

## The Fight against Organized Crime as a Challenge for Europe - for the OSCE as well?<sup>1</sup>

### *Europe as an Area without Frontiers for Transnational Crime*

Recent years have seen a significant change in Europe with regard to internal security. In the eighties one could hardly notice any Eastern European influence on organized crime and, in particular, on drug criminality in Western Europe; but in the nineties, since the lifting of the Iron Curtain, we have had to adopt a new way of looking at the matter. Europe has become a single area in which criminals can operate unhindered by national borders.<sup>2</sup> That means that Eastern European criminality has become a familiar phenomenon in Western Europe in the same way as organized crime from West Germany looks for "new markets" in the East, side by side with the burgeoning local and regional criminality there. This can represent a significant danger for democracies that are still young and whose prosecution authorities are in a transitional phase.<sup>3</sup>

The Federal Republic of Germany, in cooperation with its Western partners, began at an early stage to try to counteract this new phenomenon. Assistance to Central and Eastern European states (CEE states) in the outfitting and equipping of their police forces was considered particularly important.<sup>4</sup> A large number of bilateral agreements on fighting organized crime have been concluded with the states of Eastern Europe.<sup>5</sup> In addition, during the German

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<sup>1</sup> This article is based on a publication in the magazine "Integration" 2/1996; it has been brought up to date and slightly changed.

<sup>2</sup> Of the 787 investigatory proceedings on organized crime pending in the Federal Republic of Germany in 1995, involving more than 7,000 suspects and roughly 52,000 individual criminal acts, more than two-thirds had been committed internationally; cf. Lagebild Organisierte Kriminalität Bundesrepublik Deutschland 1995, Bundeskriminalamt (BKA), Wiesbaden [Situation Report on Organized Crime in the Federal Republic of Germany 1995, Federal Criminal Police Office, Wiesbaden].

<sup>3</sup> According to the BKA's Situation Report for 1995 (see Note 2) the danger of organized crime lies in its systematic exploitation of the sheer variety of forms and the flexibility of the economic and legal systems. Legal business structures often provide an ideal basis for illegal activities. Financial transactions, which are frequently very hard to get to the bottom of, are used to conceal crimes.

<sup>4</sup> Between 1992 and 1994 Germany provided altogether DM 66 million in police equipment assistance worldwide, of which DM 30.3 million went to the countries of Central and Eastern Europe. For the 1995-1998 period, DM 50 million (out of a total of DM 73 million) have been earmarked for the CEE states.

<sup>5</sup> There are cooperation agreements on fighting organized crime and drug criminality with Bulgaria (BGBl. [Federal Law Gazette] 1994 II p. 1025), the Czech and Slovak Republics (BGBl. 1993 II p. 37), Poland (BGBl. 1992 II p. 950) and Hungary (BGBl. 1993 II p. 743). Similar agreements have been signed with Belarus, Estonia, Kazakhstan, Latvia, the Ukraine and Uzbekistan.

Presidency in the European Union in the second half of 1994 a joint meeting of all EU and CEE Ministers responsible for internal security was held for the first time. The "Berlin Declaration" of September 1994, which was worked out there, provides for intensified cooperation in the fight against organized crime.

This only touches on a few possible approaches to an overall strategy for cooperation in the fight against crime in Europe. But the subject of "internal security" must continue to be treated, within the existing European mechanisms and bodies for cooperation, as a top priority. For the most various reasons, what has so far been done to achieve cooperation in Europe in the realm of internal security has still been inadequate. But the threat which international organized crime represents calls for the full utilization of all forms of cooperation so that through improved coordination this phenomenon can be fought successfully.

Along with the European Union, the States of the Schengen Agreements and the Council of Europe, the OSCE, too, has adopted the goal of maintaining the peace in Europe, especially by way of conflict prevention strategies designed to foster a secure life together. European security today is not threatened by conflicts between states but by international organized crime. If international crime is able to undermine the structures of the state or if it becomes a decisive force in society and in the economy, this will put at risk the security of the other European countries. How should we respond to this? Is this not a challenge for the OSCE?

#### *Past Approaches to Cooperation*

There have been initial efforts at cooperation in the realm of internal security in the European Union, the Council of Europe, and the Schengen Agreements, as well as in other international agreements and cooperative arrangements.

#### *The European Union*

The Treaty on European Union (TEU) of November 1993 provides various mechanisms for cooperation on internal security which can be traced back to the extension of the Community's responsibilities and of the available forms of cooperation. Opportunities created by the Treaty for states to work together on Justice and Home Affairs - the so-called "third pillar" of the EU Treaty - include cooperation between Member States in combatting all seri-

ous forms of crime.<sup>6</sup> Unlike the EC Treaty ("first pillar" of the EU Treaty), agreements between the European Union and third states in this sector are not possible under international law. The most Member States can do in connection with the "third pillar" is to reach common position when they represent the European Union toward the outside.<sup>7</sup> Only very limited use has been made of this option so far, particularly because of its unwieldiness. The decisions of the Copenhagen European Council in 1993 introduced first steps toward improving cooperation between the European Union and the CEE states within the framework of the so-called "structured dialogue" and the "Berlin Declaration" of September 1994 on combatting organized crime. But neither Russia<sup>8</sup> nor the trans-Atlantic dialogue between the European Union and the United States<sup>9</sup> and Canada is included in these structures.

The only items included in the Association Agreements between the EU and the CEE countries ("Europe Agreements") were the preventive struggle against drugs and money laundering. Even though the Europe Agreements were so-called "mixed agreements" between the Community and its Member States on the one side and a third state on the other, the subjects of Article K ff. of the EU Treaty were not made a part of them. Thus the comprehensive cooperation which is needed between the states of Eastern and Western Europe cannot at present be realized on the basis of these fragmentary beginnings within the European Union.<sup>10</sup> As far as the third pillar is concerned there is the additional problem that the use of these relatively new areas of cooperation provided for in the EU Treaty is further impaired by differences over the interpretation of Art. K ff. TEU between the members.

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<sup>6</sup> Art. K.1, No. 9, Treaty on European Union (TEU). For more detail on Art. K ff. see: Klaus-Peter Nanz, *Der "3. Pfeiler der Europäischen Union": Zusammenarbeit in der Innen- und Justizpolitik* [The "Third Pillar of the European Union": Cooperation in Justice and Home Affairs], in: *Integration* 3/1992, pp. 126-140.

<sup>7</sup> Cf. Art. K.5 TEU: In international organizations and at international conferences where they are represented, Member States will present the common positions set forth in this Title.

<sup>8</sup> With regard to cooperation with Russia, there are only bilateral understandings and agreements, e.g. the German-Russian Memorandum of Understanding to combat international nuclear smuggling of 22 August 1994. An agreement on combatting organized crime is still being negotiated.

<sup>9</sup> To strengthen partnership between the US and the EU, as well as its Member States, it was agreed in a declaration of 23 November 1990 (Trans-Atlantic Dialogue) to exchange information and consult on all important questions of common interest. At the Summit meeting in July 1994 in Berlin one of the results was the establishment of a working group to combat international organized crime and drug trafficking.

<sup>10</sup> To the extent that the Association Agreements with the CEE states have been ratified, the focus of implementation is at the present time being put on the economic restructuring of these countries.

### *Council of Europe*

Cooperation between the (at present) 39 Member States<sup>11</sup> of the Council of Europe in the field of internal security is essentially limited to the penal aspects of fighting crime by working out conventions and treaties - e.g. against money laundering, organized crime, and drug abuse (Pompidou Group). This covers a fair portion of internal security but, in contrast to the OSCE, such important partners as Russia, the United States and Canada are not members. Moreover, the institutional structure of the Council of Europe does not appear to be flexible enough to do the work of coordination needed in fighting transnational crime in Europe.

### *The Schengen Agreements*

The purpose of the Schengen Agreements of 1985 and 1990 was to eliminate weaknesses in security that might result from the abandonment of police and customs formalities on the internal borders of the Community.<sup>12</sup> This initiative originally involved only Germany, France and the Benelux countries but in the meantime all EU members with the exception of the Nordic states, Great Britain and Ireland have joined. These agreements are an inter-governmental instrument for the states involved in reducing border formalities. Neither the Schengen Agreement nor the Convention applying the Schengen Agreement<sup>13</sup> provides for institutionalized relations with third countries. A document associating Norway and Iceland with the Convention applying the Schengen Agreement is being negotiated. But this is justified by the membership of these countries in the Nordic Passport Union and is related to the intention of Denmark, Sweden and Finland to join.

### *International Agreements and Forms of Cooperation*

At both the United Nations and the annual meetings of the Economic Summit (G-7), experts groups on crime prevention and on analyzing the gaps in the fight against international crime have been set up. In the war on drugs there is an agreement between the EU countries, Norway, the United States, Canada, Australia and Japan under the aegis of the so-called Dublin Group

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<sup>11</sup> All EU countries, the Nordic countries and the CEE countries (except for Bosnia and Herzegovina, Croatia and the Trans-Caucasian Republics).

<sup>12</sup> A detailed account of the Schengen Agreements is in: Klaus-Peter Nanz, Schengener Übereinkommen und Personenfreizügigkeit [Schengen Agreements and Freedom of Movement], in: ZAR 3/1994, p. 99ff.

<sup>13</sup> Schengen Agreement of 14 June 1985 and Convention applying the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the Gradual Abolition of Checks at their Common Borders, of 19 June 1990.

which deals with issues related to the illegal use of drugs. Here, too, the objective is to establish consultation fora in certain regions to support dialogue with the governments there. Parallel to that, a Task Force of the most important donors (European Union, United States, Canada) has been established to coordinate equipment and training assistance in Central and Eastern Europe; organizationally it is part of the UN Drug Control Programme (UNDCP) in Vienna.

This account of the European and international bodies which deal with the phenomenon of transborder organized crime shows that at the present time there is no forum tailored to the specific threat in Europe. The existing bodies are either still unable to accomplish the needed work of coordination ("third pillar" of the European Union) or there is no treaty basis for it (Schengen). In some cases it is limitations on the field of action (Dublin Group, UNDCP) and the nature of participation (G-7, Dublin Group, Council of Europe) which preclude a sufficiently broad European approach that would also involve the US, Canada and Russia. The question, therefore, is whether there is not an existing organization in Europe which on the basis of its membership and well-adjusted structure might make such an approach possible. In what follows we investigate whether the Organization for Security and Cooperation in Europe (OSCE) might be a suitable body for cooperation in the field of European internal security.

#### *The Organization for Security and Cooperation in Europe and Internal Security*

The decisions of the Budapest Summit do not explicitly provide for cooperation among the OSCE States in the field of internal security. Only point 6 of the Budapest Decisions on the strengthening of the OSCE<sup>14</sup> might be interpreted as offering a general basis for dealing with internal security. It gives the OSCE, on the basis of the consensus rule, the function of a forum for consultation, decision-making and cooperation in Europe. This, however, is not the place to explore that issue more deeply.

That internal security is not included in the OSCE's list of responsibilities can be explained by the mission of its predecessor, the CSCE, which was committed exclusively to the goal of external security and overcoming the conflict between East and West. Is it still opportune and appropriate to have such a limitation on the OSCE?

It is precisely the rapid pace of transition to market economies in the coun-

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<sup>14</sup> Cf. CSCE Budapest Document 1994, Towards a Genuine Partnership in a New Era, in: Helsinki Monitor 1/1995, pp. 79-106, here: p. 83.

tries of Eastern Europe which provides opportunities for international organized crime to get started. It is estimated that in some of them as much as 20 percent of GNP is created in connection with organized crime.<sup>15</sup> Organized crime in Russia, according to the Ministry of the Interior, represents a danger for reform policy. And in the other countries of Central and Eastern Europe one can see a steady growth of criminal organizations.

Transnational forms of organization play an increasingly important role, according to analyses of organized crime. They have, so to speak, become its most characteristic element. Crimes such as drug traffic, weapons dealing, and trafficking in stolen motor vehicles cannot be carried out without international connections. The illegal smuggling of persons inevitably has an international dimension. About two thirds of the investigations of organized crime analyzed by the *Bundeskriminalamt* (Federal Criminal Police Office) had, in this sense, been committed internationally.<sup>16</sup> World-wide, organized crime brings in huge profits. There are estimates that they run to hundreds of billions of US Dollars per year. The total cost to Germany for the year 1994, as calculated by the *Bundeskriminalamt*, was 3.5 billion DM.<sup>17</sup>

Along with illegal drugs, these criminal groups control the manufacture and distribution of counterfeit money and the illegal weapons trade. They have a dominant position in crimes against property and in the receiving of stolen goods. There is growing activity in fraudulent investments and other profitable forms of economic crime. These groups have recognized the opportunities that lie in the new markets of Eastern Europe. Profits from criminal activities throughout the world can be invested there, almost without any monitoring. As a practical matter, organized crime is succeeding in creating areas free of legal control. It is trying to establish a parallel society independent of law and order. The penetration of certain branches of the economy - large segments of the restaurant business, for example - by a system of extorting protection payments provides a good illustration. This creates a milieu in which state law has only limited applicability. A further risk lies in the influence which criminal elements can bring to bear on the decision-making bodies of the state and society through fraud, corruption, threats or extortion. All of these aspects of organized crime show that isolated steps taken by national prosecution authorities, by the control elements of individual states, are insufficient. Rather, there needs to be an overall European strategy for the fight against organized crime, a strategy in which the necessary measures of prevention and control are shared and coordinated between the responsible institutions and authorities of the states and societies.

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<sup>15</sup> Wolfgang Heckenberger, *Organisierte Kriminalität - Ein Blick in die Welt* [Organized Crime - A Look at the World], in: *Kriminalistik* 4/1995, pp. 234-239.

<sup>16</sup> Cf. *Lagebild Organisierte Kriminalität*, cited above (Note 2).

<sup>17</sup> Cf. *ibid.*

One essential element of this overall strategy must be prevention, in both a technical and organizational sense, which has often been neglected in the past. New technologies such as the electronic anti-theft devices and the unforgeable credit card represent first steps but there is certainly much more that can be done. Such measures can only be fully successful when all European countries participate in them. Their effective use depends on exchanges of information and situation reports, measures coordinated between Western and Eastern Europe and, additionally, the inclusion of the United States, Canada and Russia.

Improved coordination would serve the cause of internal security in Europe and ultimately of stability in the entire OSCE area. For a variety of reasons existing fora are not able to fulfill this function. The OSCE, however, if used as a framework for exchange and coordination of ideas, could substantially enhance cooperation without duplicating the work of existing bodies.

#### *Including Internal Security in the Cooperative Work of the OSCE*

The inclusion of internal security matters in the OSCE would further develop the reorientation, already begun, of this framework for cooperation.<sup>18</sup> A new responsibility for combatting transborder international crime would be very much in line with the OSCE's own goals, especially given the dangers to young democracies and the potential threat to their external security. The OSCE's legally non-binding character would not be changed by such a step. Nor would the status of the OSCE as a regional arrangement under the terms of Article 52 of the UN Charter<sup>19</sup> be affected by the inclusion of internal security since Article 52 says nothing on this subject and the way in which it is formulated does not exclude additional responsibilities.<sup>20</sup>

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<sup>18</sup> It is already involved in the fight against terrorism, preventing and combatting racism and xenophobia, and coordinating efforts related to migration, refugees and displaced persons. Cf. Fifth Meeting of the Council of Ministers, 7-8 December 1995, Budapest.

<sup>19</sup> For more on this, see: Herbert Honsowitz, "OSZE zuerst". Die Neugestaltung des Verhältnisses zwischen UN und OSZE [OSCE First. The Remodeling of the Relationship between the UN and the OSCE], in: Vereinte Nationen [United Nations] 2/1995, p. 49ff. By contrast: Hartmut Körbs, Ist die OSZE eine regionale Abmachung oder Einrichtung im Sinne des Kapitel VIII der UN-Charta? [Is the OSCE a Regional Agreement or Arrangement in the Sense of Chapter VIII of the UN Charter?], in: Archiv des Völkerrechts [Archive of International Law] 4/1995, p. 459ff.

<sup>20</sup> Cf. also the other responsibilities going beyond Article 52 of the UN Charter in the OAS, OAU, the Arab League and the ASEAN states: promotion of economic growth, cultural development and science; development bank; committee for legal questions. For detailed information, see Waldemar Hummer/Michael Schweitzer on Art. 52 margin note 64ff., in: Bruno Simma (Ed.), Charta der Vereinten Nationen [Charter of the United Nations], München 1991.

It would not be possible to include internal security in the work of the OSCE simply on the basis of an interpretation of the general clause in point 6 of the Budapest Decisions. It is clear from the list of subjects that follows that the participating States have reserved the right to have such enlargements of the catalogue of responsibilities done by unanimous vote. This could be seen in the case of economic issues and the fight against racism which were only made part of the catalogue through a decision of all participants. Thus it will require an expansion of the Budapest Decisions of December 1994 (at the next meeting of the Heads of State or Government in December 1996, for example) to include internal security in the catalogue of OSCE responsibilities.<sup>21</sup>

This would require no significant organizational changes in the work of the OSCE. Both the Permanent Council and the Senior Council, i.e. the Political Directors, would ensure continuity in the discussions. At the level of the Ministerial Council there would need to be an annual meeting of Ministers of the Interior which would merge into the bi-annual OSCE Summit Meeting (Heads of State or Government). The OSCE Secretariat in Vienna would as in the past take care of the necessary back-up tasks. Proximity would make possible close cooperation with the UNDCP Task Force for coordinating equipment assistance to Eastern Europe.

### *Outlook*

The threat which organized crime presents for the young democracies of eastern Central Europe and Eastern Europe will probably grow as a result of increasing democratization and focus on economic issues and hence the creation of additional maneuvering room. International transborder crime is dealt with in many fora but the UN conferences on crime-fighting in Cairo and Naples have shown that regional organizations are a necessity. Only through them can the work in specific subject areas be tailored to regional peculiarities. The OSCE is a logical forum for this important dialogue in Europe. Its structures (ministerial meetings, Secretariat) would provide the appropriate organizational framework.

The challenges to internal security call for a rapid response, not least in a continental framework. The OSCE can accept this challenge and provide assistance to the security organs. The opportunity should not be ignored.

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<sup>21</sup> A new No. 12a in the Budapest Decisions might have the following wording: "The cooperation of the participating States in all areas of crime fighting, particularly in connection with transborder organized crime."