

The internationalization of criminal investigation in Western Europe

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I. Introduction

Dealing with the investigation into crimes and criminals that cross the frontiers separating the European states, it is often and justly observed that there is no such thing as *international investigation* in this part of the world. Indeed, we do not dispose of the kind of investigating machinery which is equipped with executive power and which, under the authority of international prosecuting bodies, lends assistance in the enforcement international criminal law (1). But this is a somewhat juridical observation, in spite of which we must bear in mind that the internationalization of criminal investigation in Western Europe is actually in progress. It is this actual internationalization, ranging from the equalization of national organizing patterns to the co-operation within multilateral organizations, which will be the main issue of this essay.

Evidently we cannot and need not explain the complete history of the internationalization of criminal investigation in Western Europe. It is important however, to briefly outline its course up until the mid-sixties, for we do have to form a notion of this period to be able to point out the radical change it has gone through ever since the seventies. But of course our main interest will be in the change itself.

In our explanation of this turn-about, the emphasis will be on the new models of internationalization which have been developed over the past few years. It is obvious however, that we can disregard neither the problems which preceded this transformation, nor the ones actually attendant on it and evoked by it. No more can we ultimately - with an eye to the future - leave out of account the reports on organized crime (and counter-action by the police), which recently have been submitted to the Council of Europe and the European Parliament.

Finally, we will take a glance into the future, not so much to contemplate

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what will presumably happen after the internationalization aimed at here will have taken place, but to indicate what action still remains to be undertaken in this field.

II. An image of the past

Anyone who is somewhat familiar with the history of the police in Europe, knows that the police services of the various states have been co-operating in many different ways for a long time. Generally speaking, this co-operation showed in two fields. As for the investigation into 'normal' communal offences, it used to be restricted to informational co-operation, i.e. the exchange of particulars, either through personal contacts between the borderland police services (the system of 'correspondence'), or by sending investigation bulletins and sometimes investigation registers to the authorities of the surrounding countries (2).

As for the fight against more or less radical political opponents though, sometimes this co-operation went much further. Here it took the shape of operational co-operation on foreign territory, and therefore included not only the exchange of intelligence but also the shadowing of suspects, the running of informers, etc. A model of this extensive co-operation, be it on a highly personal basis, is the life of the notorious Berlin police commissioner W. Stieber (1818-1882) who hunted down the communists - and especially Karl Marx - throughout Europe for years from 1848 on (3). A more structural example is the cooperation which, by the end of the nineteenth century, was started by the Okranha in Paris with the police services in Western Europe, with the purpose of keeping the Russian revolutionaries under control (4). It is self-evident that this kind of co-operation was kept a secret as much as possible, particularly because these practices were disapproved of both in socialist and in progressive-liberal circles.

Yet, at this point in time, i.e. towards the end of the past century, investigation was internationalizing increasingly. In 1898 namely, an official - though secret - conference was set up in Rome, initiated by the Italian government, to put an end to assaults committed by the adherents of certain anarchist theories, through the improvement of police co-operation. This conference was attended by the representatives (ambassadors, departmental officers, police chiefs) of no less than twenty-one states (5). The importance of this conference for the internationalization of crime investigation naturally and above all lies in the fact that for the very first time in European history police cooperation in the sphere of investigation into (political) crimes and criminals had been recognized to be a problem, a major problem, by people at the highest political levels.

Apart from this significant yet rather casual meaning, the conference has had a more durable impact on the internationalization of investigation. On

the one hand because an agreement was made to raise central units that would have to fight anarchism in all countries involved, and to stimulate a direct exchange of intelligence between these units on a monthly basis; for not only did the informational cooperation get systematized and intensified as a consequence of this conference, but also and equally important, the investigation became organizationally internationalized to some degree, through a modest standardization of the common police in the countries involved. On the other hand the conference produced agreement upon the introduction of a new identification system, i.e. the Bertillonage, causing internal organization, equipment and working methods of the European police to get internationalized to some extent. Especially the major urban police forces in Germany and Austria have, for that matter, around 1900 played a prominent part in this, let us say instrumental internationalization of investigation, not only in Europe but in the United States of America as well (6).

After having mentioned this pioneering conference, we must furthermore remark that at the beginning of this century in police circles and also at some international meetings there often were discussions about the question whether the time hadn't come to finally found an International Police Organization to facilitate criminal investigation in Europe and throughout the world. Naturally this question was also raised at the international congress on investigation in Monaco in 1914. The answer then was positive (7).

Nowadays we tend to argue that World War I has prevented this plan from being executed. This may have been the case, but it certainly is not the last thing we can say about the efforts to found an international intelligence network before the outbreak of this war. For no less a person than R.A. Reiss, the then world-famous director of the forensic laboratory in Lausanne, wrote in his book *Contribution à la reorganisation de la police*, which was published in 1914, that 'en causant avec fonctionnaires de police de divers pays', he had become convinced that 'la plupart des états sont d'accord sur la nécessité de la création de cet institut. Mais ils craignent une chose: la police politique. Ils ont peur que cette institution ne serve à faire aussi de la police politique' (8). A fear which, bearing in mind the actions of the Okranha, of course was not unfounded.

Nine years later, however, at a police congress held in Vienna from September 3rd until September 7th 1923, the Internationale Kriminal-polizeiliche Kommission (IKPK) was set up. The aim of this commission was twofold. On the one hand it would have to extend mutual aid between the police services of the affiliated states, on the other hand it would have to stimulate the development of all facilities which could contribute to a successful fight against 'das gemeine Verbrechen' (9). And the commission lost no time in realizing these objectives. As early as 1924 it proceeded to set up a general intelligence service, consisting of a central office in

Vienna and national offices in the affiliated states. Furthermore it exerted itself to fulfil the task it had taken upon itself in many other ways, for instance by publishing a magazine, books and leaflets (10).

It needs no explanation that the setting up of this commission should be considered a highlight of the internationalization of investigation. For whereas this internationalization had until then, although in mutual consultation, taken place mainly within or from within the scope of national agreements, now the foundations were laid of an independent and permanent international organization. Nevertheless, we can safely presume that this break-through could be effected because at that point in time different spheres had been internationalized already. All the same we can presume that this supreme kind of internationalization has strongly stimulated the informational and instrumental internationalization.

Furthermore, especially in view of the present developments, it is important to examine the intentions with which the IKPK was founded in 1923. In the literature of the history of Interpol this important question is disposed of with the argument that it was all a matter of improving the fight against (international) crime (11). On closer investigation however, one definitely gets the impression that the authorities of the states in question thought of the IKPK mainly as a means to help maintain order and safety in a (Western) European continent which after World War I had become turbulent and politically unstable. It is not surprising that a number of founders of the IKPK considered it to be more than just an organization that would fight the 'gemeines Verbrechen' throughout Europe (12). Following in the footsteps of the participants in the anti-anarchist conference of 1898, they mainly looked upon it as a weapon to fight political rioters with.

We won't dwell on the fact that the IKPK stopped existing during World War II. Remarkable, however, is the way the SS-police got hold of the commission and its offices. This shows in any case how much the SS-leaders, Himmler and Heydrich, considered the IKPK to be a means of power (13). It is also remarkable that they, hungry for power as they were, in their attempt to seize control over the IKPK, set up an extremely secret conference twice, in the way this had been done in 1898, the first one in 1938 and the second in 1939. The purpose of these conferences, which were attended by fourteen non-communist European states, was to make effective arrangements for the *Bekämpfung des Bolchewismus*. Obviously, at that moment the IKPK was not (yet) the appropriate body to accomplish a closer co-operation with this specific aim (14).

In spite of these and other complications the IKPK was revived in 1946 without too many problems. According to the man who brought about its resurrection, the Belgian police chief F. Louwage, this was prompted by the urgent need to solve the very problems which in 1923 had led to the foundation of the commission. He failed to reveal, however, precisely which problems these were.

Notwithstanding all that, the IKPK has flourished in many respects since. First of all through modifying its statutes by the standards of international law, it actually obtained the status of an international organization with limited incorporation, a status through which 'IKPO-Interpol', as it was then called, gained access to the United Nations. Secondly, an increasing number of states joined Interpol in less than no time. In the seventies it had more than one hundred members. But these developments, which above all things added to Interpol's prestige, were (it won't hurt to put this clear here and now) not accompanied by a reorganization of this institution to give a new lease of life to the internationalization of investigation in Western Europe. First and foremost, Interpol was and remained an international police intelligence service - no less, but no more either (15).

At the same time, however, after World War II, treaties were made concerning the international judicial aid in criminal cases, like for instance the *European Extradition Treaty* (1957) and the *European Treaty on International Judicial Aid in Criminal Cases* (1959). In the case of Belgium, Holland and Luxembourg we can also mention the *Benelux Treaty concerning Extradition and Judicial Aid in Criminal Cases*, dating from 1962. These treaties, especially the latter two, added a new form to the internationalization of investigation in Western Europe, by means of the so-called 'small judicial aid' and by means of rogatory commissions.

To differentiate it from forms earlier mentioned, we will call this new form of internationalization *judicial* (16). This is a useful differentiation, for only after having made it do we realize that this new, rather formal, procedural form of internationalizing investigation was an adequate completion of the more informal and material forms of this process, especially the informational and operational forms of internationalization. The treaty last mentioned, the Benelux Treaty, is the only one in which some elbow-room was offered for further operational internationalization. This treaty namely, has made it possible for policemen to pursue suspects up to some six miles across the frontier of the neighbouring state. They could even, under certain conditions, arrest them there.

Now, surveying the course of the internationalization of investigation up until the sixties, we can first of all conclude that this internationalization has indeed, in the course of a century, taken a composition of forms. Aside from the informational, operational and judicial internationalization (in short: the direct and executive forms of internationalization) we have also come across organizational and instrumental internationalization (in short: the indirect and supporting forms). This kind of internationalization of investigation, however, did not result in international investigation as we have defined it at the beginning of our explanation (17). The re-establishment of Interpol, although an important event, can be considered to have only been the first step in that direction.

Our second conclusion has to be, that the internationalization of

investigation has made progress mainly whenever the security and along with it the existence of a state, i.e. its social order was or seemed to be at stake. Obviously the essence of the modern state - its sovereignty and, following naturally from this, its monopoly of violence - normally doesn't allow such internationalization. And if, for urgent reasons of security, it is found necessary to internationalize investigation, it will, as has been demonstrated before, be organized in secret or in any case preferably through informal channels at the level of the police units involved.

III. The developments over the past two decades

Compared with the, in general rather slow, evolution which the internationalization of investigation has undergone until the sixties, its development ever since can be safely called turbulent. Therefore it isn't easy to give a short and clearly structured, yet balanced explanation of it. The thread we will follow, however, is that the leading part Interpol eventually could have played has been taken over by TREVI, the consultational body of the European Community dealing with matters of Interior Security.

After having described the essential transformation of the process of internationalization itself we shall address the problems involved with it.

Last of all, as has been already indicated in the introduction, we will discuss recent reports of the Council of Europe and the European Parliament on the future organization of the police fight against organized crime in Europe.

III.1. From Interpol to TREVI

Undoubtedly Interpol has, also in the seventies, rendered great services to the police of Western Europe and North-America in the way of exchanging information on persons, goods and affairs (19). But this doesn't alter the fact that in these years the functioning of Interpol was sharply criticized, in European and especially in German, English and Dutch police circles. According to the critics, Interpol was not only not equipped for the rapid and adequate coordination of ambitious investigating operations, - among other reasons because of the pressure of ever-increasing internationally organized crime - but it also seriously failed to make a tactic and strategic analysis of the development of the crimes in question as well. The congress of the Bund Deutscher Kriminalbeamter, which took place in Wiesbaden in 1974, was the first occasion on which this criticism was expressed in plain terms. But influential authors have since repeated it more than once, although they proposed to solve the problems in different ways.

Some of them, and among them certainly not the least, like for instance H.

Herold, who was the head of the Bundeskriminalamt at that time, felt that the organization and the functioning of Interpol would have to be altered, on the one hand through a large-scale modernization of the informational and documentary function of the institute, on the other hand by forming teams of experts who would have to lend assistance in major investigation operations in the various countries. Aside from that, Herold argued, there certainly was a task for the European Community. It would have to facilitate mutual judicial aid, which he considered to be too much judicial and insufficiently police-oriented. That way the internationalization, i.e. the standardization of the widely diverging police systems, would be stimulated, and criminal law would be harmonized in the member states. According to Herold the European Community would, at the same time, have to see to it that the police judicial aid in the form of 'small frontier traffic' would be generally practised in the borderland between the affiliated states (20).

Others, on the contrary, left Interpol out of consideration altogether. True, they did not plead for simply doing away with this 'Parisian letter-box', but they defended the 'Europol'-idea within the European Community. In the philosophy of R. Grunert, the head of the Bund Deutscher Kriminalbeamter, this meant that the European Community wouldn't just have to harmonize criminal law, etcetera, but that it would have to create a supranational criminal investigation department, which would play an important part in the coordination of international investigation operations, and would, in the case of certain EC-crimes, be able to launch investigation operations in its own right. Subsequently, this authority would also be responsible for tasks in the sphere of technical criminal investigation and the training of detectives (21).

Moreover, in those days there were people like J.A. Blaauw, who would rather adopt a middle course (22). He pleaded for example for the formation of a European Central Office within Interpol, for regular international and regional consultation between the chiefs of criminal investigation departments in Europe, for setting up international detective teams (whenever appropriate), for the development of general facilities for international criminal investigation in Europe - i.e. separate radio communication systems for the benefit of observation teams- and for joint investigation exercises in a European context. On top of this, he was of course in favour of simplifying mutual judicial aid and harmonizing criminal legislation within the European Community.

We can come to no conclusion other than that the reaction of Interpol staff, which at that time still consisted of French policemen mainly, to this critical discussion was one of great rigidity. In fact these men signified that they preferred leaving things the way they were as much as possible. They rejected the regionalization of Interpol through the foundation of, among other things, an organization like Europol, on account of the argument that a number of criminal organizations operated outside Europe as well. They

refused to accentuate the executive aspects of task performance, because this was said to be in conflict with the sovereignty of the affiliated states. And they turned down the idea of setting up international and regional conferences, because, they argued, at such conferences the contribution of the central services could hardly be done without, etcetera, etcetera (23).

Nevertheless the staff yielded one point, namely in the matter of drug fighting. This happened simultaneously (and probably not coincidentally) with the initiative taken in 1971 by the French President Pompidou to fight the traffic in and the consumption of illegal narcotic drugs in Western Europe in a coordinated manner. Interpol's concession originally (and, by the way, after having talked back and forth for years) consisted of the appointment of a few liaison officers at Interpol's general office, each of whom had to see to the coordination of the investigation in question in a certain part of Western Europe. Afterwards, in 1978, a small unit was added to this one, which worked in the general office as well, making tactic and strategic analyses of the traffic in narcotics in Western Europe (24).

Needless to say that this minor adaptation did not satisfy the critics of the seventies. This is why policemen in Germany and other European countries remained attracted by the thought of an 'Europol' in an European context, although authoritative police chiefs like H. Herold stuck to their original opinions (25). But of course the criticism of those who focused on Interpol only, didn't die down either. One of the leading criminal investigation chiefs of the Metropolitan Police, J.M.M. Huins, managed while lecturing at the Police Staff College in Bramshill, to recite a long list of defects and drawbacks, after which he started his exposé with a most reasonable question: 'What good is the membership of Interpol, if Interpol doesn't adequately respond to the executive needs of the European police; if Interpol won't hear of regionalization, not even of training, in and outside Europe; if Interpol won't...' (26).

However, even at that point in time, around 1980, the staff of Interpol did not want to give in. It still held on to the traditional formula of Interpol: to be a worldwide police intelligence service (27). No wonder then, that up to this very day the debate about the part Interpol should play in Europe has been dragging along in police circles. This debate is carried on mostly in courtly, concealing terms (28). Very rarely do we come across a bold account of the Interpol reality like the one which has been recently published by H. van der Weijden; an essay about the police in the member states completely failing to respond to the strategic analyses of the traffic in drugs (29). If this would have happened more often, the discussion about Interpol, which has been carried on for fifteen years now, would have probably been a more fruitful one.

However, even though Interpol itself may have stagnated, the process of internationalization in Europe during the seventies certainly did not. Linking on to the foregoing, we must first of all draw attention to the fact

that ever since the sixties all sorts of consultational and cooperational bodies, both the informal and the more formal kind, have been created in Europe, all of which have complete or partial reference to investigation. Speaking of consultational bodies with partial reference to the issue of investigation, we should mention both the Cross Channel Conference and the European Capital Chiefs of Police Conference (30). As for cooperational bodies with partial reference to the issue, we can think of the agreement made between Germany and France in 1978 on mutual cooperation in communal borderland, but also of less formal arrangements that were made since 1969 in the borderland of Aachen, within the scheme of 'NEBEDEACPOL, der Niederlandisch-Belgisch-Deutschen Polizeikonferenz' (31). Speaking of important co-operational bodies concerned solely with the issue of investigation, we must undoubtedly mention the Arbeitsgruppen zur Bekämpfung der Rauschgiftkriminalität, which were set up in the mid-seventies at the initiative of the German police in cooperation with the relevant authorities in the neighbouring countries (32). And finally we must bear in mind that, ever since the sixties, without the knowledge of Interpol, European services have been cooperating with the major federal police services in North-America, especially with the FBI and the DEA, and the Royal Canadian Mounted Police (33), as well, not only in the sphere of political intelligence work, but also in the matter of fighting more traditional, organized crime, at that time particularly the illicit traffic in narcotics.

Moreover, these and other new consultative and co-operation bodies, which in themselves are as many expressions of further reaching internationalization of the police in Western Europe, have, in many of the above respects, intensified the internationalization already in progress. Through these structures the internationalization has increased in the informational as well as in the operational and instrumental sphere. We refer to the exchange of liaison machinery, procedural agreements concerning operations on each other's territory, the formation of new units and the introduction of new working methods. But culminating and most important for this internationalization were the foundation and (recently) the enlargement of TREVI.

The initiative to set up this consultative body, institutionalized within the European Political Cooperation (EPC) of the European Community, was taken by the Council of Europe in Rome in 1975. The Council then agreed that the respective Ministers of Internal Affairs would regularly get together to discuss issues of order and security. This decision became considerably more important when, on June 29th 1976 in Luxembourg, these Ministers adopted a resolution saying that a number of study groups were to be set up as a part of a body which would be called 'TREVI' (after the famous fountain in Rome) and which, under the supervision of the Council of Europe, would have to especially stimulate co-operation in the fight against

terrorism, but also the exchange of information about organization, equipment and training of police units. These terms of reference show the reason why TREVI was founded, namely under the pressure of extensive and heavy violence committed by terrorists and extremists in different Western European regions and cities in 1975 and 1976 (34).

This decision fits into the general picture of internationalization: no sooner than after dangerous attacks have been made on the order existing in the affiliated states, does international police co-operation get organized in a decisive manner. It is right to emphasize therefore, that founding TREVI has been an important move, even at the very moment of its foundation. Important, because the co-operation between the police services of Western Europe was taken up on a level and in a manner which surpassed anything that had been accomplished or pleaded for during the past hundred years in this part of the world. Important also because with TREVI the political co-operation between the member states of the European Community was extended to the domain of interior politics, where it can in every respect rank with the co-ordinational bodies existing in the sphere of foreign politics. And important lastly, because in principle TREVI offered possibilities for further internationalization of investigation - although provisionally limited to matters of anti-terrorism only - on nearly all fronts: the informational, the operational, the organizational and the instrumental (35). To what extent these possibilities have been exploited is, in view of the secret and confidential nature of TREVI's activities, hard to say. But it certainly appears that TREVI has fructified most of all in the fight against terrorism and extremism. We can at any rate conclude this from the fact that until recently there were two TREVI-study groups working in this field only, namely one occupied with the exchange of intelligence and information about (potential) attacks and the (suspected) attackers, and one studying mainly the operational and instrumental aspects of the actions against terrorist and extremist gangs.

After TREVI's working field had thus narrowed itself, an end was put to this situation with one blow when, on April 24, 1986, in The Hague the TREVI-Ministers (for Home Affairs and Justice) definitely decided to form a third study group, to study methods and techniques to fight international crime (armed robberies, traffic in narcotic drugs and weapons).

The precise reason for broadening out TREVI's task isn't altogether clear. Was it because in some cases there (probably) has been a close relationship between terrorism - the way it has, more explicitly than before, been manifest in various shapes over the past two years - and other forms of organized crime? Was it (also) because there is an increasing tendency, for instance within the Council of Europe, to look upon organized crime as an issue of European order? Or was it (among other reasons) because Western European politicians continuously have to create new stimuli to keep alive

the idea of a European Community? Whatever may have been the reason for this decision, the fact remains that it may have far-reaching consequences for the operational and instrumental organization of investigation in Western Europe, that is, if it will be carried into effect energetically - which, bearing in mind the resolution adopted by the Council of Europe on December 5th 1986 in London, and recent statements of the new TREVI-president, the Belgian Minister for Justice J. Gol, seems to be the case. For this decision contains the seeds out of which, within the European Community, and independent of Interpol, EUROPOL could grow. This 'prophecy' is all the more legitimate, because at the conference in The Hague the TREVI-ministers also decided that the future activities of the TREVI study groups and the inherent Committee of Higher Officials would have to be coordinated and evaluated by a permanent office, the so-called Troika, consisting of the retired TREVI-president, the president in office and his successor (36).

Evidently, the reformers of TREVI have made an implicit choice from the alternatives which were presented during the discussion about Interpol in the seventies. Since this choice has turned out to Interpol's disadvantage, we still have to answer the question why, during the further internationalization of investigation in Western Europe, Interpol has not been involved. Indeed, I believe that we should ask ourselves: why did terrorism result in the foundation and development of TREVI, whereas it did not lead to the reformation of Interpol (in Western Europe)? In general, I think, we must blame this rather unexpected evolution on the fact that Interpol, in the final analysis, is no more than an international information centre and that, since it is not incorporated into (inter)national political structures, it can not be a proper instrument for adequate management, particularly not in as delicate a matter as the fight against terrorism. At the same time we must bear in mind that this fight against terrorism was a most ticklish affair for Interpol in the mid-seventies. For especially in those years Interpol was sharply criticized in the United States and in some European countries as well, even in Parliament, for neglecting a prohibition stated in Article 3 of its statutes (the prohibition namely, to interfere in political, military, religious or racial matters), because it had gotten caught up in investigation into oppositional groups and religious communities. In other words, explicit and full-scale participation in the fight against terrorism could have endangered the entire covenant of Interpol. Afterwards Interpol nevertheless gave in reluctantly, but by then it was too late to maintain or even restore the monopoly it had held in Western Europe (37).

And finally the depreciation of Interpol in Western Europe should be blamed on the inflexibility and narrow-mindedness of its (French) leaders. The very obstinacy they showed to regionally restructure Interpol, has had a particularly disastrous effect in this.

III.2. Further internationalization as a problem

In the above we have explained that the internationalization of investigation in Western Europe has not progressed without problems, and that we are dealing with a matter which indeed carries with it many difficulties. A number of these pitfalls have so far been mentioned only briefly in the discussion of the evolution of this internationalization. However, since it appears that in the years to follow it will, with TREVI being the crux, progress further than ever, it is of course necessary to reflect upon each of these problems individually.

Assuming that the informational, operational and instrumental internationalization will indeed be stimulated energetically, the problems can be divided into three categories. The first category consists of problems concerning the arguments that are being used to plead for further internationalization, being the existence of terrorism and other forms of organized crime. Secondly, there are problems which hinder or impede an efficient and effective speed-up of the internationalization. And in the third category we recognize problems concerning the managerial-political and judicial control of further internationalization of investigation. Naturally, we cannot get into this multitude of problems exhaustively within the scope of this essay. Therefore we will confine ourselves to the matters that are most important.

As for the first category of problems, we must point out that one of the biggest difficulties is the fact that there is no more than a poor understanding of the proportions, the nature and the evolution of organized (political) crime in Western Europe. On account of reasonably reliable sources we can assume that during the past twenty years certain kinds of terrorism and (violent) activism have shown an upward line generally, not only in larger countries such as Germany, but, for instance, in Belgium as well (38). Nevertheless, a fair notion of the total phenomenon of organized crime lacks altogether (39). Over the past twenty years serious studies of the subject were restricted to specific facets, specific countries and, what's more, specific periods (40). Of course this tremendous lack of quantitative insight makes it extremely difficult to estimate the need for internationally aimed investigation in Western Europe. Moreover it would be pointless to deduct the need in question directly from this quantity, not only because we will at least have to make an estimation of the amount of such investigation necessary to accomplish a certain degree of control over the problem, but also because there remain other questions to be answered, especially those concerning the relativity of crime fighting by the police (41). We can for instance think of the question raised by H. Boge last year, referring to Western Germany's approach to terrorism, namely whether there are no other and more effective means to fight terrorism, other than by the police (42). But it is equally appropriate to ask whether large-scale development of

internationally organized investigation would not, in the long run, encourage a stronger internationalization of crime itself (43).

As for the second category of problems, we can, referring to the above, first of all raise questions about the functioning of existing institutions and regulations. To what extent and with which purpose are they being used? Which difficulties arise in using them? On what points exactly are they inadequate? Etcetera, etcetera. The pitfalls on the road to internationalization of crime investigation have, to my knowledge, never before been evaluated in this manner, meaning not only the familiar and more or less unfamiliar kinds of informational (Interpol) and judicial (small judicial aid) internationalization, but particularly all new and often less well-known forms of operational and instrumental internationalization: first of all TREVI, but furthermore for instance the German-French agreement on cooperation made in 1978, the cooperation in the borderland of Germany, Belgium and Holland (NEBEDEACPOL), the arrangements concerning the crossing of frontiers in the Benelux Treaty of 1962, and such not yet referred to agreements as the *Abkommen über die dienstlichen beziehungen zwischen deutschen und belgischen Polizeibehörden im Grenzgebiet* dating from July 18th 1960, and the *Vereinbarung zwischen der Regierung der Bundesrepublik Deutschland und der Regierung des Vereinigten Königreichs Grossbritannien und Nordirland über die Gegenseitlichkeit hinsichtlich der Rechtshilfe in Strafsachen* of July 6th 1961, in which it is, in so many words, agreed upon that 'das Nationale Zentralbüro von New Scotland Yard und das Bundeskriminalamt unterstützen sich gegenseitig so weit wie möglich in strafrechtlichen Angelegenheiten' (44).

However, even without such an evaluation we can say that the existing institutions and regulations do, on a number of points, no longer meet the direct needs of the police as for the investigation into organized international crime. More in particular the existing judicial aid treaties hardly give any scope for the exchange of (written) criminal and judicial intelligence during the preliminaries to ambitious investigations. Neither do they - aside from the 'hot pursue' - clause in the Benelux Treaty - contain a proper regulation with respect to the authority of policemen operating beyond the borders of their own country. As for the latter, we think of the actions of observers or, raising even more problems, of infiltrators. Should observers be (more than) present at all? Should they spy on and pursue citizens in another state, even if this happens with the knowledge or assistance of the local authorities? Should they, in doing so, carry weapons of their own and, if necessary, use them? If so, under which conditions and according to what standards? In other words the right question to ask would be, whether the existing treaties concerning small judicial aid should not be drastically revised. And if such a revision is not wanted, because the treaties in question weren't made to solve problems of police co-operation, doesn't this indicate that something has to be undertaken to create a multilateral treaty on the

subject of investigation into international crime in Western Europe? A treaty like that would be the appropriate conclusion in a series of treaties which have been entered into during the past years with the purpose of accomplishing, at an international level, a balanced system of penal repression in Europe, but which now especially have reference to the adjudication of offenders and the execution of penalties (45).

It is almost self-evident that a treaty like the one mentioned, which could considerably speed up the informational, operational and judicial internationalization of investigation, will involve a great deal of problems. The consequence of further operational internationalization, for instance, will be that the means the police services in the various countries dispose of - both material means (equipment) and personnel means (training) - as well as the way in which these means can be employed - tactics and strategy - will need to be accommodated to one another.

But the matter won't end with accommodations in the instrumental sphere. Before long, the necessity will arise, irrevocably, for the judicial competence of the police services of the different countries to be brought in line with the formulation of criminal offences, etcetera (46), not only to facilitate international action for the benefit of individual policemen, but also to stimulate police services to get involved in adequate international investigation. Let us take for instance the 'wire-tap'. The fact that wire-tapping is not (yet) permitted in Belgium, is an obstacle to the organization and the progress of large investigations in which suspects feature who (also) operate on Belgian territory.

Aside from the need for judicial internationalization, the need will arise for organizational internationalization, i.e. police organization - particularly in dealing with specialized investigation - will increasingly have to be accommodated in the various countries. For how, on the long term, will we ever accomplish adequate co-operation between the police services of Western Europe, if the general structures of their criminal investigation departments aren't more or less conform, and if their operational structures do not correspond to some extent? On the short term it will in any case prove to be necessary to divide, within the police forces of each country, the responsibilities in the sphere of international investigation in such a manner that their co-operation with foreign police forces will be optimum. If this won't happen, their co-operation will constantly be mortgaged by 'incidents' similar to the ones that have arisen repeatedly over the past few years during infiltration and observation operations in the German-Dutch as well as the Belgian-Dutch frontier areas.

These 'incidents' bring us to the third and last category of problems, namely those concerning the control of international investigation. As Rigaux, and many others before and after him, said in 1985, the judicial cooperation existing in Western Europe has been accomplished mainly for the following reasons:

- 1 'd'éviter que le morcellement des compétences étatiques n'offre aux personnes que chacun d'eux (the various states, CF) s'estime en droit de Poursuivre et de punir un lieu d'asile sur le territoire de tous les autres Etats', and
- 2 'pour combattre une forme de criminalité jugée menaçante pour la société même des Etats et non pour telle société étatique particulière' (47).

Without doubting the legitimacy of these aims, I agree with him and others who say that the protection of the (suspected) citizen has, in this matter, never been given much consideration without any justification for this circumstance. Therefore it is my belief that, if police co-operation in Western Europe will stay on the track which we have previously described, we can, within the scheme of what in the international jargon is sometimes referred to as 'fair administration of justice', not be eager enough to pay attention to the legal protection of suspects (48).

This can be done, first of all, by clearly defining his rights in any new treaties, and by creating enough possibilities to fight their violation in court; as yet still the national courts. Secondly the judicial control of investigations in the course of which frontiers need to be crossed, will have to be intensified, not only through the installation of (international) control by the offices of counsel for the prosecution existing in the various countries, but also, especially with respect to all nonjudicial aspects of this kind of investigation, the supervision of the Departments of Justice in question will have to get stricter. And finally the political control of the administration of investigation in Western Europe should be intensified, either by the national parliaments or, taking into consideration the developments of TREVI and Interpol, by the European Parliament. In this respect it wouldn't be sumptuous for Interpol's statute of international law to finally get properly adjusted to the Western European situation (49).

III.3. Recent reports from the Council of Europe and the European Parliament

The issue of political control on the internationalization of the administration of investigation, leads us to recent discussions about the police fight against organized crime in Western Europe.

Obviously we should firstly read the report on international crime which P. Stoffelen wrote on behalf of the Juridical Committee of the Council of Europe (50). For until today the Council has always been the most important forum to discuss criminal judicature and crime fighting in this part of the world. It was this Council which once, in 1980, debated heatedly on the role of the European police, although in relation to the vindication of

human rights. On this occasion however, the issue of co-operation wasn't really dealt with. It wasn't brought up either in the *Statement on the Police* which on May 8th, 1979 was adopted by the Council of Europe, and which had been the very motive for the discussion in question (51). But once or twice during the past years the Council has argued for the energetic and unanimous fight against (organized) international crime, both in the political field and in other spheres. And finally, on September 20th, 1986, it discussed the report (52).

In the first part of this report the author describes a number of forms of international crime, and mentions counter-measures which have been especially recommended by the Council of Europe. These are considered to be the most important crimes: traffic in narcotics, illegal traffic in weapons, traffic in stolen objects of art, traffic in women, economic offences and terrorism. The counter-measures which are proposed, diverge widely for every category, ranging from diplomatic negotiation on an international level to the repatriation of prostitutes. Stoffelen even concludes this part of his report with the observation that many of these measures have never been carried into effect, mainly as a consequence of 'the lack of political will to go much further than firm declarations, whereas action is needed'.

The urgent action he refers to is discussed in the second part of the report. Aside from a number of reflections upon the necessity to integrate all judicial treaties which have until now been adopted into one European Convention on Cooperation in Criminal Matters, this part contains proposals for co-operation in the executive sphere in the contracting countries of the Council of Europe. Why the contracting countries of the Council of Europe? Why not just the member states of the European Community? First of all because international crime doesn't come to a standstill at the very frontier of the latter nations. Secondly because policemen themselves ask for police co-operation on a European level ('They know this from their own experience. They may perhaps even be better informed than, for instance, the ministers meeting at a TREVI conference'). And lastly because effective police co-operation should be accompanied with judicial co-operation and adjustment of legislation, a task for the accomplishment of which the Council of Europe happens to be the organization best suited.

The proposals themselves amount to:

- 1 The foundation of a European Police Information Central Office (eventually in the shape of a regional structure within Interpol), which would have to be responsible for the analysis of tactic information about international crime on the one hand and for gathering the required relevant documentation on the other hand.
- 2 The exchange between police and judicial authorities of intelligence of and experience in the fight against international crime, as was decided upon at the TREVI conference of April 24th 1986.

- 3 The formulation of 'a European framework agreement, if possible laid down in a legal instrument, maintaining principles, conditions and rules for (...) a practical, executive police cooperation between individual member states on a bilateral or multilateral basis'. Such an agreement would have to contain regulations on the mutual exchange of information between police forces without the knowledge of the Public Prosecutor, about wearing uniforms and equipment on foreign territory, and about cross-frontier assistance in case of emergencies. According to Stoffelen a good example of this kind of co-operation is the agreement existing in the borderland of Aachen (NEBEDEACPOL).

The report of the European Parliament which is referred to here, was written by Sir Jack Stewart-Clark on behalf of the Committee of Enquiry into the drugs problem in the member states of the European Community (53). Aside from other issues, Stewart-Clark of course mentions the police fight against illegal drugs traffic. Proposals made on this point come down to the following:

- 1 The foundation of one 'EC-Drugs Task Force', modelled on the one existing in the United States. To accomplish this, a special department would have to be added to Interpol: an international task force which would have to consist of both policemen and customs officers, and which would have to align the actions of these units both in and out of Europe. Finally, each country would have to set up a 'Drugs Task Force' of its own.
- 2 The formation of an internationally computerized data base of drugs dealers, which would have to be fed by the various police services and custom-agencies.
- 3 The accommodation of legislation concerning (the admissibility of) police fighting tactics, especially the issue of 'controlled deliveries' and the adjudication of police powers with respect to the inspection of financial transactions and the seizure of illegally obtained money.

Naturally we could linger on these proposals, but in the light of our previous description of the internationalization of investigation and of the problems concerning its further development, we will confine ourselves to the following remarks.

Firstly it is evident that these proposals support the further internationalization of investigation in the informational, operational and instrumental sphere, in the way this has been propagated for several years already by policemen and police organizations throughout Europe. As for the informational and instrumental internationalization, it is worth noticing that, opposed to the kind of evolution advocated by the EPC and by TREVI, both reports are in favour of regionalizing Interpol by setting up an Europol. Therefore in the near future we will probably have to find a compromise between these two options. Not only the police authorities in Europe need

coordination, but the political authorities as well. As for the operational internationalization, the report of the Council of Europe hardly leaves the track which has been followed for years now in the frontier districts. The foundation of a separate Europol on the level of the European Community, in charge of certain executive tasks, is left out of consideration altogether. Secondly, we want to point at the lack of (empiric) depth of the reports. Neither one of them contains a proper analysis of the criminal issue. The dimensions, the nature, the evolution, the methods, etcetera, of the various kinds of (organized) crime in Western Europe are hardly addressed at all, these aspects and other points are not thoroughly analysed, not even on the level on which this was done in the United States, by the last President's Commission on Organised Crime, the commission Kaufman (54). On top of that the reports contain no evaluation whatsoever of the bilateral and multilateral cooperational bodies existing in Europe. In both cases this shortcoming is most embarrassing. The rapporteur of the European Parliament clearly isn't aware of the 'uselessness' of Interpol's special department charged with the analysis of the drugs traffic. And the rapporteur of the Council of Europe seems to have no notion of the fact that the (official) co-operation in the frontier district of Aachen is far from attuned to the fight against (organized) international crime, and that official co-operation in this area has caused serious problems between Germany and Holland. It is, in any case, unmistakably clear that the agreement he proposes for the regulation of (operational) international co-operation in Europe does not nearly address the difficulties which presently occur during cross-frontier investigations, especially during actions of observation and infiltration in the matter of the very forms of crime that, according to this rapporteur, Europe should wage war against.

Thirdly we must take notice of the fact that both reports were written in a drum-and-trumpet spirit, and that, in accord with this bellicose tone, the authors pay no attention whatsoever to the legal status of the suspect or the political and judicial control of police actions directed against him/her. Especially for states that invariably pride themselves on their democratic and constitutional nature, the complete lack of attention on this point is disgraceful. It is characteristic of the instability of the policy which is defended in the reports in question.

IV. Conclusion

These reports show that the internationalization of investigation in Western Europe will undoubtedly increase, but that it will take a lot of work to steer this development into the proper channels. To achieve the latter it is, in my opinion, necessary for us to seriously examine the interior security in Western Europe.

This means, first of all, that research will have to be made into the evolution of (internationally) organized crime; research which, obviously, should closely correspond with empiric research in this sphere made in the United States in the past years.

Secondly, comparative research will have to be made into the organization and the efficacy of national police and intelligence agencies, and their direct and indirect international contacts. It will be evident that this kind of research should not only be juridically oriented, but should also be factual and therefore containing distinct sociological and particularly criminological components (55). Judicial research in itself is insufficient for the development, control and evaluation of (international) crime investigation (56).

And thirdly (comparative) research will have to be made into the prosecution, the adjudication and the punishment of internationally operating criminals.

Since, conclusively, Europe hardly has any experience at all with the kind of research aimed at here, it would, considering the urgency of the issue, be only natural to provide one or more scientific institutes with the means needed to start a series of studies at short notice. It could be these institutes which, on account of their research, will support the training of policemen and judicial officers in the sphere of international investigation (57).

Notes

1. A.A.M. Orie, *Internationale opsporing*. In: *Internationalisering van het strafrecht*. Nijmegen, Ars Aequi Libri, 1986, p. 165-167.
2. Compare a.o. W. Ullrich, *Verbrechensbekämpfung: Geschichte, Organisation, Rechtsprechung*. Neuwied, Luchterhand, 1961, p. 20-38; W. van den Hoek, *De geschiedenis van het wapen der Koninklijke Marechaussee*. 's-Gravenhage, 1963, p. 204-206; B. Wehner, *Dem Täter auf die Spur: die Geschichte der deutschen Kriminalpolizei*. Bergisch Gladbach, Gustav Lübbe Verlag, 1983, p. 21-47.
3. Cfr. *Denkwürdigkeiten des geheimen Regierungsrathes dr. Stieber*, aus seinen hinterlassenen Papieren bearbeitet von dr. Leopold Auerbach. Berlin, Julius Engelmann, 1884; Wilhelm J.C.E. Stieber: *Spion des Kanzlers: die Enthüllungen von Bismarcks Geheimdienstchef*. München, Deutscher Taschenbuch Verlag, 1981.
4. R.J. Johnson, *The Okranha abroad, 1885-1917: a study in international police cooperation*. Columbia University, 1970 (not published). See also: D.E. Emerson, *Metternich and the political police: security and subversion in the Habsburg Monarchy (1815-1830)*. 's-Gravenhage, Martinus Nijhoff,

- 1968; N. Hiley, Counter - espionage and security in Great Britain during the First World War. *English Historical Review*, Vol. 101, 1986, nr. 400, p. 635-670.
5. R.B. Jensen, The international anti-anarchist conference of 1889 and the origins of Interpol. *Journal of Contemporary History*, Vol. 16, 1981, nr. 2, p. 323-347.
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8. R.A. Reiss, *Contribution à la réorganisation de la police*. Paris, 1914, p. 155.
9. *Der internationale Polizeikongress*. Wien, 1923.
10. *Internationale Kriminalpolizeiliche Kommission. Die Internationale Zusammenarbeit auf Kriminalpolizeilichem Gebiete*. Wien, 1927; O. Dressler, *Die Internationale Kriminalpolizeiliche Kommission und ihr Werk*. Berlin-Wannsee, 1942.
11. Cfr. S.K. Ghosh, *The Interpol international criminal police organisation*. Calcutta, Eastern Law House, 1976; I. Noble, *Interpol: international crime fighter*. New York, Harcourt Brace Javonovich, 1975.
12. C. Fijnaut, *Opdat de macht een toevlucht zij?* Antwerpen, Kluwer Rechtswetenschappen, 1979, Vol. I, p. 398-408.
13. J. Jeschke, *Interpol zwischen 1933 und 1945*. *Kriminalistik*, 1971, nr. 3, p. 118-119.
14. A. de Jonghe, *De strijd Himmler-Reeder om de benoeming van een HSSPF te Brussel (1942-1944)*. *Bijdragen tot de geschiedenis van de Tweede Wereldoorlog*, nr. 5, 1978, p. 134-147.
15. A. Goldenberg, *La Commission Internationale de Police Criminelle*. Université de Paris, Faculté de Droit, 1953 (Thèse pour le doctorat en droit); H. Möllmann, *Internationale Kriminalpolizei - Polizei des Völkerrechts: zur Problematik der Abgrenzung öffentlicher und privater internationaler Organisationen am Beispiel der Internationalen Kriminalpolizeilichen Organisation (IKPO-Interpol)*. Würzburg, 1968; B. Napombejra,

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17. See also the efforts to set up an international police force to take care of security across national borders, e.g.; H. Wehberg, *La police internationale*. In: *Recueil des Cours de l'Académie de Droit Internationale*, 1934, Vol. II, p. 3-132.

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25. Compare I. Krusell, *Europol: Arbeitshypothese für eine kommende europäische Kriminalpolizeizusammenarbeit*. In: *Bund Deutscher Kriminalbeamter (Hrsgb.). Grenzüberschreitende Verbrechensbekämpfung im Spiegelbild zwischenstaatlicher Verträge und gesetzlicher Regelungen*. Aachen, 1980, p. 48-55. See also the essays by H. Herold (*Informationssysteme in der internationalen Verbrechensbekämpfung; Entwicklungsstand und Perspektiven*) and J. Jeschke (*Gegenwart und Zukunft der IKPO-Interpol*), in: *Bundesvorstand des Bund Deutscher Kriminalbeamter (Hrsgb.). Grenzüberschreitende Verbrechensbekämpfung im Spiegelbild zwischenstaatlicher Verträge und gesetzlicher Regelungen*. Berlin, 1980, p. 14-28.
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31. H. Seifried, *Deutsch-Französische Zusammenarbeit bei der Verbrechensbekämpfung*. *Kriminalistik*, Vol. 35, 1981, nr. 4, p. 169-173; *Euregio Meuse-Rhin (Hrsgb.). NEDEBEACPOL; Dokumentation der Festveranstaltungen am 19. September 1984 in Aachen, 1969-1984*.
32. F. Salewsky, *Die Rauschgiftkriminalität und ihre Bekämpfung*. In: *Bund Deutscher Kriminalbeamter (Hrsgb.), op.cit.*, p. 44-47; and *Die deutsche-niederländische Arbeitsgruppe zur Bekämpfung der Rauschgiftkriminalität*. *Kriminalistik*, 1977, nr. 9, p. 403-406.
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38. On the growth of terrorism in West Germany, see the *Verfassungsschutzberichte* and for its growth in Belgium, see W. Bruggeman and P. Luybaers, *Autodiefstal, hold-up en terrorisme in België (part II)*. *Panopticon*, Vol. 7, 1986, nr. 6, p. 570-581.

39. Cfr. C.J.C.F. Fijnaut, *Georganiseerde misdaad; een onderzoeksgerichte terreinverkenning*. *Justitiële Verkenningen*, 1985, nr. 8, p. 5-42; A.P. Schmid, *Political terrorism; a research guide to concepts, theories, data bases and literature*. Rijksuniversiteit te Leiden, 1983.

40. See e.g. F. Sack und H. Steinert, *Protest und Reaktion*. Opladen, Westdeutscher Verlag, 1984.

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48. A.H.J. Swart, *Internationalisering van de strafrechtspleging*. In: C. Kelk, P. Moediko, M. Moerings and A.H.J. Swart (eds.), *Grenzen en mogelijkheden; opstellen over en rondom de strafrechtspleging*. Nijmegen, *Ars Aequi Libri*, 1984, p. 112-129.
49. Compare A. Bossard, *Interpol's headquarters agreement; a culmination and a new beginning for International Criminal Police Organization*. *International Criminal Police Review*, Vol. 40, 1985, nr. 387, p. 86-107; R., Riegel, *Internationale Bekämpfung von Straftaten und Datenschutz; unter besonderer Berücksichtigung von Interpol*. *Juridische Zeitung*, 1982, nr. 9, p. 312-319.
50. Council of Europe, Parliamentary Assembly, Legal Affairs Committee. *Draft report on international crime (submitted by Mr. Stoffelen, Rapporteur)*, AS/Jur. (38) 14 Part II.
51. Cfr. Conseil de l'Europe et Eurofedop. *Colloque 'La police au service des droits de l'homme'*. Strasbourg, 1980.
52. Council of Europe, Parliamentary Assembly, 36th Ordinary Session, 26

September-4 Octobre 1984, Recommendation 989 (1984) relative à la lutte contre l'abus et le trafic des drogues; 37th Ordinary Session, 27-31 Januari 1986, Recommendation 1024 (1986) relative à la réponse européenne au terrorisme international.

53. European Communities, European Parliament, Working Documents 1986-1987, A Series, Document A 2-114/86/Corr., Report drawn up on behalf of the Committee of Enquiry into the drugs problem in the member states of the community on the results of the Enquiry.

54. Cfr. Report of the President's Commission on Organised Crime. Washington, 1986.

55. So far, the only empirical research which has been done, was in the form of research papers prepared by students, e.g.: G.J.A.H. van Gestel and M.G.Th. Agelink, Extraterritoriale politionele opsporingshandelingen bij strafbare feiten met grensoverschrijdend karakter. Apeldoorn, Nederlandse Politie Academie, 1987; C. Vanderstraeten, De positie van België inzake rechtshulp in strafzaken tussen België en Frankrijk. Leuven, Faculteit der Rechtsgeleerdheid, 1982.

56. See e.g.: Conseil de l'Europe, Affaires Juridiques. La surveillance des communications téléphoniques et l'enregistrement des télécommunications dans certains Etats membres du Conseil de l'Europe. Strasbourg, 1982 (Dossier Législatif No. 2).

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