

6 International policing in Europe: Its present situation and future

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I. Introduction

The question I want to address in the course of this lecture is a two-fold one. First, I will attempt to evaluate the state of affairs with respect to police co-operation in Europe. Second, I will also provide a perspective for this specific form of international co-operation in a Europe that is experiencing troubled times.

In order to avoid needless repetition, I shall not present an overview of the actual formal and informal arrangements in the field of police co-operation in Europe, and particularly in Western Europe. At the moment a number of quite complete descriptions of what is going on already exist, including interesting efforts to bring together all the existing arrangements in one and the same analytical framework.¹ Neither will I resort to an enumeration of all the established institutions, loosely organized practices and new initiatives in order to create for myself the opportunity to complain about the creative chaos that actually dominates the landscape of international policing in (Western) Europe. Indeed, international police co-operation in this part of the world is a very complicated matter, but how could it be otherwise? The police forces in Europe not only have to cope with a great variety of important problems in public order policing and law enforcement but also have to adapt their cross-border co-operation to divergent administrative, judicial and legal structures between the countries concerned and to embed it in rapidly changing international political structures and relationships. Instead of exclaiming one's own inability to understand what happens one should try to come to grips with it.

The first part of my paper forms the background of my evaluation of the present situation as well as of my vision of the future. It consists of some general historical notions with respect to international policing in Europe in terms of co-operation, harmonization and integration. In the second

part of this chapter, I shall evaluate the present situation, particularly in Western Europe, from three different perspectives: the democratic perspective, the legal perspective and the operational perspective. The third part of my paper relates to the future of international policing on a European scale. I try to show in this part to what extent only minimal forms of co-operation can be organized between some countries and to what extent optimal arrangements of police integration could perhaps be developed between some other countries. It goes without saying that both 'minimal' and 'optimal' in this context refer to the viewpoints in my description of the history of international policing in Europe as well as my evaluation of its present situation in Western Europe.

II. Some historical considerations on international policing in Europe

If one wants to analyse the history of the police in Europe with a view to a better understanding of the actual relationships between the countries concerned in the matter of policing, one can make, as was already indicated, a distinction between co-operation among police forces, harmonization of their organizational structure, operational methods, technical equipment and legal powers, and finally, their integration in one and the same transnational system.

The evolution of international police co-operation

As far as international police co-operation is concerned it is well known that up to the First World War such co-operation was mainly brought about to combat radical, and in any case, violent political opponents. One may think back to the German *Polizeiverein*, to the action of the Russian *Okhranka* in Western Europe and to the European anti-anarchist conference in Rome in 1898. It goes almost without saying that for several reasons this co-operation was organized in a very informal and secretive way: fear of the loss of sovereignty, incompatibility with liberal ideologies, recollections of the Napoleonic 'spy system', etc. to put it briefly: it was a highly sensitive matter.²

The discussions of the *Premier Congrès de Police Judiciaire Internationale* in Monaco in 1914 saw that this state of affairs constituted a real obstacle to organizing international police co-operation on a broader scale and in a formal, official way.³ I would even like to put forward the thesis that the foundation of Interpol in 1923 was made possible by the political instability in Western and Middle Europe as a result of the First World War and the Russian Revolution: this insecure situation and its impact of international and professional crimes was needed to overcome the named reluctance to give more room for more official and less political police co-operation. But

even in this case the states concerned were only willing to promote their common interests in such a way that their sovereignty remained completely intact. Interpol was set up as a more or less private international association of chiefs of police. Although since the Second World War Interpol has become more and more an international public institution *sui generis*, its organization still retains a lot of the original characteristics, particularly that it is not based on an international treaty, is not embedded in global, or at least international political structures like the United Nations or the Council of Europe, and even that it has no representative structure emanating from the states concerned that governs the management and operations of Interpol.⁴

Exactly on this last point a real breakthrough took place in 1975, at least as far as the member states of the European community are concerned. For in this year they established the consultative mechanism called TREVI to streamline the fight against terrorism and other forms of radical political violence. The internal, hierarchical structure of TREVI — a Troika of Ministers of Home Affairs and Justice, a committee of senior officials and 3(4) working groups — clearly marks its real intergovernmental character and, in this way, its main institutional difference with Interpol. Nevertheless, TREVI is also a very secretive institution, in some respects even more secretive than Interpol.⁵

The establishment of transnational police systems

Police co-operation is too narrow a concept to cover the actual development and the present debate in the matter of European policing. One also has to take into account the integration of police forces at a transnational level in Europe, in other words: the establishment of real European police systems.

It is not my intention to depict this very interesting history in a few words. Nevertheless, I wish to call your attention first of all to the fact that already during the eighteenth century a Europeanization of the police took place, in that the French police, notably the police of Paris and the gendarmerie, served as models for the reorganization of the city police and the rural police in, for example, Austria, Germany and Belgium. It goes without saying that this process was greatly enhanced in the course of the French Revolution and the Napoleonic Regime. In most of the countries which were occupied, conquered and successively incorporated into the French Nation and the French Empire not only the more or less decentralized civil police structure, with its *commissions de police* and *gardes rurales*, but also the centralized military police structure: the *Gendarmerie nationale*, were introduced. Without any exaggeration one could say that at the time at which Napoleon was at the height of his political power, he directly and indirectly controlled a real European police system from Paris.⁶

With much more reason the same can be said about the time of the Second World War. In the course of the Nazi-occupation of Europe for the second time in history a more or less real European police system was established: the SS police apparatus, steered from Berlin, from the *Reichssicherheitshauptamt*. This system was not only in a territorial respect more European than the Napoleonic system, but also from a functional, organizational point of view: while Fouché, strictly speaking, wasn't head of the gendarmerie and controlled the civil police only indirectly and partially, Himmler, the head of the SS and also of the *Reichssicherheitshauptamt*, directly and completely had both the military police forces and the civil police forces and intelligence services at his disposal, at least in Germany and the *gleichgeschalteten* territories, as, for example, Austria and The Netherlands. In the other parts of the Reich, such as Belgium and France his control on the police forces took a rather indirect shape.⁷ Apart from minor differences the same situation existed from the beginning in the Soviet Union: the founding father of the Cheka, Dzerjinski, created already around 1920 a transnational police system the structures of which equal those of the SS police apparatus that was gradually built up from 1933 onwards.⁸

Anyhow it is important to draw attention to these three well known historical examples because they show the (horrible) political conditions wherein the establishment of the real European police systems took place and demonstrate in this way that it would be a very laborious task to assimilate the different national police systems into one European police system in a more democratic period. In addition one should not lose sight of the fact that the recollection of the Napoleonic police system under Fouché has its parallel in the twentieth century. The organization and action of the SS police apparatus have created in at least some of the member states of the European Community a lot of distrust — most of the time unvoiced and sometimes very unjustified, not to say shabby — towards German ideas and German initiatives in the matter of international policing.⁹ Equally one may expect that any effort of Russian police authorities to bring about new forms of close international police co-operation between Russia and its former vassal states would meet with a lot of resistance in most of the actual neighbouring countries.

The harmonization of national policing

In the third place it is very important to point at the harmonizing effects of both the establishment of transnational police systems and the development of international police co-operation upon policing in the different states of Europe.

First of all, it must again be underlined that during and, in some cases, after the Napoleonic regime the existing (pre-) revolutionary French police

system was introduced or — where it was built up already — strengthened all over Western and, to a lesser degree, Middle and Eastern Europe. This means that from a historical point of view the general basic structure of many police systems is, or at least for a long time was, more or less the same: on the one hand a network of decentralized civil police services and on the other hand a centralized, more or less military police force, a gendarmerie. Of course, over the years this basic scheme of police organization in (continental) Europe has been modified, adapted, particularly in times of war, revolution and heavy social conflicts. For instance, in many countries the local police forces have gradually been unified to form national, federal or state police forces, and furthermore in some countries special but regular judicial police services have been established. In particular the German Occupation has played a significant role in this nationalization process: to some extent Himmler completed the task Fouché had initiated. In this way it is not so astonishing that — despite a lot of differences — in many European countries the police system is still characterized by a basic dualism: it encompasses both a civil and a military police force.¹⁰

Secondly, one has to realize that the development of international police co-operation has enormously furthered — on the basis of the structural harmony I have just discussed — the operational and technical harmony between the national police forces in Europe. In this regard, the secret conference in Rome in 1898 against violent anarchism already had a durable impact on the international harmonization of criminal investigation on this continent. On the one hand an agreement was made to raise central units that would have to fight anarchism in all the countries concerned, and to stimulate a direct exchange of intelligence between these units on a monthly basis. On the other hand, the conference produced agreements on the introduction of a new identification system, such as the Bertillonage, causing internal organization, equipment and working methods of the national police forces in Europe to become internationalized to some extent.¹¹ Obviously, the foundation of Interpol in 1923 greatly enhanced this form of operational and technical harmonization. Not only because within this institutional framework a lot of agreements were concluded concerning operational structures, working methods and technical equipment, but also because this new institution considerably accelerated the exchange of ideas and examples in those fields all over Europe. One only has to read the report its secretary-general O. Dressler published in 1942: *Die Internationale Kriminalpolizeiliche Kommission und Ihr Werk*, to become convinced of the harmonizing impact that Interpol had on (judicial) policing in Europe before the Second World War.¹² In addition one should not lose sight of the fact that in any case since the end of the nineteenth century a more or less common professional police literature developed in Europe. I may refer to authors like H. Grosz, F. Louwage and R. Heindl and to the well

established journals which have played an important role in this respect: the (British) *Police Journal* and the (German) *Die Polizei* and *Kriminalistik*.

Finally I just want to observe that even in the field of police powers one should not only pay attention to the actual differences in police laws and codes of criminal procedure between the various states or to their different formulations in the course of successive political regimes. It is — with a view to the future of policing in Europe — equally important to bear in mind, on the one hand that the ways in which those powers are defined often still share the values and principles which were articulated during the Enlightenment and the French Revolution, and on the other hand that their utilization often takes places within an institutional framework that still bears the marks of the Napoleonic code of criminal procedure and other connected laws. Equally, one should pay attention within this framework to the harmonizing effects the *Internationale Kriminalistische Vereinigung* and other similar European associations and institutions later on, round the turn of the century, have had on the formulation and the utilization of police powers in Europe.

The Americanization of policing in Europe

The dynamic interaction between the police in Europe and the police in North America, especially the United States, is a subject that deserves much more attention than it has received up to now. It would greatly go beyond the limits of this chapter, however, to pay attention to the European influence that the big city police forces in particular in the United States experienced up to the Second World War, and to the working relationships between European and American police forces and policemen during that time. The only issue I want to discuss relates to the fact that the Second World War and the Cold War not only definitely divided the police in Europe into two separate camps and in this way brought an end, in many respects, to co-operation and harmonization between police forces on a real European scale, but also formed the starting points for far-reaching transatlantic, North-Atlantic, police co-operation and harmonization, in particular between (federal) American police forces and national as well as big city police forces in Western Europe.¹³

Above all it is important to notice that since the Sixties the United States have sent their 'police sons' all over the world. At this moment one estimates that about 250 members of the DEA are stationed in about forty countries, and about thirty members of the FBI in some ten countries. Moreover there is an unknown number of investigators within the military forces abroad who engage in more civilian criminal investigation too.

The presence of these transnational police in Western Europe, however, should not only be studied with respect to its consequences for North-Atlantic police co-operation and police harmonization.¹⁴ A preliminary

question indeed is: what is the reason, the background for this remarkable invasion? The answer to this question is quite simple: the attempt of the successive American administrations, since the Nixon administration, to involve the European governments in a world-wide war against international (organized) crime, in particular the drug trade. This means that the Americanization of European policing in terms of co-operation and harmonization is radically based on an Americanization of European police policy, as far as such a policy exists. Helping to make a police priority of the war against drug traffickers has always been the most fundamental task of the American policeman on European soil. Looking at what is going on in the matter of proactive policing in this part of the world, one can only assess that they have delivered an important contribution to the attainment of this political aim. Meanwhile, how many European investigators are not participating in this war? Thousands and thousands of them!

The involvement of European police in the war against drugs implies — this goes without saying — co-operation with the representatives of the American police forces, above all the DEA and the FBI. This co-operation mainly concerns mutual help with the detection of crimes and the arrest of suspects. In this way it covers a whole range of activities. To give only some examples, mention may firstly be made of the use European policemen may make of the information of which the American forces already dispose, and of their world-wide communications systems. Secondly, the Americans have helped their European counterparts by providing money and personnel for undercover operations. A third form of help is the training of European policemen, in their home country or in the United States, for proactive policing in the field of the fight against drug trafficking.

The steady growing American-European police co-operation has gone, indeed, hand in hand with the harmonization of proactive police methods. To prevent any misunderstanding: the adaptation of European 'police methodology' to the American one. This adaption relates above all to different forms of covert action which are now widely used: short term infiltration, 'buy and bust', controlled delivery and so on. That's not to say that 'everything' has been aped. For example, long term infiltration and 'sell and bust' are not (yet?) accepted in most European countries. However, this partial, methodical harmonization has involved a reorganization of the police service in some places too. Around 1970, the Belgian government took the decision to establish the Administration of Criminal Information (BCI). This decision was based upon the American insights into the fight against organized crime. This fight required, so to speak, the foundation of an independent intelligence unit, manned by 'policemen' with a lot of routine but without any judicial competence. The outcome of this 'American' experiment was a disaster for the rest. Around 1980 it turned out that most of the detectives concerned were criminal, corrupt, etc., etc. Some years ago the BCI was silently removed.¹⁵

Finally attention must be paid to the fact that the American government is also very much interested too in the Europeanization of police co-operation. This can not only be deduced from its lively participation in Interpol but also from the relationship it has with TREVI. Perhaps one may predict to what extent the political unification of Europe will progress, the Americans will push the integration of the police in (Western) Europe too, for example, by selling their model of federal policing.

III. An evaluation of the present situation in Western Europe

As I already put forward in the introduction, my evaluation of the present situation consists of an assessment from three different perspectives: the democratic perspective and the legal and the operational ones. This evaluation is restricted to the situation in Western Europe. In this regard, my option is mainly based on the idea that it is in this part of Europe, that international policing has made most progress, and that a critical review of this progress makes up an appropriate basis for formulating realistic expectations concerning the future of international policing all over Europe.

Even as far as the situation in Western Europe is concerned, I shall restrict my judgment to the most remarkable developments in and between some of the member states of the European community: the police arrangements in the Schengen Convention of 1990, the foundation of Euro-pol by the Treaty on Political Union, and the evolving police function of the European Commission. In my view, these are the most important touchstones for an evaluation of the present situation from the perspectives concerned. So the choice of them in no way implies any depreciation of what is going on on smaller geographical levels or in very specific areas of international policing.

From a democratic viewpoint

It is not that easy to define what 'democracy' means in the field of international policing. Departing from a definition that gives full weight to parliamentary control on inter-governmental policies and decisions, it is of course crystal-clear that the democratic quality of Interpol as well as TREVI is rather small, taking into account their organizational characteristics. On the other hand, one has to acknowledge that many national Parliaments in Western Europe were most of the time not really willing or capable to call to account their government concerning its own involvement and the role of the police forces in those co-operation mechanisms.

In some countries this situation changed to a lesser or greater degree at the moment that the importance of the Schengen Convention in the matter of immigration policy, police policy and drug policy became manifest.

For instance, the Dutch Parliament reproached the government in 1988–89 that it had already secretly negotiated for much too long with the governments of the other four (original) Schengen states and required regular consultation on the details of the coming Convention. The Belgian Parliament, on the contrary, has shown no real and lasting interest in the Schengen Treaties and related issues. Although the United Kingdom in a direct way was (and is) not a party to 'Schengen', the Parliament in London meanwhile has paid a lot of attention to international police co-operation in Western Europe.¹⁶

More important in this context, however, is that now all the Parliaments of the member states of the European Community have for the first time in history ended up in a position where they have to formally pronounce upon the future arrangements with respect to international policing: they play the most important role in the ratification of the 'Treaty of Maastricht' and, at least most of them, also in the ratification of the Schengen Convention. In democratic terms this means enormous progress, so much the more because the European Council is of the opinion that a specific Treaty has to be concluded regarding Europol.¹⁷ In the future, if the treaties have been ratified by all the parties concerned, the national Parliaments in any case have no formal excuse any more to abstain from control on the action of 'their' police forces abroad. Parliaments that are really interested in this issue will dispose of the power to call to account their government in this matter and have in this way also an opportunity to fill up the so-called 'democratic gap' in the European Community.

Within the framework of the institutional debate on the reinforcement of the Community in the coming Political Union as opposed to reinforcement of its intergovernmental character, the afore-mentioned 'democratic gap' has also been invoked to argue for a Europol that will not be embedded in the intergovernmental structures of the Political Union as it has been envisaged in the Maastricht Treaty, but in the structures of the established Community. Although I really have my doubts about the social validity of this specific argument, I particularly want to stress that this argument only makes real sense from a democratic viewpoint if the Political Union were to be built up following a federal model, including a federal government, federal legislation, etc. In addition, one has to take into account history's lesson that states really cherish their sovereignty in the matter of police and will never be willing to hand over a part of (the governance over) their police to a half-way democratic institution like the European Parliament. So it does not attest of much historical and political insight to claim the ultimate control over Europol by the European Parliament. The argument that such a claim can nevertheless be based on Article 235 of the Treaty on the European Economic Community itself, as is alleged in the report of the new parliamentary Commission of Public Liberties and Home Affairs on Europol, is for the rest very doubtful.

In the light of this reasoning it is all the more interesting that, although the foundation of Europol in the Maastricht Treaty is considered to be an intergovernmental affair, the European Parliament is not on the basis of the related articles completely excluded from the governance of Europol. Not only the European Parliament may ask questions, but the European Council is also obliged to inform and to consult the European Parliament with respect to Europol. From an historical and political perspective this set of powers and duties already makes up a very impressive form of democratization of international policing in Western Europe. Of course, this development still shows shortcomings if related to the ideals of democracy, but an ideal situation can only be achieved within the framework of the further federalization of the Political Union.¹⁸

Further on some attention must be paid to the fact that on the basis of the Maastricht Treaty the European Commission will be involved in all of the decisions and activities relating to Europol. This fact however, is not only just another proof of the cautious democratic embedment of Europol. It can also in itself considerably further the ongoing democratization of international policing in Western Europe. It is well known that some years ago the initiative was already taken to strengthen in the fold of the European Commission the co-ordination of the fight against fraud by establishing the UCLAF. Although the European Parliament, for one, is highly pleased with the action and the results of UCLAF, the European Court of Auditors is of the opinion that it is necessary to create — eventually separate from UCLAF — an independent Community unit to control the major beneficiaries of EEC subsidies, particularly where those beneficiaries are international in their production and trading structures. The reason for this is quite clear: 'This task is virtually beyond the reasonable capabilities of national control authorities. The targeting of such controls depends on the analysis of data provided by several member states, and this is work which can best be done on a Community basis. Such a unit could usefully include national experts on temporary contracts — a formula which has been adopted by the Commission's 'anti-fraud unit'. So the institutional future of a 'Community police force' is still somewhat uncertain at this moment. This, however, does not take away that the European Commission in the longer run will be in the position to connect the activities of Europol and those of UCLAF (and eventually other units) and, in doing so, can not only exert supranational influence on Europol but will also enlarge, via this supranational way, the possibilities of the European parliament to participate legitimately in the policy concerning Europol.¹⁹

Lastly I may raise the question whether the foundation of Europol — the Communization of international policing — does not mark a certain transition from international police co-operation to transnational, even supranational integration of the police forces in Western Europe? My answer would be affirmative, although Europol will not dispose of real original

powers to operate on the territory of the member states. The involvement of the Community institutions in Europol on the one hand and its package of tasks as described in the Declaration on the Police on the other hand exclude in my opinion a negative answer to that question, in particular if one considers the institutional future that one of the architects, Dr R. Rupprecht, has predicted for Europol.²⁰ The gist of this observation is evidently that by the foundation of Europol some supranationalization of policing is realized in a peaceful and somewhat democratic way for the first time in European police history.

From a legal viewpoint

In conjunction with the foregoing remarks concerning the democratization of international policing in Western Europe it can be stated that we are experiencing equally important and positive changes in this field from a legal viewpoint.

To underpin this judgement it may first of all be noted that for the first time in history true multinational and detailed treaties will be concluded regarding many forms of international police co-operation and even modest forms of integration of national police forces at a transnational or supranational level. Indeed, the Schengen Convention and the Treaty of Maastricht form a real event in the history of international policing in Western Europe. The era in which cross-border police co-operation is only organized like an undercover operation, a public-private undertaking or a secret intergovernmental initiative comes largely to its end.

Of course one will have to wait for the proposals concerning the Europol Treaty in order to be able to make remarks concerning Europol from a legal perspective. In the meantime, however, all the energy can be spent on such an evaluation of the Schengen Convention. Again, in doing so, one can only come to the conclusion that the Schengen Convention embodies a lot of progress.²¹

Firstly, because in none of the existing relevant treaties (for instance, the 1962 Benelux Treaty concerning Extradition and Legal Assistance in Criminal Cases of 1962) and agreements (such as the Agreement of Paris of 1977 concerning the co-operation between the French and German police force in their common border area), are such detailed provisions included concerning such sensitive questions as border-crossing pursuit and border-crossing observation. Not only must many substantive conditions be fulfilled before such actions may take place, but also the central control on their course and outcome is considerably stricter than in the Benelux Treaty. The objection that 'Schengen' nevertheless strengthens the autonomy of the police by making a distinction between police co-operation and mutual legal assistance, is unconvincing. As can be deduced from the Explanatory Report to the European Community on Mutual Assistance of

1959–62 the designers of this Convention considered police co-operation as a completely different subject. As is said in that report: 'In the first place the committee debated whether a provision should be drawn up to enable single items of information concerning a criminal matter to be exchanged directly between police authorities acting in auxiliary capacity to the judicial authorities'. The majority of experts were in favour of making no such provision. They thought it best not to force the existing practices of the police into a rigid mould particularly since mutual assistance between police authorities is already regulated by the Statute of the International Criminal Police Organization (Interpol). Without any doubt the said experts would consider the Schengen Convention as a very rigid mould.²²

Secondly, one may not ignore the fact that the Schengen Convention not only contains a very complicated personal data protection system with regard to the international exchange of information between police forces but also a system that completely meets the standards of the European Convention Governing the Protection of Individuals with Regard to Automatic Processing of Personal Data of 1982 and the connected Recommendation No. R(987)15 of the Committee of Ministers to members states of the Council of Europe 'regulating the use of personal data in the police sector'. It is even the case that the Schengen convention only can come into force if the parties to it have at their disposal national legislation that is in accordance with the same requirements! Any comparison between the Schengen Convention and the existing treaties and agreements on this point can only lead to the conclusion that this convention really is a great step forward.²³

Notwithstanding the fact that, legally speaking, the Schengen Convention forms a radical and positive break with the past, a lot of authors have made critical and justified comments on the absence of provisions regarding the legal protection of (suspected) citizens who become implicated in cross-border police operations on the basis of the Schengen Convention. In particular, the lack of any provision with respect to legal aid, with respect to the collection of evidence and the judicial control upon this activity, and with respect to the access to an international or supranational court, is frequently brought up for discussion within this context. This shortcoming is of course not just another defect of the Schengen Convention. Several important observations have caused this 'black hole'. On the one hand one may not lose sight of the fact that the Schengen Convention — as far as international police co-operation is concerned — has to a great extent been conceived as a piece of international police legislation and not as the first stepping stone towards a European code of criminal procedure. On the other hand, the architects of the Schengen Convention were in this matter also faced with the divergent regulations and doctrines within the states concerned in relation to the issues in question. This experience brought them to the conclusion that any effort to realize in one stroke by

the same treaty more qualified international police co-operation as well as harmonization of the relevant provisions in national police law and codes of criminal procedure, is doomed to fail. Only piece-meal engineering can bring about success within this context, unless one prefers the use of really undemocratic methods to achieve international co-operation and harmonization in one and the same move.

This rather acquiescent conclusion, leading to the expectation that the realization of more international police co-operation will by itself force the policy-makers to engage in a process of harmonization, should not make us lose sight of the fact that at the moment and from a completely different place a process of harmonization is already going on. Since the seventies, indeed, the European Court and the European Commission of Human Rights have in a more or less systematic way applied the Articles 3, 5, 6 and 8 of the European Convention of Human Rights to the police, or at least the pre-trial proceedings in the penal process. This means that their case-law is presently delineating the general frame of reference within which police operations in the member states must be organized. I refer you in this regard to *Malone versus United Kingdom* and *Huwig versus France* concerning telephone-tapping, and at *Kostowski versus The Netherlands* with respect to informants. The unintended outcome of this profound evolution will be that harmonization of legal provisions with respect to a growing series of issues will in the longer run not be that difficult any more because the relevant legislation in the various states will in any case meet the minimal requirements which in the case-law of the European Court and the European Commission of Human Rights will have been formulated. At least ... if the Parties to the European Convention of Human Rights remain willing to implement the 'guidelines' from Strasbourg into national legislation.

From an operational viewpoint

Many people, not only in police circles, are opposed to what could be called the Communitization and the Schengenization of international policing in Western Europe. They are afraid that those processes will not further the effectiveness and efficiency of international police operations but, on the contrary, will only complicate and hamper such activities. It is not that difficult to make a lot of objections to this way of thinking. The main counter-arguments, however, are in my opinion the following.

If compared with the existing bilateral arrangements on the 'original' Schengen territory, the Schengen Convention does not restrict the repertoire of practical mechanisms for cross-border police co-operation but, on the contrary, it enlarges the possibilities for such co-operation, in some cases even considerably, for example between Germany and Holland. In addition one must not underestimate the fact that the Schengen Conven-

tion, if ratified, will enormously improve the conditions in which police co-operation takes place: it will enhance the establishment of the network of police attaches, it will facilitate the construction of cross-border communications and so forth. So the Schengen Convention is no 'bromide' for international police co-operation, but really forms a challenge for police, judicial and administrative authorities in this respect, and the initiatives which have been taken along the Dutch Belgian border prove that this last statement is no empty slogan.²⁴

The same reasoning is applicable at the level of the European Community. Many policemen and also politicians hold on to Interpol and/or TREVI and are obviously unaware that their viewpoint is very conservative not only from a democratic and from a legal perspective but also from an operational perspective. Indeed, once established, Europol will probably broaden at a great pace the scope of police co-operation between the member states of the European Community, far beyond the 'natural' limits of Interpol and TREVI. One only has to refer to the programme that is included in the Declaration on the Police, annexed to the Treaty of Maastricht, to grasp the difference. Even a Europol that does not dispose of executive competences and powers will spread its institutional wings towards police training, police research and police technology in the interest of the member states, just to mention a few examples. In other words: 'Europol' will achieve 'top-down' what 'Schengen' will realize 'bottom-up': much more operational police co-operation in a much more integrated framework than the existing mechanism could ever bring about.

In addition one has to bear in mind that a more dynamic process of growing police co-operation for its part also will enhance the harmonization of the internal structures, the operational methods, the technical equipment and even the legal powers of the police forces in the member states of the European Community. The interplay between co-operation, harmonization and integration must not be underestimated in this field.

IV. The European perspective for the future

In the foregoing I have presented a rather positive image of the development of the European Community in the matter of international policing. I have even coloured this image somewhat rosily in opposition to the critics who make themselves champions of democracy and the rule of law. Most of them lack a balanced judgement in the absence of adequate historical-comparative and legal insights. Anyhow, I hope to have demonstrated that the actual achievements in Western Europe have been made possible by the gradual process of economical and political unification and that they fit quite acceptably with the corresponding process of democratization and constitutional state-building, and in doing so I have created a

rather firm starting point for some observations regarding the future of international policing on a European scale.

Of course, the fall of the Berlin Wall has not only offered the opportunity of continuing the European approach to international policing that ultimately has led to the establishment of Interpol, but has also made it necessary — for several reasons, such as the ongoing internationalization of (organized and professional) crime, the massive and difficult problems in the field of immigration and the containment of violent public disorder. However, the 'rest' of Europe forms a very differentiated economical, political and military landscape: it shows up the rather peaceful image of the Baltic States as well as the Guernica of Yugoslavia. So, taking into account the general conditions which have furthered so much international policing at the level of the European Community, it speaks for itself that it is impossible and in some cases, even undesirable, to try to bring international policing all over Europe at the level that has been achieved in the European Community.

International policing within the European economic space

In any case a distinction has to be made between the EFTA States (European Free Trade Association) and the non-EFTA States. Together with the member states of the European Community the former states are since 1 January 1993 making up the European Economic Space (EES). The convention concerned — the convention signed in Oporto on 2 May 1992 — contains no specific articles with respect to international policing: only customs co-operation, the fight against the drug trade included, is touched upon in Article 11 of Protocol 11 of this Convention.²⁵

However, on the basis of Article 78, international policing could also be brought within the framework of the EES. In other words: if the parties were willing to do so, the former EFTA States would not only become involved in TREVI and Europol, but could also be invited to become parties to the Schengen Convention. Such a development would again be a great step forward towards much more operational police co-operation in a much more integrated democratic and legal framework.

Nevertheless it is difficult to estimate the chance that a decision will be taken in this direction. On the one hand, of course, most of the necessary conditions for taking such a step are fulfilled — general political, economical and legal conditions as well as particular conditions with respect to the organizational, operational and technical level of the police systems concerned. On the other hand one should not overlook the possibility that the Nordic EFTA States will want to organize their international relationships in the matter of policing in their own way.²⁶

In the latter case a very difficult questions arises, notably in relation to Europol: is it acceptable within the general framework of the EES for some

former EFTA States (for example, Austria, Switzerland and Liechtenstein) to join the Europol initiative and for some other EFTA States to claim the right not to co-operate with Europol? Precisely because of the mixed (communitarian — intergovernmental) character of Europol the answer to this question is not obvious. The situation with respect to the Schengen Convention — being only an intergovernmental instrument with a view to the unification of the internal market of the European Community — is of course completely different. In this case the EFTA States are of course in the same position as the member states of the European Community: they may experience a lot of pressure to become a Party to this Convention but nevertheless enjoy the freedom to do so or to abstain. Only with respect to police co-operation within the framework of the European Community, notably to contain the problem of EEG fraud, is the situation rather clear: co-operation with the UCLAF and other antifraud units in the European Commission is, in my opinion at least, part of the so-called communitarian 'acquis'.

Police co-operation and harmonization with the non-EFTA states: A role for the Council of Europe

Considering the context and characteristics of Europol and 'Schengen', it goes without saying that at the moment the European non-EFTA States, legally speaking, can neither join Europol nor 'Schengen'. This means that in relation to most of the European states international policing must be shaped within the existing traditional framework of Interpol and/or should be organized in a new way.

A lot of the older and newer Middle and Eastern European states such as Hungary, Poland, Russia and the Baltic States already are members of Interpol and so take part in the activities of its European Secretariat. In this way the historical relationships between Western and Eastern Europe in the field of international policing are in the process of being restored. This development is not only important, as we know, with respect to police co-operation, but is also a major instrument to bring about police harmonization, at least on an operational level.

In conjunction with the foregoing some attention must be paid within this framework to the efforts a lot of the member states of the European Community are making to reorganize and to equip police forces in Middle and Eastern European countries like Hungary, Poland and Romania, after the Western-European 'Model'. This evolution not only deserves much attention because of the colonial aspects as well as the commercial interests that are involved, but also because of the (perhaps unintended) consequences that this critical form of international support may have for undesirable political developments in the states concerned.²⁷

Speaking for myself in any case I would prefer that police co-operation

and harmonization with the non-EFTA States should take place within a given international political framework, such as the Council of Europe, eventually backed up by the European Community. The option of such a framework could not only guarantee much more co-ordination in this field and to some extent prevent that the states in question remain the hunting grounds of individual Western European states, police forces and private companies, but could also force the states concerned to implement the European Convention of Human Rights and the corresponding case law in exchange for effective police support.

This proposal is to some extent based on the reports which Mr. P. Stoffelen has written in the past years on behalf of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe on organized crime, police co-operation and protection of personal data in the police sector.²⁸ One of his favourite topics relates to the establishment of a European Information and Intelligence Centre. In my opinion, given the actual divisions in Europe, such a Centre could indeed form an appropriate counterpart and reflection of Europol (in its informational dimensions) for the non-EES States. But ... the role of the Council of Europe should not be restricted to the foundation of such a Centre. Its foundation should be the starting point of a European police reform movement that, like Europol, has a much broader scope. This movement should also encompass material support, training and research and so forth.

The United Nations and international policing in Europe

Finally, it is obvious that in countries like (the former) Yugoslavia, torn by civil war, neither the European Community nor the Council of Europe nor Interpol is able to achieve police co-operation, harmonization or integration within the (democratic, legal and operational) terms that have been used in the foregoing chapters. Any police-related initiative in such countries necessarily equals intervention in the ongoing violent power struggle. In such a case official police support can only be rendered within the framework of the United Nations and would connect international policing closely with international peace-keeping. Indeed the Yugoslavian drama is perhaps a good occasion to breathe new life into the pre-war discussion on the issue of whether international policing at a global level should be organized within the framework of the Society of Nations or not.²⁹

V. Concluding remark

This essay is of course limited. Hence, for example, the debate over the rise of international organized crime in Europe and the (potential) impact of

this on the debate on international policing and related policy issues has been left aside. The aim of this contribution was only to evaluate the present situation and to present an outline for the future of international policing in Europe. Its main conclusions have not to be repeated here. The only genuine concluding remark I want to make is that the evolution of international policing also clearly illustrates the intimate relationship between policing and politics. Everyone who wants to disconnect these two phenomena will inevitably misunderstand what has happened, what is going on and what the future will bring.

Notes

1. See, for example, Benyon, J., Davies, P. and Willis, A. (1990), *Police Cooperation in Europe; A Preliminary Investigation*, University of Leicester, Centre for the Study of Public Order, Leicester, and Benyon, J. (1992), *Issues in European Police Cooperation*, (Discussion Papers in Politics: No. P92/11), University of Leicester, Department of Politics, Leicester.
2. Fijnaut, C. (1987), 'The Internationalization of Criminal Investigation in Western Europe', in Fijnaut, C. and Hermans, R. (eds), *Police Cooperation in Europe*, J.B. van den Brink, Lochem, pp. 32-56.
3. Larnaude, F. and Roux, J.-A. (eds) (1926), *Premier Congrès de Police Judiciaire Internationale*, Paris, G. Godde.
4. Anderson, M. (1989), *Policing the World: Interpol and the Politics of International Police Co-operation*, Clarendon Press, Oxford, and Mollmann, H. (1968), *Internationale Kriminalpolizei-Polizei des Völkerrechts*, Würzburg.
5. Supra note 1.
6. Fijnaut, C. (1979), *Opdat de macht een toevlucht zij? Een historische studie van het politieapparaat als een politieke instelling*, Kluwer Rechtswetenschappen, Antwerpen, Vol. 2, pp. 630-790.
7. See, for example, Tuchel, J. and Schattenfroh, R. (1987), *Zentrale des Terrors*, Siedler Verlag, Berlin.
8. Legget, G. (1981), *The Cheka; Lenin's Political Police*, Clarendon Press, Oxford.
9. For example, Ruter, C.F. (d.d. 10-12-1991), 'Duits voorstel wekt nare herinneringen', *NRC Handelsblad*, p. 8.
10. Fijnaut, C. (1990), 'Toward a European Police Policy', in Nederlandse Politie Academic-Politie Studie Centrum, *Report of the European Police Summer Course 1989*, Apeldoorn-Warnsveld, pp. 27-32.
11. Jensen, R.B. (1982), 'The International Anti-Anarchist Conference of 1889 and the Origins of Interpol', *Journal of Contemporary History*, Vol. 16, No. 2, pp. 323-47.

12. Dressler, O. (1942), *Die Internationale Kriminalpolizeiliche Kommission und Ihr Werk*, IKPK, Berlin-Wannsee.
13. Fijnaut, C. (1991), 'Europeanisation or Americanisation of the Police in Europe', in Nederlandse Politie Academic-Politie Studie Centrum, *Proceedings 2nd European Police Summer Course, 1990*, Apeldoorn-Wansveld, pp. 19-27.
14. Nadelmann, E.A. (1987), *Cops across Borders: Transnational Crime and International Law Enforcement*, Harvard University, Department of Government, Cambridge.
15. Fijnaut, C. (1983), *De zaak François; beschouwingen naar aanleiding van het vonnis*, Kluwer Rechtswetenschappen, Antwerpen.
16. House of Commons, Home Affairs Committee (1990), *Practical Police Co-operation in the European Committee*, HMSO, London.
17. *Europa van Morgen* (d.d. 1-7-1992), Doc. 52.
18. Fijnaut, C. (1992), 'Naar een "Gemeenschappelijke" regeling van de politieke samenwerking en de justitiele rechtshulp', in Fijnaut, C., Stuyck, J. and Wytinck, P. (eds), *Schengen: Proeftuin voor de Europese Gemeenschap?*, Kluwer Rechtswetenschappen-Gouda Quint, Antwerpen-Arnhem, pp. 89-117. See also the report itself of the Commission of Public Liberties and Home Affairs of the European Parliament concerning the establishment of Europol (rapporteur: Van Ouirve, L.).
19. *Official Journal* (1992), Vol. 35, No. 101, p. 6.
20. Rupperecht, R. (1991), 'Brauchen wir Europol? Zukunftgedanken an der Schwelle zum neuen Jahr', *Die Polizei*, Vol. 82, No. 12, pp. 293-9, and Rupperecht, R. and Hellenthal, M. (1992), *Innere Sicherheit im Europäischen Binnenmarkt*, Verlag Bertelsmann Stiftung, Gutersloh.
21. Fijnaut, C. and van Gestelm, G. (1992), 'De politieke samenwerking in het Belgisch-Nederlandse grensgebied', in Fijnaut, C. (ed.), *De reguliere politiediensten in België en Nederland; hun reorganisatie en onderlinge samenwerking*, Kluwer Rechtswetenschappen-Gouda Quint, Antwerpen-Arnhem, pp. 175-200.
22. Muller-Rappard, E. and Bassiouni, M. Ch. (eds) (1987), *European Interstate Co-operation in Criminal Matters; The Council of Europe's Legal Instruments*, Martinus Nijhoff, Dordrecht, p. 15.
23. Dumortier, J. (1992), 'Het Schengen Informatie Systeem en de bescherming van persoonsgegevens', in Fijnaut, Stuyck and Wytinck (eds), *Schengen*, pp. 119-74.
24. Supra note 21.
25. Kamer, Tweede (1992-93), *Goedkeuring van de op 2 mei 1992 te Oporto tot stand gekomen Overeenkomst betreffende de Europese Economische Ruimte*, No. 22.872, nrs. 1-2.
26. Peterson, K. (1990), 'International Police Co-operation in Scandinavia', in Nederlandse Politie Academic-Politie Studie Centrum,

- Report of the European Police Summer Course 1989*, Apeldoorn-Warnsveld, pp. 21–6.
27. See Gregory, F.E.D. (1992), *Unprecedented Partnerships in Crime Control, Law Enforcement Issues and Linkages between Eastern and Western Europe since 1985*, University of Southampton, Southampton; see also 'Export van kennis en ervaring naar Hongarije', *Algemeen Politieblad*, Vol. 141, No. 19, p. 21.
 28. Council of Europe, Parliamentary Assembly, Legal Affairs Committee (1992), *Report on International Crime* (Rapporteur Mr Stoffelen), AS/Jur (38) 14; Council of Europe Parliamentary Assembly, *Report on Police Co-operation and Protection of Personal Data in the Police Sector* (Rapporteur Mr Stoffelen), 1403-29/1/92-2-E.
 29. Bouzat, P. (1938), 'Comment perfectionner la collaboration policière internationale ?', *Revue de Droit Pénal et de Criminologie*, Vol. 18, No. 110.11, pp. 1082–107; Wehberg, H. (1934), 'La police internationale', *Recueil des Cours de l'Académie de Droit Internationale*, Vol. 2, pp. 3–132.