Council of Europe
Conseil de l'Europe

cdpc\docs 1998\look back …

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

A Look Back at the proceedings of the first meeting of the
European Committee on Crime Problems
held at Europe House from 30 June to 3 July 1958

Memorandum prepared by Mr Vitaliano ESPOSITO

These thoughts are dedicated to the memory of **Girolamo TARTAGLIONE**, Director General for Criminal Affairs of the Italian Ministry of Justice, killed by red brigade terrorists in Rome on 10 October 1978.

1. The Council of Europe has been a pioneer among the supranational bodies in the harmonisation of the different national systems of criminal law and in international co-operation in criminal matters. But its chief merit is to have examined those sectors from a unitarian viewpoint and to have identified within the resulting overall strategy one of the most effective instruments for achieving closer unity between States ready to *safeguard and realise the ideals and principles which are their common heritage and facilitate their economic and social progress*, as the Statute of the Council of Europe has it.

2. When the Council of Europe was set up, each country had already adopted crime policies of their own choosing, and communication between their different criminal law systems was not easy. A complicated system of extradition agreements and legal co-operation agreements linked countries on an individual basis. This only changed in December 1951, when the Council's Consultative Assembly, aware of the substantial differences between extradition arrangements which prevented effective co-operation, recommended that the Committee of Ministers adopt *preparatory measures* with a view to arriving at uniform rules.

2.1. In 1953 the Committee of Ministers instructed the Secretary General to set up a committee of governmental experts to consider the possibility of laying down principles in this field acceptable to all the member States. The Committee began its work in October 1955, under the chairmanship of Mr William Fay (Ireland), later succeeded by Mr Mamopoulous (Greece). Its work was geared to drawing up a draft convention, which was eventually adopted and opened for signature by the Committee of Ministers in September 1957.

2.2. The Convention was certainly a milestone along the road to achieving international co-operation in line with respect for the fundamental rights of the individual. However, this co-operation did not manage to free itself from the principle of international law - universally recognised at the time - according to which the authority of a State ended at its borders; in other words, it was dominated by a strict concept of the principle of state sovereignty and, subsequently, of the territorial nature of criminal law.

2.3. The explanatory report accompanying the Convention stressed the need to complement existing forms of co-operation, via a similar multilateral instrument on the theme of mutual judicial aid in criminal matters. In 1956, the Committee of Ministers set up a committee of experts, which, chaired by Mr Louis de la Fontaine, prepared the relevant convention, opened for signature on 20 April 1959. In this case too, the difficulty of linking up the different systems was noted, either because of the different methods of obtaining proof or because the areas covered by criminal law differed from country to country.

3. At the same time the first individual applications lodged with the European Commission of Human Rights - which had begun its work in this connection on 5 July 1955 - complained of situations in the criminal law or penitentiary sector in numerous countries which violated the fundamental human rights recognised in the European Convention, involving: inhuman or degrading treatment in prisons; preventive detention and long-term imprisonment, including where minors were concerned; inadequate provision for alternative sentences to detention; the lack of uniformity in defining offences.

4. The first laborious steps in co-operation and the urgency of the situation highlighted the need to develop an organic programme covering crime prevention and the treatment of convicts, striking the right balance between the requirements of real and effective punishment of behaviour commonly deemed unacceptable in Europe and respect for the fundamental human rights of the individual charged or sentenced.

5. This was what prompted the Council of Europe Committee of Ministers to adopt a Resolution on prevention of crime and treatment of offenders on 10 June 1956.

5.1. The Resolution originated, in formal terms, from a proposal by the Turkish Government aimed at forging links between the activity of the Council of Europe and the ongoing work of the European Consultative Group of the United Nations dealing with the prevention of crime and the treatment of offenders, in order to avoid duplication of effort between the two international organisations in this field.

5.2. In fact, concrete action had already been taken at the level of the intergovernmental experts at a meeting held in Geneva on 23 August 1956, chaired by Sir Lionel Fox, then chairman of the Prison Commissioners of the United Kingdom and also chairman of the Consultative Group of the United Nations.

5.2.1. At that meeting, also attended by the head of the UN department dealing with social defence, a programme of principle was sketched out and passed on to the governments of Council of Europe member States. On the basis of their comments, the Council of Europe Secretary General drew up a Council of Europe action plan which was submitted for examination by the Committee of Ministers. At the 52nd meeting of the Ministers' Deputies in September 1957, the Committee of Ministers assigned the task of implementing the plan to a group of experts, provisionally called the *European commission on crime problems*.

5.3. The commission held its first meeting in Strasbourg from 30 June to 3 July 1958, and only then did it adopt the name 'European Committee on Crime Problems' (CDPC).

5.3.1. The experts appointed by the governments of Austria, Belgium, Denmark, France, Italy, Luxembourg, Norway, the Netherlands, the Federal Republic of Germany, the United Kingdom, Sweden and Turkey took part in the meeting. The expert designated by Switzerland (which had not yet joined the Council of Europe at the time) took part as an observer alongside experts attending in the same capacity from the United Nations, Interpol and non-governmental organisations (International Penal and Penitentiary Foundation, International Society for Criminology, International Society for Social Defence). The International Criminal Law Association was not represented but some governmental experts were members of it.

5.3.1.1. The meeting was structured essentially along the same lines as present, with the participation of member state and observer delegations and also representatives of non-governmental organisations and the subsequently established consultative bodies, who have constantly grown in number over the years. At present, representatives of the Parliamentary Assembly Committee on Legal Affairs and Human Rights, the Congress of Local and Regional Authorities of Europe, the European Commission and the Secretariat of the Council of the European Union speak at the annual session (sessions were bi-annual up to 1964).

5.3.1.2. The largest delegations were those from the Federal Republic of Germany and Denmark, with three and two members respectively.

The experts were mostly appointed by those responsible for the criminal law sector in Ministries of Justice. Belgium's appointee was Mr Paul Cornil, then secretary general of the Ministry of Justice; for Luxembourg it was Mr Louis de la Fontaine, solicitor-general of the Public Prosecutor's Office (who chaired the aforementioned committee of experts responsible for preparing a draft convention on judicial aid in criminal matters); for Norway it was Mr Rolv Ryssdal, under-secretary of state at the Ministry of Justice and Police (he was later to be the illustrious President of the European Court of Human Rights). Prison authorities were represented in the delegations of Austria (Mr Wolfgang Doleisch), Denmark (Mr A. Hye-Knudsen), the United Kingdom (Sir Lionel Fox) and Sweden (Mr Torsten Eriksson). Other countries had chosen either members of the judiciary also known abroad for their legal expertise or their research in the criminology sector or eminent researchers or professors in university law departments, like France, which appointed a Court of Cassation judge, Mr Marc Ancel (then secretary general of the French Centre for Comparative Law and member of the International Society for Social Defence); Italy, with a judge from the Court of Appeal of Rome, Mr Girolamo Tartaglione (member of the National Centre for Prevention and Social Defence in Milan); the Netherlands with Mr A.D. Belinfante (legal adviser at the Ministry of Justice); Turkey, with Mr Nurullah Kunter, professor of criminal law at the University of Istanbul; and Switzerland, with Mr François Clerc, professor of criminal law at the Universities of Fribourg and Neuchâtel.

5.3.2. A Bureau was formed, and Sir Lionel Fox (United Kingdom), Mr Marc Ancel (France) and Mr Paul Cornil (Belgium) were elected to it as chairman, vice-chairman and general rapporteur respectively. The appointment of a rapporteur demonstrates that, in the participants' eyes, this first meeting was to be regarded as a general conference in the criminology sector geared to action. Despite the intergovernmental nature of the meeting, many of the participants were influential members of the four major non-governmental organisations long active in the criminological research sector (see 5.3.1. above); their presence - while sustaining the lively dialectic that has always characterised the work of those organisations - gave the commission's proceedings a resolutely scientific thrust.

5.3.2.1. The commission's multidisciplinary composition was a response to a requirement earlier laid down at the Geneva meeting and reiterated in the Secretary General's action plan, which pointed out that *the modern science of social defence had aspects at once penal and penitentiary, repressive and curative, preventive and educational* and recommended that government representatives *should include prison officials as well as penologists, physicians and, sometimes, sociologists*.

5.3.2.2. The direction taken by proceedings at the first meeting hinted at the working methods and role which the CDPC would be required to pursue in years to come, in framing guidelines for crime policy in Europe.

Mr Marc Ancel stressed the need to organise society's reaction against delinquency in the light of the social changes under way and the contribution offered by criminological science.

This gave rise, from 1962 onwards, to the bodies which were to co-operate with the CDPC, such as the Criminological Scientific Council and the Council for Penological Co-operation (both of a permanent nature and each comprising seven members), the Conferences of Directors of Criminological Research Institutes, the Conferences of Directors of Prison Administration, the Criminological Colloquiums and the Conferences on Crime Policy. These bodies made the CDPC the key forum to which the demands of society were channelled and where the senior officials of national authorities (ministries of justice, prison authorities, prosecutors' offices), assisted by scientific experts, made new choices in crime policy to be adopted by their governments and regularly reviewed the activities already carried out. The Conference of European Ministers of Justice (not an organ of the Council of Europe but the latter acts as its secretariat) provides a means of examining the work achieved by the Council of Europe and paves the way for the preparation and debate of new issues to be included in the work programme of the European Committee on Crime Problems.

5.3.3. It was on the occasion of the first meeting that the *action plan* drawn up by the Secretary General was approved. It was also pointed out that the programme was to avoid overlapping with the United Nations and refrain from ambitious and costly projects (*inter alia*, it was proposed that the participation costs of the experts remain at the expense of the States concerned).

5.3.4. The points set out in the Committee's programme for the immediate future focused on the problem of the death penalty in European States; the civil and political rights of detained persons; mutual judicial aid in post-penitentiary treatment (aftercare); co-operation between European States with regard to motoring offences; juvenile delinquency.

Numerous sub-committees and working parties were subsequently set up and their respective activities have resulted in the preparation of conventions, resolutions, reports and various publications.

5.3.5. However, discussion at the first meeting already indicated that the Committee's founding fathers clearly foresaw how the programme would develop and give rise to new and original concepts.

5.3.5.1. In the penitentiary field, it was found that the free movement of individuals within Europe was in fact prohibited for persons who were free but under surveillance and unable to go abroad, even for work purposes. In the road traffic sector, it was pointed out that traditional instruments of judicial co-operation (extradition and judicial assistance) were not effective against offences committed by foreigners. In both cases, the major obstacles seemed to be the principle of territoriality of criminal law and the differences between the systems of punishment provided for in each country.

5.3.5.2. The first two conventions drawn up by the European Committee on Crime Problems provided for a substantial waiver of the principle of territoriality of criminal law in the aforementioned sectors. The two Conventions (*on the punishment of road traffic offences* and *on the supervision of conditionally sentenced or conditionally released offenders*), opened for signature in Strasbourg on 30 November 1964, make it possible, in certain circumstances, for the State on whose territory an offence was committed (or the State sentencing the offender) to waive its jurisdiction in favour of the State where the person concerned resides. This replaced the traditional method of co-operation in judicial assistance (extradition or mutual judicial aid) with a new method where the States concerned jointly administer the procedure.

5.4. Further phases in this changing concept of international judicial co-operation were the adoption of the European Convention *on the international validity of criminal judgements* and the European Convention *on the transfer of proceedings in criminal matters*, opened for signature in Strasbourg on 28 May 1970 and 15 May 1972 respectively.

5.4.1. In our commemoration of the founding fathers of the CDPC, it ought to be pointed out that the preparation of the aforementioned Conventions is in great part due to the perseverance and exceptional legal expertise of Mr H. Krutzner (Federal Republic of Germany), who chaired the relevant sub-committees of experts and, at the second Conference of European Ministers of Justice in Rome, presented a report on the need for recognition of foreign criminal law judgements.

5.4.2. These conventions provided the logical and necessary complement to the principles envisaged by the founding fathers and were also important in that they pointed the way forward for a real *European criminal law*. That law covers not only classic criminal law (crimes, offences, petty offences) but also the original Germanic system of *Ordnungswidrigkeiten* (breaches of regulations), that is acts punished through a simplified procedure by an administrative authority whose decisions may be referred to a judicial authority.

5.5. The respective systems were considered by the CDPC from a Unitarian viewpoint so that they could be assimilated for the purposes of crime prevention, while each country remained free to pursue the crime policy of its choosing. The set of norms relating to proceedings, these being derived from those norms, which may be defined as *European law of conventional criminal procedure*, enables each State to choose, as required, between a request for international co-operation of a traditional form (extradition and judicial assistance) or a modern form (transfer of proceedings or transfer of sentence enforcement).

It is undeniably further to the credit of the Council of Europe to have sought to harmonise and not unify the different legal systems. Unification always carries the risk of imposing the hegemony of one system, on the pretext of common law, while only a pluralist legal system is capable of giving substance to a humanity which is itself plural in nature (as Mrs Mireille Delmas-Marty recently pointed out).

5.6. So useful is the overall system established by the CDPC that many parts of it have recently been adopted within the European Union and other regional bodies too. This success is certainly due to the fact that the pattern of development preferred by the Committee's founding fathers hinged on respect for the fundamental criteria underlying a fair trial, enshrined in Articles 5 and 6 of the European Convention on Human Rights, which today constitutes the common platform of procedural guarantees upheld in the 40 countries now forming the Council of Europe.

6. This gives substance to the felicitous intuition of the Committee's founding fathers that *any collective achievement of the European nations in this field would have the greatest repercussions throughout the world and enhance the prestige of Europe as a factor in and guide for social and human progress for the nations of other regions.*

APPENDICES