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The Limits of District Police Co-operation in Western Europe

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Abstract

The author analyzes the history and status of co-operation among the police forces of Western Europe, noting that in most instances the co-operation is informal and has been built up mainly by the police themselves. These informal relationships have no proper juridical status, with the result that the execution of agreements can cause problems in both principle and practice. Causes and possible solutions are examined.

One of the most neglected areas in the study of police apparatus is research into the international relations in the police field. Nevertheless, this is not an unimportant matter at all. Think, for example, of the introduction of Western European models of police organization into the former and present colonies of the West, and of the continuous sale of police know-how and of police equipment to all kinds of regimes in the Third and the Fourth World.¹

The fact that these relations have been studied so little has, to a certain extent, to do with the evolution of the research into police apparatus. This research has not been carried out for a long time; yet international comparative research, which is much needed for a sound study of international relations, is practically out of the question. But in addition to this, the study of international police relations is certainly a very difficult matter. The most apparent reason for this is because those relations are seldom if ever regulated by law and are as good as left unnoticed in official documents. The much more important underlying problem is, however, that those relations—through the powers and the means the police apparatus has at its disposal—are directly concerned with the hard core of the modern state, namely its sovereign rights (external) and its monopoly of force (internal). Consequently they have always been a very delicate and thus

momentous subject in the foreign and domestic politics of states. This problem is never as well reflected in international police relations as it is in the development of the direct co-operation of the police services of different states, in the present case in Western Europe.

Between Police Dream and Political Action: EUROPOL and TREVI

When studying the evolution of international police co-operation after World War II, it is immediately striking that for many years high police officials have been pressing for substantial improvement, and even a fundamental re-organization of the existing avenues of police co-operation in Western Europe in fighting all kinds of international crime more efficiently, but also that a fundamental breakthrough is only attained under pressure of the violence of terrorists and extreme groups in the states concerned.

Since World War II, Interpol has developed into a world-wide organization, to which at this moment police services from almost 130 countries are affiliated. This often proudly presented co-operation is, however, largely illusory; for instance, for the most part, only European police services have the more advanced means of communication of Interpol at their disposal and 70% of all Interpol activities take place in and between (Western) Europe and North America.²

This means, among other things, that Interpol cannot be relied upon for efficient operational international co-operation outside these parts of the world. This is also shown by the fact that a number of Western countries have decided to station police officers in embassies abroad (e.g., Bangkok, Thailand) for special matters (such as illicit hard drugs traffic). But Interpol is also unsatisfactory within Western Europe.

In the first place it should be known that the

National Central Bureau of Interpol in the United States has a staff numbering only about five people and that for this reason a large part of the communication of important police messages between Western Europe and North America (and other parts of the world) takes place via the FBI and DEA (Drug Enforcement Administration) and not via Interpol. In addition, even this little Interpol bureau narrowly escaped being discontinued. The inquiry of diverse committees of the Congress of the United States in 1975-1977—mainly under the influence of the zeal of the Church of Scientology—into the juridical structure, the official organization, and the actual working of Interpol, revealed as a matter of fact such a large number of fundamental problems that a withdrawal of the American membership seemed to be called for.³ The point here is that such problems are simply inherent in the Interpol formula and have also led to big problems in the European context and will certainly continue to lead to problems here in the future. These include the lack of international law status and of supranational or intergovernmental control, the insufficient definition of the term *crime*, and the participation of police services from police states.

In the second place it is indeed a fact that in Western Europe itself Interpol still constitutes a very important transmission organ of police information about people, things and deeds, but it is equally well established that this organization does not work effectively here, either, and is unable to mount a well-directed, efficient fight against more or less organized international crime. It is fit neither for a fast, clear exchange of all kinds of criminal information, nor for the accurate planning and organization of actions.⁴

These and other operational problems are not addressed within the framework of reciprocal legal assistance in criminal cases. The European treaties of December 13, 1957 and April 20, 1959 in this area have been of some benefit to international police co-operation, but these treaties and the diverse bilateral and multilateral extradition and legal assistance treaties have, however, left this more urgent issue of police co-operation untouched to a large extent. In her solid study of European legal help treaties in criminal causes, F. Thomas writes as a matter of fact that "the experts have shown a full sense of the use of police co-operation but nevertheless they have left it consciously outside the field of applica-

tion of the European treaty: the efficient working of the O.I.P.G. (Interpol) on the one hand, and the limited practical meaning of the prosecutorial competency for geographical distant states on the other hand, have been decisive."⁵ A few other reasons need to be added to these.

Bearing this history in mind, it is not surprising that in practice a tangle of all sorts of official, semi-official, and other types of police co-operation has begun to develop. These cannot be dissociated from the mutual advances of police services in Western Europe in general: on the level of good fellowship, on trade union level, on administrative level, in the field of training, in the field of internal organization, in the field of equipment, and so forth. In connection with these forms of co-operation, one should also think of the general and special consultation bodies such as the Cross Channel Intelligence Conference and the Ständige Arbeitsgruppe Rauschgift (Standing Committee on Narcotic Drugs), of agreements about police alarms, of arrangements concerning operating in neighboring countries, of the exchange of information and documents, and of the adaptation to each other's means of communication.

A thing that has to be particularly stressed in this connection is that these forms of co-operation have been built up slowly and with much difficulty, in practice mainly by police officers themselves, in order to be able to cope to some extent with the large problems created by the internationalization of crime. Furthermore, it is of great importance to note that many of these forms of co-operation have no proper juridical status and that there are both in principle and in practice many other problems in the execution of the agreements: How far can the exchange of personal data go? To what extent can police officers of one country act in another? Who exerts the administrative and juridical control? In addition to the growth of these informal avenues of co-operation, more or less fundamental suggestions have been offered from all parts of Europe for many years by police officials hoping to model police co-operation in Western Europe generally on new lines or, at any rate, to work out a new framework, because the laboriously built up forms of co-operation mentioned above are unsatisfactory in a number of respects. But it should be stressed that on a political (both national and international) level, little or no interest is to be met. One of the few exceptions is the "Pompidou working group" on the level of

the fight against drugs.⁶ This is excellently illustrated by the fact that in the *Declaration of Police* which the Parliamentary Assembly of the Council of Europe approved on May 8, 1979, no mention of international police relations is made at all, let alone of international police co-operation. In fairness it should be immediately added that on the police side there has always been some hesitation to raise officially the question of co-operation, for fear that possible formal regulations would restrict rather than enlarge the already limited margin.⁷

EUROPOL

The most far-reaching proposal circulating today concerns the creation of a Western European police body: EUROPOL. This proposal is notably backed by German police officials. According to one version, EUROPOL would have to consist of a supranational prosecuting authority which can have at least its own criminal investigation department, an identification service, and a juridical service. According to another version, EUROPOL does not need to be "more" than an internationally constituted criminal investigation body. In both cases the members of EUROPOL would be authorized to deal with well defined "federal delicts" in the countries of the European Economic Community (EEC): illicit traffic in drugs, firearms, vehicles, etc.; forgery of coins; crimes committed by terrorists; offences against the environment; slave-trade; economic delicts and offences against the EEC legislation. Police officers who do not consider a EUROPOL desirable for practical reasons or who simply do not see it politically realizable usually "restrain" themselves to the investigation of "EEC delicts", the improvement of extradition and legal help treaties, the incidental formation of international criminal investigation teams, the amelioration of international connections, and the organization of permanent official consultative and educational structures. As a variation on this theme, consideration is not infrequently given to a so-called "regionalization" of Interpol for North America and Western Europe by the introduction of a separate automatized data bank for this field and the building-up of a separate staff for the support of police co-operation in this part of the world. In Interpol circles this thought has, however, always been rejected, for fear that its execution would bring about

the disintegration of Interpol as it now exists.⁸

Against the background of this laborious evolution of operational police co-operation in Western Europe, the decision of the European Council in Rome in December 1975—under pressure from England and not at German instance as if often thought—that the Ministers for Home Affairs would meet regularly in the future to discuss specific problems concerning the maintenance of the public order is, of course, very remarkable. The importance of this decision grew considerably by the resolution these ministers took in Luxembourg on June 29, 1976, namely to create under the name of TREVI (after the famous fountain in Rome) a number of official working groups that—under the supervision of European Council—were to promote co-operation in the fight against terrorism and the exchange of data about the organization, equipment, and training of police services. The groups were also to achieve a close co-operation in the field of general safety, notably with regard to air traffic, nuclear power, and national catastrophes. As a result of these decisions, not only was co-operation of police services in Western Europe taken up on scale, on a level, in a domain, and in a way that largely surpasses everything that has been envisioned and begged for in the field of police co-operation in Western Europe for the last hundred years, but the political co-operation of EEC countries was also extended for the first time to the domain of domestic politics, since the TREVI consultation structure is the true counterpart of the co-ordination of structures in the field of foreign politics.⁹

Undoubtedly this initiative was taken under pressure from the considerable and serious violence which terrorists and extremist groups committed in diverse areas and capital cities of Western Europe, notably in 1975–1976. So the international police co-operation was only tightened and strengthened at a moment when the governments in question felt that dangerous attempts were being made on the safety of their states and more particularly on the democratic organization of Western Europe. Surely, it is not to be doubted that the Western European police services and especially the intelligence services had already co-operated against terrorism and political violence in general, but now this co-operation was made official, extended, and organized in quite a new way.

Closely connected with the foregoing is the

fact that TREVI was not engrafted on or linked up with the already existing avenues of international police co-operation. This co-operation, which concerns mainly the investigation of "ordinary" crimes, is of another order than this new coming together in the face of people, groups, and activities that are dangerous to the state. As a matter of fact, this distinction between TREVI and all other forms of police co-operation very clearly finds expression in the fact that in this case the ministers involved are the Ministers for Home Affairs and not the Ministers of Justice. The fact that TREVI is also concerned with the maintenance of public order and safety is not in contradiction with this at all. Indeed, the few published documents clearly show that where questions of this type are concerned, they involve extremely difficult problems of foreign or domestic politics. On the other hand it is a remarkable fact that the involved ministers also decided upon a systematic comparison of the organization, training, and equipment of their police services. This form of international police co-operation is not new, however (cf. the anti-anarchist conference of 1898). The discussion was probably opened by officials who are in one way or another concerned with the new wave of frontier-crossing professionalization of crime that the police in Western Europe have known these last 15 years.

Furthermore it was to be expected that, apart from the fact that all political co-operation of EEC countries has a confidential character, the activities of TREVI would be secret. The European Parliament finds some difficulty in this, just as in the case of the foreign politics, but provisionally accepts this secret character as is shown by its resolution of September 27, 1979 concerning international terrorism, in which all governments are requested "à intensifier la coopération entre les services de sécurité et leurs forces de police pour que soient traduits en justice le plus rapidement possible les responsables d'actes de violence et de mort" (to intensify the cooperation between security services and their police forces so that those responsible for acts of violence and for killing can be brought to justice as quickly as possible).¹⁰

Finally it is also typical that notably in liberal and socialist circles quite a lot of criticisms were and still are being made about TREVI. In general these criticisms mainly concern the closed character of this co-operation and the

risk that such a co-operation becomes itself a danger for the democratic constitutional state. More radical opponents saw and see in TREVI the outlines of a sort of Western European police state, which is in my opinion a completely unrealistic judgement. But it must be said that the European Council and the involved ministers have not taken much trouble at all to meet justified criticism and to quiet suspicions. The confidential character of TREVI is to certain extent quite defensible, but if this form of political co-operation is to last in the long term, it will have to be accepted in the countries involved. It is to be seriously doubted if this can be achieved by screening TREVI off completely from outsiders. In many ways TREVI more or less fits in to the historical picture of international police co-operation that was sketched above. But TREVI also shows two very new elements, namely that the co-operation concerned is organized on permanent lines and that the corresponding consultation structure is one of the wheels on the administrative track over which the political co-operation of EEC countries is running. The two things are really new. For the first time international police co-operation in Western Europe is a permanent part of general international political integration. Western Europe is a permanent part of general international political structures. So TREVI mirrors in its own way the political integration Western Europe has experienced these last decades in spite of everything.

Towards a New Organization of General Police Co-operation in Western Europe

It seems paradoxical: international police co-operation is very much engaging the attention of the hard core in modern states, but nevertheless it is not minutely regulated in international treaties. But it isn't. For in this way the states concerned do not have to renounce their sovereign rights and their control of power; they can easily adapt themselves to changes in foreign and domestic politics in this delicate field, and yet they are able to some extent to cope with urgent problems of public and state security. In this way the limits of international police co-operation are drawn: in the maintenance of public safety in principle only elementary co-operation is possible; however, if state security is prejudiced, the co-operation in this field is intensified. At the same

time this implies that the limits of police co-operation can only be extended as far as the political integration between states is progressing.

In the view of insiders like Ph. de Schoutheete, the foregoing means that in the near future the foundation of something like Europol can decidedly not be counted on; this is true even for the acknowledgement of "EEC delicts" and the like. The confederal course of this co-operation simply rules out such developments.¹² In connection with the future of TREVI, first of all it seems that a large part of the planned co-operation does not appear to have been going properly at all. Only in the field of the fight against terrorism does TREVI still appear to mean something. If this failure is consistent with all that has been said above about international police co-operation, it curiously enough runs parallel to the failure of the so-called 'espace judiciaire' (judicial space) that has been described by Françoise Thomas.¹³

However, I do not share her opinion on this failure because she does not make clear distinction between the evolution of the EEC and the evolution of the political co-operation in Western Europe. It is not a question of alibis for the EEC but of a new form of co-operation in Western Europe. Its stagnation is consequently the result of the difficulties this co-operation has been generally experiencing these last years. But this stagnation also means that on short term it certainly will not be possible to break open TREVI, as it were, and to extend it to a general structure of consultation concerning all forms of police co-operation in Western Europe, although there is a need for such structure. It is desirable that this co-operation be removed from the shadows and that juridical frameworks be created within which an efficient and controllable co-operation can be organized. However, it cannot even be predicted safely that the existing TREVI consultation will be more open to publicity than has been the case so far.

Nevertheless, international police co-operation is going to continue to increase and the need for its international regulation is going to grow. Reality compels us to say, however, that in the near future it will not be possible to devise anything like a treaty concerning police co-operation between EEC countries. Provisionally, better organization of the co-operation can presumably only be realized by way of bilateral treaties, and then only, unfortunately

so it seems, when the violence of terrorists and other extreme groups makes that improvement necessary. The circumstances under which the governments of West Germany and France formed an agreement on May 11, 1978 concerning the police co-operation in the German-French border area clearly show this.¹⁴

Possibly such a development could include a fundamental revision of the organization and working of Interpol in Western Europe and North America.¹⁵ The German Federal Minister for Home Affairs strongly insisted upon this at the Interpol headquarters at Saint-Cloud in June 1981. On that occasion he also stated that the idea has also been considered by Ministers for Home Affairs of other Western European states, and that he would bring up the subject for discussion in the United States.¹⁶ It is to be hoped that, if it comes to that, the opportunity will be taken to have a new look at the organization and the function of Interpol.

Notes

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