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Chapter eight

Police co-operation within western Europe

Cyrille Fijnaut

INTRODUCTION

The political discussion on the subject of the unification of the Internal Market within the EC by the end of 1992, and in particular the debate on the elimination of border controls of individual citizens at the national frontiers of the member states, has turned the subject of international police co-operation into 'hot news' virtually overnight. Reinforcement and re-structuring of mutual co-operation between the police agencies of the countries involved is being urged all round, both with a view to the enforcement of one common immigration policy and to the maintenance of law and order, in particular the fight against serious crime including terrorism.

In order to avoid disappointment arising from unrealistically high expectations of the progress which could be made in police co-operation, I shall not just review the degree of progress which has actually been achieved to date but shall also examine the obstacles which stand in the way of its further advancement. Rather, I shall present a review of the several stages which police co-operation in western Europe has passed through during recent decades and shall consider the problems which have been associated with it.

Also I shall illustrate the extent to which the 'economic' unification of Europe has enhanced and even multiplied the problem of co-operation by referring to the experience of the Benelux countries (Belgium, Netherlands and Luxembourg) and by considering the impact of the Accord, regarding the elimination of controls at the common frontiers by 1990, which was

signed on 14 June 1985 at Schengen between the Benelux countries, the Federal Republic of Germany (FRG) and France.

A FLASHBACK TO THE PAST

The police forces of western Europe have been working together for some time. Indeed how could they not work together given the number of countries contained within this relatively small area? However, it was not until the beginning of the nineteenth century that this co-operation really began to materialise. The best known example is from the mid-nineteenth century when the police of the German states co-operated in their fight against the political opposition to their own authority (Siemann 1985).

It was in 1898, at a secret conference in Rome, that police co-operation really started to spread across Europe. This was prompted by a determination to confront the violent anarchism of the time. All previous attempts towards the formation of a combined form of co-operation between the police agencies of western European countries having failed, Interpol was founded at long last in 1923. The background was of a political nature again. The aim was to create a means by which to maintain order and security in the continent of Europe which had become turbulent and politically unstable after the First World War.

Some forty years later, after the Second World War, there was not a similarly far-reaching initiative. At that time only Interpol was reinstated (Fijnaut 1987). However, one should not lose sight of the fact that under the stress of the Cold War beside this more or less overt form of police co-operation, real co-operation between the (new!) intelligence services in western Europe and the USA was established to contain communist zealots (Barnes 1981, 1982). Perhaps this development prevented international police co-operation being remoulded in a radical way.

The successive forms of police co-operation were all mainly aimed at improving the exchange of intelligence. However, one of the side-effects was a degree of harmonisation of operational practice method and equipment, particularly in the area of crime investigation. During the 1950s this was extended with formal judicial co-operation, in the form of 'small judicial aid'. However, this was actually also one of the achievements resulting from the conclusion of the 'European Treaty on the International Judicial Aid in Criminal Cases' in 1959. International judicial aid can be

defined as the assisting of one country's penal process by another on the basis of mutual treaties.

From Interpol to TREVI

Compared with the rather slow evolution of internationalisation of criminal investigation up until the 1960s, its development ever since can safely be described as turbulent. It does not lend itself to easy analysis. The thread I shall follow is that the leading role which could have been played by Interpol has in fact been taken over by TREVI, the consultative body of the European Community dealing with matters of internal security.

Undoubtedly Interpol had, even during the 1970s, rendered great service to the police of western Europe and North America as far as the exchange of information about goods, people and criminal cases were concerned (Ferand and Schlanitz 1975; Nepote 1970). But this did not stop Interpol being sharply criticised especially in German, British and Dutch police circles. Although it was adequately equipped to investigate crime (including ever-expanding organised crime), according to the critics, Interpol had seriously failed to make a tactical and strategic analysis of the development of the pattern of crime with which it was dealing. The congress of the *Bund Deutscher Kriminalbeamter* (Association of German CID officers), which took place in Wiesbaden in 1974 was the first occasion on which this criticism had been expressed in plain and unequivocal terms.

Similar criticisms have followed since then by various influential authors, although they have each proposed to solve the problem in different ways. Some of them, like Horst Herold, who was the head of the *Bundeskriminalamt* (Federal Criminal Police Office) at the time, felt that Interpol would have to be altered, on the one hand through extensive modernisation of the information and documentation side of its operation and on the other by forming teams of experts who would assist with major investigation operations in the various countries.

But aside from that, Herold argued, there certainly was a task for the European Community (EC). It would have to facilitate mutual international judicial aid (see above) which he considered to be too much judicial and insufficiently police-oriented. That way the internationalisation, that is the standardisation of the widely diverging police systems, would be stimulated and criminal

law would eventually become harmonised within the member states. According to Herold, the EC would at one and 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 (Herold 1974).

Others, on the contrary, left Interpol out of the reckoning altogether. While they did not propose that the 'Parisian letterbox' be merely done away with, they did defend the 'Europol' idea within the EC. In the philosophy of Rolf Grunert, the Head of the *Bund Deutscher Kriminalbeamter*, this meant that the EC would not only have to harmonise criminal law and to simplify international aid, but also have to create a supranational criminal investigation department which would play an important part in the co-ordination of international investigations and would, in the case of some crimes, that is to say internationally organised crimes and serious contraventions of EC regulations, be able to launch investigations in its own right. Subsequently this new department would, he proposed, also be responsible for technical support of criminal investigation (for example in fields of dactyloscopy, photography, voice analysis and laser technology) and for the training of detectives (Gruner 1974).

Moreover there were in those days people like Jan Blaauw, who preferred the middle course (Blaauw 1974). He argued 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 the setting up of international detective teams as appropriate for joint investigations in a European context and for the development of general facilities for international criminal investigation in Europe such as radio communications systems for the benefit of observation teams. On top of this he was in favour of simplifying mutual judicial aid and of harmonising legislation within the EC.

The reaction of Interpol, which at the time consisted mainly of French policemen, was one of some rigidity; they indicated that they would prefer to leave things as they were. They rejected the regionalisation of Interpol through the formation of an organisation like the proposed 'Europol' arguing that it would be unworkable because a number of criminal organisations operated both inside and outside Europe. They refused to give any emphasis to the executive aspects of task performance because this was said to be in conflict with the sovereignty of the affiliated states; if that

were to be the case, foreign police officers would actively be involved in the application of national criminal law, which would be seen as unacceptable. They also rejected the idea of setting up regional conferences which, they argued, would not be viable without the resources of the central services in the different countries (Langlais 1974).

Progress was made, however, as far as attempts to combat drug abuse were concerned. It was probably no coincidence that this happened at the same time as the initiative taken in 1971 by President Pompidou of France to co-ordinate western European efforts to fight the traffic and consumption of illegal narcotic drugs. Interpol appointed several liaison officers at the organisation's general office in Saint Cloud (which is near Paris), each of whom had responsibility for co-ordinating investigations in given parts of western Europe. Seven years later a small unit was added which was responsible for making tactical and strategic analyses of the narcotics traffic throughout the whole of western Europe (Littas 1979). This concession did little to satisfy the critics of the 1970s. The FRG police in particular were still attracted by the idea of a 'Europol', although some influential individuals like Horst Herold stuck to their original views as described above (Krusell 1980; Herold 1980; Jeschke 1980). Nor did the criticism of those who were opposed to Interpol die down either. One of the leading criminal investigation chiefs of the Metropolitan Police, J. Huins, while lecturing at the Police Staff College at Bramshill, recited a long list of defects and drawbacks with Interpol before putting the 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 regionalisation, not even of training, in and outside Europe; if Interpol won't . . . ?

(Huins 1980)

In spite of criticism continuing up to the present day, the staff of Interpol have nevertheless maintained their view of the organisation as a world-wide police intelligence service (Brugger 1981).

Things progressed during the 1970s. Both formal and informal consultative and co-operative bodies which have relevance to police investigation, have been created throughout Europe. The Cross Channel Conference and the European Capital Chiefs of Police Conference are two examples (Fijnaut and Visser 1985). In

1978 there was an agreement between Germany and France about their common border and since 1969 there had been a number of less formal arrangements in the border area near Aachen within the framework of 'NEBEDEACPOL' the *Niederlandisch-Belgisch-Deutschen-Polizeikonferenz* (the Dutch-Belgian-German Police Conference) (Seifried 1981). The *Arbeitsgruppen zur Bekämpfung der Rauschgiftkriminalität* (the Working Groups for the Fight Against Drug Crime) which was set up in the mid-1970s at the initiative of the German police in co-operation with neighbouring authorities is also important (Salewsky 1974). Furthermore, we should not forget that ever since the 1960s European police services have been co-operating, largely without the knowledge of Interpol, with the major federal police services in North America, particularly with the Federal Bureau of Investigation (FBI), the Drugs Enforcement Administration (DEA) and the Royal Canadian Mounted Police (Barnes 1981, 1982; Fijnaut 1983) in the sphere of political intelligence work and more traditional organised crime including illicit traffic in narcotics.

These and other new consultative bodies have furthered the development of international co-operation in respect of both the dissemination of information and of operational activity, such as the exchange of communications machinery (such as walkie-talkies) and procedural agreements concerning operations on each other's territory. But by far the most significant development in the field has been the creation and recently the enlargement of TREVI.

The initiative to set up this consultative body, which was institutionalised within the European Political Co-operation of the EC, was taken by the European Council 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 much more important a year later when on 29 June 1976 in Luxembourg, these ministers adopted a resolution to the effect that a number of study groups were to be established as part of a body which was to be called TREVI, a name derived from the famous fountains in Rome. TREVI was founded against the background of extensive violence committed by extremists in several European countries in 1975 and 1976; under the supervision of the European Council these groups were intended to stimulate co-operation in the fight against terrorism and would exchange information about the organisation,

equipment and training of police units (Schoutheete 1980: 131-46).

The decision to create TREVI illustrates very well the impetus behind internationalisation; as soon as there was an attack on the establishment of the European countries in the form of terrorism, there was an incentive to establish police co-operation. It should be emphasised therefore that the founding of TREVI was an important move even at the very moment of its foundation – important because the co-operation between the police forces of western Europe was thereby raised to a level which surpassed anything which had been accomplished or even proposed during the previous hundred years. It was significant also because the co-operation brought about by the creation of TREVI extended political co-operation between the member states of the EC into the sphere of domestic politics, where it can in every respect rank with the co-ordinating bodies of the European Political Co-operation existing in the sphere of foreign politics. TREVI also acted as a springboard from which other initiatives, concerning information, operations and organisation, could be taken (Fijnaut 1982: 52-7).

The extent to which this potential has been exploited is hard to establish with certainty, largely because of the secrecy and confidentiality surrounding much of TREVI's activity. But it is clear that TREVI has borne fruit particularly in connection with terrorism and other forms of extremism. Until recently there were two TREVI study groups working in this field, one occupied with the exchange of intelligence about (potential) attacks and the (suspected) attackers and one studying mainly the operational aspects of action against terrorist and extremist groups.

Having originally narrowed its focus in this way, TREVI then quite dramatically changed the situation. On 21 June 1985 the TREVI Ministers (the Ministers for Home Affairs and Justice in their own countries) decided to form a third study group which was to study methods and techniques of fighting international crime such as armed robberies and traffic in narcotic drugs and weapons.

The precise reason for the broadening of TREVI's brief is not entirely 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 in recent years – and other forms of organised crime? Examples of this are

the relationships between terrorist movements and Mafia groupings in Italy in the sphere of the weapon trade, and between the terrorist attacks of the IRA and its extortion and smuggling activities in the border area of Northern Ireland. Or perhaps it was due to the increasing tendency for instance within the European Council to look upon organised crime as an issue of European public order? Or, one might decide, perhaps somewhat facetiously, that western European politicians must continuously create new stimuli to keep alive the idea of the 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 organisation of police investigation in western Europe, as long as, that is, it is put into effect energetically. In view of the resolution adopted by the European Council on 24 April 1986 in The Hague, this could indeed well be the case. The resolution adopted on that day contained the seeds out of which an independent 'Europol' could grow within the European Community. This 'prophecy' of increasing co-operation is all the more legitimate because at The Hague conference the TREVI Ministers also decided that the future activities of the study groups and the Committee of Higher Officials would have to be co-ordinated and evaluated by a permanent office, the so-called Troika, which would consist of the immediate past president of TREVI, the current president and his successor (Fijnaut 1986).

Evidently this reform of TREVI more or less implies a choice between the alternatives which had been brought forward in the discussion about Interpol during the 1970s. Since that choice was to Interpol's disadvantage, why had Interpol not worked harder to be more closely involved in this international development? The answer lies, I think, in the fact that Interpol is in the final analysis not much more than an international information centre and is not incorporated into international political structures and therefore cannot be a proper instrument for adequate management for as delicate an issue as terrorism.

Bear in mind also that the fight against terrorism was a most ticklish affair for Interpol in the mid-1970s because it had been sharply criticised in the USA and in some European countries for neglecting a clause contained in Article 3 of its own statutes, which prohibited interference with political, military, religious or racial matters – which is what its investigation into oppositional groups and religious groups was taken to be. In other words, explicit and

full-scale participation in the fight against terrorism could have endangered the entire covenant of Interpol. Interpol subsequently gave in somewhat reluctantly, but by then it was too late to maintain or even restore the monopoly which it had previously held in western Europe (Garrison n.d.; Gulbinowicz 1978).

UNDISCUSSSED ISSUES AND FORGOTTEN PROBLEMS

The foregoing overview of international police co-operation in western Europe clearly shows that its evolution during recent decades did not take place without its fair share of problems. Major differences of opinion surfaced concerning the shape which was to be given to this co-operation and these disagreements and occasional fierce debates have produced today's extremely complicated structure.

A degree of dissent amongst those who were trying to build co-operative structures was only part of the problem. While these problems were apparent to all, there were also a number of latent difficulties. There were indeed many subjects which were either not discussed at all or which were given very little attention but should be considered if we wish to make real progress towards co-operation in the near future.

First, there is the problem of terrorism and other forms of organised crime which are frequently used to argue in favour of further internationalisation. One of the biggest difficulties is the fact that there is only a poor understanding of the extent, nature and evolution of organised (political) crime in western Europe. We can assume, based on reasonably reliable sources, that during the past twenty years, certain kinds of terrorism and violent activism (this category including the activities of radical protest groups which use violence to achieve their ends) have increased, not only in larger countries such as the FRG, but also for example in Belgium (Bruggeman and Luypaers 1986: 570-81).

Nevertheless, a realistic picture of the total phenomenon of organised crime is altogether lacking (Fijnaut 1985: 5-42; Schmid 1983). Over the past twenty years, serious studies of the subject have been limited to particular facets, countries and periods of time (Sack and Steinert 1984). Of course, absence of quantitative information on this subject makes it extremely difficult to estimate the need for co-operative international investigation in western Europe. The volume of terrorism is only part of the story; one must

also consider how much police time is necessary and justified in order to achieve a certain degree of control over the problem, particularly in relation to the police resources which are available to fight other forms of crime (Fijnaut *et al.* 1985).

Referring to the FRG's approach to terrorism, Heinrich Boge raised the question in 1986 as to whether there might not be other more effective means for countering terrorism other than the deployment of the police (Boge 1985: 587-92; Plenel 1986: 7-20). By the same token, it could also be suggested that large-scale development of internationally organised investigation might, in the long run, be counter-productive by encouraging the further internationalisation of crime itself (McIntosh 1975).

Second, there are many questions about the functioning of existing institutions and regulations which have a bearing on further internationalisation. Indeed, we can learn much from looking closely at attempts at co-operation which have already taken place. Recent experience on the road to the internationalisation of crime investigation has, to my knowledge, never before been properly evaluated. An evaluation of Interpol and judicial internationalisation and of the new and lesser known forms of co-operation could be most instructive. Examples of such co-operation include TREVI, the German-French agreement on co-operation which was concluded in 1978, the co-operation in the borderland of the FRG, Belgium and the Netherlands (NEBEDEACPOL) and the agreement signed on 18 July 1960 entitled *Abkommen über die dienstlichen Beziehungen zwischen Deutschen und Belgischen Polizeibehörden im Grenzgebiet* (Agreement on the official relations between the German and Belgian police authorities in the borderland). It is certainly a matter of some importance to find out how these forms of co-operation have been operating in practice if one is proposing either to expand them or to replace them by other more far-reaching forms of co-operation.

Third, there are problems of control of international co-operation. As Rigaux said in 1985 (as had many others before and after him such as Dubois 1978; Orie 1983; Wijngaart 1980), the judicial co-operation which exists in western Europe has been promoted mainly for the following reasons: first, to prevent suspects, whom all the states concerned would like to prosecute, from having a refuge on the territory of one of them, and second, to enhance the containment of crimes which are seen as menaces to the different states in themselves.

Without doubting the legitimacy of these aims, I agree with Rigaux and others who maintain that the protection of suspects has never been given much consideration without any justification for this circumstance. Therefore it is my belief that if police co-operation in western Europe is to move forward on the track which we have previously described, we can within the context of what in the international jargon is sometimes referred to as 'fair administration of justice' not be anxious enough to pay attention to the legal protection of suspects (Swart 1984).

This can be done first by clearly defining a suspect's rights in new treaties and by creating possibilities to fight violations in court; in the absence of an effective, adequate court at a European level this must be undertaken at national level. Second, the judicial control of investigations which involve the crossing of frontiers will have to be improved, 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 non-judicial aspects of this kind, by tightening up supervision by the Departments of Justice; these Departments could make arrangements concerning the number, location, competence and equipment of units that may engage in cross-border operations. Third, the political control of the administration of investigations in western Europe should be strengthened, either by the national Parliaments or, in view of TREVI and Interpol, by the European Parliament.

The best proof of the validity of my suggestion that we are dealing with forgotten problems was delivered during 1986 by the European Parliament and by the Council of Europe. These two institutions had produced and debated reports on how to counter organised crime in (western) Europe. I refer on the one hand to the report by Sir Jack Stewart-Clark on how to handle the drugs problem in the EC (European Parliament Working Documents 1986-7) and on the other hand to the report by Piet Stoffelen on international crime in the EC countries (Council of Europe 1986). Neither of these two reports pays even the slightest attention to the problems which I have identified above: the extent and content of organised crime, the effectiveness of the existing forms of police co-operation and the lack of legal protection for suspects. Raising some of these 'forgotten problems' would certainly have been justified, given the reports' recommendations for the formation of a 'European Police Information Office' and for devising

a European framework agreement, if possible laid down in a legal instrument, maintaining a set of principles, conditions, and rules for . . . a practical, executive police cooperation between the individual member states on a bilateral or multilateral basis as well as for 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 monitoring of financial transactions and the seizure of illegally obtained money.

(Council of Europe 1986; European Parliament Working Documents 1986-7)

A striking detail in these two reports is that they both voice an explicit preference for reinforcement for the task of Interpol within western Europe rather than an extension of TREVI. This makes it clear that there is a huge difference of opinion between individual national governments on the one hand and the members of the European Parliament and the Council of Europe on the other concerning the basis on which police co-operation in western Europe might proceed.

THE ECONOMIC UNIFICATION OF WESTERN EUROPE IN 1992 AND THE FURTHER INTERNATIONALISATION OF POLICE CO-OPERATION

The plans of the EC

When in 1986 the time had come to slow down somewhat the pace of the progress of internationalisation of police co-operation in western Europe in order to consider carefully what might be the next step, representatives of the EC member states were attaching their signatures to the Single European Act on 17 and 18 February of the same year. Article 13 of this Act amends Article 8a of the original EEC Treaty and stipulates that before 31 December 1992 the Community will achieve an internal market: in other words, an area without the barriers of national frontiers within which free traffic of goods, people, services and capital is guaranteed.

In order to be able to realise the Single Market on schedule, it will be necessary, according to the European Commission's White Book (which contains a list of all the questions that should be solved before 1993), for various measures to be taken by the

Council of Ministers with respect to the border control of people crossing national frontiers within the EC. The practical steps which the Commission has in mind include the following:

- 1 the elimination of police checks on entry and departure from territories of the various member states;
- 2 harmonisation of the legislation on narcotic drugs and fire-arms;
- 3 harmonisation of the laws on the rights of political asylum and the legal status of refugees;
- 4 harmonisation of visa policies;
- 5 harmonisation of extradition legislation.

On the face of it this would seem to contradict the final chapter of the Single European Act, which stipulates that no part of the preceding regulations will impede the right of member states to take such measures as they may deem necessary in order to conduct border controls on immigrants from non-EC countries and to counter terrorism, criminality, drug-trafficking and illegal trade of objects of art and antiques. However, this stipulation in fact indicates a degree of ambiguity in so far as not only the member states themselves but also the Council of Ministers are authorised to devise a policy with respect to these issues.

By mid-1989 there had not been much to see at EC level, which would indicate that they are energetically pursuing a policy concerning border controls. This is not hard to understand. One has only to think of statements made by Mrs Thatcher to realise that the economic unification of Europe is still a controversial political issue. The official negotiations on the concrete implementation of this Single European Act have only recently started and it should certainly not be lost sight of that it is an extremely difficult task to bring about a common policy with respect of border controls. Just how difficult it actually is can best be illustrated by the Benelux experiment and with the negotiations that are currently being conducted on the implementation of the Schengen Accord.

The experience of the Benelux Treaty and the Schengen Accord

A discussion of the Benelux Treaty is particularly interesting in the context of this chapter because it concerns an economic union (which was formed in the period 1958-60 between Belgium, the

Netherlands and Luxembourg) in which the border controls were removed from the internal frontiers. This Treaty may be seen as a test case for the EC after 1992.

If we examine what achievements this economic union has prompted in the area of immigration policy and more specifically in the area of police co-operation with a view to maintenance of public order and security, we find that the 'test case' has produced a number of interesting results.

In the first place, it can be established that through the implementation of a number of resolutions, the enforcement of the immigration laws in the three countries was harmonised in a number of ways. However, each of the three countries retained its own individual immigration law and, just as important, in a number of areas the enforcement of these laws is not harmonised at all, neither in practice nor in law. Also, the Dutch authorities are not happy about the way Belgium is carrying out border checks on their behalf at the Belgian border with France; for years, they have been maintaining that these border checks are not being made thoroughly enough. To remedy this, they posted their own officials of the *Koninklijke Marechaussee* near the Dutch-Belgian border in 1976 in order to monitor the traffic of people who may be entering via France and Belgium. Consequently it is no exaggeration to conclude that the Benelux experiment, at least in this respect, has failed. If the parties would wish to undo this failure, they would probably have to establish a common border patrol service. However, establishment of such a common agency is practically impossible because of political, governmental and financial reasons. The Netherlands therefore has little choice other than to try to keep any problems as manageable as possible through frequent dialogue with the Belgian government, in particular the Belgian Minister of Justice, who is responsible for the application of the Aliens Act.

The co-operation between the police forces of the Benelux countries has not grown spectacularly, to say the least. As early as 1962, a number of measures were adopted to advance co-operation which were embodied in the Benelux Treaty on extradition and judicial aid in criminal cases. This Treaty provided police officers with the legal right to pursue suspects across the border into the territory of one of the other Benelux countries and even to arrest suspects within 10 kilometres radius of the border; this is the so-called 'hot pursuit' clause. The Treaty also laid down

the rules for the presence of law-enforcement officers in criminal investigations which are being carried out at their own request in another country. However, these measures, and particularly the 'hot pursuit' clause, were not defined in more detail until 1976. Even then, the measures applied only to the Dutch and Belgian provinces of Limburg on either side of the border. It was only from then on that some actual co-operation began to develop in day-to-day operations of the police agencies of Belgium and the Netherlands in this part of the common border area. They co-operated in such activities as the synchronisation of contingency plans, jointly conducted border checks, exchange of information bulletins and 'wanted' notices as well as access to each other's communication equipment. Across the remaining and indeed largest part of the common border area, co-operation continued to be a matter of ceremonial exchanges only, such as mutual visits at official openings of police stations.

Just as much, however, may be learnt from considering those areas in which co-operation has not progressed as by considering areas where progress has been made. There is still for example no satisfactory procedure which lays down the rules for mutual co-operation in an emergency or major investigation operation, although the need for such regulation has been felt for decades. The conflicting organisational structures of the police agencies in Belgium illustrate the point clearly. Apart from the *Rijkswacht* (National Police), there is the *Gerechtelijke Politie* (Judicial Police) as well as (in the larger towns) the municipal police. They are all authorised to act independently without consultation with each other or indeed their opposite numbers in the Netherlands and Luxembourg.

No efforts have ever been undertaken in the Benelux countries which have been specifically aimed at the harmonisation of the police organisations involved. This does not mean of course that some degree of harmonisation has not actually been established in recent years in a number of areas as a result of the informal exchange of information and a sharing of operational methods, but apart from this incidental harmonisation, the police organisations in the countries involved have all been through their own separate evolutionary process.

Progress has also been slow with respect to the criminal law, such as Firearms Laws and Narcotic Drugs Legislation. Even in spite of all the agreements that were concluded with a view to

harmonisation of these laws, it did not work out according to plan, at least not between the Netherlands and Belgium. The Benelux countries are still a long way from following one common policy in these areas; the discrepancies are still extremely large.

Against the background of these experiences with Benelux, it is of course not surprising that the talks on the implementation of the Schengen Accord concerning the removal of controls at common frontiers, although projected to become effective in 1990, so far have yielded only very poor results (Tweede Kamer 1986-7). Yet in 1985-6 when it was signed, expectations were high. The working party which had been set up to study the problems of 'Police and Security' had been given the task of developing proposals on how to accomplish harmonisation of the policy on narcotic drugs, firearms and ammunition, terrorism and illegal organisations on the one hand and to devise proposals aimed at improvement of the quality of international judicial aid, the exchange of police information and border controls on the other. In mid-1987 the word was that these proposals had to be ready at the beginning of 1988. However, at the time of writing, the whole negotiating process has stopped. The main reason is quite simple: political disagreements between the governments concerned about the (solution of the) different questions are too great.

It is not hard to imagine that there is a great deal of opposition in the Netherlands (as there is in the UK) to the idea of the introduction of an identity card and even to the idea of a system of mandatory identification such as already exists in the neighbouring countries which are the co-signatories to the Schengen Accord. Neither does it require a great deal of imagination to realise that enormous criticism would be generated in the Netherlands by any proposal to change the prevailing criminal law policy on the subject of soft drugs in order to adjust it to the prevailing legislation on the subject in the neighbouring countries of the Federal Republic of Germany, Belgium and France. These are just two of the many problems that the members of the working party considering police and security will have to find solutions for in the coming months.

CONCLUSION

The internationalisation of police co-operation has made progress mainly whenever the security of the social order was, or seemed to

be, under threat. Obviously the quintessence of the modern state – its sovereignty – and following naturally from this its monopoly of violence normally does not encourage such internationalisation. If for pressing reasons of security it is considered necessary to co-operate internationally, that co-operation will be organised in secret or through informal channels. The fact that such co-operation once organised has turned out to run relatively smoothly is largely because it has been mainly restricted to the exchange of intelligence on individuals, goods and incidents. The modest harmonisation of legislation policy and organisational structures which there has been has nearly always been forced by circumstance rather than having been a carefully planned political choice.

In view of this first conclusion, our second one must be that the plans of the EC for 1992 are extremely ambitious. The fact is that in the absence of any imperative to maintain security, the EC not only is aiming at intensifying the existing level of co-operation but also wishes to accomplish harmonisation of government policies on a wide range of policing matters. Furthermore, there is no suitable platform to take on the dialogue that is essential for making progress with such efforts. Also, we cannot ignore the fact that there is not one exhaustive comparative study of the organisation and operation of the various police agencies to inform this dialogue. Nor is there a study of the enforcement of all sorts of criminal law and of the actual enforcement of border checks on people crossing national frontiers.

Based on the experience gained so far with the Benelux experiment and the Schengen Accord, it can safely be stated that the plans for the EC from 1992 are far too ambitious. The major political governmental and legal differences between the EC countries will neither be overcome easily nor within such a short span of time. Not only are these differences too large in themselves, but also both the active and passive opposition to their elimination is too substantial to be ignored.

I think we should be more realistic. I would suggest that we make sure that by 1992 every effort is made to have the issue of border controls at the external frontiers sorted out and to have the immigration laws of the countries concerned harmonised only so far as is necessary to remove primary border controls to the external frontiers. It would be advisable to have a detailed proposal for the elimination of controls ready by 1992 based on the

existing co-operation agreements such as those between the FRG and France and between the FRG and Austria; this would be a draft proposal for co-operation on a Europe-wide basis. Finally, in my opinion, efforts should be made within the EC towards a programme of research on the subject of police and security, parallel with research programmes on technological and economic subjects such as that of ESPRIT. The results of this programme would first and foremost have to be utilised towards harmonisation of the organisational structure of the various police agencies, criminal legislation and the police procedures in day-to-day operation (Klink 1987: 183-9).

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