Stefano Ruggeri *Editor*

Transnational Inquiries and the Protection of Fundamental Rights in Criminal Proceedings

A Study in Memory of Vittorio Grevi and Giovanni Tranchina

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In June 2011, in the context of this project, an international conference took place in Syracuse, where distinguished scholars of international and European criminal law and practitioners from eleven countries both from inside and outside Europe met to expose and discuss the provisional results of their investigations. This book brings together the final surveys from a four-level perspective.

Many things have happened since the beginning of the present research, especially the death of two outstanding scholars of Italian criminal procedures, namely Prof. Vittorio Grevi and Prof. Giovanni Tranchina. As a consequence of this, I have chosen to dedicate this project to both of them, in memory of the high human and scientific value of these two Masters. Furthermore, today I would also like to remember Prof. Dr. Günter Heine, who took part actively in this research but unfortunately could not see this book, since he died shortly after our conference in Syracuse.

Many people have contributed to the realization of this project, and I would like to thank firstly all the outstanding colleagues who have taken part in this research for their valuable contributions. A special thank goes to Springer Verlag for its interest and sensitivity towards this project and especially to Miss. Brigitte Reschke for constantly trusting this initiative and patiently awaiting its results. I am very grateful to Mr. Christopher Schuller for his professional editing of the whole manuscript. Moreover, I am very proud of the quality of the work performed by my entire chair team, and I would like to thank especially Simona Arasi, Alessandro Arena, Rossella Bucca, Giusy Laura Candito, Marta Cogode, Federica Crupi, Diego

Foti, Irene Giaimi, and Letizia Lo Giudice. But above all this research could be completed, thanks to the irreplaceable support of my family, my wife Norma and my two little daughters Anna Lucia and Maria Isabel, who have patiently tolerated my long absence while constantly encouraging my work.

Thank you all very much!

Messina, on 11 June 2012 Stefano Ruggeri

Preface

The value of this book is that its complex structure unifies three different subjects, each of which would itself raise considerable interest: criminal inquiries, transnational judicial cooperation, and fundamental rights.

This research has been carried out at a historical moment in which we are witnessing a strengthening of transnational judicial cooperation as essential means to fight against the expansion of criminal organizations that profit from their ability to operate across borders. These are – alongside organizations nurturing political terrorism, sometimes even working closely with them – the criminal groups behind the most serious economic and financial crime, those controlling among other things both production and smuggling of drugs and human trafficking.

The danger of new transnational crime has helped overcome traditional resistance to a strengthened and more efficient international cooperation between domestic states, which have always been jealous of their own sovereignty over everything concerned with the exercise of criminal jurisdiction. These resistances continue to be felt, and those that are still justified must be separated from those which are simply the remnants of obsolete nationalist mentalities. However, this is not the field in which the international community and its individual components are facing the most serious challenge as they try to improve and strengthen their instruments for combating transnational organized crime through international cooperation.

For at least 30 years I have argued that the issue of fundamental rights cannot be dealt with theoretically and handled practically as if the only question at stake were that of elevating the threshold of untouchable individual guarantees entailed by any of them. In particular, one cannot rule out that the increase of terroristic threats should lead to partially rethinking even the extension of some individual freedoms currently considered "fundamental."

This would not, however, be the same as sharing the logic of "*à la guerre comme à la guerre*," according to which any mode of fighting against terrorism and other dangerous forms of organized crime should be admissible, even in contempt of most fundamental rights.

Fundamental rights are not a flag one can wave only under a shining sun. They are the main sail which must always be protected without being lowered even when a storm arises. For instance, it is significant that the European Convention on Human Rights distinguishes, within the sphere of the rights it deals with as fundamental, between those that can be suspended or limited in exceptional circumstances (albeit, of course, compensated by some "institutional" guarantees) "in time of war or other public emergency" and other rights which can never be either suspended or limited.

It is not my task to enter into the merits of the approaches to these problems of the various contributions of this book. However, focusing on these problems and involving so many outstanding scholars to provide information and express their opinions thereon are a credit both to the contributors and to the editor of this project.

Torino, Italy Mario Chiavario

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Part I
Introductory Part

Vittorio Grevi, Scholar and Master

Giulio Illuminati

When he happened to meet a young scholar at the beginning of her academic career or of her practice as a lawyer or a judicial officer, he loved to introduce himself plainly by name and surname: "Vittorio Grevi, pleased to meet you." A calculated understatement, conscious as he was of being already well known as prestigious author of juridical works and influential journalist and in particular as the editor, together with Giovanni Conso, of a well-appreciated textbook of criminal procedure, which for years has been adopted in many universities. For a graduate who has completed his studies not long before, making the personal acquaintance of a professor who until then had been just a name on a book cover is always an emotional moment, and one that inevitably intimidates. But the amiability of Vittorio Grevi and the true interest he showed in his interlocutors were such that soon afterwards, the conversation went on completely naturally, as between long-time acquaintances.

This is, perhaps, one of the many reasons why everyone who had the luck to know him remembers him with great affection, as witnessed by the large number of students and alumni who came to pay their last respects to the professor at his Pavia University together with the many personalities, judges, lawyers, and colleagues from all over Italy.

> However paradoxical it might appear, the dearer a person who dies is to us, the harder the mental and emotional work of forgiving him or her for having left us. And forgiveness requires that with effort, fragment after fragment, we find him or her again inside us and see him or her acting in the outside world.

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These words (in my translation) are by Sarantis Thanopoulos, a well known psychologist: I have kept the press clipping because it expresses exactly what I have been feeling after the departure of Vittorio Grevi, whom we are here today to remember.

I would like to thank the coordinator of this research for dedicating it to his memory. He was very fond of Sicily and in particular of Syracuse, where he very much liked to come, especially during the good season, so that he could take advantage of the sun, the sea and the beach as side benefits of the academic meeting.

Vittorio Grevi belongs to that generation of jurists who have deeply renewed the study of criminal procedural law in the period from the end of the 1960s to the beginning of the 1970s in which constitutional principles had been resolutely put in the middle of the academic work and served as a compass to rely on in the building of a system based on the safeguard of individual guarantees. It was in these years that the books *Nemo tenetur se detegere. Interrogatorio dell'imputato e diritto al silenzio nel processo penale* (1972) and *Libertà personale dell'imputato e Costituzione* (1976) were published: ever since then, they have been essential landmarks for scholars in these specific fields. And it was in the 1970s that there arose a pressing need for an organic reform of the code of criminal procedure, aimed at giving up the old process of inquisitorial roots and implementing the Constitution and international charters on human rights. Grevi was involved in the drawing up of the 1978 preliminary draft, which as we know remained only a draft, and afterwards in the drawing up of the code currently in force.

His position has always been coherently devoted to the safeguard of civil liberties, thanks to his steady consciousness of fundamental principles, even in times when such a position sounded almost subversive. But he couldn't stand the opportunistic champions of defense rights, who have been multiplying in recent years with the purpose of granting impunity to the powerful of the moment. For this reason he has always been fighting, not only in the scholarly field, but also through the newspaper he contributed to, against legislative tampering with the code of criminal procedure, bound as it is to obstruct the investigation of crimes without safeguarding citizens' fundamental rights: most recently in the form of the reckless bill on wiretapping, which in the end stalled in Parliament. Not every opinion of his was necessarily widely shared, but even in the face of disagreement, one couldn't help but acknowledge his great intellectual honesty. So, although it was not easy to make him change his mind, he had no difficulty admitting a mistake. He never forced someone else's opinions, but neither did he tire of trying to persuade others of his own.

He had repeatedly shown his civic commitment, putting his juridical skill at the service of public institutions (perhaps, the way things are today, it is worth specifying that we are not talking about lucrative consultancy assignments, but about voluntary work for free, that paid at most a reimbursement of travel expenses, which moreover came late and incomplete). Others have already said and written, and yet it must be said again and repeated: he had merit deserving of the highest appointments, perhaps even the Constitutional Court. But evidently he was considered politically not very reliable, not only by the right wing, but also by the left,

accustomed as he was to think on his own—according to the noblest academic tradition—and not being very prone to compromise. Now everybody, from both the right and the left, is ready to acknowledge his qualities as a jurist and as a man.

Whoever asked him for an opinion, an interpretation, or simple advice, almost always got a useful answer. Not only because of his broad and ever-current knowledge, but also due to the attention he paid to practical implications of criminal procedural law. Although he never practiced as a lawyer—a deliberate choice to avoid the risk of bias in his faculty of judgment—he always was in touch with the operational reality and with everyday problems of justice without losing the methodological rigor and systematic order that characterized his university teaching: after all, combining theory and practice is the specific task of the law scholar, and especially of the procedural law scholar. His published work confirms this, including among others the editing of the *Commentario breve al codice di procedura penale* and related *Complemento giurisprudenziale*, as well as the co-direction of the authoritative review *Cassazione penale*.

It would take too long to list even just his most important publications. It is better to remember his indefatigable activity as organizer of collective volumes and series, of research projects and lectures. Nowadays it has become fashionable to defame the whole institution of the Italian university, which has been transformed unexpectedly, and in most cases unfairly, into scapegoat for all the ills of the nation: even more paradoxical when one bears in mind the ethical state of the sources of this criticism and how little culture is worth in our miserable country. In the present climate, Grevi could be defined as an academic "baron:" full professor at only 29, senior member of his Faculty, respected by his colleagues. And indeed he has created a school of high-level scholars who are successful in the university and in the legal profession: a school based on scrupulous research and scientific precision, achieved through continuous application, excluding any superficiality or approximation. But although he participated with conviction in the politics of academic life, he never abused his power, applying his moral intransigence first and foremost to himself, and always recognizing merit where he found it, even beyond his own pupils.

He was a fundamental reference point. We will miss him.

In Memory of Giovanni Tranchina

Antonio Scaglione

To start with, I would like to thank Professor Stefano Ruggeri and the Law School of the University of Messina both for dedicating this research project to the memory of the unforgettable Professor Giovanni Tranchina who died before his time on 15 January of this year, and for entrusting me with the task of commemorating him. My loving greetings are addressed to Mrs. Nia Tranchina and her family.

I also join in the memorial to Professor Vittorio Grevi.

It is not easy, especially on an emotional level, to recall my mentor, whom I had the honour to meet in the 1970s and with whom I daily shared 40 years of academic life.

Giovanni Tranchina was born in Messina on 24 June 1937; he officially entered the academic community with his appointment first as research assistant in Criminal Procedure at the University of Messina under the supervision of Professor Girolamo Bellavista, and then as assistant professor at the University of Palermo.

After winning an entrance examination in 1971, he became a tenured professor, and, at only 34 years of age, he was appointed Chair Professor of Criminology. He subsequently became a professor of Criminal Procedure. Under his supervision, entire generations of students were formed who later entered the judiciary, the legal profession, public administration and, of course, the university.

During his university career, Giovanni Tranchina combined his generous and passionate teaching roles in Palermo and Trapani with his institutional offices. With prestige, expertise, authority and balance, he served as Director of the Department of Criminal Procedure, President of the Law School, Co-ordinator of the Ph.D. Programme in Criminal Procedure, Dean of the Law School (twice), Vice-President of the University, and also Director of the Department of Criminal Law, Criminal Procedure and Criminology.

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"As a result of his exemplary personality, characterized by vast culture, sternness and commitment," and because of his "exceptional contribution" to the development of the study of Criminal Procedure, Professor Giovanni Tranchina was awarded the title of *emeritus* on December 1, 2010.

In his role as a scholar, it is quite a complex task to give even a general outline of his numerous publications in the fields of Criminal Procedure, General Trial Theory, and Criminology.

I will just recall some excellent research papers as *L'autorizzazione a procedere* (Giuffrè, Milano, 1967), *La potestà di impugnare nel processo penale* (Giuffrè, Milano, 1970), *Le premesse per uno studio della vittima nel processo penale* (Palermo, 1974), encyclopaedia entries, papers, sentence comments, and articles published in the most authoritative journals. He also made very important contributions to the new editions of *Lezioni di diritto processuale penale* written by his Mentor Girolamo Bellavista, as well as to the *Criminal Procedure Code* in the series "Le fonti del diritto." In addition, he co-authored the Criminal Procedure manual with Delfino Siracusano, Antonino Galati and Enzo Zappalà, the latest publication of which Professor Giovanni Tranchina personally edited in the very last days of his life.

In addition to his extraordinary career as an expert on law, Giovanni Tranchina was also a lively and refined journalist who contributed to the daily evolution of legal matters with severe criticism always prompted by the ideals of justice.

The following are the fundamental concepts and ideas that he strongly believed in and that he maintained throughout 50 years of Italian criminal legislation that alternated between safeguarding the society on one side and safeguarding a person's civil rights and liberties (*garantismo*) on the other:

- That the liberty of each person is bound to be reconciled with respect for the liberty of all the others;
- That certainty is "*the same as law; the question is not whether to be certain of the law, but that certainty is in the law, as, for the same reason, the law, a rule (or a system of rules) is certainty, with the purpose to give certainty, or, better, security*;"[1]
- That the criminal process, defined as *"the balance between the supremacy of the government and the subjection of the individual"* is not aimed at criminality suppression; on the contrary, it is meant as an *instrument of justice*. It constitutes the main instrument of protection for all of the principles and essential human rights which the Italian Constitution of 1948 recognizes and preserves[2];
- That judicial independence and impartiality are deeply rooted in the very essence of jurisprudence and in its values, i.e., "*the pursuit of the truth and the preservation of human rights*."[3]

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[1] Tranchina (2007), p. 22.

[2] Tranchina (1996), p. 15.

[3] Tranchina (2007), p. 24.

I will further commemorate him with his latest publications, those from the last few months of his life, when he was physically weak but with a clear mind.

On October 27, 2010, in the auditorium of the Law School, Professor Giovanni Tranchina closed his long university career with a superb *lectio magistralis* entitled "*Il diritto al servizio della speranza*" (Law in the service of hope) which he delivered in a loud powerful voice and which was followed in utter silence by a crowd of colleagues, students and admirers. The speech concluded with a long, enthusiastic applause which touched him enormously. This last lesson showed once again his deep and vast knowledge as well as his sensitive heart.

His *lectio* was inspired from a passage by Gabriel Garcia Márquez (one of his favourite writers together with Leonardo Sciascia), which he included in one of his "minor" papers published in 1996, entitled *Giustizia penale e rispetto della dignità dell'uomo*:

> With great respect two students stop to speak with me. 'What do you study, lads?'
> They proudly answer 'Derecho' ('Law').
> I can't conceal a sceptical face:
> 'Do you study Law in this continent?'
> 'You shouldn't be surprised – they say – these are lands where the people are still able to live on hope.'

Law in the service of hope.

On his latest interview published on Giornale di Sicilia on 27 October 2010, he stressed once again his idea of criminal process: "I have always been a defender of civil rights, that is, the criminal process is bound to protect the defendant, who claims respect as a human being."

However, because the process is a "vital instrument that guarantees every person's civil rights"—he claimed—it is also bound to ensure "life and liberty rights" to the victims who have seen their essential rights infringed upon.

These ideas are firmly asserted in one of his latest papers, dated April 24, 2010, and posthumously published in the journal *Cassazione penale* in February of this year. In this paper, he reasserted the need to protect the victim, as stated in Article 111 of the Italian Constitution on fair trial rules; he also complained that the legislator "continues to be extremely indifferent" towards victims, in spite of having long been urged by supranational law toward reform.[4]

Professor Tranchina's last writing, also published posthumously, is the preface to an essay about evidence, which was written by judges and lawyers.[5]

Quoting Vittorio Denti, he pointed out that "the trial . . . cannot be abstract theory;" it has to work in close contact with "what the actual society needs." In addition, he went on to say that evidence "is to be seen not from the point of view of the effect that can be reached through each piece of evidence", but—quoting Alessandro Giuliani, another distinguished scholar—as "a chapter in the politico-constitutional history of a certain era." This will lead to the creation of "blending

[4] Tranchina (2010), pp. 4057 ff.

[5] Tranchina (2011), pp. XV ff.

and clashing relationships of logical and ethical principles on one side, and institutions on the other."

In the same work, by broadly outlining the evolution of the law of evidence from the 1930 Inquisitorial Code to the 1988 Adversarial Code he underlined a nostalgia for the inquisitorial system following the historic decision 255/1992 of the Constitutional Court, which confirmed the superiority of the principle of "non-dispersion of pieces of evidence" over the right to cross-examination.

However, "the revenge of a fair trial"—as Professor Tranchina had it—was finally implemented by Article 111 of the Italian Constitution. That article declared the right to cross-examination a constitutional rule.

Giovanni Tranchina left a legacy of critical thoughts, memories, affection, and nostalgia, for anyone who had the chance to meet and listen to him or read his works. Future generations will also have the opportunity to shape their own knowledge based upon his fundamental writings, knowledge which can cross over the borders of earthly life.

Thank you very much for your attention.

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Like a Flame: Remembering Giovanni Tranchina

Giuseppe Di Chiara

1. When, in October 2010, the Law Faculty of Palermo University celebrated 50 years of the teaching of Giovanni Tranchina on the occasion of his farewell public lecture on "The right to the service of hope," colleagues and students presented him with a plaque: a simple, unadorned silver sheet which bore a message—engraved not only in the metal—conveying the faculty's "inexpressible gratitude to a Master of law and life." At the top of the plaque we had also decided to have engraved a phrase of Piero Calamandrei: a reflection on the "square boxes of procedural law," whose study "is sterile abstraction, unless it is also the study of the living man." It seemed that this reference to the deeper dimensions of the human outlined, with powerful evocative force, the heritage of a *humanitas* that in Giovanni Tranchina had become an icon of virtue.
2. I would now like to fondly recall two other episodes. One, and it is no coincidence, is from a student periodical which bears the date of February 2003: the small local newspaper called *L'Universitario*, whose subheading reads *Notiziario studentesco del Polo didattico di Trapani*. On the cover of this thin pamphlet, unpretentiously printed using office laser equipment, we find an unsigned editorial entitled *The gentle giant*. The text, superimposed on a beautiful photo of Giovanni Tranchina, begins with a wide-angle view:

   > There are men who with their modesty, wisdom and honesty have written the finest pages of human history. They embody the art of moderation, common sense and dialogue. They are men of peace, democracy, justice and freedom.

   In this article, Giovanni Tranchina, at the time Dean of the Palermo Law Faculty and Deputy Chancellor for the teaching facility at Trapani, was presented as a "dove," whose prestige and determination could combat the "hawks." "The hope," it concluded (and this was during the Iraq war, with its series of trials, doubts and recriminations),

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> "is that the principles and methods followed by the 'doves' of the world may prevail over the arrogance of ambition, money and power," everywhere: so that "the values of freedom, democracy and solidarity between peoples do not fly on the wings of bombers" but "are carried in the hearts of men like Giovanni Tranchina."

It is both a surprise and a consolation to rediscover these forgotten lines, many years later, after the flood.

3. I would like to take the other fragment from a page full of pain, which I know well, signed by Giovanni Tranchina. As yet unpublished, it will soon be available in a book scheduled to come out in a few months' time, a compilation of essays originating from a workshop a few years ago in memory of Silvana Giambruno. Giovanni Tranchina gave me permission to publish, as an appendix to the book, the words he spoke at the funeral of his student: a few short lines in which, providing a few details of Silvana, he drew an extraordinary portrait of someone who had devoted their life to teaching, "to *leaving their mark* on others [which is the literal sense of the word to teach, *insegnare*, in Italian], teaching with the word, but above all teaching with life and teaching for life." And he continued: "This is what the work of the university teacher is all about, and his vocation lies not in following the triumphant University, but professing the militant University." These words, reread today, after the flood and in the middle of the dusty desert, really sound like an inheritance of the spirit that resonates.
4. There is, in the great fresco of Giuliano Vassalli's famous essay on personal freedom in the light of the Italian Constitution,[1] a beautiful passage concerning the start of the work of the Constitutional Court, which in hindsight transcends its original context.

> "When those first decisions were handed down" – recounts Vassalli, with all the freshness of a page in his diary – "it seemed that there finally emerged, freed from the fog of fear and convoluted intrigues, the Law, as Calamandrei had always practised and taught it: simple, clear, intelligible to all, and, above all, honest; the expression not of opportunism or skills but of truth."

These are lines in which I have always seen the portrait of Giovanni Tranchina, his simplicity and, at the same time, his boundless culture, his human fibre and his dedication to the service of hope, as with crystalline clarity he entitled his great, monumental yet conversational final lesson: a sea chart of man, of the man Giovanni Tranchina and of the man who belongs to mankind.

5. *In obscura nocte sidera micant*: there thus re-emerge, from the surrounding night, the traces of light of this gentle, enlightened giant, following in Sciascia's footsteps, in this land of Sicily. Those who met him on his path today feel both the numb vacuum left by his absence and the reassuring warmth from the fire of his presence that remains in what he gave us. The wake of light left by his profound culture remains; his attention to small things, his undying ability to get excited; his indomitable faith in freedom, the shrewd wisdom of his smile, the priceless treasure of his gestures—a look, a hug—with which his heart managed,

[1] Vassalli (1958), p. 355 ff.

beyond the strictures of the spoken word, to express the inexpressible. And today, once again, it is time, following in his footsteps, for words to stop: they have brought us to mysterious thresholds, giving form to a loss and a presence, to a call—as Mario Luzi sang—"that now, in pain, you do not heed. / But it's there, and it holds strength and song / the perpetual music . . . will return. / Be still." There remains this faith in freedom, this hope that feeds on the future, this look straight ahead to tomorrow, the greatest and most lasting lesson of Giovanni Tranchina, and of Vittorio Grevi, such different characters, yet men who shared a common ideal in their dedication to humanity and to this country. Their ability to light our way lives in our hearts, and will continue to accompany us, in the days ahead, like a flame.

Reference

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Transnational Inquiries in Criminal Matters and Respect for Fair Trial Guarantees

Giulio Illuminati

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Abstract The paper emphasizes that fair-trial guarantees represent the core of the legal struggle against transnational crime, however important it is for the protection of citizens' rights. Indeed, all the international charters on human rights recognize the guarantee of due process of law. It is then argued that the issue of transnational cooperation in criminal matters involves three different levels of analysis: judicial cooperation among states, relationships with international criminal tribunals, and European integration in criminal justice. The definition of transnational crime is followed by an outline of the main cooperation instruments provided, with a specific reference to the Resolution adopted by the XVIII Congress of the International Penal Law Association in 2009. As regards international criminal tribunals, a major issue is the admissibility of evidence collected by a state agency in violation of fundamental rights that should be excluded. Finally, the paper deals with cross-border investigations within the European Union, exchange of evidence, and minimum standards concerning procedural rights of the accused.

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Abbreviations

AChHR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
AFSJ	Area of Freedom, Security and Justice
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EUFRCh	Charter of Fundamental Rights of the European Union
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICCt	Italian Constitutional Court
ICTY	International Criminal Tribunal for the Former Yugoslavia
TEU	Treaty on the European Union
UDHR	Universal Declaration of Human Rights
USSC	The Supreme Court of the United States

1 Human Rights and the Fight Against Transnational Organized Crime

In his introduction to the United Nations Convention against Transnational Organized Crime (Palermo, 2000), UN Secretary-General Kofi Annan emphasized

> the political will to answer a global challenge with a global response. If crime crosses borders, so must law enforcement. If the rule of law is undermined not only in one country, but in many, then those who defend it cannot limit themselves to purely national means. If the enemies of progress and human rights seek to exploit the openness and opportunities of globalization for their purposes, then we must exploit those very same factors to defend human rights and defeat the forces of crime, corruption and trafficking in human beings.[1]

He continued, quoting the Millennium Declaration adopted by the Heads of State meeting at the United Nations in September 2000:

> the Declaration states that 'men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice;'[2]

and therefore

> with enhanced international cooperation, we can have a real impact on the ability of international criminals to operate successfully and can help citizens everywhere in their often bitter struggle for safety and dignity in their homes and communities.[3]

[1] Annan (2004), p. iii.

[2] *Ibid.*, p. iii.

[3] *Ibid.*, p. iv.

What right could be more fundamental than the right to life and security? Yet this is only one side of the commitment to the protection of human rights, as we all know very well. No less important is compliance with the rules in enforcing criminal law. As Raimo Lahti has written, "the penal system must be both rational concerning its goal (utility) and rational concerning its basic values (justice, humanity)."[4] If we apply this reasoning to criminal proceedings, we understand that fair-trial guarantees still represent the core of the legal struggle against transnational crime.

When dealing with cross-border investigations and international cooperation, what is usually emphasized is the goal of realizing an efficient system of law enforcement. Even the action in the so-called AFSJ within the European Union has been so far committed almost entirely to the improvement of security, if one takes into consideration the European agencies that have been established and the content of the Framework Decisions that have actually been issued. Indeed, it seems very hard to reach unanimity or even any political agreement on the formal recognition of a common standard of procedural safeguards throughout the Union.

As legal scholars, we must not forget that the protection of individuals against state authority's use of its coercive power in criminal justice is just as important at the international level. It is no accident that the international charters on human rights, long before the actual conventions on international cooperation in criminal matters, all defined the right of the accused to a fair trial in very similar terms. Thus the UDHR, Article 10 (1948); the ECHR, Article 6 (1950); the ICCPR, Article 14 (1966); as well as the ACHR (1969) and the AChHR (1981). And it must be remembered as well that Article 6(1) TEU provides for the recognition of the rights, freedoms and principles set out in the EU FRCh (2000), whose title VI (Articles 47–50) is devoted to procedural justice and to defendants' rights. In addition, the same Article 6 of the Treaty refers to the ECHR, stating that the Union will accede to the ECHR (paragraph 3) and that fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the member states, will constitute general principles of the Union's law (paragraph 3).

Through the charters of rights and, in particular, as a result of the decisions issued by the relevant international courts, a pattern emerges of slow but constant penetration of common minimum standards for the safeguards of individuals' rights in the national systems of criminal procedure. This leads directly to an increasing cultural consciousness of the fundamental role human rights play in a modern democracy.

Even at international level the usual tensions between the fight against crime and the guarantee of due process of law replicate the same way they do in national legislation and practice.

[4] Lahti (2010), p. 25.

2 Three Levels of Debate

From a theoretical point of view, it is of great interest to note the progressive advent of a new perspective, which has been defined as 'polycentric.'[5] The internationalization of criminal justice tends to transform traditional legal systems in many diverse ways.

The first is in the relevant sources of law. Today, there is a multiplicity of sources of law, and the sources are no longer hierarchically ordered as they were under the various domestic legal systems. They must be coordinated and interpreted systematically.

For the same reason, one single case may potentially fall under different jurisdictions, so that it becomes necessary to set out objective and recognizable criteria for identifying the competent court or authority and avoiding duplications. This implies that as long as a variety of jurisdictions is involved, the same situation assumes different legal values: the same question may find different answers. And the answer often depends on the methodology applied, in particular the rules of procedure and evidence peculiar to a given justice system.

The polycentric approach requires an ever-increasing interaction among legal systems, both with respect to investigation methods and to the forms of safeguards of fundamental rights. This can lead to a certain level of harmonization—for which at least the Europeans have been striving for years—starting from a common recognition of general principles at the constitutional level. Another inevitable consequence is the need for a dialogue among the courts, especially among supreme or constitutional courts of each state and the international human-rights courts. An example could be, in Italy, the well known decisions of the Constitutional court on the obligation on the national judge to interpret national law, as far as possible, in conformity with the rules established by the ECHR, which in turn is subject to binding interpretation only by the ECtHR.[6]

More generally, internationalization requires that specific attention be dedicated, even in common practice, to comparative and foreign law. The more international cooperation that is needed for transnational inquiries, the more juridical tools will have to be refined, requiring an improvement in mutual knowledge of legal systems and adaptation of the modes of operation.

After these preliminary remarks, which must be kept short even though they go to the very roots of the question, let us turn our attention to the programme of today's conference. Here we can speak of at least three levels of discussion: (a) judicial cooperation among states; (b) relationships with the ICC and other

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[5] Burchard (2010), p. 51.

[6] ICCt, Decisions 348/2008 and 349/2008. See also ICCt, Decision 80/2011. See however Caianiello (2011), p. 686, on the direct application by the national judge, of the ECHR and the EU FRCh as European Union law, after the entering into force of the Lisbon Treaty, which incorporates both sources.