UNIVERSITY OF AMSTERDAM

UvA-DARE (Digital Academic Repository)

European security culture

Preemption and precaution in European security

de Goede, M.

Publication date
2011

Document Version
Final published version

Citation for published version (APA):
de Goede, M. (2011). *European security culture: Preemption and precaution in European security*. (Inaugural lecture; No. 411). Vossiuspers UvA.

European Security Culture

European Security Culture
Preemption and Precaution in European Security

Inaugural lecture

delivered upon accession to the office of
hoogleraar Politicologie
at the University of Amsterdam
on 27 May 2011

by

Prof. dr. M. de Goede

Vossiuspers UvA

Mevrouw de Rector Magnificus,
Meneer de Decaan,
Collega's van de Universiteit van Amsterdam,
Zeer gewaardeerde toehoorders,

What is the face of the European Union as a security actor today? Let's consider two very different examples, which, taken together, reveal what I take to be a central aspect of the emergent European security culture. In June 2010, the European Union and the United States concluded a new agreement on the exchange of financial data held by the Belgian-based wire transfer company SWIFT. Since October 2001, the CIA and US Treasury have accessed such wire transfer data in secret within the context of the fight against terrorism. A substantial transatlantic controversy erupted when the existence of this secret programme was revealed in 2006.[1] After four years of negotiation and political contestation, the new agreement of 2010 enables the American security authorities to have continued access to European data. In addition, and very importantly, the agreement announces the future design of a similar programme by the EU *itself*. The purpose of such a security programme is to produce "targeted information" through the analysis of financial transaction data.[2] Through sophisticated data-analysis and network visualisations, the objective is to identify and interrupt possible terrorist activity at an early stage. We know that over 1,500 investigative leads have been shared between the United States and Europe, leading to real security interventions in Spain and the Netherlands.[3]

The European Terrorism Financing Tracking Programme is currently being developed by the Commission. This is not just a measure imposed from the outside; it accords closely with long-standing ambitions of Commission and Council, and it intersects in important ways with existing EU policies and databases. Once in place, the new programme will significantly strengthen the scope and force of the EU as a security actor.

Consider next, the nature of the EU NAVFOR operation against piracy off the Somali coast, also known as Mission Atalanta. The core mandate of the mission is to protect ships of the UN world food programme, and other shipping in the service of humanitarian aid. However, the mission is also empowered to *deter* and *prevent* acts of piracy before they take place, and to apprehend

and disrupt suspected future pirates. In practice, the mission only occasionally catches pirates red-handed, and even less often have the mission's interventions led to prosecution.[4] More frequently, Atalanta intervenes at an earlier stage, when possible future pirates are targeted and disrupted on open waters, or, increasingly, close to home ports. Separating potential pirates from normal fishermen is one of the main challenges of the mission, and is quite often impossible. It is important to examine the novel logics of suspicion, intervention and prevention at work in the Atalanta mission. Neither a war effort nor a police mission, Atalanta contains crucial elements of the evolving EU security practice, especially in terms of its preventative objectives and close cooperation with commercial stakeholders.

These seemingly very different manifestations of contemporary EU security policy, then, share an important element which may be at the heart of what I call the emerging European security culture. That element is the European ambition of *prevention*, *anticipation* and *early intervention* in crisis and conflict. "We should be ready to act before a crisis occurs," the European Security Strategy writes, "conflict prevention and threat prevention cannot start too early".[5] For over a decade, a guiding principle of EU policy in fields as diverse as development, health and consumer protection, has been a precautionary one that aims to address threats before they fully emerge. According to the 2000 Commission Communication on the Precautionary Principle, policy makers are increasingly faced with situations where normal risk assessment is impossible due to a lack of scientific knowledge, but where potential dangers are considered to be very high.[6] In such situations, the precautionary principle is invoked, which enables policy action in the face of (scientific) uncertainty and a possibility of "serious and irreversible damage."[7] This precautionary logic is now increasingly being deployed in the face of so-called 'new security threats,' such as terrorism and piracy. We need to critically examine this redeployment of the logic and practice of precaution to the field of security.

European security culture

The remit of the chair which I am honoured to accept today includes understanding and analysing the scope and force of the European Union as a global and transformative power. This benefits from an interdisciplinary research agenda that takes seriously the historical and cultural processes by which contemporary threat and danger are constituted. But equally, such a research agenda needs to foster understanding of the real developments in technological, military and security practices that are now taking place in the name of a

precautionary security politics. European Security Culture is the term I use for this dual concern with threat imaginaries and security practice – my research project on this theme is funded by the Interdivisional Vidi scheme at NWO.

There are at least three reasons why I argue that we can see the emergence of a specific *European* culture of security, even if such culture remains uneven and incomplete – as cultures usually are.[8]

The first reason is the perceived nature of the threat that Western nations are faced with today. Despite important differences in national threat perceptions, there is a widely shared agreement that contemporary threats transcend national boundaries. Organised crime, terrorist networks, piracy operations, but also the threat of environmental and nuclear disaster, do *not* stop at national borders. The threat of terrorism, for example, is now hardly ever conceived of as being state-based, or even as emerging from a coherent organisation. Instead, states and experts perceive this threat in terms of dispersed networks and local franchises. This is part of a larger image of the post-Cold War order as being a particularly threatening and unpredictable environment.[9] This 'threat picture' entails a powerful logic for post-national security cooperation, and increasingly works to blur the dividing lines between war and police efforts.

In fact, we may argue that the identification of transnational threats facing the Union as a whole, which is now done in key EU documents including the external and internal security strategies, plays a key role in the constitution of a *European* security space. For example, Europol has produced annual Terrorism Trend and Situation Reports since 2007. These reports collect and compile sometimes patchy and arguably incomparable national data in order to produce a European-wide threat assessment. Statistical representations of the annual number of attacks, arrests and convictions gloss over substantial differences in national terrains in order to present a harmonised threat picture.[10] In these documents, the EU seems to accept the first lesson of identity theory – which is that in order to develop a common identity and a common space for action, one requires a common enemy, or at the very least, a shared threat perception.[11] Consequently, it can be argued that these reports and documents do important cultural work: they do not just propose policies or strategies, but they also work to harmonise threat perceptions and delineate political community.

Secondly, we can regard the transatlantic split over the Iraq war in 2003 as a formative moment for the emergent European security culture. The image of Europe as being a particular kind of security actor that is more inclined to multilateralism and a respect for human rights has become incredibly important in recent debates in International Relations, *even if* it remains disputed. In

the midst of the opposition to the US-led preemptive strike on Iraq, numerous observers, including many Americans, looked to Europe as a global political counterweight to US power. Leading public intellectuals of very diverse political colours, such as Timothy Garton Ash, Jürgen Habermas and Jacques Derrida, appealed to Europe as a source of alternative visions and values in a global order.[12] We may note that such images of Europe have a historical durability that has been explored by our colleague Michael Wintle.[13] These analyses have impacted the self-perception of European policy-makers and citizens alike. They work to carve out the political space for particular European security ambitions and policy decisions.

Thirdly – and *despite* the current turbulence in the integration process – we should not take lightly the real and important policy proposals, framework decisions and external actions that are produced by the EU in relation to security. While analysts and academics often focus on the lack of military capacity or coherent strategic culture within the EU, far-reaching programmes in the fields of internal security and counterterrorism receive relatively little attention. European counterterrorism far exceeds the focus on terrorism and fosters a set of wide-ranging security programmes that transcend the formal borders of the union.[14] For example, the EU wishes to monitor travel to and from the Afghanistan-Pakistan borderlands more closely, and is cooperating with authorities in so-called transit countries to disrupt 'suspect travel'.[15]

Another important example is the 2002 EU Framework Decision on Combating Terrorism that sets out a very broadly-framed shared European definition of what constitutes terrorism.[16] The Framework Decision obliges member states to implement far-reaching legal changes concerning the criminalisation of terrorism, its facilitation, financing and support into their national legislation. In this manner, the Framework Decision deploys a precautionary logic: it criminalises stages of facilitation increasingly further removed from the violent act.[17] I recall addressing a workshop with puzzled Finnish policy-makers a few years back. They struggled with the task of implementing this legislation, when there had *never been* a meaningful terrorist attack in Finland with the exception of the violent liberation of a mink farm. However, the Finnish policy-makers will still have to implement the framework decision and reform national law. European decisions and action plans adopted in the name of countering terrorism and other 'new threats' have substantial impact on national law and local policing. The fact that such national impacts and local effects remain differentiated and uneven should *not* be used to explain away the important role that Europe plays here.

The European Security Model and Banal Preemption

In this lecture, I would like to discuss what I take to be a central aspect of the emergent European security culture, and that is its ambition to target threats at the earliest possible stage. The recently released EU Internal Security Strategy envisions the development of a so-called 'European Security Model.' Prevention and threat anticipation are key aspects of this model, and the strategy document stipulates the need to "to stay ahead of the threat" with a "coherent European approach" in which "preventive action" is central.[18] Prevention is also a central aspect of the EU Action Plan on Combating Terrorism which ranges from initiatives to prevent radicalisation and recruitment to reducing the vulnerability of critical infrastructure and enabling Europe-wide data-sharing on passenger records and financial data in order to 'connect the dots' of future terrorist threats.[19]

Despite the language of prevention in these documents, it is more accurate to say that security measures such as targeting radicalisation and mining commercial data for suspect transactions are *anticipatory* and *precautionary*. Prevention addresses itself to risks that are, in principle, statistically knowable and calculable according to cycles of regularity. In this sense, traditional risk management strategies in the domains of health and crime are preventative.[20] Precaution, on the other hand, addresses threats and dangers that are irregular, incalculable, and, in important ways, unpredictable. It informs decision-making when there is, in the words of François Ewald, "*a risk beyond risk*."[21] This logic dictates that uncertainty and lack of knowledge can no longer be regarded as an excuse for inaction in the face of a potentially catastrophic threat.[22]

Terrorism and piracy exceed rational calculation and statistical risk assessment. This is not just because a certain measure of irrationality may be ascribed to the perpetrators; but more so because these threats are by their nature dispersed, infrequent, and insufficiently historically documented to enable meaningful predictions. In the words of the EU Counterterrorism Coordinator, "the threat from terrorism remains real, and…like a virus, it is constantly evolving in response to our efforts to control it."[23] In the face of the unknown threat of 'self-burners' and local franchises then, the precautionary principle becomes invoked within security practice. Precautionary counterterrorism seeks to target and interrupt the phases prior to attack, and even prior to the concrete planning and plotting of attacks. Its ambition is to identify and address potential future terrorists; those who are in the process of radicalising; the breeding grounds of extremism; and the processes of financing and facilitation. The security interventions nurtured through this logic are *pre-crime*: as

criminologist Lucia Zedner has put it, they shift "the temporal perspective to anticipate and forestall that which has not yet occurred and may never do so."[24] As in the film *Minority Report*, the objective is to anticipate and target crime before it is committed, and, increasingly, before it is planned, hatched or conceived.[25]

With its sheer ambition to address root causes, stay ahead of the threat, and intervene in the lifeworlds of potential future terrorists, then, we have to take seriously the EU's adaption of the rationale and practice of what Louise Amoore and I have called 'banal preemption.'[26] This is despite the fact that it was the Bush administration that made preemption a household word when Bush argued, on the eve of the preemptive invasion of Iraq in 2003, that "if we wait for threats to fully materialize, we will have waited too long."[27] But if we understand preemption as encompassing not just overt military acts, but also more mundane modes of proactive security intervention, including the freezing of assets, preemptive arrest, and detainment at the border, we will find it to be a key aspect of the European security model. Preemption exceeds the logic of (statistical) calculability, and involves, instead, imaginative or 'visionary' techniques such as stress-testing, scenario planning and disaster rehearsal.[28] Consequently, the work of preemption is decidedly cultural. It deploys imaginative visions of catastrophic futures in order to foster policy action and precautionary intervention in the present.[29]

EU funding often prioritises this kind of precautionary and technologically advanced security research. The European Security Model is fostered through research funding and market integration. A flavour of such cultural invocation of disaster scenarios, coupled with the promise of a technological security fix is given in the FP7 brochure on current EU security research:

> Rather than respond to a bomb attack, wouldn't it be better to find out and close down the clandestine factory where the bombs are being made? Sensitive devices that analyse the air for substances used in bomb making are being developed to be placed in various locations…[or]…By automatically analysing the movements and noises produced by a gathering of people, it is now possible to detect a riot at its outbreak. Wouldn't this be better than waiting for someone to call the police?[30]

The technological security promise in these research programmes is considerable and attractive. However, applying preventative technological devices throughout urban areas in the service of crowd control and substance detection may have considerable implications for privacy, civil liberties and the ac-

PROF. DR. M. DE GOEDE

countability of security decisions. Understanding these implications receives far less attention – *and* funding! – in security research.[31]

A number of questions are raised by the emphasis on threat prevention and early intervention in European policy documents. To what extent, and in what ways, do these precautionary rationales structure European internal and external security programmes? What kind of *power* is enabled in the name of the prevention of threats at the earliest possible stage, or the preemption of public 'bads'? What are the implications for the EU's own normative ambitions to spread and support freedom and the rule of international law?

In relation to these questions, I will develop three arguments. First, we need to understand that these developments mean that the dividing line between *war* and *police*, and *internal* and *external* relations, becomes increasingly difficult to draw. This has repercussions for the way in which we theorise the European Union in a global order. Secondly, ten years after 9/11, we see that the EU plays an important role in normalising controversial security initiatives taken in the name of the war on terror. Thirdly, this produces a sharp tension with what is often seen as the EU's normative role on the global stage. Let's pursue these arguments in turn.

External-Internal, War-Police

First, then, it is important to recognise that in the contemporary security environment, internal and external European Union relations are becoming increasingly difficult to distinguish.[32] Much of the literature on the EU in a global order remains wedded to a state-centric concept of the European Union. This literature presupposes a clear distinction between a domain *inside* the union – where actor preferences are established and harmonised – and a domain *outside* the union, where policy preferences are coherently pursued in the international arena. Consequently, this literature seeks to determine the degrees of authority, cohesion and autonomy that the EU enjoys in particular policy fields.[33] According to these studies, the force and impact of the EU are mostly disappointing: by the traditional measure of political actorness – which is implicitly the model of the national state – the EU will almost always fall short.[34]

However, in relation to security policy, a strict distinction between the internal and external arenas is now impossible to maintain. In the fight against terrorism, internal agendas are shaped in negotiation with external powers, and external interventions can be accompanied by continuing internal contradictions.[35] Our colleague Christopher Bickerton has pointed out that the EU's Common Foreign and Security policy has important internal *functionalities*.

These include both the fact that security has become the main domain on which integration now plays out, *and* the fact that it is a key field through which the EU articulates its public legitimacy and contemporary identity.[36]

It is my sense then, that the literature measuring supranational coherence misses important parts of the story of EU security practice. This is partly because in the face of new threats, the dividing line between war and police efforts becomes blurred, as it is in the Atlanta mission.[37] We should recognise that it is not always supranational coherence, but that it can sometimes be internal struggle and open political contestation that produce powerful European security outcomes. Similarly, it is not always autonomy, but sometimes close assemblage with international partners and private companies that underpin the EU's force in the domain of security.[38]

These points may seem a little counterintuitive, but they can be clearly illustrated by exploring in more detail the case of the European Terrorism Financing Tracking Programme, with which I started this talk. As I mentioned, the European Commission is currently working on a proposal to develop a programme for tracking and analysing wire transfer data in the name of fighting terrorism and, probably, transnational crime. This would be a significant and powerful advance of EU security capabilities. This powerful outcome, however, is the result of a 4-year transatlantic controversy and various stages of negotiation between the EU and the US over the accessibility of the SWIFT data. In this messy and protracted process, *internal* EU disagreements and struggles over competence have fostered this powerful outcome. The EU Commission and Council have been strongly supportive of the deployment of financial data for security purposes. Indeed, the programme accords closely with some of the EU's own policy initiatives. So keen were Commission and Council to support the programme, that they moved quickly to conclude an agreement with the US in order to allow the American data analysis in 2007. However, critical Euro-parliamentarians and concerned data protection supervisors continued to raise questions about the privacy implications of the programme and fought hard to claim institutional competence to co-decide on the issue. It was due to the efforts of these critical voices that representatives were sent back to the negotiating table to discuss and design the new agreement, which stipulates the intention for an own European programme and a closer involvement of Europol. For, it was these critical voices that stressed the importance of European control over the programme and the undesirability of 'outsourcing' security decisions.

Moreover, the private company SWIFT itself played a crucial role in the affair. In the process of its cooperation with the CIA, SWIFT designed its own guarantees and procedures to delimit the amount of data that the US Treasury

would have access to. Two SWIFT employees are charged with checking the searches and are entrusted with the power to interrupt them if necessary. What we have subsequently seen in the transatlantic negotiations is that these initially ad-hoc and privately designed procedures have become incorporated into the agreements as part of the mechanisms of legal protection. To this day, SWIFT employees continue to play an important role within the process whereby wire transfer data are selected and analysed.[39]

So, the SWIFT case serves to illustrate how strength in security governing does not necessarily depend on autonomy and cohesion, but can at times be fostered through internal struggle and cooperation with commercial counterparts. Furthermore, the case shows the complex links between competing internal authorities on the one hand, and external and private partners on the other. This has repercussions for how we theorise the European Union in a global order. Rather than searching for coherent actorness, we may understand the European Union as an assemblage, that has a powerful 'reach' in security matters.[40] Our research team is working on developing this conceptual notion, and on teasing out the European assemblage in particular cases pertaining to precautionary counterterrorism.

Normative or Normalising Power?

The increasingly influential paradigm of 'normative power Europe' seeks to go beyond state-centric conceptual frameworks. This paradigm, developed most famously by Danish political scientist Ian Manners, considers the EU to be a unique global power for its ability to *shape conceptions of the normal* in the international environment.[41] This happens partly because the EU is, by its very nature, a "new and different political form" on the international stage, based on hybridity and open political contestation.[42] But Manners also argues that the EU is a normative power because it is committed to a set of core norms and values, including democracy, the rule of law, freedom and respect for human rights, that it seeks to actively promote and install through its external relations.

Normative power is an appealing concept because it allows us to investigate the operation of power in the name of globalising conceptions of "the normal". But it is a problematic concept because it conflates the descriptive and the normative in ways that may underpin a lack of European self-critique. Not surprisingly, the concept has great appeal for the EU itself.[43] Consequently, it is imperative that we step back from normative power as a descriptive concept

in order to ask, as our colleague James Sidaway has done, what the *political effects* are of understanding Europe's global positioning in normative terms.[44]

I think we can introduce such critical purchase by understanding normalising power not in the benign way that Manners does, but instead through a Foucauldian framework. Foucault draws out the dual meaning of the normal: it is both a statistical measurement and a prescriptive principle.[45] As such, "it is an element on the basis of which a certain exercise of power is founded and legitimized."[46] This is a disciplinary power, which operates through techniques of surveillance, measurement and knowledge production. In the case of the EU, this power is mounted not on a coherent actorness, but on the assemblage of diverse elements, including technological and political ones; supranational and local ones; and public and private ones. Taken together, these diverse elements produce particular governing effects.[47]

My research shows that the EU plays a vital role in contesting, but also in normalising controversial security initiatives that are taken in the name of the global war on terror. A crucial example here is the use of targeted sanctions, which has grown significantly since 2001. Targeted sanctions and the use of blacklists freeze the assets and disable societal participation of suspect individuals who cannot be brought to trial. Blacklisting is a precautionary measure *par excellence*, because persons are listed in advance of and often instead of a criminal trial. As one policy-maker recounts the adaption of targeted sanctions in the context of fighting terrorism, "[We] moved on…setting up a new legal structure to freeze assets on the basis of evidence that might not stand up in court…Because the funds would be frozen, not seized, the threshold of evidence could be lower and the net wider."[48] The logic of these measures is to target the daily expenses and travel of potential future terrorists. It challenges existing logics of evidence, criminal culpability and proportionality.[49]

The political developments concerning targeted sanctions have been particularly interesting in Europe. As in the SWIFT case, we can say that here, internal European struggle has produced an outcome that in the long run will substantially strengthen the EU as a security actor. Initially, the Council and Commission welcomed global blacklisting measures. In the aftermath of 9/11, European legislation was designed that transposed UN lists automatically into European law, and that, in addition, enabled the EU to designate its *own* lists. However, in the years that followed, important cases came before the European Court of Justice to contest the legality of blacklisting measures and their accordance with established principles of human rights. One of these cases was brought by three Swedish Somali citizens who ran the Swedish branch of the al Barakat money transfer network. In the aftermath of 9/11, al Barakat was accused of financing bin Laden and al Qaeda, but a detailed investigation by the

9/11 Committee did *not* find any evidence for these accusations.[50] Before the European Court of Justice, the Swedes argued that blacklisting on the basis of secret evidence breaches the founding principles of the European Union, including the right to a fair trial, the respect for property and the principle of proportionality.[51]

I don't have time to offer a full political analysis of these cases, which involved defeat at the Court of First Instance, victory upon appeal, and important implications for the relationship between the United Nations and the European Union.[52] But it is important to note for the sake of my argument that the famous 2008 Court ruling in the Kadi and al Barakat case entails two elements that strengthen the EU as a security actor, *even if* it challenges parts of the legality of the blacklisting measure itself. First, the Court held that the EU has the right and the obligation to evaluate listing measures according to its principles of human rights. And when subjected to a proper human rights review, the court concluded that in Kadi's case the rights of defence "were patently not respected."[53] According to our colleague Christina Eckes, "The European Court of Justice stood up to the Security Council…to protect the autonomy of the European legal order."[54] Simultaneously, I would add, the court enhanced the power of the EU as a security actor that will freeze and blacklist according to *its own* rules.

For, and this brings me to my second point, despite the important conclusion that the rights of suspects were not respected in these specific cases, the Court does regard blacklisting in principle as an appropriate precautionary security instrument. In its wording, the court upholds the appeal to radical uncertainty that underpins the blacklisting regime and that, as our colleagues from Groningen and the VU, Oliver Kessler and Wouter Werner have explained, legitimates security action *without* establishing criminal responsibility.[55] The European Court has contested important aspects of the listing regime as it has been developed by the UN, but simultaneously it affirms the basic legitimacy of blacklisting as a proper precautionary measure in the fight against terrorism. This measure, for the court, does *not* require the prior notification of suspects, nor, as yet, a full examination of evidence in a court of law. More research needs to be done on the political implications of the regime of blacklisting as it is taking shape in Europe, how it broadens the scope for European security action, and how it is integrated with other European financial surveillance measures, for example those of the Third Money Laundering Directive.

The way in which blacklisting has been embraced, contested and appropriated by the EU, then, may have the long-term effect of strengthening the legitimacy of this contested security measure. Here, the EU can be regarded as a 'normalising power' in a Foucauldian sense: a power that shapes conceptions

of what is normal and legitimate in the international order. If the Terrorism Financing Tracking Programme as it was conducted by the CIA was controversial and secret, the new EU-US agreement legitimises it and sets out the rules under which it shall take place. If blacklisting remains contested by international human rights lawyers and the Council of Europe, the interventions by the European Court of Justice work to produce a frame in which this exceptional security practice becomes normalised.

Let's recap the arguments that I have made about the emergent European security culture. I have argued that a key element of this culture is that it is preemptive and anticipatory in its ambitions and interventions. It desires to target threats and conflict at the earliest possible stage. It is dedicated to producing threat analyses based on future scenarios and anticipation. This is decisively *cultural* work; it requires cultural processes of disaster imagination and scenario planning. This leads to three further lines of enquiry. First, it has become more difficult to distinguish internal from external governing, and war from police operations. Indeed, a European security culture is not coherent and homogenised, but may be uneven, disjointed or even internally contradictory. I have suggested that internal contradictions and contestations are not necessarily a sign of weakness, but may on the contrary produce vital and forceful security outcomes. Of particular importance in this respect is the role that private participants play in the development of a European security sphere. Rather than compromising authority, such assembly with private spaces and technologies strengthens actual security practices, while rendering them less accountable. Secondly, I have suggested that one of the most important ways in which the EU shows its face as a security actor today is through its ability to legitimise controversial and contested secret security programmes by embedding them within limited political and juridical safeguards. In this sense, the EU acts as a normalising rather than a normative power. Thirdly – and this brings us to our final line of enquiry – there is a fundamental tension at the heart of normative power Europe.

Normative contradictions

In Dutch, we have a saying, 'Voorkomen is beter dan genezen': it translates as 'prevention is better than cure.' It could be the slogan of the European security culture that is currently emerging. Pre-crime and pre-conflict security practice has become the face of normative power Europe, offering an appealing security identity to the Union. But it is insufficiently recognised that precautionary security programmes raise very significant questions regarding human rights,

civil liberties and democratic accountability.[56] They can entail a broad securitisation of societal spaces and mundane transactions. They target people who have not yet engaged in violence, and indeed may never do so. The precautionary logic prioritises disruption over prosecution, but often lacks accountability. In closing this lecture, I will analyse these challenges briefly and explain why, at least in this context, the slogan 'voorkomen is beter dan genezen' is misleading at best.

The Commission Communication on the Precautionary Principle emphasises that precautionary measures should be proportional, non-discriminatory and subject to a cost/benefit analysis. But when deployed within security practice, it is nearly impossible to assess precautionary measures in these terms. This is not simply because it is difficult to measure the number of persons who were not radicalised; the number of attacks that did not take place; or the number of plots that were not hatched. It is more so the case because in a preemptive logic, the potentiality of *one* serious attack having been prevented justifies a near-limitless amount of security investment. As our VU colleagues Mathias Borgers and Elies van Sliedregt show, in the face of the unknowable but potentially catastrophic threat, the precautionary principle prioritises action over inaction. "there is room for inaction only if it has been irrefutably established that no harm will occur."[57] This means that precautionary security and proportionality are *always* in tension with each other.

Largely devoid of the possibility to evaluate effectiveness, then, and largely immune to measures of proportionality, what we see in relation to the assessment of precautionary security measures is the emergence of a different logic. In this logic, *action itself* is understood as a measure of success. In relation to the pursuit of terrorist financing, for example, what Mara Wesseling and I have found is that the measure that counts in policy evaluation is whether banks are compliant: whether they have invested sufficient resources; hired enough money-laundering officers and submitted regular suspicious transactions reports. The question of whether terrorist monies were identified and intercepted becomes almost irrelevant.[58]

What is perhaps most problematic about this shifting logic is that it tends to understand security action as largely benign or at least neutral. This accords with the logic 'prevention is better than cure'. But this logic precludes a full and careful analysis of the effects of precautionary investments and interventions *themselves*. In the cases of SWIFT and blacklisting, the improvements won by the European Parliament and the European Court of Justice are important but as yet insufficient to contain these effects.

In the SWIFT affair, for example, it is European political accountability that is now at stake. The improvements in the new transatlantic agreement pertain

mostly to the *procedure* of the data transfer. But what is not subject to review is the question of how data are selected, analysed and made actionable. It is precisely in relation to the analysis and actionability of financial data, however, that substantial questions can be raised. We now know that the data searches are considered legitimate if there is a "nexus" between the transaction and terrorism.[59] But what does such a nexus involve? On what is it based, how broadly is it defined, and how can it be demonstrated and assessed? How can we be sure that this programme does not lead to assumptions of guilt by association?

In fact, our cases under examination have led to a profound discussion concerning the *meaning* of established principles of evidence, proportionality and accountability. For example, as I have noted, the Kadi case ruled that the subject of asset freezing has a right to hear the incriminating evidence against him. After this ruling, a summary of evidence was communicated to Mr. Kadi. However, that summary was judged to be so superficial that a subsequent court ruling found that the suspect's rights had not been meaningfully respected.[60] So now, an important aspect of the court battle revolves around the meaning of evidence in freezing cases, and the minimal scope of what has to be communicated to the banned subject. In the SWIFT case, in the meantime, what we see now is a fundamental discussion concerning the scope and meaning of proportionality as it applies to data analysis for security purposes. Europol, which has overseen the programme since the 2010 agreement, has been reproached by its supervisor for allowing data requests that are still very broadly framed. Europol and its supervisor are now engaged in a series of workshops in which "conceptual issues" concerning "the application of proportionality principles" to the data transfers will be discussed and revised.[61]

The outcomes of the debates on the meaning and scope of evidence and proportionality in these cases shall be closely watched by our research team. Much more needs to be known about the relationship between precautionary security logics, measures of political accountability and the EU's role on the global stage. If the EU wants to live up to its normative image, it will have to do much more to support evaluations of precautionary security measures. Continuing shortcomings will undermine European ambitions and credibility in the global order.

Dames en Heren,

Het is een mooie gewoonte om een oratie af te sluiten met een woord van dank en ook ik wil graag van deze gelegenheid gebruik maken. Eerst wil ik het college van bestuur danken voor het in mij gestelde vertrouwen, en hartelijk danken wil ik ook de decaan van de Faculteit der Maatschappij- en Gedragswetenschappen, Edward de Haan, de voorzitter van de Afdeling Politicologie, Wouter van der Brug, en de voorzitter van mijn onderzoeksgroep, John Grin.

Het is een grote eer om na bijna vijftien jaar internationale en interdisciplinaire omzwervingen deze leerstoel te mogen bezetten bij de afdeling waar ik zelf nog heb gestudeerd. Er werken en werkten bij die afdeling en deze universiteit dan ook een paar mensen die mij in een heel vroeg stadium hebben aangemoedigd het academische pad te kiezen – in het bijzonder wil ik bedanken Gerd Junne, Marianne Marchand, Kees van der Pijl en Teun van Dijk. In dat vroege stadium hebben ook een aantal fondsen mij hun vertrouwen en steun geschonken, en ik bedank in het bijzonder de Netherland-America Foundation, de British Council Chevening scholarship programme, en het Catharina van Tussenbroek Fonds. Van het laatste – Fonds 'Catrien' – ben ik inmiddels zelf trots bestuurslid, omdat ook vandaag extra steun voor vrouwelijke wetenschappers nog nodig is.

Maar deze prachtige stap heb ik niet lichtzinnig gezet – met veel plezier werkte ik voorheen bij de capaciteitsgroep Europese Studies, waar ik mij, net als in de hele Faculteit der Geesteswetenschappen, prima thuis voelde. Veel dank aan André Gerrits, Jaap Kooijman, Casper de Groot, Jenifer Chao, Sophie Berrebi, natuurlijk Joyce Goggin; en vele andere collega's die ik niet allen bij naam kan noemen, maar met wie ik hoop te kunnen blijven samenwerken. In het bijzonder wil ik bedanken de voormalig voorzitter van Europese Studies, Michael Wintle, voor zijn steun.

David Campbell, my promoter, was a great supervisor and remains an inspirational academic, and I thank him for that. Many thanks to Randall Germain, Eli Zaretsky and Timothy Sinclair for their roles in making my PhD possible. Many thanks to my academic friends and network – this includes too many names to mention but let me thank at least Bastiaan van Apeldoorn and Erna Rijsdijk in person.

I have found my natural home in the Transnational Configurations research group of the AISSR. Politics is, after all, complex, contradictory and configurative. Our discussions and research agendas on these themes, which combine conceptual curiosity with rigorous empirical agendas, are exciting and inspiring. Of the many great new colleagues in this group, let me mention by name at least Marlies Glasius, Otto Holman, Rob Hagendijk, Chris Bickerton, David

Laws and Nel Vandekerckhove. I especially look forward to long-term future cooperation with Otto in the context of our excellent Master's programme The European Union in a Global Order.

I am privileged to have on my research team Stephanie Simon, who is taking our project in new and exciting directions. I have learned much from cooperations with Alexandra Hall and Mara Wesseling, whose research on financial surveillance will offer an important contribution to our knowledge and understanding. I am excited at the prospect of working together with Gavin Sullivan and Marijn Hoijtink.

Many of the ideas presented in this lecture have taken shape through dialogue and research cooperation with my best colleague and friend Louise Amoore. I would not be standing here today without the sage advice and strong support of her and her husband Paul Langley.

Als hoogleraar en moeder van twee jonge kinderen heb ik officieel geen tijd meer voor een sociaal leven. Mijn dank is groot aan mijn vriendinnen, Elke Veldkamp, Danielle Freriks en Liedwien Wit.

Veel dank aan mijn familie, Sjo-sjo, mijn broer Jeroen, en vooral mijn ouders. Zij vonden mijn plannen en omzwervingen nooit vreemd, en hebben mij enorm gesteund in mijn ambities. Van mijn moeder heb ik geleerd dat je soms tegen de stroom in moet gaan. Vielen dank auch meine Deutsche familie.

Mijn grootste dank gaat uit naar mijn gezin. Lieve Caspar, lieve Anna, ik hoop dat jullie je Europees zullen voelen, maar haar politiek ook kritisch zullen volgen. Het is moeilijk in woorden uit te drukken de dank die ik verschuldigd ben aan mijn man Gunther Irmer. Laat het voor allen duidelijk zijn dat ik hier vandaag niet zou staan zonder zijn steun, enthousiasme en moed.

Ik heb gezegd.

PROF. DR. M. DE GOEDE

Notes

1. Eric Lichtblau and James Risen, 'Bank Data is Sifted by US in Secret to Block Terror,' *New York Times*, online edition, June 23 2006.
2. *Roadmap, European Terrorist Financing Tracking Programme*, European Commission, DG Home, October 2010, http://ec.europa.eu/governance/impact/planned_ia/docs/2011_home_003_terrorist_financing_tracking_en.pdf.
3. David S. Cohen, David S., *Remarks to the Washington Institute for Near East Policy*, Washington, April 7 2010, http://useu.usmission.gov/tftp_040710.html.
4. Bibi van Ginkel and Frans-Paul van der Putten (eds) *The International Response to Somali Piracy: Challenges and Opportunities*. Leiden, Martinus Nijhoff, 2010.
5. European Security Strategy, *A Secure Europe in a Better World*, Brussels, December 12 2003, p. 7.
6. European Commission, *Communication from the Commission on the Precautionary Principle*, Brussels, February 2 2000.
7. François Ewald, 'The Return of Descartes' Malicious Demon: An Outline of a Philosophy of Precaution', in Tom Baker and Jonathan Simon (eds) *Embracing Risk: The Changing Culture of Insurance and Responsibility*. Chicago: University of Chicago Press, 2002, pp. 283-284.
8. See for example Christoph O. Meyer, 'Convergence Towards a European Strategic Culture? A Constructivist Framework for Explaining Changing Norms,' *European Journal of International Relations* 11 (4): 523-549, 2005; Sten Rynning, 'The European Union: Towards a Strategic Culture?,' *Security Dialogue* 34 (4): 479-496, 2003; Wyn Rees and Richard J. Aldrich, 'Contending Cultures of Counterterrorism: Transatlantic Divergence or Convergence?,' *International Affairs* 81 (5): 905-923, 2005. For a broader perspective on European (security) culture see for example Étienne Balibar, *We the People of Europe?* Princeton: Princeton University Press, 2004; Joep Leerssen, *Spiegelpaleis Europa: Europese Cultuur als Myhte en Beeldvorming*. Nijmegen: Vantilt, 2011.
9. For example, Ulrich Beck, 'The Terrorist Threat: World Risk Society revisited,' Theory, Culture & Society 19 (4): 39-55, 2002.
10. William Walters and Jens-Henrik Haahr, *Governing Europe: Discourse, Governmentality and European Integration*. London: Routledge, 2005.
11. David Campbell, *Writing Security: United States Foreign Policy and the Politics of Identity*. Minneapolis: University of Minnesota Press, 1992; Lene Hansen, *Security as Practice: Discourse Analysis and the Bosnian War*, London: Routledge, 2006; Thomas Diez, 'Europe's Others and the Return of Geopolitics,' *Cambridge Review of International Affairs* 17 (2): 319-335, 2004.
12. Timothy Garton Ash, 'The Peril of Too Much Power,' *New York Times*, April 9 2002; Jürgen Habermas and Jacques Derrida, 'February 15, or What Binds Europeans Together: A Plea for a Common Foreign Policy,' *Constellations* 10 (3): 291-297, 2003.

13. Michael Wintle, *The Image of Europe*. Cambridge: Cambridge University Press, 2009.

14. Monica den Boer and Jörg Monar, ''11 September and the Challenge of Global Terrorism to the EU as a Security Actor,' *Journal of Common Market Studies* 40: 11-28, 2002; Geoffrey Edwards and Christoph O. Meyer (2008) 'Introduction: Charting a Contested Transformation,' special issue Journal of Common Market Studies 46 (1): 1-25, 2008; Valsamis Mitsilegas, *EU Criminal Law*. Oxford: Hart, 2008.

15. Council of the European Union, EU Counter-Terrorism Strategy – Discussion paper, Brussels, 29 November 2010, http://www.consilium.europa.eu/uedocs/cmsUpload/st15894-re01%20en10.pdf.

16. Council of the European Union, *Council Framework Decision of 13 June 2002 on Combating Terrorism*, 2002/475/JHA, 2002.

17. Marieke de Goede, 'The Politics of Preemption and the War on Terror in Europe,' *European Journal of International Relations* 14 (1): 161-185, 2008.

18. European Commission, *The EU Internal Security Strategy in Action: Five steps towards a more secure Europe*, November 22 2010, p. 7; see also counterterrorism main achievements and future challenges, COM(2010)386.

19. Council of the European Union, *The European Counter-Terrorism Strategy*, Brussels, 30 November 2005, http://register.consilium.eu.int/pdf/en/05/st14/st14469-re04.en05.pdf.

20. Tom Baker and Jonathan Simon (eds) *Embracing Risk: The Changing Culture of Insurance and Responsibility*. Chicago: University of Chicago Press, 2002.

21. Ewald (note 7), 2002, p. 294, emphasis added.

22. Jessica Stern and Jonathan B. Wiener, 'Precaution against Terrorism,' *Journal of Risk Research* 9 (4): 393-447, 2006; See also Claudia Aradau and Rens van Munster, 'Governing Terrorism through Risk: Taking Precautions, (Un)knowing the Future,' *European Journal of International Relations* 13 (1): 89-115, 2007; Marieke de Goede and Samuel Randalls, 'Preemption, Precaution: Arts and Technologies of the Governable Future,' *Environment and Planning D: Society and Space* 27 (5): 859-878, 2009; Ben Anderson, 'Preemption, Precaution, Preparedness: Anticipatory Action and Future Geographies,' *Progress in Human Geography* 34 (6): 777-798, 2010.

23. Council of the European Union (note 13), 2010, p. 1.

24. Lucia Zedner 'Pre-Crime and Post-Criminology?,' *Theoretical Criminology* 11 (2): 261-281, 2007, p. 262.

25. Susan Bibler Coutin, 'Subverting Discourses of Risk in the War on Terror', in Louise Amoore and Marieke de Goede (eds) *Risk and the War on Terror*. London: Routledge, 2008; see also Michael J. Shapiro, 'Every Move You Make: Bodies, Surveillance and Media,' *Social Text* 23 (2): 21-34, 2005.

26. Louise Amoore and Marieke de Goede, 'Transactions After 9/11: the Banal Face of the Preemptive Strike,' *Transactions of the Institute of British Geographers* 33 (2): 173-185, 2008.

27. George W. Bush, *Speech at West Point*, June 1 2002, http://www.nytimes.com/2002/06/01/international/02PTEX-WEB.html.

28. Pat O'Malley, *Risk, Uncertainty and Govern*ment. London: The GlassHouse Press, 2004, p. 5.

29. Richard Grusin, 'Premediation,' *Criticism* 46 (1): 17-39, 2004; see also Louise Amoore, 'Vigilant Visualities: the Watchful Politics of the War on Terror,' *Security Dialogue* 38 (2): 215-232, 2007; Marieke de Goede, 'Premediation and the Post-9/11 Security Imagination,' *Security Dialogue* 39 (2/3): 155-176, 2008; Mark B. Salter, 'Conclusion: Risk and Imagination in the War on Terror,' in Louise Amoore and Marieke de Goede (eds) *Risk and the War on Terror*. London: Routledge, 2008; Claurdia Aradau and Rens van Munster, *Politics of Catastrophe: Genealogies of the Unknown*. London, Routledge, 2011.

30. European Commission, DG Enterprise and Industry, *Securing the Future*, Publications Office, p. 3, http://ec.europa.eu/enterprise/policies/security/files/securing_-the_future_brochure_dg_entr_web_en.pdf.

31. Julien Jeandesboz and Francesco Ragazzi, *Review of Security Measures in the Research Framework Programme*, Directorate General for Internal Policies, Study, Brussels, October 2010.

32. J. Peter Burgess, 'There is No European Security, Only European Securities,' *Cooperation and Conflict* 44 (3): 309-328, 2009; Didier Bigo, 'Security and Immigration: Toward a Critique of the Governmentality of Unease,' *Alternatives* 27 (1, supplement): 63-92, 2002.

33. For example Charlotte Bretherton and John Vogler, *The European Union as a Global Actor*. London: Routledge, 2006.

34. For example Robert Kagan, 'Power and Weakness,' *Policy Review*, No. 113, June and July 2002.

35. Sandra Lavenex and Nicole Wichmann (2009) 'The External Governance of EU Internal Security,' *Journal of European Integration* 31 (1): 83-102, 2009; William Walters, 'Border/Control,' *European Journal of Social Theory*, 9(2): 187-204, 2006.

36. Christopher Bickerton, *European Union Foreign Policy: From Effectiveness to Functionality*. London: Palgrave, 2011.

37. Didier Bigo, 'Security and Immigration: Toward a Critique of the Governmentality of Unease,' *Alternatives* 27 (1, supplement): 63-92, 2002.

38. For example Otto Holman, 'The Primacy of Domestic Politics: Neo-liberal Restructuring, the EU's Crisis of Governability and Social Imperialism,' in Andrew Gamble and David Lane (eds) The European Union and World Politics: Consensus and Division. Basingstoke: Palgrave, 2009; Bastiaan van Apeldoorn, *Transnational Capitalism and the Struggle over European Integration.* London and New York: Routledge, 2002.

39. For more on this point, see Marieke de Goede, 'The SWIFT Affair and the Global Politics of European Security,' *Journal of Common Market Studies*, forthcoming March 2012.

40. John Allen and Alan Cochrane, 'Assemblages of State Power: Topological Shifts in the Organization of Government and Politics,' *Antipode* 42 (5): 1071-1089, 2010; Jane Bennett, 'The Agency of Assemblages and the North American Blackout,' *Public Culture* 17 (3): 445-465, 2005.

41. Ian Manners, 'Normative Power Europe: A Contradiction in Terms,' *Journal of Common Market Studies* 40 (2): 235-258, 2002; Ian Manners, 'The Normative Ethics of the European Union,' *International Affairs* 84 (1): 45-60, 2008; for a criti-

cal perspective see, Michael Merlingen, 'Everything is Dangerous: A Critique of Normative Power Europe,' *Security Dialogue* 38 (4): 435-453, 2007.

42. Manners (note 37), 2002, p. 240.

43. See for example *Commission Communication on a European agenda for culture in a globalizing world*, 10 May 2007, p. 3, where the EU is described as being "founded on norms and values such as human dignity, tolerance, freedom of expression [and] respect for diversity." In recent work, Manners has written about normative power Europe as one of the mythologies of Global Europa that both make sense of the EU's global role and that "acts as a lore" of how Europeans would like to imagine themselves; see Ian Manners, 'Global Europa: Mythology of the European Union in World Politics,' *Journal of Common Market Studies* 48 (1): 67-87, 2010, p. 79.

44. Veit Bachmann, Veit and James D. Sidaway, '*Zivilmacht Europa*: A Critical Geopolitics of the European Union as a Global Power,' *Transactions of the Institute of British Geographers* 34 (1): 94-109, 2009; also Thomas Diez, 'Constructing Self and Changing Others: Reconsidering 'Normative Power Europe,'' *Millennium: Journal of International Studies* 33 (3): 613-636, 2005.

45. Michel Foucault, *Abnormal*, transl. Graham Burchell. New York: Picador, 2003; Michel Foucault, *Discipline and Punish*. New York: Vintage, 1979; see also Ian Hacking, *The Taming of Chance*. Cambridge: Cambridge University Press, 1990.

46. Foucault (note 41), 2003, p. 50.

47. Rita Abrahamsen and Michael C. Williams, 'Security beyond the State: Global Security Assemblages in International Politics,' *International Political Sociology* 3 (1): 1-17, 2009.

48. John O'Neill, quoted in Ron Suskind, *The Price of Loyalty*. New York: Simon & Schuster, 2004, p. 192.

49. Elspeth Guild, 'The Uses and Abuses of Counter-Terrorism Policies in Europe: The Case of the 'Terrorist Lists'', *Journal of Common Market Studies* 46 (1): 173-193, 2008; Iain Cameron, 'European Union Anti-Terrorist Blacklisting,' *Human Rights Law Review* 3: 225-256, 2003; Dick Marty, 'United Nations Security Council and European Union Blacklists,' Committee on Legal Affairs and Human Rights, Parliamentary Assembly, Council of Europe, November 16 2007; Gavin Sullivan and Ben Hayes, *Blacklisted: Targeted Sanctions, Preemptive Security and Human Rights*. Berlin: European Center for Constitutional and Human Rights, 2010.

50. John Roth, Douglas Greenburg and Serena Wille, *Monograph on Terrorist Financing*, National Commission on Terrorist Attacks upon the United States, Washington, August 21 2004, p. 139.

51. Court of First Instance, *Judgement of the Court of First Instance in Case T-315/01*, Yassin Abdullah Kadi versus Council of the European Union and Commission of European Communities, September 21 2005, §59.

52. See for example Christina Eckes, 'Juridical Review of European Anti-Terrorism Measures – The Yusuf and Kadi Judgements of the Court of First Instance,' *European Law Journal* 14 (1): 74-92, 2008; Jan Klabbers, 'Kadi Justice at the Security Council?,' *International Organizations Law Review* 4 (1): 1-12, 2007; Jorge Godinho, 'When Worlds Collide: Enforcing United Nations Security Council Asset Freezes in the EU Legal Order,' *European Law Journal* 16 (1): 67-93, 2010.

PROF. DR. M. DE GOEDE

53. European Court of Justice, *Judgement of the Court In Joined Cases C-402/05 P and C-415/05 P*, Yassin Abdullah Kadi and Al Barakaat International Foundation versus Council of the European Union and Commission of European Communities, September 3 2008, § 334, emphasis added.
54. Christina Eckes, 'The Case for the Resilience of the EU's Constitutional Foundations,' *European Public Law* 15 (3): 351-378, 2009, p. 378.
55. Oliver Kessler and Wouter Werner, 'Extrajudicial Killing as Risk Management,' *Security Dialogue* 39 (2/3): 289-308, 2008.
56. Mark Bovens, Mark, Deidre Curtin and Paul 't Hart, *The Real World of EU Accountability. What Deficit?* Oxford : Oxford University Press, 2010.
57. Matthias Borgers and Elies van Sliedregt, 'The Meaning of the Precautionary Principle for the Assessment of Criminal Measures in the Fight Against Terrorism,' *Erasmus Law Review*, 2 (2), 171-195, 2009, p. 183.
58. See Mara Wesseling, *Data Wars: New Spaces of Governing in the European Fight Against Terrorism Finance*, PhD manuscript, University of Amsterdam, forthcoming, chapter 5.
59. *Second Report on the Processing of EU-Originating Personal Data by the United States Treasury Department for Counter-Terrorism Purposes*, Terrorist Financing Tracking Programme, Judge Jean-Louise Bruguières, January 2010, EU Classified.
60. General Court, *Kadi versus Commission*, Case T-85/09, September 30 2010.
61. Europol, *Europol Activities in Relation of the TFTP Agreement: Information Note to the European Parliament*, Den Haag, 8 April 2011, p. 11; also Joint Supervisory Body (JSB), *Report on the Inspection of Europol's Implementation of the TFTP Agreement*, Report No. JBS/Ins. 11-07, Brussels, March 1 2011.