

A PEACEFUL REVOLUTION

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The Development of Police and Judicial Cooperation in the European Union

Cyrille FIJNAUT



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PREFACE

This book represents the fruits of 40 years of academic endeavour in the field of police and judicial cooperation in Europe. My interest in the subject was awakened in the mid-1970s in the course of my research into the political history of policing systems in Europe since the second half of the eighteenth century. That research – which culminated in my thesis in 1978 entitled *Opdat de macht een toevlucht zij? Een historische studie van de politieapparaat als een politieke instelling* (*Seeking Refuge in Power? A Historical Study of the Police as a Political Institution*) (Antwerp, Kluwer) – demonstrated that collaboration between police services had occurred in many forms and in a variety of combinations during that period, particularly with regard to suppressing extreme or radical political opposition and investigating serious forms of crime. In other words, cross-border cooperation was an intrinsic component of the work of the police.

Moreover, around that time – 1975-1976 to be more precise – the basis of the cooperation between the member states of the European (Economic) Community in combating groups engaged in terrorism and other politically motivated violence was changing. In the utmost secrecy, the member states had reached agreement in Rome to join forces in this domain and form a network for intergovernmental cooperation in the field of law and order named after the city's famous fountain, the TREVI Group.

My fascination with police and judicial cooperation in Europe has only grown since that time, not least because in the last few decades this form of cooperation has really taken off in various guises in the European Union, for example by virtue of agreements like the Schengen Implementation Agreement of 1990 and the *Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union* in 2000, but also the establishment of Europol and Eurojust to support the police and judicial cooperation between the member states.

This growing interest has led to a great many publications on the subject of this form of interstate cooperation, some of which arose from research projects in this field. Several of the projects concerned the collaboration between police services, local authorities and public prosecution services in the border region of the Netherlands, Germany and Belgium, in particular the Meuse-Rhine Euroregion. Others focused on the provision of mutual legal assistance between the Netherlands and Belgium, Germany, France and the United Kingdom. In addition, since 1987 I have organised, alone or in association with others, a series

of symposia on the development of police and judicial cooperation in Europe in both the Netherlands and Belgium.

However, the idea of writing this book dates back to the course on European criminal law that I started with Professor F. Verbruggen for the English-language Master of Laws programme that was introduced by the Faculty of Law of the Katholieke Universiteit Leuven in 1990-1991. This course – which was to the best of my knowledge the first of its kind to be taught at a European university – was constructed around the intergovernmental and supranational cooperation between the member states of the Council of Europe and the member states of the European Community/Union in the area of police and justice.

Professor Verbruggen generally lectured on the cooperation in the context of the *European Convention on Human Rights* and the *Treaty establishing the European Community*, while I focused mainly on intergovernmental cooperation in the form of the Council of Europe's conventions on mutual legal assistance and the more informal police cooperation within the European Community. Together we addressed the growing interaction between the two forms of cooperation, for example the direct and indirect impact of the *European Convention on Human Rights* on the application of the Council of Europe's conventions on mutual legal assistance and on the *Convention Implementing the Schengen Agreement* between the member states of the European Community/Union.

The intention from the outset was that Professor Verbruggen and I would at some point jointly expand the syllabus that we had written for the brand-new course into a general introduction to European criminal law. Unfortunately, other priorities in our research and teaching prevented us from carrying out that plan between 1992 and 2004, the period during which we had the pleasure of teaching the course to students from every member state of the European Union. Even at the time this was a source of regret to me, so that when I read the text of the Constitutional Treaty (also known as the Treaty of Rome) in 2004 and, several years later, in 2007, the text of the Treaty of Lisbon and immediately reached the conclusion that these treaties constituted a Copernican revolution in police and judicial cooperation in Europe, I was determined to write a book about that revolution. That plan was later solidified when the latter treaty was actually ratified by the member states of the European Union and entered into force on 1 December 2009.

Things did not go as planned after 2010. While I believed that I would be able to write the book in 2010 and 2011, it was actually the summer of 2018 before I finally completed the manuscript. There were many reasons for this. One of the main reasons was that in fleshing out the original idea the research, and hence the book itself, gradually became far more substantial than I had originally envisaged. This ensued from the steady growth of my ambitions for the book. Whereas my original intention was “merely” to show why the Treaty of Rome (which in fact never entered into force following referenda in the Netherlands and France in 2005) and the Treaty of Lisbon represented a revolution in terms of

police and judicial cooperation and explain the consequences this quantum leap would (or could) have for the further development of this form of cooperation in the European Union, in the course of writing the book the objective increasingly changed to embedding an analysis of this revolution in a long-term history of police and judicial cooperation in Europe/the European Union in order to demonstrate more clearly why it was no exaggeration to speak of a revolution.

Another factor was that with this substantial volume I also wanted to counter the often extreme and extremist, negative and pessimistic views expressed in political and party-political circles about the European Union. This Union, as will become clear later, has in any case brought about an important peaceful revolution in terms of police and judicial cooperation in Europe. *A Peaceful Revolution: The Development of Police and Judicial Cooperation in the European Union* is therefore a consciously chosen title for this book. The term “revolution” accurately describes what has happened in this field over the last 25 years – since the entry into force of the Treaty of Maastricht in November 1993 – but the term “peaceful” also denotes the exceptional nature of that revolution in a Europe with painful memories of violent police systems, stretching from the Napoleonic Empire and continuing up to the infinitely more terrible regimes of the Soviet Union and the Third Reich more than a hundred years later.

This also explains why I wanted to produce an English edition of the book, which was originally published in Dutch by Intersentia in December 2018 under the title *Een vreedzame revolutie; de ontwikkeling van de politieke en justitiële samenwerking in de Europese Unie*. After all, the revolution extends beyond Belgium and the Netherlands and affects every member state of the European Union, and has had an impact and attracted interest far beyond the European Union’s borders – in Eastern Europe and the Middle East, in North Africa and Australia and in North and South America. It therefore made sense to make the results of my research accessible to non-Dutch-speaking academics, policymakers, students and journalists. It should immediately be noted that for practical reasons this English-language edition is an abridged version of the original publication in Dutch. The general introduction provides an explanation of where the Dutch edition has been abridged. Only the bibliography has been retained in full, since the list of references is itself a useful instrument for anyone wishing to study the history of police and judicial cooperation in Europe since the nineteenth century.

I would also like to take this opportunity to thank a number of people who have played a role in the writing of this book over the last few years.

First and foremost, I would like to thank Professor Verbruggen, who during the 1990s – as we taught our joint course on European criminal law – displayed great patience in guiding me through the supranational aspects of the Council of Europe and the European Community/Union and who – like Professor D. van Daele and Professor T. Spapens, my successors at the Universities of Leuven and Tilburg, respectively – has remained an important sparring partner to this day.

Secondly, I would like to mention a number of people whose repeated financial assistance has enabled me to conduct research into forms of serious cross-border crime and transnational police and judicial cooperation in the Meuse-Rhine Euroregion from 2004. They are W. Velings, who was the chief of the regional police force in the southern part of the Dutch province of Limburg until 2008; the former mayor of Maastricht G. Leers; and the chief public prosecutors for the district of Maastricht, J. van Eck and his successor A. Penn-ter Strake, who is currently the mayor of Maastricht. The Meuse-Rhine Euroregion is one of the most highly urbanised border areas in the European Union and therefore naturally an ideal laboratory interstate police and judicial cooperation.

Thirdly, I am very grateful to the Faculty of Law at the University of Tilburg, and in particular the Criminal Law and Criminology Department, for allowing me to continue using two rooms for several years after my retirement in 2011 to store the library and archive that I had compiled on the subject matter of this book since the 1970s. Their exceptional hospitality regularly afforded me the necessary seclusion to devote lengthy periods to my work on this book.

In that context, I must once again praise my wife Marij's forbearance and patience in allowing our home to serve for so many years as a library for a quite substantial collection of specialist books on police and judicial cooperation in the European Union, but also as a depository for an enormous volume of source material on the subject. It is entirely understandable, therefore, that she – indeed, like myself – has been looking forward eagerly to the completion of this book.

It is also a pleasure to report that Kris Moeremans, the publisher at Intersentia, not only agreed immediately when I asked him to publish the book, but also made no issue of its length. This kind reaction was an additional incentive for me to press ahead and complete the manuscript of the Dutch edition of this book in the summer of 2018. I would like to thank Isabelle van Dongen, the editor-in-chief at Intersentia, for her excellent assistance in proof-reading the Dutch edition. The editing of this English edition was in the capable hands of Rebecca Moffat at Intersentia in Cambridge. Balance/Livewords produced the excellent translation for this English edition of the book.

The manuscript was completed on 31 December 2018, with the exception of the section on the possible consequences of Brexit for police and judicial cooperation between the European Union and the United Kingdom in chapter 8. The final editing of that section was completed on 30 March 2019, the day after the United Kingdom should have left the European Union.

Cyrille Fijnaut
Tilburg, March 2019

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LIST OF ACRONYMS AND ABBREVIATIONS

AFIS	Anti-Fraud Information System
AFIS	Automated Fingerprint Identification System
AFSJ	Area of Freedom, Security and Justice
BdLN	Bureaux de Liaison Network
BMS	Biometric Matching Service
CARDS	Community Assistance for Reconstruction, Development and Stabilisation
CELAD	<i>Comité Européen de Lutte Anti-Drogue</i> /European Committee to Combat Drugs
CEPOL	European Police College/European Union Agency of Law Enforcement Training
Charter	Charter of Fundamental Rights of the European Union
CIA	Central Intelligence Agency
CIR	Common Identity Repository
CIREFI	Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration
CIS	Customs Information System
COM	Communication
Committee on Budgetary Control	Committee on Budgetary Control
Committee on Civil Liberties	Committee on Civil Liberties, Justice and Home Affairs
Committee on Foreign Affairs	Committee on Foreign Affairs
Committee on Internal Market	Committee on Internal Market and Consumer Protection
Committee on Legal Affairs	Committee on Legal Affairs
COSI	Standing Committee on Internal Security

COSPOL	Comprehensive Operational Strategic Plans for Police
CRIS	Criminal Records Index System
CTG	Counter Terrorism Group
Data Protection Supervisor	European Data Protection Supervisor
Drugs Monitoring Centre	European Monitoring Centre on Drugs and Drug Addiction
EASO	European Asylum Support Office
EAW	European Arrest Warrant
EBCG	European Border and Coast Guard
ECC	European Cybercrime Centre
ECHR	European Convention for the Protection of Human Rights and Fundamental Problems
ECIM	European Criminal Intelligence Model
ECRIS	European Criminal Record Information System
ECRIS-TCN	ECRIS-Third Country Nationals
ECTC	European Counter Terrorism Centre
EDIU	European Drugs Intelligence Unit
EEAS	European External Action Service
EES	Entry-Exit System
EFCA	European Fisheries Control Agency
EGF	European Gendarmerie Force
EIO	European Investigation Order
EIS	Europol Information System
EJN	European Judicial Network
EMCDDA	European Monitoring Centre on Drugs and Drug Addiction
EMPACT	European Multidisciplinary Platform against Criminal Threats
EMSA	European Maritime Safety Agency
EPOC	European Production and Preservation Order
EPPO	European Public Prosecutor's Office
EPRIS	European Police Records Information System
ESP	European Search Portal
ESTA	Electronic System for Travel Authorization
ETA	<i>Euskadi Ta Askatasuna</i>

ETIAS	European Travel Information and Authorisation System
ETS	European Treaty Series
EU	European Union
eu-LISA	European Agency for the Operational Management of Large Scale IT Systems in the Area of Freedom, Security and Justice
EUNAVFOR MED	European Union Naval Force – Mediterranean
Eurodac	European Dactyloscopy
Eurojust	European Union Agency for Criminal Justice Cooperation
Europol	European Union Agency for Law Enforcement Cooperation
Eurosur	European Border Surveillance System
FADO	False and Authentic Documents Online
FBI	Federal Bureau of Investigation
FIU	Financial Intelligence Unit
FRA	Fundamental Rights Agency
Frontex	<i>Frontières Extérieures</i> /European Agency for the Management of Operational Cooperation at the External Borders
GRECO	Group of States against Corruption
HERA	Humanities in the European Research Area
High Representative	High Representative for Foreign Affairs and Security Policy
ICPO	International Criminal Police Organisation
IGC	Intergovernmental Conference
IKV	<i>Internationale Kriminalistische Vereinigung</i>
IntCen	Intelligence Analysis Centre
IOM	International Organization of Migration
IPA	Instrument for Pre-Accession Assistance
IPKP	<i>Internationale Kriminalpolizeiliche Kommission</i>
IRA	Irish Republican Army
IRT	<i>Interregionaal Recherche Team</i>
JHA	Justice and Home Affairs

JIT	Joint Investigation Team
Legat	Legal Attaché
LoN	League of Nations
MASP	Multi-Annual Strategic Plan
MID	Multiple-identity Detector
Multidisciplinary Group	Multidisciplinary Group on Organized Crime
NCA	National Crime Agency
NCB	National Central Bureau
NeBeDeAgPol	<i>Niederländische, Belgische, Deutsche Arbeitsgemeinschaft Polizei</i>
NSA	National Security Agency
OAP	Operational Action Plan
OCTA	Organised Crime Threat Assessment
OJ	Official Journal
OLAF	Office de la Lutte Anti-Fraude
Pb	<i>Publicatieblad</i> /Official Journal
PCCS	Police and Customs Cooperation Centre
PNR	Passenger Name Record
RAN	Radicalisation Awareness Network
ROCTA	Russian Organised Crime Threat Assessment
SatCen	European Satellite Centre
SECI	Southeast European Cooperative Project
SEPAT	<i>Stupéfiants Europe Plan d'Action à Terme</i>
SIENA	Secure Information Exchange Network Application
SIS	Schengen Information System
SitCen	Joint Situation Center
SIVE	<i>Sistema Integrado de Vigilancia Exterior</i>
SLTD	Stolen and Lost Documents Database
SOCTA	Serious and Organised Crime Threat Assessment
SPOC	Single Point of Contact
STAR	<i>Ständige Arbeitsgruppe Rauschgift</i>
Strategy	Internal Security Strategy
SWIFT	Society for Worldwide Interbank Financial Telecommunications
Tb	<i>Tractatenblad</i> /Bulletin of Treaties
Technical Committee	Technical Committee for European Co-operation

TESTA	Trans European Services for Telematics between Administrations
TREVI	<i>Terrorisme, Radicalisme, Extremisme et Violence Internationale</i>
UCLAF	<i>Unité de Coordination de la Lutte Anti-Fraude</i>
UED	<i>Unité Européenne des Drogues</i>
UNTC	United Nations Treaties Collection
VAT	Value Added Tax
VIS	Visa Information System

