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FREEDOM, SECURITY, JUSTICE: AN AGENDA FOR EUROPE

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LIBERTY, SECURITY, JUSTICE: AN AGENDA FOR EUROPE

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Mr Luis MARINHO,
Vice-President of the European Parliament

On behalf of the President of the EP, I have great pleasure in opening this conference on the area of freedom, security and justice.

The idea of an action plan[1] to implement this area dates back only to the European Council in Cardiff in June 1998, less than a year ago. To summarise briefly the steps that have already been taken to date, I would remind you that:

- the Treaty of Amsterdam contains new provisions with a view to developing the EU into an area of freedom, security and justice;

- work began with a communication from the Commission addressed to the EP and the Council, which set itself a twofold aim: (1) to analyse the actual concept of 'area of freedom, security and justice', the meaning of its various terms, and the way in which they fit in with the European context, and (2) to list the various routes that can be taken to put this area into practice.

In its conclusions, the Commission emphasised the need to deepen this preliminary approach, via an in-depth dialogue with the EP and, in particular, representatives of civil society.

- On 3 December 1998, the Council adopted the action plan on the best ways of implementing the provisions of the Treaty of Amsterdam with a view to establishing an area of freedom, security and justice. This action plan establishes, in particular, the schedule of priorities over two years and five years, and places particular emphasis on integrating Schengen into the EU's legal framework, the free movement of persons, combating trafficking in human beings, the development of Europol and the strengthening of judicial cooperation. The fight against organised crime is regarded as an absolute priority.

- As yet there has been no real public debate. The EP has appointed a rapporteur on this question, Mr Rinaldo Bontempi[2] ,who will tell you in more detail what has been done so far and what his expectations are.

The action plan should answer certain major concerns of public opinion in Europe, namely security, freedom of movement, respect for fundamental rights and democratic bases, and the rule of law.

The action plan is set to resolve questions whose scope is such that it is inconceivable that the EP could state its views on its orientations without first discussing it extensively with national parliaments and representatives of civil society.

That is why, in its annual debate on the progress achieved in 1998 on implementation of cooperation in the field of justice and internal affairs, the EP undertook not to adopt a position on the text the

1 Action Plan of the Council and Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice (OJ C 19, 23.1.1999)
2 See Annex 1.

Council will submit to it until the end of the six weeks provided for in the Protocol to the Treaty of Amsterdam on the role of national parliaments in the European Union.

This is also why the EP wishes to establish an information and early warning network with national parliaments, to monitor the decision-making process in the context of the area of freedom, security and justice. Our institution believes that parliamentary control must at all costs be strengthened at European and national level, by means of a permanent exchange of information.

Finally, it is with this aim in view that we are relying on representatives of civil society, on experts, and on professional associations to bring us the information they have and their own points of view, in order that our respective processes can be mutually reinforced.

Has the third pillar worked?
As the former chairman of the Committee on Civil Liberties, I believe that progress has been made. We found ourselves confronted with strange instruments, joint actions, joint positions that we did not know how to use, it took us years to reach agreement on the most trivial convention, the EP was rarely consulted, and usually only after the event. Since then, around thirty joint measures have been adopted, we have agreed on some twenty conventions, we have a budget, and the EP is very systematically consulted, even if we do not fail to complain about the small amount of power we have in this field.

We had asked for the third pillar to be 'communitised', and this has largely been achieved, as has the creation of an area of freedom, security and justice. The action plan cannot take effect until the entry into force of the Treaty of Amsterdam. With this in mind, the European Council has planned an extraordinary summit meeting with a view to updating it at Tampere on 15 October 1999, under the Finnish presidency. It is our task, with your help, to bring out at that meeting the viewpoint of representatives of Europe's citizens.

Presentation of the action plan of the Council and the Commission for the establishment in Europe of an area of freedom, security and justice.

Mrs Herta DÄUBLER-GMELIN,
Federal Minister of Justice
of the Federal Republic of Germany

Opportunities of an inter-parliamentary conference

We consider this inter-parliamentary conference to be extremely important, and we welcome the opportunity for the German presidency to describe to you the Action Plan of the Council and Commission for the setting up of an area of freedom, security and justice. It is our view that the creation and development of the European area of freedom, security and justice affects every individual citizen in the Member States of the European Union and is the concern of all of us. It is therefore entirely logical that we should discuss these questions in a wide context, particularly with members of national parliaments and with representatives of civil society and international organisations.

We are talking today about a "Judicial Space" that we all want. We ought to be aware of this unique situation, that a Judicial Space in Europe also means an area of common peace and common security. For this reason I think it is also important to point out that we must all appreciate that the crisis in Kosovo has now reached a climax.

We know that in Berlin today and tomorrow the Heads of State and of Government of our Member States are meeting to discuss Agenda 2000 and to lay the foundations that will ensure that our European Union and therefore the common area of freedom, security and justice will have a future within the enlarged boundaries.

These two points in time make this conference not only important but particularly relevant. I am sure that the contribution made by the discussions today will significantly promote the stabilisation and the future of our European Union.

A project for the future: the common Judicial Space

May I now turn to the Action Plan and begin by saying something about the background. We all know that the Treaty of Amsterdam introduces significant advances in the field of Justice and Internal Affairs. These concern, firstly, the extension of Community involvement in large parts of areas of activity previously included in the "third pillar", namely asylum, immigration, external borders and civil-law collaboration with institutional improvements. We also know that the Treaty of Amsterdam makes important advances in those areas of police and criminal law collaboration remaining in the third pillar. In addition to the expansion of areas of activity these are, in particular, the strengthening of the role of Community bodies, the new legal institution of the framework decision and finally the integration of Schengen together with the effective Schengen information system.

The task is now to derive the maximum benefit from the new opportunities presented to us by the Treaty of Amsterdam, acting of course in the interests of the citizens of Europe. The Action Plan commissioned by the European Council in Cardiff and accepted by the European Council in Vienna makes an important contribution to this in two ways.
Firstly, it contains not only fundamental views on the concept and embodiment of the new European Judicial Space but also an important and specific working programme for the next five years graduated by priorities. Secondly, it is an important component in the preparation (already started, of course, during the German presidency) for the Summit meeting in Tampere in October 1999, when for the first time only questions from the fields of Justice and Internal Affairs will be on the agenda of a European Council. I am sure our two colleagues from Finland will have more to say on this point. As regards content, the Action Plan concentrates equally on the creation of the new legal foundations and on the promotion and facilitation of collaboration between the Member States involved.

I should like to say a few words about the core features in the field of judicial collaboration in civil and criminal cases, that is about that part of the Action Plan that deals with the setting up of a European Judicial Space. My colleague Mr. Schapper, the Permanent Undersecretary, will deal with the parts of the Action Plan that concentrate on asylum, immigration and freedom of movement, as well as on police collaboration.

The European Judicial Space has existed hitherto as an aim which has been only partially realised. This project for the future calls for both vision and great persistence in practical implementation; it has often been a stony path to tread with a great deal of toil and trouble. We want to achieve a situation where citizens of the European Union, who are accustomed to very different legal systems in some instances in their own countries, can live in a uniform Judicial Space in which access to and enforcement of the law is possible for all on equal terms and without impediment. In particular this assumes equal access to the law for all citizens. It must therefore be ensured that those who harm or put at risk the liberty or security of the whole of society can be brought to justice equally validly in all Member States. There can be no bolt-holes for criminals. This requires unrestricted collaboration in criminal law matters among Member States as well as greater harmonisation of legislation.

Judicial collaboration in civil cases

As regards judicial collaboration in civil cases, the Action Plan places special emphasis on improving access to the law. Particular importance will also be given to this point at the special Summit in Tampere. We want to ensure that it is easily possible to establish which is the competent court and that there is no dispute about which law is applicable. The effective enforcement of a judgment must also be ensured.

Particular urgency also attaches to the conclusion of the revision work and to the Brussels and Lugano Agreements. We know that the Brussels Agreement of 1968[3] contains uniform rules valid throughout the EU on international jurisdiction, pendency of suits, and the recognition and enforcement of judicial decisions in civil and commercial matters. The Lugano Agreement of 1988[4] contains similar provisions and includes the EFTA countries. The task now is therefore to harmonise the two agreements with each other and to improve them, because much more favourable experience has been gained in practice in the courts.

We have undertaken to be able to conclude the work on content during the German presidency. The results in connection with the Brussels Agreement should then be finalised as a Community legal instrument once the Treaty of Amsterdam has come into force.

A second consideration is that we must see to it that the law on rights of association is further unified. At the moment the position is still that the question of which law is to be applied in a case with foreign involvement is answered in quite different ways, depending on the EU Member State where the citizen concerned goes to court. The so-called Rome II Project is currently being developed to deal with the law applicable to non-contractual debt situations. This is associated with the Rome Convention of 1980[5] on the law applicable to non-contractual debt situations, which is due to be revised. Rome III is a convention relating to the law of matrimonial causes, which will ensure that the question of the law to be applied in divorce proceedings will be determined in the same way.

Another important concern is the improvement of practical collaboration between the courts and the

3 The Brussels Convention on jurisdiction and the enforcement of judgements in civil and commercial matters of 27.9.1968 (OJC 27, 26.1.1998)

4 Lugano Convention 1988 (OJC 189, 15.11.1998)

5 Rome Convention 1980 (OJC 27, 26.1.1998)

public authorities in civil-law cases. We must check whether the concept of the European judicial networks for criminal cases can also be applied to civil cases. I think that here too it will be appropriate to appoint practising lawyers in each Member States as direct contacts. The improvement of collaboration between courts, e.g. in the taking of evidence, is essential. The watch-word here must be direct dealing, in other words the direct exchange of information between courts in the Member States.

A fourth point is that the Action Plan calls for an examination of the harmonisation of the rules of civil procedure that have trans-national ramifications. These too are indisputably necessary. I am sure that collaboration in civil-law matters especially will not only be made easier following the Treaty of Amsterdam but will also make substantial progress, not least because of its transfer to the first pillar. In this connection we hope and trust that there will be effective collaboration with the European Parliament and of course with the Commission.

Judicial collaboration in criminal cases

Its aim is, and must be, to ensure that the criminal prosecution system throughout Europe improves the protection of European citizens against criminal acts by unifying and, above all, improving the prosecution of criminals. At the same time, of course, the rule of law and legal certainty must also be guaranteed throughout Europe. The Action Plan envisages greater collaboration among the responsible authorities with, at the same time, the extension and harmonisation of the legal fundamentals. This is also necessary in order to highlight a number of special features, of which I shall mention just a few examples. Particular importance attaches to the work being done in the field of legal assistance in criminal cases. Here there is an urgent need to make progress quickly. We know how difficult this is. The modernisation of the traditional instruments of legal assistance is on the agenda. This is particularly important, especially bearing in mind the new telecommunications technologies and the planned provisions for monitoring telecommunications traffic. I should like to stress at this point that, despite a number of important questions that are still outstanding, we hope to reach a conclusion soon. As regards practical collaboration, we are working on the expansion of the European judicial networks in order to facilitate and, above all, to speed up cross-border collaboration between the judicial authorities of the Member States. We need to examine this question further, specifically with reference to another point. We must ask ourselves and resolve the following question: does the creation of a unified European Judicial Space not call for fundamental innovations, particularly in the areas of the mutual recognition of judgments in criminal cases, extradition or even the transfer of criminal trials? All this is very important, but for me what is really important is the role of the judicial authorities in their relationship to European institutions at European level. I am thinking about Europol, a very important institution the start of whose work we may expect to hear about soon. Any expansion of Europol in the direction of operational powers requires that the principle of the rule of law, the validity of which we also want to promote in the European Union, should go hand-in-hand with a corresponding and appropriate strengthening of the judicial supervision of Europol.

Creation of an EU charter of fundamental rights

To conclude this part, I should like to emphasise once more that, from my point of view, an important innovation of the Treaty of Amsterdam in the field of criminal law is to be found in Article 31(e) of the EU Treaty. Here it is expressly provided that, *common action on judicial*

cooperation in criminal matters shall include: ... (e) progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking. I think this is enormous progress, because in this way gaps in criminal liability can be closed rapidly and effectively. The Action Plan lists the most important crimes for which alignment at European level needs to be sought as a matter of priority. I would just mention in this connection such important areas as the trafficking in human beings, the sexual exploitation of children, fraud, corruption, money laundering and crimes against the environment.

I should like to refer briefly to another point, namely to Mr. Bontempi's draft report. We believe this is an excellent working document for the discussion. I also find it particularly remarkable that this draft makes a point which looks beyond the actual specific content of the Action Plan. It is the aspect of fundamental rights that is particularly emphasised here. I should accordingly like to take this opportunity not only to express my thanks for it, but also to introduce to you the initiative of the German presidency in drawing up an EU Charter of Fundamental Rights. In the present state of development of the Union, it is important and also necessary and timely to draw up a catalogue of the fundamental rights of the European Union. Many of our colleagues in the European Parliament and in national parliaments as well as in other civil organisations share this view. We know that a Charter of Fundamental Rights of this kind will also enable the significance of fundamental rights and their scope to be clearly consolidated for union citizens. We can confidently emphasise that such a Charter will be able to assist the Union in fulfilling its tasks. It will also indubitably strengthen judicial protection for fundamental rights. The German presidency will therefore be taking a new initiative for the creation - after a long period of deliberation - of an EU Charter of Fundamental Rights. In the course of discussions on its drafting, all considerations and all political viewpoints must be included: these will be contributed by the European Parliament, the national parliaments and as many groups as possible. The process of inclusion must of course be conducted in an appropriate manner.

Initially we are aiming for a resolution by the European Council in Cologne which will enable the process of drafting a charter of fundamental rights to get under way. This resolution should, if possible, start by outlining the substantive position regarding fundamental rights in the Union. Then a procedure should be agreed so that an appropriately constituted committee can draw up a charter of fundamental rights within a specified time. Similarly, a decision must be taken about suitable ways and means for bringing such a charter into effect as quickly as possible as part of the European Union's legal system. The aim should and must be to incorporate this charter in the Treaties within a specified time. The German presidency is relying on the support of the European Parliament, which has long been concerned to strengthen protection for fundamental rights and, in its resolution on the Treaty of Amsterdam, called for the drawing up of a specific catalogue of fundamental rights.

Mr Claus Henning SCHAPPER,
Secretary of State,
Ministry of the Interior of the Federal Republic of Germany

Implementation of the aims of the Treaty of Amsterdam in the field of internal affairs

The Action Plan for setting up an area of freedom, security and justice defines the working priorities of the EU in the field of justice and internal affairs for the first few years after the Treaty of Amsterdam has come into force. For the field of **internal affairs** in particular the Treaty of Amsterdam makes significant progress in two respects: firstly, the "Communitarisation" of the areas of asylum, immigration and external frontiers, and secondly, the inclusion of Schengen law and practice (the Schengen "acquis") in the European Union..

Given these innovations in the Treaty and the demanding programme of work which we have taken on with the Action Plan for the implementation of Amsterdam, an intensive examination of strategic and detailed questions of future internal affairs and justice policy in the European Union is now required.

The Action Plan starts by describing the political aims underlying the provisions in the area of justice and internal affairs and which are also expressly set out in the Treaty of Amsterdam: **freedom, security and justice**.

The Action Plan thus emphasises very relevantly that the concept of freedom according to the Treaty of Amsterdam goes way beyond freedom of movement in the sense of personal freedom to travel around, which remains a fundamental aim of the Treaty: Freedom also includes the protection of the private sphere - and this also covers personal data - as well as the basic protection of the individual by the State against illegal infringements when he is exercising his freedom.

To guarantee security, the Treaty of Amsterdam provides only an institutional framework which acknowledges the responsibility of the Member States for search and investigation proceedings as well as for the maintenance of internal security and public order. As early as in this chapter of the Action Plan significant emphasis is thus rightly given to the fight against organised crime and drug abuse and to the further expansion of Europol.

There is an inseparable connection between the exercise of freedom, the guarantee of security and the access to justice, and in future work there will be a real need to bring these aims into an equitable balance.

To this end the Action Plan defines working priorities, listing specific projects in the diverse fields of internal affairs and justice policy.

Brief comments on the main themes to be developed

May I now draw attention to some of the main themes that are to be developed quickly, i.e. **within two years**, in the area of internal affairs policy.

In the field of **asylum policy**, minimum standards are to be adopted for the procedures leading to the acknowledgment or refusal of refugee status. The more efficient implementation of the Dublin Convention will be examined, which may lead to the legal basis being converted into a first-pillar legal instrument. The Eurodac Regulation will be passed, so that the Eurodac System can start work.

As regards **immigration policy**, rules will be drawn up to define the status in law of legal immigrants and to provide improved measures to combat illegal immigration. A coherent EU policy for re-acceptance and return will also be developed.

With regard to **freedom of movement** and **external frontiers**, procedures and conditions are to be defined for the issue of visas by Member States. Rules will also be drawn up for a unified visa, and the provisions on the legal liability of transport companies will be further harmonised.

In the field of **police collaboration**, the emphasis is on **Europol**, particularly as regards contributing to an improvement in the fight against the smuggling of illegal immigrants. Under the terms of Article 30, paragraph 2 of the EU Treaty the responsibilities of Europol are to be further extended, the emphasis being put on operational collaboration with the Member States.

As far as the national **criminal prosecution services** are concerned, the conditions will be laid down under which they will be able to act in the sovereign territory of another Member State. Hot pursuit, observation, controlled deliveries and other forms of cross-border collaboration are important items in a successful battle against international crime. The experience and results of the Schengen collaboration can be quoted in this connection. It is also important that operational collaboration between the criminal prosecution services should be strengthened. The checking activities at the external frontiers that have been conducted jointly with great success for some time by the customs authorities of the Member States can be taken as a model for this.

Finally, it should be investigated whether the **data protection regulations**, which have been included hitherto in the various conventions in the field of justice and internal affairs, can be unified.

Similarly, the issue of minimum rules for the temporary protection of displaced persons and for joint and several compensation among Member States also has a high priority for future work.

Themes to be developed in the medium term

In the medium term, i.e. within 5 years, minimum rules will have to be prepared, for example, for the recognition of nationals of non-Member States as refugees. Rules will also have to be enacted laying down procedures for the issue of visas for long-term stays and for the issue of residence permits.
In the police sector, an information and analysis system for money laundering is to be set up. Giving Europol access to the customs information system and establishing a system for the electronic exchange of fingerprints between Member States will also be studied.

This is just a selection of projects that are to be carried out over the next few years. As I said at the beginning, the Action Plan provides a bold programme of work, which will require the maximum effort from Member States and from the Commission.

Improvement of working structures in the Council

A more technical precondition for effective configuration of the work is **efficient working structures in the Council**. The Action Plan addresses this question unequivocally and calls for a reform of working structures in the field of justice and internal affairs before the Treaty of Amsterdam comes into force.

Last week the AstV approved the proposal submitted by the German presidency regarding the areas of activity of the Council committees in the field of justice and internal affairs. From the almost overwhelming number of committees in the EU and in the context of Schengen we have tried to develop a coherent committee structure in the first and third pillars and in this way to comply with the principles set out in the Action Plan regarding the working structures. As well as this, however, bearing in mind the division of internal affairs and justice policy between the first and third pillars, we need to have intensive coordination going beyond these pillars in order to ensure that the work will lead in a coherent fashion to the building up of a **unified** area of Freedom, Security and Justice.

Close collaboration necessary

Nevertheless, the establishment of procedural bases is only a small step towards fulfilling the tasks that will face us in the next few years. If this work is to succeed even in part, **commitment, an imaginative approach** and **a willingness to compromise** will be required above all. I am confident that, with the active support of the Commission and in constructive cooperation with the European Parliament, this challenge can be met by the Member States, who will thus fulfil the expectations of Union citizens with regard to collaboration in justice and internal affairs policy.

Mrs Anita GRADIN,
Member of the European Commission

Visions which bear fruit are always born of a concrete reality. They are fashioned by people's everyday lives and are nurtured by the desire for something better. In politics therefore there is a simple ground rule: The more clearly we link our political visions to people's everyday lives, the greater the chance that they will come to fruition.

The ambition to build an integrated Europe has produced results. We have created possibilities for people to settle, work, trade and travel across the EU's borders. For the majority, language barriers and other practical obstacles continue to restrict their mobility. And that will remain the case for a long time to come. But young people in particular are more and more frequently taking advantage of the opportunities which the new Europe offers. They are studying, starting up businesses, taking jobs or starting families without much regard for national boundaries.

We must jointly organise the surveillance of Europe's external borders in a way which is effective. Trade, tourism and other travel must be promoted. Asylum-seekers must also know that their request will be examined objectively. At the same time smuggling and trafficking in human beings and other criminal activities must be stopped.

The lead which internationally organised crime enjoys must be curtailed. In this connection the fight against narcotics must remain a main priority. Terrorism likewise. At the same time a vigorous campaign is needed against the extensive transnational fraud, counterfeiting and large-scale vehicle thefts.

We must in general begin thinking in terms of Europe as a common judicial space. Parents must, for example, be able to rely on the fact that a decision on shared custody will apply throughout the Union. And victims of crime must be able to assert their rights, despite the fact that the EU's legal systems differ one from another.
Work in these and a series of other areas is a basic prerequisite if the concept of Europe is not to become unsustainable. Integration and the struggle for more freedom must never occur at the expense of people's security and law and order.

Cooperation in the fields of justice and home affairs is now into its sixth year. A number of initiatives have been taken and in many areas we can show impressive results.

In addition we have a deeper understanding of what remains to be done. The new Treaty also sets up an ambitious goal for the future: namely "...to keep and develop Europe as an area of freedom, security and justice".

As an overall expression of objectives this is particularly apt. The combination of the concepts of freedom, security and justice provides a simple, clear and at the same time ambitious indication of the direction of future work. What is required now is to define the concrete implications of this new concept.

Ever since the new Treaty was signed I have asserted that we must make clear how far we are actually prepared to go in the fields of justice and home affairs. How high will our level of ambition actually be? What is the extent of the national sacrifices which European integration will require? And what will the cost be?
As long ago as July of last year the Commission presented a proposal on the subject "freedom, security and justice". In this document we emphasised in particular that freedom must mean considerably more than simply the absence of internal border controls. In our opinion it also means that people will avoid being subjected to abuse, deception, discrimination and every form of violence.

The Rapporteur Bontempi lays great emphasis specifically upon the rights of the individual. I am very pleased about this.

Furthermore, freedom in Europe cannot apply merely to the EU's citizens. It must also cover all people who live and stay within the Union.

There is no doubt that the tasks which lie ahead of us are immense. Not least in view the fact that in future the EU will also comprise the new democracies in Eastern and Central Europe. The vision which we are striving towards today must be adjusted now to the Europe of tomorrow.

There is moreover a problem in that the field of home affairs and justice embraces several different areas of activity. Police cooperation does not for instance have much to do with cooperation on refugee questions. We must therefore carefully tailor our objectives to each individual area of cooperation.

Let me give some examples of what I mean:

The new EU Treaty offers a series of advantages for the citizens in a number of different regions. Schengen is part of this cooperation within the Union. The free movement of people across borders is at last being fully realised. Common rules for external border controls, rights for foreigners in possession of a visa to travel freely around Europe within the EU and a common visa policy are also becoming a reality.

But liberty signifies a lot more than freedom of movement. It also implies the right to live in a society which takes effective action against those who place themselves above the law. The concept of Europe therefore requires that all Member States have confidence in each other's ability to deal with serious organised crime.

This is to a large extent what Europol does. Its mandate is already broadly formulated, and we now have the tools we have long waited for in the fight against organised crime. When the Treaty of Amsterdam is in place, Europol may also have further tasks.

Another central area is the fight against drugs. The Commission will present a contribution to the Strategy Plan against drugs which will be executed within the Union over the next five years[6]. The emphasis should lie principally on the need to increase our preventive efforts.

I myself took part in the UN's special meeting on drugs in New York last summer. The final document from the meeting was very good. It confirmed that a combination of restrictive policies and far-reaching acceptance of social responsibility was the only practicable way forwards. This view is also clearly mirrored in the resolution taken by the European Parliament in November 1998.

When we talk about crime control, we must not forget the role of the judiciary in cooperation. Once the work of the police and the customs authorities is completed, the prosecutors, lawyers and judges have to take over. To an increasing extent, judicial processes are taking on an international dimension. Europe's courts and prosecuting authorities therefore also need modern and effective tools. As the systems function today, far too many cross-border crime investigations are discontinued. The reason for this is that it is too complicated to pursue them further.

In addition, things are such that our legal definitions vary within the Union. This causes major problems, not least where the fight against cheating and fraud is concerned. A criminal act in one Member State is seen as a misdemeanour in another. The penalties also vary widely. This creates almost perfect conditions for organised crime.
Self-evidently we must have realistic expectations in the area of judicial cooperation. Our Member States' legal systems have evolved independently of each other and we have differing historical

6 - Report from the Council, from 2 June 1998, to the European Council including key elements of a post 1999 EU drugs strategy, on activities on Drugs and drugs related issues under the UK Presidency (7930/2/98 – REV 2 – CORDROGUE, 26- SAN 80 – PESC 118 – ENFOPOL 70)

- EP resolution of 13 April 1999, on the report mentioned above (OJC 219, 30.7.1999)
- Communication of the Commission of 26 May 1999, from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, on a European Union Action Plan to combat drugs (2000-2004) (COM(99)239, 26.5.1999)

experiences and prerequisites. This is reflected both in people's sense of justice and in the formulation of our laws. Actually it astonishes me that the differences are not greater.

Even though the legal systems function well on the national level, the differences cause problems within an international legal environment. Judicial cooperation within the EU is therefore primarily aimed at bridging the differences which exist. That is, to get our judicial authorities to work more effectively together despite the current differences, and thereby offer people genuine access to the existing legal systems.

In certain respects we would also benefit from having regulations which are more alike. Disparities provide loopholes and organised crime takes full advantage of these. Our primary task must always be to ensure that criminals do not escape punishment simply because the judicial systems function differently.

The Treaty of Amsterdam will involve changes in the judicial field too. The Commission has the right of initiative where the criminal law is concerned. Furthermore, civil law is being moved from the international world of the Third Pillar into the area of Community cooperation. The question is how we can best take advantage of these changes.

My view is that we should try to agree on what types of crime ought to be regarded as particularly serious in all Member States. Corruption, trafficking in human beings, drug smuggling, rape, sexual exploitation of children and terrorism are some examples of crimes which should result in equally severe punishments.

When it comes to how the legal systems are organised and how the judicial process itself operates, I am a warm supporter of the idea of equal justice.

Let me also say a few words on the immigration and asylum questions. Here, all of the Member States are dependent upon each other. People must be able to rely on the fact that migration policy is being managed satisfactorily throughout the EU area.

Classic labour force immigration ended as far back as the middle of the 1970s. High unemployment figures and an uncertain economy mean that immigration of this sort is hardly likely to arise again in the foreseeable future, but every year there arrive in the EU a large number of students, researchers and entrepreneurs, and people who simply want to spend their old age here. And the reuniting of families has long constituted the most significant form of immigration into Europe.

Today, the immigration rules differ from one Member State to another. The Commission has therefore put forward proposals for rules which are more similar. Among other things we have raised the question of immigrants' basic rights - not least as regards their entry into the labour market within the EU. The question of the social status of immigrants is absolutely fundamental. It affects the living conditions for around 10 million people who have for many years been living lawfully in our Member States.

The fight against the smuggling of human beings must be intensified. As long as immigration is controlled, there will be people who try to find their way around the controls. This has created a market for large-scale trafficking in human beings. This is perhaps the greatest challenge. I am

thinking particularly about the cynical sex trade in women which is going on around Europe. Ever since I came to Brussels I have endeavoured to get these questions onto the EU's agenda.

The refugee policy in the EU has a good common foundation through the 1951 Geneva Convention. At the same time the Convention will soon be half a century old. The world has changed since then, and the refugee situation has changed with it.
Many of those in need of protection no longer meet the criteria which were worked out during the days of the cold war. Increasingly we find ourselves faced with refugee crises which flare up so rapidly, and on such a large scale, that we are unable to apply the Convention. In such situations the need for protection must always come before formal rules.

My view is, and will remain, that we need to supplement the Geneva Convention with new legal instruments for asylum. That is the reason why the Commission has adopted several important initiatives within this area. One deals with temporary protection. Another - with jointly shared responsibility[7]. A third - with making the asylum process more effective[8].

In the area of asylum policy, too, I had wanted us to make further progress. In this respect I have had strong support from the European Parliament. In the Council of Ministers, on the other hand, there was some resistance when theory was faced with reality.

This augurs ill. Not least in the light of what is now going in Kosovo. It is therefore extremely urgent that the heads of state and government make use of the meeting in Tampere to give a powerful political boost in the area of asylum policy as well.

All of these questions which we are working on within the field of home affairs and justice affect our citizens in their daily lives. It is in a way paradoxical that the area of EU cooperation which perhaps involves people most is also the one with which they are least familiar. In future, therefore, we must create as much openness and transparency as possible in our work.

During recent years the European Parliament has shown increasing interest in questions relating to home affairs and justice. It also guarantees effective cooperation in the future. Active support from the national parliaments is equally necessary. I hope that we will find formulae which will allow the influence of the national parliaments to increase. A strong national parliamentary commitment is a basic prerequisite for the effective handling of these questions in the Council of Ministers. There is a great deal more to be done in this respect.

Generally speaking it will take considerable political will to produce the necessary decisions. The new

7 Amended proposal for a joint action, of 24 June 1998, concerning temporary protection of displaced persons, presented by the Commission pursuant to Article 189a(2) of the EC Treaty and proposal for a joint action concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons (OJC 268, 27.8.1998 – COM(98)372 final of 24.6.1998 and COM(98)372/2 of 3.7.1998 – Cor. Cover Page FR, DE, EN)
Resolution of the EP, of 20 November 1998, on the modified proposal of the Commission for a joint action concerning the temporary protection of displaced persons (COM(98)0372 – C4-0505/98 – 97/0081(CNS) – new consultation)-legislative resolution
Resolution of the EP, of 20 November 1998, on the proposal for a joint action concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons (COM(98)0372 – C4-0506/98 – 98/022 (CNS) – legislative resolution – rapporteur: Mr Jan Kees Wiebenga (OJC 379, 7.12.1998)
8 Towards common standards on asylum procedures (SEC (1999)271 of 3.3.1999)

Treaty is a disappointment for me as regards the forms of decision in the field of home affairs and justice.

I feel that the need for unanimity will remain for at least the next five years. Certainly, cooperation on these questions is still regarded as a sensitive issue! An important objective in the next few years will therefore be to continue engendering confidence in the EU's efforts in the whole of this area.

In the short term what is required is to invest the concepts "freedom, security and justice" with tangible meaning.

Preparation of proceedings in respect of the Tampere Summit

Mr Jussi JÄRVENTAUS,
Minister of Justice of Finland

A comprehensive development is required for the European Judicial Space. The Treaty of Amsterdam provides for an opportunity to create an area of freedom, security and justice in Europe – an opportunity that is not to be missed. The special meeting of the European Council in Tampere in October makes it possible for the heads of state and government to lay down a framework for the further development of the area.
Significant political results should be reached in Tampere, so as to meet the expectations of the citizens on the improvement of security and justice in Europe. In addition, the decisions of the European Council must be easy to understand. For concrete results to be achieved, the Tampere agenda should be limited to certain key issues, such as immigration and asylum, the fight against cross-border crime and the development of the European Judicial Space. This latter issue involves the promotion of the legal safeguards available to the citizen.

The leading principle in the development of the European Judicial Space should be the improvement of the legal security of the citizens and of their equality before the law. To achieve this objective, an adequately uniform set of basic legal rules should be laid down in the Union. Citizens throughout the Union should be able to trust that they will receive equal treatment before any administrative authority or court of law, no matter what is the Member State in which they are located.

The concrete goal of the improvement of the legal safeguards available to the citizen should be the guarantee of access to information, the right to make initiatives and pursue proceedings, as well as to appeal administrative or judicial decisions. Many of the problems are most evident in proceedings of an international nature, where the parties or the witnesses are from different countries. Usually the problems are more practical than theoretical. Indeed, it may be difficult for a citizen even to find out which authority to approach and what measures to take in order to protect his/her interests.
Accordingly, we should aim for concrete measures for cutting the red tape that causes problems to the citizens in their everyday life.

Some thought should be given to the issue of how the Judicial Space can be developed as comprehensively as possible. On one hand, we need harmonisation of legislation or the creation of

common minimum standards. On the other hand, we should proceed by removing any technical barriers to the efficient co-operation of the administrative authorities of the various Member States.

In addition, more trust should be put in the systems and authorities of the other Member States. The equality of the citizens before the law should be improved also by way of joint actions by the Union for the prevention of cross-border crime. What is needed from Tampere is a clear political message on where the EU stands on this issue, as well as on our commitment to the decisions that are made so as to fight such crime.

Jurisdiction of the Court of Justice following the entry into force of the Treaty of Amsterdam

Mr Nial FENNELLY,
Advocate-General at the Court of Justice
of the European Communities

Judicial restraint

I would like to make two preliminary remarks concerning the position of a Member of the Court of Justice in attending a conference such as this. Belonging to the judicial arm of the European Union, one is naturally bound to respect a certain reserve in participating in discussions at the political level. In accordance with the precepts of Montesquieu, the legislative function is separate from the judicial one. The legislature makes the laws. It is only subsequently that the Court can normally express its view though there is one exceptional procedure permitting the Court to be asked for its opinion in advance. The second comment is related. The Court is, by a somewhat strained analogy, a consumer of the services of the Community legislature. It is at the end of the production chain. Your current discussions in the context of your Action Plan will have a delayed impact on the Court. It is, nonetheless, a privilege to be allowed to see the legislative work at its preparatory stage. It is impossible not to be favourably impressed by the fact that the major institutions of the Union, at the very threshold of the entry into force of the Treaty of Amsterdam, are actively engaged in the formulation of policy positions regarding the new areas of competence which it creates. This represents a positive and cohesive vision for the Union, a determination to give real effect to the area of Freedom, Security and Justice.

Movement of pillars

May I now advert to two remarks made by the Court in its capacity as an Institution of the Union in its report of 1996 for the Intergovernmental Conference:

"The Union, like the European Communities on which it is founded, is governed by the rule of law"; and:

"It is obvious that judicial protection of individuals affected by the activities of the Union, especially in the context of cooperation in the fields of justice and home affairs, must be guaranteed and structured in such a way as to ensure consistent interpretation and application both of Community law and of the provisions adopted within the framework of such cooperation."

This remark was prompted by genuine concern at the fragmentation of the Treaty structure which resulted from the so-called "pillar" arrangement within the Treaty on European Union (Maastricht Treaty). Not only was a dual Treaty structure adopted involving a dilution of the legislative role of the Community legislature so that the important new competences created at Maastricht, relating in their nature very directly to individuals, were matters merely acknowledged to be of "common interest" to the Member States, but the legislative procedures of Article 189a (now 249) were largely abandoned in favour of "joint positions", "joint action" and conventions. Of greatest concern to the Court was the exclusion (by Article L) of its jurisdiction from all aspects of this new co-operative structure, save where the Member States chose, pursuant to the now defunct Article K(2)(c), third paragraph, to confer jurisdiction upon it relating to the interpretation and application of a convention. This was true even, remarkably, of Article F(2), now Article 6(2)of the TEU, which provides for the respect by the Union of "fundamental rights as guaranteed by the European Convention for the Protection of Human Rights ... as general principles of Community law" (emphasis added). The irony is that it was the Court which, over a period of some twenty five years, had in its case-law developed and applied these principles of "Community law". At least this anomaly has been removed by the terms of Article 46(2)(d) of the TEU.

At the very least, the Treaty of Amsterdam has to be seen as representing a positive development, insofar as it tends generally to re-establish the coherence of the Treaty structure. The first and third pillars are no longer rigidly separate.

The subject-matter of this conference is that aspect of the new Treaty which, under the rubric of the new term, "freedom, security and justice" seeks to integrate a number of diverse, though related, aspects of human life. Freedom and security can be seen as representing important political aspects, whereas the inclusion of "justice" is an acknowledgement not merely that the Union is founded on the rule of law but that the rights of individuals are to be respected and guaranteed. Consequently, the courts at both national and Union level are to exercise their interpretative and supervisory role.

Justice, in the context of the new Treaty has a second, though not a secondary, meaning. Both Title IV of the EC Treaty (Articles 61(c) and 65) for civil matters and Article 31 TEU (ex Article K.3), for criminal matters, envisage steps to extend judicial cooperation between the Member States.

The rapprochement between the two pillars takes two forms. Firstly, it involves the transfer to the Community pillar of substantial parts of the subject-matter of the third pillar created at Maastricht. Obviously, the most important of these is the entire area of control of the external borders of the Union and related policies concerning asylum and immigration. A comparison of the former Article K(1) with Articles 61 and 62 indicates a more or less direct transfer.

The second form consists in the change in content and structure of the "third pillar" itself. The expression "common interest" of the Member States is replaced by "the Union's objective" for the changed subject-matter.

Jurisdiction of the Court

So far as the Court of Justice is concerned, the important point to emphasise is that it is conferred with jurisdiction in areas from which it was excluded by the Treaty of Maastricht. Article 46

(formerly Article L) provides that the Court is to have jurisdiction in accordance with the provisions of the Treaties in respect of "the provisions of Title VI, under the conditions provided by Article 35". The latter Article, however, while conferring jurisdiction "to give preliminary rulings on the validity and interpretation of framework decisions and decisions, on the interpretation of conventions established under this Title and on the validity and interpretation of the measures implementing them", make this jurisdiction conditional upon a declaration to be made by each Member State, which may, in turn, vary in its effect. A declaration may confer the right to refer questions on all courts of the Member State or restrict it to courts of final appeal. No part of Article 35 provides the Court, however, with jurisdiction to interpret Title VI itself. This is, presumably, because the provisions of Title VI do not appear capable of having direct effect; direct effect is expressly ruled out for framework decisions (Article 34(2)(b)).

As a consequence of the transfer of the principal subject-matter of the third pillar to the Community pillar, the Court would normally enjoy the jurisdiction conferred by Article 234 (formerly 177). The application of that Article is, however, restricted by Article 68(1), in the sense that only courts "from whose decisions there is no remedy under national law" may make references. In this case, as distinct from Article 46, such courts are obliged to refer. This was a pragmatic and practical response to the expectation that, in matters of asylum and immigration, very large number of references were likely to be generated by an unmodified Article 234 and where, in addition, there is an imperative need for speedy decisions. Furthermore, Article 68(3) introduces a novel form of extra-jurisdictional request for rulings on questions of "interpretation of this Title or of acts of the institutions of the Community based on this Title". The Council, the Commission or a Member State may ask the Court for interpretations of Title IV or acts of the institutions thereunder, independently of any national litigation. This provision has been compared with Article 4 of the Protocol on the interpretation by the Court of Justice of the Brussels Convention of 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters in the event of conflicting judgments between the courts of Member States or the Court of Justice, which has remained a dead letter. I do not predict that fate for Article 68(3).

Using a rather imprecise method of counting, it seems that the Court may be called upon to exercise, in particular, its interpretative role in five new distinct circumstances. One member of the Court has aptly called this a jig-saw puzzle. I might add that many pieces remain incomplete, some may or may not be supplied later and, even then, their exact shape is unclear. The five are:

Firstly, as noted, pursuant to Article 46 of the Treaty on European Union, in respect of Title VI of that Treaty, in effect, police and judicial cooperation in criminal matters;

Secondly, pursuant to Article 40 of the Treaty on European Union, (not relevant for present purposes) in respect of matters covered by authorized closer cooperation, but within the scope only of Title VI of that Treaty;

Thirdly, pursuant to the new Article 11 of the EC Treaty, in respect of closer cooperation which Member States are authorized under fairly restrictive substantive and procedural conditions to establish among themselves;

Fourthly, as noted, pursuant to Article 68, in respect of the new Title IV of the EC Treaty, concerning visas, asylum, immigration and related matters;

Fifthly, pursuant to Article 2 of the Protocol integrating the Schengen Agreement into the framework of the European Union, in respect of the Schengen acquis, and then, pursuant to potentially varying jurisdictional rules.

These provisions are widely scattered through the Treaties and Protocols. The language used is not always consistent. The inclusion of Member States is variable and uncertain both as to the fact and the manner of their participation. Even now four Member States have made no declaration pursuant to Article 40 of the Treaty on European Union. All of this is likely to pose problems for the courts and tribunals of the Member States when deciding whether they have jurisdiction to refer questions and then whether or not they are obliged to do so.

One may hope that, at the next Treaty revision, the opportunity will be grasped to revise these provisions so as to produce a more workable scheme.

The experience of the Court: free movement of persons

This diversity in the exercise of jurisdiction is, more substantially, matched both by the diversity of subject-matter covered by the new competences and the new legislative instruments and procedures. The Court will certainly be called upon to exercise its jurisdiction in areas which have not hitherto come within its purview.

On the other hand, the Court has a not insignificant experience over a period of more than twenty five years, taking as a starting point the end of the original transitional period at the end of 1969, in operating as the judicial arm of the Community, in securing for Community nationals respect for the rights of free movement within the Member States to which the Treaty entitled them.

One can begin with the trilogy of cases starting from Van Duyn, decided in 1974, where the Court established the principle of direct effect of the rights of free movement of workers, of freedom to provide services and establishment. Although the origin of each of these rights was economic, the legislature appreciated that effective freedom of movement of persons had to imply the right to enjoy the same conditions of life in the host Member State as that State's own citizens. The ripple effect of economic rights spread into the social context.

The Community has gone a long way towards establishing, within its boundaries, an area of genuine freedom of movement. Community legislation, interpreted by the Court of Justice in the light of the Treaty objectives, has, in particular, established a broad range of ancillary social, family and amenity rights as flowing directly or indirectly from the declared economic rights. In pursuit of this objective, concrete expression has been given to the principle of freedom of movement in the following respects:

- the abolition of restrictions on movement and residence of workers, providers of services and those seeking to be established in other Member States and the grant of all social and tax advantages enjoyed by workers of the host State;
- the obligation of Member States to grant the spouses and children of such persons rights of residence equivalent to those granted to the person himself;
- the grant of rights to social security benefits in a host Member State to Community migrant

workers;
- the grant of rights to remain in a Member State after the end of employment, or having pursued self-employed activity or on retirement (subject to the proviso of not placing an excessive burden on the host State);
- rights to remain and reside more generally, in particular for the economically self-sufficient; rights of residence for students.

One of the notable cases in the field is Cowan, where the Court decided that a national of another Member State travelling as a tourist and, therefore, to receive services, is entitled to be protected from harm on the same basis as the nationals of the host State, under a scheme of compensation from injury provided under national law.

Case-law on expulsion

The conditions under which non-nationals can be expelled from a Member State have had to be considered in a long series of cases, also going back to Van Duyn, where the Court ruled that Directive 64/221 had direct effect. That directive was adopted to coordinate the rules envisaged by Articles 39(3) (ex Article 48(3)) and 46 (ex Article 56), under which Member States retain certain rights to curtail the freedom of movement conferred on Community nationals on grounds of "public policy, public security and public health".

The Court has had to consider refusal of entry or expulsion of persons convicted of drugs and firearms offences as well as persons engaged in political agitation and prostitution amongst others.

The principal elements in the case-law are that:

- reliance by a Member State on one of the grounds, "public policy, public security or public health" constitutes a derogation from a fundamental principle of Community law and must, accordingly, be strictly construed;
- both Article 48 of the Treaty (now 39 EC) and Article 3 of the directive are directly effective;
- although "Member States continue to be, in principle, free to determine the requirements of public policy in the light of their national needs", Article 3(1) of the Directive limits that "discretionary power";
- a measure concerning an individual must be based exclusively on the conduct of that individual and not on "grounds extraneous to the individual case" such as a general objective of deterrence; furthermore, for example, "previous criminal convictions cannot in themselves constitute grounds for taking" measures to restrict the residence rights of a Community national; they can only constitute evidence of the present propensity of the person concerned to commit crime. The danger of the individual to society has to be assessed at the movement of the proposed deportation as factors affecting conduct are liable to change over time.

Third country agreements

The existence of Community agreements with certain third countries has led the Court in addition to rule on a large number of cases concerning the rights of workers from those countries and the members of their families to work and reside in the community. The four principal agreements conferring rights on workers from third countries are those with Turkey, Morocco, Tunisia and

Algeria. Turkish workers are in the most favoured situation legally of all these four. Article 6(1) of Decision 1 of 1980 lays down conditions under which a Turkish worker may accept employment in a Member State which has admitted him. The right to renewal of an employment contract without the renewal of the corresponding right of residence would be pointless. Thus the employment rights conferred by Article 6 of Decision 1 of 1980 "necessarily imply the existence of a corresponding right of residence for the person concerned, since otherwise the right of access to the labour market and the right to work as an employed person would be deprived of all effect". Family members, covered by Article 7, may have similar concomitant rights of residence.

The position of Moroccan workers was the subject of the judgment of the Court in El-Yassini, which concerned an attempt to apply, by analogy, the principles developed on the applicability of the Turkish Agreement to the agreement with Morocco. The Court ruled that Moroccan workers did not have the same rights. In substance, Decision 1/80 conferred certain employment rights on Turkish workers (once admitted by a Member State), which gave the implicit right of residence. The Moroccan agreement did no more than confer a right not to suffer discrimination on a person once employed, but no right to the employment itself, and thus no right of residence. Consequently, a Member State, the United Kingdom, was entitled to expel a Moroccan worker who had gained access to the United Kingdom, married a British citizen, and obtained employment, once he had been divorced from his British wife.

Citizenship

A recent important addition to the Community legal context is the establishment by Article 8a(1) (now Article 18) of the Treaty on European Union of citizenship of the Union that:
"Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect."

Article 8a was considered by the Court in Martínez Sala, where the issue was the right to receive a social security benefit and in Bickel where the issue was the right of German and Austrian nationals to have legal proceedings against them in the German-speaking Italian province of Bolzano conducted in the German language.

All of these areas have given the Court a substantial exposure over many years to issues affecting individual nationals of the Member States as well as third-country nationals. The substantive issues have been varied, even if not yet as varied as human life itself. There is no reason to doubt the Court's competence and willingness to take on the new responsibilities involved in the Treaty of Amsterdam.

Conclusion

I will before concluding make two general remarks about the exercise by the Court of its varied functions in the light of the new treaty.

The first arises from the very fact that the Court will, for the first time, have to exercise jurisdiction in relation to the Treaty on European Union. Here it is important to note that Article 47 of that Treaty provides, in effect, that nothing in it is to affect "the Treaties establishing the European Communities

or subsequent Treaties and Acts modifying or supplementing them". This is similar to the position taken by the Court in 1971 in ERTA that acts adopted by the Member States relating to matters within the "power of the Community" are subject to review for their legality and consequently for their conformity with Community law by the Court. It has important implications for the legal basis of measures adopted in the future under the Treaty on European Union, which might have been adopted under the Community Treaties. As the Court itself reiterated more recently, it is its "task ... to ensure that acts which, according to the Council, fall within the scope of [what was then] Article K.3(2) of the Treaty on European Union do not encroach upon the powers conferred by the EC Treaty on the Community". Thus, the fact that the Court will be exercising jurisdiction in respect both of the Treaty on European Union and the Community Treaties, combined with the diversity of new legal procedures and the potential overlap of subject-matter between the Treaties offers scope for institutional disputes regarding legal basis and procedural matters.

The second point is that all of the provisions of both Treaties in the area of freedom, security and justice contain a reservation in favour of Member States in similar terms:

"This Title shall not affect the exercise of the responsibilities incumbent on the Member States with regard to the maintenance of law and order and the safeguarding of internal security" (Article 33 of the Treaty on European Union, Article 64(1) of the EC Treaty).

A similar provision was contained in Article 100c of the EC Treaty (now repealed), but has not been interpreted by the Court. Although this quite strong wording was no doubt deliberately chosen so as to establish a reserved area not subject to scrutiny by the institutions, including the Court, it is tempting to draw a parallel with the provisions of Articles 39 and 46 concerning "public policy, public security and public health" as discussed above and to suggest that the new derogations would be subjected to equally strict scrutiny.

To conclude, the Court will willingly accept its obligation to exercise the wide range of new jurisdictions conferred upon it. Its permanent tasks are to interpret and apply the Treaties, to maintain the institutional balance within the Treaties and that between the Community and the Member States, and to ensure that the complete system of judicial protection established by the Treaties is respected and maintained. Consequently, within the constraints imposed upon it by resources, it will welcome the challenge of extending further the Community legal system to nationals of third countries.

The impetus given by the European Parliament and its Committee on Civil Liberties and Internal Affairs since the entry into force of the Maastricht Treaty

Mr Rinaldo BONTEMPI,
rapporteur for the European Parliament's committee on Civil Liberties
on the area of freedom, security and justice

In this respect, one of the main objectives must be to ensure that the great potential and enormous innovations of the Treaty of Amsterdam are not betrayed. Bearing in mind, on the one hand, the very real normative and procedural difficulties and, on the other, the current lack of any strong political will, there is reason to fear that the mountain will be turned into a molehill - that the tremendous

potential of the Treaty of Amsterdam will come to nought. This would be a major disappointment to European citizens, who are feeling a real need to see their European citizenship as having genuine substance, and would have negative consequences for European institutions and for democracy.

Three concepts have a fundamental significance: participation, transparency and effectiveness. I am not speaking because of any love of style or rhetoric but because I truly believe that these criteria are vital to the establishment of an area of freedom, justice and security, as intended by the Treaty of Amsterdam. I hope that this meeting would be able to make a broad contribution to establishing participation and offer some clear indications concerning a way forward that would respect the principle of transparency.

Transparency, participation, efficiency: key elements of an action plan

Mr Jacob SÖDERMAN,
European Ombudsman

The Action Plan presented by the Council and the Commission opens a new frontier in the evolution of the Union. But one whose implications need still to be weighed.

My contribution, however, has more modest aims: firstly, to give you a brief overview of the challenges that the new provisions will bring about in the defence of the rights of our citizens, and secondly, some possible suggestions to make that task more efficient.

Among the new provisions of the Treaty of Amsterdam, those aimed at the establishment in the Union of the area of freedom, security and justice appear as one of the most challenging innovations. They seek to translate into reality a long overdue objective: that of a Europe without internal borders, in particular as regards the right to free movement of people. The increasing number of complaints received by the Ombudsman in the past year on this subject are evidence that the problem has become a major public concern. The Action Plan could be instrumental to improve the situation, and in doing so it should contribute to bringing the European Union closer to its people.

Nevertheless, the establishment of an area of freedom, security and justice can only be founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. To ensure that these foundations are secure, it is imperative that such area is firmly rooted under democratic control, that its structures are accountable, and that its functioning operates openly and transparently. What role can the European Ombudsman play in helping to bring these aspirations into reality?

The task of the European Ombudsman, as set out in the new Art. 195, is to deal with instances of maladministration in the activities of the Community institutions and bodies with the single exception of the Court of Justice and the Court of First instance acting in their judicial role. Every citizen or resident of the Union may apply to the European Ombudsman, regardless of their personal interest in the instance of maladministration. Even though the term 'maladministration' is not defined by the Treaty, it is clear, as I already stated in my Annual Report in 1995, that there is maladministration if a Community institution or body fails to act in accordance with the Treaty and with the Community acts

that are binding upon it. In defining maladministration, respect with fundamental freedoms and human rights are to be taken as one of the basic criteria.

There are two elements regarding the remit of the Ombudsman which I should stress at this point: my mandate concerns only the administration at the Union level, and insofar as their activities may constitute an instance of maladministration.

In order to build up the Union as an area of freedom, security and justice, the Treaty of Amsterdam has moved a number of new policy areas related to the **free movement of persons**, in particular those governing visas, asylum, and immigration into the Community realm (new Title IV of the EC Treaty). Since these matters shall become an integral part of the activities of the Community, accordingly they will fall under the remit of the European Ombudsman. Therefore with the entry into force of the Amsterdam Treaty, the Ombudsman, following a citizen's complaint or at his own initiative, will be empowered to inquire into potential cases of maladministration in the activities of Community institutions and bodies when implementing the provisions of this Title IV.

A significant component for the establishment of that area of freedom, security and justice, namely issues related to **police and judicial cooperation in criminal matters**, will still remain outside the Community framework, albeit within the mandate of the Union (Title VI of the EU Treaty). Nevertheless, some elements of the Community scheme will still be applicable to these areas, as laid out in the new Art. 41 par. 1
"Articles [...] 195 [...] of the Treaty establishing the European Communities shall apply to the provisions relating to the areas referred to in this Title"

What is then the scope of the European Ombudsman powers in this area? Some of the provisions of this Title VI are addressed to national authorities, and therefore could not fall under my mandate. Setting also aside the provisions related to the jurisdictional role of the Court of Justice, and the legislative powers of the Council, the remaining provisions of this Title concern basically the promotion by the Council of police cooperation through Europol. Since Europol in the development of these activities, will be acting as an instrument of the Council, its actions are reviewable by the European Ombudsman. This should have also been the intention of the Treaty drafters because, a different conclusions, would entirely deprive Art. 41 of any meaning. It is interesting to point out that this committee on Civil Liberties and Internal Affairs of the European Parliament already defended this possibility in an early report.

Police activities are one of the typical areas for supervision by national ombudsmen. At the European level, such supervision concerns possible instances of maladministration as defined earlier in my speech.

In carrying out the task of the institution, my inquiries cannot go beyond the limits set out in the Ombudsman's Statute. Once of these limits is that the potential maladministration must result from the activities of a Community institution or body. By contrast, the application of the main provision establishing an area of freedom, security and justice, such as the issuance of visas, the protection of displaced persons, the consideration of applications for asylum, or the use of police forces to combat organized crime, will be exercised largely by national, regional and local authorities. Thus, these aspects cannot be directly supervised by the European Ombudsman. It should then be up to the national Ombudsmen and similar bodies – usually Petitions Committees - to supervise national

authorities and ensure that they respect the rights that EC law confers upon citizens.

At my own level, I believe that a closer cooperation between the European Ombudsman and similar institutions in the Member States, either at the national, regional or local level, should facilitate a better exchange of information on specific problems concerning free circulation of persons in Europe, and a proper control of external borders.
In a conference held in 1996 with the participation of national ombudsmen an similar bodies in the Union, we decided to set up a close cooperation to ensure that Community law and human rights be respected at all levels in the Union. This cooperation has been intensified lately through internet links and seminars, in order to guarantee that every body concerned is ready for the new tasks that the Amsterdam Treaty is bringing forward, especially as regards asylum, visa, and the status of foreigners. These are traditional causes for complaints to these bodies at national level.

The Treaty speaks of transparency and openness as fundamental principles of the Union. Good administration requires therefore transparency as one of its basic components. As European Ombudsman, I have a particular responsibility in relation to transparency. The creation of my office was meant to underline the Union's commitment to democratic, transparent and accountable administration. I understand "transparency" to mean that processes of decision-making should be understandable and open. The decisions themselves should also be reasoned and based on information that, to the maximum extent possible, is publicly available.

These principles applied to all policies of the Union, regardless of whether they are part of the Community pillar, or the former third pillar. It is therefore my view that the establishment of an area of freedom, security and justice cannot be excluded because of its nature from the need for transparency, including the application of particular rules on access to documents.

Another fundamental element in the notion of "maladministration" is whether or not the Community actions at stake have been consistent with the obligation set out in Article F, new Art. 6, of the Union Treaty that the Community institutions and bodies respect fundamental rights.

The rules which will set up the Union as an area of freedom, security and justice will have a direct impact on the rights of citizens. It is therefore essential that in their implementation, the Union ensures full respect to human rights and fundamental freedoms. The ways and means to attain this objective have long been discussed at Community level. The new situation after the entry into force of the Treaty of Amsterdam makes this discussion even more pressing. The fact that now, some weeks before the entry into force of the Treaty, we are unable to know the precise content of the rules elaborated under the Schengen agreement and which are to become Community law is not satisfactory.

New initiatives in this area such as the one suggesting to adopt a **charter of fundamental rights** in the Union, are already under discussion. Drafting the charter is a time consuming affair. I would therefore like to advance another way forward: a new provision in the Treaty, to require that the Union's Institutions and bodies respect all the existing Human Rights Conventions that all or the majority of the Member States have ratified.

This would clarify the present slightly unclear situation concerning human rights observance on the EU level.

Also, it would be of great importance that the European citizens would be duly informed of the remedies under Community law on the national level. In a society governed by the rule of law, the courts constitute of course the main system through which the rule of law is upheld. At the moment, however, there is no provision which informs the citizens of the vital role played by national courts in ensuring respect for Community law, including Human Rights principles.
Furthermore, national and regional Ombudsmen and similar bodies such as Parliamentary Petitions Committees should also be informed about as having a responsibility to help citizens in case of conflicts with the administration involving Community law, including Human Rights issues. Each Member State should have an obligation to ensure that its legal order includes an effective and appropriate non-judicial body to which the citizens may apply for this purpose. So far these non judicial bodies exist on the national level in all Member states, but in Italy, where a law proposal is still pending before the Parliament.

We need to take advantage of the opportunities for a Union closer to its citizens that the Treaty of Amsterdam has brought about. We should not lose sight, however, of the challenges and potential dangers that the new provisions, in particular those for the establishment of an area of freedom, security and justice pose for all of us.

1. Fundamental rights, citizenship and civil judicial cooperation

Mrs Brigitte ERNST
Amnesty International

I should like to thank you on behalf of Amnesty International and of the International Federation of Human Rights Leagues, which has also associated itself with this contribution, for inviting us to this Interparliamentary Conference: NGOs do not often have a chance to make their views heard in this way and also in advance of the final event, which will be the Tampere summit.

We are particularly relying on the European Parliament, now that it is stronger, to maintain in future the reference role it has played with regard to human rights.

I propose to consider two aspects:

1. In the period following Amsterdam and on the eve of enlargement of the European Union, do not neglect what has been achieved by the Council of Europe.

2. The European Union's policy on fundamental rights cannot be elaborated in a traditional intergovernmental framework.

This is a very important time. Amsterdam will increase the powers of the European Union and the European Parliament in areas that are very sensitive in terms of protection of the rights of the individual. Enlargement will increase the geographical spread of the European Union well beyond what we see today. Protection of human rights remains a challenge, when these two aspects are taken into account.

Do not forget the Council of Europe. The European Convention on Human Rights has been in existence for almost half a century. The Court at Strasbourg is an exceptional instrument for the protection of human rights. It ensures external monitoring of the protection of human rights in relation to national states, but also in relation to the European Union, and it provides access to justice for persons complaining about violation of human rights by national states. Our organisations regard the drawing up of a Charter of Fundamental Rights specific to the European Union as an important step forward, but this must be done subject to three conditions:

- The Charter must not exclude accession of the European Union to the European Convention on Human Rights, even though we are well aware that this necessitates revision of the Treaties. Such an accession remains a priority for us.

- It must complement existing international instruments. The European Union's Charter must not reduce the level of protection of human rights. Our organisations will be particularly vigilant in this area. We shall accept no compromises. In our opinion, the agreement reached on a European Charter of Fundamental Rights must relate to the highest possible level of protection. One cannot haggle over the protection of human rights, and the Charter must not represent a retrograde step; it must represent only progress.

- This Charter is a positive step, and will provide an opportunity to ensure better protection of social rights. Amnesty International specialises essentially in the protection of civil and political rights. We are cooperating with social NGOs in order also to ensure, via the European Union's Charter of Fundamental Rights, improved protection of economic and social rights.

My last point: the Charter must not interfere with the existing judicial supervisory or monitoring mechanisms, but must complement them. It will be very important to think through the role of the Court of Justice and that of the Strasbourg Court. Luxembourg and Strasbourg must cooperate and must ensure that their judicial mechanisms can fit together and not compete.

The European Union's Charter of Fundamental Rights cannot be drawn up in a traditional intergovernmental framework, as has been the case to date with the founding texts. Firstly, the Charter must be based on the widest possible consultation of citizens, non-governmental organisations, the world of academe, and intergovernmental organisations. We have taken note of the German Presidency's intention of launching this consultation process.

We have also heard the declaration made on behalf of the Finnish Presidency. We are very happy about these political undertakings. We have also noted the commitment of the European Parliament, expressed by its rapporteur, Mr Bontempi, who is a specialist in this issue, since at the time of the previous legislature he made an excellent report on the accession of the Community to the European Convention on Human Rights, which needs to be borne in mind today. We should like to see a concrete expression of governments' willingness to undertake a consultation process on the Charter. It is now three months since the beginning of the German Presidency, and we have not yet received anything. Finally, we believe that the obvious place to finalise the European Charter of Human Rights is within the parliaments - the European Parliament, of course, but also the national parliaments.

Mr Giampiero ALHADEFF,
President of the platform of European Social NGOs

I represent the Platform of European Social NGOs, an alliance of 25 major networks and federations operating in the social field and representing a wide range of NGOs from throughout the Union. We regroup for example the European Women's Lobby, the Migrant's Forum, the European Anti Poverty Network, the Disability Forum, Coface the families association, the Public Health Alliance, my own SOLIDAR and many more. We are an important part of that inter-connective tissue which brings the Union and the citizen closer together. We represent over a hundred thousand groups across the Union, in their turn bringing together many millions of citizens.

We have developed a close consultative collaboration with DG Vof the Commission, with ECOSOC and with this Parliament's Social Affairs Committee. We also closely collaborate with the European Trade Union Confederation with who we share many concerns and with whom we are involved in a common campaign of a bill of rights for Europe.

Many of our members feel that the process of economic and commercial integration has moved ahead too quickly without sufficient regard for the social dimension of European Integration. They want a social Europe to be alongside the single currency and the single market. This is not only about idealism and a belief in justice and equity. Our members are deeply involved in their local and national communities and they are also women and men who are deeply committed to the European Project. But they know that not giving the social dimension sufficient prominence opens a door to petty nationalism, extremism and xenophobia.

There are two issues I want to draw your attention to. Firstly is the issue of a Bill of Rights for Europe and secondly is about the role of NGOs at the European level. In 1996 DG V commissioned a report by a Committee of Wise People which was led by Maria Lourdes Pintasilgo. The Committee was charged with examining "what might become of the Community Charter of Fundamental Social Rights of Workers" in connection with the then ongoing IGC. The Committee extended its brief because and I quote, "it felt that Europe was in greater danger than it realised and that the "social deficit" was fraught with menace."

They went on to say "Europe, cannot be built on unemployment and social exclusion, nor on inadequate sense of citizenship. Europe will be a Europe for all, or it will be nothing at all". The Amsterdam Treaty went some way towards those sentiments, but for us and many others, not far enough. The Employment Chapter, Articles 13 on discrimination and 136 and 137 on social exclusion are important advances. The Commission is in the process of issuing Communications on discrimination and on social exclusion and we will of course be closely involved in commenting on this work.

We were disappointed that much was left out of the Amsterdam Treaty, but recently we have been given cause for some optimism by the strong lead given by the German Presidency on the issue of Fundamental Human Rights.

Also timely is the Simitis Report, commissioned by DG V and due to be released any day now. Perhaps the crisis of the last few weeks will provide the political will for greater accountability and for a bold initiative on fundamental rights.

The Committee of Wise People had noted that as "regards the Treaties of the European Union, it is not possible as yet to speak of a genuine structure of social rights, but rather ad hoc, piecemeal measures" they also said that "social rights are defined outside the treaties". This situation needs to be addressed. The next six months will be key in taking forward to debate.

The Wise People supported the view that human rights, social, civil, civic and political are indivisible. This is also the view of the Platform and of the ETUC.
There are two key elements of the report of the Wise People which I want to draw your attention to.

Firstly, they divided rights into those who should come into effect immediately and others which are more in the form of objectives to be achieved.

The eight rights included:
- Equality before the law
- Ban on any form of discrimination
- Equality between women and men
- Freedom of Movement
- The right to chose one's occupation, profession and educational system throughout the Union
- The right of association and to defend one's rights
- The right to collective bargaining and action.

On the other hand the objectives to be achieved were a number of rights, integral to the European social model such as the right to education and life-long learning, housing, work and health.
A precondition of this the Wise People believed that the Treaty should stipulate that each Member State needed to set in place a minimum income.
These rights raise important issues of subsidiarity, but we believe they must be tackled if the European project is to reflect the concerns of the citizen.
It is our opinion that any future revision of the Treaty will have to in the first stage set these rights out, set minimum standards to apply throughout the Union and a mechanism for assessing and monitoring progress.

However, whilst we press for rights for European citizens we must not forget those third country nationals living in Europe. We therefore welcome the measures regarding freedom of movement suggested in the report of your Rapporteur, Mr Bontempi. We particularly welcome your suggestion of a base of civil and political rights for third country nationals. But we probably would go further and suggest that similarly we need to define the basic rights of those who have entered the Union or have remained within it without the necessary legal documentation. We know this is a difficult subject, but my own NGO has uncovered conditions of near slavery affecting so called "clandestine" migrants which should not be tolerated in a civilised democracy, and which cannot be dealt with through more effective policing and border controls alone.

We hope that these considerations will be taken up by the German Presidency and followed through at the Tampere meeting. The Platform, working with the ETUC and other civil society actors such as the Permanent Forum for Civil Society, will press for any Charter of Rights, enforceable rights embedded in the Treaty, not just another document, however important it may be.

Finally, let me conclude with another issue which is close to our hearts. The role of NGOs is recognised in Declaration 23 to the Maastricht Treaty and Declaration 38 to Amsterdam Treaty. The Committee of the Wise People urged the Council to "make express provision in the treaty for non-for-profit organisations and foundations….". We too wanted recognition of the role of NGOs be written into the text of the Treaty, but this was not the opinion of the Council at the time.

However, NGOs are a important feature of organised civil society and as such have significant contributions to make to the European Project. We are therefore actively campaigning to ensure that any future revision of the Treaty does rectify this important deficiency.
But not all changes require a revision of the Treaty. The ETUC and the Platform are actively examining advances which could be addressed prior to any revision and will in the next few months come forward with concrete proposals.

There are also improvements which this House can take forward. Representatives of development, social, human rights and environmental NGOs have begun to collaborate and you will not be surprised to hear that they feel that there is much room for improvement in our relations with the Institutions of the European Union including the Parliament.
We believe that this House too should put its relations with civil society and NGOs on a less ad hoc basis and within a more organised framework. After all consultation with civil society is a process and not just a series of disconnected events.
ECOSOC, under the auspices of its new President, Beatrice Rangoni Macchiavelli, is promoting a Convention on Civil Society in which we will be involved. We hope and believe that concrete proposals will come out of this process, but even before then this Parliament's Committee of Presidents might want to seriously engage on how the position of civil society can be supported and strengthened within the House. We are prepared for dialogue and have concrete proposals to put on the table.

We are also pressing this case with the Council and with the Commission.

Mr Virgilio DASTOLI,
Permanent Civil Society Forum

The Permanent Civil Society Forum was created on the initiative of the International European Movement, whose President is Mr Mario Soares, in September 1995. It is a forum which brings together some 100 non-governmental organisations and which worked throughout the period of the Intergovernmental Conference that led to the Treaty of Amsterdam. In our view, this Treaty is something of a disappointment, since a whole series of civil society demands were not taken up in the Treaty. With regard to citizenship, this is currently rather like an empty shell that has yet to be filled.

We broadly support your committee's proposals and ideas, particularly as described in Mr Bontempi's report on the Charter of Fundamental Rights. Mr Bontempi mentioned the weakness of political will. This weakness is demonstrated in the fact that the European Union has not yet acceded to the European Convention on Human Rights, and that the Social Charter has not yet been ratified.

The question of the Charter cannot be separated from the need for in-depth revision of the Treaties

on European Union, which must bring about a democratic system. This revision must include strengthening of joint policy, in particular as regards facing up to unemployment, risk and social exclusion. One fundamental right of citizens is to participate actively in economic and social life.

This Charter must be a Charter of positive rights: it must be enshrined in the Treaties. It must be elaborated by means of a democratic procedure, which must involve both the European Parliament and the national parliaments, as well as a dialogue with civil society. Drawing up of the Charter cannot be separated from revision of the Treaties; a chronology will have to be established. This Charter must be implemented in accordance with the Community method. We have drawn up our own version of a European Citizens' Charter, as a contribution to the work of the European Parliament and civil society. We decided with the Social Platform and the European Trade Union Confederation to discuss the basic elements of this Charter together, and we are prepared to collaborate with the European Parliament. At Tampere, we shall be organising a Civil Society Convention on the subject of "Citizens' agenda 2000", which will take up the subjects that are to be discussed at the Tampere European Council.

Mr Jan NIESSEN,
Migration Policy Group

I have been asked to speak briefly on article 13 of the new Treaty which is the article on anti-discrimination. I will focus particularly on the provisions that deal with discrimination on the basis of race, skin colour, religion and belief. When the European Union establishes an area of freedom, security and justice, there is the question to whom that will apply. We think that there are too many people within the Union who cannot exercise those rights, prevailing racism prevent them to exercise the free movement rights across the Union. In our opinion a European approach to combat discrimination on the basis of race, ethnic origin, skin colour, religion is necessary. We have called upon the European Union for quite some time to put in place a directive. Until the ratification and the entering into force of the Amsterdam Treaty, the European Institutions have said that there was no clear competence. We did encourage them to invoke Article 235 which did not seem good enough. The Treaty of Amsterdam will change all that. Article 13 of the new Treaty will provide the European Institutions to act. We are well aware of the fact that the European Parliament and the European Commission have spoken very strongly on those issues over the last few years. Commissioner Flynn has announced that he will launch two major proposals for directives to combat racial discriminiation before the summer.

One final appeal to members of national parliaments: we are well aware of the fact that the Commission is very determined to launch these directives. The European Parliament supports these initiatives, but there is of course the famous clause of unanimity in the Treaty. We call upon the national parliaments to work on their governments. We fully trust the Commission as well as the Parliament but we do not trust all member states. We hope that we can convince the national parliaments through an intensive dialogue to adopt these legislative measures against racial discrimination, if possible within a year.

2. Judicial cooperation

Mr Dieter FRISCH,
Transparency International

Mr. Frisch sheds some light on one particular aspect of the Action Plan for combatting international and cross-border crime, namely the fight against corruption. As one of its founder members, he represents Transparency International (TI), the only international non-governmental organisation with a world-wide structure and operations, which deals exclusively with the fight against corruption.

Its method is not to investigate and pillory individual cases, but by pressure and advice to work towards a change in the rules of the game wherever laws, rules or practice tolerate or encourage corruption. In the beginning, there was a general impression that the necessary attention was not being paid to this subject - at least not in its wider ramifications. The argument of subsidiarity was even advanced, which is not appropriate in this context, since action by individual States in this area is neither sensible nor effective. It would in addition be discriminatory for companies in a particular country if that country's government was the only one that took measures against corruption while competitors in a neighbouring country were spared such action. Subsidiarity therefore automatically passes to a higher level, either that of the Union or that of OECD.

In November 1995 TI presented a memorandum to the European institutions in an attempt to indicate what the latter might be able to do in this area. Consideration was given not only to criminal law aspects, the third pillar of Maastricht, but also to a whole series of relevant areas, most of which form part of the first pillar of the Treaty, for which much greater possibilities of action exist than in the third pillar. Examples of such areas include the tax-deductible nature of bribes, problems in procurement, export promotion measures etc.
The Commission sent a Communication to the Council and Parliament in May 1997[9] which, we were glad to see, set out the problem in its fullest complexity. Mr. Bontempi contributed an important report on the subject, which was approved in October 1998[10]. In this way a collaboration based on trust was achieved with a non-governmental organisation.

Among the measures to be taken, bringing the criminal law into line is of crucial importance. Bribery exercised abroad must be made a criminal offence like bribery at home. This ought really to be self-evident within the European Union, but it is not yet so. The Convention concluded[11] by the 15 EU States in May 1997, which makes active and passive corruption within the area of the EU a criminal offence, is therefore of crucial importance. It should accordingly be ratified as a matter of urgency and be transposed into criminal law: so far only Finland has completed the process by depositing its instrument of ratification. Other Member States have nevertheless made considerable progress in this direction. However, it is regrettable to have to note that an OECD[12] convention, dealing with a similar subject and signed at a later date, has already come into force in February 1999. One must therefore wonder why legislation within the Community is so often more tedious and cumbersome than in the context of OECD.

9 Communication from the Commission to the Council and the European Parliament on a Union Policy against corruption (COM(97)192 final, 21.5.1997)
10 European Parliament's resolution, 6.10.1998 (OJC 328, 26.10.1998)
11 Council Act of 26 May 1997 drawing up, on the basis of Article K.3 (2)(c) of the TEU, the Convention on the fight against corruption involving officials of the EC or officials of Member States of the EU (OJC 195, 25.6.1997)
12 OECD Convention on combating bribery of foreign public officials in international business transaction (21.11.1997)

Once corruption abroad becomes a criminal offence, a whole series of rules and practices will be seen in a different light:

- Tax allowances for money paid as bribes will then have to disappear once and for all, because otherwise the tax inspector will become party to a criminal act.
- The export credit insurance department will then have to examine whether it can continue to cover the full invoice value without question, including the obvious 20% bribe, or whether it must think again. A short memorandum on this subject has been forwarded to the Commission.
- In future an auditor too, if he comes across instances of deception or corruption while checking the accounts, will have to decide to whom he must report these cases.
- Provisions and penalty clauses to prevent corruption will have to be included in international procurement contracts.
- The fight against corruption will have to become an important aspect of the European aid programme for developing and transitional countries.

Summing up, this contribution has been intended to cover not only criminal law and the area of justice, but also those areas consequently affected by the changes in the criminal law. TI will continue to warn, to urge, to put forward proposals and to follow critically the necessary processes of change in this area.

Mr Orlando ALFONSO,
President of MEDEL, Association of European Magistrates for Democracy and Freedom

MEDEL consists of magistrates not only from the European Union but also from Central and Eastern European countries.

MEDEL organised several conferences on the issues under discussion: one on organised crime, which took place in Brussels two years ago; one on the European judicial space in connection with criminal matters, which was held in Paris and organised in collaboration with the French School of Magistracy and the University of Trier; and another on civil justice in Europe to be held in Paris this year.

Immediate and direct judicial cooperation among the various European judicial authorities is needed. Mr Alfonso particularly mentioned the importance of making it possible for the power currently invested in various bodies, such as Europol, to be exercised also by an independent judicial authority.

He perceives the establishment of new guarantees concerning the independence of judicial authorities as being of vital importance in the transition from a phase of judicial cooperation to a common European judicial space.

Mr Renaud VAN RUYMBEKE,
Judge in the Geneva appeal

What we found three years ago in the Geneva appeal still applies: organised crime supports the existence of numerous tax, banking and judicial havens. Today it is very easy for any drug trafficker to approach a trustee in Geneva, who will provide him with a Panamanian company and open accounts for him in Jersey. What a trafficker can do in a very short time will take 10 or 15 years for the judge in a criminal court who tries to follow the threads back, and some states still do not even reply. That is the reality.

Three routes appear possible. The first is to harmonise legislation. One could also envisage unification of company law. A public European company register could be created, which would make it possible to see company accounts and to find out who the real company directors are.

The second route is to create a European judicial area. Europe has created free movement of capital, goods and persons. The only people still subject to frontiers are criminal court judges. This area needs to be created with several simple axes enabling, firstly, direct transmission from judge to judge, also enabling a judge from one state to move to another state and there to carry out investigations without let or hindrance. It would be necessary for banking secrecy not to be invoked against criminal court judges.

Third route: for effective combating of organised crime, a European unit would need to be responsible for this fight, at one and the same time collecting information, providing assistance for national judges, and having its own means of investigation throughout the territory of Europe.

As long as no measures of this kind are implemented, the fight against organised crime will remain a lost cause.

Mr Sandro CALVANI,
Representative to the European Institutions,
UN/DCCP Brussels

The Elaboration of an International Convention against Transnational Organized Crime

A major United Nations' priority, falling within the scope of activities of the Centre, relates to improving the set of instruments available to the international community to combat organized transnational crime. Particular emphasis is currently placed in the fields of combatting and preventing the smuggling of migrants, the traffickking in women and children, the smuggling and illicit manufacturing of firearms and ammunition, and corruption.

In December 1997, in response to the new challenges posed by organized transnational crime, Member States decided, at the General Assembly, to begin with the elaboration of a United Nations Convention against Transnational Organized Crime. The Convention should provide the legal framework for harmonizing different legal systems and stress the importance of a legally binding instrument to overcome the problems traditionally associated with international cooperation and mutual assistance. The text of the Convention should be submitted to the millennium General

Assembly to be held in 2000.

New Initiatives: Elaboration of three Global Programmes

The Centre, jointly with its research arm, the United Nations Interregional Criminal Justice and Research Institute in Rome, has prepared proposals for three global programmes addressing topical concerns of the international law enforcement and justice community.
The **Global Programme against Corruption** will provide technical cooperation to a selection of developing and transitional countries. In these countries an analysis will be made of current problems and policies. Assistance given will include the introduction of mechanisms to monitor public sector tendering and commercial transactions for the promotion of anticorruption measures.
The **Global Programme against the Trafficking in Human Beings** addresses smuggling of migrants, and trafficking in women and children. In a selection of countries, field-projects will be carried out to test promising strategies, such as new structures for collaboration between police, immigration, victims' support and the judiciary, both within countries and internationally (linking countries of origin to destination countries).
The third programme, on **Global Studies on Organized Crime**, will assess the dangerousness and trends of organized crime groups across the world, focussing on forecasting future developments and strategies of such groups in order to facilitate the formulation of pre-emptive responses. One output will be the bi-annual World Report on Organized Crime.

Global programme against Money Laundering

The Global Programme against Money Laundering is a research and assistance project within the United Nations Office for Drug Control and Crime Prevention (ODCCP). It focuses on three main areas of activity:

a) Promoting cooperation: training, institution-building and awareness-raising;
b) Understanding the money laundering phenomenon: research and analysis; and
c) Raising the effectiveness of law enforcement.

The Programme's goal is to increase the effectiveness of international action against money laundering by offering comprehensive technical expertise to requesting Member States.

3. Free movement of persons, asylum and immigration

Mr Raymond HALL,
Regional Representative of the
United Nations High Commissioner for Refugees

Western Europe's tradition of openness to victims of persecution has a long history. The grant of asylum has been a demonstration of the commitment of European States to democratic society and human rights.

It is in Europe that the 1951 Convention has its origins. International refugee law owes much to principles and practice progressively developed and refined by European States.
Until the early 1980s the number of asylum seekers arriving in Europe remained fairly stable at under

100,000 annually. Around 70 percent came from Eastern Europe. They were, for the most part, rapidly granted asylum and easily integrated. By the mid-1980s, however, the picture was changing. In 1986 the average number of applicants almost doubled, reaching 300,000 by 1989. A higher percentage of them came from other continents.

By the time the number of asylum seekers reached a peak of nearly 700,000 in 1992, the refugee problem had become complicated by the growing global phenomenon of migration. For want of other immigration opportunities, migrants increasingly knocked at the asylum door. In a context of greatly increased complexity, a failure to distinguish between refugees who flee persecution and economic migrants who leave their countries seeking better economic opportunities increasingly characterised both official policy and public attitudes. As a result, the emphasis shifted from one of protecting refugees to exclusion and control.

Last year the number of asylum seekers in Europe as a whole had dropped to some 366,000, about half the 1992 peak, and a small fraction of those seeking asylum world-wide. Approximately 40 percent of 1998 applicants applicants in Europe were Europeans, mainly Kosovo Albanians and Turkish Kurds, reflecting two of Europe's most intractable minority rights problems. It is a sad reality that the Europe of today continues to be a major refugee producing region.
Persecution and exile are as much a feature of the present decade as they were of the Cold War era. There have, nevertheless, been important changes both in the nature of the contemporary refugee problem and in the perception, attitude and political interests of asylum States. The collapse of the old order has given rise to a more volatile world in which refugee movements have intensified and seem likely to continue to occur. Forced displacement is, more than ever before, the product of vicious internal conflicts fuelled by nationalistic, ethnic or communal tensions. The victims, often of deliberate attack, are unarmed civilians, most of them women and children who make up over seventy percent of the world's refugees.

Meanwhile, in Europe, like on other continents, Governments have taken measures to reinforce their borders and are increasingly reluctant to bear the costs of asylum. At the same time, they have failed to develop coherent and consistent strategies and policies to address the problem of refugee flows.. While the States of the European Union continue to extend protection to significant numbers of refugees, asylum in Europe is increasingly under threat because fears of "uncontrolled migration" have prompted States, individually and collectively, to resort to a wide range of control and deterrence measures. Instead of being the precision tools required to distinguish those in need of international protection from those who are not, these have generally taken the form of blunt instruments catching both "unwanted" immigrants and persons in need of protection. This is significant not only for Europe but, because what happens here has an immediate and far-reaching effect on the rest of the world. When asylum in Europe is threatened, asylum is threatened globally.

Three issues in particular are a source of deep concern to UNHCR:
First, a number of measures have been taken to contain potential asylum-seekers in their countries of origin or in transit countries, irrespective of their need for protection; these include mandatory visa requirements, carrier sanctions, the posting of immigration officers abroad to carry out pre-screening of passengers and financial assistance to third countries for reinforcement of their border controls. Undoubtedly the primary target of such policies is illegal immigration, but their indiscriminate application has been detrimental to the protection of refugees.
Second, for those who manage to slip through this "cordon sanitaire", complementary arrangements

have been developed. These include re-admission agreements; a so-called "safe first country of asylum" policy which lacks adequate criteria for measuring safety and the availability of meaningful protection; or provisions to deal with manifestly unfounded applications in a way which places an excessive burden of proof upon the asylum seeker. Other deterrent measures taken at national level in certain States include the reduction of social benefits available to asylum seekers, denial of reception facilities and the resort to detention.

Third, there has been a tendency to limit the scope of the 1951 Convention both at the national and EU levels through a narrow interpretation of the refugee definition. Last year only 11 per cent of applicants in Europe were recognised as refugees under the 1951 Convention. While some States granted a much larger proportion of applicants permission to stay on humanitarian grounds, many of those in genuine need of protection benefited either from less secure forms of protection than Convention status or fell into a legal void where they were, at best, exempted rather than protected from refoulement.

The recent study *Leading by Example: A Human Rights Agenda for the Year 2000*, funded by the European Commission concludes that "the treatment of asylum-seekers [...] has been a matter of particular political controversy within the Member States of the Union and an issue in relation to which accepted human rights standards, which are clearly binding on the EU, appear to be most at risk". One cannot help but ask if this is a worthy record for a Europe poised to enter the new millennium. And does it match the rhetoric of a Europe which continues to perceive itself as a champion of human rights?

One thing is sure. Clearly, the current European control and deterrence-driven approach is not in the interests of the asylum-seeker. Nor, however, does it appear to have been notably successful in resolving the migration problems of States. In fact, it may well have played a significant role in fostering the emergence of a dangerous, reprehensible and highly profitable industry of human trafficking which is posing growing threats to the very societies that restrictive immigration policies were intended to protect.

The new phase of harmonisation ushered in by the Amsterdam Treaty has, we believe, a good deal to set straight. The new impetus given to the harmonisation of Europe's asylum policies and laws presents both an opportunity and a danger. An opportunity to ensure that the European Union responds in a principled and coherent way to the challenge of forced displacement. And a danger that the European response will be based on a control perspective that will make protection increasingly difficult to obtain for those who need it.

The Treaty has set the stage for the development of EU-wide, legally binding instruments in relation to material and procedural aspects of asylum law. While "communitarisation" may result in increased consistency and coherence of asylum policies and practices of Member States, there is concern that the unanimous voting procedure for the adoption of any measures during the five-year transitional period following the Treaty's entry into force may result in Member States' settling for the lowest common denominator of refugee protection. Nor is this danger adequately offset by weak provisions for judicial oversight by the European Court of Justice or, at least initially, democratic oversight by the European Parliament.

A second concern is that, faced with the difficulties of reaching unanimous agreement on contentious

issues of substance, the asylum provisions of Amsterdam will be emptied of meaningful content; that they will be limited to harmonisation of procedural issues of interest to States to the exclusion of substantive protection issues relating to the rights of the refugee. Recently this potential loss of substance has already been in evidence in discussions of the European Commission's draft on temporary protection.

As we look forward to the imminent entry into force of the Amsterdam Treaty and to the Tampere Summit on Justice and Home Affairs issues in November this year, UNHCR urges the EU and its Member States to take a strategic approach to the development of asylum policy, firmly rooted in the principle of asylum for those in need of international protection. It hopes to see an asylum policy that guarantees every applicant access to territory and ensures expeditious and fair status determination procedures that distinguish effectively between those who need protection and those who do not.

To achieve this, political vision and leadership will be required. There is an urgent need to open up a new political dimension in the asylum debate; not, of course, in the sense of the recent Austrian strategy paper which supported an ill-advised move away from a rights based approach to asylum towards one based on political discretion but, on the contrary, in the sense of staking out the political space within which a principled, protection-based approach can be anchored and the human rights of asylum seekers properly secured. Without such a commitment the legal development foreseen under the Amsterdam Treaty will lack a proper foundation.

In relation to the specific agenda set out in article 63 of the Amsterdam Treaty and further elaborated in the Action Plan of the Council and Commission a few remarks need to be made.
First, there is an overriding need for a common agreement on fundamental questions of substance and not merely on form and procedure. The Dublin Convention, despite the positive contribution it has made in determining the State responsible for hearing an asylum claim, has illustrated the danger of harmonising procedures without a common understanding of what constitutes a valid asylum claim. Under Dublin procedures asylum seekers may be sent from a country where they would be recognised as a refugee or accorded a complementary form of protection to one where they will not.

A starting point for any coherent, protection-based asylum strategy must surely be a common understanding of **who** it is that is in need of protection and **wha**t the content and legal basis of that protection will be. Unless there is agreement on these fundamental issues, it is difficult to see how other areas foreseen for harmonisation within the framework of the Amsterdam Treaty can be effectively tackled and given meaningful content.

In the view of UNHCR, the cornerstone of a harmonised European asylum policy needs to be a common interpretation of the refugee definition contained in the 1951 Convention; an interpretation, moreover, that is responsive to all forms of persecution -- irrespective of whether it is due to state or non-state actors -- and which gives due recognition to the persecutory dimension of much contemporary conflict.

Undoubtedly, however, even when the Convention is properly applied, not all victims of violence and conflict or other persons with a valid claim to protection fall within its scope. Many who are rightly or wrongly excluded from its application currently lack adequate protection in a number of

European States. We therefore welcome the inclusion of subsidiary forms of protection on the Amsterdam harmonisation agenda and warmly applaud the work recently carried out by the European Parliament in this regard[13]. Agreement amongst Member States on the scope of application of the 1951 Convention is needed, however, to give full meaning and consistency to such complementary protection measures. Needless to say, it would be unacceptable if complementary forms of protection were to be little more than an expedient pretext for granting a lesser degree of protection to victims of persecution who meet the criteria for recognition as Convention refugees. Both Convention status and complementary forms of protection are the result of an individual status determination procedure. Individual determination of asylum requests may prove impractical in situations of large-scale influx. In such cases, UNHCR supports recourse to temporary protection as a practical device which allows for a principled response by States to large numbers of asylum-seekers displaced by war and generalised violence, without necessarily applying individual procedures. Temporary protection is a measure which complements protection under the Convention by ensuring that its fundamental purposes are respected even while its application is temporarily suspended for a particular group of arrivals. In view of the relationship between temporary protection and the 1951 Convention, UNHCR believes that it should have a mandatory consultative role in any arrangements regarding the phasing in or the termination of temporary protection regimes. It also favours a standard of rights which takes due account of the fact that many of the beneficiaries of temporary protection fulfil all the criteria for 1951 Convention status. UNHCR supported most aspects of the recent draft put forward by the Commission on temporary protection and is particularly concerned at the tendency to erode the proposed regime of rights in the inter-governmental negotiating process currently underway.

Other than in cases of temporary protection, the grant of asylum requires appropriate procedures in order to ensure that those who are in need of protection are properly identified. A fair, efficient, effective and accessible asylum system serves dual objectives: it identifies individuals who need protection; and it separates out those who do not and who can, in principle, be returned to their country of origin or habitual residence.

In many parts of the European Union, asylum procedures are currently in crisis. Problems of capacity need to be urgently addressed. At the same time, UNHCR believes there is scope for shortening and streamlining the procedures themselves, particularly at the appeal stage, while ensuring that fundamental safeguards are respected.

To achieve coherence, the European Union must resolve the considerable differences in procedural legislation and practice amongst the 15 Member States. This is necessary in order to ensure that asylum seekers enjoy an equal chance of obtaining protection throughout the Union, which is far from being currently the case. UNHCR therefore commends the work recently carried out by the Commission with a view to establishing a framework for common standards on asylum procedures. It believes that the Commssion document provides a sound basis for the development of a single asylum procedure in Euorope and hopes that this effort will continue to be given high priority. Full and unhindered access to asylum procedures needs to be assured and a number of notions, including those of “safe third countries” and “safe countries of origin” need to be reviewed to ensure that they do not bar from the procedures persons in need of asylum.
Europe must continue squarely to face its responsibility to identify and protect those in need of

13 Resolution of the European Parliament of 10.2.1999 on the harmonisation of forms of protection complementing refugee status in the European Union (rapporteur: Mrs Michèle Lindeperg, OJ C 150, 28.5.1999) – Annex 2.

international protection. The European asylum -- or, for that matter, migration -- problem cannot, however, be solved in Europe alone. Nor can it be solved by erecting barriers. Any effective strategy must encompass the entire continuum of forced displacement, from its causes to its eventual solutions. It is clearly in the interests of European States to situate their asylum and migration policy within a broader approach which addresses political, human rights and developmental issues in countries and regions of origin. It is therefore ironic that while Europe expresses concern at the arrival of significant numbers of asylum seekers from given regions, UNHCR programmes in those very regions are frequently strapped for cash, and benefit today from drastically decreasing funding support from the European Institutions.

As a step in the direction of a more holistic approach to the problem of displacement, UNHCR welcomes the recent initiative by the by the European Union Presidency to develop comprehensive plans of action in relation to a number of regions from which significant numbers of asylum seekers originate. We are pleased, moreover, to have been consulted at an early stage in the development of these plans. We believe that such an approach, if conceived from a protection perspective, can significantly contribute to addressing the root causes of displacement and, where necessary, to strengthening protection in regions of origin and transit. In no sense, however, should it be regarded as a substitute for Europe's own responsibility to provide asylum to those in need of protection.

In conclusion, on the eve of the entry into force of the Amsterdam Treaty, Europe is confronted with a challenge. It is in the hands of the European Union and its Member States to ensure that the asylum-related provision of the Treaty do not simply reinforce the restrictive trends of the 1990s but that they place refugee protection back on a proper footing in harmony with the aims of freedom, security and justice to which we all aspire.

Mr Friso ROSCAM,
European Council for Refugees and Exiles

ECRE is an umbrella organisation for co-operation between close to 70 non- governmental organisations from 25 countries in Europe, concerned with refugee issues. ECRE campaigns, on behalf of its pan-European membership, for humane, fair and comprehensive asylum policies.

ECRE considers 1999 to be a very important, possibly even decisive year in determining the future direction of asylum policy within the European Union. In the Treaty of Amsterdam and the Action Plan, the European Union has set itself a promising agenda of work for the coming years and some unique opportunities lie ahead for States to take a creative and principled approach towards asylum policy. Long term vision is required, and political bravery against xenophobia and extreme nationalism which can so easily overtake even the most affluent and democratic of continents. Leadership is also needed in managing increasingly diverse societies which will need to be based on new definitions of 'borders', 'community' and 'shared responsibility'. The Heads of State and Government Summit in October 1999 in Tampere, Finland could be the starting point for such leadership. This is a matter not only of helping immigrants and ethnic and racial minorities to a better life and refugees to protection, but of truly establishing future freedom and security (and prosperity) for all people who reside within the Union.

In the process leading to the signing of the Amsterdam Treaty, the 1996-7 Inter- Governmental

Conference commenced amid high expectations from many non- governmental organisations that it would mark a new era of democratic and judicial accountability in EU decision-making in the asylum field. In this context, the Amsterdam Treaty can be interpreted both as a disappointing postponement of the necessary reforms, and as an important step towards their eventual achievement. What is clear is that the Treaty creates an imperative for Member States to develop a series of Community instruments, within a short deadline, which will govern the lives of many millions of migrants, asylum seekers, refugees and other third country nationals within and beyond the borders of the Union.

Civil society has a vital role to play in monitoring and contributing to the development of these Community instruments. Its role has been legally recognised in Declaration No. 17 to the Amsterdam Treaty, relating to consultation with UNHCR and other international organisations. This provides civil society with the context for presenting its views in this challenging year. Three organisations ECRE, the Migration Policy Group and the European Network Against Racism (ENAR) have recently jointly compiled a Paper entitled "Guarding Standards - Shaping the agenda", on the entry into force of the Treaty of Amsterdam in relation to asylum and immigration policies. This Paper contains the views of these three organisations on how governments could implement the Amsterdam Treaty agenda in a humane and fair way, in compliance with international human rights standards.

Our Paper also relates to the Action Plan on an Area of freedom, security and justice, in which the Council lays out two categories: measures to be taken within two years, and those to be taken within five. We believe that this prioritisation should be determined not only by "existing plans and the need to continue taking forward present medium-term work programmes" (Par 27) but also by what migrants, refugees and ethnic minorities in Europe presently feel to be in need of most urgent resolution. Nor should institutional momentum override the opportunity presented by the 'transitional period' for innovative thinking and fundamental re-examination of previous policies. By this criteria, we would argue that the issues of refugee definition and the standards attached to complementary forms of protection require handling within two years, while development of a new instrument related to the Dublin Convention and safe third country returns could be postponed until a clearer evaluation of this Convention is available. These and other alternative priorities are clearly set out at the end of our Paper in an 'NGO Alternative Action Plan', containing a summary of all the recommendations made in the Paper.

We urge Member States to conduct such evaluation before communitarising the Third Pillar measures. Regarding the numerous agreements and pieces of 'soft law' which were adopted under the Third Pillar, many experts in the field believe that they will be taken as the basis for much of the new EC legislation. Our concern is to ensure that this is not done without some hard critical re-thinking and a principled commitment by Member States to avoid the 'lowest common denominator' approach. In that context, we would feel greater confidence in the Commission's ability to balance divergent interests. In the last few years the Commission has, in our view, indeed submitted various proposals which are properly balancing the legitimate interests of Member States and the protection needs of refugees, and which, we believe, need to be adopted at the earliest opportunity. We also welcome the recent initiative taken by the European Commission to issue a working document entitled 'Towards common standards on asylum procedures' (March 1999)[14]

14 'Towards common standards on asylum procedures' (SEC(99)271 of 3.3.1999)

which we feel provides a good basis for discussion and presents a balanced approach to this issue, which is so crucial in the present EU asylum policy debate.

What we see however as being the most significant in the present debate is the commitment of Member States, as laid down in the Treaty of Amsterdam, to deliver Community law according to a specified agenda and to do so within the set time limit of five years.

We therefore strongly feel that national and European parliamentary scrutiny and well- informed public debate, often lacking when the original non-binding resolutions and joint actions were adopted, should be encouraged. The emphasis should be on respecting the human rights of those affected by any new Community asylum and immigration laws, given that the Treaty of Amsterdam now solemnly declares the Union to be founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law.

This Inter-Parliamentary Conference, which brings together members of the European Parliament and of EU national Parliaments to debate these issues, is obviously vital to these processes of democratic scrutiny. In addition, the Conference of European Affairs Committees (COSAC), which includes representatives of national parliaments, now may examine any legislative proposal or initiative under the new immigration and asylum Title which "might have direct bearing on the rights and freedoms of individuals" and should be urged to do so at every opportunity.

The Treaty of Amsterdam itself provides a legal basis towards more democracy and transparency. Indeed, a new Article 254 promises that EU documents will be made available, subject to approval by the Council and if no single Member State raises an objection. Combined with the consultative role of the European Parliament, this could and should bring some degree of transparency to the legislative process of the Council of Ministers. ECRE urges Member States to allow expert NGOs, UN bodies and other international organisations to fulfil their consultative role by transmitting all relevant documents and working documents well in advance of final Council decisions.

In conclusion, we urge Member States that, in implementing the asylum agenda of the Amsterdam Treaty as a whole, they apply the basic principle of respecting the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, the standards of the UNHCR Executive Committee as well as those standards set out in the UNHCR Handbook on procedures and criteria for determining refugee status.

We would also like to express our sincere hope that this Inter-parliamentary conference will trigger off a process in which the principle of increased transparency initiated by the German EU Presidency will also be pursued by the incoming Finnish Presidency. Respecting the Nordic tradition of openness, transparency and establishing a true and effective dialogue with NGOs, this would enable civil society to be more effectively involved in future EU debates.

Mr Saïd CHARCHIRA,
EU Migrants' Forum

Deliberations on implementation of the area of freedom, security and justice must include a definition of the three concepts involved: freedom, security and justice.

The Migrants' Forum, which represents 15 million migrants within the EU, and the European NGOs specialising in immigration issues with which it works in the context of the "asylum and immigration" NGO platform are pondering on the place and role of immigration in the context of this area of freedom, security and justice. In this context, the European Union Migrants' Forum believes that these concepts must be defined with due regard for the international instruments for the protection of human rights and fundamental freedoms. In particular, there must be regard for the terms of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms. Compliance with these standards must apply to all persons within the territory of the EU.

The concept of freedom must be understood in the widest sense and will cover, in particular, free movement of persons throughout the territory of the EU, whether they are EU citizens or nationals of non-member countries, under the same conditions and whatever their status in society. The concept of freedom also covers all fundamental rights, including protection against all forms of discrimination. To this end, the principle of non-discrimination, particularly in a racial and religious context, must be assured via adoption of a European directive against all forms of discrimination. Incidentally, we have just drafted a proposal for a directive against racism.

With regard to immigration policy in the EU, we have always supported the thesis of a Community-level policy. We know today that certain aspects of immigration policy will move from the third pillar to the first, and this is a good thing. Work must continue on making this a Community-level policy pure and simple.

Immigration policy in the EU should also be set in the framework of a short-, medium- and long-term global strategy. This strategy should have due regard for international judicial instruments such as the International Labour Organization's Convention on the Rights of Migrant Workers and their Families.

In our view, three axes are essential if a global immigration policy is to be drafted within the EU:

1. Joint action on migration pressure in the context of programmes of cooperation and aid in the development of the EU should take into account the full participation of civil society in countries of origin.

2. The fight against illegal immigration should, above all, be aimed at dismantling networks and should tackle those trafficking in human beings and not the illegal immigrants who are all too often the victims of unscrupulous people.

3. The integration of all nationals of non-member countries legally resident in EU Member States should be demonstrated by granting them the same status as enjoyed by EU nationals.

A balance should be achieved between these three axes with due regard for human rights and fundamental freedoms as advocated by international legal instruments.

In conclusion, I would simply say: freedom for all, citizens of the Union and nationals of non-member countries, security for all, and justice for all!

Mrs Renate HELD,
International Organisation for Migration

The International Organisation for Migration is an international organisation whose members consist of 113 states and states that have observer status. It is an operational service providing organisation and concrete activities for migrants and governments. IOM upholds the principle that humane and orderly migration benefits both migrants and also society. IOM offers practical activities that it implements together with governments to manage movement of people in an orderly way focusing on refugees, displaced persons, asylum seekers, rejected aylum seekers, and other groups of migrants. IOM has several migration management instruments in its repertoire and has developed a menu of migration management modules that IOM adapts and customizes for the different migration scenarios.

I would like to focus on two service areas that would seem of particular interest within the framework of the Action Plan on how to implement the provisions of the Treaty of Amsterdam in the best way.

Trafficking of human beings

The first item are the activities geared at combatting trafficing persons as put forward in article 11 of the Action Plan. Migrant trafficking is not a new phenomenon. Trafficking routes are becoming increasingly tangled and the involvement of individual criminal and organised networks is on the increase. Today, human trafficking has become a global business generating huge profits for trafficers. Organised crime syndicats create serious problems for governments and expose migrants to exploitation and violation of their fundamental human rights. The growth in volume and complexity has meant an increase in the need to address trafficking in a more pro-active way.
IOM and its partners have addressed this problem in a multi-disciplanary way combatting trafficking by promoting research, technical cooperation and the sharing of information amongst member governments. An example at the European level is the study that was conducted assessing the availability and adequacy of statistical and other data on trafficking in women and children in the member states and in selected source and transit countries in Central and Eastern Europe as well as in the developing world. The purpose of these studies is to share information as well as to build up the capacity of collecting data on trafficking, increased cooperation amongst states and to identify on the basis of these data, ways and means of addressing the multi-disciplanary phenomenon of trafficking. We are currently undertaking a feasability study on "rapid information transfer" with support from the Commission, aiming to prevent and combat the trafficking in human beings in the European Union. This project undertakes activities to elaborate improved methods for rapid information flows and reporting on trafficking into the E.U. Member States and Schengen countries with the aim of establishing common strategies to combat trafficking. Prevention of trafficking and protection of potential victims is an important goal and measures need to be intensified. One effective prevention measure is the implementation of public information campaigns. These aim to provide potential migrants with accurate and reliable information on the risks and consequences of irregular migration. Information about legal possibilities for migration raise the general awareness of migration legislation and immigration procedures amongst potential target groups in a manner understandable to them and give a realistic background on the living conditions in Western countries. Public information campaigns are designed to counteract the destorted information

provided by clandestine networks.
IOM and its partner organisations have accumulated valuable experience in the conduct of such mass campaigns aimed at the prevention of trafficking in for instance the Ukraine, Albania, Romania and South Asia. They will continue further campaigns in Central Europe and Morocco this spring. An intensification of such public information campaigns would be a desirable and cost effective migration management tool to make a meaningful contribution towards trafficking.

Return program

Secondly, I wanted to briefly mention "return programs". IOM carries out programs sponsored by different European governments on a bilateral basis geared at helping migrants to return home on a voluntary basis. Such programs are applicable when people have become stranded after a request for asylum has been turned down. Voluntary return programs have also proven to be an effective measure geared at helping trafficked persons return and reintegrate back to their country of origin.

Workshop I

1. Freedom of movement of persons: crossing of external borders, immigration, approval of asylum

Mrs Viviane REDING,
rapporteur for the European Parliament's
Committee on Civil Liberties, on the strategy document
on asylum and immigration policy[15]

Most of you will have read with great interest the text on asylum policy presented by the Austrian Presidency. My colleagues and I have many criticisms of this text, but it had the merit of initiating the debate, so that representatives of the people and NGOs can discuss and put in place a new policy on migration.

In our opinion, at all stages of deliberations a clear distinction must be made between the problem of the right to asylum and that of migratory flows. Hence the Committee on Civil Liberties divided its report into three parts:

1. Asylum, which is a fundamental right. We support the international conventions in force. We do not want them to be changed. We want them to be better applied. If it were to be necessary to go further, an addendum should be added to these conventions.

2. Migration for work purposes. This involves legal immigration, with regard to which we place emphasis, above all, on improving the integration of legal immigrants.

3. Illegal immigration. We must find joint measures to combat it and to dismantle networks of traffickers in workers. We must also find common rules so that the return of illegal

15 EP's resolution on the strategy paper on the European Union's migration and asylum policy (OJC 219, 30.7.1999) – See Annex 3

immigrants can take place with due regard for human rights, in accordance with humanitarian rules.

Lastly, we should like the new Commission to have a single commissioner who is responsible for the entire asylum and immigration problem.

Prof. Bruno NASCIMBENE,
Professor at Milan University

Professor Nascimbene began by stressing the importance of being able to compare the legal, practical and political aspects of a particular issue. Conferences such as this one enable the legal and judicial profession, on the one hand, to hear about the experiences of people in civil society who are working with asylum-seekers and immigrants and, on the other, to have direct and immediate contact with politicians and policy-makers, who can, in turn, take note of any suggestions coming from civil society and the legal and judicial profession.

The speaker referred to the Reding report, saying that he had particularly valued the distinction the report drew between the right to asylum and migration for employment purposes. He explained that international case law had perceived these as two distinct areas ever since the 1950s and 1960s. It is only in the 1990s that people have begun to question the continuing validity of the traditional distinction between asylum and migration: the two issues have become the subject of confusion and it has often been argued that international laws on asylum are inadequate when it comes to tackling the issue of migration. However, Professor Nascimbene argued that we need to remember that some of these texts, such as the Geneva Convention, for example, were drawn up in response to the needs of a particular period. It is therefore unreasonable to expect them to provide an adequate response to issues that have emerged only subsequently.

Professor Nascimbene agreed with the Reding report: the Geneva Convention, which is referred to by all the main texts of international law on the subject, almost as though it were a kind of "international public law", needs to be revised and possibly supplemented by an additional protocol. Whatever the case, the right to asylum is unquestionably a fundamental human right and, as such, cannot be made subject to any restrictions. In any event, Community law from the Treaty of Maastricht on - and even more so with the Treaty of Amsterdam - has adopted as its own some of the provisions to defend human rights and the fundamental rights of the person contained in current international instruments. Even the Court of Justice has accepted the common standard of treatment required by the right to asylum, which is also applicable as regards migration.

Looking at the second aspect of the issue covered by the Reding report, that of migration for employment purposes, Professor Nascimbene noted the need for rules that are common to all Member States of the European Union. First and foremost, however, he recommended that account be taken of a whole range of existing principles and international conventions. This recommendation concerns, in particular, the need to cooperate in a coherent and coordinated manner with other international organisations working in this field, such as, for example, the Council of Europe, which is, even for purely geographical reasons, the closest to the European Union. He said that we need to avoid wasting time and energy on drawing up instruments that are the same as those already drawn up by international organisations on the same issues. By way of example, he mentioned the Council

of Europe's convention on migrant workers, the migrant workers' statute and the many ILO conventions and suggested that, where international conventions contain principles that have already been accepted by a large proportion of the States that make up the international community or are members of the Council of Europe, the European Union could simply use the experience gained in other places, including at judicial level, and accept the findings already made by other international organisations.

Professor Nascimbene said he would like to express his opinion on some of the subjects already covered by previous speakers, and on the concerns expressed by Mr Fennelly, Advocate-General of the Court of Justice, about the amount of work that will fall upon the Court of Justice when the Treaty of Amsterdam enters into force. Like Mr Fennelly before him, Professor Nascimbene commented that we are going to be faced with fragmented rules and competences and that it will be extremely difficult to achieve an overview of the various options which the new titles of the Treaty of Amsterdam offer as regards the Court's jurisdiction. Professor Nascimbene shared the doubts expressed by Mr Fennelly concerning effective guaranteeing of the rights envisaged by the new Treaty of Amsterdam in terms of jurisdictional protection. He added that the figure of the judge that emerges from the Treaty of Amsterdam is virtually a "half judge" or "demi judge". Indeed, with the mixture of discretionary and mandatory powers, with the potential either for the judge of the court of final jurisdiction or highest level or, subject to a government declaration, for any national judge at any level to have the power to refer cases to the Court of Justice, we could find ourselves faced with a dangerous limitation of the Court's jurisdiction, which will also imply restricted access to Community justice for citizens. According to Professor Nascimbene, the situation is unsatisfactory. It is unreasonable to expect Member States to show absolute respect for the principle of jurisdictional protection unless we can guarantee that the same level of respect is going to be shown by Community institutions. If we are to create a European judicial space, then we have to allow both the development of substantive rules (judicial space) and an appropriate increase in procedural law (jurisdictional space).

This analysis led Professor Nascimbene to refer to the first speech of the meeting. The speaker in question had pointed to the gaps in some national asylum procedures and had taken the opportunity to highlight the imbalances that can develop if substantive rules and, therefore, definitions, are not accompanied by correct, and possibly common, procedures. Professor Nascimbene went on to mention the Commission report, "Towards the definition of common rules governing asylum procedures". This document covers the definitions of "safe third country" and "manifestly unfounded request", examines the possibility of introducing a new wording for the concept of "manifestly unfounded request", and tackles the question of procedures. Professor Nascimbene reiterated that, in law, procedural aspects are intimately bound up with substantive aspects and that procedural rules are complementary to substantive ones.
In conclusion, the professor turned his attention to the expression "space, freedom, security and justice". According to his definitions, freedom means allowing people to move around; security means allowing people to move around in a safe environment; and justice means allowing people to move around in a safe environment, yet within the context of a judicial system that is trusted by citizens. With an almost poetic comment, he added that the expression "space" seems to evoke an image of a place where people can fly. But, obviously, if they are to be able to fly in the European Union, European citizens will need Community wings rather than national ones, just as they will need appropriate jurisdictional protection within Community law.

Mr Christos THEODOROU,
Member of the Committee on Public Administration,
Public Order and Justice - Vouli ton Ellinon, Greece

I deplore the fact that in the course of our discussions we have touched only on theoretical aspects of the creation of this area of freedom, security and justice, omitting to mention concrete action and the way in which all this action can be implemented. In my view, one concrete proposal would be to grant special financial aid to the immigration stations constituted by Greece, Germany and, more recently, Italy.

Lord BRIDGES,
Member of Subcommittee F
of the European Communities Committee,
House of Lords, United Kingdom

I serve as member of a sub-committee of the European Communities commitee in the House of Lords which is particularly concerned with questions of Justice and Home affairs. I would like to make two very brief comments. The first is about the importance of asylum question. We are very puzzled by it, we have a long tradition of it. The traditions do not exactly apply to present circumstances. There is an almost permanent argument about the status of economic refugees whether they can in certain circumstances always or never be regarded as persons suitable for asylum. I do think that, if there is one question, which stands outs as calling for a firm and clear decision, it is this one. The preparatory work done by the European Parliament is extremely helpful.

The other matter which is more of domestic concern but may interest colleagues concerns the argument which has gone on in London recently about Schengen and the right which we had under the Treaty of Amsterdam to opt in if other member states agreed. Our committee spent some time examining this question. Most of my colleagues and I felt that there was a strong attraction in the single European travel area. We hope that our government will take this seriously. It seemed to us to correspond with one of the statements made by one of our foreign ministers, who said that shortly after the Second World War he was being able to go down to Victoria Station and to buy a ticket to travel wherever he wanted to. We found in talking to the representatives of our government, that they were still very much attached to maintaining our external frontier controls on the grounds that being an island we had always done this and they believed that it was appropriate to continue to attempt to control illegal immigration from abroad.

In our inquiries in the sub-committee we reached the view that it is not really possible to exercise such controls effectively nowadays. If a person wishes to enter the country illegally, it is regrettably all too easy to do so. The only way in which you can effectively discover illegal immigrants is when they are trying to perpetrate a social security fraud after entering our country or if they overstayed the period in their visa or by the receipt of information from another European member state. For these reasons we strongly urge our government to think in terms of an opting in to the Schengen Treaty on a wide a front as possible. Recently the government announced that it is following this course but it is maintaining the external frontier controls and engaging in as many other activities of Schengen as possible, particularly in the Schengen information system. This matter will now have

to be considered in an appropriate way within the European Union.We do also think in the Schengen connection that the protection of data entered into the Schengen system is a matter which requires most careful thought and which is not at the present properly covered. We have our own national data protection rules and I am sure that many others do. This also requires further study.

Mr Michael ELLIOTT (PSE, UK),
Member of the European Parliament

I do agree on what Lord Bridges was saying. I think that one of the problems in the UK with asylum seekers has been that for a variety of reasons the procedures have been far too slow. That is causing injustice in itself. I know cases of asylum seekers either waiting for an initial decision on their application or waiting for the hearing of an appeal, who have been waiting for years to know where they stand. It seems to me quite unacceptable that people should be kept around for a period up to 10 years sometimes not knowing whether they have any permanent right to remain. Sometimes they have been accorded temporary privileges but that is not always the case. If it is difficult for the initial asylum seekers, how much more difficult it is for relatives and particularly for children. The government in the UK intend to accelerate these procedures and intend to deal with all application cases within 6 months or a year at most. It will need substantial reinforcement of the various official bodies.

On the question of Schengen and border controls I too very much welcome the recent announcement from the British Home Secretary. I would like to think that we could reach the day when Britain will be prepared to face down its border controls but the trouble is that no elected government can run too much ahead of public opinion. There is an insularity amongst people in Britain. In time though attitude will change and my hope is that Britain will eventually be able to become fully involved in the Schengen agreement but at least I think that the proposals made by the British Home Secretary take us a long way forward.

Certainly, people do get in illegally in all sorts of ways. We do need to try and get a more common practice.
Finally, I would like to make another point. Many of the asylum seekers are coming from countries that are applicants to the European Union. I have had assurances from the European Commission that in the course of the perspective negotiations the question of the treatment of minority groups within the applicant countries will be stressed and the need to respect the principles of article 13 of the Amsterdam Treaty. This should make clear to applicant countries that this will be a requirement. Members of the European Parliament, serving joint committees with the Parliaments of the applicant countries, are already making these points. We also have to give a lot more thought in the years to come to our relationships with those countries on the periphery of the European Union who are not likely to ever be members but with whom we need a good, sensible and realistic relationship and from whom we do not want to be the continual recipient of asylum seekers for unjustified reasons. I think that means that we have to talk more in depth and be prepared to help and assist these countries in ways that will improve the quality of life of the people that live in those countries.

Mrs RAUSCH,
Caritas Luxembourg

Ardiane is an Albanian from Kosovo who has been recognised as a refugee for seven years in Luxembourg. He asks the competent authorities to be allowed to take in his mother and sister, owing to the current situation in Kosovo. The authorities refuse his request, although he has a monthly income of over 2500 euro. The result is that he goes to look for them illegally. Consequently, the number of people in an irregular position in Luxembourg increases by two. I ask myself if the fight

against illegal immigration is not attacking the wrong targets. Would it not be better to tackle our inhumane regulations? Shouldn't we tackle restrictions on the Geneva Convention? Shouldn't we fight for supplementary protective rules?

Mrs Michèle LINDEPERG,
rapporteur for the European Parliament's
Committee on Civil Liberties on forms of protection complementing
Refugee status[16]

In response to Mrs Rausch, Mrs Lindeperg drew attention to the need, described in her report, to apply the Geneva Convention in full on the one hand and, on the other, to provide for forms of protection complementing refugee status.

Supplementary protection is completely different from the proposal for temporary protection made by Commissioner Gradin, which is currently blocked by the Council, since this temporary protection applies to massive influxes of displaced populations.

In this report on complementary forms of protection the European Parliament restates its commitment to the Geneva Convention. Most importantly, this supplementary protection must not appear to be a way of relieving the Geneva Convention of its content. On the contrary, we repeat that we are committed not only to the Convention, but also to its non-restrictive interpretation in accordance with the recommendations of UNHCR. We even stipulate what we understand by this and, in particular, recognition of persecution by non-state groups. This is excluded by a number of Member States, which were supported in this interpretation by the joint position adopted at European level in March 1996[17] . We stipulate that interpretation of the Geneva Convention must obey both the spirit and the letter of the Convention. We even add that we believe that sexual harassment must come under the Geneva Convention. A number of people not covered are seriously at risk if they return to their countries. For humanitarian reasons, there is a need to provide for supplementary protection. These people are currently subject to widely varying national provisions. We ask that these be harmonised in the form of a regulation.

Professor Henri LABAYLE,
University of Bayonne, France

Mr Nascimbene clearly stated that the Geneva Convention was the kernel of protection of refugees, but that it is known that there is also constitutional protection of asylum in all our Member States. I cannot see what stands in the way of imagining that tomorrow positive law would comprise minimum international standards, intermediate standards which could be Community standards, to which would be added internal standards that would express, for the constitution of every Member State, the choices it made in respect of asylum and, in particular, political asylum.

Over and above the normative aspect of the matter, it seems to me that as far as control is concerned,

16 Resolution of the European Parliament of 10.2.1999 on the harmonisation of forms of protection complementing refugee status in the European Union (OJ C 150, 28.5.1999) (See Annex 2).

17 Joint position of 4 March 1996 defined by the Council on the basis of Article K.3 of the TEU on the harmonized application of the definition of the term 'refugee' in Article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees (OJL 63, 13.3.1996)

and judicial control in particular, there are situations today that are completely abnormal. These are the situations that give rise to problems and which risk posing problems, since via 'communitisation', we shall have to manage a number of initiatives in the Community pillar, initiatives which were taken in the context of the old third pillar in the form of soft law, because positive law was not wanted. Once these regulations are transformed into positive law, that is when we shall see if the idea of safe countries, non-member countries, first host countries complies with the Geneva Convention, because the Treaty imposes measures that comply with the Geneva Convention. In the context of consideration of both the production of law and the control of law, today asylum is at the heart of the difficulties facing the European Union, particularly with regard to the problem of persecution by private individuals.

Mr Felix LEINEMANN,
Committee of Bishops in the European Community

I have three comments to make: the first is to question the values by which the European Union's migration policy is or proposes to be guided. The theme for our meeting today is freedom, security and justice. In this I see an emphasis on the security to be provided for the general public, which I cannot entirely support. My view on this point is that we should be paying more attention to solidarity with refugees and other persecuted persons. It will also be our task to communicate this solidarity to the citizens of the Union. In this connection it may perhaps be appropriate to introduce a concept from environmental policy: that of sustainability. In the long term, a migration policy can be successful only if it approaches the refugee problem from a global angle, in other words if we show solidarity with other countries too.

Development into a positive principle

In principle, we welcome the action plan's objective of promoting, in the fields it covers, judicial bases and common working methods in the Member States. It is above all in fields of policy relating to questions of migration and asylum and to the protection of refugees and deportees that a global concept is proving to be necessary, particularly in the face of increasing migration into the European Union. This concept must also take account of the principle of solidarity.
We are fully aware of the problems arising from harmonisation of the various national judicial bases. However, this project must not be implemented in accordance with the lowest common denominator.

In the view of the COMECE secretariat, all the measures should take account of the following objectives:

- promoting solidarity among Member States;
- strengthening the social tie among citizens of the Union; and
- upholding the principles of freedom, democracy, human rights and the rule of law.

Towards security through solidarity

The concept of "security" is understood very narrowly by host countries. Above all, it relates to the question of possibilities of defence against possible abuse (by unjustified demand) and the internal security of Member States. In contrast, the necessary solidarity towards refugees and asylum seekers is relegated to the background (cf. Declaration on peace, No. 24).

We emphasise that, with due regard to the human dignity of refugees and deportees, the European Union shares responsibility for their fate. In the long term, restrictive measures cannot be the appropriate means of ensuring internal peace. The peace and solidarity of the Community can be assured only if the measures envisaged are considered in the light of the personal dignity of those involved.

We emphasise the importance of Christian and ethical principles, and of respect for human rights, which must be taken into account in all statutory regulations.

A Europe without ramparts

The powers and priorities set out in the action plan are certainly designed to serve the interests of the Union. However, they will be successful only if the Union is not closed to non-member countries and their citizens. A lasting migration policy will require a global approach to migration phenomena. Such a policy must take account of both the situation outside Europe and global demographic developments.
Only worthy and just circumstances in non-member countries and for their citizens will succeed in restoring to everybody the right to live in dignity in their own country.

Equal distribution of responsibilities

Given the current differences with regard to law and the treatment of refugees, deportees and asylum-seekers in Member States, it is essential to provide for comparable protection that is appropriate and, at the same time, respects human dignity.
An appropriate joint regulation can be valid only if the responsibilities in relation to the acceptance of asylum-seekers, refugees and deportees are shared among all the Member States according to their capacities.

Specific comments

With regard to the list of measures proposed in the action plan, COMECE has three comments to make:

- No individual can be compelled to return to a region where he risks being subjected to torture or other forms of cruel and inhumane treatment. Before returning people who have sought refuge with us to escape a civil or international war, we must examine carefully whether the local situation permits them to be accepted and reintegrated by their country of origin.
- Following their admission to an EU Member State, and following a stay of a certain duration, citizens of non-member countries must be able to enjoy the same rights as a European citizen, in particular the right to choose a job and the right to train and to study. Protection of the family, as provided for in Article 8 paragraph 1 of the European Convention on Human Rights, is a priority. It must be ensured that families can be reunited.
- The action plan does not mention the problem of all the people who find themselves in Member States without being entitled to be there, sometimes for many years (people with no papers). An acceptable solution needs to be found for these people, for example in the form of a right of residence, to enable them to leave illegality behind and to remain in the EU with dignity. Such a decision would, in the long term and to a great extent, be in the interests of peace within the European Union.

Conclusions

We are well aware of the tension that exists between ethical considerations and the policies one can persuade society to accept. However, the European Union can achieve credibility as a community only if it shows solidarity with those who are weak and persecuted. All EU Member States, but also all those responsible in civil society, have the task of making Europe's citizens understand and accept these essential principles.
The political quality and ethical legitimacy of a European concept of security will depend on the question whether those who are most threatened by distress, violence and dependence derive concrete benefit from it.

Mrs Anne VAN LANCKER,
rapporteur for the European Parliament's
Committee on Civil Liberties on Schengen[18]

I would have been delighted if the United Kingdom intended to make use of the 'opt in' with regard to Schengen. I can understand that a country like the United Kingdom needs some time in order to abandon the island concept and its frontier controls, but I have to be honest and say that I have equally mixed feelings about the UK's partial opt in and Schengen and about Schengen itself. We would gladly have regarded Schengen as a European area of freedom. Actually, we have accepted that the European area of freedom was realised only at Schengen level and that a certain balance came into being between freedom and security, but I increasingly feel that really the balance in the structure and also in the UK's 'opt in' has been lost, that the security of those who are within the Schengen area is being achieved at the expense of the possibility for other citizens to enter the Schengen area. The external controls are the top priority. My first report[19] showed clearly that in the context of the Schengen information system, drawing attention to undesirable persons appeared to be more important than drawing attention to criminal acts. Illegality has become one of the principal crimes to be signalled in the context of the SIS. In fact, I should also like to point out that at the point when Italy was faced with the problem of the Kurds, the first reaction of the Schengen partners was immediate reinstatement of internal border controls.

I am concerned about the latest reports from the Council. The Councils of December and February made it seem that the entire implementation of the Schengen acquis under the Treaty is going wrong, that they are in danger of making no distinction between what has to be done under the first and third pillars. As a result of the safeguard clause, the Schengen acquis is in danger of coming into the third pillar. That is particularly bad. If the SIS were to end up under the third pillar, no data protection or democratic control would come on board. We in the European Parliament have always said that we want efficient police cooperation at European Union level, but at the same time we added that we do not want police with no standing. If Schengen comes into the third pillar, we shall be threatened with a situation in which there are police, but with no standing. What I am referring to here is the absence of control by the Court of Justice and the lack of reliable control by the European Parliament. If the British are considering opting into Schengen, I should like to ask our colleagues

18 EP's recommendation of 14 January 1999 to the Council on the programme of activities to be conducted under the Schengen cooperation arrangements up to June 1999 (OJC 104, 14.4.1999) (See Annex 4)
19 EP's resolution of 11 March 1997 on the functioning and future of Schengen (OJC 115, 14.4.1997)

from the British Parliament to make maximum use of the right to information and consultation. Two countries have set a good example: the Netherlands and Italy. However, we are now in danger of ending up in a situation where neither national parliaments nor the European Parliament have any democratic control over Schengen.

Mr Kurt KRICKLER,
Co-Chair of International Lesbian and Gay Association
(ILGA-Europe)

I would like to address two aspects of this discussion concerning lesbians and gays who are often completely ignored or neglected in this debate.

The first aspect is asylum. Some Member States recognise gays and lesbians as belonging to a "particular social group" which is, in case of persecution, one of the five reasons for the right to be granted asylum mentioned in the Geneva Convention. Other Member States grant asylum to persecuted gays and lesbians on "humanitarian grounds" outside the Geneva Convention. Other members do not grant asylum to people persecuted on the grounds of their homosexuality. If there is harmonisation in asylum matters in the EU, we demand that gays and lesbians be recognised as belonging to a "particular social group" according to the Geneva Convention and, therefore, be granted asylum in case of persecution.
Moreover, some countries have "white lists" of countries whose citizens would not be granted asylum because they are deemed as countries under the rule of law. Among the countries on those lists, there are, however, countries with a total ban on homosexuality, even between consenting adults. We demand that those countries be deleted from such lists.
Indeed, when the Lindeperg report was debated in this Parliament last months, smaller political groups tabled amendments to this effect.
Unfortunately and to our great disappointment, all these amendments addressing the specific situation of gays and lesbians in asylum matters, were defeated by the majority of this Parliament.

The other aspect I would like to address is the freedom of movement for gays and lesbians which is heavily impeded by the non-recognition of same-sex couples, even of those couples who are legally "married" in their native countries. As you may know, some Member States, Denmark, Sweden and the Netherlands, have introduced Registered Partnership for same-sex couples.
The non-recognition, in practical life, means that a same-sex couple cannot freely move to another Member State if one of the partners is either a non-EU citizen (although legally residing in the Member State of the partner) or an EU citizen but cannot find work in the potential host EU country. A married heterosexual couples in either of these circumstances would not have any problem to move together to another Member State.
Since the free movement of citizens is one of the main pillars of the Union, it is totally unacceptable that such obstacles to the free movement still prevail. We appeal to this Parliament to remedy this situation.
Again, last month, when the Lehne report was debated in this Parliament, some smaller political groups tabled amendments to this effect but again, the great majority of this House rejected them.
ILGA-Europe regrets the lack of support for equal rights of gays and lesbians in this Parliament. It is not enough to condemn the violation of the human rights of lesbians and gays in the annual EP

reports on the respect of human rights in the EU. This Parliament has a crucial role in defending the equal rights of all people.

Mr Patrick DELOUVIN
International Federation
of Human Rights Leagues

European Union Member States have been attempting to reconcile their asylum policies for some years, but associations rarely have an opportunity to make themselves heard. Nevertheless, these associations endeavour to follow this work closely, and have frequently made their position or recommendations known, even though not invited by governments to do so. 1999 will mark the entry into force of the Treaty of Amsterdam, the European Parliament election and the appointment of a new Commission. In the not too distant future, the European Union could well be admitting a dozen new countries in Central and Eastern Europe and from the Mediterranean basin. Today, the Action plan of the Council and the Commission (hereinafter referred to as the Action Plan) and various European Commission initiatives such as the projects on temporary protection and on asylum procedures are deserving of major exchanges between state officials, parliamentarians and bodies and associations involved in the right to asylum.

No other area in the world appears to be better covered by international human rights conventions than the countries of the European Union: Convention for the Protection of Human Rights and Fundamental Freedoms (1950), European Convention for the Prevention of Torture and Inhumane or Degrading Penalties or Treatment (1987), United Nations human rights conventions. The 1997 Treaty of Amsterdam reaffirmed that the European Union is founded on the principles of liberty, democracy and respect for human rights.

The affirmation of such elevated principles also involves responsibilities. The European Union Member States are highly developed countries, which include some of the oldest democracies in the world. This privileged position enables and obliges them to comply with the standards in place on human rights. In addition, the European Union has become one of the world's centres of economic and political gravity. Thus what it does and what it omits to do have a considerable effect on the attitude of the other countries in the world. Finally, Member States must make human rights the cornerstone of their national and foreign policies, in order to ensure that enlargement of the European Union will be accompanied by improved respect for these rights in Europe.

Right of asylum and protection of refugees

In the field of asylum, the texts adopted during the 1990s by representatives of European Union Member States in accordance with the intergovernmental method have, in general, constituted agreement on the "*lowest common denominator*". These political decisions have led to practices that are more and more restrictive and, despite this, certain Member States are concerned about the increase in the number of requests for asylum in their territory in 1998.

The Treaty of Amsterdam involves an enormous programme of work specified by the *Action Plan* over the years to come. For its part, the European Commission has just distributed to the Council and the European Parliament a document entitled *Towards common standards in respect of asylum*

procedures. Our associations are delighted that the Treaty of Amsterdam stipulates that measures on asylum must respect the 1951 Geneva Convention and the other treaties in force. Moreover, they fully approve of the affirmation in the Plan under which "*measures must take due account of the fact that the fields of asylum and immigration are separate and call for different approaches and solutions*".
Our associations ask that application of the Treaty of Amsterdam should plug several gaps.

1. The Treaty of Amsterdam makes no reference to compliance with the instruments ensuing from the 1951 Geneva Convention. Our associations ask that at the Tampere Summit, Heads of State and Government should solemnly reaffirm that all measures adopted that involve consequences for asylum seekers and refugees will respect, in addition to the 1951 Geneva Convention, all the instruments ensuing from it, in particular the conclusions of the UNHCR Executive Committee and the UNHCR Guide to the procedures and criteria to be applied to determine refugee status. In this context, the Heads of State and Government must also make reference to respect for the European Convention on Human Rights and, above all, for its Article 3, under which "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*". The Schengen Agreement obliges contracting parties to impose sanctions on companies which transport passengers not holding the necessary travel papers. This provision can easily have the effect of preventing victims of human rights violations, who are often forced to leave their country without their papers, from reaching a place of refuge. The Action Plan provides for continuing to harmonise legislation on carriers' responsibility (36.d.iv). Measures on visas and immigration and the sanctions imposed on carriers must take account of the specific needs of asylum seekers as regards protection. Measures implemented against "*illegal immigration*" must not prevent asylum seekers from reaching a place where they would be safe.

2. The 1992 resolutions on "*safe*" third countries, on "*safe countries of origin*" and on "*manifestly unfounded requests*" and the 1995 European Union resolution on minimum guarantees in respect of asylum procedures do not respect certain basic principles of the rights of refugees. Our associations are concerned about the conditions of return to "*safe third countries*" when the returning country has not obtained, in every individual case, a guarantee from the said third country that the request will be examined in accordance with a fair procedure. Moreover, while it is true that the Dublin Agreement establishes criteria making it possible to determine the Member State responsible for examining an asylum request, it also authorises Member States to send an asylum seeker to a third country. This Agreement does not guarantee that asylum seekers will have access to the procedure for determining refugee status in either of the countries. Our associations are delighted that, in its recent working document entitled *Towards common standards in respect of asylum procedures*, the European Commission proposes a re-examination of the conditions for return to countries said to be "*safe*", particularly with regard to the need to obtain strict guarantees on admission and access to effective protection (§§ 14, 21, 22), and even envisages abandoning the concept of "*safe country of origin*" (§ 22). Our associations ask that no asylum seeker should be sent to a "safe third country" unless the sending State has obtained guarantees under which this third country will permit the asylum seeker to benefit from a fair asylum application procedure. Our associations ask that the measure on minimum standards for asylum procedures should plug the gaps in the resolution adopted by European Union governments in 1995, in particular as regards "*manifestly unfounded requests*" and the concept of "*safe third country*". In particular, there should be a guaranteed right of appeal, with a suspensory effect. In addition, border police should transmit all requests for asylum to a

competent independent body.

3. According to the Treaty and the Action Plan, minimum standards governing reception of asylum seekers should be adopted within two years. Our associations ask that all measures on conditions of reception should guarantee appropriate means of subsistence to enable asylum seekers to live in dignity until a decision on their request is taken, including the waiting period in respect of the results of an appeal.

4. The common position of the European Union on "*the harmonised application of the definition of the term refugee*" (1995) permits states not to recognise as refugees persons persecuted by non-state players. This interpretation does not comply with the UNHCR recommendations or, in particular, with the Guide to the procedures and criteria to be applied to determine refugee status. Our associations are delighted that the European Commission proposes reviewing this point in the text of the common position (§ 5.4). Our associations ask that the European Union's common position on the interpretation of the definition of the term "*refugee*" should be revised and that measures to implement the Treaty of Amsterdam should guarantee that persons threatened by non-state entities are included in the 1951 Geneva Convention's definition of the refugee if their state of origin neither wishes to nor can protect them.

5. According to the Treaty of Amsterdam and the Action Plan, minimum standards on temporary protection and on a balance between the efforts agreed to by Member States must be adopted "*with maximum speed*". All temporary protection measures must be reserved exclusively for exceptional situations of massive influxes and must not be translated into weakening of protection standards. The right to benefit from an individual asylum request procedure must always be guaranteed. Repatriation must not be imposed until there has been a fundamental and lasting change in the human rights situation in the country of return. Member States must demonstrate solidarity with other countries in the world that receive large numbers of refugees and must take measures to prevent these countries from having to bear a disproportionate share of the burden.

6. In the measures to be adopted in the two years following the entry into force of the Treaty of Amsterdam, the Action Plan provides for "evaluation of countries of origin with the aim of formulating an integrated approach specifically adapted to each country". This measure was not included in the Treaty itself, but obviously refers to the work of the *High-level group on asylum and migration* created in 1998. This group plans to establish an action plan, for the following areas in the first instance: Afghanistan/Pakistan, Albania and neighbouring countries, Morocco, Somalia and Sri Lanka. This plan must comprise, in particular, an analysis of the reasons for flows, possibilities for reinforcing a joint development strategy, and diplomatic consultations with regard to signing readmission clauses or providing for safe return to the country concerned.

   One of the European Union's objectives is to contribute to the development of democracy and to reinforcing the lawful state in partner countries. In May 1995, the Council took the decision to include in each of the agreements concluded with non-member countries a clause on "key elements", relating in particular to human rights, including references to universal and/or regional instruments, and an article providing for implementation of a suspension mechanism in the event of failure to respect one of these key elements. All agreements concluded since May 1995 include this clause devoted to human rights, but there are still differences between them

- for example, the suspension mechanism is not always included in the texts. Community programmes of development aid and cooperation include human rights conditions: aid may be frozen if the beneficiary country is responsible for serious violations of basic rights or fails to respect democraticprinciples. Our associations ask that the drawing up by Member States of a plan in respect of certain countries of origin of asylum seekers or transit applicants should be designed in such a way as to promote respect for human rights in all countries and to protect the rights of refugees, wherever they are, and not with the aim of preventing persons in danger from reaching the territory of the European Union.

7. A protocol depriving European Union nationals of the right to request asylum in other Member States, except in exceptional circumstances, has been Annexd to the Treaty of Amsterdam. This decision weakens the system of international protection of refugees and asylum seekers, and could constitute a dangerous precedent for other parts of the world. Our associations again ask the Heads of State and Government meeting at Tampere to repeal the protocol on asylum for nationals of Member States of the European Union, and we ask every Member State to declare unilaterally and publicly that it will not apply it in the time before it is repealed.

8. With enlargement of the European Union, candidate countries are asked to respect the "*Community patrimony*", particularly in the field of the right to asylum and immigration. The European Union should help these countries to develop asylum structures which ensure effective protection for asylum seekers and refugees. With the adoption of measures implementing the Treaty of Amsterdam, Member States should remedy the deficiencies with regard to asylum inherent in the European Union's current policies, an action that will have consequences in the countries of Central and Eastern Europe, and in other countries that are candidates for accession.

9. Lastly, the scope of the work initiated in the context of the *Action Plan* justifies the establishment of regular in-depth exchanges among state officials, parliamentarians, and bodies and associations involved in the right to asylum. Our associations again ask Heads of State and Government to establish a system enabling the associations or individuals concerned to follow the progress of the work as it evolves, in such a way as to be able to influence its content at the appropriate time, both before and after the Tampere Summit.

Mrs Michèle LINDEPERG,
rapporteur for the European Parliament's committee on Civil Liberties
on supplementary forms of protection

In one paragraph of the report on supplementary forms of protection, we ask that supplementary protection should apply to persons who have fled their country owing to fears based on sexual orientation. A number of small political groups within the European Parliament had proposed a series of fairly detailed amendments on this subject. Speaking personally, I supported them, but I voted against them. Let me explain. The problem when one wants to have a text adopted by the European Parliament is to know how far one can go to be certain that the text will be accepted. The first time, I had gone too far. Result: the report was not accepted. For the report to be adopted, it needed majority support. I was seeking this majority support. If these amendments had been adopted, the report itself would have been put at risk.

Mr Fabio EVANGELISTI,
President of the Parliamentary Committee
Monitoring Implementation of the
Schengen Agreements

We need to be careful and distinguish between the issues associated with refugees and those associated with immigrants, particularly illegal immigrants.

The speaker then took his cue from topical issues (Romano Prodi's nomination as President of the European Commission, the House of Lords' decision to bring Pinochet to trial) to distance himself from his role as President of the Schengen Committee and talk about the Kosovo refugees. He did not wish to make any political comments on the bombing of Serbia but wanted to stress how vital and urgent it was to have plans to accommodate the tens of thousands of refugees who would inevitably leave the province of Kosovo to flee reprisals.

The duty to provide shelter cannot fall solely on the country or group of countries that happen to be "on the front line". Mr Evangelisti said he was thinking not only of Italy, which has a sizeable Kosovo community, but also of Switzerland and Germany. No, the refugee situation caused by NATO intervention has to be seen as the shared responsibility of every member of the Atlantic Alliance, and particularly of the European Union. We need to consider how we can help to set up adequate camps in Albania and Macedonia and how we can support these two countries financially.

How can we deal with a humanitarian disaster such as the one that is about to befall by relying on an instrument such as the Dublin Convention, which requires refugees to request asylum in the first country they enter and puts the burden of proof on them, requiring them to prove that they are at risk of torture, racial persecution, etc, in their own country?

According to the speaker, one alternative would be to shelve the Dublin Convention, which is based on the Geneva Convention, which was, in turn, drawn up on the basis of the nature of refugees fleeing the former Soviet bloc in the 1950s. Those refugees were dissidents, which meant each case had to be examined individually and that care had to be taken to ascertain whether they actually met the necessary requirements to obtain refugee status. Today, however, European countries need to develop more flexible forms of humanitarian protection that go beyond the bounds and limits of current legislation, beginning with the Dublin Convention that, together with the Schengen Agreement, will become part of European law as from 1 May next.

2. Fundamental rights, citizenship and judicial cooperation in civil matters

Professor Henri LABAYLE,
University of Bayonne, France

The European Union is aware of the need to stand back and allow some time to elapse before intervening openly in the situation of its Member States in the field of fundamental rights. Today the gradual institution of a European judicial area has the merit of bringing into the open a long-standing

debate, namely that of the constitution of a “Union governed by the rule of law” comparable with the concept of the state governed by the rule of law that binds national societies together.

It is therefore scarcely necessary to indicate the extent to which the discussion of an area of freedom, security and justice obliges the Member States and the EU institutions seriously to consider the action to be taken in practice in response to a political consensus, that of an unreserved commitment to the to the protection of fundamental rights.

1. An inescapable evolution

The Treaty of Amsterdam marks the culmination of a lengthy evolution which has seen the process of European integration hesitate between parallel construction of a guarantee system within an enlarged Europe, that of the Council of Europe, and competition between national guarantee systems for fundamental rights whose vitality and generality characterise internal judicial trends in these last years of the century.

However, inclusion of the problem of democracy and of the state governed by the rule of law in Article 6 of the Treaty on European Union does not appear to resolve all the questions. These relate both to the need to adopt a heritage and an identity common to Member States, and also to the difficulty of making this a priority and perhaps a crucial criterion for candidates for accession. More than an economic model, the European subcontinent would thus appear to be a democratic model whose founding principles could be invoked against third parties.

At the very least, an agreement on the substance of the principles and values concerned must exist before any advances are made in such a sensitive area. Although Member States have not considered the implications, there is, and has been for a long time, a broad consensus among European political and judicial systems.

This is hardly surprising when one considers all that contemporary political or judicial traditions owe to British democracy, to the French Republic, or to the German legal system. From the representative regime to the rule of constitutionality via the defence appeal or organisation of the defence of the prerogatives of the individual in the face of authority, European judicial structures are deep-rooted and unique. They alone probably bear witness to a decisive step in constructing a Union-level rule of law. What is more, the fact of the accession, nearly half a century ago, of Member States to the European Convention on Human Rights, which refers to a very great extent to the categories and procedures of internal law, illustrates this relationship.

An additional practical explanation can be derived from the circumstances. For a long time, Member States have eased their consciences on the subject of fundamental rights by being satisfied with their membership of the Council of Europe and with the guarantee given them by the system of agreements under the ECHR. The subsidiary character of the text and of the judicial control accompanying it thus provided their membership with all the flexibility it needed. However, it cannot disguise reality, the reality of an in-depth transformation of national choices from the top down. From correct administration of justice to non-nationals' rights, via family law or the exercise of the right of ownership, whole areas of public freedoms have been Europeanised in this way, in depth and without major conflicts. There can be no denying, therefore, the decisive influence of the ECHR on state immigration policies or the right to a court hearing.

Thus this intellectual comfort, which had the merit of not requiring the European Union to concern itself with the problem, seems to have outlived its time, for both political and judicial reasons. The political reasons should not be underestimated. The reason why the Council of Europe was able to undertake the activity it did in the field of human rights was essentially that its members revealed no fundamental shortcomings from the point of view of democracy, and that when such shortcomings arose, the "controlled expulsion" applied to the Greece of the colonels enabled a response to be made. Moreover, the fact of having used it at least once established the precedent of an option that could possibly have been chosen on other occasions. The Council of Europe thus acquired, with little effort, a human rights reputation which the end of the 20th century is experiencing some difficulty in living up to. The geopolitical upheavals at the end of this century have led the Council of Europe to play the part of a genuine training ground for democracy, if not a decontamination screen. The price of this irreplaceable function may have been the fact of being less particular about the ways in which new arrivals meet the main obligation set by the Council rules, that of being committed to the "pre-eminence of the law". Hence a succession of dubious accessions which perhaps give rise to retrospective doubts in certain democracies, such as the Kingdom of Spain or Portugal, given the ease with which countries such as Croatia, Ukraine or Russia are now accepted. Whatever the facts of the matter, the need for a return to the original rigour was certainly sufficiently keenly felt by the Member States for them to include in the Treaty on European Union a selection mechanism similar to that which existed in the Council of Europe's rules.

In addition, the issue of the diversity of the Council of Europe's members, added to that of the reform of the ECHR's guarantee system by protocol 11, poses a fundamental question, namely that of maintaining of the standard of protection of fundamental rights within the continent of Europe. Whether one supports the hypothesis of the "break", that of differentiated protection, or that of a double standard, it is difficult to imagine that the dynamism that has characterised political and judicial protection of human rights at European level can be maintained in an environment that has suddenly become heterogeneous by force of circumstances. At the very moment when the European Union is entering crucial areas in the field of civil liberties, it is no longer possible to avoid the debate.

The impasse also exists in the strictly judicial arena. It is feeding, firstly, on the scope of Community integration in new sectors, a scope that can no longer be concealed from the vigilance of constitutional jurisdictions, as was clearly indicated by the German Constitutional Court when the Maastricht Treaty was being ratified. Whether it is a matter of the substance of the issues dealt with or the lack of democracy in a Community institutional system that does not have a representative legislator and where the access of individuals to justice is singularly limited, the potential for a blockage can be clearly seen. Thus it is important for the Union's institutional system to commit itself more strongly to the path of effective democratisation of its modes of operation. Community imperfections are more and more difficult to accept given that, internally, fundamental rights are influencing the structures of the rule of law and, at European level, the judicial control of the European Court of Human Rights is reflecting needs of which we are aware.

The Treaty of Amsterdam embarks on this course. Even if various more or less ambitious scenarios may be sketched out, nonetheless it constitutes a genuine revolution to the extent that it deliberately places the European Union in the arena of fundamental rights, something which, from Rome to

Maastricht, Member States had always refused to do openly.

Oddly enough, in this position the Union is running in parallel with what had hitherto characterised the role of the Council of Europe. It is divided into a legislative dimension and a protective dimension, guaranteeing the fulfilment of commitments, a structure that is specific to the Europe of Strasbourg. Divided between explicit reference to the implications of fundamental rights and reference to constitutional traditions and the ECHR, even including a general principle of non-discrimination or fundamental social rights, the European Union now appears to be tempted by an autonomous approach. Making respect for these values a condition for accession and the application of its policies, it is breaking with the past: the Union is "based" on fundamental rights.

However, the earlier functionalist approach confuses this process, not least in the eyes of those who initiated it, the Member States. Whether this caution was required for new developments in European integration, such as those relating to an area of freedom, security and justice, or competition between the different systems of protection was becoming impossible to manage without a minimum of rationalisation, the fact remains that what has been achieved gives the impression of having been improvised rather than thought through, tolerated rather than desired. While Maastricht had constitutionalised twenty years of the ECJ's jurisprudence, Amsterdam goes much further, but the political symbolism and technical implications of this choice have not been clarified and accepted by the Member States.

2. The constraints of European public order

Compared with the previous situation, the Treaty of Amsterdam marks a break, one which constitutes a genuine practical revolution inasmuch as entry into the arena of fundamental rights is innovative. The claim to uphold and develop an "area of freedom and justice" and the inclusion of a general principle of non-discrimination are evidence of a determination to enter an area that had hitherto remained undeveloped. That being the case, it became inevitable that these constraints would be applied to any state wishing to enter the Union, but also imposed on existing Member States.

2.1 The constitution of an area of freedom, security and justice

This is put forward as the main reason why the EU should take account of fundamental rights. The explanation is rightly used, but it cannot be the only one, given the extent to which this new field of European action touches the very heart of the rights of the individual and compels the European Union to adopt a position. This lends support for the idea that "European public order" is imposing itself on Member States, a public order which national case-law is clearly now reflecting and which prohibits, for example, the handing over of individuals to dangerous destinations or the functioning of justice in a way too remote from normal conceptions of human rights.

For a long time, the interplay of constitutional constraints and the jurisprudence of the European Court of Human Rights has encouraged the acceptance of these facts. Member States have had to accept its constraints individually when their immigration policies or the effect of their joint police measures led them to move away from it. Although there is no need for a critical interpretation of the area of "freedom", which in fact mainly affects freedom of movement, the European Union is

moving into matters which, of their nature, touch on fundamental rights. This involves not only taking account of fundamental rights but also drastically revising the status quo.

The subject of the state governed by the rule of law and the necessary protection of individual liberties is certainly no novelty for the Community judicial order.

First of all, the Treaty of Amsterdam included in Article F.2 the lessons of Court of Justice jurisprudence in this matter; secondly, the introduction of European citizenship has had major consequences from this point of view. Nevertheless, strict delimitation of Community jurisprudence to the "Community context" and the lack of any properly binding rules in the area of the third pillar have reduced the interest of this situation. In this context, the explicit reference in the Treaty on European Union to the European Convention on Human Rights and the Geneva Convention on political refugees has had few concrete consequences in the application of the Maastricht Treaty.

From now on, the variety of the problems covered by the area of freedom, security and justice requires the European Union to take full responsibility for the implications of fundamental rights. This directly involves issues evoked by migration policies, which may touch on the right to asylum (to comply with the Geneva text), on protection against inhuman or degrading treatment or on the right to lead a normal family life, but also extending as far as the administration of the justice demanded by the operation of a joint anti-crime policy as systematised by the new third pillar, entire crucial areas of the law of civil liberties are directly involved. The same logic as in the relevant articles of the European Convention on Human Rights will very likely underlie the whole structure. So how can it be doubted that the "quality of the law" or the "fair process" that will be required in certain cases will spare national legal systems, that judicial cooperation in civil issues will eventually bring about a substantial rapprochement of national family laws or a shared understanding of parent/child relationships?

Thus there is now a large element of common vision of the place of the individual in European society and of his or her relationships with authority.

Even if this is already largely the case, both as regards Community regulations under the supervision of the Court of Justice and as regards national implementation that is subject to supervision by the national courts and the European Court of Human Rights, the change of perspective is radical. The shift in favour of the Union and, in particular, of the Community is apparent in two crucial instances: the way in which regulations are drafted and the way they are reviewed.

With regard to the drafting of regulations, national constitutional traditions would not be satisfied in the long term with the imperfections of the Union's institutional system and, in particular, with those that affect its legislative authority. Since the issues mentioned earlier are, by their nature, essentially the concern of the legislative powers in the Member States, the obvious question that arises today is that of the competence of the law-making body within the Union. From criminal law to respect for individual liberties, too many high-profile responsibilities are at stake for them not to have an effect on the institutions.

Two points may already be called into question straight away: the balance between Council and Parliament and, more generally, the organisation of parliamentary subsidiarity, for contacts between the national parliaments and the European Parliament. This twofold requirement, in respect of both

Member States and the Union, will doubtless necessitate great delicacy in identifying which subjects call for an exclusively European approach and which will be satisfactorily handled through national coordination. Whatever the case, the response given will determine the Union's capacity to legislate in a binding and effective way.

The same reasoning applies to the subject of judicial control. Here too, the organisation of tasks between the national level (and how could a national measure implementing a common regulation avoid the national courts?) and the Community level will pose delicate problems of adjustment. For the rest, the Court of Justice is well aware of the challenges the Union's judicial system has to face. It is investigating two courses: strengthening its prerogatives and increased reliance on national jurisdictions or even the creation of specialised national jurisdictions. Within the general problem of judicial control, if respect for fundamental rights is to be satisfied, it requires a level of speed and efficiency that the current system is, without doubt, no longer capable of supplying.

We can thus see a radical change taking place, while not underestimating the effect of the "spatial" logic that is involved in the entire structure. Following on directly from the Single European Act and the disappearance of internal frontiers, the logic of the single territory has unpredictable potentials. Whether it is a matter of the area of "*freedom*", which will necessitate protection in the broadest sense from both restriction and intrusion, or a matter of the area of "*security*", which is clearly becoming a recognised right of the citizens of the Union, in reality we are witnessing the advent of a unique principle of territoriality. The need for a single law, a single justice and a single security for a common territory is implicitly being formulated, even though an inventory of the problems posed has not really been made by the negotiators. If we add the fact that the Treaty expressly mentions the "*maintenance and development*" of such an area, we can see that it incorporates a logic of both defence and construction. The traditional conflicts between freedom and security, between public order and individual freedom, have every chance of recurring, but this time at European level. Thus the question of arbitration of the people or the courts is posed at this level also.

Fundamental rights in the European Union may then appear in a different light. Promotion of them may be the goal of the new area thus instituted and no longer a limit, as it is too often understood to be. The libertarian identity of the continent of Europe would thus be seen as a crucial driving force and not as a brake. In this context, one can only be surprised by the indifference of Member States towards this dimension, considered to be of secondary importance, whereas the European Parliament has understood it perfectly and is now organising itself in consequence. The call for a harmonised area can only be organised around founding principles and values that the fight against organised crime or illegal immigration could not embody on its own.

2.2 Affirmation of a general principle of non-discrimination

This constitutes another innovation in the Treaty of Amsterdam. It goes far beyond what we have known hitherto, particularly by strengthening the call for unified or harmonised regulations.

National laws, the law of the Convention and Community law have long followed a similar approach in order to develop a flexible principle in the final years of this century which ranges from formal equality to simple non-discrimination. We know the devastating power that this principle has been able to exert in the Community legal system.

The new Article 13 of the Treaty of Amsterdam, which condemns discrimination based on age, sex, race, ethnic origin, religion or beliefs, a disability or sexual orientation, may offer a lever that will also be effective in establishing a common area where regulations will be progressively harmonised because they cannot be differentiated too much.

In this context, an area open for the free movement of persons will very rapidly raise questions about the status of ordinary non-EU citizens, their reception and their integration at European Union level, and not just at Member State level. The unifying power of the principle of equality is bound to oblige national sovereignties to give way in the name of fundamental rights. Whether it is a question of differentiating between citizens and non-citizens of the Union or even of the distinctions to be made between different categories of non-EU citizens, the application of the principle of non-discrimination will lead to a judicial levelling-out process, the effects of which are almost impossible to forecast. The principle of equality derived from the ECHR cannot be taken as an example, because this Convention is not autonomous. Moreover, although today the principle of non-discrimination is at present only a principle of prohibition, the day will certainly come when Community implementing measures will have to be devised in order to put individuals in identical situations. It is doubtful whether the unanimity required in the Council will be able to resist the political debate which will then erupt for long.

This unifying power of fundamental rights in a single area within which no distinction would be made in the way people are treated also affects social issues, although its potentialities are not as obvious there.

The purely technical absorption of the additional social protocol rejected by the United Kingdom in Maastricht has been commented on widely in Amsterdam. Less note may have been taken of the fact that the wording of the Treaty showed the scars of the confrontations that had dominated the subject during the past ten years. An explicit reference to " *fundamental social rights*" is included in Article 136 of the Treaty establishing the European Community, which refers to the Social Charter signed at Turin, as well as but also to the Charter of Fundamental Social Rights of Workers, whose adoption in 1991 had put the United Kingdom at odds against its other eleven partners. It is thus a question of giving concrete meaning to the concept of European citizenship, which has hitherto been confined to rights of freedom of movement or the appearance of political participation.

The overall result of this process is that neither the legislator nor the courts, be they national or European, can hold aloof from this redefinition of the links between fundamental rights and the European structure. The European Union is moving, directly or indirectly, in this direction.

2.3 Respect for the principles of the state governed by the rule of law

Whether a cause or a consequence of the movement described earlier, the proclamation of the European Union's commitment to fundamental rights is backed up by a dual mechanism: it is, of course, necessary to respect fundamental rights in order to join the Union, and it is also necessary to do so in order to benefit fully from its policies.

We know basically why the European Union has equipped itself with a mechanism similar to that which existed in the Council of Europe and enabled the latter to sift through accession requests on the basis of the human rights criterion. In addition to fears linked to the fact that the Council of

Europe has clearly relaxed its vigilance since the implosion of the Eastern bloc, the prospect of candidates appearing from new directions explains the insertion of the new Article 49 into the Treaty. As an express condition of accession (replacing the earlier implicit verification), this approach poses obvious concrete problems. The purely political and subjective appreciation at a given moment of the situation in a candidate state with regard to democracy or the rule of law is a particularly delicate subject. As an attestation of democracy or the absence of it, it also exempts from this examination all those who, being already members of the virtuous circle, are assumed a priori to fulfil these guiding criteria. It has therefore been criticised on those grounds.

It is doubtful whether this political barrage will continue very long, once pressures like those that forced open the doors of the Council of Europe for the benefit of Russia and Croatia are in turn directed towards the European Union. Only the complexity of the procedure put in place will enable minority votes sufficient to block a motion to make themselves felt, in terms of a sensitivity to these issues that is usually more often found in the north of the Union than in the south or west.

Setting up a sanction mechanism in response to violation of fundamental rights presents the same risks, particularly as regards its methods of application. Thus Article 7 of the Treaty, which institutes it, refers to a "*serious and persistent breach*" of fundamental rights. This clearly shows that lesser breaches will usually be tolerated, which is not very reassuring; while this is indeed an innovation, it actually goes nowhere near as far as the Council of Europe procedure which inspired it. Here, it is no longer a question of expulsion or induced withdrawal but, much more simply, suspension of the conditions of full participation in the Union. The symbolism of such a procedure thus deserves to be emphasised. No more.

3. The upheaval in legal prospects

As long as there was no question of openly involving the Union in the sphere of the state governed by the rule of law and in the protection of fundamental rights, the coexistence in Europe of different systems guaranteeing these rights was not a major issue. An implicit sharing out of roles accordingly left the Council of Europe with the task of protecting fundamental values and the responsibility of essential screening. This has now become a key issue, both owing to the weakening or even disappearance of the requirements set by the Strasbourg-based Council, and also because the European Union, once it was involved in the field of political union, could no longer ignore the issue.

3.1 The reason for the upheaval: the function of fundamental rights

If we take the view that the Treaty of Amsterdam overturns the established elements of the traditional approach to fundamental rights, this is mainly due to abandonment of the traditional viewpoint.

Hitherto, and following much hesitation, every time Community regulations and Community courts took account of fundamental rights, this was coloured by the Community perspective. We also know that it was under pressure from national jurisdictions, essentially those of Germany and Italy, that the Community judicial system embarked on this course. Rejecting the primacy of Community law if it deviated from the requirements of fundamental rights, national courts thus compelled the Court of Justice to evolve. Hence the jolts and hesitations which led the Union at the same time to dispute

the Community's adherence to the European Convention on Human Rights and yet to make human rights an important element of its foreign policy, including in a commercial context.

This explains a certain amount of legal and political acrobatics. One important concern was to avoid any too obvious conflicts or manifest competition with protection derived from national law and, above all, from the European Convention on Human Rights. To date, acceptance by the European Court of immunity under Community law, admittedly tempered by the conformable use of the Convention by the Court of Justice, has not resulted in any hiatus damaging to the coherence of the system. Such a situation cannot last indefinitely.

The Treaty of Amsterdam turns this page, intentionally or unintentionally, by introducing genuine "constitutionalisation" of fundamental rights in clear terms.

"*The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.*" This solemn affirmation, made in Article 6 (1) of the Treaty, has crucial consequences. It is perhaps surprising that these are manifestly underestimated by Member States and are rarely mentioned in the public debate.

The first consequence does not relate just to the language: the Union is "*founded*" on democratic principles. That is to say, it is not a matter of an area of competence or a Community "object", but something else entirely: a base, a foundation stone on which everything rests and without which it could not exist. Objectively, the actions and functioning of the Union in its three pillars are thus based on these guiding principles, something which could one day give rise to embarrassing questions when people start to wonder about the precise and concrete nature of these principles.

From the principle of representation to democratic transparency via the right to judicial protection or the revisited principle of legality, the entire institutional structure of the Union must in fact eventually be examined closely in the light of these principles which, moreover, the Treaty says are "common" to the Member States. The democratic "crossbreeding" which will inevitably result is likely to hold many surprises, where the cultural and sociological or political parameters will certainly gain the upper hand over legal debates.

The presence of this common denominator leads to a second crucial consequence. Only states sharing this common good will be capable of entering and remaining in the circle formed. The Treaty has accordingly put in place the procedure in Articles 7 and 49, which should make it possible to guarantee the integrity of the common patrimony. Here too, the viewpoint thus indicated, however relative it may be from a political standpoint, calls for an in-depth modification of the behaviour hitherto acceptable. Only the objective function of fundamental rights justifies setting aside in this way the exception that one does not interfere in a state's internal affairs and institutionalising this right of inspection in intra-Community relations. Moreover, there is probably no need to emphasise that the political initiative in such a right is unlikely to be taken by those whom the Treaty has invested with it, namely the Council, Member States and the Commission, so as to give the European Parliament the platform it deserves. How can one believe that such recognition will not lead to a profound re-examination of the balance of the institutions?

Thus it is clear that the recognised dynamism of fundamental rights has every chance of breaking down the fragile barriers put in place by the IGC and awakening strangely indifferent sovereignties.

3.2 The results of the upheaval: adaptation of the institutions

The requirements of a Union based on the rule of law have obviously not yet been realised. However, such a rule of law appears to be inescapable, and obliges people to consider the question of unequivocal commitment to a declaratory procedure, if necessary constitutional in nature.

A first level of deliberation relates to the appropriateness of such a procedure. It has been invoked several times, notably in the European Parliament and at the IGC. The adherence of all the Member States to the ECHR and the strength of these states' constitutional traditions led certain people to claim that the essentials were assured and that there was no need to go any further. It is not certain that they are completely right, even if the added value of a European fundamental rights text would doubtless be very limited, given the commanding and operational nature of the existing text.

Firstly, from a technical point of view, we need to plug some gaps. For example, the immunity of Community law from the Strasbourg institutions currently creates the risk of a weakness in the protection of fundamental rights. The fact that a Community regulation can be judged to comply with the ECJ's standards does not, for all that, absolve the Member State implementing this regulation of its obligations towards the ECHR. Certainly, in exceptional cases, it may be condemned in Strasbourg for complying with a stipulation from Brussels. Thus, for example, the introduction of Community immigration policies is bound to multiply submissions for legal settlements based on the risk of treatment contrary to fundamental rights. So how is it possible to believe that the Community court cannot take cognizance of this directly from this point of view, or to keep on believing that Member States can be torn between their Community obligations and those they have accepted towards the ECHR?

There are two possible hypotheses. The first is that of a "soft" incorporation of the ECHR by the European Union, along the lines of what has been achieved to date; this will be encouraged by the pressure of the new policies. However it is doubtful whether this will meet the needs involved sufficiently quickly, and in any case it will not provide a solution to the democratic deficit experienced by citizens of the Union. The second hypothesis is that there will be a break in relations and that the European Union and its courts will assert their autonomy with regard to the ECHR and the Council of Europe. The result may well be an "appropriation" or "absorption" of the principles derived from national constitutional traditions and the ECHR, and the stimulus provided by the Court of Justice, which would be the author of this, could provoke in return greater awareness on the part of the institutions. Here too, the political effect of such a change of direction will not meet the expectations of the citizens of the Union, and will very likely be limited to specialists. With identical material content, for today everything is accessible, a declaration of rights would then simply be an element in a new strategy.

This constitutes a second level of deliberation, directly linked to the feasibility of the operation, as a possible follow-up to the initiative taken at the Cologne Summit, which calls for the drawing up of a European Union Charter of Fundamental Rights.

The caution shown by the initiative illustrates the difficulty of the enterprise, hesitating between

reference to known concepts in national laws, such as freedom or equality, and the temptation to write and define. There is undoubtedly an initial trap to be avoided, all previous attempts having been abortive owing to the impossibility of achieving a common definition of rights, even though they are shared. A list or a reminder, a preamble or a constitutive instrument - these are the choices that will have to be made at some point.

The way in which a charter of this kind is adapted is also highly symbolic. The impasse identified at the IGC appears to indicate that the royal route of the constitutive declaration is too steep to be credible. The fact remains that the very technique of a declaration calls for the intervention of institutions representing the peoples of Europe, which representatives of Member States or experts mandated by the latter cannot be. Once the lid of this Pandora's box has been lifted, who can say what will come out, and how do we explain Member States' indifference to these questions, if it is not simply reticence? The political dynamic linked to fundamental rights is very likely to culminate in an institutional debate, at the heart of which the principle of democracy, administrative transparency and judicial control will pose questions which Member States cannot easily avoid. The first player to take the initiative in this area will have every chance of retaining it, and everything suggests that this European Parliament strategy is the right one for its objectives.

The scope of such a process still remains to be examined. Its main judicial use would be to offer citizens of the Community and third parties the possibility of invoking it against any violation, by judicial means if need be. Thus, returning to the debate mentioned earlier on the autonomy of the Community legal system, such a declaration would simply pose the problem of how to link it with the national constitutional requirements from which it derives its authority.

That is why we need to revert to the subject of subsidiarity, which led to the success of the ECHR and enabled it to enrich national legal systems.

On the other hand, from the political point of view, the argument based solely on the political "visibility" of the Union is not sufficient to demonstrate the value of the process, however cogent it may be. The route taken by the political Union depends on the fundamental agreement of the Union's citizens with values and action principles that transcend those underlying the Social Charter. The Union's ability to formulate them and to enable its citizens to identify with them and take them on board is, without a doubt, the key to European identity and to its future.

Mrs Michèle LINDEPERG,
rapporteur for the European Parliament's committee on Civil Liberties
on forms of protection complementing refugee status

The European Parliament has asked several times that the European Union should accede to the European Convention on Human Rights. The Council and the Court of Justice have always refused to support this request. The Court invoked the fact that there was no legal basis. What do you think of the idea of the Community itself acceding to it? Would this help to resolve the contradiction between Luxembourg and Strasbourg that you mentioned, or would it instead complicate matters? Is there not effectively a legal basis? When we put the question to the Council, it invokes the Charter of Fundamental Rights which is in hand. When I asked the Minister of Justice whether this Charter covered nationals of non-member countries legally residing in Member States, the reply was clear

and concise: no.

Professor Henri LABAYLE,
University of Bayonne, France

Accession to the European Convention on Human Rights involves a technical aspect and a political aspect. To deal with the political aspect first: accession to what end? Each of our Member States is bound by the European Convention on Human Rights. The case law of the Community's Court of Justice respects it absolutely. The complexity of accession is such that it would result in an upheaval that would be constitutional in scope. It would truly be necessary to reform virtually the whole of the European Union's judicial architecture to arrive at a result which we already virtually have. The European Union is ripe for autonomy. It is good that our Member States are realising today that there are far more things that they share than that divide them. With regard to the administration of justice, administrative transparency and migration policies, we still tend to draw attention to the things that are different, but we forget the things that draw us together. We forget that the law we have made together is ultimately a law that is applied, that democracy was born in our countries, and that judicial control was born there. The last element: the new Council of Europe is going to go through difficult periods, because it has to be assumed that countries from the East will come into it, and there is a major discrepancy between their judicial systems and the law of the Council of Europe. My fear is that, given this context, there are two options. The first option is preferable - that would be to wait for a while. Progress on human rights standards would be halted to enable those who are behind to catch up. The second option, which would be worse, would be to lower standards. In our national governments, even if comments are made on Luxembourg jurisprudence, its validity is never questioned. I am not sure that in future, when a European Union Member State is condemned by a Chamber, national legal systems will not respond by rejecting this, simply because of the composition of the jurisdiction. Today the maturity of the European Union is such that we can embark on the course of an autonomous process. The arguments heard this morning cannot be accepted. As citizens, we cannot accept that a Europe of freedom and justice can be created without courts, we cannot accept that it cannot have Community courts because there will be too many files. Where are we? What democracy are we in? How can we be surprised that citizens, or constitutional jurisdictions in a number of our countries, such as the German constitutional jurisdiction, believe that EU democracy is not up to standard? Is it on the pretext that there would be 300 000 requests for asylum that we should not have a judicial body to examine these requests? The fact that it will not be the Court in its present form, but something else, is not a problem. What is clear is that arguments of this kind cannot be put forward to challenge all democratic control and all judicial control.
The file is before you today. The EP and the Member States must move it on. EU citizens will enter into this area only at the point when they find there what they have in their own states: the values of the state governed by the rule of law.

Professor Bruno NASCIMBENE,
University of Milan, Italy

In this speech, Professor Nascimbene wished to make people aware of the danger of any lowering of the standard of treatment of citizens, including foreign nationals and, therefore, all individuals.

On the one hand, he stressed the need not to lose sight of the "hard core", represented by the European Convention on Human Rights, in the context both of the Community as such and of Member States of the European Union. On the other hand, he commented that there was a real danger that the standard of treatment might drop.

His second observation, which was connected with the first, concerned the issue of the protection of fundamental rights in the area of national case law, that is, constitutional case law in Germany and Italy. In Italian case law, as in German case law, even in rulings that have accepted the meaning of Community law and the primacy of Community law over national law, it is always understood that the protection of fundamental rights, as guaranteed under national constitutional law, cannot be called into question by Community rules or by the rules of international law. Professor Nascimbene therefore noted that, if one were to think for any reason that the standard of treatment had fallen, this would unfortunately have to be attributed to the line taken by national and constitutional courts.

Mr Christos THEODOROU,
Member of the Committee on Public Administration,
Public Order and Justice - Vouli ton Ellinon, Greece

I am still concerned about the fact that many countries that are candidates for accession do not have the rule of law in their own territory: let us take the example of Turkey, where we are witnessing "show trials", like the current Ocalan trial, in which the procedures, in particular, are inadequate. Should states that do not respect human rights not be "pointed" in the direction in which we are going?

Professor Henri LABAYLE,
University of Bayonne, France

Things are very complex, and from the outset there has been a political or diplomatic debate consisting of looking at whether by admitting a legal system which is somewhat unsound, one is not helping this system to make faster progress in catching up with the average standard. Opposed to this option is an inverse option, which consists of saying: you will stay out as long as you have not been able to achieve a good standard. For a very long time it was the Council of Europe that served as a "decontamination screen" between democratic and non-democratic states. Both the procedure for accession to the Council of Europe and the procedure for exclusion from it were based on commitment to democratic values. Then there was the Turkish business in the 1980s and doubts arose, with people saying that if one undertook control procedures, in other words exclusion, the situation in Turkey would become worse. Then came the implosion of the countries of the East, the wave of countries from the East acceded, although at the time nobody was completely convinced that that they were meeting the standards. Then there were the examples that are posing a problem today: Russia and Croatia. Allowing Russia to accede at the time of the events in the Chechen Republic showed that the screen was no longer functioning. I am struck by the fact that at that moment the Treaty of Amsterdam, as if by chance, took up the baton: it puts in place a procedure of accession to the European Union on the basis of commitment to values, creates a sanction procedure that makes it possible to suspend the application of rights in a Member State failing to respect these values, which is done as in the Committee, as in the Council of Europe, and makes the Council of Ministers the arbiter, as in the Council of Europe it is the Committee of Ministers. Everything is happening as if the plans that had been conceived in the form of the Council of Europe in 1949 were moving into the European Union at the end of the 1990s and as if one was in the process of recreating a sort of "club". I believe that there will be a period of problems and that all these legal systems will evolve in the direction of our system. The best evidence is the fact that Romania has just been condemned by the European Court of Human Rights for having attempted to prevent the exercising of individual recourse under the European Convention on Human Rights in its country. The European Court of Human Rights has condemned Turkey for extremely serious matters a number of times in recent years. The first condemnation covering torture ever taken to the Council of Europe was in respect of Turkey. There is increasing pressure in respect of fundamental rights.

Mrs Isabelle BROUILLARD,
Conference of Committees on Courts of First Instance of
Justice and Peace in Europe

The Conference draws attention to the importance of fundamental rights, and in this context it is unable to accept the action plan in its present form, because the concepts of security, freedom and justice have not been adequately defined. It is true that the action plan provides for the concept of "person" as a common point, but it envisages several categories of persons. Despite the reference to the principle of non-discrimination, there is a risk of discriminatory treatment. Fundamental rights must constitute the basis of European Union policy, but above all, they must include a global approach. The in-depth debate must begin, especially as regards migration policy.

Mr Michael ELLIOTT (PSE,UK),
Member of the European Parliament

About 9 years ago the European Parliament, in the consideration of its report for its special committee on racism and xenophobia, recommended that we should move away in terms of the rights to certain civil liberties and voting rights from the traditional concepts of citizenship and that all civil rights should be granted to anybody in the European area on the basis of being permanent resident irrespective of any other consideration, race, religion, background[20]. Simply the fact that you have shown that you have been a permanent resident of the European Union should entitle you to these rights. The Parliament has supported that quite a few years ago. I wonder how far you would go along with this and how far it is realistic to consider that governments might be prepared to agree to this sort of thing.

Professor Henri LABAYLE,
University of Bayonne, France

This is a very complex question. The field of civil rights is, in practice and often by right, recognised in respect of everybody, irrespective of their nationality. The concept of fundamental right was used for the first time in a European document not by the Parliament, nor by the Court of Justice, but by Member States. When one reads Regulation 1612/68 on freedom of movement for workers, and its grounds, one sees that Member States wrote that the right to freedom of movement is a fundamental right. That was the first time this term was used.
In our countries, as in the Community system, it has never really been possible to establish a barrier between the civil situation of ordinary aliens and that of citizens. Particularly as the concept was divided into three categories: the national citizen, the Community worker in respect of whom no discrimination is possible, and the ordinary alien. Each time the Community citizen invoked non-discrimination in order to benefit from the same rights as the ordinary citizen, he brought the ordinary alien along behind him. For example, the French Constitutional Council refused to permit,

20 "*That Member States consider granting the right to vote and stand, at least in local elections, first to all Community citizens and then to all legal immigrants with five years' continuous residence in the country*".
(Recommendation 64)
European Parliament – Committee of inquiry on Racism and Xenophobia, Report of the findings of the inquiry; Rapporteur: Mr Glyn FORD, 1991

with regard to social security benefits, the creation of a distinction between Community and non-Community workers, on the basis of the fact that the principle of equality opposed it. In the field of civil rights, equality in practice and by right should not encounter any obstacles. On the other hand, in the field of political rights, it is extremely difficult to transcend the criterion of nationality. The alignment of the political rights of ordinary aliens with those of citizens is a matter for national political decisions which it is very difficult to bring to a head.

Mrs Anna TERRON I CUSI (PSE, Spain),
Member of the European Parliament

1. Since I heard the German Presidency announce the Charter of European Citizens' Rights in this house, something has been bothering me. This Charter of Rights is all very well, and I agree that the fact of being a citizen of the European Union should give rise to some additional rights, but I wonder why this Charter, this list of rights, has been drawn up for the first time now? Does it not serve to exclude people who you said have until now always been recognised as subjects with the same civil rights as national citizens of the Union? Does it not serve to exclude people, so that, for the first time, we are about to legislate on rights for only those residents in the Union who are national citizens? This really worries me. There is a proposal that work be done on drawing up a statute for legal residents. But I believe we have to be very minimalist here and say that everyone has full rights, unless specified to the contrary. It bothers me that, with this Charter, which is in theory a step forward, we are going to be saying precisely the opposite: these are rights that non-nationals of an EU Member State do not have.

2. In connection with the issue of asylum: we have succeeded in harmonising only the absence of a right to request asylum, that is, we have said that a citizen of a third country may request political asylum from only one EU Member State and we have mechanisms to determine which Member State should receive this request. This means that we have effectively denied the asylum-seeker the opportunity to seek asylum in the other fourteen countries. I might be in agreement with this if the EU were really a single body responding to requests for asylum, but I do not feel that we have reached this stage. I understand that political asylum is not granted by the EU, which means that this third-country citizen is better protected, so to speak, and entitled to be in the Union's area of freedom, security and justice only if it continues to be a single country that grants the right to asylum, whilst we deny that person the possibility of requesting asylum from another fourteen countries. I do not know. Maybe this is just a way of trying to move forward and see where we are, for we are always very happy to claim that we have common rules. But we have only one common rule, and it is one that denies people the right to request asylum more than once in what used to be national States.

3. I feel this meeting should convey to both the Council and the Commission, but particularly the Council, a concern I have about the way in which the Council and Commission go on and on presenting this Parliament with documents and proposals that sometimes bear little similarity to each other. I should very much like to be able to explain to an NGO in my country that is not part of a major European network, a national or local NGO that is working to integrate immigrants, why the proposal concerning the admission of third-country citizens made by the European Commission is completely different from the strategy document presented by the Council, and why the Commission's capacity for legislative initiative and the Council's capacity for initiative

in terms of action sometimes run in different directions. I think this concern should be expressed to national parliaments so that they can pass it on to their governments and that we should also express it to the Council; and I wonder whether NGOs have a similar concern about coherence in a future under the Treaty of Amsterdam.

Professor Henri LABAYLE,
University of Bayonne, France

A declaration on fundamental rights by the European Union could only be a good thing. A few questions arise, however, given the little we know about this initiative: what legal form? What legal power? Has the 1990 Charter of Fundamental Social Rights already been invoked before a court? Is it directly applicable? The silence shows what the response is. If the idea is to produce a declaration or a resolution, it will not change anything. On the other hand, if the idea is to create a positive right, if necessary inserted into a protocol or a chapter of the Treaty, it is clear that, subsidiarity being what it is, there will be a constitutional obstacle in Member States that grant more than the declaration in question aims to grant. I find it difficult to see how the declaration in question could write, say or even suggest that it is a matter of restricting rights that currently exist.

Mrs Hedy d'ANCONA,
President of the committee on civil liberties

The discussion we have had with the Presidency about the charter has made it very clear that the charter being worked on does not apply to migrants legally resident in the Union, because it covers social, economic and political rights. It must be borne in mind that such a charter is not acceptable to some or possibly even a majority of the Parliament. We cannot construct on the one hand a directive based on Article 13, which prohibits any distinction, and on the other hand a charter in which that distinction is implicit. We find ourselves at the beginning of a debate, but I have the feeling that there are a number of members of our committee who are unable to empathise with it.

Mrs Brigitte ERNST,
Amnesty International

I know that the European Union Treaties refer to fundamental rights, but they do not grant the European Union competence in this field. The proof of this is that the term used is "The European Union and its institutions shall respect human rights" and not "shall guarantee human rights", which is very different. This reference had already long been in existence. It was codified by the Maastricht Treaty. The text of Article F (2) was not changed in Amsterdam. It had already been included in the Maastricht Treaty. The progress achieved in the Treaty of Amsterdam is the explicit recognition of the Court's competence, but a limited competence. It is not, for example, accessible to citizens. It does not make it possible for a citizen to appeal to the Court of Justice on the subject of human rights. Another advance that has been made by Amsterdam is that the Council has been given the power to adjudicate on Member States' performance in this context, since in the event of a major human rights violation by a Member State, the Council will decide to suspend part of the rights inherent in membership of the European Union.

Progress has been made, but not enough progress for us to be able to say that the Council of Europe's instruments need to have their power taken away. Our organisations are not in favour of full autonomy for the Community legal system in this field. We believe that external control is always a good thing and that we should not ignore the competence of a Court which has several decades of expertise in the protection of individual rights.
Moreover, Community competence in the field of human rights still remains limited. As the Court of Justice itself said, in its judgment prior to the IGC, "*It has to be admitted that no provision in the Treaty confers on the Community institutions in general the power to issue human rights regulations or to conclude international conventions in this field.*" The ECJ, which has done a lot to increase protection of human rights in the EU, has thrown down the gauntlet and handed over to the political world.

The concept of categories of citizens is an important subject, to which the Parliament should devote a great deal of attention. Freedom of movement has been proclaimed since the beginning of the Treaty of Rome. With the Treaty of Amsterdam, conditions have been added to this. They have said "yes" to freedom of movement, but under conditions of security and respect for justice. We must make sure that the conditions added in Amsterdam do not destroy the fundamental principle of freedom of movement. Free movement for whom? As things stand at present, it needs to be recognised that the poor are prisoners of their own Member State. They do not have freedom of movement. One of the advances this Charter could achieve is to make progress in the field of social rights.

Mrs Isabelle BRACHET,
European Federation of Human Rights Leagues

There is a risk that Strasbourg and Luxembourg will interpret this differently. Citizens need legal security. We believe that the solution would be for the Community to accede to the European Convention on Human Rights, since the European Court has already recognised the characteristics of the Community legal system in at least one of its judgments.

In addition, individuals do not have the option of individual recourse to the Court of Justice of the European Communities in the same way as to the European Court of Human Rights, where this individual recourse is much more developed, since in the Community legal system, the Community measure must affect the person directly and individually in order for him to be able to appeal.

Finally, the universality of human rights is obviously an essential principle. They cannot apply to only one category of citizens.

Professor Henri LABAYLE,
University of Bayonne, France

As the law stands at present, there is no external control of Community measures. That is the problem. Outside the ECJ, nobody is competent to adjudicate on a directive or a regulation. I concur wholeheartedly with your analysis, which consists of saying that the EU's judicial system is not a democratic system: it does not permit satisfactory access to justice for citizens. On the other hand, I do not share your idyllic vision of the Strasbourg Court. When the European Court of Human Rights applies a reasonable time limit to itself, when it gives judgments in less than 6 or even 7 years, that is the point at which one may consider it to be a worthwhile jurisdiction.
That is not so much the point under discussion. Today we must be aware that the material field of Community competences - justice, immigration, freedom of movement - is the field in which, in all our legal systems, 80% of questions in respect of fundamental rights arise. The question is clear: is the Community system ready to accept its responsibilities?

Workshop II

1. ***Combating criminality: judicial cooperation***

Professor Mireille DELMAS-MARTY,
University of Paris, France

Combating criminality has become a priority objective. As Mr Wiebenga explained in his report on criminal proceedings in the EU[21], it is an objective that involves a new way of thinking. Above and beyond cooperation in the traditional sense of the term, today we are considering genuine harmonisation of criminal law.

This harmonisation is at the centre of the work of a group of experts with which Mrs Delmas-Marty and Mr Spencer are collaborating. For several years this group has been working on a corpus juris project aimed at ensuring protection of the European Community's financial interests. The key element of this corpus juris would be the creation of a European public prosecutor's office, an authority that would serve as an interface between police and judicial action. It is encouraging to see that the EP has already launched discussions on this central element.

The group of experts working at the request of the Commission's DG XX (Financial Control) has proposed the creation of a unified European area of criminal matters, for two reasons:

1. Problems linked to criminality have been increased by the opening up of frontiers.
2. The traditional resources of criminal law are largely out of date.

21 EP's resolution of 13 April 1999 on criminal procedures in the EU (Corpus Juris) (See Annex 5)

The opening up of frontiers

The Treaty of Amsterdam sets itself the objective of developing in the European Union an area of freedom, security and justice. To date, the four freedoms have tended to favour insecurity and a kind of injustice. Frontiers are open to individuals, and to criminals in particular, but they are closed to authorities charged with cracking down. In this context, the opening up of frontiers may become a criminogenic factor. Moreover, it creates risks of inequalities or even discrimination in the defence of European citizens when they are judged in a country other than their country of origin, a situation that is becoming increasingly common.

A criminogenic factor

The most striking point in recent criminological research is the finding that the opening up of frontiers has been a criminogenic factor. The statistical approach must be treated with great caution, since it remains an approximation, even if one restricts oneself to cases of fraud on the European budget and to obvious criminality, known to the control authorities. The statistics are dependent on the goodwill of Member States. In the Court of Auditors' report for 1998, the Court found that communications from Member States sometimes contained information that was erroneous, or indeed incomplete. Thus the maintenance of a "black list" of budgetary offences was laid down by a 1995 regulation. Few Member States have respected it: four communications originating in three Member States were received between 1995 and 1998, although we know that during the same period, at least 72 transactions involving an amount exceeding 100 000 euro were discovered. Moreover, the report cites the case of the region of Campania (Italy), which communicated more than 1000 irregularities at the end of 1996. Examination of them would have monopolised all UCLAF's resources for several years. However, it is estimated that in the field of own resources, fraud would have increased by around 5 to 6% each year since the start of the study in 1996.

It emerges from the case studies coupled with the statistics that this criminality is particularly difficult to detect and prosecute, because it is transnational. It is estimated that cases that are transnational in nature account for around 80% of the amount of the frauds. The degree of organisation is extremely high. In the 1990s, 1% of cases of fraud can be regarded as representing almost 50% of budgetary impact. Thus there are huge, highly organised frauds alongside small scattered frauds.

A factor of discrimination

Since its creation in 1994, the NGO "Fair trials abroad"[22] has published regular reports on the problems posed when a European citizen is judged in another European country. In the past five years, these problems have increased considerably, which is worrying in the context of the rights of European citizens. By way of example, the report mentions the doubling in five years of the number of British detainees outside the United Kingdom. One of the main problems in the context of the rights of individuals is that remands in custody are used more systematically when the individuals involved are Community citizens from other countries. Similarly, in defending oneself it is more difficult to seek evidence in a foreign country. There are also difficulties with regard to interpretation and in respect of applying the principle of *non bis in idem* - the prohibition on prosecuting twice on

22 Harmonisation of Justice within the European Union. National legal systems and discrimination against "foreign" EC Citizens.

the basis of the same facts.

1. New resources for combating fraud

Outmoded traditional resources

The traditional resources of criminal law have been to some extent overtaken by these factors. At national level, the first response that can be contemplated in the face of the development of criminality of this kind is to extend national competence. The example on which the group of experts has been working in the context of budgetary frauds shows that the various solutions that have been attempted have proved inadequate. The principle of assimilation that originates in the Court of Justice's jurisprudence was included in the Maastricht Treaty and taken up again by the Treaty of Amsterdam. It enables the European budget to be handled in the same way as the national budget, but this does not guarantee effective protection or equality of financial operators from country to country. An attempt has also been made to extend territorial competence to the entire Community, as was done in the United Kingdom by a 1993 law, the Criminal Justice Act, which laid down a principle of expanded competence, enabling prosecution in the United Kingdom of a person complicit in or inciting an offence committed in another Member State. It is an interesting idea, but jurisprudence has shown that it was very difficult to end up with a sentence under these conditions, because the courts find themselves frustrated by the rules of evidence in reaching guilty verdicts.

International cooperation combines intergovernmental cooperation and harmonisation of legislation. It is the 1995 Convention on the Protection of Financial Interests[23] that needs to be strengthened. The new possibilities offered by the Treaty of Amsterdam in the context of the third pillar need to be utilised. At the moment, the results of this cooperation are a little disappointing. From the practical point of view, the public hearings held by the judges of the court of appeal in Geneva, organised by the Parliament[24] in April 1997, showed the extreme difficulty of cooperating. Many conventions do not enter into force because they are not ratified. One has the feeling that a wall of paper has been erected in the face of crime. Other conventions have been ratified but remain extremely difficult to apply. Thus Judge Gherardo Colombo, signatory of the Geneva Appeal, referred to the problem of letters rogatory sent to other countries, only 20 to 30% of which were successful, sometimes very belatedly. The Luxembourg representative had mentioned to him the multi-stage appeal system possible in Luxembourg and Switzerland. In the course of one case, 60 successive applications had been formulated and rejected in Luxembourg before the letter rogatory was dispatched and executed. With regard to Switzerland, mutual aid agreements are better developed there between Switzerland and the United States than with the EU. Moreover, international cooperation was designed on the basis of the traditional mode of cooperation centred on individuals rather than on criminal organisations, and was situated in a bilateral context. At multilateral level, the situation is very confused, as there are several conventions on the same subject, different legal areas (Schengen, Council of Europe and EU conventions, etc.). To this is added the problem of ratification (at present, the Community's 1995 Convention on the Protection of Financial Interests has not been ratified by a single Member State).

The creation of a *corpus juris*

23 Council Act, of 26 July 1995, establishing the Convention on the protection of the EC financial interests (OJC 316, 27.11.1995)

24 "*Towards a European judicial area*". Available at the European Parliament, DG IV, ASP 6D50, Brussels

Under these conditions, it appeared necessary to go beyond traditional instruments and propose a radical new response, in order to put an end to an absurd situation in which criminals can move around but the bodies charged with cracking down cannot. In this spirit, the group of experts proposed unifying a number of offences and the relevant penalties in the sector of fraud in respect of the Community budget. Eight offences were defined, accompanied by specific penalties. Determination of the conditions of attribution of responsibility must be unified, whether it is individual responsibility or that of the head of an undertaking or legal person. The key to the proposals lies in the idea of unifying the rules of procedure and evidence. This unification of the procedure would be effected around the creation of a European public prosecutor's office, which would monitor the investigative work of the police and the UCLAF/OLAF. It would itself be placed under the control of a judge of freedoms, as also proposed by Mr Wiebenga in his report.

This is a pluralist and evolutionary project. It is not a matter of imposing one country's model on fourteen other Member States, but of taking account of the different legal traditions and proposing a synthesis that will constitute an improvement for all. A spontaneous rapprochement between different legal traditions has already occurred (common law and Roman law). Moreover, the European Convention on Human Rights and the jurisprudence of the Strasbourg Court constitute the first brick in the edifice of the European penal structure, since they have already enabled common rules to be established. So the time is right for a common pluralist law. It is an evolutionary project because it is necessary to proceed in stages. The group of experts suggests beginning with the fight against budgetary fraud, which constitutes a European interest by its very nature. It would then be necessary to continue with the fight against organised crime, which constitutes a European interest by vocation, included in the Treaty of Amsterdam.

The draft corpus juris was published in 1997 and translated into the various EC languages. A follow-up study is currently in progress: in it, the application in the 15 Member States of the 35 articles making up this text is being analysed and the compatibilities and incompatibilities with the criminal law of each country are being identified. Certain aspects are being gone into more closely, such as the conditions for the appointment of the European prosecutor or his disciplinary status. A summary of the proposals will be produced by Mrs Delmas-Marty following a meeting of the group of experts in May 1999. The initial draft will be revised in the light of the study, and will be available in autumn 1999, prior to the European Council at Tampere on the area of freedom, security and justice.

Professor John SPENCER.
Cambridge University, United Kingdom,
Member of the working group on the Corpus Juris

In the United Kingdom, the draft corpus juris received unexpected publicity from the Daily Telegraph in December 1998. This newspaper presented it as a project drawn up in secret in Brussels with the aim of replacing the British legal system. Professor Spencer regarded this as a positive development, since it enabled him to explain what the corpus juris really was and to initiate the debate: a House of Lords committee is currently examining the text.

1. The context

The draft corpus juris is designed exclusively to protect the Community's financial interests and to facilitate prosecution of cases of transnational fraud. This initiative originated with the European Commission's DG XX (Financial Control): it invited various experts to conceive a project making it possible to simplify the laws of the 15 Member States and more easily to prosecute anybody guilty of transnational budgetary fraud. It was a question of finding practical solutions to combat budgetary fraud. This rigid context was respected, even if it was sometimes tempting to move outside it and to imagine full harmonisation of means of combating criminality on a European scale.

The problems that complicate the fight against budgetary fraud frequently come into a more general context. Thus it is difficult to organise proceedings in relation to transnational crime, whatever its nature, and for an innocent party to defend himself when he is prosecuted. The definition of the elements of admissible proof does not go without saying. Some Member States lay stress on the primacy of oral testimony and wish to hear witnesses speak. In other Member States, a witness resident in one country cannot be compelled to give evidence in another. In addition, in the event of lack of proof, not only is it very difficult to prosecute, but this also means that when somebody is the object of prosecution, it is difficult to defend him because there is no mechanism allowing elements of proof put forward by the prosecution to be refuted on the basis of other evidence.

Remand in custody is another problem, as the NGO "Fair trials abroad" has mentioned. There is no simple system for returning the person to the country where the proceedings are being held. Consequently, people generally prefer not to free persons resident in another Member State on bail, since the court does not dare to accept the responsibility of allowing somebody to leave its territory when it is so difficult to get him back. This constitutes discrimination against citizens of other Member States, which exists in the criminal justice system of every country.

Obviously these two general problems arose in the context of the fight against budgetary fraud. So the solutions provided by the corpus juris could therefore be applied to all proceedings in the context of a dossier with a transnational dimension, whatever the nature of the crime.

The most controversial element of the corpus juris is, without a doubt, the proposal to create a European public prosecutor's office, which would be involved in proceedings in respect of budgetary fraud. Naturally if this body proved to be effective, its field of activity could be extended to cover all crimes of a transnational nature.

2. The main proposals contained in the corpus juris

First of all, the corpus juris proposes definitions of certain offences linked to Community budgetary fraud and of the court with judicial competence to prosecute them. Thus fraud per se is defined, as are other specific offences such as corruption of officials, abuse of power and misuse of funds. The idea is to define offences commonly recognised in all the Member States, so that they can be prosecuted anywhere in the Community. For example, it would be possible for an English court to institute proceedings against a Greek national who had committed crimes in Italy and Portugal.

The corpus was relatively easy to produce, since the criminal law systems of all the Member States involved comparable ideas of the type of reprehensible behaviour that should be penalised and on the major distinctions to be established between degrees of guilt.

The establishment of common rules in respect of evidence is more controversial. The corpus juris proposes that a certain number of elements of proof should be systematically accepted in the course of proceedings relating to fraud in respect of the Community budget in all the Member States. The first element is direct proof, which could be presented to the court either by a witness in person or by videoconference from another country.

The most hotly debated of the group of experts' proposals is the creation of a European public prosecutor's office, which would have the authority to organise prosecutions in cases of budgetary fraud. It would have a 'light' structure, with a head in Brussels. Members would have to be representatives of public prosecutors, backed up by each of the public prosecutors' offices in the Member States and appointed for a specified period, during which they would be on detachment with the European public prosecutor's office in Brussels. A structure of this type would make it possible to avoid excessive bureaucracy and to ensure that those who organise prosecutions before the courts of each of the Member States are familiar with the legal system in the relevant Member State.

In addition, the European public prosecutor would have to have authority in respect of investigation and prosecution. Two models exist in Europe: a dominant model in which the public prosecutor is in charge of both the investigation and the court proceedings, and a minority model such as the Crown Prosecution Service in England and Wales, where the public prosecutor is not involved in the investigation. The group of experts believed it to be important to have a prosecution service that would handle both aspects, investigation and prosecution. Moreover, even in England and Wales, in cases of serious fraud it has been found to be necessary to appoint an ad hoc prosecutor, responsible for both the investigation and the court proceedings.

The European public prosecutor should also have powers of coercion enabling him to assemble the elements of proof. The approach should be the same in all the Member States. A list of the European prosecutor's powers is specified in Article 20 of the corpus juris. At the same time, provision is made for an external authority, an independent judge, to assure control of the coercive measures adopted by the European prosecutor. Here too, Europe has different models of control of coercive measures at the time of assembling the elements of proof. In some countries, the examining magistrate does it all himself. In others, the public prosecutor works alone but those responsible for the investigation must obtain authorisation from the court when it comes to carrying out searches, for example. Therefore, an important element of the group of experts' proposals is the creation of a "freedom judge", an independent judge appointed by the judicial authorities of each country. He would not be involved in the investigation and would issue authorisation in the event of the use of coercive measures affecting the fundamental freedoms.

Rather than proposing the creation of a new system of European criminal courts, the group of experts adopted a pragmatic approach. Their work was inspired by the example of the United Kingdom, where three different legal systems coexist but where common terms have been used to define crimes.

Mr Gerritjan VAN OVEN,
Justice and Home Affairs Committee
of the Lower House in the Netherlands

Mr Van Oven supported intensive cooperation between the European Parliament and national parliaments. Current developments in criminal law necessitate increased cooperation among Member States and the harmonisation of certain rules, as provided for in the Treaty of Amsterdam. It is a sensitive subject for Member State governments, which explains why this issue remains in the third pillar and why the creation of a European penal code looks Utopian at the moment. The proposals in the corpus juris are positive, but standardisation of practice without parliamentary control must be avoided. This is the direction in which we appear to be moving.

Since 1993, intergovernmental cooperation has been put in place that has led to the adoption of agreements and joint positions, particularly in the field of fraud, European corruption and the charge of involvement in a criminal organisation. When these legal instruments are adopted, it is not possible for parliament to amend them. This means that national parliaments are giving up their competences in this field, with no possibility of control, which seems dangerous.

With the Treaty of Amsterdam, there is a wish to standardise certain rules in the field of criminal proceedings, but this is expressed somewhat vaguely. To date there has been no general debate on the objectives of European cooperation in the field of justice and home affairs. There are no criteria allowing parliaments to embark on such cooperation. The Council is the only body to decide on the action to be taken, on a case by case basis.

Within the Parliament of the Netherlands, Mr Van Oven has requested a study on the relationship between European criminal law and Dutch criminal law, since there is a need to specify the crimes that should be dealt with at European level and those that remain subject to national competence.

The role of the national parliaments must be specified, and there must be increased cooperation between the European Parliament and national parliaments. COSAC is not enough, because it does not make it possible to assess measures adopted in respect of three criteria: subsidiarity, the incidence of crimes that need to be defined and judged at European level, and the mechanisms for applying the measures adopted. The parliaments should be in a position to control the work of Europol and of the European public prosecutor's office, for example.

Mr Rinaldo BONTEMPI (PSE, Italy),
Member of the European Parliament

The corpus juris constitutes a reference model for future developments in a sector suffering from inertia and from the obsolete nature of national regulations. There is a gulf between the urgency of transnational problems and the responses to them. To remedy the situation, there is a need for a clear project like the corpus juris, which is an unprecedented symbol of openness. The opportunity to debate the European criminal law system must be seized, in order to move forward and to adopt concrete measures. Article 31 of the Treaty on European Union is a move in this direction, since it provides for the definition of common minimum standards[25].

The ultimate objective is to construct a European legal and judicial area in respect of civil and

25 Article 31 (ex Article K.3) – *Common action on judicial cooperation in criminal matters shall include (....):*
"(e) progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking"

criminal law. To achieve this, a number of stages will be involved: firstly, unifying certain standards and then reviewing intergovernmental cooperation from top to bottom. At Tampere, it would be necessary to establish a number of reference points and to provide for new working methods with increased involvement of the European Parliament and national parliaments. The rapporteurs would create the link between the European Parliament and national parliaments. Designated officials within national parliaments would be responsible for monitoring activities designed to establish an area of freedom, security and justice. We need to work together on these dossiers, since COSAC is not, in fact, enough.

Mr Tony VENABLES,
Euro Citizen Action Service

The principle of free movement of persons can sometimes conflict with security. However, this principle is not as well developed as is believed: only 5.5 million out of 370 million European citizens live in another Member State. In three years, ECAS has studied around 20 000 questions asked by citizens on the subject of free movement of persons. The majority of them related to recognition of qualifications, social rights and the right of residence.
Many see European citizenship as an added value that may resolve these transnational problems. So it is difficult for citizens to understand why some rules depend on the EU, others on Council of Europe conventions, and others again on the Member States.

The Treaty of Amsterdam gives rise to some concerns on the subject of the rights of individuals. With regard to the ambitious development intended in the next five years, the emphasis needs to be on democratic control. The European Parliament must follow these developments closely and must organise a structure for working with the national parliaments. At Commission level, a single Commissioner must be made responsible for all the sectors of the area of freedom, security and justice.

Assuring democratic control by the Parliament represents a first step. It is difficult to imagine going further unless this condition is met. One of the risks mentioned in the report of the Wise Men on the European Commission is rushing into new projects without having the resources necessary to manage and control them.

Professor Mireille DELMAS-MARTY,
University of Paris, France

All the previous speakers have expressed the wish to establish a democratic Europe. It is a matter of ensuring control by parliaments. In fact, when one mentions the fight against criminality, the concept of legality is an important one and assumes a contribution from parliaments. As the Treaties stand at present, the legal bases are insufficient to achieve this.

With regard to collaboration between the European Parliament and national parliaments, the French senator Pierre Fauchom had put forward the idea of an interparliamentary group (EP/national parliaments) on the subject of the fight against criminality. The establishment of such a group could fulfil the expectations expressed by parliamentarians.

With regard to the role of citizens, the Treaty itself contains some starting points. Articles 17 to 22 are, however, inadequate. Thus the specification of the role of citizens must come from citizens themselves, hence the essential role of NGOs, whose importance was recognised on the occasion of the celebration of the 50th anniversary of the Universal Declaration of Human Rights. It is clear that collective awareness of belonging to the same community is currently growing.

It is not a question of doing things in order, of first putting citizenship forward and then the normative instruments. It has to be a parallel and interactive process. The means must be found for citizens to control what is proposed and express an opinion, but we must not wait for citizenship to be fully realised before taking action in the fight against criminality.

Mr Orlando ALFONSO,
President of the Association of European Magistrates
for Democracy and Freedoms (MEDEL)

With regard to the definition of crimes in the context of European cooperation, the corpus juris appears to offer an excellent working basis. However, there should be more intensive collaboration between the European institutions and European magistrates, in order for the latter to be more involved in the establishment of the area of freedom, security and justice.

The powers of each body and their allocation at European level need to be precisely specified. At present, the executive authority is the main player in cooperation. It would be desirable for the legislative and judicial authorities to be given wider powers in the process of elaborating the new European area.

The independence of the European public prosecutor's office in relation to the executive authority must be assured, as must the legitimacy of the judicial authority, by creating a European control authority. Criteria will then have to be drawn up for evaluating the legality of the actions of this public prosecutor's office, particularly in the course of investigations. In the context of police cooperation, Europol's activities are controlled by the executive and not by the judicial authority, which is not satisfactory.

Mr Stephen JAKOBI,
"Fair trials abroad"

The "Fair trials abroad" Association is the only NGO specialising in these issues. Its field of action is limited to proceedings relating to transnational crimes, which represent only 1 to 2% of cases brought before the courts of Member States. In this context, the Association is studying the problem of the defendant's defence when he is being tried in a country other than his own.
If it is necessary for a European criminal law to be developed in relation to proof or prosecution, for example, it is essential first to guarantee the civic rights of individuals. To this end, Articles 5 and 6 of the European Convention on Human Rights, supplemented by certain points in the corpus juris, must be put into practice in order to ensure respect for the rights of all citizens and to prevent all forms of discrimination.

With regard to the Tampere Summit, the Association expects governments to make sufficient resources available, on the one hand to strengthen the interpreting and translation services of police and judicial authorities and, on the other, to provide improved legal assistance for the persons concerned.

Professor John SPENCER,
Cambridge University, United Kingdom

In his contribution, Mr Orlando suggested greater participation by the courts of the Member States in the discussion process on the fight against criminality in Europe, and Mr Spencer agrees with this. In particular, national courts would need to be more familiar with the functioning of the criminal justice systems of the other countries, in order to create working relationships based on trust.

The political legitimacy of the European public prosecutor is a delicate matter, also mentioned by Mr Orlando. The authors of the corpus juris originally devoted little attention to this aspect, which became apparent only in the course of later discussions. In many Member States, the public prosecutor's services are controlled hierarchically, by a minister responsible to parliament for the decisions taken. The group of experts preferred the idea of a public prosecutor independent of the executive authority. His actions will, however, be monitored in accordance with the principle of legality of proceedings. To do this, legal regulations need to be decreed, in order to specify the cases in which the public prosecutor must institute proceedings. In the event of inefficiency or a breach of the regulations, the European public prosecutor could be dismissed from his duties under the same procedure that exists for judges of the Court of Justice of the European Community.

2. Combating criminality: police, customs and administrative cooperation

Mr Hartmut NASSAUER,
rapporteur for the European Parliament's
Civil Liberties Committee on EUROPOL[26]

Bilateral police cooperation between Member States go back quite a long way. For the first time, the Maastricht Treaty set up formal multilateral cooperation. This was a major advance in the fight against criminality, which culminated in the establishment of the Europol Drugs Unit. However, it took nearly two years of negotiations to draw up the Convention on the European Police Office itself. The question of the competence of the Court of Justice caused particular delay in the process, owing to British opposition. Finally, each Member State decided individually whether or not to sign the protocol on the subject, and 14 States signed it. It took a particularly long time for the Convention to enter into force, since having been signed in 1995, it came into force only on 1 October 1998.

26 EP's resolution of 19 May 1995 on the Europol Convention (OJC 151, 19.6.1995); 14 March 1996 (OJC 96, 1.4.1996), 13 April 1999 (OJC 219, 30,7.1999)

At political level, there is a wish to grant Europol operational powers. It is envisaged that Europol would coordinate or direct transnational affairs. It would not, however, have executive power, which reverts to each Member State (arrest, prosecution, investigation). At present Europol's role is seen only as supporting national authorities in cases involving transnational aspects. There is still mistrust towards a European police authority endowed with operational powers. Mr Nassauer hopes that in future Europol's activities will conquer reluctance and persuade Member States of the value of closer police cooperation. The successes of the Europol Drugs Unit, a body that preceded the establishment of the actual European Police Office, demonstrate that it is possible to fight organised crime effectively and to ensure greater security in Europe thanks to increased cooperation.

Mr Günter KRAUSE,
Chairman of Europol's Management Committee

The Europol Convention was signed in July 1995 and entered into force on 1 October 1998. However, the European Police Office has not yet commenced its activities. Supplementary instruments have been produced, three of which have not yet been adopted by all the Member States:

- The Protocol on Immunity has yet to be ratified by France and Italy. Mr Krause appeals to the national parliaments to exert pressure on their respective governments in order to expedite the procedure.

- Work is still in progress on the bilateral agreements between the Netherlands and the other 14 Member States on the status of Europol officials.

- The internal regulation on the joint body for the protection of Europol data. On the fringe of the European Council in Berlin, a compromise was reached and the proposal is likely to be put to COREPER and then to the Council.

Thus it appears that Europol is likely to commence its activities on 1 July 1999. Following this official launch, it will be necessary to give concrete expression to working relationships between national police authorities and Europol. The form this collaboration takes will depend on the goodwill of national authorities and the added value Europol brings them. The element that is essential to the work of the European Police Office is the setting up of its computer system, consisting of two separate databases. An analysis system to which only Europol officials and persons working on cooperation projects will have access is almost complete from the technical point of view, which means that Europol will be able to begin its analytical work right from the start of its activities. The second element of Europol's computer system will link it with national police. This is more complex to realise, and will probably not be in place until 2001. The call for tenders should be issued before the end of the German Presidency and the work should be commissioned in the course of the Finnish Presidency.

Europol also needs to have appropriate personnel and equipment. In the 1999 budget, Europol was allocated only 119 posts, representing 40 people doing actual police work, together with liaison officers on detachment from their national administration. Given Europol's many fields of activities, this is inadequate. Under these conditions, it would seem to be difficult to extend its field of activities further, as currently proposed.

It has been suggested that Europol's mandate should be extended to the fight against counterfeit currency. With the launch of the euro, it would seem to be entirely appropriate to have a criminal police headquarters specialising in the field of counterfeit currency. Moreover, the 1929 Geneva Convention provides for a cooperation framework to combat counterfeit currency, including a system of exchanges of information between the national authorities involved and INTERPOL. Each national administration is responsible for its own currency. In the context of a currency common to 11 states, it does not make much sense for INTERPOL to cooperate with 11 national offices; this cooperation should take place via a central office, Europol. This expansion of Europol's activities would already have been confirmed if the Lower House of the Dutch Parliament had not raised the question of a definition and a very clear delimitation between the different bodies participating in the fight against counterfeit currency.

A Danish initiative is also under way to extend Europol's mandate to crime against the environment. This is a very important subject, but the proposal is not very realistic given the resources currently devolved to Europol. The setting up of the European Police Office must proceed in stages. Denmark's proposal will have to be studied from a longer-term perspective.

Mr Krause refers to the comments made by Mr Nassauer on the extension of Europol's mandate on the basis of the Treaty of Amsterdam. It is true that Article 30 § 2 of the Treaty on European Union[27], as amended by the new Treaty, is not very clear. This problem was mentioned at a recent meeting of the Europol working party within the Council, but the ambiguities have not as yet been resolved. This initial discussion enabled a list of questions to be drawn up. The article cited earlier mentions that Europol may, in particular, support the operational actions of joint teams comprising representatives of the national authorities and Europol. What are these teams? Who leads them? Who specifies their powers? Their participants? What is the role of Europol's representatives? These questions remain unanswered. In Germany, there is a joint working party of the Federal Government and the *Länder* in which all the officials have the same powers. The negotiations currently under way between Germany and Switzerland with a view to entering into a cooperation agreement are likely to involve this kind of organisation. Mixed teams made up of officials from the two countries would be put in place, and all the members of these teams would have the same powers in the territory of the two states. In this respect, cooperation between European Union Member States has not gone far enough. It will take several years to implement the new Article 30 § 2 of the Treaty of Amsterdam amending the Treaty on European Union, and so it has been necessary to establish short- and medium-term priorities, as indicated in the Action Plan of the Council and the Commission.

27 Article 30 (ex Article K.2)

2. The Council shall promote cooperation through Europol and shall in particular, within a period of five years after the date of entry into force of the Treaty of Amsterdam:

(a) enable Europol to facilitate and support the preparation, and to encourage the coordination and carrying out, of specific investigate actions by the competent authorities of the Member States, including operational actions of joint teams compromising representatives of Europol in a support capacity;

(b) adopt measures allowing Europol to ask the competent authorities to the Member States to conduct and coordinate their investigations in specific cases and to develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organised crime;

(c) promote liaison arrangements between prosecuting/investigating officials specialising in the fight against organised crime in close cooperation with Europol;

(d) establish a research, documentation and statistical network on cross-border crime.

Mr Jürgen STORBECK,
Director of Europol

The activities of the Europol Drugs Unit

Since 1994, a "preliminary" organisation has been in existence at Europol, created in anticipation of the entry into force of the Convention on the European Police Office. The competences of this body, the Europol Drugs Unit (EDU), initially linked to the fight against drugs, have been extended to cover many fields, such as the fight against trafficking in vehicles, radioactive substances, human beings and money laundering. The European Police Office, which should be commencing activities on 1 July 1999, will have the same competences as the EDU, to which will be added the fights against terrorism and child pornography.

The Europol Drugs Unit is responsible, as Europol will be as from July 1999, for transmitting the information required for certain national investigations. Thanks to the EDU, this information is transmitted within the space of a few hours, while in the past this could take weeks, in the image of judicial cooperation, via which this exchange may take months or even years.

In order to increase efficiency, the organisation of the system of liaison officials is in the process of being improved. They may be contacted directly by national authorities and cover all the Community languages. They are responsible for collecting information, analysing it, and then making it available to the requesting authority. The collection of information will be improved by the computer system described by Mr Krause, which will become operational in 2001. Their strategic analysis makes it possible to organise this enormous mass of information and to follow developments in the situation closely: the supply of drugs, the methods used by traffickers, the routes taken by smugglers, the evolution of certain criminal organisations. Thanks to this analytical work, Europol is in a position to fulfil its third task, which is to support investigative procedures in different Member States at different levels (national, regional or local) and to coordinate cross-border controls on goods. Lastly, Europol makes available to national authorities expertise and technology that make it possible to make an inventory of competences and to exchange experience. Every week, Europol holds two or three meetings with representatives of Member States to resolve the problems they encounter or to organise parallel investigations in several states.

The obstacles

The length of the decision-making process in the European institutions has seriously delayed the establishment of the European Police Office. It took two years to draw up the Convention creating Europol, followed by an additional year to take a decision on the competences of the Court of Justice. Mr Storbeck stressed how slow this work was, which is difficult for those responsible for fighting crime on the ground to understand. In addition, it took three years for the 15 Member States to ratify this Convention, thus further delaying the start of Europol's activities.

Another source of problems for the EDU is control of its activities. This needs to be effective but not abusive. The Administrative Board meets once or twice a week and consists of 70-80 people from all the Member States, speaking in 11 languages, which means that many interpreters are required. The Joint Supervisory Board has 35 members, plus interpreters. Financial aspects are supervised by three institutions, an independent private undertaking, financial controllers, and

experts from the Member States, and the legality of activities is analysed by experts from the Court of Justice. There is talk of adding a mediator to this mechanism. Mr Storbeck regards this multiplicity of controls as absurd: there are more people responsible for these different controls than actually combating cross-border crime. He does not consider that the fears expressed on the subject of the lack of democratic control of the Office's activities are justified, since Europol is the first institution in the field of police cooperation whose methods are laid down by legal rules. In Mr Storbeck's view, the EDU is currently subject to more controls than are the national authorities. Even if control is essential, it must not stand in the way of fighting crime effectively.

The mandate

With regard to extension of Europol's mandate, it will have to be given appropriate means in order to be able to fulfil its tasks correctly. In a few years' time, the Office will be responsible for all fields of crime involving cross-border aspects. These responsibilities must be transposed progressively and priorities must be established, since Europol is not at present in a position to take on all these tasks at the same time. When Europol's mandate is extended, it will also have to be given additional resources. When the EDU acquired a new competence, namely combating trafficking in persons (children in particular), it had to wait over a year before it was assigned an expert in this field. No expert has arrived to strengthen the team for the fight against trafficking in radioactive materials. Mr Storbeck finds this situation difficult to endure. To ensure that the future Police Office functions properly, needs must be evaluated, priorities established, and the necessary resources allocated.

Finally, Europol's tasks must be clearly delimited, particularly with regard to the future Office for combating fraud, for example. Moreover, there are already a number of international organisations in existence for the purpose of combating crime. Work needs to be coordinated, to prevent duplication. Legislative standards also need to be modernised. At national level, they frequently date from the last century, and at international level from the 1950s and 1960s. New instruments must be adopted, such as the recent United Nations Conventions on combating organised crime and drug trafficking. It will be a long time before they enter into force, since they have to be ratified by the signatory states, which then have to adapt their national judicial regulations in order not to impede application of the Conventions. Decision-making procedures and methods must also be simplified and modernised, not only in the field of police cooperation, but also in that of judicial cooperation, because the two are linked in the fight against crime.
According to the speaker, in five or ten years' time Europol will have its own investigative powers, without executive competences such as the power to search, which is a matter for national authorities. Moreover, there are certain kinds of crime that occur internationally and are not yet within Europol's competence - Internet crimes (dissemination of pornographic pictures, fraud, blackmail, etc.) or crimes against the environment, for example - that it would be better to combat at European level, with the participation of the national public prosecutor. As an investigative body, Europol will be able to provide solutions, on the basis of the experience of the International Criminal Court, which has been assigned investigative competences but not executive competence.

Mr Salvador VIADA BARDAJI,
Public Prosecutor, Spanish Anti-Corruption Office

Since the Spanish Anti-Corruption Office, which is part of the Spanish Public Prosecutor's Office,

was set up in 1996 with the specific task of investigating the most serious economic crimes being committed in Spain and to correct the more serious acts of corruption being committed within public services, we, as members of the Anti-Corruption Office, have experienced in respect of international judicial cooperation, a series of problems that we believe should receive priority attention (either prior to or simultaneously with negotiations concerning this formidable instrument of Community cohesion, the "corpus juris").

Economic crime, which is often organised and usually more intelligent and better resourced than any other type of crime, is taking advantage of the current situation within Member States of the Union, whereby physical borders have been removed but legal borders are still fully in place, without any significant advances having been made in the field of judicial cooperation since the 1959 Strasbourg Agreement on Judicial Assistance in Criminal Matters, which was drawn up within the framework of the Council of Europe.

I would therefore suggest the following measures which might alleviate the problem until the overall situation is improved by the introduction of new legal instruments for judges and public prosecutors:

Establishment of direct assistance between judges in different countries, without mediation by the respective governments.

In the European Union, the only existing channel is the "letter of request", which is sent via the respective Ministries of Justice or another channel indicated by the States in question. The difficulties increase - thus lengthening the whole procedure - when the requesting judge does not know to which judge in the other Member State he should send his letter of request; when the receiving judge is not aware of the significance of the case giving rise to the letter of request; or when neither of them is familiar with the other country's legislation. All of this should have been solved a long time ago with direct communication between judges in the Member States (as already happens with the police and public prosecutors under the Schengen Agreement), since these defects in the system (and the failure to correct them) are benefiting organised crime.

The existence of tax havens actually within the European Union is unacceptable. To cite just a few, Gibraltar, the Channel Islands, Luxembourg and, in a different way, the Netherlands (with her overseas territories) are, in fact, money havens and places where it is easy to set up companies (or "trusts") whose ownership can never be traced. Companies are set up in these countries (often backed by legal documents) and nobody ever knows the identity of their actual owner. And the difficulties entailed in waiving bank secrecy in these countries are virtually insuperable (or, where they are superable, the process takes more years than is acceptable in any civilised judicial system).

UCLAF's lack of resources and powers is clearly beneficial to organised crime.

Letters of request are often seriously delayed and there are various reasons for this - some legitimate, others unacceptable. There is a need (in addition to implementing the Common Action of 29 June 1998 on good practices concerning judicial assistance in criminal matters) for the creation of a Community body which could be answerable either to the Commission or to the member of the Commission responsible for the "area of freedom, justice and security", which would receive reports and complaints about delays and failures in the processing of letters of request by the various countries. These could be sent on to the countries concerned, which would have to provide an

explanation of the proceedings. We feel that this simple reminder (and the authority of the person issuing it) could solve and shift a large number of situations that are currently at a standstill, as well as serving as a basis for investigating the most common shortcomings, in order to resolve them.

There is a need to develop the European Judicial Network[28] as a means of standardising jurisdictional assistance between judges and public prosecutors in the various countries.

In cases concerning fraud against the interests of the European Union, the Commission should, where it is legally possible (and it is possible in Spain), appear in open court as the injured party. The reason for this is as follows: when a fraud is committed through an organisation that - as we have seen above - uses people, companies and capital located in various countries, the national courts and authorities that might be competent to deal with the case may have insufficient knowledge because, for all the reasons which we have outlined, it is very difficult for them to secure assistance. But the European Commission can act in all the Community countries; it can expedite actions in the best possible way in all of them; and it can, depending on the various legislations, provide documents and other pieces of evidence obtained in one country for open hearings in others. In brief, in its role as the injured party, it can achieve much more than can possibly be achieved by a single judicial body in one Member State. Obviously, this is a mechanism that would be used only for major cases of fraud, since it could be very costly, but the deterrent effect of using such a system in a selective manner could, in itself, be very effective.

There is a need to step up existing Community programmes (GROTIUS and FALCONE) for providing judges and public prosecutors (and other civil servants) particularly responsible for dealing with organised crime with the knowledge they need of other languages, since this is an obstacle which quite often blocks communication between civil servants in different countries.

The existence of dual incrimination as the guiding principle for extradition proceedings is counter-productive; and the lack of any rules that allow a judge in one country to cite (simply to summon to appear at the court of the requesting country) someone directly as a witness is also counter-productive. Use has to be made of the letter of request, and there are no effective mechanisms to ensure that the party summoned will appear to give evidence. In practice, therefore, many witnesses fail to appear and are not in any way punished for this.

Lastly, and by way of a summary, it should be pointed out that the inability to solve these problems is benefiting international criminals, who are currently, for these reasons alone - the greater or lesser efficiency of Member States' individual judicial systems - relatively safe from any punishment for their crimes.

24 Joint Action of 29 June 1998 adopted by the Council on the basis of Article K.3 of the TEU, on the creation of a European Judicial Network (OJL 191, 7.7.1998)

Mr Benoît DEJEMEPPE,
Public Prosecutor and
Signatory of the Geneva Appeal

Mr Dejemeppe believes that the need for justice is increasing throughout the world in relation to the increase in violence in suburbs and schools. To meet this need, police and judicial services have an ever-increasing presence. In this context, the principle of equality must be respected: if a crime or an offence has been committed on the territory of the EU, an appropriate response must be provided. Unfortunately, European police services are advancing more rapidly than European judicial services. The slowness of judicial cooperation may be due, in particular, to cultural differences in the application of legal regulations. However, there has been an improvement in cooperation in respect of so-called classic offences: paedophilia, armed robbery, murder, burglary or fraud. Cooperation is more difficult in other areas of crime (financial, economic, fiscal).

The development of international cooperation in general and European cooperation in particular requires modernisation of police and judicial systems, something which is complex because of fear of the increasing "opposing force" role assumed by the police and judicial authorities. Some countries are already applying new European measures such as the EC Convention on the protection of financial interests. However, Mr Dejemeppe believes that insufficient use is made of the instruments available to the police and magistrates, partly owing to ignorance and partly owing to differing penal practices and policies.

International judicial cooperation may also be impeded by institutional inertia. For example, the European Commission twice failed to respond within the allotted time in connection with authorisation to waive its officials' immunity. Similarly, there have been occasions when UCLAF did not respond within the allotted time.

Mr Dejemeppe calls for a change in thinking, in order that international cooperation should not be subjected to restrictive conditions, and asks those involved to demonstrate their goodwill. The cynical idea that states cooperate with one another only if they have mutual interests must be put aside in order for Europe to move forward. Too many matters where considerable financial interests are at stake are delayed or not brought to a conclusion, owing to a lack of institutional means and material resources. Improvement in the functioning of justice is part of a particular vision of Europe that needs to be realised, not only by drawing up legal rules, but also by showing the political will to implement them.

Mr Günter KRAUSE,
Chairman of Europol's Administrative Board

Mr Krause refers back to Mr Storbeck's position as regards rejecting excessive control over Europol, and supports it. In the Member States, national governments are controlled by their parliaments. However, national parliaments do not have direct access to the authorities and bodies involved in fighting crime, and cannot exercise control over them. Europol itself is indirectly controlled by the 15 Member State parliaments, through the representatives of national governments in the Council.

The EP also monitors Europol's activities by means of Mr Storbeck's regular contributions, for example.
As mentioned by Mr Nassauer, the Treaty of Amsterdam gives the EP a new role in the context of police, judicial and customs cooperation. The Council and the Parliament need to agree on a control that is effective but does not impede Europol's activities. To ensure that the decision-making process, which is already lengthy in the third pillar, is not further held back, the EP should set itself a three-month deadline for issuing its opinions.

With regard to control of the legality of Europol's activities once it has operational competences, it must be pointed out that in the majority of Member States, the judicial authority does not control the police services. In Germany, for example, the judicial authority actually manages dossiers and procedures and the police follow its instructions. Thus the judicial authority does not exert control over police activities, but directs their investigations.

As Mr Storbeck has indicated, it should be possible for Europol to handle offences committed on the Internet and to inform the competent national authorities when it confirms that an offence has been committed, so that they can launch an investigation. Germany has regulated the problem by means of a federal police system. The *Länder* decide on the procedures and investigations, but delegate to the Federal Crime Office competences relating to offences on the Internet and crimes against the environment.

Mrs Charlotte CEDERSCHIÖLD,
rapporteur for the European Parliament's
Civil Liberties Committee on the fight against
organised crime[29]

Mrs Cederschiöld is concerned that information relating to a field as sensitive as organised crime is sometimes too widely distributed, and insists that prevention should be developed.

Mr Jürgen STORBECK,
Director of Europol

In reply to one of Mr Dejemeppe's comments, Mr Storbeck wishes to point out that the Convention on Europol provides for combating modern forms of crime and not only traditional forms. In this context, there are three important elements: the definition of clear responsibilities for Europol and for the various police services in order to prevent disputes, a partnership between the police and the judiciary, and the transposition into practice of legal rules that are sometimes ignored.
With regard to the working language, Mr Storbeck does not believe that Europol can work in 11 languages, or even more following enlargement. Besides, English has asserted itself as the language normally used by the Office's staff.

With regard to control of Europol, Mr Storbeck replies to the doubts and questions raised by Mrs Cederschiöld. The data protection committee has permanent access to Europol's databases and verifies the processing carried out according to established criteria. No other police institution or administration has this verification. Access to these data is also particularly well protected and regulated in legal and technical terms.

With regard to prevention, Mr Storbeck is convinced that it is worthwhile, particularly in the fields of organised crime and drugs. An overall design involving all the authorities and experts concerned must be defined in order to combat organised crime effectively.

With regard to the Internet, Mr Storbeck believes that Europol must play an autonomous part in the preliminary collection of information, in order to be able to ask national judicial and police authorities to launch an investigation.
To answer the question about information, one person is responsible for dealing with requests and for press relations. Europol's initiatives are, however, limited owing to budgetary restrictions.

On the subject of Schengen and cross-border prosecutions, Europol should take up these elements following integration of the Schengen acquis into the Treaties on the European Community and European Union. The rules remain extremely complex, and their operation will have to be reviewed following this integration. In all cases, Europol's staff are not authorised to implement prosecutions, this right being exercised by national authorities.

With regard to judicial cooperation, in practice procedures take far too long. In addition, judges and lawyers do not always have the necessary information on the instruments and procedures in existence

29 EP's resolution of 20 November 1997, on the Action Plan to combat organised crime (OJC 371, 8.12.1997)

at European level. Improved training is essential, as is the establishment of a network of practitioners of justice responsible for supporting and training their colleagues. These elements should make it possible to facilitate and expedite judicial cooperation.

Mr Renaud VAN RUYMBEKE,
Magistrate signatory of the Geneva Appeal

Mr Van Ruymbeke wishes to mention that the judiciary and the police have complementary roles, and supports Mr Storbeck's idea of a partnership between the two authorities in order to ensure that their actions to combat organised crime are effective. To this end, he considers it essential for police activity to be supported by a judicial authority. Police investigations are pointless in some cases, in particular in cases of corruption and money laundering, if only a magistrate can authorise access to a bank account.

Mr Gerritjan VAN OVEN,
Justice and Home Affairs Committee
of the Lower House in the Netherlands

Europol must be given the necessary resources to fulfil its tasks correctly in the context of extension of its competences. With regard to parliamentary control, Europol is a matter for the third pillar, which is governed by the rules of intergovernmental cooperation, which results in fragmented control in which there is little room for national parliaments and the EP. So Mr Van Oven reiterates his wish for close cooperation between the parliaments to plug this gap and exert more direct control.

Mr Jürgen STORBECK,
Director of Europol

With regard to the EP's control, there are two options. The first would be, in the context of the Treaty of Amsterdam, to integrate Europol into the first pillar under the responsibility of a Commissioner. To date the progress made under the third pillar has been significant, and Mr Storbeck is happy to stay within this framework. The second option would be to amend the Europol Convention in such a way that it would provide for parliamentary control to revert to the EP.

Mr Storbeck agrees with Mr Van Ruymbecke's comments, and would like the judiciary to be more involved in the fight against international crime. In addition, he deplores the fact that when the Europol Convention was being drawn up, the judiciary may not have expressed its wish to participate in this initiative sufficiently strongly. Provision was made for the judicial authorities to be mentioned in this Convention, but this mention was omitted and justice ministers did not oppose this omission. From a practical point of view, the judiciary is already participating in the main investigations launched by Europol.

Thursday 26 March

Workshop conclusions

Professor Henri LABAYLE,
University of Bayonne, France

The contribution made to the current discussion by the NGOs is very important. A number of questions were raised during the first day of the meeting, mainly relating to the establishment of an area of freedom, security and justice and the principles by which it will be governed. The first requirement the European Union must meet is to ensure its effectiveness. We will not be able to establish an open area for the free movement of persons and activities if, some 15 years after the conclusion of the Schengen agreements, we are unable to monitor the soundness of the options chosen and the rules adopted to date. One essential requirement in the light of which European Union's actions must be judged is the need to uphold fundamental human rights. Human rights reflect both our desire for freedom and the need for security. Article 29 of the Treaty on European Union, for example, reminds us that one of the Union's objectives is to provide citizens with a high level of safety.

With regard to the right of asylum, the possible calling into question of the provisions of the Geneva Convention has caused controversy. It is possible, however, to imagine forms of Community action which, without prejudice to the hard core of international law on refugees, would exist alongside the powers which each Member State, in accordance with its constitution, wishes to retain with regard to political asylum.

One important aspect of monitoring the quality and relevance of the rules adopted in the European area involves ascertaining whether the rights conferred on Union citizens, and third-country nationals passing through or living in the European Union, are effectively upheld. Moreover, before criticising the ineffectiveness of Community mechanisms or the abstract and theoretical nature of Community structures, each Member State must ask itself how seriously it is seeking to implement the objectives laid down in the Treaty on European Union to which it has subscribed. It is also important not to attribute to the European Union responsibilities which lie elsewhere. For example, in the case of the single legal area, we must recognise that organised crime and problems connected with immigration existed long before the creation of the European Community, and we shall never know whether the opening of Europe's frontiers accentuated, accompanied or caused an increase in the incidence of crime. We do know, however, that a realistic reading of the subsidiarity principle precludes each individual Member State from responding separately to all the challenges they face. From now on, we must resolve to do together whatever we are no longer able to do on our own. It follows that our actions must be governed by certain principles.

First of all, the principle of solidarity. If we wish to create a single area within which each entity has responsibility for what is happening in the territory of the others, we cannot continue to rely on such imperfect legal and technical arrangements as those at our disposal at present. We must reject the ethnocentric approach. We must not be obsessed with transposing the peculiarities of the Member States' respective systems into the European Union's institutional and legal system. Any attempt to

set up a super-Ministry of the Interior or a Ministry of European Justice will be doomed to failure. It would be more appropriate to consider the various mechanisms that exist in highly developed federal systems such as the US, and establish procedures to oversee how the approach selected operates in practice. We might envisage setting up joint committees of members of the national parliaments and of the European Parliament to monitor methods of controlling illegal immigration, for example, or the protection of private life and fundamental human rights.

The second principle is the principle of freedom. Now that the Treaty of Amsterdam, by its very nature, has extended the scope of the European Union's powers to areas that are 80 to 90% concerned with human rights (namely justice, freedom of movement and immigration), it is no longer possible to rely in the long term on a system which has so many drawbacks, in terms of jurisdiction and legislation, as that available to us at present. Today the European Union is called upon to establish a higher degree of protection of fundamental rights. It is very probable that the Strasbourg system will prove unworkable over the next few years. The European Union will have to intervene in areas which are particularly sensitive in terms of the Member States' constitutional traditions. The principle of judicial review will raise very important questions both with regard to the measures already adopted, when they manifest themselves in the form of binding acts of Community law, and with regard to all the proposals which are still on the table. In particular, the independence of the judiciary, which is recognised in the constitutions of all our Member States, will make it necessary to increase the powers of national judges throughout the territory of the European Union. The national judge will have to be able to fulfil his or her responsibilities fully without being impeded by legal frontiers, which should not exist in a single judicial area. The use of advanced technologies to create an area of freedom, security and justice must be accompanied by corresponding measures to ensure the protection of data. The requirement to guarantee civil rights makes it necessary for us to consider what kind of authority will be able to assume the task of monitoring developments in this area. France is in favour of setting up an agency in the form of an independent administrative authority, while Germany believes this is a matter for the courts.

The principle of subsidiarity raises an essential political and legal issue. The application of this principle is threatened by the suspicion, unfortunately now firmly rooted in public opinion, that the construction of an area of freedom, security and justice might not remedy, but on the contrary increase the insecurity of daily life. It is only by holding a political debate at national level, in which the various associations would take part, that it will be possible to reverse his pernicious prejudice. The national parliaments can and must play a crucial role in this process. The national parliaments are the legislative bodies, and hence are of vital importance in establishing both freedom of movement and, in the judicial field, an area of security and justice which also upholds individual freedoms. But the national parliaments are also the bodies responsible for supervising public administrative and political institutions. It follows that the construction of Europe will be conditional on the national parliaments' ability to apply the principle of subsidiarity in future. It is important not to lose sight of the common values embodied in the Member States' legal traditions and twenty centuries of history. Only the determination to apply and defend these common values will enable the European Union to carry into practice the principles of European territoriality and of freedom.

Mr Jan Kees WIEBENGA,
Member of the European Parliament

Two professors provided introductions, namely Mrs Delmas-Marty and Mr Spencer. This meant that the two important legal families in the European Union were represented: Napoleonic law and the Anglo-Saxon case law legal system. These two legal systems were able to come to terms with one another in the proposal for the 'corpus juris'. This already indicates that the whole idea of the report transcends national legal systems.

The workshop covered judicial cooperation, but in reality two points were involved, namely harmonisation of criminal law at European level and harmonisation of criminal proceedings at European level, i.e. substantive criminal law, harmonisation of the way punishments are determined in a few cases: terrorism, drug dealing, corruption, slave-running. There was also the question of harmonising prosecution proceedings, with the proposal for the creation of a European public prosecutor.

The two professors said that the situation is absurd: on the one hand, internal borders have lapsed, while on the other hand police and justice systems still remain bound by these borders.

The second finding is that international judicial cooperation is not working well at present. This is because there are two jurisdictions: that of the European Union and that of Schengen. Then there are also conventions at Council of Europe level. That is why there is a need for the proposed corpus juris, which aims in particular to harmonise substantive criminal law, especially the rules on fraud, but subsequently also to specify criminal proceedings at European level. There is also the proposal to create a European public prosecutor. This is a controversial proposal. The aim is to make judicial cooperation as good as police cooperation already is.

A number of important points were raised in the discussion. The first was the need to achieve better cooperation between the European Parliament and national parliaments. Behind the national parliaments stands public opinion, which is completely uninformed. The European Parliament must remain continuously in contact with national parliaments.

Another comment was that a European commissioner must take on responsibility for the whole policy area of freedom and justice.

There was also the question of the legal basis, the legitimacy of the European public prosecutor. It was pointed out that the possibility of a new agency is not mentioned in the Treaty of Amsterdam. What legitimacy is there? How will powers be divided between a European public prosecutor and national public prosecutors? In my view, the European Parliament needs to think further about this and to discuss it with the European Commission.

One last point to be raised was transnational prosecution: harmonisation of European criminal proceedings. In this connection it was pointed out that it was necessary in future to establish, parallel with this harmonisation, a pan-European or transnational defence system, especially for the accused. National and European criminal law has two objectives: firstly, to be able to convict the guilty and, secondly, to protect the innocent.

Mr Carlos JIMENEZ VILLAREJO,
Public prosecutor, head of the special department for the suppression of financial crime involving corruption in Madrid and Signatory of the General Appeal

Thank you, Madam Chairman. I am Public Prosecutor at the Spanish Anti-Corruption Office, which is part of the Public Prosecutor's Office and was set up specifically to deal with economic crimes and corruption. From this point of view, I feel we have a good idea of the shortcomings in the fight against transnational economic crime.

The notion of "corpus juris" seems extraordinary to us and we should not underestimate the fact that it could become a reality in the short term. What is certain, however, is that the current situation, the situation with which we are faced today, means that in many cases, as Mr Bontempi explained earlier, criminals enjoy impunity simply because they are able to commit their crimes through an organisation established in several countries and it is impossible to punish them in only one. It would therefore be useful, before corpus juris is introduced, to discuss the shortcomings that give rise to this impunity.

For example, direct communication between judges in different countries. In Spain, when a judge wishes to ask another judge something, he does it directly, without either the Government or the Ministry of Justice intervening. We do not understand why, in the European Union, we still insist that the Ministries of Justice of the different Member States be involved in handling letters of request.

Secondly, it is astonishing that there are still tax havens, actually within the EU. The lack of resources and powers available to UCLAF to combat crime in this area is counterproductive. It is surprising that there is no Community body which can receive complaints made as a result of failures to respond to letters of request sent from one country to another. And it is astonishing that a national judge cannot directly summons a citizen of another country, even as a witness; and it is even more surprising that there is no mechanism whereby such a citizen can be forced to appear and make a statement as a witness in the requesting country.

Our failure to solve these problems is actually benefiting organised crime and gives people the impression that "hard" crime enjoys impunity when it is committed within the various European Member States in an organised manner.

Another issue, linked to this, is that the lack of any real, effective danger of punishment, and the lack of any control over these issues leads to this disease called corruption, which has devastating effects if it is not tackled in good time.

Mr Jan Kees WIEBENGA,
Member of the European Parliament

Criminal-law cooperation had been included in the European Union's tasks only since the Treaty of Maastricht. The workshop's theme had taken things a step further, but it would probably still take several more years. National parliaments were reporting that Brussels was already going too far. This process should be well controlled, but was handicapped by the fact that the Council of Justice Ministers can introduce new mechanisms and take decisions only by unanimous vote.
The European Parliament must ensure that national parliaments are alert to what is happening, that they are able to keep up. Then it must be ensured that the rules in the Third Pillar are rapidly adjusted internally, so that an improved system can be achieved within five years.

Mr Hartmut NASSAUER,
Member of the European Parliament

The EU must organise direct legal assistance between the responsible authorities and institutions. This is the first step for an area of freedom, security and justice. All responsible authorities and institutions must be able to contact their counterparts in other Member States direct, without having to go through the present inter-State procedure with all the administration involved. Quite apart from the cost and time savings, effectiveness will also be improved in this way.
Direct legal assistance as a core feature should therefore be aimed at. Any rejection of this aim on the part of Member States, arguing that the relevant legal standards could not be guaranteed, must not be accepted, since all Member States are indubitably States governed by the rule of law.

No additional activities may be transferred to Europol unless it is given more staff. At the moment, Europol has 119 employees, of whom 40 to 50 are working in criminal investigation proper.
One justified demand for expansion is, for example, the fight against currency forgery, as this is a typical Community problem. It necessarily calls for action by Europol, but this must lead to the allocation of more resources. In practice, Europol will start by organising cross-border investigations. In order for it to do so, the Council will have to utilise to the full the framework in Article 30 of the Treaty of Amsterdam. It is essential that the limited possibilities for the further development of Europol under the Treaty of Amsterdam are quickly appreciated.
Another problem is that of duplicated work in international organisations. As far as Europol is concerned, this means overlapping with traditional inter-State police work (e.g. Interpol) and bilateral agreements. In this case each organisation carries out its own investigations and can even get in the way of the others. The only solution is an exchange of information about investigations in progress, so that the organisations are not investigating at cross-purposes.

From the point of view of those responsible for Europol it would be appropriate for it to have its own authority to conduct investigations, but it need not have its own executive powers (e.g. to conduct searches or make arrests) as long as it is operationally effective. Europol should coordinate cross-border investigations on its own responsibility and not just support such coordination, as is laid down at present in the Treaty of Amsterdam. These powers would inevitably require an independent judicial institution which would take over the gathering of information for the courts. The setting up of this "European public prosecution service" would be the simple consequence of the constitutional structure of criminal prosecution.

Practising lawyers believe that the build-up of Community police work is progressing faster than that in the area of justice. This obliges us to intensify our work in this area.

Not only must Europol be provided with repressive means to prosecute criminals, but efforts must also be made to introduce an integrated approach to criminal prosecution which will include both prevention and rehabilitation and not just confine itself to repression.

There is some doubt about the way in which parliamentary control of Europol is ensured. Neither the European Parliament nor the Parliaments of the Member States control Europol as a government agency. Normally, parliamentary control is exercised through the responsible politicians, namely the ministers concerned. The situation is different with an international organisation such as Europol. The European Parliament has merely the right to be informed. On the other hand, there is no guarantee of willingness on the part of Europol itself to comply with this obligation to provide information.
How the European Parliament and national Parliaments could therefore cooperate is shown in the proposal for a Recommendation to Europol[30] containing the following considerations:

1. Calls on the Parliaments of the Member States to take consistent account of their right and duty to supervise the actions of the Council members responsible for Europol and the representatives appointed to Europol Management Board in the framework of the provisions of their constitutions, cooperating closely with the European Parliament in so doing;

2. Recommends to the Member States Parliaments that they ensure that they receive regular reports on the activities of their national supervisory bodies in accordance with Article 23 of the Europol Convention and that they engage in an exchange of views on this subject with the European Parliament;

3. Recommends to the Member State Parliaments that they examine the annual reports of the Management Board pursuant to Article 28(10) of the Europol Convention and the reports of the national supervisory bodies with a view to ascertaining any necessity for amendments to the relevant provisions of the Europol Convention, and that they introduce such amendments jointly with the European Parliament.

For these reasons, the national Parliaments with their responsible committees and the European Parliament with its responsible committee should meet once a year to enable important trends for the continued development of Europol to be identified.

It is not possible for Europol to be controlled by 15 national Parliaments. The only way out is therefore to have control exercised through the Community. This will however lead once again to a transfer of sovereignty from the Member States to the Community. We must expect this to be resisted by Great Britain and the Scandinavian countries and, in certain circumstances, even by France.

30 European Parliament recommendation to the Council on Europol: reinforcing parliamentary controls and extending powers: rapporteur: Mr Hartmut NASSAUER, JO C 219, 30.7.1999

National parliaments

Mrs Märta JOHANSSON,
Swedish Parliament

We on the Swedish side think that the Action Plan is a good and far-sighted venture which will give the concept of freedom, security and justice tangible significance for our citizens.
As regards asylum and immigration questions, it is important that an agreement be reached within two years about what rules are to apply to temporary protection and how the burden is to be distributed between the EU countries. The situation of children must be given special attention in asylum procedures and in the reception of asylum-seekers.
On the question of crime control, the Action Plan provides a clear and unambiguous lead with a variety of elements.
Europol will, we hope, soon be able to start up its own activities so that common police cooperation can be intensified. We were talking a lot yesterday in working group 2 about the legal control of Europol. We do not feel this is important today, because control of the police is in national hands.
Bilateral police cooperation, too, must be developed, and this will occur as a result of Schengen being integrated into the EU.
We must develop systems for reciprocal legal aid with a view to facilitating cross-border preliminary investigations and contacts with authorities. That the Action Plan also mentions closer cooperation in the recognition and execution of judgments and court decisions in criminal cases is to be welcomed.
Another section deals with harmonisation of certain parts of our criminal legislation. This, we feel, will be taken up for discussion when the need arises. All in all, the measures and priority assignments mentioned in the Action Plan will assist our common endeavours in fighting crime within the EU. But our objectives must be clear. Legal and practical obstacles to the prosecution of criminals within the EU must be eliminated, but the implementation of the *corpus juris* however demands other careful considerations. There must not be any safe havens for criminals within the EU, and it would be a good idea for Parliament to state this clearly in its opinion.
In order to achieve this, all of the EU's activity must be permeated by a crime-prevention and crime-control perspective. Nor must the situation of the victims of crime be forgotten. I believe that we have a firm foundation to stand on, but its implementation will test us severely.

Mrs Marida DENTAMARO,
Italy

I should like to comment that, in immigration and asylum policies, we particularly need to recognise and acknowledge the need to find a point of balance between "freedom" and "security" - concepts and values whose interdependence has already been quite rightly stressed. Consideration must always be given to the freedom and security of all and of each individual, as human beings, irrespective of whether or not they are EU citizens, so that we do not allow the freedom of any one person or group of people to prejudice or threaten the security of others, or vice versa.

I should like to say straight away that it is essential that these issues are transferred from the third to the first pillar to ensure that European policies are practical and effective, since it is absolutely impossible for these issues to be dealt with, from either the legislative or the practical viewpoint, within the confines of individual Member States. No national legislation or action can be effective

if it is not harmonised with legislation and action in the other Member States.

First and foremost, we need to be very firm and clear in identifying and then differentiating the ways in which we are going to handle three very different phenomena: legal immigration, whether it has already been regulated or, more importantly, has yet to be regulated; illegal immigration, which needs to be tackled at all levels with effective practical instruments; and political asylum, which requires rigorous criteria for the recognition of refugee status.

I do not feel it is at all superfluous to stress the difference between these phenomena and also the need to avoid any confusion or ambivalence: suffice it to say that a huge number of non-EU nationals are arriving in Member States - and I'm thinking in particular here of Italy and its coastal regions - without any documents and claiming to be of Kurdish nationality (which it is absolutely impossible to verify) simply to secure refugee status.

As for legal immigration, the very principle of the free movement of people within the Union makes any system to regulate migratory flows that does not cover every Member State quite inconceivable. This raises a final issue, that of receiving refugees. There are areas of the Union that are constantly facing such emergencies; there are countries that, for geographical reasons, are continuously exposed to massive influxes that are neither regulated nor predictable. One of these is Italy, because of the enormous length of her coastlines, bordering on countries such as Albania and Kosovo and also readily accessible to the Kurds.
Everyone is aware of the huge humanitarian effort Italy is making to deal with these influxes; it is an imposing phenomenon that defies all regulation and requires immediate action, structures and economic resources if those arriving, often women and children, are to be given shelter.

I think that everyone also knows, that there is a powerful lobby for the Nobel peace prize to be awarded to the people of Salento, a region in southern Italy that has demonstrated an extraordinary capacity for solidarity, generosity and hospitality as regards this difficult issue. It is a problem that cannot be left to individual governments or individual local authorities simply because they are more directly involved because of their geographical position. It is a problem that has to be tackled by the Union as a whole, from both the economic and the organisational viewpoints.

Mrs Hedy d'ANCONA,
President of the committee on civil liberties

It is possible for ECU 15 million to be made available for the reception of refugees in the current critical situation. When the Parliament sees a chance of opening up these funds, this should mean a good financial start. It should be possible to use that fund in this emergency situation. The European Parliament has created the budget line. Given the current situation, the European Parliament is in a position to open up the line.

Mr Gerritjan VAN OVEN,
Justice and Home Affairs Committee
of the Lower House in the Netherlands

Lack of time means that we are unable to discuss every subject in depth in this debate. It is a question, rather, of a random picture in relation to the subjects we regard as coming under the Third Pillar.

An incredible amount has happened in the area of the Third Pillar since the Treaty of Maastricht entered into force. There are very many more visible results than in the Second Pillar of the Maastricht Treaty. The results of the entry into force of Schengen are an obvious part of this; intensive judicial and police cooperation has been achieved in the context of the Third Pillar. Even more will happen in the next five years, following the entry into force of the Treaty of Amsterdam. We shall be able to greet the integration of Schengen into the European Union. This means that the European institutions will have a stronger 'grip' on the Schengen regime. We shall see a strengthening of the Court of Justice's powers in respect of the Third Pillar. This does not alter the fact that parliamentary control will still be lacking in the two areas over those five years, as was expressly stated in the reports by Messrs Wiebenga and Nassauer.

We must look to see how we can strengthen the opportunities for **parliamentary control**. The December 1998 action plan from the Council and the Commission also offers a fantastic opportunity for this, since it is a detailed action plan and states what paths must be followed in the next few years in the fields of asylum and immigration, and judicial and police cooperation. In many cases no concrete interpretation has yet been achieved. As a member of the Dutch Labour Party, I enthusiastically support the ambitions of this action plan. We must bring about solidarity in Europe, with minimum standards for the receiving and checking of refugees, common evaluation of security in their countries of origin, and a genuinely balanced distribution.

Firstly, I should like to talk about extension of the powers of Europol. The relevant provision in the Treaty of Amsterdam is extremely vague. There is a difference between powers of information and executive powers, but between them comes the area of operational powers, and those who drafted the Treaty did not have it absolutely clearly in mind what this has to involve. As parliamentarians, we can ask people to be aware of this and ask that we should be involved in the deliberations. The Dutch Parliament would be totally opposed to a situation in which such powers were exercised in conflict with Europol's powers. This is a subject that needs to be studied in depth.

I would also cite the position of the prosecutor or the introduction of minimum sanctions for particular criminal acts. We must try to strengthen this control. The European Parliament's position is currently too weak, as is that of the national parliaments. Now the question is of how we can strengthen the situation. Who will take the initiative? If I may express criticism of Mr Nassauer's report, which says that the national parliaments must take the initiative and must involve the European Parliament in this, that does not seem very logical to me. There is no network of national parliaments and a separate structure would have to be developed to this end. It is true that the European Parliament is in the weakest position, but it is also the most centrally placed. Therefore it would be more obvious for an initiative of this kind to be undertaken by the European Parliament.

Mrs Hedy d'ANCONA,
President of the committee on civil liberties

Today's meeting is not seen as concluding the work of our parliamentary committee, but its purpose

is also to look at the inadequacy of our situation as a European Parliament and as national parliaments, in order to combine our powers as far as possible, so that we can deploy parliamentary control as effectively as possible. We should in any case convene a similar meeting with each other after Tampere, in order to discuss the results of Tampere. Your idea of making maximum use of members of national parliaments and those of the European Parliament before ministers go to Tampere, and of the opportunity for members of national parliaments to pass on particular messages to their ministers, is an interesting thought, which I shall certainly mention in my final conclusions.

Mr Hartmut NASSAUER (PPE, Germany),
Member of the European Parliament

The national Parliaments have the authority to exercise control, and the European Parliament would have the central opportunity to do so. I tried to point out in my report that the idea that 15 national Parliaments do in fact control Europol is somewhat remote from reality. In practice, I suspect that the Dutch will be willing to be more involved than the Finns. Basically, it is an unsatisfactory situation at the present time. The solution can only be that Europol will gradually become more of a community institution and the responsibility for control will then rest with the European Parliament. This is absolutely the only way to do it, but you know which Member States will start jumping up and down if we make such a suggestion.

Mrs RAUSCH,
Caritas Luxembourg

Mr Van Oven has emphasised a contradiction which NGOs experience every day: the contradiction between the abolition of European borders on the one hand and, on the other, strengthening of borders when it comes to asylum and migration.

I do not understand why Luxembourg expends so much effort on sending some asylum seekers to Italy, or why Finland expends so much effort on sending asylum seekers to Germany. Is this not contrary to the founding principle of solidarity? I ask national parliaments and the European Parliament to evaluate the Dublin Convention, which does not support a common area of security, freedom and justice.

Mr Friso ROSCAM,
ECRE

We believe in the issue of responsiblity sharing in receiving refugees in Europe. We also believe that it is very important to resolve this issue, not only because it would improve refugee protection, but because its resolution would allow other areas of harmonisation.
This issued needs to be linked to the Tampere Summit. The Commission has submitted a proposal on temporary protection of displaced persons on a solidarity scheme. The first proposal dates back to March 1997; the revised proposal dates back to 1998 before the Kosovo crisis.

The Council's Ministers for Justice and Home Affairs are not able or not willing to adopt these proposals or resolve this issue. I believe that national parlementarians and MEPs should stress to the governments that this issue should be dealt with at Tampere.

Mrs Hedy d'ANCONA,
President of the committee on civil liberties

We are probably all agreed in favour of bombing, but unanimity will also be required in order jointly to resolve the consequences of it. The problem is not a temporary solution, using the money, since the fund is available. What is now needed is to achieve unanimity in order to accept common responsibility.

Mr Fabio EVANGELISTI,
Chairman of the Italian Parliamentary Committee monitoring the implementation of the Schengen and EUROPOL Conventions

The surprises of integration

Often, in the past and even today, the European integration process has moved along unpredictably. Only two years ago, few people would have been willing to believe, let alone place a bet on it, that in 1998 Economic and Monetary Union - EMU - would come into being with 11 members and that the Schengen Club would dissolve into the great body of the European Union. Yet that is exactly what is happening today, before our very eyes.
Europe may well be mammoth-like, but every now and then it leaps forward, and catches us by surprise. Even though many people prefer not to admit it openly, the decisive changes that are now taking place (the creation of broadly-based EMU and the incorporation of the Schengen acquis) have in fact taken us somewhat by surprise. It might seem to be almost a victory of the functionalist rationale (according to which Europe will be built up gradually in stages, pursuing sectoral and well-defined objectives and targets) over the constituent rationale (according to which every sectoral achievement should be preceded by and be incorporated into an overall Grand Project) that has long been the preferred solution of many advocates of European integration.
Let us be clear about one thing: I remain convinced of the need for a great institutional reform project, particularly in view of enlargement, which might otherwise run the risk of becoming an endless process that would be wearing and fraught with risks for both the internal stability of the candidate countries and for their relations with those of us who are already members.

But at every level, and particularly at the level of national parliaments, we have to realize that even without the Political Union things really are moving ahead. And we must appreciate the full importance and irreversibility of these changes so that we do not simply have to put up with them when they happen, but are able as far as possible to help steer them ourselves.

Changes in sovereignty

Political change must be directed and steered, and not passively accepted. This is, one might say, the essence of sovereignty. And the essence of contemporary politics may be considered to be a constant striving to preserve sovereignty, or better still, to create the conditions for a new kind of sovereignty no longer hinging around national governments.
The question of who should lay down the main thrusts of European economic policy in the age of the EURO is the issue at the top of the current agenda. It is here that much of our future will be played out, individually and collectively, as European citizens. But the future not only lies there.
Together with the right to mint money, the other great area of sovereignty, whose consolidation gave rise to the modern nation states, is control of the territory (the borders in particular) and the people, through the police. But even this major slice of sovereignty is now about to be transferred gradually, very gradually, (perhaps too gradually according to one political assessment which - I recognize - is highly controversial) from the national to the supranational, if not to the Community level.
The first stage of this transfer of sovereignty has been taking place since the end of the Eighties, with the establishment of a tightly-knit and complex network of intergovernmental cooperation arrangements as its main framework, including the Schengen System, which was the main unifying factor, at least from one particular point in time onwards.[4]
The Treaty of Amsterdam marks a new stage in this great historical process of disseminating and transforming sovereignty in that area of political activity which the Maastricht Treaty labelled " Justice and Home Affairs" (JHA), and which the new Treaty has brought together under a single heading - which sounds grand but is not self-evident - the "Area of Freedom, Security and Justice" (AFSJ)[31].

The European Parliament and the national parliaments

Over the last ten to fifteen years, there has been a tendency in Europe towards convergence between national immigration and asylum policies and legislations[32] . At the same time - thanks to the work of a large number of working groups and sub-groups, both formal and informal, at times almost secret - the European police forces have enhanced their capacity and their ability to dialogue and exchange information, and work together.
The Schengen Agreements and the work of the Executive Committee and the other organs belonging to the 'Schengen system' have formalised and perfected this state of affairs. But the movement

31 The ratification of the Amsterdam treaty was authorized by the Italian Parliament with the law n° 209 of 16 June 1998.

32 In the case of Italy, which has turned into an immigration country only in the last two decades, this process of legal harmonization and administrative modernization, aimed at meeting the European standards, has been particularly demanding. A crucial step ahead has recently been taken, from the normative point of view, with the passage of a new comprehensive law (n° 40, 6 March 1998). On the whole process of formation of an Italian set of laws in the field of immigration and legal status of foreigners, see: Pastore, *Migrazioni internazionali e ordinamento giuridico*, in Violante (ed), *Legge Diritto Giustizia*, Storia d'Italia (Einaudi, 1998)

towards supranational integration in the matter of home affairs began before Schengen, and Schengen is not the whole story.
European-wide migration and internal security policies have developed slowly, outside any effective democratic, let alone judicial, control. National parliaments and the European Parliament were (and still are) left virtually in the dark about the activities of the various groups set up along the lines of TREVI. And with a few differences (to which I will return shortly) between the national systems, Parliaments find it very difficult even to be briefed in good time and hence to bring any influence to bear in any way on the work of the Schengen Executive Committee. These are supposedly administrative activities, but it is a very odd way of administering, laying down rules that not even one parliament - even with a unanimous vote - is able to change.
Europe's migration and security policies have been worked out without any kind of effective democratic oversight. I say this without wishing to be controversial and also partially recognising the responsibility of the political parties and the parliamentarians, at home and in the European Parliament. Too often we politicians have been lazy and superficial, and we stepped back when faced with excessively technical arguments and the painstakingly arduous task of hammering out fundamental texts. And I say this without any recriminations about the past: perhaps it was necessary to have an experimental phase in order to adapt the control structures to the formidable changes and to the new challenges that characterize the period after 1989.
But today Europe's policies on internal security, immigration and asylum have become too complex and important for our common future to be able to allow things to remain opaque and "administrative". The great decisions being made in this area are now decisive for the future of the continent, and they must be transparently adopted through a genuinely democratic debate. European security has to become, for all intents and purposes, a political matter, also to prevent it from becoming the monopoly of demagogues.

The Schengen Committee - EUROPOL

I would just like to say a few words about a number of specifically institutional aspects in this area in my own country. I am certainly not doing this to suggest that it might in some way be a model for others to follow, but it certainly possesses various original features which might represent 'food for (reformist) thought', even beyond the Italian national borders.

In 1993, while authorizing the ratification of the Schengen agreements, the Italian parliament set up a Committee responsible for supervising the implementation of these treaties on the Italian side (law n° 388, 30 September 1993). Due to several institutional (and some political) obstacles, the "Schengen Committee", as it used to be called, began its activities only in March 1997. One year later, with the law for the ratification of the EUROPOL convention (n° 93, 23 March 1998), the Italian lawmakers have added to the responsibilities of the Schengen Committee supervision of the activity of the Italian "National EUROPOL Unit".

The Schengen-EUROPOL Committee, as it is now more appropriate to call it, and which I have the honour of chairing, is a specialised committee of both Houses (composed of ten Senators and ten Deputies), empowered to carry out inspections on the spot, summon hearings of representatives of the government and the civil service, invite experts and scholars as speakers, and submit motions,

questions and if necessary, level criticisms against the Italian government in the subject areas with which it deals[33] .

But the most original aspect of this Committee - the one which makes it stand out from all similar Committees in Europe (with the partial exception of the Dutch case) and other bicameral Committees or Commissions of Inquiry or Watch-dog Committees in the Italian parliament - is something else. The Schengen-EUROPOL Committee may also issue an opinion binding on the government relating to "draft decisions, binding on Italy, tabled before the Executive Committee" (Section 18(4) of Law 388/1993).

So far this power to bind the national government's position on the Executive Committee has been used very sparingly, partly because a breaking-in period has been necessary for the benefit of the members of the Committee on an issue of such undoubted complexity and sensitivity. But also because the Committee intends to ensure that its role (and it could hardly be otherwise) is more that of a watch-dog rather than a policy-maker, and at all events it operates only by laying down general policy guidelines rather than detailed policies for the work of the government. Lastly, the Committee's work has been very "self-controlled" because - let us admit it - in the difficult phase of applying the Schengen Convention any more wide-spread intervention would have been likely to hamper what was in Italy's fundamental national interest, namely, to become a full member of the club.

Today, I believe that it is important that the Committee exists, primarily as a "specialised" watch-dog over Italian constitutional values in a particularly sensitive area within the European integration process. But we must not delude ourselves: a national parliamentary Committee can do very little, left to its own devices. And even if it is vested with formal powers, external constraints (stemming both from a lack of information and political contingencies) are extremely powerful. It is only in particularly important situations that the Committee would be likely to be able to take direct and binding action. As far as the rest is concerned, we play a role - to which I attribute extreme importance - of collecting, processing and disseminating information. We mediate between the decision-making bodies (the Executive Committee, and eventually the Council of Ministers), parliament and the public at large[34] .

In other words, we are trying to be a sounding-out mechanism to serve parliament (and the public) in the deep, and not always crystal clear, sea of "home affairs".

33 From May 1997 until June 1998, the Schengen-EUROPOL Committee has conducted a survey on the process of implementation of the Schengen Convention in Italy. The results of the survey were published in two parts: Atti parlamentari, XIII legislatura, Camera dei Deputati – Senato della Repubblica, Comitato parlamentare di controllo sull'attuazione ed il funzionamento della Convenzione di applicazione dell'accordo di Schengen, *Stato di attuazione della Convenzione di applicazione dell'accordo di Schengen, Parte I* (1997) *e Parte II* (1998), Indagini conoscitive e documentazioni legislative n. 3 e n. 3-A.

34 The most recent result of this effort of information is a booklet called *L'Italia e Schengen. Lo spazio di libertà, sicurezza e giustizia tra problemi applicativi e prospettive,* published by the Italian House of Deputies (Camera dei Deputati, Roma, 1998) and containing the proceedings of the conference organized on 3 April 1998 by the Schengen Committee, on the occasion of the final step of the implementation process of the Schengen agreements for Italy (lifting of the police controls at the Italian ground borders with other Schengen countries, on 31 March 1998)

Towards a system of multi-level democratic control?

If the adoption of Community-wide policies for immigration and asylum and the incorporation of the Schengen acquis within the European Union is (as I hope) successful, the task of supervising and monitoring common policies on immigration, police cooperation, and so forth will become the joint responsibility of the European Parliament and the national parliaments, using the procedures which are set down respectively for the First and the Third Pillars.
I see this as a natural development, consistent with the general thrusts of the process of European Integration, and it is therefore something which must be actively prepared and then, when the time is right, be greeted with satisfaction.

However, there is one risk that must be borne in mind. As the powers of the European institutions are broadened, the level of technical and political preparation needed to be able to monitor and take part in drafting common policies, knowing all the issues and facts involved, will also increase. This need for specialisation is particularly acute in such technically complex and politically sensitive areas as free movement, internal security and justice.

As this sector becomes more 'europeanised', it is essential for a multi-tier democratic control system to be established with the following features:

a) **high level of technical competence**: there must therefore be specialised organisms (or sub-organisms) along the lines of the Schengen Committee or similar bodies, at the level of both the European Parliament and the national Parliaments;
b) **strong capacity for European-level political synthesis**: if not, the "democratic control" will never be able to become "democratic guidance";
c) **close linkage with local and national societies**: the multi-tier control system must be capable of rapidly taking on board, with the greatest sensitivity, the demands and the protests, the reports and the criticisms of our citizens. This means that the central tier of representation alone (the European Parliament) cannot suffice;
d) finally, **political weight and incisive institutional action is needed**: obviously this is the very essence of the function of democratic control and policy-making, however one may wish to interpret it. This could be done, in part at least, by extending qualified majority voting and co-decision procedure to the whole of the Community Pillar, and by a radical overhaul of the role of the European Parliament within the Third Pillar.

But this is leading us into the area of future projects and hopes, but not - I trust - sheer fantasy.

Mr Pedro JOVER,
Spanish Congress

I should like to talk about three issues I consider to be particularly important:

The future European Charter of Fundamental Rights.

I believe that this is a very valuable proposal which will have to be pursued with care if it is not, yet again, to provoke similar frustrations to those experienced in the past. This Charter will make

progress and be genuinely useful only if it meets three conditions:

a) its wording is clear, specific and comprehensible, that is, quite the opposite to the wording of the Treaties. Both the EU and the EC Treaties are a complex web of regulations and counter-regulations, exemptions and exceptions. If we wish to build a Europe that is accessible to citizens, it is absolutely vital that its Constitution be something that citizens can understand. At the moment, not only citizens but also the so-called experts often have problems finding their way around this very complicated network of regulations;

b) it includes real fundamental rights, that is, legal rules that have direct effect, legal rules that are directly binding on the citizens and public authorities of every Member State. It must include fundamental rights that can be demanded and enforced right from the outset, with a quick and easy procedure, before national judges, for guaranteeing protection against any infringement of those rights. What I mean is that, if this future Charter of Fundamental Rights is nothing more than a declaration of principles or includes only mandates for the public authorities that are not binding on citizens, then it will not serve any purpose. It must be a Charter with general effects and must serve both citizens of the Member States and residents of third countries, who must have the same rights;

c) it is important that it shall provide a level of protection at least equal to that already provided by the European Convention for the Protection of Human Rights and Fundamental Freedoms. And here I have my doubts about whether this can actually be achieved, since the lowest common denominator of the fifteen Member States could leave us with a Charter that would offer a lower level of protection than that currently provided by the European Convention and the Court of Human Rights in Strasbourg.

Provided these conditions were met, Spanish Members of Parliament and, I believe, the Spanish Government would be absolutely in favour of pursuing the idea of a European Charter of Fundamental Rights;

Two issures seem to be special priorities if we are to create a European area of freedom, security and justice:

a) freedom of movement, establishment and residence within European borders. In other words, we must, as soon as possible, ensure effective application of the provisions of Articles 62 and 63 of the EC Treaty and, therefore, do away with all internal border controls. As far as external borders are concerned, we need not to strengthen but to harmonise controls. If we are to do this, it is essential that the Council shall reach agreement on the subjects covered by Articles 62 and 63 of the Treaty; we need urgent measures as regards entry control standards at external borders; as far as visas are concerned, we must as soon as possible draw up a list of third countries whose citizens are going to require visas; we have to establish common rules as regards asylum systems, the right of asylum and the rights of refugees; and, above all, we have to decide what we are going to do about the tremendous pressure of immigration being experienced by some EU Member States. In Spain, we are having problems as regards people who are requesting asylum and refugee status when we have no way of knowing whether they are really being persecuted in their own country. We need to establish common rules and as soon as possible solve the

problems concerning communities of displaced persons and refugees, the reuniting of families, etc. In this respect, we already have the Schengen acquis, which could be very useful here;

b) the fight against crime. Citizens are constantly being told that the existence of legal borders and of different legal systems is often resulting in the impunity of people responsible for corruption and "white-collar" crimes about which people are particularly sensitive. In this respect, Article 31 of the EU Treaty is enabling us to advance towards what some people have called a European Criminal Law. And yesterday people were even talking about a Common Criminal Code; I wouldn't go that far, it would be excessive. Article 31 mentions three types of crime: acts of terrorism, illegal trafficking in drugs and organised crime, which are already significant. In practical terms, organised crime is a broad concept which can embrace many different crimes; here, the Council has to act quickly and both this Parliament and national parliaments must call on the Council and our respective governments to make haste in solving the problem of impunity, which requires a Common Criminal Code and, I would say, a Common European Law of Criminal Procedure. It was said yesterday that there are essentially two lines of approach in European criminal procedure systems: accusatorial and inquisitorial procedure. I come from a country that essentially has an inquisitorial procedure, but I believe that the accusatorial procedure is better - a procedure in which the Public Prosecutor's Office undertakes all the necessary action to investigate and pursue the investigation of crime and in which the impartial judge takes the decisions affecting fundamental rights. This approach has to be adopted as soon as possible and, in this respect, the Treaty provides us with a very important instrument: framework decisions.

I would like to stress the vital need for the Commission to have a single commissioner directly responsible for these issues. As regards action by national parliaments, I am afraid that some people have too much faith in national parliaments' ability to monitor and control these issues, when the margin for action is actually quite small, given that national parliaments operate in a different way in each Member State. I believe a significant step would be - and we have already heard that this is being talked about in both the Italian and Dutch parliaments - to set up special committees or working groups which would effectively follow issues associated with freedom, security and justice in the European countries. In practice, I believe that the most effective method of monitoring and control is "Communitarisation"; until Europol is truly Communitarised, monitoring and control might take place, but it will not be truly effective because it is unthinkable that national parliaments could really monitor and control these issues.

Mr Hartmut NASSAUER (PPE, Germany),
Member of the European Parliament

I have no doubt at all that 15 national Parliaments cannot in fact control Europol. The answer can be found only in "communitarisation", but that means that sovereignty must be transferred from the Member States to the Community, since the European Parliament acts on behalf of that community. It must be obvious that not only will our colleagues from Great Britain oppose this, but it will certainly not be regarded with enthusiasm in the Scandinavian countries either, and possibly not even in France. That is the consequence of this situation, and I wanted to stress this point.

Mr Salvatore SENESE,
Vice-chairman of the Italian Senate's Justice committee

"Corpus juris"

According to the speaker, the meeting has made it possible both to overcome the doubts and to highlight the advantages of taking a gradual approach that does not exclude the possibility of adopting intermediate measures, such as letters of request sent directly through judicial offices, without passing through government and diplomatic channels, and direct action by magistrates in territories belonging to another country.

Thus, Mr Senese noted that the only objections raised to the aforementioned report can be explained by the fact that public opinion within the individual Member States is still too attached to a national conception of criminal law and finds it difficult to shift into a European dimension. According to the speaker, there is a "gap in knowledge and awareness". Indeed, criminal law is highly symbolic and evokes feelings that go beyond the purely rational. He gave the example of monetary union - a union that demands just as much as does the unification of criminal law but that, contrary to the latter, which is necessarily faced with the emotive forces of the symbolic, has the material forces of the economy on its side and is therefore coming up against fewer obstacles in its development.

So, how do we overcome the emotive forces of the symbolic that are obstructing the unification of criminal law? Taking up the argument used by those demanding a closer link with national parliaments, Mr Senese asked for the Wiebenga report and the corpus juris to be sent to the various national parliaments so that there could be constructive debate on the issue. Public debate is an effective way of bringing the issue to the attention of national public opinion, involving governments and, therefore, allowing the level of awareness already shown at European level to be appropriated at national level.

Europol

In his opinion, if we talk about a European police force, even one whose sole task is to gather information, we run the risk of raising fears - some of them well-founded, if we remember that previously, police collaboration initially took place without any democratic control. In some parliaments, including the Italian Parliament, ratifications of the protocol are coming up against objections based on the fact that the protocol makes provision not only for the immunity of Europol structures but also for the personal jurisdictional immunity of Europol agents. Although Mr Senese felt that the hysterical headlines in some Member States, with the newspapers screaming about "007 with a licence to kill", are exaggerated, he called for Parliament's opinion on the action plan on this subject to recommend avoiding as far as possible the use of instruments containing immunity clauses. The problems such clauses are intended to solve can usually be tackled with more sophisticated instruments that do not give rise to such criticism. He suggested, for example, the adoption of a minimum, common criminal law that punishes any crimes committed by Europol agents, thus avoiding a situation in which a single police force operates in territories in which the risks are graded and measured differently.

The right of asylum

The speaker said he agreed that there should be minimum standards applicable to procedures for recognition of the right to asylum so as to reduce waiting periods and, particularly, to make it possible to establish a single European procedure as regards asylum. However, he expressed some doubts about the idea of limiting the secondary movements of refugees between Member States, since he was uncertain about the compatibility of such restrictions with the principle of non-discrimination. According to the speaker, anyone who resides legitimately, in accordance with a legal right, in the European Union must be able to move around freely. Anyone who has the right of asylum must have the same possibilities for movement as Community citizens. Any restrictions would be justified only when political refugee status had been granted on the basis of a definition by a Member State that was broader than the minimum standard provided for by future European procedures.

Mr Senese concluded by noting that common procedures concerning asylum would obviously have to refer to the Geneva Convention. That Convention states that recognition of the right to asylum can be refused when there are "serious reasons to believe" that the asylum-seeker has committed crimes against humanity or other offences against UN principles. The speaker said that the wording "serious reasons to believe" is too vague and dependent on the state of development and legal sensitivity of EU Member States and, in particular, that it is likely to give rise to varying interpretations from country to country. Mr Senese pointed out that the European Convention on Human Rights provides for the presumption of innocence and that there cannot therefore be any "serious reasons to believe", and suggested that, in order to reduce this discretionality, the European Parliament introduce a new element into the framework of the action plan. Where there are "serious reasons to believe" that the asylum-seeker has committed crimes against humanity or other offences against UN principles, the common regulations on the right of asylum should provide not only for the a priori refusal of the right of asylum but also for suspension of the recognition procedure and the issuing of a temporary residence permit. It would then be up to an impartial third judge to investigate the reasons and give a verdict of guilt or innocence.

Mr Gerritjan VAN OVEN,
Justice and Home Affairs Committee
of the Lower House in the Netherlands

I should like to respond to two points mentioned by Mr Senese: the sending of the report on corpus juris to the national parliaments and the question of immunity. In my opinion it is a very good idea to send the relevant report to the national parliaments. Those responsible for the corpus juris say that it has been written to cover criminality with regard to the inflicting of harm on the European Community, but this could be seen in much broader terms. I am in agreement on this, but then there has to be an appropriate debate on subsidiarity, because these criteria are now also completely inadequately expressed in the Treaty of Amsterdam, particularly in Articles K.1 and K.3. It is not so easy to develop a schedule of subsidiarity, but one could think of various types of criminal offence more or less far removed from the European Union.

My second comment relates to the immunity protocol. In my view a very large number of parliamentarians find it hard to come to terms with this. In the Netherlands, the question has been raised of who judges whether Europol officials have exceeded their authority. The Dutch government has promised a study on what body judges whether Europol officials can appeal to these immunities.

Mr Christos THEODOROU,
Member of the Committee on Public Administration,
Public Order and Justice
Vouli ton Ellinon, Greece

If there is a wish to launch an area of security and justice, the Treaty of Amsterdam constitutes an important step towards a citizens' Europe, and the provisions it contains bear witness to a common endeavour to develop an area that would take up these concepts. It mentions the defence of fundamental rights and the fight against any form of distinction whatever. It defines priorities in fields that arouse a degree of disquiet in European citizens: protection of external borders, trafficking, smuggling, increase in organised crime in its most advanced forms, such as the use of new technologies via the Internet and satellite systems. Also, the fight against drug trafficking, protection of personal data, the citizen's access to justice, increased judicial cooperation, in both the criminal and civil fields, constitute objectives of the common endeavour undertaken by the Union.

Illegal immigration

Greece is suffering pressure from immigrant flows: that is why we should concentrate our efforts on external border controls, while preserving the balance necessary to avoid creating a "fortress Europe". In addition to protection of our borders, control of illegal immigration, with all that this involves, is also dependent on the application of preventive measures in the countries of origin. These countries should be given economic assistance and, if need be, pressure should be exerted on them to ensure that they take all the necessary action.

Asylum

For us, the Geneva Convention is and will continue to be the cornerstone of the granting of aid to asylum seekers. In addition, we know that the Union's actions need to be coordinated, in order to deal with crises in countries bordering on the Union that cause waves of immigration into our countries. Proposed solutions have been put forward: the creation of reception centres and aid for those subject to the greatest pressures; and it would be good to be able to supplement these measures with the principle of solidarity. However, this should be preceded by serious research. At the moment, we support financial compensation for the centres receiving the greatest numbers of refugees, and pressure is also being exerted for revision of the Dublin Convention in respect of definition of the state responsible for granting asylum.

Organised crime

An increase in it will have serious consequences not only in financial terms, but also in political and social terms: thus citizens need to be made aware of the importance of the operation of the institutions' rule of law. A great deal of attention needs to go on being devoted to all measures to protect the freedom and security of citizens, and we must fight organised crime, intensifying our efforts with the aid of countries that are candidates for accession.

To conclude this debate on freedom, security and justice, I shall address myself to our European parliamentarians, urging them not to forget the case of Mr Ocalan, for his battle for self-determination of his homeland and his freedom risks bringing him to execution or to life imprisonment in a Turkish gaol.

Mrs Hedy d'ANCONA,
President of the committee on civil liberties

We have discussed this subject many times in the European Parliament, where there is a wide range of views. Very gradually we have developed a number of common views on the subject, which does not mean that everybody agrees about everything. We have a fairly uniform opinion on the prosecution of users. We have a reasonably generous attitude to this. We find that our first priority is major dealers or people involved in whitewashing or trading in human beings, and also prevention.

Mr Rocco MAGGI,
Member of the Justice Committee,
Chamber of Deputies, Italy

Mr Maggi expressed his pleasure at having been invited to the meeting and explained that he was speaking on behalf of the Justice Committee of the Italian Chamber of Deputies and would be making a few brief comments concerning, in particular, the issue of justice in Europe and in line with what Mr Senese had said earlier.

According to Mr Maggi, in view of the size of the European area, crimes against the environment, the advanced technologies being used by organised crime, corruption, smuggling and laundering of goods, not to mention trade in human beings and terrorism, it would be appropriate for any global policy for the administration of justice that is to lead to rapid, practical implementation of a European criminal code to go beyond the simple harmonisation of legislation and simplification of procedures. Indeed, if the strengthening of Europol's powers is to be accompanied by the development of a judicial function at European level, then the procedures applied by individual Member States will as soon as possible have to offer the same guarantees via rules that are at least equivalent, so as to avoid any disparity of treatment from one jurisdiction to another.

If the idea is to establish a European Public Prosecution Service, a measure that already implies the unification of criminal law, it will be necessary to define the role and function of that Public Prosecution Service in general in a convention that is binding on the Member States and to confirm the vital need to separate the roles of the Public Prosecution Service, whose independence is to be protected (investigating function), and judicial bodies (judging function). The principle of role division may, together with the principle of the equality of prosecution and defence in criminal trials, ensure practical implementation of the "fair trial" and should, therefore, be extended and rendered operative in all Member States of the Union as a measure of our degree of civilisation in judicial terms.

General conclusions

Mr Rinaldo BONTEMPI (PSE, Italy),
Member of the European Parliament

Rinaldo Bontempi began by stressing the significance of this public meeting, which had brought together the various actors involved in the democratic decision-making process, including representatives of civil society, for a moment of reflection. He pointed out that not only was this necessary from the point of view of participation, to enrich the democratic nature of the decision-making process, but that it also concerned the question of effectiveness. For example, according to Mr Bontempi, the third pillar had been largely ineffective both because of major limitations at the legislative level and because the dimension of democratic dialogue had been omitted. The agreements reached within some committees, without consulting the opinion of the various parties concerned, had ended by being blocked in their implementation because they had sooner or later come up against an obstacle in the European Parliament, in national parliaments or in civil society. The speaker noted that great work had been done, for example, in areas concerning the fight against organised crime and police cooperation - work that nonetheless remained on paper without being transformed into practical measures, because it had not been adequately accompanied by broad-ranging democratic debate. The current document on asylum and immigration presented by the Austrian Presidency demonstrates that there is an alternative to this. The comments made on the document by the European Parliament and contained in the Lindeperg and Reding reports have been drawn up on the basis of observations and criticisms put forward by non-governmental organisations. It is because of this attempt to achieve a broader democratic consensus that this text - with respect to which, despite the criticisms concerning its merit, it should be acknowledged that the Austrian Presidency has finally defined an appropriate strategy - will probably meet fewer obstacles to its progress.

The effectiveness of democratic systems is linked to a strong affirmation of principles. Fundamental freedoms and the right to security are two evolutionary elements of Community law, which means that the right to security will be bound up with the basic, sacrosanct principles of freedom and equality and, therefore, justice. According to the speaker, it is impossible to identify the heart of citizenship in the Treaty of Amsterdam if we limit ourselves to the official notion of citizenship, as it is defined in the manuals. Indeed, we have a mediator - the European citizen's right to petition and to vote in a Community country. We shall however achieve genuine citizenship only if we move forward on the path indicated by these three principles: freedom, security and justice.

As regards **fundamental rights**, Mr Bontempi noted that the idea of a charter of fundamental rights has been reintroduced as a fundamental objective because of the commitment of the German Government. The rapporteur shares and backs the comments made by Amnesty international and other representatives of civil society about the need for any such charter to be based on the work that has already been done by the Council of Europe and about the need to guarantee the highest possible level of protection for citizens. Mr Bontempi said that the charter of fundamental rights must not be a mere show-piece to demonstrate that Europe has its house in order as far as fundamental rights are concerned; rather, it should form the foundation of practical European Union polices, including policies on the delicate issues of immigration and asylum.

The third issue to tackle concerns the **centrality of parliaments**, which should, the speaker stressed, play a fundamental role in a broadly-based democratic system such as the one that prevails in the EU Member States and the one that is to be created at European level. He noted, ironically, that this was, however, a subject that is not very often talked about, whereas executives seem to be a more trendy topic. However, executives have major operational limitations, such as, for example, not leaving sufficient space for parliaments, which should be participating actively in the processes of guidance, connection with civil society and monitoring and control. With respect to monitoring and control, Mr Bontempi pointed out that the Italian model could be of great interest to the European Union because of its dynamic and evolutive interpretation of the function of monitoring and control. Indeed, there is very often a risk of conceiving monitoring and control as a static or even obstructive function. According to the rapporteur, however, it is precisely when things are not going well that, because of its innovative nature, this function can stimulate action.

The core issue in the quest for effectiveness is the coherence of practical measures and a more general vision of the European architecture. However, here he would like to stress the need to avoid any confusion between substantive principles and regulatory data, which were to be discussed separately. This same notion of the division of roles has been accepted on one occasion and rejected twice this year, by the Committee on Civil Liberties itself. This confusion has been caused by the fact that such a division is not important for the purposes of identifying valid common principles in the various legislative systems. According to Mr Bontempi, what actually needed to be confirmed was the importance of the presumption of innocence, the equality of the parties and a fair trial. In general, it will be a question of developing the European Union's own "corpus juris", the legal basis of which is provided by the future Article 280 of the EC Treaty, which will make it possible to work on some aspects of criminal law, both substantive and procedural. At the same time, there will be a need to draw on Article 31 of the EU Treaty. This article provides minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking.

Here is a general lack of transparency. We are going to need to consider and, in particular, be aware of the fact that, even as regards the most delicate issues, the duty to guarantee adequate transparency will have to be observed.

The spirit of innovation must accompany all the various processes and experiences. If we seek appropriate mechanisms with an innovative spirit, we shall be able to avoid reproducing at European level any institutional mechanisms that have already proved inadequate. In 1970, for example, Italy introduced the original instrument of the regional authorities, but it provided them with the same mechanisms as were being used at national level, which proved ineffective at regional level. Innovation can enable us to avoid repeating such experiences at European level. Mr Bontempi identified three main areas for innovation:

1. reception policies and, more generally, the major issue of asylum - how to introduce an additional status category and temporary protection, while retaining the universal nature of asylum;

2. independent authorities and international tribunals - the Pinochet and Öcalan cases, and any other cases that arise as a result of internationalisation and globalisation, call for

consideration of the need for an independent authority to judge such cases. Mr Bontempi would like to see an independent court rather than political opportunism deciding whether Öcalan was a terrorist or a freedom-fighter resorting to force;

3. the security of citizens in our towns and cities.

Following this meeting, there would certainly be more information and suggestions to put forward to encourage the European Parliament to take up the challenge and actively define its roles as regards government, monitoring and control and guidance. The European Parliament would be supported in taking up this challenge by the fact that it will continue, as proposed by the Committee on civil Liberties, to be responsible for relations in this area with both national parliaments and civil society.

Mrs Hedy d'ANCONA,
President of the committee on civil liberties

This is only the beginning of a continuous network and a continuous exchange of information. We all know that here and there in the Third Pillar there is a democratic deficit. It is very difficult to explain to our citizens that this deficit exists and that we are doing nothing about it. National parliaments have six weeks to decide on their position with regard to the proposals made by the Council. Perhaps we have a period of about three months. We believe that in the intervening period we must inform each other about our standpoints. Never again do we want to decide on a standpoint without knowing your standpoints. We are going to try to find out the fastest way of doing this. We have already begun, with a page on the Internet.

We should have an exchange of standpoints before Tampere, but we must also combine our forces after Tampere. On the basis of the Treaty of Maastricht, we have an annual discussion with the Presidency about progress in the Third Pillar. We have stipulated that this discussion should take place on the basis of part of the Council.