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**Policing 'high tech crime' in the global context: the role
of transnational policy networks**

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Abstract

The European Union, G8 and the Council of Europe have recently developed their approaches to combating international and organised crime. But within this phenomenological umbrella, attention is now being focussed upon the policing of 'hi-tech crime'. This policy intervention again underlines the importance of an understanding of the new international policy networks, their transnational dynamics of governance, and the democratic opportunities for intervention in the policy process.

The paper will first outline the development of the policy networks on organised crime within the European Union and G8. Second, by focussing upon the development of policies on hi-tech crime within three international fora, the paper will underline the apparent importance of 'infrastructural power' in ensuring that the policing of hi-tech crime is translated to the law enforcement agenda.

Introduction

In December 1998 the Interior Ministers of the European Union (EU) received the 'basic elements' of the EU's 'strategy against high tech crime' (Council of the EU, 1998d, p.IV). The document outlines 'Strategic Guidance' for the EU to avoid overlap with the work of other organisations by coordinating work and building upon the work undertaken by other international bodies. Effectively this sanctions what informally has been occurring for three years between the EU, the G8 and to a lesser extent the Council of Europe. A number of bodies within these organisations have, through overlapping 'expert group' membership been operating as policy networks linking the G8 and the EU within the field of action to combat organised crime. This paper will highlight some of the network structures, and how these have affected the development of policies to combat 'high tech crime'. Arguably, the material presented reinforces the case that a transnational power elite is acting relatively autonomously on a broad range of criminal justice issues in the name of action to counter transnational organized crime. To illustrate this view, the nature of governance within the third pillar will be examined, and how this has changed since the *Treaty on European Union* (TEU) formalised the EU's Justice and Home Affairs (JHA) policy process.

Organising a System of JHA Governance

The nature of EU governance within the JHA field has undergone two fundamental changes in the 1990s. First, ratification of the TEU in November 1993 formalized a relatively incoherent span of policy fora into a hierarchical and more transparent system of governance (Hayes-Renshaw & Wallace, 1997, p.94; Bunyan, 1993, pp.28-31) but fractured by the three 'pillars'. The second, more fundamental change, informs the approach of this paper and can be characterized as a move to

selective horizontal policy integration, underpinned by the informal devolution of executive responsibility to a number of key 'expert' or 'High Level' groups. This feature has been apparent from an early stage in dealing with 'cross-pillar' drug issues where coordinated action with the EC pillar is required. But the recent cohering of initiatives around the phenomenological theme of 'organized crime' has provided the premise for a more fundamental change in the system of governance and distribution of power in the JHA sphere. By examining the issue of 'hi-tech crime', it will be seen below that two key overlapping networks of state actors 'possessing specialist skills and expertise' has been empowered within the transnational context straddling the EU and G8, creating operational and policy frameworks to counter 'organized crime'. In addition, the EU policy community on organized crime is playing a broader role in entrenching a policy acquis to those countries in Europe seeking membership of the EU (Norman, 1999, forthcoming). The EU and G8 policy communities are acting together in a way that suggests the development of a transnational networks of actors concerned with coordinating an effective response to serious and international crime at the global level working through international organizations at the policy and operational level.

The genesis of the EU's policy community on organized crime was the initial high level political initiative at the European Council (Dublin II) in December 1996 which circumvented the third pillar structures in creating a 'High Level Group on Organized Crime'. This was to formulate a coherent and coordinated response to such forms of offending across the EU's pillars. Acting under the Irish Presidency's initiative, the Heads of State were investing the High Level Group with *de facto* executive discretion in compiling, coordinating and integrating a gamut of issues around the theme of organized crime. The High Level Group was composed of 'national experts' and their resultant *Action Plan to Combat Organized Crime* of April 1997 exemplified the new found willingness to coordinate, in detail, JHA activities with other international fora, and the prospective accession states. However, the European Council's actions, and the subsequent decision of the Council to reformulate the Group, can be regarded as the point of (permanent) departure from the previous decision-making procedures of the third pillar - to a new mode of governance in JHA matters.

To shed light on the importance of this change in JHA governance within the EU it is necessary to examine the changing nature of the policy process within and outside the EU. The approach seeks to use policy networks analysis to highlight the form of the institutional development within the EU, G8 and the Council of Europe - and their interrelationship in the coordination of policies and action to combat organized crime. The bodies examined are relatively bounded and autonomous, whilst the role that certain key actors have in acting within a number of 'expert groups' appears important. Clearly, a more detailed empirical examination of the 'agents' involved in the respective policy communities would further test the utility of the approach. However, what is presented shows that a comprehensive analysis of the dynamics of the policy networks between the EU and G8 requires cognizance of both 'infrastructural power' and the importance of key 'agents' (Marsh, 1998, p.188) to understand the policy impact of such linked networks.

A Mode of EU Governance in Transition

The change in the system of governance within the third pillar can be regarded as a shift from a hierarchical policy machinery to one that creates 'shortcuts' to the policy process where priority action is desired. The need to shortcut the formal policy process stems from the stagnation of the system for negotiating binding legislative instruments within the [TEU](#) third pillar regime. The tortuous negotiation of the *Europol Convention*, equaled only by its extended national ratification by each Member State, was clearly an embarrassment for the JHA Council which itself has a relatively high degree of autonomy from the European Council (Curtin, 1993, p.27; O'Keefe, 1995, p.895-897). Many of the formal reasons for the delays in negotiating the *Europol Convention* rest upon the unanimity principles enshrined within the [TEU](#), but were manifested in a lack of agreement on the appropriate role of the European Court of Justice, the need for (uniformly high) standards of data protection, the demand for external accountability mechanisms, and ultimately no common view at

which way Europol should develop in the future. The [Treaty of Amsterdam](#) partly addresses this bind by allowing conventions to come into force when half the Member States have completed their national ratification procedures (Article K.6.2.(d)).

Given the stasis of the third pillar policy process, the need to ratchet up work addressing issues of 'organized crime' became paramount by 1996. This was accomplished by the Irish 'Presidency push' on organized crime issues subsequently sustained and mediated by the High Level Group on Organized Crime established by the European Council (Dublin II) in December 1996. This 'expert group' was mandated not only to address the (so many) strands of policy essential for the EU to act against serious international and transnational offending, but also any treaty changes it identified as necessary for the efficient functioning of the third pillar. Briefly, the Irish Presidency sought to overcome the JHA Council's inertia by corralling a broad swathe of actions in the field of police, customs and judicial cooperation - separating them from the drugs issue - with the approval of the European. This Presidency push sought to 'create a High Level Group to draw up a comprehensive Action Plan containing specific recommendations, including realistic timetables for carrying out the work' (High Level Group, 1997, p.1). The Group was to complete its work within a relatively short time frame and report by March/April 1997 in time for any recommended treaty changes to be communicated to the Amsterdam Intergovernmental Conference (High Level Group on Organized Crime, 1997, Annex). The resulting *Action Plan to Combat Organized Crime* was accepted unreservedly by the European Council (Amsterdam) in June 1997. Further, Recommendation 22 was implemented without delay, ensuring that a successor 'multidisciplinary working party' was established to ensure implementation of the *Action Plan*. The subsequently termed 'Multidisciplinary Group (MDG) on Organized Crime' was formed by the addition of 'operational law enforcement practitioners, prosecutors' to the High Level Group's cohort of 'policy-makers at a senior level' (Presidency of the Council of the EU, 1998, p.4). The MDG operates under the auspices of the Presidency and now benefits 'eight national experts and practitioners' specifically mandated to further the MDG's work (Council of the EU, 1997, p.6).

The MDG on Organised Crime is unhindered by the constraints of working through the elaborate five-tiered hierarchy of the third pillar policy process set up by the [TEU](#), but the formulation of the series of measures outlined in the *Action Plan*, clearly lacked transparency, in an area which has been subject to severe critique on this front (Bunyan, 1993, pp.32-33; European Parliament, 1997, paras N & O). A close reading of the *Action Plan* and an analysis of the subsequent work of the MDG reinforces the view that the High Level Group was invested with a high degree of autonomy (during its temporary mandate) and that this is sustained within the MDG (permanently). As Smith highlights, 'through establishing a policy community government can depoliticise a policy area and so it is less likely to be politically dangerous' (Smith, 1993, p.18) and this appears to be one of the immediate objectives (and successes) of the European Council.

By June 1998, it was clear that the MDG's role was broadening whilst it was coordinating activities with countries and organizations outside the EU, and in ensuring the CCEE are considered in any initiative on organized crime. The first factor was a consideration that the UK was keen to reinforce prior to and during its Presidency in the first half of 1998 and wholeheartedly supported by the Head of the Policing Organized Crime Unit of the Home Office. The incumbent was during the latter half of 1997 planning the organized crime agenda for the 1998 G8 Summit (Birmingham) and was part of the Presidency Troika prior to the UK Presidency. This fortuitous positioning of events, and the presence of an experienced senior official with a clear strategic perspective on the subject (Wrench, 1997), dovetailed neatly with New Labour's political ambition to concurrently play a constructive role within the EU and act as a 'bridge' between the EU and its Transatlantic Partners (most notably the USA). The importance of the non-EU policy communities in action to combat organized crime is further assessed below, but it is clear that to maximize the ambitions of the new MDG, and the impact of the UK's Presidencies, the remit of the body needed to go beyond the strict implementation of the *Action Plan*.

By June 1998 it was reported to the European Council (Cardiff) that the 'MDG has provided a helpful forum for continuing strategic policy development and improving operational cooperation... It has promoted enlargement with key countries and bodies outside the EU... and, at its suggestion, the Council (JHA) has endorsed the approach of G8 recommendations... on organized crime and terrorism... and stated it will draw upon them in pursuing its own work in these areas' (Presidency of the Council of the EU, 1998, p.3). The MDG is now a permanent executive body within the Presidency that is institutionally positioned so that it can seek and get the highest political endorsement (when needed) and call upon the K.4 Committee to promote pertinent legislative initiatives. Thus the MDG is able to act with relative autonomy, has high *de facto* political authority, and is dynamic enough to adapt to strategic policy development and new demands in EU action to combat organized crime.

G8 and European policy networks

The above has concentrated upon the development of the system of internal EU governance in the field of action against organized crime. But this focus on the internal JHA policy domain needs to be placed within the broader spectrum of the EU's developing external relations. This embraces EU action within the wider European domain with the Countries of Central and Eastern Europe (CCEE), the Council of Europe, the Transatlantic arenas and G8 (formerly G7-P8). But in attempting to elicit an understanding of the external relations component of JHA governance, it is important to recognize the policy networks that now link the EU to G8 and the Council of Europe. The interlocking of these three groups has been facilitated by the three non-European G8 members (the USA, Japan and Canada) gaining official observer status of the Council of Europe in 1996 (Canadian Department of Foreign Affairs, 1996), further enveloping, and reinforcing the possibilities of a G8 international policy community on organized crime acting as a 'link agency' between the two international organizations. The influence of the former G7 in the field of action against money laundering, the control of chemical precursors and in the utilization of mutual evaluation mechanisms has been demonstrated elsewhere (Gilmore, 1997) but recent G8 action to combat organized crime represents a decisive move to a policy domain with a more integrated and deeper field of activity that embracing a range of areas including high tech crime.

To enable an understanding of these organized crime policy networks first the role of G8 within its 'Lyon Group' will be examined, followed by the developing work of the Council of Europe in this field.

The Role of G8 in the Policing of High Tech Crime

The G8 Senior Experts Group on Organized Crime, colloquially known as the Lyon Group, is a distinct international policy community concerned with action to combat organized crime. The EU's Transatlantic Dialogue with the USA and Canada clearly reinforces this cooperation as the provisions of the 1996 *New Transatlantic Agenda* and accompanying Action Plan demonstrate (EU-USA, 1995, pp.7-8, pp.23-26). The six-monthly EU-US Summits provide the focal point for the appraisal of mutual action in JHA matters including the 'expert level meetings on corruption and money-laundering now under the auspices of the Multidisciplinary Group on Organized Crime' (EU-USA, 1998, p.1). However, the Lyon Group's policy outputs, and its success in fulfilling its desire to propagate its work within other international fora, means that it must be regarded as an important part of the machinery of international cooperation against organized crime.

The G8 crime policy domain has been developing for some time with initial concentration upon political issues such as terrorism and extradition, but later drugs and Declarations by Heads of State about global crime problems. The move from rhetoric about crime and globalization to specific action against 'transnational organized crime' emanates from the decision of the 1995 G8 Summit (Halifax) to create a formal body, the Senior Expert Group on Transnational Organized Crime. Its initially temporary mandate was to develop a wider-ranging but specific set of measures for states to

adopt in their action against organized crime, which were presented as *Recommendations to Combat Transnational Organized Crime Efficiently* at the G7-P8 Summit (Lyon) in April 1996. Since this time, G8 has successfully disseminated its policy work across a broad range of policies on action to combat organized crime, project-based (operational) action against international offending (Norman, 1998) as well as high tech crime.

A number of crucial determinants of this success are important to focus upon in considering the wider EU system of governance in JHA matters. First there is now a close formal association of G8 with the European Union, the Council of Europe and the United Nations. For the EU both the Presidency of the Council and the President of the Commission now participate in the G8 Summits (cited Gilmore, 1997, p.31). In addition, it has already been noted that *all* the G8 states are now members or observers of the Council of Europe. Secondly, the presence of four EU Member States within the G8 was underpinned by a determination on the part of the UK to forge closer policy linkages between the G8 and the EU in preparation for its overlapping Presidencies of both G8 and the Council of the EU in 1998. Finally, the composition of the Lyon Group reflects that of the EU's MDG in that it involves both senior policy-makers and practitioners from each state developing policy initiatives and ensuring they can be practically implemented and monitored.

Success in disseminating the work of the Lyon Group has been seen on a number of fronts, but way that this has been accomplished reinforces the contention that the Lyon Group acts a distinct international policy community closely linked via an overlapping membership to the EU's MDG on Organized Crime. For example the Head of Policing Organized Crime Unit of the Home Office leads the UK's Lyon Group delegation. He was consulted on the Heads' of State's text that announced the creation of the Lyon Group (Wrench, 1997, p.39) in Halifax, Nova Scotia. In addition, the official's concern with 'hi-tech crime' and the promotion of 'project-based action' (*Ibid.*, p.40) were sanctioned in the *40 Recommendations* (P8, 1996, paras 16 & 28). In preparation for the Presidencies of G8 and the EU the incumbent gained G8 agreement that hi-tech crime would be a G8 priority for 1997/98 (G8, 1997a, p.7), resulting in the establishment of (a number of sub-groups including) Subgroup V dealing with action against high tech crime. The subgroup met three times in January, June/July and between 10-12 December 1997, the latter being the first G8 ministerial meeting, and one that endorsed the *Principles and Action Plan to Combat Hi-Tech Crime* (G8, 1997b, Annex). During the latter half of 1997, whilst the UK formed part of the EU Presidency Troika and during the UK's Presidency 'US and Canadian experts were involved in discussions on the subject of high-tech crime... [and] the MDG received reports on the current work by G8 on this subject. Following the G8 agreement on the *Principles and Action Plan to Combat Hi-Tech Crime* the Council (JHA) on 19 March 1998 gave its political endorsement to the approach set out in the 10 Principles on high-tech crime, the 40 Recommendations on organized crime and the 25 Recommendations on terrorism, approved in the framework of the G8' (Presidency of the Council of the EU, 1998, p.9). This coincided with receipt of the Commission study on high-tech crime in March 1998 (Seiber, 1998), as requested by the previous High Level Group on Organised Crime. Following recommendations for greater international coordination in the Commission study (*Ibid.*, p.4 & p.238-9) the G8's work was further considered by the MDG prior to a coordination meeting with the Lyon Group and the Council of Europe (Presidency of the Council of the EU, 1998, p.9).

The Role of the Council of Europe in the Policing of High Tech Crime

The Council of Europe established its own Committee of Experts on Crime in Cyber-Space in February 1997 shortly after the Lyon Group's Recommendations raised the issue. The Committee's terms of reference also sought to underline the need for international cooperation (cited Seiber, 1998, p.180). It is noteworthy that the Commission and the Council of the EU, USA, Canada and Japan may send a representative to the Council of Europe's Committee of Experts on Crime in Cyber-Space (European Committee on Crime Problems, 1997, paras 5(d)&(e)). Thus a triumvirate of G8, EU and the Council of Europe has in little over one year aligned themselves with the G8's initial concern for hi-tech crime - with each fora ensuring that their strategies are coordinated across the

organizations and disseminated to its membership.

In trying to elicit mechanisms of this inter-organizational governance in the field of organized crime it is apparent that the process has been given high level political endorsement within the revitalized 'Quadripartite Meetings' between the EU and the Council of Europe (Council of Europe, 1995, pp.8-9). The developing JHA agenda of the Quadripartite Meetings elicit another crucial aspect of the developing formal system of third pillar governance - one that extends in to the wider European architecture in order to fulfill the EU's strategic concern to prepare accession states for membership (Norman, 1999, forthcoming). The Quadripartite Meetings are composed of a representative of the Presidency and the Commission from the EU, and the Chair of the Committee of Ministers and the Secretary General for the Council of Europe. At its 8th Meeting in 1996, an 'Exchange of Letters' formalised an expansion of cooperation to all levels and for the first time to areas of concern to the EU's third pillar (EU-Council of Europe, 1996, pp.1-2). By March 1998, under the UK's Presidency of the EU, this cooperation had deepened to a meeting of the full K4 Committee to discuss 'mutual assistance in criminal matters, the fight against corruption, money laundering, hi-tech crime, the sexual exploitation of children, organized crime, the enlargement of the European Union, as well as racism and xenophobia' (EU-Council of Europe, 1998, p.3).

Examination of hi-tech crime highlights the parallel tracking of policies within the EU, the G8 and the Council of Europe as increasingly high level contacts between the EU and the Council of Europe are developed. This dynamic of policy transference from the agenda of one international body to others is also seen in other areas within the broad field of action against organised crime (Norman, 1999, forthcoming).

Conclusion: Accountability and Policy Networks

In outlining the changing nature of governance within the third pillar of the EU and the impact of a range of policy communities the question arises as to how this affects the accountability of the policy process within the current third pillar. The above has attempted to highlight the presence and form of the networks, their sites of activity and their respective influences. In doing so, this arguably adds to an understanding of the nature of governance in this field and consequently would inform an analysis of how accountability over this policy domain could be increased. Before addressing this issue it is useful to draw some preliminary conclusions from the material presented above.

It is clear that an analysis centered upon the EU will only partially delineate the system of third pillar governance - the role of the G8 and the Council of Europe highlights the international policy influences in action to combat organized crime in general, and high tech crime in particular. The extent of the networks' influence (in terms of 'infrastructural power' and 'agent' action) is uncertain at this stage, but it is clear that the policy field of EU police and judicial cooperation in criminal matters is now subject to far greater international influence.

The executive power invested in the MDG on Organized Crime presents those concerned with accountability with fundamental challenges in seeking to oversee its activities and influence the policy process. Unlike the prospective Article 36 Committee (formerly K.4) under the [Treaty of Amsterdam](#), the MDG has no treaty basis but is currently a powerful policy community developing policies and deepening operational action to combat organized crime within the EU, the CCEE and beyond. Despite this there are arguably at least three factors that will progressively ensure that the 'democratic deficit' over EU police and judicial cooperation in the criminal matters will not be as severe as that under the [TEU](#) regime or the current transitional form of governance presented above. First, the political will to change the image and effectiveness of the third pillar governance has since 1997 finally extended to informal consultation with the European Parliament, and to a limited extent with academics and non-governmental organizations. Secondly, in March 1998 the Council approved measures to qualitatively improve the openness and transparency of proceedings within the third pillar (Council of the Council of the EU, 1998). Whilst this was not as far reaching as the UK

Presidency wanted (Council of the EU, 1998a) it has provided the basis for greater transparency and furthered access to Council documents (Council of the EU, 1998c). Finally, the formal requirements of the [Treaty of Amsterdam](#) will put into place an obligatory system of consultation with the European Parliament (Art.K.11). The progressive impact of the high level political will, transparency, openness and the new formal legal obligations raises the prospect a more open network embracing external non-state influences and enhancing accountability over this policy domain.

Realistically, the influence of the G8 international policy community on organized crime and the Council of Europe cannot be easily brought to account within the broader context of the EU's overriding strategic objectives. These include the importance of the Transatlantic Agenda, the Strategy for Accession and the increasing importance of the EU's External Relations generally in furthering the broad field of justice and home affairs policies. The narrow base of the policy communities requires a more detailed analysis of the policy dynamics of the EU's system of governance in this field, and the international initiatives to coordinate action to meet the challenges of high tech crime and other policy initiatives to combat organized crime.

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