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**Crime and Punishment:
An In-Depth Analysis of Security Issues in
The European Union**

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Crime and Punishment: An In-Depth Analysis of Security Issues in the European Union

Adam Bisaccia♦

Introduction

The third pillar of the European Union, known as Justice and Home Affairs is paramount to European Union security. The pillar consists of a variety of security issues, two of which are crime and terrorism. As history has shown, the European Union has continually worked to protect the freedoms it has provided its citizens; however, criminals and terrorists have taken advantage, and continue to look to take advantage of, these freedoms in order to conduct their activities and carry out their operations. Yet, advances in crime-fighting and counter-terrorism have worked to thwart many of these criminal activities, thereby creating a safer and more secure European Union.

An in-depth overview and analysis of the counter-measures and institutions implemented by the European Union clearly indicates that the European Union is serious about protecting its citizens. Institutions such as Europol, Eurojust, and FRONTEX have helped to foster communication and information-sharing among European Union member-states. Yet, it is important to recognize that despite the European Union's best efforts, there is still much progress to be made. Within existing institutions, there still exist standard bureaucratic and political setbacks that accompany a body as large as the European Union.

A combination of historical review and present-day analysis serves to provide an overview regarding the topics of organized crime, drugs, terrorism, and the countermeasures to these issues. These concepts are explored within in order to provide a complete and thorough understanding of the security issues facing the European Union, and its plans to counter these threats.

The Development of Preventative Measures

The Trevi Group

Terrorist attacks throughout the 1960's and 70's¹ initiated the call for tighter internal security within the European Community. In 1976, the then nine EC members created the Trevi Group, a French acronym for Terrorism, Radicalism, Extremism and International Violence.² The Trevi Group consisted of ministers of justice and/or interior, senior officials, and high-level police chiefs.³ The Trevi Group sponsored several working groups to respond to the issue of European security.⁴ Working Group 1 created secure communication links between countries combating terrorism. Working Group 2 dealt with exchanging information on police training, forensics, and equipment. Several other smaller working groups were additionally created, including a working group in 1991 dealing with Europol.⁵

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¹ Most significantly the 1972 attack on the Olympic Games in Munich

² EUROPE CONFRONTS TERRORISM 210 (Karin von Hippel ed., 1995).

³ OCHIPINTI, JOHN D. THE POLITICS OF EU POLICE COOPERATION 31-32 (2003).

⁴ BOMBERG ET AL., THE EUROPEAN UNION: HOW DOES IT WORK? 141 (2008).

⁵ OCHIPINTI, at 32.

The Trevi Group did in fact have several successful operations including the dismantling of the western European branch of the Islamist group, Hezbollah.⁶ However, it was clear that with the onset of the planned single market—capital, people, goods, and services—the Trevi Group would face serious and pressing security issues. In 1985, the Schengen Agreement was reached, calling for the elimination of border checks between the Benelux countries, Germany, and France.⁷ The reduced border security meant easier access for European citizens; however, illegal immigrants, organized crime, and terrorists groups also capitalized on the lack of border security.⁸ In 1991, a Trevi working group established the Ad Hoc Working Group on Europol, and the findings of this working group were proposed for the European Council at Maastricht in 1991.⁹ Soon to follow was the Maastricht treaty, which established the three pillars of the European Union. The third pillar, Justice and Home Affairs, replaced the Trevi Group, and served to counter many of the security issues faced by the European Union, especially with its new lax border structure. The Maastricht treaty also created the legal framework for Europol.

The Beginnings of Europol

Though the Trevi Group worked to bring the concept of Europol to reality, the road was not always smooth. Many EC countries were weary of a European police force—something strongly pushed for by Germany. A steering group for the third pillar, known as the K.4 Committee, outlined the three major proposed goals of Europol. First, Europol was to coordinate investigations and search operations to assist member-state operations. Second, Europol was to create a database to compile all investigative advancements. Lastly, Europol was to create a system to analyze and evaluate the anti-drug efforts of member-states. Because of the amount of legislation that it would take to create a fully fledged Europol, a temporary organization was established known as Europol Drugs Unit (EDU), while the Europol Convention was still being fine-tuned. The Trevi Group ultimately placed EDU in The Hague.

A liaison system was set up whereby each member-state sent an official representative to the EDU. The EDU was to assist a member-state upon the request of the member-state liaison.¹⁰ Several restrictions were placed upon the EDU in order to protect the civil liberties of the citizens of the member-states. First, the EDU was prohibited from holding onto intelligence. Rather, liaison officers would provide the EDU with information to assist in investigative matters, but that information was to be returned to the member-state upon conclusion of the investigation. Second, the EDU was not permitted to use any executive police measures such as arrest, undercover work, or surveillance. Third, the EDU was not in charge of liaison officers; rather, the member-states controlled EDU liaison officers.¹¹

Nonetheless, the EDU saw tremendous requests for investigative aid from member-states. Additionally, these requests grew exponentially year after year. Not only did requests expand, but so did the criminal activities that the EDU was working on. Over time, more legislation was passed to expand the power of the EDU—however these powers were still rather modest. The EDU now saw increased authority to conduct serious joint-investigations with member-states upon their request. With the progress that the EDU made, a transition occurred upon the completion and implementation of the Europol Convention, officially creating Europol; however, the true powers of Europol were not implemented until 1999.¹²

⁶ EUROPE CONFRONTS TERRORISM, at 210.

⁷ VAN OUDENAREN, JOHN UNITING EUROPE: AN INTRODUCTION TO THE EUROPEAN UNION 234 (2005).

⁸ BOMBERG, at 141

⁹ OCHIPINTI, at 35.

¹⁰ OCHIPINTI, at 52.

¹¹ OCHIPINTI, at 52.

¹² OCHIPINTI, at 56-57.

Europol in Modern Day

Major changes to Europol came when the Treaty of Amsterdam took effect in 1999. The Treaty of Amsterdam moved several major areas such as immigration and asylum out of the third pillar to the Community pillar. Therefore, JHA was to handle criminal and policing matters. This specifically helped focus the efforts of Europol to criminal matters. The European Union was now able to call on a formal, EU-wide police agency. Europol was now able to act independently without the need for authorization from the JHA council. However, it is important to note that the Treaty of Amsterdam specifically limits policing powers such as uniformed patrolling or arrests to member-states.

Today, Europol has a staff of 600. It investigates a range of international crimes, including: terrorism; illegal immigration; money-laundering; drug and people trafficking; and pornography.¹³ Although Europol lacks any operational powers, it is a focal point for police cooperation within the EU due to the volume of information and ready exchange.¹⁴ More specifically, Europol is an intelligence gathering organization that works to assist the operations of member state law enforcement.¹⁵

CEPOL and PCTF

Furthermore, in an effort to foster cross-border cooperation, information sharing, and networking, 2005 saw the creation of the European Police College known as CEPOL.¹⁶ CEPOL's creation was agreed upon at a meeting in Tempere, its purpose—to orchestrate police training in European Union member-states.¹⁷ By gathering the combined knowledge and experience of senior level police officers, these officers are able to take this training back to their member-states, and therefore, implement better measures in the fight against crime.

Additionally, the European Police Chiefs Task Force (PCTF) is another effort on behalf of the EU to combat criminal activities. PCTF serves as a forum for high-ranking police chiefs to exchange high-level information in an effort to determine the strongest means of thwarting crime within their respective member states. It is the hope of the PCTF to build relationships between high-ranking police officers so that crime-fighting can move beyond borders and become as efficient as possible.¹⁸ PCTF is another example of the efforts of Justice and Home Affairs to foster member-state cooperation.

The European Arrest Warrant

Perhaps one of the greatest movements in combating crime in the European Union was the implementation of the European Arrest Warrant (EAW). On several occasions, the issue of extradition arose among European countries. Several particular laws made extradition an incredibly long and difficult process. First, states were permitted to deny extradition if the crime was of a political nature. Therefore, terrorists often escaped extradition. Second, the concept of double-criminality meant that the crime had to be recognized by both the requesting and requested state. Third, states could deny the extradition of their own nationals.¹⁹

Following the end of the Cold War, the issue of extradition arose again. Many countries, such as Spain, were plagued with terrorist attacks and desperately requested that the requirements for extradition be lessened.²⁰ However, two conventions aimed at fostering an EAW either failed or turned stagnant when more pressing issues arose. Frustrated, both Spain and eventually Britain

¹³ FONTAINE, PASCAL EUROPE IN 12 LESSONS 47 (2006).

¹⁴ PETERSON ET AL., THE INSTITUTIONS OF THE EUROPEAN UNION 206 (2002).

¹⁵ OFFICIAL WEBSITE OF EUROPOL. <http://www.europol.europa.eu/index.asp?page=introduction>

¹⁶ OFFICIAL WEBSITE OF CEPOL. <http://www.cepol.europa.eu/index.php?id=about-cepol>

¹⁷ BOMBERG, at 146

¹⁸ OFFICIAL WEBSITE OF PCTF. http://ec.europa.eu/justice_home/fsj/police/chief/wai/fsj_police_task_force_en.htm

¹⁹ FRIEDRICH, JORG. FIGHTING TERRORISM AND DRUGS 88-89 (2008).

²⁰ FRIEDRICH, at 99.

called for the concept of *mutual recognition* of criminal sentences. The countries argued that European Union member-states should have confidence in the judicial systems of the respective member-state. This idea soon gathered credibility, and was endorsed by the Presidency Conclusion to the Tampere European Council in 1999.²¹ By 2001, Spain, Germany, Italy, Britain and France²² recognized mutual recognition, ultimately leading to the European Arrest Warrant. Due to the September 11, 2001 attacks on the United States, the EAW was rushed through European Union legislation, and officially implemented on June 13, 2002.

An EAW may be issued by a member-state judge if the individual is *accused* of a crime that carries a punishment of more than a year in prison, or if the individual has been *sentenced* to more than four months in prison.²³ Moreover, the requested country has ninety days to return the individual upon request, and ten days if the individual surrenders. The dual criminality principle does not apply for thirty-two specific serious crimes that European Union member-states have agreed upon such as arms trafficking, human trafficking, child pornography, murder, terrorism, etc. However, these crimes must be punishable by at least three years in prison under the requesting member-states legal system. If this is not shown, the concept of dual criminality remains in effect.²⁴ Whether to extradite the individual is no longer a political decision, it is mandatory. Moreover, EU member-states cannot refuse to turn over their own nationals. This concept stems from the idea that the European Union acts as one body.²⁵

However, there are still several exceptions to the EAW's applicability. For instance, the concept of double jeopardy applies. If the individual has already been tried in the requesting country, he may not be sent back. If amnesty covers the individual under the member-states national legislation, then that member-state can refuse to turn over the individual. Moreover, if the statute of limitations has run in the requesting country, then legally that person may not be tried for the crime. Therefore, the requested member-state need not turn over the individual. Finally, if the individual has not yet reached the age of majority to be criminally responsible for his actions, then the requested member-state need not turn over the individual.²⁶

EU Crime Issues

Organized Crime

Perhaps one of the most significant issues that the EU faces is organized crime. With organized crime comes an influx of trafficking of drugs, weapons, and humans. Violence all too often accompanies organized crime. Organized crime effects the very foundations of a society—its culture, economy, politics, and safety. Criminal organizations have been able to reach the very highest positions in government as well:

Organized crime groups often supplant the state in societies undergoing a transition to democracy, as their representatives assume key positions in the incipient legislatures, which are responsible for crafting the new legal framework for the society. Their presence within the legitimate state institutions undermines political stability because their goals are to further their own criminal interests...²⁷

²¹ FRIEDRICH, at 100.

²² France partially recognized mutual recognition, but preferred legal harmonization.

²³ OFFICIAL WEBSITE OF JUSTICE AND HOME AFFAIRS, REGARDING EAW.

http://ec.europa.eu/justice_home/fsj/criminal/extradition/fsj_criminal_extradition_en.htm.

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ MITSILEGAS, ET AL. THE EUROPEAN UNION AND INTERNAL SECURITY 53 (2003).

There are several reasons for the increase of organized crime in the European Union. First, with the implement of the Single European Act, borders to commerce were dismantled; combine this with the use of a single currency—the Euro—and it is easy to see how issues of counterfeiting and money laundering can easily increase across EU member-states. Additionally, with the onset of the Schengen Agreement, physical borders cease to exist; therefore, organized crime can easily spread from one Schengen country to the next. According to the EU Organized Crime Threat Assessment (OCTA) 2007, criminal organizations are using legitimate businesses as covers for their illegal operations in order to facilitate criminal activities, launder money, and re-invest that laundered money.²⁸ Moreover, the conclusion OCTA 2006 stated that Organized Crime's targeting of high-level public sector officials for corruption was the biggest threat from criminal organizations.²⁹ Criminal organizations are consistently working to corrupt legitimate businesses and individuals to exude their power.

The EU has worked to combat organized crime through a variety of measures such as the Amsterdam Treaty, the Vienna Action Plan on Organized Crime, the European Union Strategy for the beginning of the New Millennium, and the Hague Program of 2004.³⁰

The Amsterdam Treaty provides in Article 29, that organized crime will be countered through closer cooperation between member-state police, customs officials, and other authorities by use of Europol, and more effective use of judicial authorities.³¹

The Vienna Action Plan directly acknowledges the problem of organized crime in its opening paragraph:

[O]rganized crime is increasingly becoming a threat to society as we know it and want to preserve it [sic]. Criminal behavior no longer is the domain of individuals only, but also of organizations that pervade the various structures of civil society, and indeed society as a whole. Crime is increasingly organizing itself across national borders, also taking advantage of the free movement of goods, capital, services and persons. Technological innovations such as Internet and electronic banking turn out to be extremely convenient vehicles either for committing crimes or for transferring the resulting profits into seemingly licit activities. Fraud and corruption take on massive proportions, defrauding citizens and civic institutions alike.³²

The Action plan calls for increased cooperation between police and judicial officials. It calls for a legal framework to be implemented to define how Europol and judicial authorities should work together on joint investigations.³³

To continue, the European Union Strategy for the beginning of the New Millennium outlines political guidelines and thirty-nine recommendations. The overall call of the Strategy is: to strengthen collection of information regarding organized crime; prevent organized crime infiltration in the public and private sector; strengthen partnership between society and the criminal justice system; strengthen the investigation of organized crime; strengthen Europol; trace and seize the proceeds of organized crime; strengthen cooperation between judicial authorities and police; strengthen cooperation of applicant countries; and, strengthen cooperation with third countries and international organizations.³⁴

²⁸ 2007 EU ORGANIZED CRIME THREAT ASSESSMENT 12.

[http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_\(OCTA\)/OCTA2007.pdf](http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_(OCTA)/OCTA2007.pdf)

²⁹ Id. at 13

³⁰ OFFICIAL WEBSITE OF JUSTICE AND HOME AFFAIRS, REGARDING ORGANIZED CRIME.

http://ec.europa.eu/justice_home/fsj/crime/fsj_crime_intro_en.htm.

³¹ MITSILEGAS, ET AL, at 86-87.

³² MITSILEGAS, ET AL, at 88

³³ <http://europa.eu/scadplus/leg/en/lvb/l33080.htm>

³⁴ <http://europa.eu/scadplus/leg/en/lvb/l33125.htm>

The Hague Program of 2004 additionally takes a stance against organized crime. The Program suggests that European Union member-states implement common methodologies for combating organized crime, as well as for creating a crime statistics method. Moreover, the Program calls for greater public-sector transparency through an EU anti-corruption policy. It also recommends greater cooperation between state level police and judicial authorities.³⁵

Narcotics

Combating drugs has become a major aim of the European Union. This is due to the fact that drug use often sparks other crimes—in that drug addicts will commit crimes to earn money to fuel their habit. Moreover, with drugs comes violence. The biggest problem that western European member-states face is heroin.³⁶ In 1999, nearly half of all UK organized crime operations dealt in the trafficking of heroin.³⁷ Furthermore, synthetic drugs have increased sixteen percent per year since the 1970's. A significant problem is occurring in the central and eastern European Union member-states. These countries often are used in trade routes for drug trafficking and have documented significant increases in drug users within their borders.³⁸

In 2004, the Council of the European Union released the EU Drugs Strategy for 2005-2012. In it, the Council outlines its plans to combat illegal drug use in the European Union. This plan implements a regional approach that will target heavily effected European Union member-states. European Union member-states who are not confronted with similar drug problems are able to choose whether or not they participate in such operations.³⁹ The plan aims at both supply and demand reduction. Regarding demand reduction, the European Union plans to accomplish this through: preventing people from using drugs; preventing experimental use from becoming a habit; early intervention; providing treatment and rehabilitation programs; and, reducing drug-related health and social damage. In order to reduce the supply, the EU Drugs Strategy calls for: increased police cooperation; sharing of information and knowledge; and stronger ties with Eurojust; better use of Europol, the EAW, the Financial Intelligence Unit, and the United Nations Convention against Transnational Organized Crime protocols; consistent prosecutorial measures across the board; unification of member-states most heavily affected by drug trade; and tougher measures against non-European Union countries that are producing the narcotics.⁴⁰

EU Security Issues

Terrorism

The member-states of the European Union have independently battled terrorism for decades. Spain has dealt with ETA, Germany with RAF, Italy with the Red Brigade, France with the Algerian terrorists and the UK with the IRA. However, with modern day international terrorist organization such as al-Qaeda, the threat has become a major issue of the European Union as a collective body. The 9/11 attack on the US, 7/7 attack on Britain, and the 3/11 attack on Spain has propelled terrorism to the forefront of the EU agenda. Although the 7/7 and 3/11 attacks in Europe were heavily publicized, that does not mean that those were the only terrorist attacks that the European Union faced.

According to the EU Terrorism and Trend Report 2007, a total of 498 terrorist attacks were carried out in the EU in 2006, with 706 individuals suspected of terrorism in fifteen EU

³⁵ THE HAGUE PROGRAM.

http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/doc/08_organised_crime_en.pdf

³⁶ MITSILEGAS, ET AL, at 71.

³⁷ MITSILEGAS, ET AL, at 71.

³⁸ MITSILEGAS, ET AL, at 73.

³⁹ EU DRUGS STRATEGY FOR 2005-2012, at 6. <http://register.consilium.europa.eu/pdf/en/04/st15/st15074.en04.pdf>.

⁴⁰ Id.

member-states arrested in that same year.⁴¹ More alarmingly, despite all the efforts of the European Union and the member-states, the EU Terrorism and Trend Report 2008, showed an increase in terrorist attacks to 583 over the course of 2007.⁴² Although the majority of these attacks resulted in limited or no material damage, the fact is that the attacks were still carried out, with a number of the attacks meant to injure and kill. The European Union does not face simply Islamist terrorism; it faces left-wing terrorism, right-wing terrorism, eco-terrorism, and ethno/separatist terrorism.

Ethno/separatist terrorism is carried out in attempt by the organization to gain independent recognition or sovereignty. It may be motivated by politics, ethnicity, religion, or a combination. Ethno/separatist terrorism accounted for 424 attacks in 2006, with France receiving sixty percent of the attacks, and Spain receiving nearly all of the rest.⁴³ Although the majority of these attacks are relatively low-level, the ETA attack on Madrid airport did result in deaths and significant injuries, emphasizing the fact that these separatists are not afraid to kill when necessary. Left-wing terrorist attacks are carried out in order to shift the political system to the extreme left, usually in conformance with Marxist idealism.⁴⁴ Greece, Italy, Spain, and Germany saw fifty-five left-wing terrorist attacks, and although low-level, several attacks were intended to kill.

It is important to note, that despite these other types of terrorist attacks, Islamist terrorism still remains the highest priority of the European Union, and the member-states. Islamist terrorism is such a priority due to the extremism involved, and the nature in which the attacks are carried out—namely, that they are meant to inflict as many casualties and damage as possible. 2006 saw two thwarted Islamist attacks on EU member-states. The first was an attempted bombing of two German trains. The second was the attempt to detonate bombs in airplanes traveling from the United Kingdom. 2007 saw four thwarted Islamist attacks in the European Union. First was the intended detonation of two car bombs outside of a London nightclub. The following day, a car was driven into the arrivals terminal of Glasgow Airport; however, the car failed to detonate. In Germany, several Islamic radicals were arrested while in the process of making bombs which they planned to detonate within Germany. The bombs were said to be more powerful than those used in the 3/11 Madrid train bombings. The final thwarted effort was in Denmark, where several men were arrested for planning an attack within the borders of Denmark. It was stated one man had just returned from terrorist training in Pakistan, and had extensive knowledge and operational materials for bomb-making.⁴⁵

Counter-Terrorism

The EU has worked to counter these attacks; however, much like the US, the efforts are mostly seen following an attack or “near-miss”. Following the September 11th, 2001 attacks on the United States, the European Council approved a counter-terrorism plan on September 21, 2001 that included: enhancement of police and judicial cooperation, a call for member states to better identify terrorists within their borders, and an anti-terrorism unit within Europol.⁴⁶ Additionally, the European Union planned to introduce the European Arrest Warrant, implement all existing international conventions on terrorism as soon as possible, combat terrorist financing, and

⁴¹ EU TERRORISM AND TREND REPORT 2007, at 5.
http://www.europol.europa.eu/publications/EU_Terrorism_Situation_and_Trend_Report_TE-SAT/TESAT2007.pdf

⁴² EU TERRORISM AND TREND REPORT 2008, at 12.
http://www.europol.europa.eu/publications/EU_Terrorism_Situation_and_Trend_Report_TE-SAT/TESAT2008.pdf

⁴³ EU TERRORISM AND TREND REPORT 2007, at 6.

⁴⁴ EU TERRORISM AND TREND REPORT 2007, at 12.

⁴⁵ EU TERRORISM AND TREND REPORT 2008, at 20.

⁴⁶ VAN OUDENAREN, at 249

strengthen aviation security.⁴⁷ The common definition of terrorism was reached for legal purposes, defined as:

[a]ttacks upon a person's life which may cause death; 2) attacks upon the physical integrity of a person; 3) kidnapping or hostage taking; 4) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss; 5) seizure of aircraft, ships or other means of public or goods transport; 6) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons; 7) release of dangerous substances, or causing fires, floods or explosion the effect of which is to endanger human life; 8) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life; 8) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life; 9) threatening to commit any of the acts listed in 1) to 8).⁴⁸

This expansive definition of terrorism seeks to avoid any loopholes in the law. Additionally, any European Union member-state judge may use this definition in rendering a verdict. Furthermore, the European Union agreed to freeze the assets of any person, groups and/or entities involved in terrorist activities. The EU also maintains lists regarding those considered terrorist groups, and those with terrorist affiliations, which mirrors the United Nations' list. The EU also maintains a separate non-UN list which contains the European terrorist organizations such as the IRA and ETA, and the military and political wings of Hamas. Lastly, there is a secret list that contains the names of particular terrorists which is used for asset-freezing.⁴⁹

However, the European Union is still victim to bureaucratic and political setbacks. The larger European Union member-states still fail to rely on Europol for the majority of their efforts. As noted earlier, Europol can request information, but member-states are free to reject this request if the member state feels that this would pose a risk to the integrity of its investigation. Another issue is that Europol cannot initiate investigations; however, as of 2002 it may work side-by-side with member-state investigations as well as request that member-state's initiate investigations.

Moreover, 2005 saw the creation of the European Counter-Terrorism Strategy. This strategy, implemented at the national, European, and international level, involves four pillars: Prevent, Protect, Pursue, and Respond. Prevention seeks to deter those who would otherwise turn to terrorism from doing so by rooting out its causes. The key priorities are to: recognize and stop problem behavior, most notably on the internet; introduce criminal offenses for those attempting to recruit individuals to extremist causes; educate more of the population on European Union policies; create more member-state assistance programs; develop inter-culture dialogue; create a forum for discussing issues; and continue research and analysis.⁵⁰ Protection is done by reducing the vulnerability of European infrastructures to attacks. The European Union's key priorities in this field are: improving EU passports through biometrics; creating a Visa Information System and second generation Schengen Information System; developing a risk analysis of the European Union's external borders; developing aviation and maritime security measures; and, developing a

⁴⁷ OCHIPINTI, at 152.

⁴⁸ EUROPE CONFRONTS TERRORISM, at 174.

⁴⁹ EUROPE CONFRONTS TERRORISM, at 176.

⁵⁰ THE EUROPEAN UNION COUNTER-TERRORISM STRATEGY, at 9.

<http://register.consilium.europa.eu/pdf/en/05/st14/st14469-re04.en05.pdf>

program for critical infrastructure protection.⁵¹ Pursuit is done by impeding terrorist planning, travel, and communication both within Europe and abroad. The priorities of the European Union in this field are to: strengthen member-state capabilities to combat terrorists; utilize Europol, Eurojust and the Joint Situation Center to the fullest; furthering the recognition of judicial decisions; ensuring the full implementation of existing legislation; prevent terrorists from gaining possession of a wide variety of weapons; combat terrorist financing; and, providing technical assistance to third countries in their efforts to combat terrorism.⁵² Response is implemented in case all other measures fail, in an effort to minimize the damage of an attack.⁵³ The European Union priorities in this field are: to agree to an EU coordination agreement; revise the legislation on the Community Mechanism for civil protection; develop risk assessment to respond to an attack; improve coordination with international organizations; and, develop approaches to help families of victims of terrorism.

An additional implementation of the European Union is the creation and utilization of FRONTEX, the European Union agency tasked with organizing cooperation between member-states in the issue of external border security.⁵⁴ FRONTEX has several tasks: coordinating operational cooperation between member-states in the field of management of external borders; assisting member-states in the training of national border guards, including the establishment of common training standards; carrying out risk analyses; following up the development of research relevant for the control of persons and surveillance of external borders; assisting member-states in circumstances; requiring increased technical and operational assistance at external borders; providing member-states with necessary support in organizing joint return operations.⁵⁵ Although FRONTEX does not have authority within member-states, this agency is crucial in maintaining external border security in order to ensure that those who pose a threat to the European Union are not able to penetrate its borders.

Moreover, the European Union has signed and committed to furthering the Proliferation Security Initiative (PSI). The Initiative allows all signatories to search planes and ships in order to seize weapons of mass destruction.⁵⁶ Legal, diplomatic, military, and economic measures were created and implemented to counter rogue organizations and countries from gaining and using WMDs. Under the Proliferation Security Initiative, signatories commit to: undertaking effective measures independently or jointly, to locate and seize WMDs in addition to halting and disrupting their transport; adopting universal procedures for quick information exchange regarding proliferation activity, protecting classified information, dedicating adequate resources, and maximizing efforts; reviewing and strengthening national legal authorities to better facilitate the carrying out of these operations; and, taking specific actions in support of the efforts to thwart the transportation of WMDs by not transporting or assisting in the transport of WMDs for or with countries of proliferation concern, boarding ships or planes to inspect for WMDs or similar weapons when reasonably suspected, allowing other countries to inspect the signatories ships and planes, insisting that vessels leaving or arriving in a signatories country be subject to inspection, inspecting in international territory any vessel suspected of transporting WMDs.⁵⁷

⁵¹ THE EUROPEAN UNION COUNTER-TERRORISM STRATEGY, at 11.
<http://register.consilium.europa.eu/pdf/en/05/st14/st14469-re04.en05.pdf>

⁵² THE EUROPEAN UNION COUNTER-TERRORISM STRATEGY, at 14.
<http://register.consilium.europa.eu/pdf/en/05/st14/st14469-re04.en05.pdf>

⁵³ THE EUROPEAN UNION COUNTER-TERRORISM STRATEGY, at 16.
<http://register.consilium.europa.eu/pdf/en/05/st14/st14469-re04.en05.pdf>

⁵⁴ Official website of Frontex. <http://www.frontex.europa.eu>.

⁵⁵ Id.

⁵⁶ <http://www.globalsecurity.org/military/ops/psi.htm>

⁵⁷ <http://www.globalsecurity.org/military/ops/psi.htm>;

European Union “Homeland Security”

Thus far, it is obvious to see that the European Union, as a supranational institution, necessarily takes a different approach to the concept of homeland security. According to Gustav Lindstrom’s, “The EU’s Approach to Homeland Security”, the European Union has several unique approaches. First, the European Union works to foster cooperation and communication among member-states, rather than acting as a primary responder. The EU, most notably in organizations such as Europol, gathers information and compiles databases, but does not initiate investigations on its own, and does not respond to threats in an executive power such as the Federal Bureau of Investigation. Secondly, there are a variety of actors in the European Union that each work towards “homeland security”. These actors are spread across the three pillars, and each have a unique role—as opposed to the unified role of the American Homeland Security. Third, the European Union often acts sporadically. It implements new protective measures in a responsive measure, rather than a proactive one. EU policies are implemented generally after member-state terrorist attacks. Moreover, member-states tend to have varying levels of protective measures, meaning that there is no fluidity in European Union counter-terrorism. Some states maintain higher levels of protection than the European Union does as an institution.⁵⁸

A serious question remains as to whether the European Union can ever implement something similar to the United States’ Department of Homeland Security. The European Union needs to remain in the role of coordinating cooperation between member-states. Additionally, it must continue to aid member-states as in intelligence gathering. The European Union must also work to protect critical infrastructure, while leaving member-states to look after their national infrastructures.⁵⁹ The European Union could also create legal regulations for the deployment of military troops in response to or prevention of terrorist acts. Currently, the deployment of member-state troops is for humanitarian aid or disaster relief efforts only; however, the EU could create legal framework for deploying troops for counter-terrorism.⁶⁰

Moreover, there are other options that can be implemented as well, yet a balance must be struck between civil liberties and security. Several proposals have been made to create better security, including: data retention proposals for internet and phone records in the European Union; the use of biometric data in European Union passports; the introduction of second generation Schengen Information System; transfer of passenger records between the European Union and the United States, and initiatives to ban certain individuals from the European Union.⁶¹

Striking a balance between homeland security and civil liberties is an undoubtedly tough task. At one end, protecting the lives of European Union citizens is paramount; however, stripping away certain fundamental rights can be nearly as damaging. A cornerstone of the European Union is the free movement of goods, services, capital, and people, and with this freedom comes severe challenges. Mr. Lindstrom suggests that the way to implement tougher security is for member-states to bind together outside of the European Union. Particular countries such as Germany, France, Britain, Spain, and Italy have all considered creating greater security measures within their borders. Germany, France, and Spain all have either increased surveillance measures, or intend to, in places such as public transportation areas. Britain has proposed tougher judicial stances, including the ability to legally hold an individual without charge for up to ninety days. These protective measures by the member-states have their own citizens concerned, so it is unquestionable that other, less threatened European Union member-states would want nothing to do with these measures on a supranational level. However, by working bilaterally or multilaterally, these countries can work to counter a common threat. If these measures seem particularly worthwhile, then they may be adjusted as needed to be adopted on an EU level.⁶²

⁵⁸ TRANSFORMING HOMELAND SECURITY 115-117 (Esther Brimmer, ed., 2006).

⁵⁹ TRANSFORMING HOMELAND SECURITY 76-77 (Esther Brimmer, ed., 2006).

⁶⁰ *Id.* at 78.

⁶¹ *Id.* at 123.

⁶² *Id.* at 127.

Such multi-lateral agreements have already been noted. France, Italy, Germany, Spain, and the United Kingdom had policy meetings in 2005 in which they agreed to share information that would help to thwart organized crime, immigration, and security issues. Moreover, France, Belgium, Germany, Luxembourg, The Netherlands, Spain, and Austria have all agreed to the policies under the Prüm Convention, whereby information sharing is to take place between the signatories to combat crime and terrorism.⁶³ DNA data is to be compiled and placed in a database which can be actively searched by signatory countries. However, the DNA is not permitted to allow the direct identification of the individual.⁶⁴ Moreover, fingerprints are to be stored in a similar database whereby signatory countries may search.⁶⁵ Furthermore, signatory countries authorize the use of joint patrols, whereby a particular member-state's police may patrol jointly with another member-state's police, on their soil.⁶⁶ And, in the event of an emergency, one member-state's police/troops may cross the border of another member-state in order to aid and/or combat that threat if deemed necessary by the threatened state.⁶⁷

These measures are undoubtedly useful for combating crime and terrorism within member-states. However, it is understandable that many individuals and even certain member-states would be weary of allowing such widespread data sharing, and joint patrolling, as would be seen if it were held on the EU stage. As for now, multi-lateral and bi-lateral agreements seem to be serving the purpose of preventing security breaches. Only time will tell if these agreements will be seen on an EU level.⁶⁸

Conclusion

In closing, crime and terrorism are significant threats to the European Union and its member-states. Long before the European Union, member-states have battled crime and terrorism within their borders. However, the freedom provided by the European Union—goods, services, capital, and persons—has been taken advantage of by criminals and terrorists. These individuals are now able to freely move between borders, meaning that their operations can move with them. With these organizations comes increased violence, drug use, and a universal increase in criminal activity.

However, the European Union has made significant efforts to combat crime and terrorism. The creation of organizations such as Europol, FRONTEX, and Eurojust (not to mention the countless others) has helped to coordinate efforts so that member-states are not fighting alone. Legislation such as the European Union Counter-Terrorism Strategy, the Vienna Action Plan, and multi-lateral agreements such as the Prüm Convention, have helped make the EU a safer place.

Unfortunately, statistics indicate crime and terrorism are still witnessed all throughout the EU. The EU is a symbol of unification and prosperity—a binding of democracies. Member-states, specifically the larger ones, need to work more closely with the EU institutions, such as Europol. These member-states tend to keep information to themselves, rather than sharing intelligence which could be useful to Europol. Moreover, the European Union still remains largely reactive when it comes to combating major issues such as terrorism.

More proactive measures need to be taken, while still working to protect civil liberties as much as possible. It is an unfortunate reality that with the freedom that EU citizens enjoy, comes an easier means of conducting illegal activities, and a stronger hatred among terrorist

⁶³ <http://www.libertysecurity.org/IMG/pdf/Prum-ConventionEn.pdf>, at 3.

⁶⁴ *Id.*, at 6.

⁶⁵ *Id.*, at 8.

⁶⁶ *Id.*, at 17.

⁶⁷ *Id.*, at 18.

⁶⁸ EUROPE CONFRONTS TERRORISM, at 181.

organizations. Crime and terrorism are inevitable; however, the European Union is on the right path to a safer Europe.