



## Cooperation in the field of Justice and Home Affairs

(Lecture delivered at the Seminar *In the European Arena*,  
carried out by the Netherlands Institute of  
International Relations Clingendael)

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Análisis nº 15

5<sup>th</sup> November, 2001

Some weeks ago the president of the Spanish Government stated that for the incoming Spanish presidency of the European Union the priority of priorities was the attainment of the European common area of freedom, security and justice. In the new world situation stemming from the heinous crimes of New York and Washington it seems fairly obvious that it should be so, but it must be stressed that cooperation in this field was a mayor priority for us long since. Spain staunchly supported the Tampere agreement and has since pressed for its swift implementation. We simply find that in a Europe without frontiers in which all Member States share common values it is anachronistic that cooperation in Justice and Home Affairs should be based in old practices, such as extradition procedures, whose inadequacy has been highlighted by the new nature of international terrorism and transnational organised crime. It is time that we put an end to the criminal exploitation of legal loopholes between our countries.

We had recently a mayor example of such anachronism when Italy complained about the rulings of the Spanish Constitutional Court, which denied the extradition of Italian *mafiosi* because it considered unfair some aspect of the Italian legal procedure. This anomalous situation led to the Hispano-Italian agreement of 28 November 2000, which abolished extradition for mayor crimes, adopting instead a procedure based in the mutual recognition of penal decisions. We thought that it was the right way to address the European cooperation in these

matters and we welcomed that Commissioner Vitorino should have assumed this model as adequate for the ensemble of the European Union. We also welcomed the recommendation on the role of the European Union in combating terrorism adopted by the European Parliament on 5 November 2001. And the Spanish Government was prepared to give a mayor thrust to cooperation in Justice and Home Affairs during its incoming Presidency.

Such was the situation before 11 September. Afterwards international cooperation against terrorism has acquired a new urgency and since the extraordinary European Council meeting on 21 September we know that some difficult decisions that Spain was prepared to fight for during its Presidency might be already approved during the Belgian Presidency. Nevertheless the magnitude of the problems involved in the common combat against international terrorism and transnational organised crime is such that surely much work will remain to be addressed by the Spanish Presidency. In particular we consider of outmost importance three questions: the European arrest warrant, the common list of terrorist organizations and those which support terrorism, and the measures to combat any form of financing for terrorism.

In my intervention I will consider four mayor topics: cooperation between judiciaries and police forces; fighting terrorism and international crime; European security in the context of global insecurity; and the common policy on immigration.

### **Cooperation between judiciaries and police forces of the European Union's Member States.**

In Spain, we consider that the Framework Decision on the European arrest warrant, on which we hope it will be possible to achieve a significant political agreement at the December meeting of the Justice and Home Affairs Council, will be a fundamental step towards a common area of Justice, putting an end to an anomalous situation in which frontiers otherwise wide open are only a barrier for law enforcing.

The combat against terrorism and other mayor crimes would be enhanced by the creation of joint investigation teams consisting in magistrates and police officers, as decided at Tampere and whose creation without delay was decided in the Brussels European Council meeting of last September.

We support the initiative of Belgium and Sweden to extend Europol's mandate to deal with the serious form of international crime and also support the creation of an antiterrorist team in Europol. It is too early to say if Europol will become in the near future a sort of European FBI but certainly it should become a mayor instrument in the combat against transeuropean crime, which represents an increasibly grave danger.

Last but not least, other aspect of cooperation in these matters with which the Spanish Presidency will have to deal is Eurojust, which is expected to be operative at the beginning of next year.

## **Fighting terrorism and international crime.**

Fighting terrorism has unfortunately been a pressing need for Spain. Spain and Britain have long since been the EU countries most affected by terrorism. It is not surprising that we should be specially concerned with this heinous threat, the more so because in past years we have not always found in European partners all the cooperation in this combat that we expected. Nevertheless it is evident that we have never suffered any terrorist attack at the frightening scale of those on 11 September, which gave international terrorism a new status as a mayor global threat. The European Union cannot and will not be any guiltier of that slowness in responding to the terrorist threat that the European Parliament rightly denounced just six days before the 11 September attacks. Therefore this will be the greatest task of the Spanish Presidency, as it is presently being that of the Belgian Presidency.

We have recently reached a bilateral agreement with France, at the Perpignan summit on 11 October, which addresses some of the most pressing needs in the international cooperation against terrorism. This agreement envisages the temporary surrender of criminals imprisoned in the requested country to allow their trial in the requesting country. It envisages the surrender of suspects to the country in which he is searched for the gravest crime, giving a solution to the problem of double criminality. It resolves to create joint antiterrorist investigation teams. And it foresees the immediate delivery of copies of the documents seized to the suspect. We think this is a good model for the European Union to follow.

It should not be any difficulty for the Justice and Home Affairs Council to reach a common definition on terrorism at its meeting on December. It will open the way to follow the European Commission proposal on the approximation of Member States' criminal laws with a view to establishing common criminal sanctions for terrorist acts, which we imperatively need.

We also consider of the utmost importance the agreement on a list of terrorist organisations, which should be drawn up by the end of this year. It is necessary, even if difficult, to include in that list those organizations which offer a cover for the terrorists, giving them support and funding, because present-day terrorist organizations operate as vast networks which include a vast array of apparently non-violent outfits, such as those who help financing Al-Qaeda. We have pieces of evidence that show that ETA network includes even apparently cultural non-profit organizations that enjoy public funding. This is something that the European Union cannot allow in the present circumstances.

Presently there is a wide international assent on the need to address the financial aspects in the combat against terrorism. This is therefore the other great question in which the Spanish Presidency will have to carry up the initiatives already adopted by the Belgian Presidency. The European Union should adopt the extension of the directive on money laundering, to cover not only drug trafficking but also other serious crimes, including terrorism, and to extend the obligations of the directive to certain non-financial activities and professions. It should also adopt the framework decision on freezing assets, the scope of which

must be extended to terrorist crimes.

This financial aspect of the combat against terrorism is also relevant in the fight against organised crime, for both of them share similar ways of illegal funding. Another aspect that we consider especially relevant in the fight against crime is the problem of illegal drugs. According to the European strategy against drugs we consider equally important to prevent consumption and to fight trafficking. A special stress must be put against the traffic in chemical predecessors.

There are other questions related to this matter that the European Union could consider. For example should we adopt a common regulation of covered agents? Should we adopt a common regulation for the protection of witnesses?

### **European Union's security and insecurity abroad: communicating vessels.**

The relationship between security in Europe and in the global arena has been reshaped by the tragic events of 11 September have destroyed any delusion we could have harboured about a fortress Europe whose security might be independent from insecurity abroad. In security matters we really live in a world of communicating vessels. Therefore we should increase security cooperation at a global level, particularly in the fight against international terrorism, whose global nature nobody can deny after the exploits of Al Qaeda. The European Union could and should play an important role in reaching a global agreement on terrorism and in fostering the dialogue with the Arab and Islamic countries, especially with those Mediterranean countries engaged in the Barcelona process. And it has to strengthen its antiterrorist cooperation with the United States.

At the global level, we welcome the Indian proposal for framing within the United Nations a general convention against international terrorism, and we will endeavour to reach a coordinated European Union position in that contest. We also support the broadening of the Financial Action Task Force on money laundering (FATF) to include cases of terrorism.

The Spanish presidency will foster the cooperation between the European Union and the United States in combating terrorism that in the aftermath of the New York and Washington attacks was envisaged in the joint statement of 20 September. The transatlantic link that has proved so valuable in defence policy should be extended to the fight against terrorism and other mayor international crimes. According to the declaration issued after the European Council of Gent the European Union is prepared to engage with the US in reciprocal initiatives such as facilitation of mutual judicial assistance as well as extradition in connection with terrorism, enhancement of the joint efforts with regard to non-proliferation and export controls regarding both arms and chemical, bacteriological and nuclear substances capable of being used for terrorist purposes, and intensification of cooperation in the fight against false and forged documents. This would be a mayor task for the Spanish Presidency.

The fight against terrorism should be integrated into the Common Foreign and Security Policy. It is necessary to evaluate the European Union relations with third countries in the light of the support they may give to terrorism. The Fi-

nancial Action Task Force mechanism will be used for coordinated counter-measures against Non-Cooperative Countries and Territories (NCCT) also in relation to those countries that harbour, support or provide safe heavens to terrorists and their means of financing.

We are aware of the connection between the combat against terrorism and the peace efforts to prevent and stabilise regional conflicts, in particular that of the Middle East. Global terrorist threats and regional conflicts are also communicating vessels.

### **The common policy on asylum and immigration.**

The terrorist threat has occupied most of my intervention, but it does not mean that there are no other outstanding questions for the Spanish Presidency to deal with. At least I should mention the policy on aisle and immigration, which the Tampere European Council resolved should be a common policy and which is particularly important for a country such as Spain situated in the southern frontier of the European Union.

We support proposals for Directives on foreign long-term residents and on minimum standards on procedures for granting and withdrawing of refugee status. In the light of the present threats we have to consider the criteria for granting refugee status for members of radical organizations suspected of terrorist links or which harbour antidemocratic and discriminatory principles fostering religious, ethnic or gender hate.

Finally we support the Framework Decision on combating trafficking in human beings, on which political consensus has been already achieved.