft Framework Decision on the execution in the European Union of orders on the freezing of property or evidence. The purpose was to establish the rules under which a member state was to recognize and execute in its territory a freezing order issued by a judicial authority of another member state. A special committee was set up to review policy at frequent intervals.

### **Assistance and support to third countries in tackling terrorism**

As the world's largest trading partner and its largest provider of development assistance, the European Union is in a very good position to help other governments tackle organized crime and terrorism—and to withdraw assistance from governments which refuse to do so. The EU has taken steps to use its leverage in trade and cooperation with third countries by linking this to implementation of standards for cooperation on terrorism and non-proliferation.

Agreement was reached in 2002 at the Seville European Council on the inclusion of an 'anti-terrorism clause' in the Association and Co-operation Agreements between the EU and other parties, either directly in the agreement itself or in a separate declaration or exchange of letters.<sup>32</sup> This clause has been included in a small number of agreements concluded since then.<sup>33</sup> It provides for cooperation in 'preventing and repressing terrorist acts within the framework of [UN Security Council] resolution 1373' and on sharing information

<sup>31</sup> The scope of Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering was extended in Directive 2001/97/EC of the European Parliament and the Council, approved on 19 Nov. 2001 and issued on 4 Dec. 2001. For the new directive see *Official Journal of the European Communities*, L 344 (28 Dec. 2001), pp. 76–82.

<sup>32</sup> See Seville European Council, 21–22 June 2002, Presidency Conclusions, Annex V (note 17).

<sup>33</sup> See Perpiña-Robert, F., 'EU Presidency Statement on Counter-Terrorism: Resolution 1373: Summary: Speaking points for the presentation by the European Union in the meeting of the Counter-Terrorism Committee with the EU', New York, 23 Apr. 2002, URL <<http://europa.eu-un.org/article.asp?id=1323>>; and 'Report of the European Union to the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism', Enclosure, UN Security Council document S/2001/1297, 28 Dec. 2001, available at URL <[http://europa.eu.int/comm/external\\_relations/un/docs/eu1373.pdf](http://europa.eu.int/comm/external_relations/un/docs/eu1373.pdf)>.

and expertise. The anti-terrorism clause is technically regarded as non-essential, however, meaning that it could not lead to suspension of agreements. Its application is further limited ‘with respect to international conventions to which [the signatory states] are party, and to their legislation and to their respective regulations’.<sup>34</sup>

The ‘non-proliferation clause’, agreed at Brussels in December 2003, is potentially much more far-reaching in its effect, as it is an ‘essential clause’ which could lead to suspension of cooperation in the event of concerns arising which were not addressed through an established dispute procedure.<sup>35</sup> It applies to new agreements. One is currently under negotiation with Syria.

Work has also focused on technical assistance for states’ efforts to combat terrorism. Trial projects have been carried out in Indonesia, Pakistan and the Philippines, and more are planned.<sup>36</sup>

A common theme of European responses was the need to tackle the ‘sources of terrorism’ as well as terrorism itself. Terrorist networks can put down deep roots in weak states and can draw social and political capital from societies where there is unresolved conflict or social upheaval and economic stagnation.

A thread which is common to the analysis and prevention of all new threats is state weakness—or in some extreme cases the absence of any functioning state. Afghanistan’s link with both terrorist and crime networks has been well documented. Most of Europe’s heroin originates in Afghanistan and enters Europe along trafficking routes through Central Asia and the Western Balkans. Organized crime is a predatory problem that eats away at the fabric of societies, contributing to erosion and collapse from within. The Western Balkans offers a case where the perspective of EU membership has acted as a powerful driver for reform, but it also illustrates how much practical help is needed.<sup>37</sup> The problem does not lend itself to statistical precision. Nonetheless, Balkan criminal organizations are thought to control the distribution of around 70 per cent of the heroin entering Europe.<sup>38</sup> Up to 200 000 women are trafficked through the Balkans for the sex trade each year. According to the International Organization for Migration (IOM),<sup>39</sup> among the 700 000 women who are transported over international borders each year for the sex trade, as many 200 000 are taken to or through the Balkans.<sup>40</sup> In addition, every month 1000 tonnes of illegal cigarettes cross the Adriatic Sea to the European market.

<sup>34</sup> The standard text of this clause is an internal Council document which has not been published.

<sup>35</sup> See ‘“Non-proliferation clause” to be included in agreements with third countries’, URL <<http://ue.eu.int/pesc/Armes/Docs/st14997.en03.pdf>>.

<sup>36</sup> Commitments to cooperate closely in the fight against terrorism have been included in or agreed alongside new Association Agreements between the EU and Algeria, Chile and Lebanon.

<sup>37</sup> See Caparini, M., ‘Security sector reform in the Western Balkans’, *SIPRI Yearbook 2004* (note 7).

<sup>38</sup> Interpol statistics, quoted in ‘Intervention by Javier Solana at the London Conference on Organised Crime in South Eastern Europe’, London, 25 Nov. 2002, URL <<http://ue.eu.int/pressdata/ENdiscours/73343.pdf>>.

<sup>39</sup> See the IOM site at URL <<http://www.iom.int/>>.

<sup>40</sup> See Binder, D., ‘Bosnia shunning European drive to halt trafficking in women’, *International Herald Tribune* (Internet edn), 21 Oct. 2002, URL <<http://www.ihf.com/articles/74297.html>>, citing the IOM.

Clearly, there cannot be any lasting solution to these problems unless the environment is tackled which allows these networks to flourish. Much of the responsibility for this rests with the governments concerned—where there are functioning governments which can act—but the European Union can do much collectively to address this challenge.

At the collective European level, the range of instruments—at least on paper—is formidable. The EU is the world's largest trading partner and the world's largest provider of development assistance. It operates assistance programmes and has structured agreements with most countries. Even if these measures were not primarily designed for or billed as security-building programmes, their effects can militate against the conditions which breed and spread terrorism in a number of ways: by promoting social and economic development, by drawing states into profitable international economic cooperation, by improving education, cultural standards and transparency, and in general by fostering and consolidating democracy and good governance.

The strongest operation of this kind in which the EU has engaged in recent years has undoubtedly been the pre-accession process, which has so far brought 10 states, mostly post-Communist, to the point of qualifying for EU entry and has managed to eliminate interstate conflicts between them (and, at least, ameliorate most of their internal security problems) along the way.

The prospect of EU membership is acting as a powerful incentive for reform in the Western Balkans. The Stabilisation and Association Process (SAP), introduced by the EU for the Western Balkans in 1999,<sup>41</sup> was designed, more explicitly than any previous EU strategy, to bring security problems in the region under control and to pre-empt new conflict through a combination of material aid and political incentives—notably the prospect (albeit long-term) of eventual full EU membership. The prospect of EU membership is also giving new momentum to a settlement in Cyprus which would allow both communities on the island to accede to EU membership.

A strong security rationale can also be found in the EU's Barcelona Process, the latest embodiment of a long-standing Euro-Mediterranean dialogue with states in North Africa and the Middle East.<sup>42</sup>

<sup>41</sup> The SAP offers the possibility for the 5 countries of the region (Albania, Bosnia and Herzegovina, Croatia, FYROM, and Serbia and Montenegro) to sign a new kind of agreement, i.e., a Stabilisation and Association Agreement with the EU, opening up concrete EU accession perspectives for the first time, as the EU did for Central and East European countries in 1998 with the launch of the enlargement process and the opening of accession negotiations. See European Commission, 'EU in Southeast Europe: the Stabilisation and Association Process', URL <[http://www.eudelyug.org/en/eu\\_in\\_see/stabilisation.htm](http://www.eudelyug.org/en/eu_in_see/stabilisation.htm)>.

<sup>42</sup> On the Barcelona Process, or Euro-Mediterranean Partnership, see URL <[http://europa.eu.int/comm/external\\_relations/euromed/](http://europa.eu.int/comm/external_relations/euromed/)>. The Euro-Mediterranean Partnership has since 1995 built up a solid and substantial set of cooperation activities, ranging from political dialogue, through trade liberalization, economic reform and infrastructure networks to culture, education and the movement of people. It is based on a comprehensive approach to security and the principle that cooperation and co-ownership are the best way to promote reform and to deal with the root causes of the terrorist threat. It includes EU-financed activities to promote exchange of best practice and training to help the police and judicial authorities in the countries concerned in the fight against terrorism.

Certain capabilities developed in the framework of the ESDP since 1999—especially in the areas of policing<sup>43</sup>—can help to develop local capacities. The first-ever EU crisis-management operation, the EU Police Mission (EUPM), was launched in Bosnia and Herzegovina in January 2003 with a mandate for three years and with the goal of establishing local police enforcement capacities. The EU Police Mission Proxima in the Former Yugoslav Republic of Macedonia (FYROM), with similar aims as well as a focus on efficient border management, was launched in December 2003.<sup>44</sup>

### III. Remaining challenges for the EU

The examples above, which are far from exhaustive, show what has been achieved within the EU framework in the three years since the attacks of September 2001. New instruments have been developed—particularly in the area of internal security—and old instruments have been adapted and combined. The speed of the changes is especially noteworthy against a background where the EU, until recently, could not have been seen as a (conscious) security actor. The need to adapt has in itself been a driver of institutional change and development. Nonetheless, the response has been uneven: stronger in some areas than in others. As work is brought forward, a number of issues will have to be addressed.

One of these issues is the role which the ESDP might play in tackling terrorism more directly. A fundamental objective of the CFSP is ‘to strengthen the security of the Union in all ways’. For many years, however, there has been more ‘foreign’ than ‘security’ in CFSP. Engagement in crises was hampered by the absence of capabilities at the EU level, leaving Europe reliant on the United Nations, NATO or the USA for external security. Even in the foreign policy area, effectiveness was constrained by the shifting focus of rotating six-monthly presidencies, by an emphasis on declamation over action, and by the strong and often competing interests of member states. This has begun to change with the appointment of an EU High Representative for the CFSP and with the progressive development of joint military and police capabilities for crisis management.

The initial stimulus for this development was the 1999 crisis in Kosovo, which created a determination to take a more active role in the challenges of post-conflict reconstruction that Europe faced in the region. This was followed by two years of essentially institutional and doctrinal development before the EU declared itself operational.<sup>45</sup> In 2003, as noted above, the EU launched police operations in Bosnia and Herzegovina and in FYROM, and it has also

<sup>43</sup> See Dwan, R. and Lachowski, Z., ‘The military and security dimensions of the European Union’, *SIPRI Yearbook 2003* (note 12), pp. 213–36.

<sup>44</sup> The EUPOL Proxima mission was launched on 15 Dec. 2003, for an initial period of 12 months. See URL <<http://ue.eu.int/arym/pdf/concordia.pdf>>; and Dwan and Wiharta (note 7).

<sup>45</sup> ‘The Future of the European Union: Laeken Declaration’, 15 Dec. 2001, URL <[http://europa.eu.int/futurum/documents/offtext/doc151201\\_en.htm](http://europa.eu.int/futurum/documents/offtext/doc151201_en.htm)>.

undertaken military missions in FYROM (EUFOR Concordia, March–December 2003) and in the DRC (Operation Artemis, June–September 2003). However, operations have so far been limited to the Petersberg tasks, that is, humanitarian and rescue tasks; peacekeeping; and other tasks of combat forces in crisis management, including peace making. This mission definition is expressly included in Article 17 of the 1992 Treaty on European Union (Maastricht Treaty) and forms the limiting framework as well as the foundation of ESDP.<sup>46</sup> The range of tasks involved in counter-terrorism was not foreseen when it was formulated. Consequently, when the June 2002 Seville European Council meeting examined the issue of ESDP and terrorism, it foresaw two avenues of work.<sup>47</sup> First was the need to identify the military capabilities required to protect forces deployed in EU-led crisis-management operations against terrorist attacks. Second was the need to explore how military or civilian capabilities could be used to help protect civilian populations against the effects of terrorist action.

Even at the height of internal EU disagreement on Iraq, there was a growing convergence of views in the EU on the need for new thinking in the security and defence field on how best to tackle terrorism. At the Le Touquet Summit of February 2003, France and the UK agreed on the need for solidarity in the face of possible terrorist attacks.

Faced with the risks of all kinds, particularly from terrorism, France and the UK commit themselves as from today to mobilise all their available assets in order to provide help and assistance to the other country. We invite our Partners in the EU to join us in this commitment. We support the proposal to include in the Treaty a solidarity clause, in order to cope effectively with the threats we face together, making use of all the instruments and structures of the EU, both civilian and military.<sup>48</sup>

The draft Treaty on a Constitution for Europe currently under negotiation includes a ‘solidarity clause’,<sup>49</sup> engaging member states to help each other against the consequences of possible terrorist attacks, and a provision for structured cooperation on defence matters. The European Security Strategy that was approved in December 2003, however, foresees a wider spectrum of ESDP missions, including support for third countries in combating terrorism. It also emphasizes the need ‘to transform our militaries into more flexible, mobile forces and to enable them to address the new threats’.<sup>50</sup> The European Council has agreed to the establishment of a small military planning cell. While these decisions in themselves will not encroach on the role which NATO is assuming in counter-terrorist actions, they do ensure that ESDP will become a more serviceable instrument for addressing new security threats.

<sup>46</sup> For the Maastricht Treaty see URL <<http://europa.eu.int/en/record/mt/top.html>>.

<sup>47</sup> See Presidency Conclusions, Seville (note 17).

<sup>48</sup> See ‘Declaration on Strengthening European Cooperation in Security and Defence’, Le Touquet, 4 Feb. 2003, URL <[http://www.defense.gouv.fr/dga/fr/pdef/declaration\\_touquet.pdf](http://www.defense.gouv.fr/dga/fr/pdef/declaration_touquet.pdf)>.

<sup>49</sup> Article 42 of the Draft Constitutional Treaty for Europe (note 1).

<sup>50</sup> European Council (note 8).

A second issue that will need to be addressed is threat assessment and intelligence cooperation. Following the September 2001 attacks, assessments were drawn up by EU member states' embassies and Commission delegations in many capitals. These aimed at producing an assessment of the perceived terrorist threat to third countries and the ability and willingness of governments to enforce strict counter-terrorism measures. It remains the case, however, that most intelligence cooperation between EU member states and with third countries takes place outside the framework of the EU institutions.<sup>51</sup> Different perceptions of the threat from Iraq contributed to sharp differences of view among EU member states on military action. This has contributed to the realization that, in the future, common approaches to difficult security-related issues will have to be based on common threat assessments. A better flow of information from member states will be necessary to underpin strategic decisions at the EU level and to facilitate the targeting of EU instruments in accordance with real needs.

A third issue is coordination. The new threat of terrorism has clearly shown that the EU cannot pigeonhole the threats or categorize the challenges to its existence as a liberal democratic polity and a social market economy, according to its own decision-making structures. The terrorism threat cuts across internal and external security; across the competences of member states and the European Union; and across the spectrum of activities ranging from security to trade, development, transport and justice. It is the threat that synthesizes. Like organized crime, terrorism is an issue that pits networks against bureaucracies. As is the case with the USA, NATO and other actors in the fight against terrorism, the EU is being forced to adapt and better integrate itself in response.

As noted above, the EU deals with terrorism under all three of its institutional pillars. It has two working groups of national experts dealing with terrorism. The Terrorism Working Group (TWG) deals with internal security and the Counter-Terrorism Working Group (COTER) deals with external security. While they have developed the practice of periodic joint meetings, interaction is limited, reflecting the coordination problems in many member states. At the senior working level, the Political and Security Committee (known by its French acronym 'COPS') deals with CFSP and ESDP matters, while the Committee of Permanent Representatives (COREPER) has a broader remit and is the traditional filter and preparatory mechanism for decisions by foreign ministers and the European Council.

Like everything else in the European context, the challenge of integration is complex and operates at three different levels.

The first challenge is to pull together elements of policy, funding and action within what is recognized as the span of the EU's external security-related activity. The incompletely realized link between anti-terrorist strategy and the

<sup>51</sup> For a partial overview see Keohane, D. and Townsend, A., 'A joined up EU security policy', *CER Bulletin* (Centre for European Reform), no. 33 (Dec. 2003), URL <<http://www.cer.org.uk/articles/issue33.html>>.

'classic' instruments of ESDP is referred to above. Other developing elements of EU security policy offer similar overlaps and opportunities for synergy. A good example is the EU's policy against the proliferation of weapons of mass destruction (WMD), which developed rapidly in 2003 through the adoption first of a set of guiding principles and an Action Plan, and then the Strategy against Proliferation of Weapons of Mass Destruction, adopted at the Brussels European Council in December.<sup>52</sup> These documents include measures to combat proliferation not only between states but also involving terrorists and other sub-state actors. They require a laborious concertation of many different lines of action and sources of funding (the Commission, the Council, the member states, the European Atomic Energy Community, and so on) and the integration of the WMD theme into a range of different EU external relationships and dialogues.

EU members have already recognized that a step-change in efficiency across the whole field of external action will demand drastic institutional change. That may happen. There are proposals in the draft EU Constitution to create a more powerful EU 'Foreign Minister', double-hatted as Commissioner and supported by a single Foreign Ministry bringing together personnel and resources formerly split between the different EU organs. The appointment of a longer-term President of the European Council and changes in the system of EU collective representation abroad would also be important steps towards greater coherence. However, the Constitution will take time to adopt and ratify. For the moment—and probably for the next four years at least—better integration will have to be achieved by other means.

The second challenge is posed by the link between internal and external security. This is becoming increasingly obvious and is stressed repeatedly in the European Security Strategy. Viewed through the prism of enlargement, what was once external action to promote stability and security is now internal action. The candidate countries already participate extensively in stability building and other 'homeland security' programmes that are identical or similar to those in place for members of the EU. To a more limited but still significant extent, this is also true for cooperation with some other partners close to Europe which are preparing themselves for candidate country status. An example is the JHA programme, which forms part of the Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programme for the Balkans.<sup>53</sup> Conversely, some security-related Community programmes that were developed primarily for use within the Union are increasingly being applied outside the EU, a prime example being civil protection.

The challenge of achieving full coordination and synergy in this field is complicated both by the institutional barriers remaining between external and internal agencies and activities—at the national level and in the EU 'pillars'—

<sup>52</sup> EU Strategy Against Proliferation of Weapons of Mass Destruction, Brussels, 12–13 Dec. 2003, URL <[ue.eu.int/pressData/en/misc/78340.pdf](http://ue.eu.int/pressData/en/misc/78340.pdf)>.

<sup>53</sup> On the 2002–2006 CARDS programme see URL <[http://europa.eu.it/comm/external\\_relations/sec/docs/cards/sp\\_02\\_06.pdf](http://europa.eu.it/comm/external_relations/sec/docs/cards/sp_02_06.pdf)>.

and by the problems of attitude and bureaucratic culture. A further dimension is the proper concern of EU governments and citizens not to allow internal security measures, no matter how real the external threats that drive them, to encroach too far on individual liberties and civil rights or to create new suspicion and divisions in multi-ethnic societies.

The planned consolidation of the EU's 'pillar two' resources will not spread to the second pillar–third pillar relationship anytime soon, and for the foreseeable future improvements in this respect will depend critically on governments' internal coherence and on relationships between the EU's new 'foreign minister' and his Commission colleagues.

A third challenge is to achieve coherence between those EU activities related to external and internal security, and other activities carried out in the 'first pillar', generally under the Commission's authority. The Commission has a limited role in security matters (both CFSP and ESDP) and it certainly has no direct role in military affairs. However, its actions contribute to the emergence and strengthening of the EU security policy and have the potential to enhance the success of future operations. Examples are the efforts under way to improve and simplify the regulatory framework for the defence industry within the Union and its capability to compete on the world market, including through more standardization. Some of the more significant shortfalls related to the ESDP military headline goal are directly related to a number of industrial and technological sectors, including aerospace and information technology, where there is no strict demarcation between civilian and military industries. On the more defensive side, it is the Commission within the framework of the Common Commercial Policy that represents the EU in international discussion on the strategic export controls which are now generally recognized to need strengthening, against both 'rogue states' and terrorists. Other first-pillar matters of obvious relevance are energy, international finance and infrastructure protection.

One more general issue is the need for greater interaction between governmental and non-governmental actors, whether these are non-governmental organizations (NGOs) in the field or companies in the private sector with their own risks and their own methods of risk assessment and risk management. This, in turn, will imply the sharing of information with partners hitherto outside the formal security loop. It will also imply greater coordination and therefore greater costs in human and financial resources. It will imply increased state reliance on private security provision, increased training and considerably enhanced public diplomacy to match the required degree of greater government involvement in the private lives of citizens. These are relatively uncharted waters for the EU, but September 2001 boosted both the consciousness of urgency and the mechanisms of inter-sectoral cooperation and integration.



## IV. Conclusions

The evolution of the European Union into a new political form has been neither smooth nor steady. It has developed through a kind of ‘punctuated equilibrium’ with periods of virtual standstill or equilibrium, alternating with rapid development into new forms.<sup>54</sup> In the words of an initiated observer, Europe is a ‘permanent building site’.<sup>55</sup> The inherent political difficulty of, in particular, achieving new surrenders of competence to the centre and new harmonization of national practice means that moments of great crisis and popular emotion may offer the only chance to jump certain barriers to progress. History is likely to regard 11 September 2001 as such a case in point.

With the end of the cold war and the subsequent emergence of ‘rogue states’ and new and exacerbated forms of international terrorism, it is now widely recognized that security must be analysed and managed not only between states but also at the sub-national, regional and global levels. Similarly, the functional scope of what is included in ‘security’ has widened from the purely military to a broader political, economic, social and environmental coverage.<sup>56</sup> The EU had arguably been developing as a ‘post-modern’ security system for some time before the ‘post-modern’ security philosophy was voiced.<sup>57</sup> Some within the EU, including some within the European Commission, have followed these conceptual developments and have for some time recognized the EU’s consequent potential.<sup>58</sup> Since its inception, the EU has had a range of competence and applicable resources that are wider than those of almost any other organization, capable of covering all the currently recognized dimensions of security (other than, so far, collective military defence) and more. Its intrusive regulatory character gives it unique possibilities to address sub-state dimensions of threat and mobilize sub-state actors for positive ends. Its border-free internal market both allows and forces it to become adept in transnational remedies. Its tradition of common external negotiating positions allows it to make coherent, often influential collective inputs to global-level discussion of universal human challenges.

The September 2001 events brought home to the EU itself and to a range of external partners the need for cooperation in areas relating to the internal security of the Union. Some of these areas relate specifically to the security of citizens, while others relate to critical infrastructure protection (CIP) and the environment.<sup>59</sup> Still others are important for security in terms of their effects

<sup>54</sup> Gould, S. J., and Eldredge, N., ‘Punctuated equilibria: the tempo and mode of evolution reconsidered’, *Paleobiology*, vol. 3 (1977), pp. 115–51.

<sup>55</sup> Delors (note 4).

<sup>56</sup> See, e.g., Krahmann, E., *The Emergence of Security Governance in Post-Cold War Europe*, Economic and Social Research Council Working Paper 36/01 (University of Sussex, Sussex European Institute: Falmer, 2001), URL <<http://www.one-europe.ac.uk/pdf/w36krahmann.pdf>>, p. 13.

<sup>57</sup> See, e.g., Cooper, R., *The Breaking of Nations: Order and Chaos in the Twenty-First Century* (Atlantic Books: London, 2003).

<sup>58</sup> See Commission Report to the Ghent European Council, 19 Oct. 2001, URL <<http://europa.eu.int/news/110901/emu.htm>>.

<sup>59</sup> See also chapters 16 and 17 in this volume.

on economic life and prosperity: such widely diverse policy areas as development cooperation or the stabilizing effects of the Economic and Monetary Union (EMU) and the single European currency have far-reaching relevance for overall security. How far the European Union itself will succeed in mobilizing this dauntingly wide range of possibilities and resources—or even in keeping track and control of the narrower range of instruments directed against terrorism as such—remains an open question.

Overall, the EU response to international terrorism since 2001 has brought a new realism to EU foreign policy making. Under pressure from a very present threat and from the US responses to it, the EU has had to grapple with the profound link between domestic and international security and with the need to develop new capabilities and new modes of cooperation. The threat of international terrorism and ‘hyper-terrorism’<sup>60</sup> has underlined the impotence of the EU’s legalistic approach to policy making, with its undue concentration on separating the three pillars of policy making produced by the Maastricht Treaty. This is increasingly acknowledged—in the European Security Strategy, in the provisions of the draft Treaty establishing a Constitution for Europe and in the wide acceptance of the importance of solidarity as a guiding principle in security matters.

The EU remains hamstrung by its own internal procedures, based on the simple but deceptive premise that internal and external security are somehow separable. Some of its ‘limbs’, especially in the third pillar, have developed a new reach and flexion, although—as any organism experiencing a growth spurt—coordination between the limbs is not yet as good as it should be. The fairest interim verdict may be that the EU’s response to new threats—like the EU itself—is still a work in progress, but also that awareness of the threat, and of the EU’s potential for tackling it, is greater than ever before.

<sup>60</sup> Heisbourg, F., Fondation pour la Recherche Stratégique, *Hyperterrorisme: La Nouvelle Guerre* (Odile Jacob: Paris, 2003).