

Tilburg University

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Published in:

The internationalization of police cooperation in Western Europe

Publication date:

1993

[Link to publication in Tilburg University Research Portal](#)

Citation for published version (APA):

Fijnaut, C. J. C. F. (1993). The internationalization of police cooperation in Western Europe. In C. J. C. F. Fijnaut (Ed.), *The internationalization of police cooperation in Western Europe* (pp. 9-17). (SMP-cahier; No. 6). Gouda Quint.

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The Internationalization of Police Cooperation in Western Europe

Cyrille Fijnaut

I. Introduction

In the coming years international police cooperation in Western Europe will undergo a lot of change, at least when the Treaties which embody its regulation and organization have been ratified by the States concerned: the Schengen Convention and the Maastricht Treaty on European Political Union. This thesis can be easily proved by an analysis of the relevant provisions in these Treaties. But such a demonstration does not take away that the political unanimity these provisions at first sight radiate, is to some extent very misleading: in fact they are the miraculous result of laborious negotiations between senior representatives of the Member States of the European Community or, to put it simply: they represent complicated political compromises.

If only to gain an adequate understanding of the named Treaties in the field of police cooperation it is necessary to explain the philosophies the Parties to these Treaties in general honour with respect to this issue and, in particular, the standpoints that they have defended in 'Schengen' and in 'Maastricht'. However, this is not the only reason why the Dutch Police Foundation has asked some of the important architects and observers of the restructuring of international police cooperation in Western Europe, to explicate today the perspectives and arguments which play a vital role in the policy their respective governments support with a view to international policing in this part of the European, the Western world. The other, the second reason returns to the idea that a profound insight into the similarities and differences between the States concerned into this respect is a necessary condition for any appraisal of the future evolution of international police cooperation. To what extent are they really willing to invest money, time, people into the application of the agreements made in the Schengen Convention and the Maastricht Treaty? And – in the long term – which outlooks for yet more radical changes are realistic or completely untenable? I hope that Prof. dr. M. Anderson, dr. R. Rupprecht, mr. L. de Witte and Mrs M. Hoefman – in close cooperation with mr. J. Peek – will be able to give us an idea of the answers to these questions.

All this, however, does not justify the presence of Prof. dr. E. Nadelmann in our midst. Nevertheless his contribution to this conference is also very important. Not only because transatlantic police cooperation – via Interpol as well as via the liaison officers of the FBI (Federal Bureau of Investigation) and the DEA (Drugs Enforcement Administration) at our American embassies – has become a frequent affair, but also because the DEA in particular considers Western Europe as an important part of its global battle field. In other words: reorganization of international police cooperation in Western Europe in one way or another implies a restructuring of the working relationship with the federal American police services. Therefore I hope that Prof. E. Nadelmann will inform us about the foreign police policy of the American government in relation to Western Europe. For the rest I want to make the observation that insight in the federal police system of the United States is also a prerequisite for any estimation of the prospects for international police cooperation in the difficult process of economical and political unification of Western Europe.

My own contribution to this conference is mainly intended to provide some of the background knowledge one should have in order to understand the contributions of the other speakers. Above all this means that I shall present a more or less reflexive and critical overview of the complicated structures of international police cooperation which presently exist in Western Europe.

II. The Unstable Position of Interpol

Of old, at least from 1923, Interpol has been the most important cooperation mechanism in Europe and, in any case since World War II, over the whole world. Today the 2 main functions of Interpol are still the exchange of police information, in very diverging forms, and the collection and analysis of data concerning all sorts of international (organized) crime. To strengthen the position of Interpol in the presence of new and more powerful forms of police cooperation in Western Europe a European Secretariat was established in 1986. This Secretariat has to assist the Technical Committee on Cooperation in Europe and the European Regional Conference. Furthermore it ensures liaison between 'Europe' and the other Interpol-regions, it organizes working meetings enabling investigators from different European countries working on the same case to cooperate more closely, and it tries to cover the day-to-day man-

agement of complex cases requiring international police cooperation at operational level.¹

In spite of all this Interpol is not based on an international treaty. This shows that Interpol still functions more or less as an international police association, although its structures are much more formalized than those of the German Polizeiverein in the 19th century. However, it would be completely false to deduce from the fraternal appearance of Interpol that it is a private, non-profit making organization. For a number of reasons it is more appropriate to characterize Interpol as an international public institution *sui generis*. This judgement is not only founded on its aims and tasks as described in the Constitution of 1956, but also on the role Interpol has been assigned in several treaties relating to legal assistance in criminal matters, on the agreements with the French government concerning such things as the immunity of its personnel and the control of the information stored, and on the fact that states which are involved in the activities of Interpol, at least in theory, pay allowances, send delegates to its meetings, etc.²

The ambiguous position of Interpol has nevertheless always been a source of negative criticism, insinuations and so on. At present the (American) National Association of Chiefs of Police (NACOP) is its most important opponent. Its director G.S. Arenberg in a letter of 11 February, 1992, to the Permanent Ambassador of the United States of America to the United Nations wrote the following³:

- The United Nations has utilized and funded Interpol on specific projects to combat the illicit drug trade. Yet, an examination of the facts demonstrates that highly placed Interpol officials who controlled the Interpol network in certain countries have abused their office for their own profit by actively engaging in illicit drug trafficking;
- NACOP is also concerned because, despite these activities, and despite Interpol's past as an arm of the Nazis during the Second World War, Interpol operates above the law. Interpol is immune from legal actions around the world. No international oversight mechanism exists over Interpol and Interpol is accountable to no one;

1. ICPO – Interpol General Secretariat, 'The European Secretariat', *International Criminal Police Review*, 1990, no. 424, 10-12.
2. Anderson, M., *Policing the World; Interpol and the Politics of International Police Cooperation*, Oxford: Oxford University Press, 1989, 57-73; Möllemann, H., *Internationale Polizei – Polizei des Völkerrechts*, Würzburg: s.n., 1969.
3. This letter was 'published' on the writing paper of the National Association of Chiefs of Police.

- Although the Interpol Constitution requires members to abide by the Universal Declaration of Human Rights and to refrain from intervening in political, military and religious matters, no mechanism exists to enforce compliance with these requirements;
- There is no question among law enforcement professionals that we need an effective international law enforcement program to combat international crime. However, such a program should be established by Convention so that the organization is held accountable for its actions;
- We respectfully request that the United Nations conduct a comprehensive review of its current relationship with Interpol to determine if Interpol has conformed to the principles and guidelines which are imperative to its good relations with the United Nations.

At a recent round table discussion on Interpol in the Belgian Senate Mr. Arenberg firmly repeated his accusation. But what must we think about its content?

On the one hand I would like to argue that it is a very one-sided attack – the functioning of the American DEA outside the United States is equally very questionable –, that its empirical basis shows weak points – his remark on Interpol during the Second World War is to some extent inappropriate – that it completely leaves aside the intimate involvement of the United States in Interpol during the last fifteen years – e.g. in 1984 the head of the U.S. Secret Service (!) was elected president of Interpol – and that his legal judgement about Interpol lacks the much-needed sophistication.

On the other hand, however, he hits the nail on the head: the position of Interpol is very ambiguous. It is very unclear who its members are: the States or the police chiefs concerned? More importantly, unlike other international, intergovernmental (public) institutions, not only is Interpol not embedded in global, or at least international political structures like the United Nations, the Council of Europe, let alone the European Community, but also has – e.g. at the level of senior officials – no representative structure, emanating from the States concerned, that governs the management and operations of Interpol.

III. TREVI: The First Intergovernmental Counterpart of INTERPOL

It is precisely the ‘a-political’ character of Interpol that was one of the important factors in the process that ultimately led to the foundation of TREVI in 1975. Interpol, indeed, was not an appropriate mechanism at

all to cope with the problem many Member States of the European Community were confronted with at the beginning of the 1970s: terrorist activities of groups and movements of European, but also of non-European origins. Interpol was not a suitable vehicle for the police to tackle this international problem for two reasons. The first one has to do with the prohibition in the Interpol Constitution (Art. 3) that it may not become involved in political, military, religious and racial matters. The second reason is related to the ambiguous legal position of Interpol: the grip of the states concerned on this institution is not strong enough to enable them to use it as their own instrument to steer international police cooperation in such a sensitive matter as (the fight against) terrorism. In short, at the time, in 1975-1976, the political leaders of the European Community had to look for a different solution than the mobilization of Interpol. In doing so they hit upon the idea of creating a radically new, but yet more secretive consultation and cooperation mechanism: TREVI.⁴

The hierarchical structure of TREVI makes clear its real intergovernmental character and, in this way, also its main institutional differences with Interpol. At the top of TREVI are the Ministers of Interior and Justice concerned; they meet twice a year under the chairmanship of the Minister of the Member State that chairs the European Council. At the second level are the Committee of Senior Officials who prepare the meetings of the Ministers and direct the working parties at the third level. The actual four regular working parties are on terrorism (I), on equipment, public order, training etc. (II), on drugs and serious (international, organized) crime (III) and on '1992'. Whereas these topics clearly show that TREVI in some respects doubles the operational tasks of Interpol and so is a challenging rival for it, the structure of TREVI marks in a significant way its institutional difference with Interpol: TREVI really represents an international governmental institution, Interpol only forms a peculiar international police organization. This justifies the conclusion that simply by the foundation of TREVI in 1975 international police cooperation in Western Europe was taken to a level which surpassed anything that has been accomplished or pleaded for the past hundred years in this part of the world.

4. Fijnaut, C., 'The Internationalization of Criminal Investigation in Western Europe', in: Fijnaut, C. and Hermans, R., eds., *Police Cooperation in Europe*, Lochem: J.B. van den Brink, 1987, 32-56.

IV. The Communitization of International Police Cooperation: The Foundation of Europol

However, the debate and policy concerning the economic and, later on, the monetary and political unification of Western Europe have again caused something like an earthquake in this field: the foundation of Europol. One has to give the Germans credit for pushing the debate in Europe for the past twenty years with respect to such a new police institution, or at least such a new police cooperation mechanism. The German literature nevertheless clearly shows that the opinions of the leading figures have always been divided on the way a reorganization of police cooperation in Western Europe should be put into effect. Their ideas not only differed on the role of Interpol in any new arrangement but also on the role of the European Communities and, particularly, the role of the European Commission in this context. But the Schengen Treaty of 1985 already made clear in which direction the knot would be cut. In its annexes the proposal is made that with a view to the fight against the illegal trade in drugs in the long term a central service will be indicated for the exchange of information. In other words: already in this Treaty Interpol (and TREVI) was passed by completely.

It is not necessary to examine now the debates which, over the past years, have taken place in the European Council, the European Commission and the European Parliament with respect to the organization and reorganization of police cooperation at the level of the European Communities. In summary it can be stated that they really prepared the battlefield for Europol. This can, for the rest, also be deduced from the fact that in the Action Programme that was accepted in Dublin in 1990 by the TREVI Ministers and by the European Council, the foundation of a service, as was already mentioned in the annexes of the Schengen Treaty, was programmed for the 12 Member States of the European Community: the European Drugs Intelligence Unit (EDIU).⁵ The progression from this project to the declaration in the Maastricht Treaty on Political Union with respect to Europol is not that great: at the TREVI Ministers meeting on 18 September of this year it was decided that the ad hoc group, that has to establish Europol, should redouble its efforts to ensure that Europol is put in place quickly and in particular should see

5. Fijnaut, C., 'Naar een "Gemeenschappelijke" regeling van de politie samenwerking en de justitiële rechtshulp', in: Fijnaut, C., Stuyck, J. and Wytinck, P., eds., *Schengen: Proeftuin voor de Europese Gemeenschap?*, Arnhem-Antwerpen, Gouda Quint - Kluwer Rechtswetenschappen, 1992, 89-117.

that the first phase, the Europol Drugs Unit, is in place by January 1993.⁶

The original German suggestion aimed at the foundation of Europol in 2 phases: to begin with Europol should only be a centre for the exchange of information and experience, later on it should get original powers to operate (independently?) within the Member States of the European Community. It was predictable that the (other) Member States would radically resist the latter part of this proposal. It was equally obvious that the governments involved would place Europol within the framework of the intergovernmental cooperation. The relevant provisions in the Maastricht Treaty are indeed part of the so-called 'third pillar' in this Treaty: intergovernmental cooperation in the fields of justice and home affairs. Art. K.1, 9 of the Treaty on European Union only concerns 'police cooperation for the purposes of prevention and combatting terrorism, unlawful drug trafficking and other serious forms of international crime (...) in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol)'. The annexed Declaration on Police Cooperation only adds that Europol may fulfil the following functions: support for national criminal investigation and security authorities, creation of data bases, central analysis and assessment of information, collection and analysis of national prevention programmes, measures relating to further training, research, forensic matters and criminal records departments.

All this doesn't alter the fact, however, that on the basis of the general provisions in the chapter concerned not only the European Council but also the European Commission and the European Parliament will be involved in the decision-making process concerning Europol. In other words: the Maastricht Treaty effectuates a certain Communitization of police cooperation between the Member States of the European Community. Indeed, apart from the provisions concerning the right of initiative (only for the Member States) and the Committee of Senior Officials (of the Member States), Art. K.4 clearly states that the Commission will be totally involved in all the activities with respect to the field of 'Justice and Home Affairs'. Art. K.6 regulates the participation of the European Parliament: the Chairmanship and the Commission have the duty to inform it regularly about the activities, the Chairmanship is obliged to consult the Parliament on the most important aspects of the cooperation concerned, and the Parliament disposes of the right to ask questions to the European Council and to make recommendations to it. For the rest

6. See the *Press Release* of 18 September 1992 concerning the *Interior and Justice Ministers Meeting* in Brussels.

the institutional position of Europol will be clarified in a specific convention as was decided at the Lisbon Summit. So we have to wait some time for more details concerning this crucial issue. Nevertheless the foregoing shows that the institutional knot has in principle been cut: police cooperation in Western Europe will become more and more an affair of the European Community.

In relation to the existing institutional arrangements the importance of this decision must not be undervalued. Interpol and TREVI are still permeated by the informal and confidential character that always has typified police cooperation in Western Europe. The organization, mission and duties of both institutions are not based on unambiguous international treaties and their operations are still concealed from the general public, let alone the subject of anything like independent, external, democratic review, control or accountability with respect to their work. What is more, both institutions only represent forms of intergovernmental cooperation, although exactly on this point the position of Interpol is very different from the position of TREVI. Whereas Interpol still functions more or less as a fraternal international police association, TREVI forms a real intergovernmental cooperation mechanism between the Member States of the European Community, but completely extraneous to its established institutions like the European Commission and the European Parliament.

V. Conclusion

The position and definition of Europol entail that in the long run this new police institution will take over the task of Interpol, at least within the Member States of the European Community. The fact that the European Drugs Intelligence Unit is renamed the Europol Drugs Unit and that this Unit is not lodged in Interpol, clearly marks the beginning of this development. If the Community becomes more federalized the end-result will perhaps be that Interpol will have the same position in the European Community as in the United States: one of the outside contact points with the police in other continents. At that stage Interpol would really be the complement of Europol.

Being embodied, in the Maastricht Treaty, within the framework of intergovernmental cooperation between the Member States of the European Community, it is obvious that the governments involved have to arrange, in one way or another, the governance of Europol. The most natural solution would be that this important function would be entrusted to TREVI, or at least to a representative body composed of the

TREVI Ministers. The containment of organized crime is after all one of the main aims of this intergovernmental cooperation mechanism. If this should happen, it would mean that in the long run TREVI and Europol would probably fuse together and form one and the same police institution. Parallel to the reordering of the relationship between Interpol and Europol such a development would also considerably reduce the confusing complexity of international policing in Western Europe.