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The Development of International Police Cooperation within the EU and Between the EU and Third Party States: A Discussion of the Legal Bases of Such Cooperation and the Problems and Promises Resulting Thereof

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**THE DEVELOPMENT OF INTERNATIONAL
POLICE COOPERATION WITHIN THE EU AND
BETWEEN THE EU AND THIRD PARTY
STATES: A DISCUSSION OF THE LEGAL
BASES OF SUCH COOPERATION AND THE
PROBLEMS AND PROMISES RESULTING
THEREOF**

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INTRODUCTION	600
I. TRADITIONAL BILATERAL, REGIONAL, AND MULTILATERAL BASES OF TRANSNATIONAL POLICE COOPERATION.....	603
A. THE UNITED STATES.....	603
B. THE MIDDLE EAST	606
C. CENTRAL AND EASTERN EUROPE.....	609
D. INTERNATIONAL AND MULTILATERAL EFFORTS	610
II. EUROPEAN EFFORTS AT TRANSNATIONAL POLICE COOPERATION	611
A. TREVI	612
B. THE MAASTRICHT TREATY—PROGRESS TOWARDS GREATER POLICE COOPERATION	616
C. THE SCHENGEN AGREEMENT	619
D. EUROPOL.....	624
E. OTHER BILATERAL AND MULTILATERAL AGREEMENTS BETWEEN MEMBER STATES.....	630

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III. PROBLEMS RESULTING FROM INCREASED POLICE COOPERATION IN THE EUROPEAN UNION.....	633
A. PROLIFERATION OF POLICE INFORMATION EXCHANGE AND HUMAN RIGHTS CONCERNS	633
1. <i>The History of European Privacy Protection</i>	634
2. <i>Relations Between European Union and Third Party States</i>	635
3. <i>The Schengen Agreement</i>	639
4. <i>Europol</i>	641
5. <i>Recommendations</i>	644
B. DEMOCRATIC CONTROL	646
1. <i>Attempted Solutions</i>	648
2. <i>Recommendations</i>	649
C. LACK OF ADEQUATE LEGAL AND JUDICIAL SUPPORT.....	649
1. <i>Attempted Solutions</i>	651
2. <i>Recommendations</i>	652
D. RELUCTANCE ON THE PART OF MEMBER STATES	653
IV. THE FUTURE	653
CONCLUSION	655

INTRODUCTION

The principle goal of most criminal enforcement efforts, both domestic and international, is to immobilize criminals. In order to accomplish this, three things are typically required: information, evidence, and the criminal. The increase in criminality on an international scale, along with the declining importance of national borders in an era of globalization, makes it less likely that all three elements will co-exist within the same national jurisdiction. For this reason alone, the police and judicial authorities of one State are required to cooperate with the authorities of other States. Even if jurisdiction were established or mutually agreed upon in a particular case involving more than one national territory, it is likely that the police would still need assistance and cooperation in the areas of information gathering, apprehension of the criminals, evidence procurement, witness interrogation, confiscation of illegal funds, and extradition concerns.

Throughout Europe, as well as in a number of other areas of the world, public concern about the spread of organized crime has provided an impetus for increased levels of cross-border police cooperation. There are numerous examples of criminal enterprises that transcend national boundaries. Consider, for instance, a criminal venture in which a group of drug traffickers from the United States and Russia purchases drugs produced in South America and then sells the drugs in the Middle East. This same group of criminals also runs a prostitution ring throughout Central and Eastern Europe. The enterprise deposits proceeds of their criminal activity into bank accounts in Switzerland and other European Union Member States. Criminal activities involving such a large number of countries are hardly rare. As such, the need for some level of international cooperation and assistance is evident.

The need for cooperation in this regard is particularly apparent in Europe. Economic, social, and political integration closely binds the countries and peoples of the European Union. Indeed, the preamble to the Maastricht Treaty asserts that the Member States are “determined to lay the foundations of an even closer union among the peoples of Europe.”¹ Confounding the process of closer integration, however, is the fear of burgeoning transnational crime.

The European Economic Community’s evolution into the more cohesive European Union created both concerns and opportunities over the future of more intensive trans-border police and security cooperation within Europe. There is a very real concern that the increasing closeness of the Member States of the European Union will facilitate crime across borders: “[h]ard drugs, stolen cars, trafficking in prostitutes, illegal immigrants; whatever the industry, the European single market is making cross-border crime easier.”² For this reason, there is growing pressure for increased international cooperation on crime prevention and policing within Europe.

1. Treaty on the European Union, Feb. 7, 1992, 1992 O.J. (C 191) pmb1. [hereinafter Maastricht Treaty].

2. *Convention Against Crime*, ECONOMIST, Mar. 11, 1995, at 53 (discussing crime in Europe and the measures undertaken to combat criminal activity); see also Olivier Van Vaerenbergh, *La Monnaie Unique, Une Aubaine Pour Le Crime?*, LE SOIR, Mar. 16, 1998, at 5 (arguing that a single European currency could lead to increased cross-border crime in the European Union).

This increasing integration of the Member States of the European Union has led to cooperation on a number of new and virtually unprecedented levels. One area of integration is that of assistance and cooperation within the field of policing. Although many countries in the world have long engaged in both formal and informal means of cooperating within the field of criminal justice, the European Union envisions a level of police cooperation going beyond anything previously established between sovereign nations.

In addition to the current efforts by the Member States of the European Union, there has also been cooperation between the European Union and third party States, such as the United States. These collaborative efforts exist on many levels, including cooperation in information and evidence gathering, intelligence work, permission to conduct investigations in the respective national territories, and apprehension of criminals within foreign territories. Nonetheless, while cooperation between police of different jurisdictions is hardly a new phenomenon, the current scheme of cooperation in the European Union is progressing rapidly and will reach an unprecedented level in the near future.³ As increasing globalization and improving technology has facilitated high-level international crime, it has also improved mechanisms for detecting international crime and apprehending international criminals.

Despite the comprehensive nature and consistency of former mechanisms of police cooperation, past efforts were not nearly as ambitious—nor have they had such profound implications—as the greater intimacy and cooperation emerging in the European Union. Moreover, the existing and emerging means of police cooperation within the European Union are much more integrative than other attempted forms of international police cooperation. For this reason, they are likely to have a profound effect, not only on international crime, but also upon the European citizenry in general.

While there is a general awareness that international police cooperation will soon become a necessity, there is a great divergence of

3. See *EU/Mediterranean States: Commission Practices for Euro-Med Conference*, EUR. REP., Jan. 5, 1996 (discussing the initiatives used to promote police cooperation within the European Union); see also Monica den Boer & Neil Walker, *European Policing After 1992*, 31 J. COMMON MKT. STUD., at 4 (describing briefly the origins of European police cooperation).

views on how to accomplish, and how quickly to proceed with, the task. The individual police forces of the Member States are at the forefront of the European Union's declared intention to prevent and combat international crime. These police organizations and their practices vary widely, as do ideas about how the European Union will utilize their services. Basic knowledge and understanding of these variations is an essential prerequisite for developing effective cooperation among the different groups.

Within the European Union, significant problems could arise from this new level of police cooperation because many of the new forms of police cooperation operate on the basis on information exchange and the maintenance of large computer databases. Consequently, there is an extreme risk of the violation of the fundamental right to privacy. In addition, there are also very serious concerns about the existence of judicial control over Community actions taken in this sector. Finally, many individuals are alarmed about the lack of democratic participation in the decisions and activities undertaken in this new area of cooperation.

This article examines both the promises and potential problems of increased police cooperation within the European Union. Parts I and II comprehensively present and analyze the bases of transnational police cooperation. These sections include a discussion of both traditional and European bases of police cooperation. Part III examines the various criticisms of international police cooperation. Finally, Part IV concludes that the present and future of this important level of cooperation will depend on improvements in judicial and legal support, and increases in democratization and data protection by the Member States.

I. TRADITIONAL BILATERAL, REGIONAL, AND MULTILATERAL BASES OF TRANSNATIONAL POLICE COOPERATION

A. THE UNITED STATES

The American system of policing has had a dramatic influence on policing in Europe, and American police activity in Europe is unique for a number of reasons. First, no other government maintains law enforcement representatives in so many European countries. Fur-

thermore, no other government possesses such a multitude of law enforcement agencies. Finally, no other government has exercised such a powerful influence on the criminal laws, procedures, and investigation techniques of other countries.

Before the Second World War, there was a movement towards trans-Atlantic police cooperation and harmonization. Currently, the United States has a strong position in the police activities in Europe. Numerous American law enforcement agents are stationed permanently in United States embassies and consulates throughout Europe; even more are in Europe on temporary assignments. American law enforcement in any given embassy may include representatives of the Drug Enforcement Agency, Federal Bureau of Investigations, Secret Service, Customs, Internal Revenue Service, Immigration and Naturalization Service, and the military investigative services.⁴ This strong American police presence in Europe is the result of successive attempts by American administrations to involve European governments in a worldwide war against international crime—particularly the drug trade.

American-European police cooperation involves mutual help in the detection of crime and detention of suspects. American forces benefit from access to the European territory and access to information possessed by the European police and investigative authorities. Traditionally, the cooperation has benefitted Europe in a number of important ways. European police forces use information from a massive worldwide communications network to which the Americans have access. Americans additionally help their European counterparts by providing money and personnel for undercover operations. In addition, European police officers train in their home country or in the United States for proactive policing in the fields of drug crime and other international criminal activity.

Despite the history of American police cooperation within Europe, complications abound. For instance, the role of American police officials remains undefined—American police officials in Europe lack the important and definitive powers to arrest individuals and to seize evidence. On the opposite side of the spectrum, there is a concern

4. See ETHAN NADELMAN, *THE INTERNATIONALIZATION OF POLICE COOPERATION IN WESTERN EUROPE* 135 (Cyrille Fijnaut ed., 1993) (describing American law enforcement presence abroad).

that American authorities in Europe tend to overstep their jurisdiction. For example, the United States has been subject to criticism for establishing greater international police cooperation in an effort to combat money laundering.⁵

Recently, John Moscow, New York Assistant District Attorney, announced that his office might file criminal charges against overseas bank employees who fail to spot and report money laundering schemes.⁶ London is the target of this initiative, where an estimated five hundred million dollars generated by criminal activities, notably drug smuggling and Russian organized crime, passes through banks each day. The prosecutor adamantly stated, "I'm not conceding the money laundering title to London. We do more of it in New York, but we're not going to tolerate our bad guys moving money from New York to London banks and using that to say that they are out of our jurisdiction."⁷ While this prosecutor's proposal might cause some foreign banks to protest the United States attempt to exercise extra-territorial jurisdiction, money laundering, as a global problem, must be fought on a global level.

Several trends continue in the field of American police cooperation in Europe. Relations between United States and European police agencies will become more intimate as formal relationships proliferate and informal bonds deepen and expand. The United States has great interest in the Europeanization of police cooperation. Illustrating this is not only the United States' lively participation in Interpol,⁸ but also in the relationship the United States has with Trevi.⁹ Intelligence and counterintelligence agencies in search of new missions will focus increasing efforts on transnational criminals. Consequently, jurisdictional conflicts will intensify as will the emergence of new legal issues in international criminal law enforcement.

5. See Jack Nelson, *Money Laundering: Now Global and Piling Up*, INT'L HERALD TRIB., Feb. 3, 1998, at C4 (discussing the global state of money laundering).

6. See *id.* (remarking on American efforts to curb money laundering in England).

7. *Id.*

8. See den Boer & Walker, *supra* note 3, at 4 (describing Interpol as the oldest and largest intergovernmental policing organization).

9. See *id.* at 6 (examining the creation and functions of Trevi).

B. THE MIDDLE EAST

The European Union and Middle Eastern countries also cooperate in international policing.¹⁰ The Euro-Mediterranean Partnership ("EMP"), a far-reaching accord between the European Union and twelve countries of the Middle East, is the most important formal agreement.¹¹ Instead of working towards numerous short-term goals, this new partnership aims to create long-term stability and growth. The process is based upon three basic pillars: (1) a political and security dialogue emphasizing human rights; (2) economic and financial services to create a free trade zone covering Europe and the Mediterranean countries by the year 2010; and (3) the establishment of relationships among the people of the regions to help foster the values of a civil society.¹²

In October 1994, the European Commission urged the Member States of the European Union to restructure the European Union's relationship with its Mediterranean neighbors, creating the foundations for the EMP. The parties signed the Barcelona Declaration establishing the EMP on November 28, 1995.¹³ The basic thrust of the EMP is a catalog of principles designed to govern the relationship between the European States and their Mediterranean partners,¹⁴ in-

10. See *EU/Mediterranean States: Ministerial Conference on Euro-Med Partnership*, *supra* note 3 (stating that the twelve Middle Eastern States of the Euro-Mediterranean Partnership ("EMP") are Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, The Palestinian Authority, Syria, Tunisia, and Turkey).

11. See *id.* (describing the EMP as a watershed agreement).

12. See Shada Islam, *Middle East-Mediterranean: Barcelona Declaration Praised*, Nov. 30, 1996, INTER PRESS SERV. (noting that a landmark meeting in Barcelona aims to identify common interests and open dialogue on political and economic issues).

13. See Barcelona Declaration and Work Programme, Conclusions of the Euro-Mediterranean Conference held in Barcelona, in BULL. EUR. UNION, Nov. 1995, [hereinafter Barcelona Declaration]; see also Commission Communication of 8 March 1995 to the Council and the EP on Strengthening the Mediterranean Policy of the European Union: Proposals for Establishing a Euro-Mediterranean Partnership, COM(95)72 final at 1.4.57; Islam, *supra* note 12 (discussing the establishment of the EMP). See generally THE EURO-MEDITERRANEAN PARTNERSHIP: POLITICAL AND ECONOMIC PERSPECTIVES (Richard Gillespie ed., 1997) (providing commentary and analysis on the establishment of the EMP).

14. See Shada Islam, *Europe-Mediterranean—A Partnership in Barcelona*, Nov. 24, 1995, INTER PRESS SERV. (noting that a landmark meeting in Barcelona

cluding the peaceful settlement of disputes, respect for democracy, enforcement of the rule of law and human rights, arms control, and a commitment to fight terrorism and crime.

Specifically, the Barcelona Declaration covers three major topics. First, it envisions both a political and security partnership to create a common area of peace and stability.¹⁵ Second, it calls for an economic and financial partnership to establish a common zone of prosperity.¹⁶ Finally, it anticipates a social, cultural, and human partnership to increase exchanges between the countries taking part in the EMP.¹⁷ For the purposes of international police cooperation, the establishment of a political and security partnership is most relevant. This component provides a basis for cooperation on perplexing criminal issues such as trans-border crime, money laundering, and the movement of illegal immigrants.

Since the formation of the EMP, several developments in the area of security cooperation are noteworthy. First, the members have approved and adopted a number of confidence-building measures. For instance, concrete planning is underway for the creation of a network of political and security correspondents.¹⁸ Additionally, work will soon begin on the completion of human rights and weapons inventories—members already exchange senior political and military officers. Furthermore, members are organizing civil and military cooperation machinery for use in regional disasters.¹⁹

Second, serious discussions on a plan of action covering six significant areas are underway. These areas include the strengthening of democracy, preventative diplomacy, security and confidence building, disarmament, terrorism, and organized crime. The regions are designing this plan to be very comprehensive and cover a wide range

aims to create a "common area of peace and stability").

15. See Islam, *supra* note 12 (commenting that the EMP embraces civil society).

16. See *id.* (identifying the establishment of a free trade zone).

17. See *EU/Mediterranean States: Commission Practices for Euro-Med Conference*, *supra* note 3 (stating that the Barcelona Declaration complemented the initiatives of the EMP).

18. See Islam, *supra* note 14 (discussing attempts at the Barcelona Conference to improve efforts in the area of security cooperation).

19. See *id.*

of security issues that affects both regions. Until then, the parties are creating an Euro-Mediterranean Charter for Peace and Stability.²⁰ This Charter will create an institutional dialogue and crisis prevention mechanism as the cornerstone of the EMP's political and security dimension. Moreover, in September 1996, the parties inaugurated joint information and training measures for diplomats from partnership countries.²¹ These measures will continue throughout 1998, when an electronic information network linking their foreign ministries is planned.

Third, crime prevention and detection is another area under development.²² The EMP agreement provides for the identification of extremist groups and closer cooperation in drug trafficking. Some speculate that this may lead to a new military arrangement between the parties, at least in terms of security and police personnel exchange. The future of such security arrangements is open for debate. Proponents argue that it is time that European and Mediterranean countries take control over their own defense and begin to play a greater role preventing and detecting criminal activity in their own territories. Opponents argue that the United States and other world powers must be included in these agreements. These critics point to

20. See *Conclusions of December 6 General Affairs Council*, REUTER EUR. COMMUNITY REP. (Dec. 6, 1996), available in Lexis, INTLAW Library, EU Cases, Legislation and News File (describing the Euro-Mediterranean Charter for Peace and Stability as a general framework for the confidence and security building measures contemplated by the Barcelona Declaration); see also *Marin Memo on Euro-Mediterranean Partnership*, REUTER EUR. COMMUNITY REP. (Nov. 27, 1996), available in Lexis, INTLAW Library, EU Cases, Legislation and News File (characterizing the Euro-Mediterranean Charter as the institutional dialogue and crisis-prevention mechanism that will form the cornerstone for cooperation on political and security measures between EMP members).

21. See *Marin Memo on Euro-Mediterranean Partnership*, REUTER EUR. COMMUNITY REP. (Nov. 27, 1996), available in Lexis, INTLAW Library, EU Cases, Legislation and News File (discussing the commencement of information and training programs for diplomats from the twenty-seven EMP countries and noting that next year an electronic information network will link their foreign ministries); see also *Implementation of Barcelona Declaration*, REUTER EUR. COMMUNITY REP. (Apr. 3, 1997), available in Lexis, INTLAW Library, EU Cases, Legislation and News File (providing information on a workshop for European and Mediterranean diplomats to share cultural information).

22. See *EU/Mediterranean States: Commission Priorities for Euro-Med Conference*, supra note 3 (mentioning that EMP members hope to encourage cooperation to combat serious criminal activity).

the Bosnian situation as an example of the European Union's weakness in dealing with international breaches of security.

C. CENTRAL AND EASTERN EUROPE

International organized crime—in particular international car theft, illegal trade in women, children, drugs and weaponry, and money laundering—especially in the new democracies of Central and Eastern Europe (“CEE”), poses an increasing threat to Western Europe. The proximity and easy access between CEE and the European Union mean that discussions of increased police cooperation within the European Union must address specific considerations emanating from CEE.

In many ways, CEE has initiated integration into Western European efforts of police cooperation. For instance, many CEE States such as the Baltic States, Hungary, Poland, and Russia are already members of Interpol.²³ Such cooperation plays a major role where it advances the harmonization of police work, at least at the operational level. Additionally, some Member States of the European Union are making efforts to reorganize, train, and equip police forces in CEE. In doing so, these States have made an effort to expand the Western European model of policing into CEE. Because of these efforts, cooperation between Eastern and Western Europe in the field of international policing has a solid foundation. Actual achievements in the field of increased police cooperation in Western Europe have been made possible by the gradual process of economic and political unification brought by the European Union—these achievements complement the corresponding processes of democratization and constitutional state-building.

If the European Union expands eastward and offers memberships to countries of CEE, these countries will have a greater role to play in the European Union's existing mechanisms for trans-border police cooperation. Specifically, the Europol Convention provides that, “[t]his Convention shall be open to accession by any state that becomes a member of the European Union.”²⁴ As increasing numbers

23. See den Boer & Walker, *supra* note 3, at 4-5 (discussing the history of Interpol).

24. See Convention Based on Article K.3 of the Treaty on European Union, on

of CEE States become members of the European Union, police cooperation and harmonization with CEE States should take place in an international political framework. The Council of Europe is one European Union forum. Basing the harmonization of police cooperation in CEE upon an established legal framework would ensure a higher level of cooperation in the field. It might also lead to greater human rights protections and the facilitation of information exchange.

D. INTERNATIONAL AND MULTILATERAL EFFORTS

Interpol is the oldest wide-scale mechanism for international police cooperation. Before World War I, international police cooperation was primarily viewed as a means of combating radical and violent political opponents.²⁵ States were only willing to cooperate on common police and security interests to the extent that their individual sovereignty remained intact. As such, they organized Interpol as a private international association of police chiefs, not as a means of true interstate cooperation.

Since World War II, Interpol has become more of an international public institution, although several of its defining characteristics remain in place. For instance, Interpol's organization is not based upon an international treaty. In addition, Interpol is not embedded in an international political structure such as the United Nations or the Council of Europe.²⁶ Instead, Interpol is comprised of *National Central Bureaux*, which are organized around a General Secretariat²⁷ based in Lyon, France, and provides a far-reaching communications network for the exchange of criminal intelligence and other important information between its members.

the Establishment of a European Police Office, 1995 O.J. (C 95) 316/01 [hereinafter *Europol Convention*] (discussing the relationship between the Europol and the European Union).

25. See generally R.B. Jensen, *The International Anti-Anarchist Conference of 1889 and the Origins of Interpol*, 16 J. CONTEMP. HIST. 323 (1981) (surveying the historical foundations of Interpol).

26. See MALCOLM ANDERSON ET AL., *POLICING THE EUROPEAN UNION* 52 (1995).

27. See den Boer & Walker, *supra* note 3, at 4-5 (discussing the history of Interpol).

There are a number of positive aspects to the internal structure and organization of Interpol. For instance, it has a large membership.²⁸ Additionally, Interpol includes States from a number of different legal, political, and ideological backgrounds, including those from opposing regimes.

Nonetheless, there are multiple negative aspects of Interpol. First, the organization has a reputation for a relatively low level of security in matters such as terrorism.²⁹ Second, Interpol can only be effective when the participating States are willing to cooperate and fully engage in the activities of the organization. Some Member States lack a complete commitment to Interpol.³⁰

II. EUROPEAN EFFORTS AT TRANSNATIONAL POLICE COOPERATION

The European Union provides an extremely useful vehicle for the study of international police cooperation. In the European Union, an unprecedented level of cooperation exists between the Member States. At the same time, a number of factors have stalled the speed and the extent to which cooperation has taken place.

The most significant factor in this regard is the concern of the Member States over the possible loss of sovereignty in the fields of law enforcement and criminal justice.³¹ While there is a recognized need for increased police cooperation, countries are wary of specific courses of action. Therefore, developments have been piecemeal rather than comprehensive. Organizations, structures, and procedures for increased police cooperation in the European Union have evolved incrementally in order to cope with new circumstances and the reti-

28. See ANDERSON ET AL., *supra* note 26, at 51 (stating that 176 States are Interpol members).

29. See den Boer & Walker, *supra* note 3, at 4-5. (attributing low security levels to "bureaucratic inertia").

30. See *id.* (noting that Interpol's effectiveness directly depends on the level of mutual trust and shared priorities among members).

31. See Julian J.E. Schutte, *The European Market of 1993: Test for a Regional Model of Supranational Criminal Justice or of Interregional Cooperation in Criminal Law*, 3 CRIM. L.F. 55, 56 (1991) (describing the long-held belief that criminal law and procedure are the sole province of Member States).

cence of some Member States to engage in increasingly profound levels of cooperation.

Although police cooperation is not the primary impetus for the close relationships of the Member States of the European Union, it is an area of increasing international concern and attention. In addition to concerns about increasing international crime and terrorism, the general support for increased European integration, infrastructure facilitation, and growing trust between the Member States of the European Union all facilitate greater police cooperation. Recent years have brought a number of notable developments in the field of increased police cooperation within the European Union.³²

A. TREVI

During the early 1970s, many European Member States were confronted with acts of terrorism perpetrated by both European and non-European groups. At the time, some States realized that Interpol was a largely ineffective mechanism for dealing with international terrorism. First, Article 3 of the Interpol Constitution states that “[i]t is strictly forbidden for the Organization to undertake any intervention on activities of a political, military, religious or racial character.”³³ Second, the ambiguous legal position of Interpol does not provide an effective mechanism for dealing with such problems. These factors combined to show Europeans the greater need for enhanced regional police cooperation.

Criticisms of the political nature of Interpol led the Council of Ministers, in December 1975, to establish one of the earliest foundations of international police cooperation in the European Union—Trevi.³⁴ The origination of the term Trevi is widely disputed, but many believe it is an acronym for “Terrorism, Radicalism,

32. See den Boer & Walker, *supra* note 3, at 3-8 (giving an overview of recent developments in the field of international policing).

33. INTERPOL, THE CONSTITUTION AND GENERAL REGULATIONS OF THE ICPO-INTERPOL art. 3 (1956); see also Lara A. Ballard, Comment, *The Recognition and Enforcement of International Criminal Court Judgments in U.S. Courts*, 29 COLUM. HUM. RTS. L. REV. 143, 205 (1997) (asserting that “Interpol, despite its popular mythology, is a private, largely unregulated organization whose members have no authority either to issue binding warrants, to make arrests, or even to conduct on-site investigations without the consent of the host state”).

34. See den Boer & Walker, *supra* note 3, at 6-7 (detailing the history of Trevi).

believe it is an acronym for "Terrorism, Radicalism, Extremism and Violence International."³⁵ The Trevi members are the European Union Member States. In addition, "friends of Trevi"—Canada, Morocco, Norway, Switzerland, and the United States—attend meetings as observers. The initial objective of Trevi was to provide a basis for greater European cooperation to combat international terrorism. Over the years, however, the organization has begun to focus on drug trafficking and other types of serious organized crimes.

Trevi consists of a hierarchical structure that operates at three different levels. At the highest level of the organization are the ministers, who are responsible for policing and internal security matters in their respective States. These ministers maintain overall responsibility for Trevi.³⁶ At the middle level is the Trevi group of senior officials, consisting of senior civil servants, and occasionally senior police officers. The task of this group is to provide police advice. At the lowest level are a number of working groups that consist of civil servants, police officers, and occasionally representatives from relevant organizations.³⁷

Established in May, 1977, the Terrorism Working Group facilitates concerted European action against terrorism.³⁸ This group's primary duty is to analyze information held on known and suspected terrorist groups, paying particular attention to their strategies and tasks. Furthermore, the group communicates information through Trevi's own secure communications network regarding practical security procedures as well as information about crime scene procedures following terrorist incidents.³⁹

35. See JOHN BENYON ET AL., *POLICE COOPERATION IN EUROPE: AN INVESTIGATION* 152 (1993).

36. See den Boer & Walker, *supra* note 3, at 6 (describing the origins and structure of Trevi).

37. See *id.*

38. See John Benyon et al., *Understanding Police Cooperation in Europe: Setting a Framework for Analysis*, in *POLICING ACROSS NATIONAL BOUNDARIES* 46, 59 (Malcolm Anderson & Monica den Boer eds., 1994).

39. Malcolm Anderson, *The Agenda for Police Cooperation*, in *POLICING ACROSS NATIONAL BOUNDARIES*, *supra* note 38, at 3, 12 (discussing the operational role of the Terrorism Working Group).

Established at the same time as the Terrorism Working Group, the second Trevi working group is the Technical Forum.⁴⁰ This group is responsible for promoting police cooperation and exchanging information on a number of issues including police training, public order, police equipment, forensic science, and other scientific and technical matters, and football hooliganism.

The third working group, entitled Serious Organized International Crime Group, was established in June 1985 to coordinate activities against serious crime.⁴¹ The Group works in four different areas. First, the drug trafficking unit concentrates on drug liaison offices posted in drug producer and transit countries. This division also agreed that each country would establish a National Drugs Intelligence Unit, and the European Community would establish a European Drugs Intelligence Unit.⁴² The creation of Europol will accomplish the latter objective.

The second division of the Serious International Organized Crime Group assists in harmonizing police activities and promoting international initiatives against money laundering.⁴³ Since its inception, it has worked with the United Nations, the Council of Europe, and the Financial Action Task Force to accomplish its goals.

The Environmental Crime Group is the third division of the Serious Organized International Crime Working Group.⁴⁴ This division works to understand and reduce incidents of environmental crime.

The fourth division of the third working group is European Crime Analysis.⁴⁵ The mandate of this organization is to analyze crime in Member States, developing a comparative approach. This division seeks to develop techniques to solve particular crimes or series of crimes, as well as to foster general crime prevention.

40. See Benyon et al., *supra* note 38, at 59.

41. See *id.* at 59-60.

42. See *id.* at 60

43. See *id.*

44. See *id.*

45. See *id.*

The fourth Trevi Working Group, entitled Trevi 1992, existed exclusively between December 1988 and December 1992.⁴⁶ The temporary Group dealt with political topics relating to the policing and national security implications of reduced national border controls. It was also designed to examine measures that could be introduced to compensate for the relaxation of the internal frontier.

Trevi has been subject to a number of criticisms. The primary critique relates to the secrecy surrounding Trevi's operations. Some individuals and organizations have suggested that Trevi is too secretive and disconnected from other European Union institutions.⁴⁷ In addition, Trevi's internal structure often prevents the working groups from acting in a cohesive manner. For example, in certain cases, Trevi working groups have been unaware of the activities of the other Trevi working groups.⁴⁸

Some of these criticisms could be resolved, however, if Trevi operated within European Community institutions. If the activities of Trevi were formally and explicitly located within the European Community's political process, increased legitimacy and less distrust of the organization would result.

A number of other obstacles to Trevi's progress are apparent. For instance, Trevi operates at the intergovernmental, political, and senior official levels and may not be taking sufficient account of micro-level law enforcement responsibility. In addition, the Trevi structure is inefficient, since the group does not have a permanent location or secretariat. Finally, stymieing Trevi's accountability is its lack of a legitimate structure for policymaking or executive action. Because of this, a certain suspicion often accompanies any evaluation of Trevi's merits.

46. See Benyon et al., *supra* note 38, at 60.

47. See *id.* at 61 (stating the criticisms leveled at Trevi raise doubts about its democratic accountability and political legitimacy).

48. See *id.* (identifying the structure of Trevi as leading to decreased accountability).

B. THE MAASTRICHT TREATY—PROGRESS TOWARDS GREATER POLICE COOPERATION

The Maastricht Treaty made significant contributions to the development of police cooperation within Europe by adding the third pillar of "Cooperation in the field of Justice and Home Affairs."⁴⁹ Insofar as the objective of recognizing matters of common interest is concerned, the document offers relatively little guidance. The Maastricht Treaty words this objective vaguely: "[F]or the purpose of achieving the objectives of the Union, in particular the free movement of persons."⁵⁰ Given this very broad starting point, it is not entirely clear what are the intended missions of the third pillar. However, the third pillar can be considered as being more than a sum of its provisions. It is a strong symbol of the growing realization that international crime within the European Union's territory should be dealt with on a supranational level. The development of the third pillar represents a major accomplishment in the transfer of criminal justice matters to the main core of the European Union.

Including matters of European Union transnational police cooperation into the third pillar of Maastricht Treaty⁵¹ served to reinforce a number of issues that had been of common interest among the Member States for some time.⁵² These common interests include:

- (1) asylum policy; (2) rules governing the crossing by person of the external borders of the Member States and the exercise of controls thereon; (3) immigration policy and policy regarding nationals of third countries; (4) combating drug addiction; (5) combating fraud on an international scale; (6) judicial cooperation in civil matters; (7) judicial cooperation in criminal matters; (8) customs cooperation; and finally (9) police cooperation

49. See Maastricht Treaty, *supra* note 1, art. K.

50. See Maastricht Treaty, *supra* note 1, art. K.1.

51. See *id.*; see also Peter-Christian Müller-Graff, *The Legal Basis of the Third Pillar and its Position in the Framework of the Union Treaty*, 31 J. COMMON MKT. STUD. 493, 493-94 (1994).

52. Monica den Boer, *Europe and the Art of International Police Cooperation: Free Fall or Measured Scenario?*, in LEGAL ISSUES OF THE MAASTRICHT TREATY 279, 281 (David O'Keefe & Patrick Twoney eds., 1994) (characterizing the third pillar as consolidating and formalizing previous European law enforcement initiatives).

for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime.⁵³

While the first three areas have certain implications of international police cooperation, numbers four through nine have broader reaching implications.

The general authority to pursue the policies of the third pillar rests with the Member States, as provided in Article K.1.⁵⁴ The Maastricht Treaty only specifically provides that the Member States shall regard the identified areas as matters of common interest,⁵⁵ shall consult one another within the Council with a view toward coordinating their action,⁵⁶ and shall collaborate among the relevant administrative departments.⁵⁷

The individual Member States will largely decide how affairs under the third pillar proceed. The Council has no power to initiate any measure in this area. Even if the Council unanimously decided to apply Article 100(c)⁵⁸ to action in the areas of the third pillar, it remains the providence of the Member States to adopt that decision in accordance with their respective constitutions.⁵⁹ In addition, the possibility for initiative by the Commission is also limited. For the Council to consider action depends on the initiation of action by at least one Member State. This requirement exists only in the areas of police and

53. Muller-Graf, *supra* note 51, at 493-94 (providing a detailed overview of the third pillar's objectives); see Maastricht Treaty, *supra* note 1, art. K.1 (referencing the Treaty's acknowledgement of areas of common interest).

54. See Hans Ulrich Jessurun D'Oliveira, *Expanding External and Shrinking Internal Borders: Europe's Defense Mechanisms in the Area of Free Movement, Immigration and Asylum*, in LEGAL ISSUES OF THE MAASTRICHT TREATY, *supra* note 52, at 261, 263 (describing the Maastricht Treaty as a victory by the Member States over the Commission).

55. See Maastricht Treaty, *supra* note 1, art. K.1.

56. See *id.* art. K.3.

57. See *id.*

58. See *id.* art. 100(c).

59. See *id.* art. K.9 (providing that Member States should conform to their respective constitutional amendments).

customs cooperation, and judicial cooperation in criminal matters. In all other areas, the Commission can take initiative on its own.⁶⁰

While the third pillar expands the possibilities for international police cooperation, it also includes a number of safeguards. With respect to criminal justice cooperation, Article K.2 provides that activities employed in the framework of Title VI of the Treaty—Provisions on cooperation in the Fields of Justice and Home Affairs—must comply with the European Convention on Human Rights⁶¹ and the Geneva Convention on Refugees.⁶²

Article K.5 is another important provision included in the Maastricht Treaty, providing that Member States must defend a common position with international organizations and conferences.⁶³ This provision implies that the European Union must present a united front on issues such as money laundering or drugs in front of international bodies such as the United Nations.

Title VI of the Maastricht Treaty extends the scope of cross-border law enforcement. Before the Maastricht Treaty, there was almost an exclusive focus upon information exchange in terms of police cooperation. Under the Maastricht Treaty, however, the focus has shifted to greater levels of cooperation. Title VI also emphasizes questions of legal and democratic accountability through mechanisms such as data protection and transparency of action. If the matters under Title VI are developed significantly, and become fully accepted and integrated, the inclusion of Title VI in the Maastricht Treaty will be regarded as an important accomplishment in the integration process.

Despite its potential contributions, Title VI remains of questionable overall value. This is partly due to its mixed construction. Specifically, it addresses many issues that are clearly connected to other parts of the Maastricht Treaty. One such example concerns combat-

60. See Maastricht Treaty, *supra* note 1, arts. K.3, K.9 (referencing the Commission's ability to initiate action).

61. European Convention on the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 (entered into force Sept. 3, 1953).

62. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150, *amended by* Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

63. See Maastricht Treaty, *supra* note 1, art. K.5 (stating that Member States are responsible for safeguarding the internal security of the European Union).

ing drug addiction,⁶⁴ which, although covered by Title VI, is also linked with European Union health policy.⁶⁵

C. THE SCHENGEN AGREEMENT

The Schengen Agreement ("Schengen" or "Agreement"),⁶⁶ signed on June 14, 1985, created another level of cooperation within the criminal justice sector.⁶⁷ The formation of Schengen acknowledged the need to abolish obstacles to the free movement of goods and persons. A fundamental component of the Schengen system was the eventual abolition of controls at all borders between participating States.⁶⁸ Specifically, the Agreement provides detailed measures for the abolition of checks at internal borders, movement of persons, police, and security, the Schengen Information System ("SIS"),⁶⁹ transport and movement of goods,⁷⁰ protection of personal data,⁷¹ and standardized definitions.⁷²

In addition to reducing border controls, the Schengen Agreement also provides for a higher level of police cooperation among its contracting States.⁷³ Particularly, the Agreement provides for the exchange of information, operational cooperation such as cross-border

64. *See id.* art. K.1.4.

65. *See id.* art. 129(1)(c) (linking the Maastricht Treaty with European Union health policy).

66. *See* Schengen Agreement on the Gradual Abolition of Checks at Their Common Borders and the Convention Applying the Agreement, Jan. 19, 1991, Belg.-Fr.-F.R.G.-Lux.-Neth, reprinted in 30 I.L.M. 68, 69, 73, 84 [in four parts] [hereinafter Schengen Convention] (Schengen Agreement concluded June 14, 1985; Schengen Convention concluded June 19, 1990).

67. *See id.* arts. 39-47 (establishing methods for police cooperation among the Schengen signatories). *See generally* CHANTAL JOUBERT & HANS BEVERS, SCHENGEN INVESTIGATED 33-38 (1996) (providing background and analysis on the Schengen Convention).

68. *See* Schengen Convention, *supra* note 66, arts. 2-38 (establishing guidelines for the movement of persons across internal and external borders, the issuance of visas, and the responsibility for visa application processing).

69. *See id.* arts. 92-119.

70. *See id.* arts. 120-25.

71. *See id.* arts. 126-30.

72. *See id.* art. 1.

73. *See id.* arts. 39-91.

observations, cross-border pursuit, controlled delivery, and the legal position of police officers during these operations. Additionally provided for are the installation of telephone, radio, and telex lines, and the provision of liaison officers to police authorities of the contracting parties.⁷⁴

Two of the aforementioned articles on police cooperation are particularly important. Article 39 of the Schengen Agreement obligates police agencies in Schengen States to render mutual assistance in providing information upon request for the prevention or detection of criminal offenses.⁷⁵ This is only possible, however, to the extent that national legislation permits. In addition, Article 46 permits the free exchange of information that may help to prevent future crimes or threats to public order.⁷⁶ Taken together, these two articles provide the basis for a much higher level of cooperation among the police authorities of different contracting States.

A notable part of the Schengen Agreement concerns its provisions on data and information.⁷⁷ The Agreement represents the most broad-based effort thus far to establish a pan-European police communications system. It includes measures on cross-border surveillance, "hot pursuit," the powers of questioning and arrest, and carrying firearms to a foreign territory.⁷⁸ It also enables national police and customs authorities to access information on missing or wanted persons, individuals refused entry, and stolen and embezzled property.⁷⁹

The SIS has important technical features. Each contracting party has a National Schengen Information System ("NSIS"), which is a national data depository. A central unit in Strasbourg, France con-

74. See Schengen Convention, *supra* note 66, arts. 39-91.

75. See *id.* art. 39 (discussing the Schengen's allowance for mutual assistance).

76. See *id.* art. 46(2) (stating that information exchange should be facilitated without prejudice).

77. See Julian J.E. Schutte, *Schengen: Its Meaning for the Free Movement of Persons in Europe*, 28 COMMON MKT. L. REV. 549, 559 (1991) (referring to the Schengen Information System ("SIS") as the "most spectacular novelty" of the Schengen Convention).

78. See Schengen Convention, *supra* note 66, arts. 40-41, 48-49, .

79. See *id.* art. 92(1) (providing for the establishment and maintenance of the SIS).

nects all NSIS's to each other, as well as copies and distributes all data. Collectively, these two components comprise the SIS.

The SIS provides border officials ready access to the criminal records of anyone within the contracting State. As such, the SIS provides enormous assistance in preventing and detecting crime. "Two days after the new accords went into effect, German police reported that they had already arrested thirty-five people at the country's borders, among them a Russian driving a stolen car and a Turk wanted for murder in the Netherlands."⁸⁰ It is very likely that information provided by the SIS facilitated many of these arrests.

At the same time, the SIS has been subject to a number of criticisms due to its comprehensive nature—including its potential for violating the privacy rights of the European citizen. Another concern about the Schengen system is that actual movement within the territory may become more restricted because of the SIS's reporting mechanism. Due to the fact that a person's right to enter and reside in the Schengen territory depends upon the domestic laws of each contracting State, the potential exists for curtailed freedom of movement within the single market.⁸¹ Thus, if one contracting State decides that a person is inadmissible under domestic law, and reports this person to the SIS, the entire Schengen area becomes inaccessible to that person.⁸² It is likely that criteria of *personae non-gratae*, common to all contracting States, will develop to combat this difficulty.⁸³

80. Serge Jaquet, *Moving Ahead As One*, in INTERNATIONAL REVIEW: A CRITICAL ANALYSIS OF WORLD EVENTS (on file with *American University International Law Review*).

81. See JOUBERT & BEVERS, *supra* note 67, at 36 (emphasizing the irony in the potential for Eastern European citizens to be prohibited from entering Western European territories given the harsh criticism leveled by the West at Communist Eastern Europe for restricting population movement).

82. See Martin Baldwin-Edwards & Bill Heberton, *Will SIS Be Europe's Big Brother?*, in POLICING ACROSS NATIONAL BOUNDARIES 137, 154 (Malcolm Anderson & Monica den Boers eds., 1994) (noting that Schengen has a system of cumulative controls where its reporting mechanism will categorize an offender of one State's laws as an offender of Schengen's security, regardless of whether the offender could be held criminally liable in any other contracting State).

83. David O'Keefe, *The Schengen Convention: A Suitable Model For European Integration?*, 11 Y.B. EUR. L. 185, 191-92 (1991) (emphasizing that when one contracting State imposes more stringent immigration standards, the standards must be enforced by every other contracting State).

An additional concern is the Schengen requirement for abolition of border controls on people at all internal borders of the States in the European Union that are party to the agreement. Traditionally viewed as a mechanism for protecting internal security, the abolition of border controls necessarily creates a number of profound implications for policing.⁸⁴

First, the abolition of border controls may encourage the growth of transnational crime. If it is true that border controls protect the security of States, then the abolition of borders may facilitate the movement of international criminals and criminal activity across State borders. Increased police cooperation will be necessary to track and monitor international criminals as they move freely among contracting States.

Second, the absence of border controls mandated by Schengen will likely cause a shift from external to internal criminal controls. Since police authorities will no longer be monitoring the borders, they may be required to undertake increased monitoring and investigation within the country itself. An over-eagerness in conducting internal investigations targeting individual citizens may lead to charges of discrimination and harassment against officers. This will require the police to be more selective in their investigation activities, especially when identifying and interrogating suspects.

Third, the full growth of Schengen may be impeded by a lack of full participation by the contracting States. The current members of Schengen include Belgium, France, Germany, Italy, Luxembourg, the Netherlands, Portugal, and Spain. Five other States, Austria, Denmark, Finland, Greece, and Sweden have joined Schengen, but have not yet fully implemented the agreement and eliminated all controls at their borders, although Austria is likely to achieve this final step in the near future.

In December 1997, Austria announced the implementation of the Schengen Agreement.⁸⁵ The country will lift all customs and immi-

84. See generally Schutte, *supra* note 77, at 568-70 (discussing some negative aspects of "Schengenizing" the law in the European Community on the free movement of people).

85. See *Austria Joins Schengen Group*, AEROSPACE DAILY, Dec. 8, 1997, at 405 (stating that Austria will abolish border controls for passengers traveling among European Union Member Countries); *Austria Joins Schengen Accord on*

gration controls with Schengen contracting States. Of the eight countries with which Austria shares a border, only Germany and Italy are Schengen members. Germany's criticisms of Austria for not controlling illegal immigration, particularly from Eastern Europe, have delayed the eradication of Austria's border controls. Because of German concerns, however, Austrian authorities have stepped up controls and reinforced surveillance at the nation's borders.⁸⁶

Likewise, although Greece signed Schengen in 1992, it has only recently adopted Schengen provisions eliminating border controls.⁸⁷ The country's delay has largely been the result of technical difficulties in restricting the entry of illegal immigrants into the numerous islands that comprise Greece's southern border.⁸⁸

Denmark, Finland, and Sweden's relationship with the other Nordic countries, including Norway, a country not part of the European Union, complicates their efforts to participate in Schengen. Specifically, the countries assert that full participation Schengen is hindered by membership in the Nordic Union, which provides for free movement between the Scandinavian countries.⁸⁹

Ireland and the United Kingdom have not yet joined Schengen. Like the members of the Nordic Union, Ireland and the United Kingdom share a Common Travel Area. Additionally, the two nations ar-

Free EU Movement, AGENCE FRANCE-PRESSE, Dec. 1, 1997 (stating that controls on Austria's common border with Italy and Germany are to be removed by March).

86. *See German Official Slams Three-Country Border Accord*, AGENCE FRANCE-PRESSE, July 18, 1997 (expressing doubts that Austria could stop illegal immigrants from crossing its 810-mile border with Eastern Europe).

87. *Greece to Adopt EU Border Pact Despite Opposition*, REUTER EUR. COMMUNITY REP. (June 10, 1997), available in Lexis, INTLAW Library, EU Cases, Legislation and News File (describing a protest outside the Greek Parliament where Schengen border controls were being debated and noting that, protests notwithstanding, the Greek Parliament would pass the necessary legislation).

88. *See Martin Walker & Alan Travis, Analysis: Schengen Europe: Losers in the Game Without Frontiers*, GUARDIAN (London), Jan. 7, 1998, available in 1998 WL 3072662 (noting that much of Greece's coastline has proven virtually impossible to police).

89. *See Schengen Pact Spreads Wings*, REUTER EUR. COMMUNITY REP. (Dec. 19, 1996), available in Lexis, INTLAW Library, EU Cases, Legislation and News File (observing that Denmark, Finland, and Sweden might not implement Schengen provisions until the year 2000).

gue that their sea borders act as a barrier against international criminal transaction and movement, and present obstacles to full participation in Schengen.⁹⁰

Finally, there have been some practical concerns associated with Schengen. Significantly, the contracting States worry about the cost associated with the changes that Schengen necessitates. If the European Union expands eastward to include States from CEE, it may be very difficult for those States to meet the costs associated with Schengen. For example, current contracting States have found it necessary to invest in costly modern technology such as passport scanners and other sophisticated computerized equipment designed quickly to identify forgeries and stolen license plates.

D. EUROPOL

In January, 1994, Member States established the Europol Drugs Unit⁹¹ as Europol's first phase.⁹² Currently, Europol is limited to relaying information between national police in Member States on drug crimes and money laundering, but officials expect the organization's role to grow. Once fully established, Europol will broaden the scope of police cooperation between the Member States of the European Union at a rapid pace. It is likely that such a change will lead to cooperation that is far beyond the limits of Interpol and the former Trevi.

90. See Jeremy Gaunt, *Dutch See EU Border Pact With Norway, Not Britain*, REUTER EUR. COMMUNITY REP. (Feb. 10, 1997), available in Lexis, INTLAW Library, EU Cases, Legislation and News File (reporting that "sovereignty and security-conscious Britain says it has no intention of lifting its border controls"). Ireland, because of its open border with Britain, cannot join Schengen unless Britain does so. See *id.*

91. See Joint Action of March 10, 1995 adopted by the Council on the Basis of Art. K3 of the Treaty on European Union Concerning the Europol Drugs Unit, 1995 O.J. (L 62) 1, 3 (1995) (noting that Member States have a provisional framework for cooperation in the Europol Drug Unit). This agreement replaced the June 2, 1993, Ministerial Agreement on the Establishment of the Europol Drugs Unit. See *id.* art. 8.

92. See ANDERSON ET AL., *supra* note 26, at 64, 66-67 (explaining that the Europol Drug Unit was established as Europol's first phase in dealing with the problems caused by international illicit drug trafficking, associated money laundering, and organized crime).

Germany originally advocated the creation of Europol,⁹³ suggesting two bases for its foundation. First, Europol should serve as a center for the exchange of information and experience. Second, Member States of the European Union should eventually grant Europol "original powers" to operate within the Member States.⁹⁴ Participants at the Maastricht Summit in December 1991 formally adopted Germany's proposal,⁹⁵ and recognized Europol in the Maastricht Treaty under the newly developed title of Justice and Home Affairs.⁹⁶

Passed in 1995,⁹⁷ Articles K.3(2)(c) and K.1(9) of the Maastricht Treaty provide the basis for the Europol Convention.⁹⁸ Article K.3(2)(c) provides that:

The Council may on the initiative of any Member State, in the areas referred to in Article K.1 (7) to (9): without prejudice to Article 220 of the Treaty establishing the European Community, draw up conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.⁹⁹

As providing a basis for the establishment of Europol, this provision needs to be read along with Article K.1(9). This article provides, as an objective of the union that:

police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international

93. See Cyrille Fijnaut, *The Internationalization of Police Cooperation in Western Europe*, in *THE INTERNATIONALIZATION OF POLICE COOPERATION IN WESTERN EUROPE* 9, 14 (Cyrille Fijnaut ed., 1993) (crediting the Germans for pushing debate in Europe for the past twenty years with respect to a new police institution-police cooperation mechanism).

94. See *id.* at 15 (noting that it was predictable that some Member States would resist the proposal granting "original powers" to Europol).

95. See den Boer & Walker, *supra* note 3, at 7.

96. See *id.* (asserting that Europol is now embedded within a fortifying regulatory context).

97. See Europol Convention, *supra* note 24 (indicating that Europol was passed on July 26, 1995 in Brussels).

98. See Maastricht Treaty, *supra* note 1, art. K.3(c) (discussing that the Council may draw up conventions which it shall recommend to the Member States for adoption); *id.* art. K.1(9) (noting that Member States shall police cooperation concerning certain areas of international crime as a matter of common interest).

99. *Id.* art. K.3(2)(c).

crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol).¹⁰⁰

Article 2 of the Europol Convention lists the main objectives of Europol.¹⁰¹ The primary objective of Europol is improving the effectiveness and cooperation of Member States in the prevention and combatment of terrorism, unlawful drug trafficking, and other serious forms of international crime.¹⁰² To accomplish its primary objective, Europol has five principal tasks: (a) to facilitate the exchange of information between Member States;¹⁰³ (b) to obtain, collate, and analyze information and intelligence,¹⁰⁴ (c) to notify the competent authorities of the Member States of information concerning them, and of any connections identified between criminal offenses;¹⁰⁵ (d) to aid investigations in Member States by forwarding all relevant information;¹⁰⁶ and (e) to maintain a computerized system of data collection and information.¹⁰⁷

The first provision of Article 2 requires that Member States cooperate with one another when two factors are present. First, there must be factual indications that an organized criminal structure is involved. Second, the forms of crime in question must affect two or more Member States in such a way that requires a common approach.¹⁰⁸

100. *Id.* art. K.1(9).

101. *See* Europol Convention, *supra* note 24, art. 2 (setting forth the main objectives of Europol).

102. *See id.* art. 2(1) (stating that the main objective of Europol is to improve the effectiveness and cooperation of Member States authorities in preventing international crime).

103. *See id.* art. 3(1)(1).

104. *See id.* at 3(1)(2).

105. *See id.* art. 3(1)(3).

106. *See id.* art. 3(1)(4).

107. *See* Europol Convention, *supra* note 24, art. 3(1)(5) (noting that a computerized data system is to be maintained in accordance with Articles 8, 10, and 11).

108. *See id.* art. 2(1) (indicating that the scale, significance, and consequences of the criminal activity must warrant a cooperative approach by Member States).

The second provision of Article 2 describes the progressive mandate of Europol.¹⁰⁹ Initially Europol will act in the fields of unlawful drug trafficking, trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings, and motor vehicle crime.¹¹⁰ Europol's competence also extends to illegal money laundering activities in connection with the aforementioned crimes,¹¹¹ or specific manifestations thereof, as well as related criminal offenses.¹¹²

Within two years of the latest entry into force of the Convention, Europol's authority will expand to cover "crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property."¹¹³ If, however, the Council acts unanimously in accordance with procedure in Title VI of the Maastricht Treaty, the Council may instruct Europol to deal with terrorist activities or other forms of crime at an earlier date.¹¹⁴

To effect these provisions, Member States have certain duties under the Europol Convention. Each Member State is required to have a national unit charged with seven main tasks.¹¹⁵ According to Article 4, the national units must:

- (1) supply Europol on their own initiative with the information and intelligence necessary for it to carry out its tasks;
- (2) respond to Europol's requests for information, intelligence and advice;
- (3) keep information and intelligence up to date;
- (4) evaluate information and intelligence in accordance with national law for the competent authorities and transmit this material to them;
- (5) issue requests for advice, information and analysis to Europol;
- (6) supply Europol with information for storage in the comput-

109. *See id.* art. 2(2) (describing the initial crime prevention activities of Member States, as well as policing activities to begin no later than two years following the date the Europol Convention enters into force).

110. *See id.* (explaining when Europol Member States shall act and the types of activities they can prevent).

111. *See id.* art. 2(3)(1).

112. *See id.* art. 2(3)(2).

113. Europol Convention, *supra* note 24, art. 2(2).

114. *See id.* (noting that the Council must act unanimously to pursue solutions to terrorist activities before the statutorily-defined time period expires).

115. *See id.* art. 4(1).

erized system; (7) ensure compliance with the law in every exchange of information between themselves and Europol.¹¹⁶

Large parts of the duties of the Member States involve the provision of data. Member States, however, are not required to provide certain information—particularly in those areas that are deemed to be tasks of Member States as provided for in Articles 4(4)(1), (2), and (6)—if doing so would threaten national security interests, jeopardize the success of a current investigation, endanger individuals, or involve information on certain Member State intelligence activities.¹¹⁷

A primary component of Europol concerns the development and maintenance of a computerized system of information.¹¹⁸ Such a system should play a primary role in the collection, analysis, and transfer of data. Article 8 of the Convention describes the content of the information system as including both personal information as well as information relating to criminal enterprises and activities.¹¹⁹ The Convention provides that data entered into the system shall relate to two categories of people. The first category of people include those who, in accordance with the concerned Member States' national law, are suspected of having committed or participated in a criminal offense for which Europol is competent, or who have been convicted of such an offense.¹²⁰ The second category is comprised of persons for whom there are serious grounds under national law for believing will commit criminal offenses for which Europol is competent.¹²¹

If an individual falls into one of the above two categories, the personal data entered into the Europol system may include: the person's surname, maiden name, given names, and aliases;¹²² the date and

116. *See id.* art. 4(1)-(7).

117. *See id.* art. 4(5)(1)-(3).

118. *See id.* arts. 6-7 (explaining that Europol shall establish and maintain a computerized system of collected information in order to perform its tasks).

119. *See* Europol Convention, *supra* note 24, art. 8 (setting forth the content of the information system).

120. *See id.* art. 8 (1)(1).

121. *See id.* art. 8 (1)(2).

122. *See id.* art. 8(2)(1).

place of birth;¹²³ nationality;¹²⁴ sex;¹²⁵ and any other necessary characteristics that will assist in identification.¹²⁶ In addition to personal information, data entry may include information relating to suspected or actual criminal activity. This data may include:

- (1) criminal offenses, alleged crimes and when and where they were committed;
- (2) means which were or may be used to commit the crimes;
- (3) departments handling the case and their filing references;
- (4) suspected membership of a criminal organization;
- (5) convictions, where they relate to criminal offenses for which Europol is competent under Article 2.¹²⁷

Thus, Europol is authorized to gather, analyze, and share a large amount and variety of information pertaining to individuals.

Europol's development represents a rather notable accomplishment in the move towards greater international police cooperation within Europe. The recognition of Justice and Home Affairs as a separate pillar of European activity¹²⁸ emphasizes that Europol exists within a firm and well-established supportive regulatory context.¹²⁹ This foundation may help advance Europol's work. In addition, under Article K.3 of the Maastricht Treaty, international conventions may be promulgated under the wide range of affairs provided for in Article K.1.¹³⁰ This may lead to more systematic regulation in an area where a certain level of progress has already been accomplished.

Some consider that "following the signing and ratification of a convention for the establishment of Europol, it is likely that this

123. See *id.* art. 8(2)(2).

124. See *id.* art. 8(2)(3).

125. See Europol Convention, *supra* note 24, art. 8(2)(4).

126. See *id.* art. 8(2)(5) (noting that other characteristics likely to assist in identification can include any particular physical characteristics not subject to change).

127. *Id.* art. 8(3)(2)(1)-(5).

128. See E.P. Wellenstein, *Unity, Community, Union—What's in a Name?*, 29 COMMON MKT. L. REV. 205, 209 (1992) (explaining that the construction of three pillars in the Maastricht Treaty occurred despite the fact that Member States originally promised "a single institutional framework").

129. See den Boer & Walker, *supra* note 3, at 7 (reporting that Europol is settled within a supportive regulatory context).

130. See Maastricht Treaty, *supra* note 1, art. K.3.

agency will develop into a fully fledged European police office or agency.”¹³¹ On the other hand, Van Oustrive, the rapporteur on Euro-pol for the Committee on Civil Liberties and Internal Affairs of the European Parliament, has argued that “[a]t present we do not have the political, legal and procedural structures we would need for an operational European federal police force.”¹³² While it is still too early to decide upon the precise future of Europol, it appears that Oustrive’s statement is much more on target for the time being.

In the future, the European Commission will be in a better position to influence and coordinate the activities of Europol. Additionally, there will be enhanced opportunities for the European Parliament to participate legitimately in the development of policy concerning Europol. The position and definition of Europol suggests that, in the future it should take over the role of Interpol within the Member States of the European Union. If the European Community becomes more federalized, it is likely that Interpol will eventually hold the same position in the European Union as it does now in the United States—as an outside contact point with police in other countries.

E. OTHER BILATERAL AND MULTILATERAL AGREEMENTS BETWEEN MEMBER STATES

A network of treaties, established within the framework of the Council of Europe, govern traditional inter-State cooperation in criminal matters between judicial authorities. Although the European Union is more extensively cooperating in criminal detection and apprehension, these classic agreements remain of considerable importance and use. The European Convention on Extradition (“Extradition Convention”)¹³³ and the European Convention on Mutual Assistance in Criminal Matters (“Mutual Assistance Convention”)¹³⁴ enjoy the widest recognition and have the greatest practical impor-

131. Benyon, *supra* note 38, at 61 (asserting that Europol will promote effective cooperation).

132. EUR. PARL. DEB. 3-426/281 (Jan. 21, 1993).

133. Dec. 13, 1957, 359 U.N.T.S. 273 [hereinafter Extradition Convention] (setting forth extraditable offenses, as well as rules and procedures governing extradition).

134. Apr. 20, 1959, 472 U.N.T.S. 185 [hereinafter Mutual Assistance Convention] (detailing rules in the field of mutual assistance in criminal matters).

tance. Almost all member States of the Council of Europe have ratified both treaties.

The Extradition Convention imposes a duty to extradite upon members of the Council. In conformity with tradition, the Extradition Convention excludes from the duty to extradite political offenses, or offenses connected with a political offense.¹³⁵ Extradition may be refused by a State if it has substantial grounds for believing that the request is a mere pretext for the prosecution or punishment of a person on account of race, religion, nationality, or political option. Moreover, a State may base refusal to extradite on the substantial belief that an individual may be prejudiced for any of these reasons.¹³⁶ In addition, a country may refuse the extradition of nationals, in keeping with continental legal tradition.¹³⁷ Notably, due to the great importance of modern economic crime, fiscal offenses are no longer generally excluded from the categories of extraditable crimes.¹³⁸

The Mutual Assistance Convention proceeds from the assumption that contracting parties are under a basically unrestricted duty to afford one another the widest measure of mutual assistance in criminal proceedings.¹³⁹ The Mutual Assistance Convention no longer requires the offenses concerned to be punishable under the national law of both the requesting and the requested State. Reasons for the refusal of assistance are optional and are contained in a blanket provision stating that the requested State may refuse assistance if it considers execution of the request likely to prejudice its sovereignty, security, or other essential interests.¹⁴⁰

A number of bilateral and multilateral agreements between Member States have influenced progress towards increased police cooperation within Europe. In February 1997, for example, Germany and

135. See Extradition Convention, *supra* note 133, art. 3(1), 359 U.N.T.S. at 278.

136. See *id.* art. 3(2), 359 U.N.T.S. at 278.

137. See *id.* art. 6, 359 U.N.T.S. at 280 (providing individual contracting Parties the opportunity to define the term "nationals").

138. See *id.* art. 5, 359 U.N.T.S. at 280 (setting forth that extradition can be granted for offenses in connection with taxes, duties, customs and exchange).

139. See Mutual Assistance Convention, *supra* note 134, art. 1(1), 472 U.N.T.S. at 186 (noting that contracting parties undertake to afford each other the broadest measure of mutual assistance in criminal proceedings).

140. See *id.* art 2(b), 472 U.N.T.S. at 192.

the Netherlands agreed to expand the scope of their police cooperation.¹⁴¹ The police forces will engage in joint activities, including assistance in disasters and public events, traffic controls, the apprehension of criminals, and surveillance.¹⁴² Additionally, the two countries will improve the exchange of information.¹⁴³

Many other bilateral and multilateral agreements are currently in existence. These agreements help advance cooperation between Member States on issues of mutual importance and necessity such as money laundering, drug trafficking, traffic in persons, traffic in arms, and the unlawful seizure of aircraft.¹⁴⁴ In many cases, such agreements were created after it was determined that exclusively domestic efforts had little impact in countering the specific problem.¹⁴⁵ Such international problems require international attention.

At the same time, however, such agreements may also impede progress. Due to the number of agreements, and the diverse issues they govern, however, there is often confusion about which law controls. Any future development of one system of international police cooperation will have to adopt an integrated and comprehensive approach.

141. See Chairmanship of the European Union, *Greater Safety Through Cooperation Between Dutch and German Police*, Press Release, Feb. 5, 1997 (stating that the safety of inhabitants near the German border will increase as a result of the agreement between the Netherlands and Germany).

142. See *id.* (explaining that the joint activities demonstrate that the German and Dutch police forces will work closely together).

143. See *id.* (asserting that police investigation and prosecution in Germany and the Netherlands will be more coordinated and increasingly well-executed due to the cooperative agreement).

144. See generally MALCOLM ANDERSON, *POLICING THE WORLD: INTERPOL AND THE POLITICS OF INTERNATIONAL POLICE CO-OPERATION* 20-22 (1989) (providing examples of bilateral and multilateral police initiatives).

145. See *id.* at 20 (asserting that the increasing wealth of highly industrialized countries facilitated the growth of international crime thus necessitating the coordination of police efforts on an international scale).

III. PROBLEMS RESULTING FROM INCREASED POLICE COOPERATION IN THE EUROPEAN UNION

A. PROLIFERATION OF POLICE INFORMATION EXCHANGE AND HUMAN RIGHTS CONCERNS

Although many opportunities exist for the exchange of personal data in the European Community, no data protection legislation is in place pertaining to State use of data at the Community level. Instead, such protection exists only on a national level. These differences create a major impediment to the full integration of the European Union and the protection of the rights of European citizens.

There are also no Community provisions regulating the means of exchanging police information about individuals within Member States, or between the European Union and third parties.¹⁴⁶ Rather, each measure on international police cooperation, ranging from Schengen to Europol, has its own data protection provisions. No single detailed and all-encompassing approach deals with these legitimate concerns. The fact that there are numerous different—and potentially conflicting—provisions on data protection supplements the already existing confusion over how such information should be handled.

Of particular concern are non-Europeans within Europe. If the misuse or abuse of international police data while in Europe victimizes such individuals, they might face difficulty in appealing to the European Court of Human Rights for assistance. Non-Europeans with limited ties to Europe may face greater obstacles in appealing to this Court and may thus be subject to greater personal data abuses. On a more hopeful note, however, certain commentators have argued that the courts of Europe, including the European Court of Justice

146. See Council of Europe Recommendations to Member States, Recommendation No. R (87) 15 (1987) (regulating the use of personal data in the police sector). This recommendation provides for a greater level of protection to the person on whom police data has been compiled. See *id.* This recommendation is non-binding, however. See *id.* Accordingly, Member States are under no specific obligation to comply with it and European citizens do not derive any direct rights from it. See *id.*

have been attempting to include immigrants in Community law to some extent.

1. *The History of European Privacy Protection*

When evaluating the various techniques for protecting data that currently exist within the European Union, it is important to understand the history of privacy protection. One of the first references to a right of privacy appeared just a little more than one hundred years ago in Thomas M. Cooley's treatise on the law of torts, wherein Cooley coined the phrase "the right to be let alone."¹⁴⁷ Subsequently, Samuel Warren and Louis Brandeis, in an 1890 *Harvard Law Review* article, argued that a right of privacy is essential to the individuals existing in advanced civilizations.¹⁴⁸ The article traced the roots of the right of privacy back to the common law of England.¹⁴⁹ Since then, a number of domestic laws, as well as international human rights conventions, have sought to encode this principle of a right to privacy.¹⁵⁰

Protection of personal data is quite important in an increasingly global society, particularly one that is heading towards increased cooperation in the attainment and maintenance of criminal intelligence. As early as 1981, the Council of Europe adopted Convention 108. Addressed to the Member States of the Council of Europe, as well as its non-member States,¹⁵¹ Convention 108 has been signed by all Member States of the European Union.¹⁵²

147. THOMAS M. COOLEY, *LAW OF TORTS* sec. 29 (1st ed. 1880).

148. See Samuel Warren & Louis Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 196 (1890).

149. See *id.* at 193-95 (describing the evolution of common law protections against trespass, nuisance, and intellectual property and describing the right to privacy as the next logical step in that succession).

150. See *Universal Declaration of Human Rights*, G.A. Res. 71 U.N., art. 12, U.N. Doc. A/810 (1948). This declaration states that "[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." *Id.*; see also *International Covenant on Civil and Political Rights*, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1967).

151. See Council of Europe, *Convention for the Protection of Individuals with Regards to Automatic Processing of Personal Data*, Jan. 28, 1991, E.T.S. No. 108,

The primary objective of Convention 108 is to guarantee every individual a "right to data protection."¹⁵³ Importantly, however, domestic legislation of individual Member States is necessary to achieve this goal.¹⁵⁴ The Convention defines the quality of data that should be collected within the parameters of five basic principles: (1) the fair and lawful obtaining and processing of data; (2) the storage for specific and legitimate purposes; (3) the adequacy, relevance and non-excessiveness of the storage in relation to the purpose; (4) the accuracy of the data; and (5) the usage of the data no longer than necessary for the original purpose.¹⁵⁵

The issue of data protection in the European Union, including police data, was the subject of concern after the Council of Europe's Convention 108. This is especially so with the advent of Europol and its proposed system of information exchange. While the vast majority of work on data protection involves the inclusion of data protection provisions in the various agreements on police cooperation, work is ongoing in other fronts as well. Thus far, however, most of these efforts have led to little more than brainstorming and debate.

2. *Relations Between European Union and Third Party States*

In the context of interactions between the European Union and third parties—with lower levels of data protection—greater problems may occur. This may especially be the case in CEE where political and economic liberalization brings with it an ambition to establish fundamental freedoms, including privacy and data protection. Such efforts, however, have not moved at great speed, nor have they occurred in all of the countries in the region.

arts. 22(1), 23 (1) [hereinafter Convention 108] (noting that Convention 108 is open to Member States and that the Council of Europe may invite non-members to accede to the Convention).

152. See Herald D.J. Jongen & Gerrit A. Vriezen, *The Council of Europe and the European Community*, in DATA TRANSMISSION AND PRIVACY 139, 140 (Dennis Campbell & Joy Fisher eds., 1994) (differentiating between those countries who have signed Convention 108 and those that have passed the necessary implementing legislation).

153. See Convention 108, *supra* note 151, art. 1 (identifying the purpose of the Convention as to promote security of personal data).

154. See *id.* art. 4.

155. See *id.* art. 5.

Article 59 of the 1989 Hungarian Constitution states: “[i]n the Republic of Hungary, everyone shall be entitled to good reputation, to the inviolability of one’s home, as well as to the protection of private secrets and personal data.”¹⁵⁶ Thus, it appears as if a basic constitutional right to privacy exists. Additionally, in 1992, Hungary adopted a special act on personal data protection that complies with the Europol Convention requirements.¹⁵⁷ Personal data is only accessible by permission of its owner, and only for the aims that the owner stipulates.¹⁵⁸ Weakening the efficacy of this Act, however, the country remains without an expansive system of data protection to regulate personal data possession and transfer by national police or governmental sources.

In the Czech Republic, the government adopted a substantive law in 1992, influenced by the Council of Europe Convention.¹⁵⁹ The Act regulates information systems containing personal data established both before and after adoption of the law. The law allows the national government to authorize the operation of already existing information systems that do not comply with the law, but only in exceptional cases and for a period not exceeding three years.¹⁶⁰ Although the Act provides for the establishment of a special regulatory body to control compliance, to date, controversies surrounding the level of power afforded to the body continue to prevent its establishment.

In Slovakia, the protection of personal data is guaranteed by Article 19(3) of its Constitution, which provides that “[e]veryone has the right to be protected against the unwarranted collection, publication, or other illicit use of his personal data.”¹⁶¹ Two other constitutional

156. A MAGYAR KÖZTÁRSASÁG ALKETMÁNYA [Constitution] art. 59 (1989) (Hungary), available in <<http://www.hungaryemb.org.ctrh.htm>>.

157. See generally Act LXIII of 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest (Hungary), available in <<http://www.bild.acad.bg/privacyHU.htm>>.

158. See *id.* sec. 5, para. 1.

159. See The Act on Protection of Personal Data in Information Systems, Apr. 29, 1992 (Czech Republic), summary available in <<http://www.privacyexchange.org>>.

160. See *id.*

161. SLOVK. CONST. art. 19(3), available in <<http://slovakia.eunet.sk/slovakia>>.

provisions provide for additional protection of personal data. Article 22(1) states that “the privacy of correspondence and secrecy of mailed messages and other written documents and the protection of personal data are guaranteed.”¹⁶² In addition, Article 22(2) provides that:

[n]o one must violate the privacy of correspondence and the secrecy of other written documents and records, whether they are kept in privacy or sent by mail or in another way, with the exception of cases to be set out in law. Equally guaranteed in the secrecy of messages conveyed by telephone, telegraph or other similar means.¹⁶³

The Romanian Constitution offers some general principles on the protection of personal data.¹⁶⁴ Article 26 provides that “the public authorities shall respect the family and private life.”¹⁶⁵ Article 31, entitled “Right to Information,” provides that the right of access to any information of public interest cannot be restricted. Moreover, this constitutional provision requires public authorities to provide accurate information to the citizens in areas of public affairs. Finally, public and private media are obligated to provide correct information.¹⁶⁶

Bulgaria offers vague methods of data protection in Article 32(1) of its Constitution:¹⁶⁷

The privacy of the citizens is inviolable. Everyone is entitled to protection against any illegal interference in private or family affairs and against encroachment on his honor, dignity and reputation. No one shall be followed, photographed, filmed, recorded or subjected to any other similar

/history-politics/slovak-constitution.txt>.

162. *Id.* art. 22(1).

163. *Id.* art. 22(2). For further information on the protection of data in the private sector in the Slovak Republic, see Jan Drgonec, *Computer Law in the Slovak Republic*, 9 *COMPUTER L. & PRAC.*, No. 3, at 87 (1993).

164. *See* ROM. CONST. arts. 26, 31 (1991), available in <<http://www.kappa.ro/guv/consti.html>>.

165. *See id.* art. 26

166. *See id.* art. 31.

167. *See* BULG. CONST. art. 32(1) (1991), available in <http://www.uni-wuerzburg.de/aw/bu00000_.html>.

activity without his knowledge or despite his express disapproval, except when such actions are permitted by the law.¹⁶⁸

In addition, Article 34 of the Bulgarian Constitution provides that the freedom and confidentiality of correspondence and all other communications shall be sacrosanct.¹⁶⁹ In spite of these constitutional provisions, Bulgaria is currently without any laws to enforce these protections.

Like many of its neighbors, Poland lacks a generic data protection law. In addition, Poland's Constitution does not contain any provisions establishing privacy rights. Nonetheless, an Ombudsman considers right to privacy and data protection complaints.¹⁷⁰ Such cases are rare, though they do exist.

Slovenia has enacted data protection legislation. The Personal Data Protection Act¹⁷¹ is based on the Organization of Economic Cooperation and Development ("OECD") guidelines governing the protection of privacy and trans-border flows of personal data.¹⁷² The Act applies to the private sectors and to both manual and automated data. The Act requires the registration of data files with the Republican Administration—the body responsible for enforcing the provisions of the Act.¹⁷³ There is also a trans-border data flow provision, which requires the recipient country to have data protection laws in force before data transmission occurs.¹⁷⁴

Macedonia has a constitutional provision that is related to the protection of personal data. Article 18 of the Macedonian Constitution provides that "the security and confidentiality of personal information are guaranteed. Citizens are guaranteed protection from any

168. *Id.* art. 32(1).

169. *See id.* art. 34.

170. *See* ORGANIZATION OF ECONOMIC COOPERATION AND DEVELOPMENT, PRIVACY AND DATA PROTECTION: ISSUES AND CHALLENGES 21 (1994).

171. The Personal Data Protection Act (1990) (Slovenia).

172. *See* ORGANIZATION OF ECONOMIC COOPERATION AND DEVELOPMENT, *supra* note 170, at 68-70.

173. *See* The Personal Data Protection Act arts. 30-32 (1990) (Slovenia).

174. *See id.* arts. 26-29.

violation of their personal integrity deriving from the registration of personal information through data processing.”¹⁷⁵

The European integration process, particularly the increasing possibility that CEE nations will become Member States, creates a new threat to the fundamental right of privacy. Many of the existing and evolving mechanisms of European Community police cooperation rely upon data collection, analysis, and exchange.¹⁷⁶ The security of this information is crucial to international police cooperation in Europe.¹⁷⁷ Consequently, management of the technology systems themselves is required and, at the same time, monitoring new technologies is essential.

3. *The Schengen Agreement*

Under Schengen, the contracting parties are obligated to individually adopt data protection standards at least equivalent to those set forth in Convention 108.¹⁷⁸ In cases of non-compliance, Schengen forbids the transmission of personal data to the territory of the Member State.¹⁷⁹ Convention 108, however, is insufficient to achieve a universal minimum standard of data protection and act as a starting point for further development. Thus, Schengen created additional safeguards to prevent against the abuse of personal data.

175. MACED. CONST. art. 18, available in <<http://www.soros.org.mk/mk/en/const.htm>>.

176. See Neil Walker, *European Integration and European Policing: A Complex Relationship*, in *POLICING ACROSS NATIONAL BOUNDARIES*, *supra* note 82, at 22, 28 (noting the importance of creating new databases for information exchange, and providing a facility for central analysis of information to help the planning of operational investigations).

177. See Francis R. Monaco, Comment, *Europol: The Culmination of the European Union's International Police Cooperation Efforts*, 19 *FORDHAM INT'L L.J.* 247, 286 (1995) (stating that Europol holds a Member State that supplies information responsible for the information's security); see also Kenneth G. Robertson, *Practical Police Cooperation In Europe: The Intelligence Dimension*, in *POLICING ACROSS NATIONAL BOUNDARIES*, *supra* note 82, 106, 112-16 (describing the practical applications of information exchange agreements such as Interpol, Trevi, the Schengen Information System, and Europol).

178. See Schengen Convention, *supra* note 66, art. 117(1); see also Convention 108, *supra* note 151, arts. 5-8 (delineating standards for data quality and security).

179. See Schengen Convention, *supra* note 66, art. 117(2).

Although Schengen provides increased opportunity for the collection and exchange of data, the agreement restricts certain data uses.¹⁸⁰ The Schengen implementing convention contains two sets of data protection regulations, one of which applies to the exchange of information in general.¹⁸¹ The other, a more detailed scheme, governs the SIS.¹⁸² The main principle is that data filed with the SIS may only be used for the purposes established for each type of report.¹⁸³ The provisions limit the number of people with access to the data,¹⁸⁴ and mandate the accuracy, timeliness, and lawfulness of the data entered into the system.¹⁸⁵

The vagueness of these provisions, however, is a potential problem. As currently constructed, these provisions leave a lot open to interpretation. In addition, the articles would be more useful if they were more stringent and offered a higher level of data protection. Finally, and most importantly, there is no mention of a specific European judicial authority responsible for monitoring disputes arising under the provisions.

Furthermore, Schengen provisions are in place to protect the rights of individuals. For instance, Article 109 guarantees the right of any person to have access to data pertaining to him.¹⁸⁶ The individual also has the right to have factually inaccurate data corrected or legally inaccurate data deleted.¹⁸⁷ In addition to the aforementioned criticisms, the exercise of personal rights under Schengen must be in accordance with national law. The applicable national law is not dependent in the

180. *See id.* art. 102 (noting that data may only be duplicated for technical purposes, and data may never be used for administrative purposes).

181. *See id.* art. 39 (discussing the exchange of information in furtherance of police cooperation among Contracting Parties).

182. *See id.* arts. 102-18 (explaining the protection of personal and security data under the Schengen Information System).

183. *See id.* art. 102(1).

184. *See* Schengen Convention, *supra* note 66, art. 101 (explaining that access to data is reserved for authorities responsible for border checks and other police custom checks, as well as by people responsible for issuing and examining visas).

185. *See id.* art. 105.

186. *See id.* art. 109.

187. *See id.* art. 106 (stating that only the reporting Contracting Party is authorized to amend, supplement, correct, or delete data that it introduced).

nationality of individual but on the territory in which the individual invokes his rights. In the end, some complainants could engage in "forum shopping," searching for the jurisdiction which best protects their rights.

4. *Europol*

The collection, retention, and exchange of information constitute the cornerstone of Europol.¹⁸⁸ Indeed, under Article K.1(9) of the Maastricht Treaty, Europol is intended to be a "Union-wide system for exchanging information within Europol."¹⁸⁹ As such, there is a very real concern about how to protect the public from abuses of this kind of data system.

As the European Union undertook steps to create Europol, the management of data raised a number of serious questions. There were critical concerns about what kind of information could be provided to Europol by local police, as well as what kind of information could be accessed by these local authorities. At first, the French government argued that liaison officers should have access to everything on the Europol system.¹⁹⁰ To the contrary, Germany and the United Kingdom asserted that information should only be available on a "need to know basis."¹⁹¹ Their concern was that sensitive information needs protection. The two countries additionally expressed the practical fear that foreign agencies would not provide crucial information to the Europol system if there were a threat of widespread data dissemination.¹⁹² Through compromise, the countries agreed that routine information would flow freely; a Europol "inner core" would hold sensitive information.¹⁹³

188. See Maastricht Treaty, *supra* note 1, art. K.1(9); see also Europol Convention, *supra* note 24, art. 3 (identifying the tasks of Europol and its functions for collecting and exchanging information).

189. Maastricht Treaty, *supra* note 1, art. K.1(9).

190. See *Convention Against Crime*, *supra* note 2, at 53.

191. *Id.*

192. See *id.*

193. See *id.* (noting that the British dislike the "inner core" concept); Europol Convention, *supra* note 24, art. 31 (detailing measures to ensure confidentiality of information).

Another area of sensitivity surrounded the storage length of information. In the context of criminal databases, such as those used by Europol, the removal of entered data was a common concern. To address this issue, the Europol Convention added Article 8(5), which provides that if proceedings against an individual are dropped or result in the acquittal of the individual, the data relevant to these decisions shall be deleted.¹⁹⁴ This does not require deletion of all information pertaining to the individual. Rather, it merely indicates that the information must be deleted if it relates to the particular decision to end proceedings or acquit the individual.¹⁹⁵ It is likely, therefore, that some amount of personal information will remain in the system.

Moreover, because Europol has broad authority to maintain data on individuals,¹⁹⁶ issues relating to dismissal of charges or acquittals may be relevant. Individuals could still be included in Europol's computers simply because there is continuing suspicion that the individual either already has committed or will commit a criminal offense for which Europol is competent. There is no clear guidance on how, or if, such individuals can ever remove themselves from the computer system of Europol. Article 21(1), however, indicates that data files shall be retained only for the time necessary for the performance of the data's tasks.¹⁹⁷

Nonetheless, the Europol Convention does contain certain provisions designed to protect individuals from misuse and abuse of data. For instance, Article 20(4) states that an individual has the right to correct or delete erroneous data concerning him.¹⁹⁸ Europol must correct or delete incorrect information and inform the complaining individual within three months of the complaint. If the individual is not satisfied with Europol's response, or if he does not receive a reply from Europol within three months, he may refer the matter to the joint supervisory body.¹⁹⁹ The joint supervisory body has the task of

194. See Europol Convention, *supra* note 24, art. 8(5).

195. See *id.*

196. See *id.* art. 8(1)(1)-(2) (enumerating the categories of people on whom data may be maintained).

197. See *id.* art. 21(1).

198. See *id.* art. 20(4).

199. See Europol Convention, *supra* note 24, art. 20(4).

reviewing the activities of Europol to ensure that data use does not violate the rights of individuals.²⁰⁰ The joint supervisory body is composed of not more than two members of each of the national supervisory bodies.²⁰¹

In addition to these measures, Article 25 of the Convention provides for data protection in a number of different manners.²⁰² This Article provides that each Member State and Europol shall implement measures designed to: (1) prevent unauthorized access to data, including preventing its inspection, modification, or deletion; (2) ensure data access control such that persons may only access data covered by their access authorization; (3) establish and verify the data entered, when and by whom the data was entered, as well as the institutions to which data is being transferred; (4) ensure that installed systems may be immediately restored in the case of a failure or interruption; and (5) ensure that the system functions without fault and that stored data cannot be corrupted by means of a system malfunction.²⁰³

Although significant, these provisions are only as useful as the actual measures implemented by the Member States and Europol. Clearly, each Member State has a great deal of discretion in determining how to utilize these measures in order to achieve the stated results. Moreover, several of the measures on data protection refer to ensuring that the data in Europol's computerized information system will remain in existence, in good condition, and available for use by Europol.²⁰⁴ Therefore, the effectiveness of these measures in preventing the misuse and abuse of data remains to be seen.

The possibility of data theft is another potential problem that is inadequately addressed by the defense mechanisms of Article 25. Regardless of the various laws adopted by the Community or by Member States, third parties have the opportunity to steal the data and use

200. *See id.* art. 24.

201. *See id.* art. 24 (detailing the necessary characteristics of the members of the joint supervisory board).

202. *See id.* art. 25 (suggesting ten different methods for data protection).

203. *See id.* art. 25(2)(1-10).

204. *See* Europol Convention, *supra* note 24, art. 25(2)(6-10) (including provisions to that primarily benefit Europol).

it for illicit purposes. Exemplifying this very serious problem, in December 1997, individuals in Belgium stole data on organized crime collected by the Europol Drug Unit.²⁰⁵ Thus, even if tight security characterizes the Europol regime as a whole, mediocre security in one Member State can destroy the whole system.

5. Recommendations

One comprehensive mechanism is needed to protect all European Union citizens from the existing and developing means of data collection and distribution. The European Community appears to have made a half-hearted attempt to accomplish this through the European Community Directive on Personal Data Processing ("Directive").²⁰⁶ On July 18, 1990, the Commission submitted throughout the Community a package of new measures pertaining to data protection and the free flow of data, the Directive was a part of this package. After many amendments,²⁰⁷ the European Parliament and the Council adopted the Directive on July 24, 1995.²⁰⁸

The Directive creates a framework with broad principles of data protection and the possibility of exemptions on an as-needed basis. Applying to both the public and private sectors the Directive covers "any information relating to an identified or identifiable individual."²⁰⁹ Through the establishment of obligatory general data processing principles, and with the creation of specific control rights, the

205. See Barry James, *Belgian Police Face Growing Distrust: Charges of Incompetence and Laxity are Leveled at Fragmented Forces*, INT'L HERALD TRIB., Mar. 2, 1998, at 2.

206. Proposal for a Council Directive Concerning the Protection of Individuals in Relation to the Processing of Personal Data, 1990 O.J. (C 277) 3 [hereinafter Data Processing Directive] (discussing the European Community's new objectives relating to data protection).

207. See Amended Proposal for a Council Directive on the Protection of Individuals in Relation to the Processing of Personal Data and the Free Movement of Such Data, 1992 O.J. (C 311) 30 (presenting amendments to the Data Processing Directive).

208. See Directive 95/46/EC of the European Parliament and of the Council on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data, 1995 O.J. (L 281) 31 [hereinafter EC Directive].

209. *Id.* art. 2(a).

Directive endeavors to protect the rights of the citizen. Specifically, the Directive prohibits the automatic processing of sensitive data revealing "ethnic or racial origin, political opinions, religious or philosophical beliefs or trade union membership, and of data concerning health or sexual life."²¹⁰ Either the explicit consent of the data subject or grounds of important public interest may override this restriction.²¹¹

Despite the wide scope of the Directive, concerns remain about its potential effectiveness in protecting the individual citizen, particularly regarding cooperation in the police sector. Most importantly, under the Directive activities outside the scope of Community law are excluded from the Directive's restrictions.²¹² The Directive also excludes data processing operations undergone for reasons of public safety or security, and State activities in areas of criminal law.²¹³ For this reason, despite the comprehensive nature of the provision and its strong language, the Directive provides little practical protection to individuals concerned about police use of personal data.

Within the European Union, one of the greatest problems relating to the proliferation of police data is the lack of a specific and uniform regime to control the attainment, maintenance and transfer of data. Member States need clear guidance from the Community about the proper use of personal data. This can be accomplished in a manner that permits the Member States some leeway and takes into account specific circumstances.

Business concerns have impeded the Community's creation of a more comprehensive system for the protection of personal data. In a number of countries, a significant body of individuals and companies are active in lobbying against the creation of stringent data protection regulations. Businesses, especially those involved in information exchange, often contend that data protection legislation impedes the progress and development of a global information structure.²¹⁴

210. *Id.* art 8(1).

211. *See id.* art. 8(2)(a), (c).

212. *See id.* art. 3(2).

213. *See* EC Directive, *supra* note 208 (setting forth other factors that prohibit the processing of personal data).

214. *See* Jan Berkvens, *Will the Data Protection Directive Prevent a Global In-*

Thus far, Community action on data protection in the public sector has focused on the inclusion of data protection provisions within the various agreements calling for increased police cooperation. Provisions relating to specific agreements will not be sufficient. A Community-based effort is needed to control all aspects of personal data available to the police. At the same time, the strengthening of judicial and democratic controls on the activity of international police work in the European Union will reduce legitimate concerns about the use and maintenance of personal data by police and related governmental forces. Such a comprehensive and inclusive approach to protect individual rights would foster an increased level of acceptance for police cooperation.

This recommendation is analogous to the state of data protection in the United States. In the United States, a state's attempts to regulate issues pertaining to privacy must conform to federal constitutional provisions on the freedom of speech, as well as any other federal legislation on the issue.²¹⁵ This can and should be done in the European Union. The creation of a Community-wide minimum standard for the use of all personal data by police and State authorities would create cohesion in the system and ensure greater levels of rights protection.

B. DEMOCRATIC CONTROL

One definition of democracy is parliamentary control of inter-governmental policies and decisions. The gap in the power between the Commission, Council of Ministers, and European Council, as well as that of the national parliaments and the European Parliament creates a democratic deficit. Because the European Union is an organization consisting of democratic States, it is itself undemocratic. In the past, and in the present to a certain extent, the institutions in

formation Structure?, 2 COMPUTER L. & PRAC. 38, 42 (1995) (arguing that the Data Protection Directive is not designed to further development of "the global information infrastructure").

215. See generally Ben F. Overton & Katherine E. Giddings, *The Right Of Privacy In Florida In The Age Of Technology And The Twenty-First Century: A Need For Protection From Private And Commercial Intrusion*, 20 FLA. ST. U.L. REV. 16 (1997) (discussing United States legislative efforts in the areas of data protection and privacy).

the European Union with the most power were not democratically elected.²¹⁶

The problem of democratic deficit is particularly clear within the context of international police cooperation in Europe. The intergovernmental structure of international police cooperation implies a lack of formal democratic powers by the national parliaments as well as the European Parliament to exercise direct control over European policing bodies.²¹⁷

In addition, many of the specific mechanisms for increasing international police cooperation lack sufficient democratic controls. For instance, Interpol and Trevi have few democratic qualities. This is due to the organizational characteristics of these bodies. Another example is the failure of many national parliaments in Western Europe to account for their own government involvement, or the role of their police forces in the cooperation mechanisms. Moreover, the role of the European Parliament has been marginalized—particularly in matters relating to cross-border police cooperation. The Parliament has voiced its concern about this and has announced that it will take a more active role in the matters of Title VI.²¹⁸

Currently, the European Council is of the position that it must conclude a specific treaty regarding Europol. This may reduce some of the existing democratic deficit concerning international police cooperation in Europe. Based on the Maastricht Treaty, the European Commission will take an active role in Europol decisions and activities. Although this is further proof of an increasing trend towards the democratization of police cooperation in Europe, further steps are necessary.

The Council currently has primary power over a wide majority of decisions in the field of police cooperation. This raises a number of

216. See Juliet Lodge, *Transparency and Democratic Legitimacy*, 32 J. OF COMMON MKT. STUD. 343, 355 (1994) (detailing arguments about the unequal distribution of power between the Council and the Parliament).

217. See Müller-Graff, *supra* note 51, at 495 (describing the institutions with responsibilities for implementing the third pillar).

218. See Resolution on Participation by the European Parliament on Cooperation in the Fields of Justice and Home Affairs, 1994 O.J. (C 44) (discussing the need for the European parliament to participate in the creation and implementation of international agreements in the fields of justice and home affairs).

considerable concerns. As has been pointed out by analysts in other areas, there is apprehension that the Council—which is comprised of the executive branches of national governments and meets collectively—could adopt legislation unapproved by either the European or the national parliaments.²¹⁹ This issue becomes particularly relevant in the debate over police cooperation, as the Council is often the only European body which has an appreciable level of power within this area.²²⁰

In the immediate future, there are considerable problems with democratic participation in the European Union in the context of justice and home affairs, including police cooperation. This is especially evident where the principle of bottom-up subsidiary is concerned. As the current system is organized, social legitimacy, transparency, and active citizen control over police activity are seriously lacking. As accountability for policing activities moves from the local and regional level to the international level, anonymity and distance between the citizens and police will increase. This is problematic from a number of viewpoints. Increased suspicion and distrust of the police on the part of the citizen will result. At the same time, it might also encourage the police to step out of the guidelines of commonly accepted behavior, believing that transgressions will be more difficult to detect in a transnational system.

1. Attempted Solutions

The Commission has made few attempts to rectify fully the problems of democratic deficit in the area of police cooperation. The issue of governmental transparency is extremely important to democracy, and “[i]t is often assumed that openness is one of the hallmarks of a social, liberal democratic society.”²²¹ The Commission has, how-

219. See Lodge, *supra* note 216, at 345 (identifying the imbalance in legislative matters between the Council's and the European Parliament as a reason for the Council's weak accountability to either the European or national parliaments).

220. See *id.* (mentioning the historical argument that accountability would only be strengthened by making the Council and Parliament a bicameral legislature with co-equal powers).

221. *Id.* at 356-57.

ever, attempted to make its activities more transparent and has provided additional information about its work.²²²

The new information and communication policy of the European Union institutions cannot fully address the problems of democratic deficit,²²³ particularly in the area of police cooperation where there are virtually no opportunities for democratic participation. As such, increased transparency, while useful in other areas, will have virtually no impact on the ability of European citizens to participate in decisions relating to cross-border policing.

2. Recommendations

Although fostering true democracy in a supranational organization such as the European Union requires a certain level of creativity and ingenuity, a number of steps can be taken to improve the situation. Specifically, the institutions of the European Union need to obtain a greater participatory role in activities and legislation. Currently, opportunities for any level of participation, and even access to information, are extremely limited. Due to the requirements of “confidentiality,” “operational matters,” and “security,” the European Parliament has great difficulty in securing documentation relating to the Council’s activities in the field of justice and home affairs. As a first step in eliminating the democratic deficit in the area of international police cooperation, the Parliament should assume a greater role in working on this issue. As the third pillar becomes more integrated into the fundamental workings of the European Union—and methods of decisionmaking are altered—a higher level of democratic participation will develop.

C. LACK OF ADEQUATE LEGAL AND JUDICIAL SUPPORT

A significant problem in fostering increased levels of international police cooperation within Europe is the absence of clear legal direction. The variation in criminal law and procedure, which often exists

222. *See id.* at 350-53 (detailing the efforts of the Commission to promote transparency and concluding that these efforts made the legislative process more democratic).

223. *See id.* at 344 (noting that the new information and communication policy merely lays the groundwork for ultimately redressing the democratic deficit).

among Member States, is potentially detrimental to European citizens if police cooperation is continued and expanded without a corresponding legal foundation.

There is a lack of legal harmonization in criminal law and procedure occurring on a number of different levels. First, there is a lack of semantic harmonization. Among the Member States of the European Union, there is a wide discrepancy in the legal definitions of criminal activity. This could have a number of negative implications. If Member States do not agree on the basic definitions of common legal terms in the field of criminal justice, it will be profoundly difficult to make substantial progress on higher levels of cooperation. Ultimately, the process by which common definitions for these terms will be established depends on the role of the European Court of Justice ("ECJ").

Second, there are problems harmonizing operational definitions in the practice of transnational police cooperation. This refers to the sharp differences that often exist between the national criminal procedures of Member States. Procedural differences exist as to how to conduct investigations, obtain criminal evidence, arrest suspects, engage in hot pursuit, conduct interrogations, and engage in pre-trial investigation. Moreover, there are important differences among Member States in the conduct of criminal trials. Rules of witnesses, evidence, pleadings, and interrogation differ among Member States.²²⁴ Such differences ultimately effect the conduct of police officers in carrying out their duties and may present obstacles to increased levels of international police cooperation.

Third, there is a lack of harmonization of rules of mutual judicial assistance and legal aid. This is especially important regarding the issue of Community policing. With greater police cooperation at the Community level, the need arises to harmonize the various resources available to criminal defendants.

Finally, the organization of international judicial monitoring of cross-border police activities is critical. The increased levels of inter-

224. See Donna Gomiev, *The Future of Fair Trial in Europe: The Contributions of International Human Rights, Legal and Political Instruments*, 9 NETH. Q. HUM. RTS. 263, 264 (1991) (discussing some of the fair trial standards that human rights conventions are establishing).

national police cooperation, which occur despite the absence of adequate legal foundations, distort the balance of power between criminal defendants and prosecuting authorities. "The defense does not have independent access to the foreign networks available to the police, even though it might have legitimate need thereof."²²⁵

1. *Attempted Solutions*

There have been few attempts to correct the problems associated with the lack of legal and judicial support. Indeed, one of the most serious and obvious drawbacks to the Schengen agreement is the absence of judicial support and legal redress for individuals. Schengen, did not appoint a single judicial body to interpret and enforce its provisions.²²⁶ There is an increased level of judicial support within the context of the Europol agreement. It is not sufficient, however, for what one expects and demands from a democratic system.

Many suggest granting the ECJ jurisdiction over major criminal law agreements, such as the Europol Convention.²²⁷ This would ensure a greater level of judicial protection for activities carried out under these agreements. Political differences, however, have held back such proposals. Especially in countries heavily impacted by the economic recession, a new nationalism is surging. Consequently, countries such as Italy, German, and the United Kingdom are concerned over the potential loss of sovereignty to European institutions that might render them less able to respond effectively to internal political and economic problems.²²⁸ Likewise, there is a great reluctance on the part of Member States to harmonize their criminal legislation. It appears, however, that this may change in the future as Member

225. O'Keefe, *supra* note 83, at 203.

226. See Baldwin-Edwards & Heberton, *supra* note 82, at 150-53 (observing that domestic legal systems are primarily responsible for enforcing Schengen provisions without any supervision by a supranational authority).

227. See, e.g., Monica Den Boer, *Police Cooperation in the TEU: Tiger in a Trojan Horse*, 32 COMMON MKT. L. REV. 555, 563 (1995) (discussing various proposals to expand the jurisdiction of the European Court of Justice and the debates surrounding these proposals).

228. See ANDERSON ET AL., *supra* note 26, at 261, 263-65 (asserting that European power is viewed by many Europeans in zero-sum terms such that increasing the power of a supranational entity necessarily erodes national self-determination in individual countries).

States realize that such changes are necessary in the European Union's increasingly integrated marketplace.

2. Recommendations

In order for any of the new methods of police cooperation to work, there must be a much higher level of legal and judicial support than currently exists. A reduction in the problems associated with the lack of legal support requires greater harmonization of laws between the Member States on matters relating to criminal law. In reality, this is likely to occur slowly, as Member States will be inclined to maintain their grasp on this remaining aspect of their sovereignty and individuality.

Additionally, there must be concrete steps to improve drastically the currently existing legal and judicial support. The lack of any judicial machinery to deal with the disputes that will inevitably arise within the context of the agreements on police cooperation is lamentable. The most effective way to accomplish this is to grant jurisdiction over these matters to one European court—perhaps a new court created specifically for these matters. In relation to Schengen, for example, David O'Keefe contends that “a new court is needed, attached like the Court of First Instance to the Court of Justice, with jurisdiction in asylum, immigration, international police cooperation concerning aliens, data protection and other topics raised by the movement of persons within the context of the single market.”²²⁹ The same suggestion can be made for matters included under Title VI and Europol.

Obviously, increased judicial support is required over that which currently exists. Granting jurisdiction to the existing European courts is insufficient, however. Doing so might lead to docket overcrowding and substantial delays in rendering judgments. At the same time, the judicial body should be well versed in the matters before it. These factors emphasize the need for a specialized court to deal with these matters.

229. O'Keefe, *supra* note 83, at 212.

D. RELUCTANCE ON THE PART OF MEMBER STATES

Another potential obstacle to increased police cooperation within the Member States of the European Union concerns the rise of nationalistic tendencies, which may interfere with the goal of increased cooperation. In many ways, police units of Member States are not prepared to engage in highly sophisticated levels of international police cooperation. Some experts have predicted an increased incidence of "turf wars," as different European police organizations compete for a greater share of police work.²³⁰

Transnational police work contends not only with the normal domestic friction—arising out of distinctive political, social, economic, and legal systems and cultures—but also with tensions stemming from State sovereignty. Even when acting under terms of an actual or tacit agreement, police officials engaging in cross-border activities must be vigilant to avoid infringing on national sovereignty. The current system of international police cooperation in Europe is not well organized. As such, it is often difficult for the ordinary police officer to understand how to conduct cross-border activities without impinging on the sovereignty of another Member State.

While concern about the likelihood of nationalistic tendencies interfering with increased police cooperation may be well founded, there is also reason to believe that these issues may be worked out. As national police forces and other bodies increase their knowledge of the systems of other Member States, there will likely be a greater familiarity, and an accompanying level of trust, with one another. In addition, the eventual harmonization of laws in the criminal field will add to this increased trust thereby facilitating greater cooperation.

IV. THE FUTURE

At the time of this writing, the Treaty of Amsterdam²³¹ is still awaiting full ratification by European Union Member States. None-

230. See Piet Van Reenen, *Policing Europe After 1992: Cooperation and Competition*, 2 EUR. AFF. 42 (1989).

231. Treaty of Amsterdam amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, Nov. 10, 1997, 1997 O.J. (C 340) 1, available in <<http://ue.eu.int/Amsterdam/en/Amsteroc/en.htm>> [hereinafter Treaty of Amsterdam].

theless, the direction taken by this treaty on issues of cross-border police and judicial cooperation is of interest. Taken as a whole, the Amsterdam Treaty is a concrete step towards Community cohesiveness.

The Treaty of Amsterdam has added important provisions concerning police cooperation in Europe. Provisions on Police and Judicial Cooperation in Criminal Matters are found in Articles 29 to 42 of the Treaty of Amsterdam. The first article, 29, takes the place of former Article K.1. This provision states the objective of the Community in working towards police and judicial cooperation in criminal matters.²³²

One important new provision is Article 31.²³³ This provision promises common action on judicial cooperation in criminal matters. Such action is to include:

- (a) facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States in relation to the proceedings and the enforcement of decisions; (b) facilitating extradition between Member States; (c) ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation; (d) preventing conflicts of jurisdiction between Member States; and (e) progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking.²³⁴

One of the most significant developments included in the Treaty of Amsterdam, *vis-à-vis* increased trans-border police cooperation, is the granting of a certain level of competence to the ECJ to consider a limited number of related subject matter.²³⁵ The ECJ has jurisdiction, subject to certain conditions, to give preliminary rulings on the validity and interpretation of framework decisions, and to render decisions on the interpretation of conventions established under the Treaty of Amsterdam.²³⁶ Moreover, the ECJ has the power to rule on the validity and interpretation of the measures implementing the pro-

232. *See id.* art. K.1.

233. *See id.* art. K.3.

234. *Id.* art. K.3(a)-(e).

235. *See id.* art. K.7.

236. *See id.* art. K.7(1).

visions of the Treaty of Amsterdam.²³⁷ This aspect of the treaty is extremely important as one of the biggest criticisms of previous treaties was their failure to provide for judicial control. As such, this provision could go a considerable distance in improving the legitimacy of the regime.

The jurisdiction of the ECJ is limited, however, by the Member States' willingness to accept such jurisdiction. Article K.7(2) states: "By a declaration made at the time of signature of the Treaty of Amsterdam or at any time thereafter, any Member State shall be able to accept the jurisdiction of the Court of Justice to give preliminary rulings as specified in paragraph 1."²³⁸ Although the Treaty of Amsterdam appears to take some important steps towards increased police cooperation, future progress rests in the hands of the individual Member States and not under the full auspices of the Community. Therefore, increased international police cooperation will be gradual and deliberate.

CONCLUSION

The need for international cooperation in crime prevention and control is increasing worldwide. Modern criminal policy is no longer conceivable if it does not include an international element. The internationalization of economic activities and transport leads to a dramatic internationalization of crimes. This is particularly important within the context of the European Union. As changes in law and policy have facilitated the free movement of goods, services, persons, and capital, so too have they facilitated the movement of criminal activity. It is thus only natural that cross-border mechanisms of policing continue to develop.

Recent years have brought tremendous legal changes in international policing. Until the recent past, international policing was largely conducted through under-cover operations or secret intergovernmental initiatives. The signing of the Maastricht Treaty, the Schengen Convention, and a whole host of bilateral and multilateral treaties, signals the conclusion of such an era. Nonetheless, the future of a "Community Police Force" remains uncertain at the moment.

237. See Treaty of Amsterdam, *supra* note 231, art. K.7(6).

238. *Id.* art. K.7(2).

Although some form of policing at the Community level is necessary, concerns exist about the current manifestations of international policing in the European Union. Certain critics have expressed fear that recent developments will actually complicate and hamper international police activities. Others remain concerned about the possible negative implications that the system may have on human rights. Clearly, in order to be truly effective, Member States must improve certain aspects of the current agreements on international police cooperation. Most importantly, the European Union must improve judicial and legal support, increase democratization, and enhance data and privacy protection. The European Union should not continue the quest towards greater international police cooperation until these important matters are dealt with.

The move towards a greater level of international cooperation among national police forces and criminal investigation organizations is a big step, even when considered in the context of the European Union where a high level of integration and harmonization exists in other areas. It remains questionable whether the long established relationship between national States and the act of policing will serve as a hindrance to the development of supranational policing bodies and institutions. As has been the case with other aspects of European integration, the move towards greater police cooperation is likely to take substantial time and considerable effort. Much of the foundation is already in place, the remaining question is whether Member States will have the political will necessary to harmonize and integrate this area of activity.