The Future Group

Pioneering visions on development within the European arena of freedom, security and justice

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Abstract

The European Union has undergone a transformation from being an economical cooperation to also include politics, and is now moving towards a more juridical polity. Much of the juridical visions of freedom, security and justice are created within various Working Groups.

A recent addition to this process is the informal working group called the Future Group, comprised by six European interior ministers and aided by expertise in the field. Created to pave the way for the forthcoming Working Group in 2010-2014, many of its proposals have turned out to be quite pioneering.

We have attempted to link this group to theoretical approaches, discussing its institutional nature. We have also discussed it in relation to previous working groups. Our aim has been to inform about the work of this important group, and to discuss its proposals, which in many ways have been pioneering. We have also discussed the impact it has had and might have on the future of juridical integration within the EU. This should appeal to all European citizens as it more and more will affect their everyday lives.

Key words: The Future Group, juridical harmonization, Justice and Home Affairs, security, personal integrity
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1 Introduction

The European Union started as a vision in the immediate post-war years, a dream for the nations to come closer to each other by creating something as a union. A common trade area, built around steel and coal, to secure peace and economic wealth for its six members; Germany, France, Italy, Belgium, Luxembourg and the Netherlands, with emphasis on the first two (Bomberg, Peterson and Stubs, eds. 2008).

This cooperation grew quite fast and attracted more and more members and developed new needs and inspired new ambitions. It slowly developed into a common political arena.

Today, after a number of different treaties, we can perceive the deep economical and political cooperation that we are used to see the now 27 Member States work within. But once again, developing the Union has become number one on the agenda, as the new EU has to deal with new situations and problems.

The key part that now has to be developed is some more fundamental juridical harmonization and the Union is slowly moving in that direction. Will the next major step be to create a deeply developed juridical cooperation, with common laws and actions? And will it function in the same fashion that we have seen of earlier developments?

Five decades later the vision is still a Europe without war and controversies, where nations protect each other and are heading towards a common goal. As the Union has moved rapidly from pure economic integration, to political harmonization, we now seem to move towards juridical integration. Today, cooperation within economy and politics is not enough.

The inhabitants who live in the new, open Europe are in need of a new kind of protection in the juridical field. But this is not an easy task to handle; on the contrary it seems to be the most sensitive approach of all.

This is all too visible in the rejection of both the European Convention in France and the Netherlands, and the more recent Lisbon Treaty in Ireland. These apparent failures posed unprecedented challenges to the Union.

Parallel with the major treaties, Working Groups have been established to further the European vision within the various fields of freedom, security and justice. The most recent attempt of juridical integration is the High-Level Advisory Group on the Future of European Justice Policy (the Future Group).

This is an informal working group with the aim to identify possibilities, both current and potential to improve European justice and security, and present them before the European Commission. Many recommendations from this informal
group have already been approved by the Commission, yet it remains quite anonymous.

1.1 Why study the Future Group?

The European Union has become a place where people do not need to stand in line for border Control, nor show visa to enter another EU country. The economical and political integration of the European Union are widely seen as the beneficial sides with free trade, open borders and increased mobility across national borders.

The flipside of this is the juridical problems that come together with all these advantages, such as smuggling, human trafficking or a parent being able to lose all its parental rights inside the walls of another EU nation’s justice.

With time the Union has also become a place where people need to take action to get information, to obtain knowledge about their juridical rights and possibilities. It should therefore appeal to all European citizens to know what rights they have got and what kind of protection that is guaranteed for the individuals of the European Union. In a society formed by different sovereign states, but without inner limits and closed borders.

In this thesis we will both inform and discuss how the European Union is moving towards a much deeper juridical cooperation and how the Future Group place a potential key role in this.

That is why we decided to write about the Future Group and their work. We want to see how discussions within the group have progressed. What new ideas have come from their work? What effects may these have?
2 The Future Group – What is it?

The European Union is right now preparing to define its priorities for its actions in the field of justice in the close future. To do this the Portuguese presidency set up a high level advisory group during the fall of 2007. This group is supposed to take on the work already started by the Tampere Programme in 1999, the Hague Programme in 2004 and the Action Plan in 2005. In order to take on the new challenges that are facing the European Union when it comes to the European Justice Policy. (The Future Group 2008a:4-6)

The reports made by the Future Group are supposed to be a commencement for defining the objectives of a future Justice programme that will begin in 2010 and shall be completed in 2014. (ibid:7)

The Future Group has decided upon five different areas as being of highest importance and these are now the big challenges for the future of the European Union.

One of these main areas is to improve the protection of the citizens in the European Union, especially when it comes to the safety of children. But also to create a basic set of rights, and minimum guarantees, if any of the Unions citizens would be a part in a criminal investigation. This together with the enhancement the rights of victims inside the Union and to improve data protection.

Further the Future Group wants to increase legal predictability in family, commercial and civil law. The same personal rights shall be recognized throughout the European Union if a conflict would appear in a citizen’s daily life.

Moreover the Future Group wishes to enhance the access to justice in the EU, by supplying the Member States with knowledge and information about the European rules and legal systems of neighbouring EU-countries and to better be able to communicate in other languages.

Another of the Future Groups main work areas is to improve the fight against organized crime, this including terrorism, within the rule of law.

A final aim is to work with the future challenges in the external dimension of the European area of justice, to create legal and juridical partnerships with neighbouring states and strategic partners. (The Future Group 2008c:3-8)
3 Federalism and Liberal Intergovernmentalism

The basic idea with the European Union is the establishment of an organization created within a liberal intergovernmental spirit. That is not always the case in reality, though. And the European Union has received much criticism for being too centralized and bureaucratic. If this is true or not can be discussed.

And the same discussion can apply to the Future Group, as its structure is founded on the concept of liberal intergovernmentalism, where the Member States constitute the very group. But the ideas emanating from this group can in turn work in the other direction.

In order to enable this discussion we want to define the difference between the conceptions of federalism and liberal intergovernmentalism (hereafter abbreviated as LI).

3.1 Federalism

Federalism is both the theory and advocacy of a federal order. In this order, authority is divided between subunits and a central government. In a federation citizens have obligations to more than one authority. (plato.stanford.edu)

In the book The European Union: How does it work? federalism is defined as follows: "Federalism is a constitutional arrangement in which the power to make decisions and execute policy is divided between national and subnational levels of government. In a federal system both national and subnational units wield a measure of final authority in their own spheres and neither level can alter or abolish the other" (Sbragia & Stolfi, 2008:117).

So federalism is multi-layered, but hierarchical. Exactly how this hierarchy is organized differs a lot between federations. In the EU a guiding principle for this hierarchy is the principle of subsidiarity. It implies that the power to deal with an issue is held by institutions at a level as low as possible, and only as high as necessary. (www.federalunion.org.uk).

3.2 Intergovernmentalism

Whereas intergovernmentalism can be described as "both a theory of integration and a method of decision-making in international organizations, that allows states
to cooperate in specific fields while retaining their sovereignty. In contrast to supranational bodies in which authority is formally delegated, in intergovernmental organizations states do not share the power with other actors, and take decisions by unanimity.

In the European Union, the Council of Ministers is an example of a purely intergovernmental body whiles the Commission, the European Parliament, and the European Court of Justice, represent the supranational mode of decision-making. Virtually all other integration initiatives, including those among developing countries (www.answers.com).

The question of what theory suits best defining the EU is more a question of where the power lies in the Union. According to Bomberg, Peterson and Stubb (2008:15), the three most important sets of actors are the Member States, institutions and organized interests. When we are to compare the federalist perspective with the liberal intergovernmentalist one, we will find that the biggest difference is the federalist believes in a government which has the ultimate responsibility to keep its states together, whereas the liberal intergovernmentalism sees an international institution, as EU, as a cooperation between the governments of the Member States.

The EU has federal features, but could not be called a federation, at least not as for today. But if the EU ever were to become a federation, we would experience a new kind of federal order.

We must here try to separate from the thought of a federal system, like the one we know in the USA. The EU is an international gathering of different member states, and it has the final say in different decisions of supranational kind. But it is first and foremost EU’s first pillar, ”the European Community”, that has the power over supranational decisions (Bomberg, Peterson, Stubb 2008:5).

3.2.1 Within the Justice and Home Affairs

When it comes to the Justice and Home Affair’s (JHA) pillar, its institutions have federal features concerning the so-called power-sharing and consensus. The Future Group also suggest measures that could be called federal in the sense that they wish to harmonize different national rules, legal systems and police operations (these measures could be seen as very ”dramatic” and hard to transcend from theory to practice).

We think it might be easy for Europeans to possess an awkward perception of the term ”federalism”. We might look upon a federal system, like the USA, as a gathered and internal system of states, with a strong common national feeling. We will dare to suggest that the same ”national” feeling does not exist between the member states within the European Union. But is this feeling needed to create a federation?

Anne Lise Fimreite and Jan Erik Grindheim have written about ”public administration”, and explain the features of federal systems as a system that is recognized by the local basis of power, as opposed to a unitary system (like
Norway, with "stat" and "kommune"), where these "kommuner" possess a derived power. (Fimreite & Grindheim 2001: 96)

The book contains a chapter about politics and administration within the EU. Freely translated from Norwegian: "What separates the EU from other forms of international organizations, is the supragovernmental organization’s autonomous power of action, the federal features of the legal systems, and that the membership of the union contributes to the formation of national preferences and putting forward the guidance of independence of the member countries"(ibid:153).

So, the fact that the Member States of the EU have a "regional" power in a European perspective, may thus suggest that if we look upon the 27 countries of the Union as "states", the EU has the federal features in the power-sharing part.

When we talk about a certain set of governmental rule, like a federation, we must include the aspect of common values and common traditions. With the EU consisting of 27 different countries, it would be hard to imagine a future European federation. The different national governments would then have to reconsider some of their sets of values. They also ought to look upon the foreign world with new eyes and get new perspectives in areas that are still handled by the nation states them selves.

Andrew Moravscik is the foremost scientist of European relations and the European Union. He has come up with the theory of LI and sees that European integration can best be explained as a series of rational choices made by national leaders (Moravscik 1998:18).

The conception of power is central in the LI. Each and every politician within national borders has his or her important preferences in the economical part of the domestic political sphere. The decisions made in EU are thus a result of negotiations between states (ibid:103).

Moravcsik claims that the European integration, since 1955, reflects three factors: “patterns of commercial advantage, the relative bargaining power of important governments, and the incentives to enhance the credibility of interstate commitments” (ibid:3).

The EU is criticised for its democratic deficits. And if we are to look upon the institutions of EU from a LI point of departure, the critiques of democratic deficit are pointing towards, amongst others, Moravsciks believes.

At a seminar held by Moravscik at Princeton University, he justifies the way EU works as democratic. He believes that the EU has managed an impressive amount of efforts and that it has become the most ambitious and successful intergovernmental institution in the world.

"...that any political institution that exists, like the EU, does not meet the basic democratic criteria set forth by theories, such as libertarian, pluralist, social democratic or deliberative conceptions of democracy is wrong“ (www.youtube.com).

With this Moravscik might mean that EU has no organisation to be compared with. Because how is our ideal democratic society and where did we ever see an example of it?
He also suggests that a democratic society should demand participation by its citizens: “Ideal democratic theories tend systematically to overlook the illimitations of the ability and willingness of the individuals, even in fully democratic societies, to involve themselves extensively in politics, to develop expertise to contract with one another in order to manage credible commitment problems and to overcome existing differentials in social recourses“ (ibid).

It is time to recognize that the EU can neither aspire to replace nation states nor seek democratic legitimacy in the same way nations do’ (Moravcsik 2005: 2).

By watching EU form different, theoretical perspectives, we have been able to put light on different ways to look upon European integration. We will suggest that the ongoing European integration can neither only be described through a LI perspective nor through a pure federalist one.

The European Union could be said to be the most advanced cooperation between countries.

The basic idea with the European Union is the establishment of an organization created within a liberal intergovernmental spirit. That is not always the case in reality, though, and the European Union has gotten criticized for being too much of a bureaucratic organization. If this is true or not can be discussed, but one thing that can be said is that the basic idea of intergovernmentalism has worked out well in the construction of the Future Group. It is created through the idea of liberal intergovernmentalism and therefore represents the very essence of the European Union. An organization where the member states themselves together steer the big ship forward towards new development and together creates a united front.

3.3 Are we moving towards a United States of Europe?

Europe is, and has always been, a complex territory. It is full of history of groups, rulers, religious and ethnical challenges and differences. Most of the nation states of Europe are countries that have existed for up till two hundred years.

The discussion of what kind of polity the EU has developed into, and continues to develop into, is a big subject in itself. This topic is not the main topic of this thesis, but it is important discussing it in the context of the further development of the work of EUs Justice and Home Affairs.

We want to mention two theories of governing. These two theories are the liberal intergovernmentalism and the federalism.

The third pillar of the EU, like the second, is dealing with intergovernmental issues. (The first pillar is, on the other side, mostly dealing with supranational issues).
The JHA has the responsibility for many different areas within justice, law, crime, migration, etc. All these areas are dealt with at local, regional and national levels. In addition comes the supranational level in this EU context.

All the different national laws and how these are dealt with, legislatively from country to country, must make clashes and challenges for the EU. But the Union, and in our case the JHA, makes it possible to address problems which cross national boundaries.

As we have already discussed, the JHA continues to work with different approaches to harmonize these levels of government.
4 Predecessors

After the Amsterdam Treaty, which entered into force on 1 may of 1999, the JHA decided to work out five year plans for the most important aims of the third pillar. In the year of 1999 a strategic work programme, considering the criminal and internal security cooperation, was adopted. The programme went under the name of the city where it was adopted, Tampere and would last for 5 years. In October 2004 another programme was adopted, the so called Haag programme, concerning the same questions and also this one for 5 years. So, accordingly this programme runs out in December 2009.

We will now explain, in short, the two programmes that have already been completed within the areas of freedom, security and justice.

4.1 The Tampere Programme

In the European Councils own report, the EU tries to explain their priorities concerning the Tampere programme (1999). After the terror attacks of September 11\textsuperscript{th}, they have been criticised by journalists as being too concerned about working with security, and forgetting about the other aspects for which they are responsible (ec.europa.eu).

"...the Commission has always been at pains to ensure balance between the freedom, security and justice aspects. In addition, the Union must guarantee a high level of security so that the freedoms can be exercised to the full"(ibid).

Member States have sometimes had the effect that national concerns were given priority over Tampere priorities.

"It is up to the experts in the Member States to use the opportunities for cooperation that European integration offers” (ibid). When reading these lines it seems that the first programme might have had some difficulties communicating with the Member States.

On the home pages of the European Parliament one can read about the main goals of the Tampere Programme, and already under this first programme, it seemed important to further harmonize the judicial systems.

With the ambition of harmonization, the programme sought to prevent criminals from finding ways of exploiting differences between the judicial systems of the Member States. And for that reason, a better compatibility and more convergence between the countries within the EU had to be achieved (www.europarl.europa.eu).
Other goals were combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of women, children and minorities (ibid.).

The Tampere programme set out measures to combat crime of different kind. Crime prevention proposals were suggestions for national improvements of the work of police officers and others working against crime as well as for the intergovernmental cooperations of crime preventing kind.

"The first priorities for this cooperation could be juvenile, urban and drug-related crime.” (ibid)

This first programme had more shy features than the one of the Future Group. It proposed cooperation between Member Countries “to create joint investigative teams in certain areas of crime, while respecting systems of judicial control in Member States” (ibid).

In 1999 the European Council wanted to limit the areas of cooperation against crime. These are the areas that the Council thought would be best working with at an intergovernmental level; financial crime, drugs trafficking, trafficking in human beings, particularly exploitation of women, sexual exploitation of children, high tech crime and environmental crime (www.europarl.europa.eu).

"Major practical progress has been made in the first phase of the area of freedom, security and justice. But the objectives set at Tampere have not yet all been achieved.” (http://ec.europa.eu)

4.2 The Haag Programme

The Haag programme (2004) has had 10 main points of ambitions.

To guarantee that fundamental rights are followed and that people of the Union have access to justice.

To have the Geneva Convention of Refugees and other international treaties on the same issues as guiding lines to provide protection to the citizens of the EU.

These treaties should also be ideals in the work of controlling external borders and of regulations of migration flow.

The fight against the growing threats of terrorism and cross border crime is prioritised.

To use the potential of the organisations of Europol and Eurojust more frequently. These institutions are aimed at carrying further “the mutual recognition of judicial decisions and certificates both in civil and in criminal matters, and to eliminate legal and judicial obstacles in litigation in civil and family matters with cross-border implications.” (Vermeulen 2005:609)

One agreement that has been mutual for the two past programmes is the Schengen agreement, which came into force in 1990. Borders both within the Schengen area and at its external frontiers are quite porous, meaning that organized crime and
terrorism are frequently transnational in nature, thus necessitating multinational approach (Bomberg, Peterson & Stubb, eds. 2008:139-140) The book also explains the challenge that it is to make the Member States cooperate at this level, where there are national laws to follow.

However, progress at the EU level has been inhibited by Member States’ concerns for their sovereignty in this sensitive area (ibid). The report discusses that issue, and for us it seems like it finds the new, enlarged European Union challenging.

”...in judicial matters, the enlarged Union further enhances the need to adopt measures to boost mutual confidence in order to consolidate the mutual recognition principle” (ibid).

And as an additional support of the programmes the Commission adopted a five year EU Action Plan, in August 2006. This was to help develop a comprehensive and coherent EU strategy.

The main objective of the EU action plan is capitalizing on available data and form a basis for agreeing the need for future action, and also to harmonize the definition of crime types within the EU (Annex1 2007).
5 Connections between the Lisbon Treaty and the Future Group

What follow is a brief description of how the Treaty is interconnected with The Future Group. The aim of the Lisbon Treaty (2007) is to establish an area of freedom, security and justice and to strengthen the means of preventing and combating crime and terrorism. In the opening articles of the Lisbon Treaty stresses the values on which the European Union is founded, values that also the Future Group deeply preserve and point out. These values being the respect for human rights, freedom, democracy, equality and the rule of law.

The Lisbon Treaty wants to improve the legal framework of the EU so it will contribute for a more effective implementation of European policies. Just like the Future Group the Lisbon Treaty emphasizes the creating of an area of freedom, security and justice without internal boarders, the promoting of justice and social rights and especially the protection of children’s rights. The Treaty also wishes to establish a common immigration and asylum policy and to fight the trafficking in human beings, these kinds of decisions would be taken through qualified majority voting and the European Parliament would have the power of co decision. (Information Leaflet, 2008:24-25)

The Lisbon Treaty will allow the Union to become a legal entity, it will with other words be able to sign a contract, be a member of an international organization or a part of an international convention. And it will make the EU’s working methods much more open and effective than today. (Foundation Robert Schuman 2007:6-9)

The power of the Parliament will be strengthened in terms of legislation, budget and political control. This would be a step forward when it comes to the democratization of the EU and it gives more influence to the citizens. One major achievement to give the inhabitants more power is the citizen’s initiative, which is a new system that is promoted in both the Lisbon Treaty and the Future Group. It enables the citizens to turn directly to the Commission to ask it to introduce a legislative proposal they find important to the Parliament and to the Council, this when it comes to one of the Unions fields of competence. To be allowed to do this the initiative has to be signed by at least one million of the EU’s 500 million inhabitation from a substantial number of Member States (ibid.:21-22). An opportunity to make the inhabitants voices on EU projects more clearly heard that does not only create a new democratic era within the EU but also sounds both feasible and very promising as important to fulfil.

The Lisbon Treaty also want to enhance the efficiency of the decision making process with regard to the area of freedom, security and justice and again this is something that also the Future Group is strongly promoting.
The Lisbon Treaty introduces the principle of increased legal co-operation both civil and criminal, through the principle of mutual recognition. The recognition principle consists of the idea that each legal system acknowledges that the decisions adopted by other legal systems of other Member States are valid and applicable. To establish this principle would be a huge accomplishment and it is given a lot of attention in the Lisbon Treaty, but surprisingly not in the Future Group reports.

The Future Group reports do discuss the importance of mutual recognition both in the field of criminal and civil law and the value of harmonizing procedures. So they both talk about the importance of co-operation between the Member States and the legal authorities and to improve the effective access to justice. But the profound discussion about the establishment of rules and procedures to ensure the recognition of all forms of judgement and legal decisions across the entire European Union seems to be missing in the Future Group reports.

So one of the main essences of the Lisbon Treaty seems not to have been brought up to discussion in the reports and instead of the profound dialogue concerning approximated legislation the dialogue is driven towards different co-operation initiatives. And even though the question is brought up thought the talk of harmonization and a more coherent European regulation so juridical authorities easier can apply national legislation issued on the basis of EU instruments it is just really touched on very superficial. The references in this case do not seem to be enough as the Future Group is supposed to put up the frames and goals for a whole new plan to run but does not even take it up to a real discussion. It more or less disconnect from the two parts. It should really be much more focus on them.
6 The Future Group

6.1 Creation of the Future Group

The preparations to create a new five year programme, 2010-2014, started with the informal meeting of Ministers of Interior and Immigration in Germany in January 2007. (The Future Group 2008b:5)

At this meeting the German Minister for the Interior and the Vice-President of the Commission proposed the creation of an informal group at ministerial level with the objective of considering the future of the European area of justice, freedom and security, called the Future Group.

The countries chosen to belong to this group are the six Member States which have had, or are going to have, the Presidency in the year of 2007-2009. That is: Germany, Portugal and Slovenia, and France, Czech Republic and Sweden. Further participants are a representative from the future Presidency trio (Spain, Belgium and Hungary) and also representatives from the European Parliament and the Council. In addition both Great Britain and Ireland have been invited to attend the meetings as representatives of the common law countries. All delegates participate on a personal capacity; this also goes for the commission who is represented by a commissioner.

The findings and recommendations of the Future group are meant to be an important contribution and a source of inspiration for the Commission’s proposals for the next multi-annual programme in the fields of justice and home affairs. It is also supposed to create a debate around the subject and the future of the Home Affairs in the Union.

What are then the main challenges for the Future Group for 2010-2014? The Group has especially listed three things, all fundamental to secure and complete the area of justice, freedom and security, within the European Union where the conditions are continuously changing. First is to conserve the European model in the area of European Home Affairs by balancing mobility, security and privacy.

Further the Group considers that the more and more expanding interdependence between internal and external security needs extra attention and needs to be dealt with. Thirdly the Group presses the importance of increasing the capacity of inter European data networks.
6.2 Objectives of the Future Group

Respect for human rights and support for democratic institutions must remain the fundamental values characterising the entire scope of the programme, this far called the Future Group (www.statewatch.org).

"European integration rests on common values in the form of fundamental rights, respect for the rule of law and democratic institutions. These must be the basis for any action of the Union” (ibid.). This was written in 2004, but may still be said to be important values in today’s JHA.

When we look beyond the past programmes, and see what has happened to the EU since 1999, we see the big enlargement of 2007. An enlargement that requires new measures of migration policies, asylum policies, the security and the juridical aspects for the Future Group.

The Group has therefore set up five main areas of future measures. Under, we have tried to list the measures as shortly and concisely as possible. The Future Group has been assisted by many of the Member Countries in the following proposals.

6.2.1 Improving the Protection of Citizens

The Future Group wants to establish mutual trust in the judicial systems throughout Europe, and for the sake of the rule of law, to gain the same level of minimum rights in criminal investigations.

It is an important aim to increase the protection of children in the EU. Their first priority concerning children is to protect them against sexual crime. They also aim to fight abduction by parents or others, and to fight paedophile networks (ibid.:5).

The internet and all technological possibilities of today increase the risks of abuse, and the fact that the internet is endless in time and space, means that criminals may use information wrong. Therefore, The Future Group wants to improve data protection regimes already existing (ibid.:5).

There are, according to the participants of the Future Group, still a gap in this area, and some of the suggested plans are exchanging best practice and providing backing for victim support organisations (ibid.:6).

6.2.2 Legal Certainty in Family, Commercial and Civil Law

The free movement of goods, people, capital and services is still an important principle of the EU. The Future Group wants to make sure these movements are done legally and that whenever a dispute occurs in this field, it wants to create a legal system, where every hypothetical scenario is taken to account.
"The EU has set out - and the task is not an easy one - to determine which law would apply to each of these types of dispute and designate". They also suggest that the instruments of the Hague Conference on Private International Law should be strengthened. (ibid.:6)

6.2.3 Promoting Access to Justice within the EU

To accomplish this goal, the Future Group needs the people working with juridical issues on a daily basis to cooperate with the EU. Knowing the rules of neighbour countries and understanding of other languages are, according to the Future Group, important contributors to a more harmonized, European juridical system.

A common database with both the Member States and the Union as participants would ease the communication (ibid.:7).

6.2.4 Advancing in the Fight against Organized Crime

The Future Group finds it very important to repress and prosecute criminal acts “everywhere and unremittingly” by applying the law with the respect of human rights. This method is meant to be discouraging to criminals. ”Achieving greater convergence in procedures and methods for obtaining and utilizing evidence is a key issue...”. Otherwise, this proposal of fight against organized crime does not bring any revolutionary measures (ibid.:8).

6.2.5 The External Dimension

The point of meeting future challenges in the external dimension of justice policies might be said to be the most challenging and most ambitions of these five main points.

Here, the group wants to establish new networks of legal systems to strengthen the rule of law (ibid.:8).
Proposals by the Future Group

What follows are some of the more path breaking proposals that the Future Group has presented to the Commission. By presenting these we wish to illustrate the innovative features of the group.

7.1 Proposal on Police Cooperation

The police forces in the Union are the responsibility of each Member State’s field of competence. However the Future Group calls for closer cooperation between the law authorities, but they point out that this should be done preserving the European model. This is one of the major tasks of the Future Group and some of their solutions to make it come true is by reinforcing Europol, exchanging knowledge between the Member States and integrating police register management and security technologies.

The Group also proposes that it should be easier for national police to act on another Member States territory. This is something that can be very sensible as countries tender to want to take care of their own criminal investigations. A written request would still be needed though, but the simplification of the process can in some eyes still be seen as an infringement on ones sovereignty. (The Future Group 2008c:43-44)

Europol is here given the role of a close partner and a common centre for all the European national police forces (The Future Group 2008b). To do this it would of course be needed that the Member States themselves contribute with essential information. In doing so Europol could become a very important tool concerning criminal investigations within the EU. If this expansion would be feasible Europol would become a European Mecca when it comes to being a competence centre both for technical support and for providing information.

To be able to carry out this mission the European Union really needs to put a lot of trust not only into its 27 Member States, but also into their capacity to make their officials honour that spirit, both when it comes to trusting all the nations in sharing their competence and also that the information available is respected and properly handed.

Another rather bold suggestion from the Group considering police cooperation is the Police and Customs Cooperation Centre (PCCC). This organization would be available for all the Member States and would work on an international basis handling crises and different cross-border events. This should, according to the Future Group, become a model of future police cooperation, especially in the border zones (ibid:7). Something that is maybe easier said than done, for
something like this to be applicable there is a need of a further development also when it comes to cultural differences between the national forces and there would be a need of a common culture and for European training, for example trough the European Police College. This would be a far larger commitment than it maybe sounds like at first.

Also regarding the fight against terrorism the Group wants Europol and Eurojust to be the centre of information and considers that the flow between these two organizations and the Member States deeply needs to be improved. The Future Group deems that the EU is in need of securing the quality of information sharing and methods of action in every single country to make it conform to a common standard for the Union.

7.2 The Convergence Principle

The Justice and Home Affairs is built around a number of principles. But as the European Union has developed in an amazing pace it is now ready for something new, the next step. The Future Group considers it essential that the Member States of the European Union start to really work together and starts to share their competences in the area of internal affairs.

The way to achieve this would, according to both the Future Group and the Council, be to develop a new principle. An approach to achieve both the strategic and operational objectives set within one framework and by establishing precise rules for evaluating the actions undertaken. This principle, in addition with the availability of information together with the principle of recognition, can constitute a guiding gist for the continued construction of the common European area of security and can look for new opportunities to solve juridical issues and to help each other, this also when it comes to matters that normally are strictly national business. To help this come true the Group presents the Convergence Principle can be seen as the precursor to this principle.

Some ways to utilize this principle is through common training programmes for the personnel of law enforcement, exchange of experts, pooling certain expensive equipment, solidarity mechanisms, and learning of other languages, simpler cooperation procedures and information exchange. All these things would, according to the Future Group, also help creating a true and genuine practical cooperation between the Member States. The purpose of the Convergence Principle is with other words to bring the nations closer together within the framework of a process of convergences consisting in promoting closer operational cooperation among the law enforcement authorities of the Member States and with that not only through standardisation when necessary. (ibid:16-17)

This principle would address all fields where a closer relation could be possible between the Member States, such as in the institutions, with agents and legal frameworks. The idea is that the more the countries work together, not only by sharing values, but also equipment and practice, the more they will harmonize with each other (Council Presidency 2008). These relations will be based on the
Acquis Communautaire of the Union and all information about other countries juridical systems should be available for the public, just as the information about different cooperation’s between countries, all to promote good understanding of every actor’s knowledge. (The Future Group 2008b:16-17).

In fact quite recently the Council adopted this principle, so the ideas and the principle as such is already present in the thinking of the Union and among the individuals working there. (Council Presidency 2008)

In taking account of the report by the Future Group the Council considers it necessary to strengthen the action of the European Union and this especially when it comes to operational issues, this to be able to guarantee a very high level of safety for the inhabitants of the unions common area of freedom, security and justice. The Council also believes that this principle will help enhancing the effectiveness and coherence of actions within the area of internal justice. (ibid.)

The Council has stated that they want this initiative to strengthen both future agreements as well as the ones already existing in the area of security. The thought is that with this new policy it will become easier for the Member States to act and analyze things in the same way. The Council also points out that the exchange of information and intelligence through the Principle of Convergence also will be important for ensuring a high level of protection of personal data in the European Union and the internal security. Something that both the Council and the Union have taken very seriously.

7.3 The Euro-Atlantic Area

The EU considers itself sharing a lot of values with the USA, when it comes to; democracy, the rule of law and human rights, but also when it comes to creating a strong and sustainable market-based economic growth. (Council Secretary 2008) The Future Group is standing behind the planning of an expanded Euro-Atlantic Area. With all threats in the world against peace, global security, human rights and democracy the Future Group and the Council consider this transatlantic cooperation to be of very high importance. Such co-operation will be decided upon by the year of 2014. A Euro-Atlantic area of cooperation would be a collaboration between the EU and the United States of America regarding the field of freedom, security and justice. (The Future Group 2008b:16)

Such a cooperation would contain sharing personal data between the two parties, to promote transnational crime and terrorism. The two parties would then work more together to create democracy and stability in the world, this also through cooperation with other parties such as the United Nations and the NATO. (Council Secretary 2008)

The Euro-Atlantic Zone concerns both political, juridical and economical cooperation and is extremely far going!

Questions taken up are among others free and secure movement of goods between the two continents, the global climate change, the democratization of the
world, the financial crises, the energy safety etc. And all this will be done in mutual respect of each other. (ibid.)

Another common goal is to remove the need of a visa for travelling between the US and all the Member States of the EU. But this possible cooperation does not seem credible all the way and it seems like the EU tries to take on to much at once. And not only that, it seems seriously to contradict the core of the Convergence Principal and the idea of a closer cooperation inside the Union, especially when it comes to internal security. And the Council states that they with the Principle of Convergence want to “ensure a high level of protection of personal data in the European Union”. Is it really possible to do this and at the same time sign an agreement with the United States of America where they get the right to take part of certain personal data of the inhabitants of the EU.

The Council does point out that this cooperation, to fight transnational crime and terrorism, is indeed in need of the possibility for both parties to share personal data for law enforcement. This will, according to the Council be done while totally protecting the fundamental rights and civil liberties of the citizens of the European Union, and not only that but in particular their privacy and to protect their personal data. But how can this be possible? Is it even plausible to think that this kind of advanced data protection system would be possible today, as we can not even give our own inhabitants a satisfactory protection against transnational crimes within European Union as it is today? The answer the Council gives is, if one dares to say so, a bit vague, they rely on the shared values of the both continents. Shared values and a common need of saving the world will be the base for not utilizing this open information for any inappropriate purposes.

But why it still feels like the United States of America in the end will consider themselves to have more reasons to get personal information, of course strictly for safety reasons, concerning people in, for example, Romania, Hungary or France, than the EU about anyone in the US, can maybe be discussed.

The data protection needed to create such a partnership with the US would be enormous; to at the same time collaborate with information sharing and to protect the citizens of the European Union from a new possible arena of transnational crimes would demand a whole new outset of data protection. Is this possible? If not, the whole core of the European Union, to protect its citizens and to develop an area of justice, security and freedom within the EU-boards, would be lost.

The Council adopted a Framework decision in the end of November 2008 on protection of personal data when it comes to police and judicial cooperation in criminal matters. The reason was to ensure a high level of protection for the basic rights and freedoms and in particular the privacy while guaranteeing a high level of public safety when exchanging personal data of the individuals.

By setting these protection standards the Council highlights the importance of safeguarding the most fundamental rights of the inhabitants. This framework decision also contributes developing a deepened confidence between the different Member States. (Council Press Release, 2008:38-39)

To protect the personal data and the personal life of the inhabitants is considered being a fundamental issue in a democratic society and an essential
contribution to the stability of democratic values, but to be able to ensure this in an open area with the USA can turn out to be very difficult.

The Future Group admits that opening the arena of information sharing can cause some threats for the individuals and the society as a whole, as information can be used for other purposes than them they were collected for. Therefore the respect of the proportionality principle, referring to the practice of only taking the most necessary actions needed, and of fundamental rights while collecting data for law enforcement purposes has to be highly respected. (The Future Group 2008a:28)

The Future Group is especially pointing out the importance of the Union making everything possible to prevent any illegitimate use of its inhabitants personal information and underlines that this defiantly is one of the major challenges that the JHA Council must face in implementing the Treaty of Lisbon. It is a very important step for the EU but the true challenge will be to prevent and fight crimes within the frames of a democratic society and find the most effective balance between fundamental rights principles and security rules. And the Future Group states that “solutions that involve a weak protection of privacy and data protection should not be implemented”. (ibid:29-30)

Since the EU directive number 95/46/EG, concerning protection of personal data was implemented in the Member States national legislation personal data has been considered having an equivalent protection within the Union. Personal data can therefore be freely transferred between the Member States. When it comes to transmission to a third country it has to be examined by the national data inspection or the EU, however that particular country’s legislation provides a requisite protection of the individual’s rights or not, possibly in combination with a separate agreement. (SFS, §14)

The framework decision contributes with enhancing mutual trust between the competent authorities within the EU and the information in question will be protected so as to prevent any obstruction to Member States cooperation while at the same time respecting the individuals’ basic rights to privacy and their personal data. (Council Press Release 2008:39)

How this would be feasible in an open arena between the USA and the 27 governments of the EU is hard to see as it today even is difficult to fully adopt between the Member States themselves.

To terminate the applications for Turkey to become a fully adequate member of the European Union or dropping the name debate considering Macedonia/The Former Yugoslavian Republic of Macedonia seems impossible, but to sign a strategic partnership and open up a visa-free area with new sharing of personal data of the citizens with the worlds most powerful country, a country with a population of 287 400 000 inhabitants (www.freedomhouse.org) does not seem to cause any worries at all.

But the idea, to cooperate with the USA, to help combating global warming and help countries in need, is good. The question is though if the world, especially the EU, can handle this big step, is it really feasible and is a visa-free area between the EU-US etc really what the EU should concentrate at right now?
8 Reflections

In a world that has become ever more globalized, the feeling of belonging becomes more important to us. Even if most people of the EU Member States do not pay attention to the fact that they are living within the most ambitious and fastest growing organizations in the world. They will, somehow, in their daily lives experience that they are a part of a bigger society. And even if the EU is often criticized for being too much of a bureaucracy with democratic deficits, it has developed in many areas during more than fifty years.

The organization that started of economical and strategic reasons in 1952, and as a contribution to prevent further conflicts in a devastated post-war Europe, has developed into a complex network stretching across 27 countries of Europe.

The people working within the JHA pillar are dealing with sensitive challenges. Sometimes they are trapped in dilemmas between wanting to maintain the responsibility of the countries involved and wanting to be in charge of other missions.

8.1 The Connection to Theory

One challenge we have dealt with during the work of this thesis, is, through the processes of creating new programs of the area of justice and home affairs, to see what theoretical perspective/context within the political science that we could put this integration practice into.

In many areas, the nations within the EU still have most of power. But with the programs and treaties, that are successively evolving between the supranational Union and the intergovernmental Member States, we can see an ongoing development.

We have mentioned two theories- federalism and liberal intergovernmentalism- and could find clear features of both within the latest project of the Justice and Home Affairs, the Future Group.

The horizontal challenge of balancing mobility, security and privacy is an ambition now set up by the Future Group. And with these issues, comes the one with balancing the power sharing. The Future Group wishes to bring the states closer together by harmonizing legal systems, police cooperation across borders, improving language knowledge for better intergovernmental communication.

Bomberg, Peterson and Stubb (2008:68) are questioning if the EU institutions drive the integration process forward, or if the national governments remain in the control of the process. Either way, the EU wants to represent its member countries, and to be an important part of the globalized world.
8.2 International Perspective

Karen A. Smith explains that, already under the Tampere program, the EU ought to develop a capacity to act and be regarded as a significant partner in the international scene (Smith 2008:52).

It seems like the Future Group wants to meet most of their future challenges on a "day-to-day" basis and on a "case-to-case" basis. It is hard to imagine this group getting control over every situation occurring within the joint European zone. A believe in the internationalization of systems that, still, work mostly on a national basis. To bring the countries of the EU closer together is a grand ambition shown in all the documents published on the future JHA work.

To do this through the spirit of the new Principle of Convergence and by continuing to improve and simplify the exchange of information and intelligence between the law enforcement authorities within the EU seems to be both an essential and realizable deed. (Council Presidency 2008)

Our reflection on the Euro-Atlantic Area is maybe not as positive, though. We are not alone in our scepticism. A lot of countries seem to think that the EU should put personal data to be of highest rank and the Commission has stated that they continue to keep the area of protection of personal data among their priorities. (The Future Group 2008c)

It is strongly believed that a fundamental gist in a democratic society is to protect the personal life and data of the inhabitants. And this is also an essential contribution to the stability of the democratic values, but to be able to fully ensure this in an open area with the USA can, according to us, turn out to be very difficult.

The Future Group do admit that opening an arena of information sharing can cause some threats for the individuals and for the society as a whole- this as information can be used for other purposes than those they were collected for. (The Future Group 2008a:28) Therefore, we think that it is very important that the EU respects The Proportionality Principle and also the fundamental rights of the inhabitants while collecting data for law enforcement purposes. If this can be done this new open arena can be seen as a very important and historical step.

8.3 Other important findings

On an organizational level, the work of the Future Group is very promising. The initiative to create such an informal group, a level of people, experts in their field, deciding to work together and to create a new, safer future within the JHA is very pioneering and indeed needed. And we consider this ambition to be a superb way of thinking outside the box and a good vision for the future.
But what surprised us during the reading about the different justice institutions reports is that they seem to run parallel with each other. The JHA and the Police Cooperation, for example, do not even seem to be in contact with each other and are making totally different plans for the future. The latter’s justice board goes through the main issues within the 1st pillar and the first within the 3rd pillar and the structure reports are very different.

The JHA and the Justice reports do not seem to talk about the same way of facing the issues and how to meet the problems of the future, in opposite they seem, as said, to go parallel of each other,

The JHA comes up with very exclusive material, with some bold ideas and innovative thinking. It is more disconnecting from the habitual way of thinking within these kinds of reports and got a higher vision. The documents from the JHA are much stronger and more radical.

The Justice reports on the other hand are more traditional in its approach. They are more talking about the leftovers and how we can develop the instruments that already exist. Instruments that already are well incorporated in the day to day thinking and then let them be the main tools to face the issues of the future. And in one way these reports seems to be more credible to employ, develop and also to really be accepted among the other institutions and the Member States.

So the two organizations seem to contradict each other and this especially when it comes to data protection. Were the JHA, through the Future Group, talks a lot about the security developments and about data protection and takes it up to a much higher and wider level than it is today with enormous plans and great elevations.

This while the Justice reports more focus on safeguard protection and measures needed for that, preferably within already existing instruments.

The more radical approaches taken by the Future Group can easily be seen as very scary and broad by both Member States as the common man. Maybe in some cases it would be better to put focus more on technical issues, working processes and impact. An example of this according to us is “The EU Classification on Offences”.

“The EU Classification on Offences” is a system made because of the need to harmonize the definitions of crime types, the definitions of law enforcement measures and existing statistics available at national and EU levels. The system would classify the crime types by category and would then advance the implementation of the EU Action Plan and its associated Experts and Working Groups. (Annex1 2007)

This is an issue that could create a lot of opposition and could easily turn out to be a discussion about a common criminal law system and a common penalty system, but instead it was decided to put the angle of approach more on harmonization and common understanding. And the whole thing became instrumental and both people and Member States could see it coming, it did not come as some kind of chock or surprise.

The whole thing became more of a common goal, with an enormous consideration of the Model of the EU. One step at the time was taken, through
consideration of systems already in place in the different Member States and harmonization became the common aim and not the feeling of becoming a part in a federal society.

The angle used to attack the issue from became much less threatening, no big issues or problems came out of it, this even though the result would be quite a break with tradition and a big alteration.

This was, according to us, a much better strategy to work from, softer and easier. Maybe this way of handling new issues in the EU should be used more often in the future instead.

8.4 Concluding remarks

But in *summa summarum* the JHA, with The Future Group, seem like wanting to work towards a goal of a power sharing, with a strong cooperation between regional, national, intergovernmental and supra-national levels and that the dream of the Union is to better be able to coordinate actions by the various European Union actors in the area of freedom, security and justice. And this in particular in the agencies of the Union and by making the fullest possible use of their recourses for priority actions.

The relationships between the states is wanted to be stronger and more like the ones between brothers and sisters in a warm family, where you share toys and help each other out when necessary, this without reflection about why or if it is suitable or not.

The decision to start to make full use of both Europol and Eurojust seems also to be a perfectly natural step to take.

Now, in May 2009, the Commission will decide upon the future program. If the timetable will be feasible this information will be declared during the Swedish Presidency and then be negotiated upon during the Czech Presidency. The alignment and content in the future program will become very important for the progressing cooperation within the arena of judicial and interior affairs. (Personal e-mail)

And along side with this the ratification process of the Lisbon Treaty continues to proceed and the report also refers to new possibilities of action under a new legal regime.

The process, started by the Future Group and now continued by the Commissions consultation, will hopefully give a good basis for the forthcoming negotiations considering the new work program. It is clear from the reports by the Future Group that there exists a consensus concerning the importance of that the future program will balance the actions of the EU, when it comes to the fight against criminal actions. This with particular emphasis on the actions needed to strengthen the rule of law and the protection of the citizens. That ambition is also something Sweden stands behind (ibid.), and it seems highly likely that this will be stressed in the county’s upcoming period of Presidency.
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