INTERNATIONAL COOPERATION AGAINST TRANSNATIONAL ORGANIZED CRIME: THE PRACTICAL EXPERIENCE OF THE EUROPEAN UNION

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I. DEVELOPING COUNTERMEASURES AGAINST TRANSNATIONAL ORGANIZED CRIME: HOW FAR CAN WE GO?

As long as crime and organized crime remained domestic issues, the history of international law enforcement and judicial cooperation proceeded at a leisurely pace. Many years passed from when private policemen and private security companies were first used to collect evidence and apprehend offenders abroad, to when the first formal arrangements were made for law enforcement cooperation. Initiatives for formal judicial co-operation arrangements emerged even more slowly. The first modern multilateral treaties on cooperation in criminal matters did not appear until less than fifty years ago.

It is thus all the more remarkable how much progress has been made world-wide during the last few years.

It is true that we had a right to expect a qualitative change in our response to crime and international crime. After all, we are facing considerable increases in crime as a result of many factors. These factors include developments in technology, transportation and telecommunications, the social changes related to massive impoverishment, natural disasters and internal conflict, the establishment of regional trade groupings removing barriers to the movement of people, goods, services and capital, and fundamental political changes in many parts of the world.

Nonetheless, it would have required a visionary to have said, only five years ago, that in the year 2001:

- over 120 countries would have signed a wide-ranging global convention against transnational organized crime;
- work is underway on a global convention against corruption;
- a controversial campaign against off-shore and on-shore financial centres engaged in money laundering is leading to significant results; and
- regional cooperation is evolving rapidly in places as diverse as Southern Africa, the Andes countries, the countries around the Baltic Sea, and Southeast Asia.

How far and how fast can this intensification of global cooperation go? One way to try to answer this question would be to look at existing cooperation on a smaller scale, and see if it could be expanded world-wide. The European Union countries provide one useful point of reference. If cooperation can be developed among these fifteen countries, with their quite different legal systems and different criminal justice structures, it can be at least visualised elsewhere.

This paper looks at police cooperation, prosecutorial cooperation, judicial

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cooperation, and cooperation in the formulation of domestic law and policy. In each case, the present status quo in most parts of the world will be set out, and then the practical reality in the European Union will be described.

A few words about the European Union. It consists of fifteen Member States, comprising almost all of Western Europe. (In addition, ten Central and Eastern European countries, and Malta and Cyprus are negotiating on membership.) One important area of cooperation is known as "justice and home affairs", which to a large extent deals with the control of organized crime. Decisions in this sector are made by the European Union Council, which consists of the respective Ministers from each Member State.[1] The Council can adopt so-called framework decisions (formerly known as "joint actions"), common positions, resolutions, recommendations and conventions. "Framework decisions" are binding in respect of their goal, although each Member State has some flexibility on how to amend its legislation in order to ensure that this goal is met. "Joint positions" are used, for example, in negotiations with third States and inter-governmental organizations; Member States are required to adhere to any joint position agreed to. Resolutions and recommendations are non-binding, although they do express a political goal. Conventions are binding on the signatories, and there is political pressure on all Member States to sign them.

A second major decision-making body in the European Union is the Commission, which has responsibilities in particular for deciding on the economic integration of the European Union. It does not have any powers to decide on "justice and home affairs", although it does have the right of initiative. A third power is the directly elected European Parliament, which has a right to be consulted, also on justice and home affairs.

II. POLICE COOPERATION

The global status quo:

The general rule around the world is that law enforcement personnel do not have powers outside of their jurisdiction. Notices are communicated through Interpol. A few countries have posted liaison officers abroad, and informal contacts are used on an ad hoc basis. Otherwise, officially, information may not and is not exchanged except through formal bilateral channels, and even then only in a few cases. Coordination of cross-border investigations is rare, and requires considerable preparation through formal channels.

The European Union reality:

- an international organization, Europol, co-ordinates cross-border investigations, and seeks to provide support to domestic law enforcement services in specialist fields.
- a network of liaison officers has been developed.
- Europol produces annual situation reports on organized crime, bringing together data from all Member States.

[1] To avoid some confusion: the European Union and the Council of Europe are different organizations. The former consists of fifteen Member States, and as noted covers most of Western Europe. Its top decision-making body is called the European Council of Ministers, or the European Council for short. The Council of Europe, in turn, today has 43 Member States, and covers almost all of Europe, East and West, North and South.

Within the framework of the Schengen conventions, which apply to almost all EU Member States,

- the Schengen information system allows national law enforcement agencies to share data on many key issues almost instantaneously with their colleagues in other countries. The system extends to some 50,000 terminals in the member states.
- law enforcement authorities are allowed hot pursuit across borders.
- law enforcement authorities are allowed to engage in surveillance in the territory of other countries.
- law enforcement authorities are allowed to engage in controlled delivery.

A. Europol

Europol was established in October 1998, when the Europol Convention entered into force among the fifteen European Union countries. It is an international organization that has its headquarters in the Hague, in the Netherlands. It is not at present an operational entity. It is not, for example, a "European Bureau of Investigations", with agents mandated to carry out investigations or to arrest suspects in the different European Union countries.

The objective of Europol is essentially "to improve ... the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications than an organized criminal structure is involved and two or more Member States are affected by the forms of crime in question in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned."

Europol is charged, more specifically, with acting to prevent and combat unlawful drug trafficking, trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings and motor vehicle crime. After Europol's establishment, its mandate has been successively expanded, to include for example crimes committed or likely to be committed in the course of terrorist activities, and money laundering. Proposals are now being considered to extend the mandate even further, for example to the forgery of money and means of payment.

The principal tasks of Europol consist of:

1. facilitating the exchange of information between the Member States,
2. obtaining, collating and analysing information and intelligence (including the preparation of annual reports on organized crime),
3. notifying the competent authorities of the Member States of information concerning them and of any connections identified between criminal offences,
4. aiding investigations in the Member States by forwarding all relevant information to the national units, and
5. obtaining a computerized system of collected information.

Europol is also charged with developing specialist knowledge of the investigative procedures of the competent authorities in the Member States and providing advice on investigations, and with providing strategic intelligence to assist with and promote the efficient and effective use of the resources available at the national level for operational activities. For this purpose, Europol can assist Member States through advice and research in training, the organization and

equipment of the authorities, crime prevention methods, and technical and forensic police methods and police procedures.

Work in progress. What about the future of Europol? In October 1999, soon after the Europol Convention entered into force, a special European Union Summit was held in Tampere, Finland, to discuss, among other issues, further improvement of cooperation in responding to transnational organized crime. In respect of Europol, the Tampere meeting concluded, *inter alia*, that:

- joint investigative teams should be set up, as a first step, to combat trafficking in drugs and human beings as well as terrorism. Representatives of Europol should be allowed to participate, as appropriate, in such teams in a support capacity.
- Europol's role should be strengthened by allowing it to receive operational data from Member States and authorising it to ask Member States to initiate, conduct or coordinate investigations or to create joint investigative teams in certain areas of crime, while respecting systems of judicial control in Member States.

In March 2000, a new action plan against organized crime was adopted.[2] It contains a number of points regarding Europol:

- Europol could carry out studies of practice at national and Union level and of their effectiveness, develop common strategies, policies and tactics, organize meetings, develop and implement common action plans, carry out strategic analyses, facilitate the exchange of information and intelligence, provide analytical support for multilateral national investigations, provide technical, tactical and legal support, offer technical facilities, develop common manuals, facilitate training, evaluate results, and advise the competent authorities of the Member States.
- consideration should be given to the feasibility of setting up a database of pending investigations, making it possible to avoid any overlap between investigations and to involve several European competent authorities in the same investigation.
- Europol should help in establishing a research and documentation network on cross-border crime, and in organizing the collection, storage, processing, analysis and exchange of relevant information, including information held by law enforcement services on reports on suspicious financial transactions. The establishment of compatible criminal intelligence systems among Member States should be a long-term goal.

Europol is now up and running. There is a clear need for it in Europe. Its potential for developing strong cooperation between the law enforcement agencies of the fifteen different Member States of the European Union is immense, and the pressures on it to succeed are great. The experience of the European Union shows that practical law enforcement cooperation is possible also within a formal structure.

B. Schengen

Due in part to the slowness with which police cooperation was being developed and to political differences of opinions over the extent of this cooperation, some European Union countries (originally,

[2] The Prevention and Control of Organized Crime: A European Union Strategy for the beginning of the new Millennium. See section V.C., below.

Belgium, France, Germany, Luxembourg and the Netherlands) decided on a "fast-track" alternative. The result was the Schengen Agreement of 1985 and the Schengen Convention of 1990, which has sought to eliminate internal frontier controls, provide for more intensive police cooperation, and establish a shared data system.

The "Schengen group" currently consists of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden, as well as, from outside the EU, Iceland and Norway.[3] The United Kingdom and Ireland have not joined, since they wish to retain separate passport controls.

Police cooperation within the framework of Schengen includes cross-border supervision, "hot pursuit" across borders into the territory of another Member State; and controlled delivery (i.e. allowing a consignment of illegal drugs to continue its journey in order to discover the *modus operandi* of the offenders, or to identify the ultimate recipients and their agents, in particular the main offenders). These forms of cooperation have been hard-won: they did not see the light of day until after protracted negotiations between the Governments concerned, and even then they have been hedged by a number of restrictions.

The need for Schengen arose with one of the primary goals of economic integration, the elimination of border controls on the transit of persons, goods, capital and services. Although this elimination of border control undoubtedly promotes trade and commerce, at the same time it makes more difficult the task of controlling the entry and exit by offenders. In return for ending checks on internal borders, the Schengen countries agreed on the establishment of the Schengen Information System (SIS). This consists of a central computer (in Strasbourg, France) linked to a national computer in each country, and to a total of some 50,000 terminals. When fully operational, data entered into any one computer (for example data on wanted persons, undesirable aliens, persons to be expelled or extradited, persons under surveillance, and some stolen goods) would immediately be copied to the other national information systems. An electronic mail system (SIRENE; Supplementary Information Request at the National Entry) allows for the transfer of additional information, such as extradition requests and fingerprints. Yet another data-connected acronym is VISION, which refers to the "Visa Inquiry System in an Open-border Network".

The strength of the Schengen arrangements lies in the fact that they allow for highly practical law enforcement cooperation, at a level that is unique in the world. At the same time, the arrangements have been subjected to criticism. Although the arrangements have been made specifically to respond to the opening of the borders between the countries in question, the question remains whether these arrangements are still insufficient to respond to the increased mobility of offenders. Secondly, the arrangements do not include all European Union countries, while on the other hand they do include two non-EU countries. This inevitably leads to some

[3] The principal reason for the inclusion of Norway and Iceland is that these two countries are part of the passport-free zone formed among the Nordic countries. The other three Nordic countries, Denmark, Finland and Sweden, are members of the Schengen group.

practical difficulties. Third, since there is no supervisory court structure or any effective parliamentary review of Schengen decisions, it has been suggested that human rights concerns will receive less attention that the law enforcement priorities. (On the other hand, any actions taken would necessarily fall under the jurisdiction of at least one of the Schengen countries, and so the legality of the action could then be scrutinized under the appropriate national law.)

C. Information Gathering and Analysis

Law enforcement authorities worldwide would be among the first to agree that a more proactive, intelligence-led approach is needed to detect and interrupt organized criminal activities, apprehend the offenders, demolish the criminal networks, and seize and confiscate the proceeds of crime. Information is needed on the profile, motives and *modus operandi* of the offenders, the scope of and trends in organized crime, the impact of organized crime on society, and the effectiveness of the response to organized crime. This information includes operational data (data related to individual suspected and detected cases) and empirical data (qualitative and quantitative criminological data).

Regrettably, on the global level the arrangements for the exchange of operational and empirical data continue to be *ad hoc*, between individual law enforcement agencies or even individuals. Such *ad hoc* arrangements also raise concerns over whether or not domestic legislation on data protection is being followed. Implementation of the United Nations Convention against Transnational Organized Crime (in particular articles 27 and 28) should provide a firmer foundation for this exchange of data, but the Convention has not yet entered into force.

Within the European Union framework, on the other hand, several arrangements are already in place for gathering and analysing data:

- a joint action adopted in 1996 deals with the role of liaison officers. Their function is specifically to focus on information gathering. They are to "facilitate and expedite the collection and exchange of information though direct contacts with law enforcement agencies and other competent authorities in the host State", and "contribute to the collection and exchange of information, particularly of a strategic nature, which may be used for the improved adjustment of measures" to combat international crime, including organized crime. So far, over 300 liaison officers have been posted by EU countries, and they work in close cooperation with one another.
- Europol already produces annual reports on organized crime based on data provided by Member States. These annual reports are being used in an attempt to define strategies. Over the years, the quality and utility of these annual reports have improved, even though continued work is needed to improve the validity, reliability and international comparability of the data.[4] One particular feature of the annual reports is that they contain

[4] The work on the annual situation reports is primarily done by a "Contact and Support Network" consisting of representatives of the law enforcement authorities of the different Member States.

recommendations based on an analysis of the data.
- various decisions have been taken on the exchange of information on specific subjects. For example, a Joint Action adopted on 20 May 1997 requires the exchange of information between law enforcement agencies when potentially dangerous groups are travelling from one Member State to another in order to participate in events.
- the European Union has created a number of financial programmes to encourage the closer involvement of the academic and scientific world in the analysis of organized crime.
- a European police research network is being established to act as an information source on research results, other documented experiences and good practice in crime control.

III. PROSECUTORIAL COOPERATION

The global status quo:

International contacts between prosecutorial authorities are based on bilateral and the few multilateral treaties on mutual legal assistance. Informal contacts are facilitated by the International Association of Prosecutors and other, similar non-governmental organizations.

The European Union reality:
- a special structure, the European Judicial Network, has been set up to promote direct contacts between prosecutors. The system involves computerized links between the Member States, and in time will probably even allow automatic translation and transmission of requests.
- several European Union Member States have posted liaison magistrates abroad, with a specific mandate to facilitate responses to requests for extradition and mutual legal assistance, and a more general mandate to promote international cooperation.
- prosecutorial and judicial co-operation is promoted also by direct contacts through the Schengen structures.
- an international organization, Eurojust, is being set up to assist in the coordination of the prosecution of cross-border cases.

A. The European Judicial Network and the Strengthening of Informal Contacts

Among the greatest difficulties in extradition and mutual legal assistance are the lack of information on how a request should be formulated so that it can readily be dealt with in another country, and the lack of information on what progress is being made in the requested State in responding to the request.

In those (rare) cases where the practitioner personally knows his or her counterpart in the other country, informal channels can be used. The European Union has decided to create a more solid base for these informal contacts by establishing a "European Judicial Network" (EJN).[5] This network consists primarily of the central authorities responsible for international judicial cooperation in criminal matters, and of the judicial or other competent authorities with specific responsibilities within the context of international cooperation. The EJN focuses on

[5] Joint Action of 29 June 1998. A similar structure has been set up for cooperation in civil matters.

promoting cooperation in respect of serious crime such as organized crime, corruption, drug trafficking and terrorism.

The EJN is promoting cooperation in a number of different ways. First of all, it organizes regular meetings (at least three times a year) of representatives of the contact points. These meetings have dealt, for example, with case studies, general policy issues, and practical problems. Organizing the meetings in the different EU Member States provides an additional benefit: the host country can present its system for international cooperation, and the participants can get to know one another. Both factors are important in instilling confidence in one another's criminal justice system.

Second, the EJN is preparing various tools for practitioners. One very useful tool is a CD-rom that provides practitioners with information on what types of assistance can be requested in the different Member States (sequestration of assets, electronic surveillance and so on) for what types of offences, how to request it, and whom to contact. The CD-rom also contains the texts of relative international instruments and national legislation. A second tool is a computerized "atlas" of the authorities in the different Member States, which shows who is competent to do what in the different Member States in relation to international cooperation. Soon, the contact points in all fifteen Member States will be connected with one another by a secure computer link that can be used not only to follow up on requests, but even to send the requests themselves.

A third tool is a uniform model for requests for mutual legal assistance. Consideration is currently being given to developing a system for automatic translation of these requests, at first at least into the major European languages.

B. Liaison Magistrates

The concept of the liaison magistrate is based on the positive experiences with the growing network of liaison officers used to promote cooperation between law enforcement agencies. In law enforcement, the liaison officer uses direct contacts to facilitate and expedite the international collection and exchange of information, in particular information of a strategic nature.[6]

The liaison magistrate is

- an official with special expertise in judicial cooperation,
- who has been posted in another State,
- on the basis of bilateral or multilateral arrangements,
- in order to increase the speed and effectiveness of judicial cooperation and facilitate better mutual understanding between the legal and judicial systems of the States in question.[7]

The liaison magistrate does not have any extraterritorial powers, and also otherwise must fully respect the sovereignty and territorial integrity of the host State.[8]

[6] The recent Treaty of Amsterdam of the European Union (article 30(2)(d)) called on the European Council to "promote liaison arrangements between prosecuting/investigating officials specialising in the fight against organized crime in close cooperation with Europol". In order to create a basis for the development of this work, on 22 April 1996, the European Council adopted a Joint Action on a framework for the exchange of liaison magistrates to improve judicial cooperation.

Liaison magistrates are—so far—used almost solely by the European Union countries. In general, liaison magistrates are sent to countries with which there is a "high traffic" in requests for mutual assistance, and where differences in legal systems have caused delays. France has been the most active in sending out liaison magistrates, and has sent them not only to Germany, Italy, the Netherlands, Spain and the United Kingdom, but also outside the European Union, to the Czech Republic and the United States. France is also considering sending a joint liaison magistrate to the Baltic countries (Estonia, Latvia and Lithuania).

Several other European Union countries have sent one or two liaison magistrates: the United Kingdom to France and Italy; Italy to France (and is considering sending one to Spain and the United Kingdom); the Netherlands also to France (and is considering sending one to the United States); Finland to Estonia (and is considering sending one to the Russian Federation); Germany to France; and Spain to Portugal.[9]

Liaison magistrates work on the general level (by promoting the exchange of information and statistics and seeking to identify problems and possible solutions) and on the individual level (by giving legal and practical advice to authorities of their own State and of the host State on how requests for mutual assistance should best be formulated in order to ensure a timely and proper response, and by trying to identify contact persons who might help in expediting matters). The exact profile of the work of the liaison magistrate varies, depending on such factors as the types of cases, and the extent to which there are direct contacts between the judicial authorities of the two States.

The advantages, from the point of view of the sending State and the host State, are numerous. Language problems are reduced, requests for judicial co-operation can be discussed already before they are sent in order to identify possible problems, and there is a basis for promoting trust and confidence in one another's legal system.

C. Eurojust: A Formal Structure for Prosecutorial Coordination

Even the direct contacts and expertise provided by the EJN and the liaison magistrates cannot always provide the type of coordination needed in investigating transnational organized crime. Over recent years, the idea gradually evolved of setting up a separate entity, somewhat comparable to Europol in the law enforcement field, to

[7] A related concept is that of the legal attache, who is posted in the mission of the sending State to look after legal issues in general that concern the host State and the sending State. Reference can also be made to temporary exchanges of personnel, which are designed to increase familiarity with one another's legal system and foster direct, informal contacts. Neither legal attaches or personnel on temporary exchange, however, have the same expertise and job profile as the liaison magistrate.

[8] See, for example, P.B. Heymann, Two Models of National Attitudes Towards International Co-operation in Law Enforcement, Harvard International Law Journal, vol. 31, p. 99, and Alastair Browne, Towards a Prosecutorial Model for Mutual Assistance in Criminal Matters?, in Peter J. Cullen and William C. Gillmore (eds.), Crime sans Frontieres: International and European Legal Approaches, Hume Papers on Public Policy, vol. 6, nos. 1 and 2, Edinburgh University Press, Edinburgh 1998.

[9] From outside the European Union, Estonia has sent a liaison magistrate to Finland.

coordinate national prosecuting authorities and support investigations of serious organized crime extending into two or more Member States.[10]

The idea for the establishment of such an entity received a considerable push at the special European Union Summit held in Tampere, Finland in October 1999. At the Summit, everyone was agreed on the need for such a new entity. However, there appeared to be different opinions regarding what the precise mandate of Eurojust should be, and how it should go about doing its work.

The Tampere meeting decided that these questions should be solved by the end of 2001—a rather tight schedule, but one which remains feasible. In the meantime, a temporary unit, called "Pro Eurojust" (short for "Provisional Eurojust") started work in Brussels in March 2001.

The way in which the work of Pro Eurojust is evolving provides some indicators of how Eurojust itself will work once it begins operations. Each Member State has sent a senior prosecutor or magistrate to Brussels on permanent assignment. These representatives meet every week to discuss both individual cases and general policy for coordinating investigations. Plenary meetings tend to be devoted to policy issues, while most cases will be dealt with in smaller meetings, among representatives of only the individual countries involved.

Pro Eurojust itself does not have any operational powers. Instead, the national representatives, having agreed on what needs to be done, contact the competent authorities in their own Member State for the required action. In addition, individual members of Pro Eurojust may have operational powers according to their national legislation. One of the topics now being debated is what type of operational powers Eurojust itself will have. For example, it may be able to ask a Member State to initiate criminal proceedings or to provide Eurojust with data regarding the case.[11]

IV. JUDICIAL COOPERATION

The global status quo:

Mutual legal assistance and extradition are based on an incomplete patchwork of bilateral treaties and, in rare cases, multilateral treaties. These treaties tend to cover only some offences, and offer only limited measures. Requests must be sent through a central authority. The procedure tends to be slow and uncertain, with requests often being frustrated by bureaucratic inertia, broad grounds for refusal, and differences in criminal and procedural law.

The European Union reality:

- all European Union Member States are parties to broad multilateral treaties on mutual legal assistance and extradition.
- the European Union has decided on standards of good practice in mutual legal assistance, and regularly reviews compliance with these standards.
- separate European Union treaties on mutual legal assistance and on

[10] See Hans G. Nilsson, Eurojust—the Beginning or the End of the European Public Prosecutor? in Europarattslig Tidskrift, vol. 4, 2000

[11] In order for Eurojust to have the power to ask for data, considerable attention will have to be pay to data protection, for example, on how data are to be transmitted, on who has access to the data, on confidentiality, and on the maintenance of personal records. In this respect, the laws of the different Member States remain quite different.

extradition have been drafted to update and supplement the existing multilateral treaties prepared within the framework of the Council of Europe.
- the European Union is now moving towards a system of mutual recognition of decisions and judgments in criminal matters. When this system is in place, cooperation will be speeded up considerably: a decision or judgment in any Member State can be enforced as such in any other Member State.
- a mutual evaluation system has been established, in which experts from different countries assess the practical conduct of international cooperation in the target country.

A. Mutual Legal Assistance

The Member States of the European Union are all parties to the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters.

The 1959 Convention, however, was drafted almost a half century ago. Since then, ideas regarding how mutual assistance should be provided have changed considerably, especially in Europe, where there has been extensive experience in this sector. There has been a clear trend towards simplifying and speeding up mutual assistance by eliminating conditions and grounds for refusals. Since the European Union Member States have a lot of cases in common, they have come to expect certain standards of conduct—after all, if the central authority of one country is itself slow or sloppy in responding to requests, it can scarcely expect others to be better when responding to its requests for assistance.

In 1998, the European Union decided to adopt a set of standards on good practice in mutual legal assistance.[12] Each Member State was required to prepare, in one year's time, a national statement of good practice. These were then circulated among all the Member States. The idea here was that the Member States publicly commit themselves to upholding these standards, and can be held accountable.

The sets of standards include at least the following eight points:

a. to acknowledge all urgent requests and written enquiries unless a substantive reply is sent quickly;
b. when acknowledging requests and inquiries, to provide the name and contact details of the authority (and, if possible, the person) responsible for executing the request;
c. to give priority to requests which have been marked "urgent";
d. where the assistance requested cannot be provided in whole or in part, to provide an explanation and, where possible, to offer to discuss how the difficulties might be overcome;
e. where it appears that the assistance cannot fully be provided within any deadline set, and this will impair proceedings in the requesting State, to advise the requesting State of this;
f. to submit requests as soon as the precise assistance that is needed has been identified, and to explain the reasons for marking a request as "urgent" or in setting a deadline;
g. to ensure that requests are submitted in compliance with the relevant treaty or arrangements; and
h. when submitting requests, to provide the requested authorities with the name and contact details of the

[12] Joint Action of 29 June 1998 on good practice in mutual legal assistance in criminal matters.

authority (and, if possible, the person) responsible for issuing the request.

Although some of these points may seem trivial, they all have an immediate impact on the day-to-day work of judicial authorities involved in international cases.

The fifteen European Union countries have prepared their own Mutual Assistance Convention (adopted on 29 May 2000). This is not intended to be an independent treaty, but instead supplements the 1959 Council of Europe convention and its protocol. It brings these earlier treaties up to date by reflecting not only the "good practices" referred to above, but also the development of investigative techniques and arrangements.[13] Given that this Convention and the United Nations Convention against Transnational Organized Crime were negotiated at the same time, it should not come as a surprise that they share many ideas.

For example, the new European Union Convention includes provisions that deal with:

- the sending of procedural documents directly to the recipient in another State (article 5);
- the sending of requests by telefax and e-mail (article 6);
- the spontaneous exchange of information (article 7);
- restitution of property to its rightful owner (article 8);
- temporary transfer of persons held in custody for purposes of investigation (article 9);
- hearing by videoconference (article 10);
- hearing of witnesses and experts by telephone conference (article 11);
- the use of controlled deliveries (article 12);
- the use of joint investigative teams (article 13);
- the use of covert investigations (article 14);
- interception of telecommunications (articles 17 to 22); and
- the protection of personal data provided in response to a request (article 23).

In particular the provisions on the interception of telecommunications are quite lengthy, and were the subject of extensive debate. Different Member States have different provisions on the conditions under which the interception of telecommunications is allowed. However, given the ease with which people can now move from one country in the European Union to another, and given also the ease with which communications can be traced and listened to, this presumably will become an increasingly important issue, and the time spent on it was undoubtedly well spent. The basic solution in this respect was to allow interception, but to keep the authorities in the countries in question informed.

The Convention brings in some other innovations. Perhaps the most interesting one is that it reverses one fundamental principle in mutual legal assistance. Today, the almost universal rule is that the law applicable to the execution of the request is that of the requested State. The new Convention states that the requested State must comply with the formalities and procedures expressly indicated by the requesting Member State. The requested

[13] In May 2001, political agreement was reached on a protocol to the 2000 Convention, which would simplify mutual assistance even further. The proposal is currently under consideration.

Member State may refuse to do so only if compliance would be contrary to the fundamental principles of law of the requested State.

B. Extradition

The Member States of the European Union are all parties to the 1957 Council of Europe Convention on Extradition.

Also here, the Member States of the European Union have sought to supplement the Council of Europe Convention by drafting new treaty obligations. In 1995, the European Union adopted a Convention on simplified extradition within the EU. Essentially, the Convention focuses on the many cases where the person in question consents to extradition. One year later, in 1996, the European Union adopted a Convention on the substantive requirements for extradition within the European Union.[14]

The European Union is currently considering various options for "fast-track extradition". These discussions have been held within the context of the discussion on mutual recognition of decisions and judgments in criminal matters. In regards to extradition, the goal is to have a warrant of arrest issued by the competent authorities of one State recognized as such by the authorities of another EU State, establishing a basis for extradition. A proposal on such a procedure is expected by the end of the year 2001.

In advance of any decision on "fast-track extradition", Spain and Italy have signed a bilateral treaty on this type of extradition, and the United Kingdom is introducing legislation along the same lines.

The Spanish-Italian treaty applies to persons suspected of or convicted for terrorism, organized crime, drug trafficking, arms trafficking, trafficking in human beings or sexual abuse of minors, where the maximum sentence is at least four years. A copy of the court order is to be sent directly to the Ministry of Justice of the other country, which translates it and sends it without delay for enforcement. What is noticeable here is that the procedure does not call for any court hearings at all. The only grounds for refusal are if the documentation is not in order, or the person in question has been granted immunity for some reason.

The United Kingdom proposal is for a "backing of warrants" scheme.[15] The UK already today uses such a "backing of warrants" approach with Ireland.[16] Under this approach, the extradition request is replaced by a simple arrest warrant, which is transmitted through the Home Office to the local court. The local court only has to establish (1) that the person arrested is the person for whom extradition is sought; (2) that the warrant and accompanying documentation are in order; and (3) whether any of the restrictions on extradition apply.[17] If none of these are a bar to extradition, the court simply notes

[14] This 1995 Convention has been ratified by nine of the fifteen Member States: Austria, Denmark, Finland, Germany, Greece, the Netherlands, Portugal, Spain and Sweden. The 1996 Convention has been ratified by Denmark, Finland, Germany, Greece, the Netherlands, Portugal and Spain.

[15] The Law on Extradition: A Review. Home Office, March 2001, London.

[16] Similar arrangements exist among Belgium, Luxembourg and the Netherlands. The five Nordic countries—Denmark, Finland, Iceland, Norway and Sweden—also have a fast-track extradition scheme among themselves.

on the back of the warrant that this can be enforced.

According to the UK proposal the backing of warrants scheme would cover extradition requests from all European Union countries as well as from Iceland, Liechtenstein and Norway (referred to as "tier one" countries). It can be extended to other extradition partners, as appropriate. For "tier two" and "tier three" countries, certain additional conditions should be met: double criminality; the political offence exception; the passage of time has not made it unjust or oppressive to extradite; whether the basis of the extradition is a conviction imposed *in absentia*; and whether the offence is a military offence that is not also an offence under the general criminal law.

From the point of view of the United Kingdom, all remaining states, "tier four" states, would be subject to the *prima facie* requirement. This means that the authorities of these countries should demonstrate, to the satisfaction of the UK authorities, that there is sufficient evidence of the guilt of the person in question to proceed with the extradition.[18]

C. Mutual Recognition of Decisions and Judgments

Because of jurisdictional limits (and perhaps also a deep-rooted lack of confidence in the criminal justice systems of other countries), decisions made in the investigation of organized crime cannot be directly enforced abroad. For example, if a court in one country orders that a suspect be arrested, that his or her assets be frozen, or that his or her house be searched for evidence, mutual legal assistance has to be requested in order to have the decision carried out abroad. The process inevitably takes some time—time during which the suspect can empty out his or her bank accounts and move on to a third country.

So far, little attention has been paid to what can, in a way, be seen as a parallel to mutual legal assistance: recognising the validity of a decision taken by a foreign authority or court, and enforcing it as such. The principle would enable competent authorities to quickly secure evidence, seize assets and immobilize offenders. This would, of course, also be in the interests of the victim.[19]

Internationally, mutual recognition of foreign decisions and judgments is almost

[17] There are two conditions: the offence is punishable by at least a minimum of twelve months in the requesting State, and the *non bis in idem* principle is satisfied.

[18] The United Kingdom has waived the *prima facie* requirement with all States Parties to the European Convention on Extradition and, following an amendment to the Scheme in 1981, with all partners in the Commonwealth Scheme. For the United States, in turn, demonstration of "probable cause" is currently sufficient. See., e.g., Gully-Hart, Paul (1992), Loss of Time Through Formal and Procedural Requirements in International Co-operation, in Eser, Albin and Otto Lagodny (eds.) (1992), Principles and Procedures for a New Transnational Criminal Law. Documentation of an International Workshop 1991. Beitrage und Materialien aus dem Max-Planck-Institut fur auslandisches und internationales Strafrecht, Freiburg im Breisgau, pp. 245–266, at p. 256–257.

[19] Protecting the interests of the victim is one of the priorities of the European Union. On 15 March 2001, a framework decision was adopted on in order to ensure victims uniform minimum legal protections in criminal proceedings. In September 2001, the Commission submitted a proposal on unification of compensation to victims from the State.

non-existent. There are few bilateral or multilateral treaties on this topic. One of the few is the European Convention on the International Validity of Criminal Judgments, prepared within the framework of the Council of Europe in 1970. Even this treaty has very few signatures, and even fewer ratifications.[20] Indeed, most EU Member States have not ratified it, and so it has very little practical importance. Furthermore, this only applies to legally final judgments, and not for example to decisions made in the course of an investigation.[21]

With the increasing integration of Europe, Member States are now seriously considering the potential for mutual recognition of decisions and judgments. It is widely regarded as an effective and indeed almost unavoidable tool in cooperation. Furthermore, proponents argue that the close ties among the European Union countries, and the fact that they are all signatories to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, has lead to a situation in which all Member States should have full faith and confidence in the operation of the criminal justice system in each other's country. To give an example, if a judge in one country orders that a suspect should be arrested, courts in all other European Union countries should have confidence that the decision was made according to law and with due respect to human rights.[22]

As a result, the Tampere European Summit in October 1999 endorsed the principle of mutual recognition and called for the preparation of a programme to gradually make mutual recognition a working reality. In the view of the Tampere Summit, mutual recognition should become the cornerstone of judicial co-operation in both civil and criminal matters within the European Union. The programme requested by the Tampere Summit was adopted on 30 November 2000.

There is currently discussion in the EU about whether the system of mutual recognition should allow refusals, for example on the grounds that the human rights of the person in question had not been sufficiently taken into consideration. Some regard such a "fail-safe" system as necessary, while others consider that the European Union member states should have confidence that other member states respect the European Convention on Human Rights. Another item of discussion is whether the condition of double criminality should be maintained.

[20] Of the European Union Member States, only Austria, Denmark, the Netherlands, Spain and Sweden have ratified the 1970 Convention. The other countries that have ratified it are Cyprus, Estonia, Iceland, Lithuania, Norway, Romania and Turkey. An additional eleven countries have signed, but not yet ratified, the Convention.

[21] There is one further exception to the lack of mutual recognition internationally. The five Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) recognize one another's decisions and judgments, and refusals are almost unheard of. This system is based on the fact that the Nordic countries share very much the same legal system, and also otherwise have long-standing cooperation with one another.

[22] An analogy can be made with the "full faith and credit" doctrine contained in article IV, section 1 of the Constitution of the United States. According to this section, "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

Work in progress: In February 2001, Belgium, France and Sweden submitted a proposal regarding the mutual recognition of decisions on the freezing of property and of evidence. The goal is to adopt a decision on this by the end of 2001. In July 2001, the European Union began considering a proposal from France, Sweden and the United Kingdom regarding the mutual recognition of fines. In March 2001, Germany has a somewhat parallel proposal to this latter one on fines. A proposal is expected on the mutual recognition of pre-trial orders in investigations into computer crime. The programme of work adopted in November 2000 also contains measures in regard to the transfer of prosecution and the exchange of information on criminal records; work on these may begin in the year 2002 or 2003. Work is also planned on ways to avoid double jeopardy in connection with mutual recognition.

D. Mutual Evaluations

The Member States of the European Union have made a number of commitments to improving their response to organized crime, and to improving international cooperation. These commitments were undoubtedly made in good faith. However, the practical reality of investigation, prosecution and adjudication (for example, lack of resources, and differences in priorities in different sectors and on different levels) can mean that the work that is actually carried out remains at odds with the commitments.

One way to diagnose what problems exist is to carry out expert reviews. The OECD has instituted a system of mutual evaluations of Member States on measures taken to prevent and control money laundering. These evaluations are carried out by teams of experts from different countries who, because of their background, are able to talk as colleagues with experts and practitioners in the target country, and ask the right questions and understand the answers they are given. This approach has been deemed so successful that the European Union has adopted it on a broader scale. Accordingly, on 5 December 1997 the European Union decided on the establishment of a mechanism for evaluating the application and implementation at the national level of international undertakings in the fight against organized crime.

Following the OECD model, small teams of experts visit the target country, interview practitioners, report on their assessment and make recommendations. The assessment is confidential,[23] and the target country is given every opportunity to correct any errors that may have been made.

So far, two rounds of evaluations have been carried out in all fifteen Member States. The first round dealt with mutual legal assistance and urgent requests for the tracing and restraint of property, and the second round dealt with law enforcement and its role in the fight against drug trafficking. A third round, which will deal with extradition, will soon begin.

The Member States are quite satisfied with the way in which the mutual evaluations have been carried out. The process has not only contributed to greater understanding of the differences that exist between the countries, but has also lead to many changes in law and practice.

[23] With the permission of the country in question, the report can be published. Indeed, all of the reports so far have in fact been published.

V. COOPERATION IN THE FORMULATION OF DOMESTIC LAW AND POLICY

The global status quo:

International cooperation on the formulation of domestic law and policy is almost entirely limited to general provisions in bilateral and multilateral treaties, and to even more general recommendations, resolutions and declarations.

The European Union reality:

- the European Union has accepted decisions calling for criminalisation of a number of offences. The definitions are generally rather tightly drawn, and have forced countries to amend their legislation accordingly.
- the European Union has begun cooperation in the prevention of crime, including organized crime.
- the European Union has adopted a number of action plans and programmes that have had a clear effect on policy and practice in all the Member States.
- the cooperation in this regard has been extended to the twelve candidate countries, which are rapidly amending their own procedural and criminal laws.
- there are signs that the European Union may be moving towards what is called the "communitisation" of criminal law, in other words to a situation where the power to determine the contents of criminal law is increasingly shifted from the individual Member States to the fifteen Member States working together.

A. Criminalisation

On the global level, in the area of substantive criminal law, very little international cooperation exists. Where it does exist, it primarily concerns the very few substantive provisions in bilateral and multilateral treaties, such as the minimum definitions of participation in a criminal organization, corruption, money laundering and obstruction of justice in the United Nations Convention against Transnational Organized Crime. There are also a number of resolutions, recommendations and declarations regarding criminal law and criminal justice, but these have tended to have little actual impact on law, practice and policy.

This is not the case with the European Union, where there is not only extensive discussion about the harmonisation of both criminal and procedural law, but much has been done in practice.

The question of how far the criminal law (and procedural law) of the Member States should be harmonised is a subject of considerable controversy. Everyone appears to agree that some degree of harmonisation is necessary in order to ensure smooth international cooperation, as long as by "harmonisation" one means the *approximation* or co-ordination of different legal provisions or systems by eliminating major differences and creating minimum requirements or standards. To use a musical analogy, we can continue to play our national music, as long as it is in harmony with the music of the other fourteen Member States.

Everyone also appears to agree that at this stage at least we are not talking about the *unification* of criminal and procedural law, in the sense that the fifteen distinct legal systems would be replaced by one system. To use the musical analogy, no one supports the idea of replacing the orchestra with a single piano, no matter how beautiful or large.

The process so far has involved a focus on certain key issues, where the Member States have agreed that harmonised legislation is necessary. Among the issues dealt with are the following:

Fraud and counterfeiting
- fraud and other crimes against the financial interests of the Communities (Convention of 26 July 1995, protocols of 27 September 1996 and 19 June 1997)[24]
- fraud and counterfeiting of non-cash means of payment (framework decision on 28–29 May 2001)
- counterfeiting of the euro (framework decision on 28–29 May 2001)

Drug trafficking
- illicit cultivation and production of drugs (Council Resolution of 22 November 1996)
- "drug tourism" (Council Resolution of 22 November 1996)
- sentencing for serious illicit drug trafficking (Council Resolution of 6 December 1996)
- drug addiction and drug trafficking (Joint Action of 9 December 1996)

Trafficking in persons and related offences
- trafficking in human beings and sexual exploitation of children (Joint Action of 21 January 1997)
- combating illegal immigration (Council recommendation of 22 December 1995)

Corruption
- corruption (Convention signed on 26 May 1997)
- corruption in the private sector (Joint Action of 22 December 1998)

Other offences
- racism and xenophobia (Joint Action of 15 July 1996)
- football hooliganism (Council Resolution of 28 May 1997)
- money laundering (Joint Action of 3 December 1998)
- arms trafficking (Council Recommendation of 7 December 1998)
- participation in a criminal organization (Joint Action of 21 December 1998)

Procedural issues
- interception of telecommunications (Council Resolution of 17 January 1995)
- protection of witnesses in the fight against international organized crime (Council Resolution of 23 November 1995)
- individuals who cooperate with the judicial process in the fight against international organized crime (Council Resolution of 20 December 1996)

Work in progress. The work on further harmonisation of criminal and procedural law in the European Union is proceeding on the priority areas identified at the Tampere European Summit in October 1999. Work is underway for example on the minimum provisions on the constituent elements of offences and penalties relating to drug trafficking, on the sexual exploitation of children and child pornography, and on racism and xenophobia. A Commission proposal on the constituent elements and penalties relating to terrorism is expected in October 2001, and another proposal on cyber-crime and other high-tech crime is expected towards the end of 2001. A considerable amount of attention has also been focused on money laundering, and on the freezing of the assets of offenders. For example, a framework decision on

[24] In May 2001, the Commission proposed an amalgamation of the various Convention provisions relating to fraud against the financial interests of the EU.

money laundering and on the identification, tracing, freezing or seizure, and confiscation of the instrumentalities and proceeds of crime was adopted on 26 June 2001.

One general priority area is the protection of the financial interests of the European Union, for example against subsidy fraud, embezzlement and corruption. Here, there is a much further-reaching proposal, called the "Corpus Juris" project.[25] Briefly, this project seeks not only to harmonise the definition of offences against the financial interests of the European Union, but also to set up a European Public Prosecutor system, using identical procedural law provisions in each Member State. Proponents have said that this degree of uniformity is necessary to prevent organized criminal groups from utilising differences between the Member States. Critics, in turn, see this as an attempt to create a supranational criminal law and procedural law, which in time may lead to the unification referred to above.

The Corpus Juris project raises broader issues of how far the harmonisation of criminalisations can go, and who can make the decisions. Questions of criminal law have so far always been reserved to the Member States themselves to decide, on the basis of consensus. Article 31(e) of the Treaty of Amsterdam gave the Commission a right of initiative in these matters. The exact implication of article 31(e), however, has been questioned. Most Member States are of the view that the Commission is limited to the right of initiative, and only the Member States themselves may make any decision on criminalisation. A minority, however, are of the view that article 31(e) in effect gives the Commission the right to *oblige* Member States to adopt criminalisations on certain issues, if criminal law sanctions are the only way to protect Community interests. The issue is still open. So far, a working compromise has been reached: decisions under article 31(e) are being made in tandem, with the Commission taking a decision on matters within its power, and the Member States (through the Council) taking a decision at the same time on matters within their powers.

[25] See http://www.law.uu.nl/wiarda/corpus/engelsdx.html The project was first presented on 17–18 April 1997.

B. The Prevention of Organized Crime

Organized crime, just as is the case with crime in general, does not spread at random. It is often a planned and deliberate activity. Accordingly, it depends to a great deal on the presence of motivated offenders, on the existence of the opportunity for crime, and on the orientation of the work of those who seek to control organized crime. In line with this so-called situational approach, the Member States are exploring ways to ensure that committing crime is made more difficult, that committing crime involves greater risks to the offender (in particular the risk of detection and apprehension), and that the possible benefits to the offender of committing crime are decreased or eliminated.

Also the Tampere European Summit stressed the importance of crime prevention. It suggested that common crime prevention priorities should be developed and identified. Elements for the crime prevention policy are contained in the Council resolution of 21 December 1998 on the prevention of organized crime. In March 2001, the Commission and Europol presented a report on a European strategy on the prevention of organized crime.

One step in developing and identifying priorities was made on 15 March 2001, when the European Union decided on the establishment of a crime prevention network. This network consists of contact points in each Member State, representing not only the authorities but also civil society, the business community and researchers. The network functions by organizing meetings, compiling a database and otherwise by seeking to gather and analyse data on effective crime prevention measures on the local and regional level in order to disseminate information on "good practices."

C. European Union Policies and Programmes

The various measures listed above and that have been taken by the European Union did not come piecemeal, one by one. Instead, they are elements of a wider EU policy against organized crime. A critical step was taken on 16–17 June 1997, when the European Union adopted a Plan of Action to combat organized crime. Instead of the resolutions, recommendations and declarations that have so often been adopted in other fora—regrettably often with little practical impact—the European Union decided, for the first time anywhere, on specific action, with a clear division of responsibilities, a clear timetable and a mechanism for implementing the action plan. The strong consensus reached by Member States on the 1997 Plan of Action helped to create the political and professional climate required on both the EU level and the national level to take and implement the necessary decisions.

The 1997 Plan of Action changed the rate of the evolution of international cooperation against organized crime. Examples of the progress that has been achieved are the mutual evaluation mechanism, the entry into force of the Europol Convention, the establishment of the European Judicial Network, criminalisation of participation in a criminal organisation, the establishment of a variety of funds to support specific measures, the adoption of joint actions on money laundering, asset tracing, and good practices in mutual assistance, the pre-accession pact with the candidate countries, and the identification of further measures in respect of the prevention of organized crime.

The period allotted for the 1997 Plan of Action ended on 31 December 1999. However, more work needed to be done. When Finland held the Presidency of the European Union during the second half of 1999, it led discussions on the necessary follow-up plan. These discussions were given added push by the decision to hold a special Summit, the Tampere European Council (15–16 October 1999), which dealt with, among other issues, cross-border crime.

Among the priorities identified by the Tampere European Summit are:

- the prevention and control of crime through the reduction of opportunities;
- the facilitation of co-operation between Member States in criminal matters;
- co-ordination and, where appropriate, centralisation of criminal proceedings;
- protection of the rights of victims and the provision of assistance;
- development of operational police co-operation and law enforcement training at the EU level;
- enhancement of customs co-operation in the fight against crime and in the use of information technology;
- the fostering of international co-operation in the fight against transnational organized crime;

- reinforcement of the role of Europol;
- adoption of a common approach throughout the EU on cross-border crime;
- depriving criminals of the proceeds of crime; and
- enhancing knowledge and capacity to fight money laundering activities.

These various priorities—known in the European Union as the "Tampere milestones"—set out a fairly clear programme for the European Union for the years to come. More detail was provided by the follow-up to the 1997 Plan of Action that was worked out during the Finnish Presidency of the European Union, and adopted in March 2000.[26] The core of the document consists of eleven chapters that set out the political guidelines, the respective mandates and initiatives, and the detailed recommendations. Specific forms of crime that are the focus include economic crime; money laundering and off-shore centres; terrorism; computer crime; and urban crime and youth crime.

D. Cooperation with Candidate Countries and Other Third Countries

Even if the European Union Member States could effectively develop their laws and systems to prevent and control organized crime within their borders, this would not be enough. Preventing and controlling organized crime requires global co-operation.

One particular focus is cooperation with the so-called candidate countries. The European Union is currently negotiating actively with twelve countries on membership. In December 1999, the European Union decided in addition to start preparations for the extension of this process to Turkey. Enlargement on such a scale, from fifteen Member States to 28, will constitute not so much an evolutionary step for the EU as a leap into the unknown. Institutions, interests, policies, balances of power: everything will change. The European Union is faced with a political challenge of the first order.

In this process, considerable attention is being paid to the prevention and control of organized crime. The European Union has already adopted a large number of measures (referred to as the *acquis communautaire*),[27] and the Member States have implemented them in their domestic legislation and practice. In order to avoid a situation where organized criminal groups take advantage of a sudden expansion of the European Union, also the candidate countries must fully accept and implement the *acquis*. To this end, on 28 May 1998 the European Union has made a so-called pre-accession pact with the candidate countries on how the process should be carried out. Considerable work is underway multilaterally and bilaterally to assist the candidate countries in this work.

A second focus is the Russian Federation. Again during the Finnish Presidency, a special European Union Action Plan was prepared on common action with the Russian Federation on combating organized crime. This in essence sets up a structure and process

[26] The new plan of action is known as "The Prevention and Control of Organized Crime: A European Union Strategy for the beginning of the new Millennium."

[27] The "acquis communautaire" can be loosely described as the legislation of the European Union. It consists not only of the Treaties and all EU legislation, but also of the judgments of the Court of Justice and joint actions.

for continuous consultations and cooperation between the European Union and the Russian Federation. In addition, there is a broader "partnership" agreement with the Russian Federation (and with Ukraine) that provides a basis for cooperation.

Other geographical areas with which the European Union is seeking to strengthen co-operation include the Mediterranean, South Eastern Europe, China, North America, Latin America and the Caribbean.

The European Union is also active in working through intergovernmental organizations such as the Council of Europe and the United Nations. For example, throughout the negotiations on the United Nations Convention against Transnational Organized Crime, the European Union countries worked very closely together in seeking to ensure that the resulting Convention was as effective and broad as possible.

VI. LESSONS TO BE LEARNED

As can be seen, the European Union has put into place an enormous number of measures in only a few years in order to better prevent and control organized crime. The strengths of the European Union in international criminal justice lie in the considerable political pressure and interest in cooperation, as a result of which consensus will often be found even if some countries initially resist the pressure to change their criminal policy.

In this connection, two questions come to mind. Have the measures actually been effective in preventing and controlling organized crime? And if the European Union has been successful, can the progress made within the European Union be repeated elsewhere?

Whether or not the European Union has improved its effectiveness in responding to organized crime can, of course, be debated. It is difficulty to show a clear cause-and-effect relationship. For example, it is misleading to try to judge effectiveness against organized crime by an increase in the number of arrests, prosecutions or convictions. To a large extent, organized crime remains hidden. Evaluation of progress remains difficult. When the present plan of action was being drafted, the Finnish Presidency wanted to include indicators of performance, measures that would provide a more precise tool for evaluating how effective we have been in implementation. Regrettably, it proved to be impossible to incorporate such an element into the plan of action. As long as we have no way of assessing the true extent of organized crime, or of its impact on society, it is almost useless to speculate if, for example, the creation of Europol or Eurojust has had an impact on organized crime in Europe.

On the other hand, it is possible to say from the practitioner's point of view that cooperation has been made more effective and easier. The creation of Europol has clearly improved cooperation among law enforcement authorities, just as the creation of the European Judicial Network, the institution of liaison magistrates and the creation of Pro Eurojust have streamlined cooperation among prosecutors. Information can be received more quickly and analysed more effectively, and the response can be made more promptly.

The networking that is taking place in the European Union has also increased the degree to which practitioners know about, and have confidence in, one's another criminal justice system. Also this makes cooperation more effective.

Can the developments in the European Union be replicated elsewhere?

There are undeniably certain features of the European Union which make progress easier than may be the case elsewhere. One is the existing structure for decision-making. Without the Council and the various networks, it would be difficult if not impossible to get sovereign countries to agree on measures which may have at least the appearance of infringements on sovereignty: examples include the setting up of such formal structures as Europol and Eurojust, the adoption of decisions on the harmonization of key legislation, and decisions related to mutual recognition of decisions and judgments. A second factor which eases progress in the European Union is the fact that the Member States have worked closely together for a long time, and have come to understand and, to at least a modest degree, have faith and confidence in one another's criminal justice system.

Nonetheless, many elements of the European Union response to transnational organized crime can, and in fact are, being implemented elsewhere. The European Union has had the benefit of experience with far-reaching cooperation, and has learned considerably from experience what works and what does not work. As shown in the negotiations on the United Nations Convention against Transnational Organized Crime, the practical experience among the European Union Member States has often served as a guide for other countries and regions. Examples are the "good practices" in mutual legal assistance, the use of videoconferences in the hearing of witnesses, the establishment of joint investigative teams, and the use of liaison officers.

We have come a long way from the period when countries ignored crime beyond their borders. The speed with which the European Union Member States have agreed on cooperation, and the commitment that is being shown on a high political level on implementation, show that the Member States are very mindful of the danger that organized crime poses to the individual, the community, the country and the international community. Over the past few years, there has been remarkable, indeed unprecedented progress in the national and international response to organized crime, as shown by the strengthening of the legislative framework, the reorganisation of the criminal justice system, the growing network of bilateral and multilateral agreements, and the strengthening of formal and informal international contacts.

In the prevention and control of organized crime, we all still have a long way to go. Nonetheless, the first steps have been taken, and the experience in the European Union can help in charting out the possibilities as well as pitfalls on the road ahead.