

A Peaceful Revolution: The Development of Police and Judicial Cooperation in the European Union

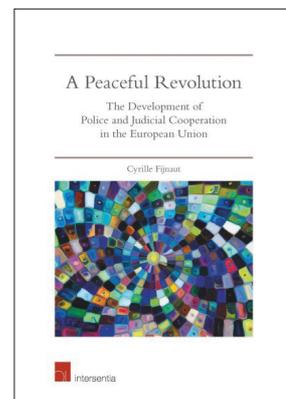
Cyrille Fijnaut

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Police practitioners are familiar with the institutional setting in which they are currently working, but few know many details about the history of their police force, let alone the history of police bodies of other European countries. Such a knowledge gap is even more the case for international police cooperation; today this is still an area in which only a limited number of practitioners is involved. However, knowledge of its historical context and development is of crucial importance for the understanding of the current state of international police cooperation and its limitations.

International and European police cooperation have gained some attention from researchers in various scholarly disciplines since it became more institutionalised after 1990. However, only a few historians have carried out research in this area of recent history that is highly relevant for the understanding of today's cooperation practice. Therefore, this opus magnum by Cyrille Fijnaut fills a gap due to its broad and exhaustive approach based on a high number of documents and publications as well as on the author's longstanding research in this area.

Fijnaut – professor emeritus of criminology and criminal law at Erasmus University Rotterdam, KU Leuven and Tilburg University – has always been interested in more than just the current issues of crime and criminal law. He is the leading scholar regarding the history of policing and transnational police cooperation in Europe (see Van Daele 2020). Based on his longstanding teaching experience, he has now published an astounding book on the history of police and judicial cooperation in Europe, including recent developments during the past decade. The book was first published in Dutch in 2018. The publication of an English version makes it more accessible for an international audience – in contrast to some of Fijnaut’s publications in Dutch that have never reached a broader international public, i.e. his doctoral thesis ‘*Opdat de macht een toevlucht zij? Een historische studie van het politieapparaat als een politieke instelling*’. Published in two volumes in 1979, Fijnaut’s thesis paved the way for his interest and expertise in explaining the functioning of today’s police agencies in the context of their own history and of the evolving political systems within which they function. The list of references in Fijnaut’s new book underlines his role as one of the leading scholars in the field of interdisciplinary legal and historical research on police and judicial cooperation – the references to publications authored or co-authored by himself cover more than five pages (p.757-762).

Fijnaut has always positioned recent developments of police cooperation within a wider historical context. In his new book, he situates its beginnings in the Napoleonic Empire (p.10) and demonstrates with a number of examples that such international cooperation in policing had started long before Interpol’s predecessor was established in 1923.

Fijnaut organises this opus magnum in a chronological fashion, which makes it easier to use for people who do not want to read the book from the beginning to the end, but rather need information on a specific period or cooperation initiative. However, the author sometimes disregards this organisational principle for good reason when he summarises the destiny and impact of specific initiatives or policies outside the chronological order. As not all of the numerous policy initiatives meant to bring forward international police and judicial cooperation were successful at the end, information on the outcome and reasons for failure is important and interesting in order to understand why a policy initiative succeeded or failed. For this purpose, the book uses at some points the heading ‘A sketch of their implementation’ in order to explain major developments in the 1990s and 2000s – for Schengen and Europol (p. 232ff.), Eurojust, the plans to establish a European Public Prosecutor’s Office (EPPO) (p. 259ff.), and the *Framework Decision on the fight against Organised Crime* (p. 392ff.), among others.

In this book, Fijnaut asserts that the initiatives that led to the establishment of Interpol date back to the early 20th century. This information is not new, as several researchers and journalists have investigated the origins of Interpol in the past decades (e.g. Deflem, 2002; Greilsamer, 1997). Fijnaut summarises the relevant information in chapter 2.3 (p. 21ff).

The role that the Council of Europe has played for establishing the framework for police and judicial cooperation is another important element that explains the current state and the institutional settings of this policy area in Europe. The chapter on the 'earlier involvement of the Council of Europe' (p. 93ff.) demonstrates the CoE's crucial role in the establishment of more coherent rules for mutual legal assistance. This legal framework is now becoming even more important again after Brexit, as the more specific (and mostly more efficient) EU rules might not be applicable any more vis-à-vis the UK in the future. The book's chapter on the Council of Europe also provides a useful overview over the European Court of Human Rights' case law on police and judicial cooperation (p. 116ff.).

Beginning with chapter 3.4 (p. 120ff.), Fijnaut explains the involvement of the European (Economic) Community (EEC), the predecessor of what is today the European Union, in police and judicial cooperation. This period was characterised by an informal cooperation infrastructure, complemented by a limited number of cooperation projects inside the EC framework, namely UCLAF, the anti-fraud body established in 1988 that later became OLAF (*Office Européen de Lutte Anti-Fraude*). The late 1980s, the period in which the Treaty of Maastricht was under negotiation, can also be perceived as a crucial period for the development of police and judicial cooperation in Europe as numerous initiatives that characterise this cooperation in Europe of today date back to this time. Such initiatives include the Schengen area, Europol and the European Union's 'third pillar' that was established by the Treaty of Maastricht and fully integrated into the new EU setting with the Treaty of Lisbon in 2009. Fijnaut summarises the developments during this period in chapter 4 (p. 145ff.).

Between the Treaties of Maastricht and Lisbon, the Treaty of Amsterdam – which entered into force in 1997 – marks the beginning of another important period for police and judicial cooperation in the EU, which Fijnaut describes in chapter 5 (p. 205ff.). Integrating major parts of the Schengen cooperation into the EU's first pillar and strengthening the EU's role for police and judicial cooperation, this treaty facilitated the end of a purely intergovernmental cooperation in the 'third pillar'. This period was also characterised by a number of major programmatic documents, namely the 1999 Tampere Programme, and by multiple policy initiatives taken in reaction to the terrorist attacks of 11 September 2001. Likewise, the establishment of the first Police and Customs Cooperation Centres for bi- or multi-lateral cooperation in the (former) border regions is another important development that goes back to the late 1990s (p. 250ff. *et passim*).

Chapter 6 (p. 311ff.) covers the developments in the mid-2000s in connection with the Hague Programme (2005) and with the draft Constitutional Treaty, that never entered into force. Nevertheless, this can be perceived as an important period of consolidation. In response to a series of terrorist attacks in London, Madrid and other European cities, it became a high priority to make existing cooperation infrastructure such as Europol more

effective. The debate about the ‘principle of availability’ regarding access to police information available in other member states and the interoperability of information systems for Justice and Home Affairs dates back to this same period of the Hague programme (p. 362ff.). Both of these topics are still on the agenda today. Likewise, the ‘European Arrest Warrant’, introduced in 2002, became a success story at that time (p. 381ff.), replacing lengthy mutual legal assistance procedures by more efficient cooperation for most trans-border arrest cases inside the EU.

With part III and chapter 7 on the Treaty of Lisbon and the Stockholm Programme, the book shifts to ‘the current state of police and judicial cooperation’ in the EU (p. 441ff.). The term ‘renewal’, which the author introduces to refer to police cooperation in that period (p. 471), is justified due to the consolidation of the existing cooperation infrastructure that occurred. The establishment of revised legal bases has been on the political agenda for the EU’s Justice and Home Affairs since 2009 as one of the elements of this renewal. Instead of establishing additional cooperation infrastructure, existing bodies such as Europol and Frontex were strengthened. The only major new bodies established since this time draw from ideas developed much earlier: the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) and the European Public Prosecutor’s Office (EPPO) (p. 505ff.). The EPPO will function based on a Regulation passed as enhanced cooperation (Article 86 TFEU) in 2017. Until now, only 22 out of the 27 EU member states have joined the EPPO, which is currently preparing for the start of its operational work planned for the near future (Aden et al., 2019).

Chapter 8 (p. 583ff.) traces other recent developments such as the establishment of a ‘Security Union’ (p. 585ff.) and the impact of the 2015 migration crisis on police and judicial cooperation in the EU (p. 592ff.) including the establishment of new databases combining policing and migration purposes and steps towards the interoperability of these databases (p. 614ff.). Another section of this chapter discusses the impact of Brexit on police and judicial cooperation (p. 670ff.).

Finally, in chapter 9, the book finishes with a ‘general conclusion’ (p. 719-727). This chapter briefly summarises the main findings of the book and ends with an outlook at political initiatives to be laid down in a programmatic document for the further development of EU police and judicial cooperation in the period 2021 to 2027.

With this publication, Cyrille Fijnaut has compiled a broad base of information that will be useful for scholars and practitioners interested in how police and judicial cooperation in Europe has come into being and developed in a long-term perspective. This alone is an outstanding merit of this book, which is likely to become one of the main references in this area. The publisher could have further supported this achievement not only with

the English version of this book that is now available, but also with offering an index that could have facilitated the ability to find information on specific agencies, bodies or policy initiatives in this opus magnum.

Fijnaut's (mostly implicit) normative assumptions and the theoretical framework that he used for the general narrative throughout the book might be the subject of a critical debate. This is particularly the case for the term 'peaceful revolution' used in the title and further explained and discussed in the final chapter. However, the rich material that this book brings together could lead to the assumption that the current state of police and judicial cooperation in Europe can be explained by path dependencies and a long history of trials and errors, rather than by a 'revolution'.

Scholars of historical institutionalism will find in this book the raw-material necessary for identifying path dependencies that explain continuity (for example the member states' struggle not to lose too much influence in this policy area) and critical junctures such as the end of the cold war and the 2001 terrorist attacks that led to enhanced Europeanisation of this policy area. Critical security studies and civil liberties groups will probably not concur with Fijnaut's generally positive view on the practice of enhanced police cooperation, on the merging of policing and migration policies (critically analysed by 'crimmigration' scholars; for example Arriaga, 2016; Brouwer et al., 2019) or the recent shift from the *Area of Freedom, Security and Justice* to a *Security Union*. Nevertheless, independent from the normative positions and various backgrounds that readers may come from, all who are interested in this topic will find in this book rich material for further interpretation and debate. For practitioners, the book will be helpful to better understand the institutions, agencies and bodies that currently characterise police and judicial cooperation in Europe – and their limitations.

References

- Aden, H., Sánchez-Barrueco, M. L. & Stephenson, P. (2019). *The European Public Prosecutor's Office: Strategies for coping with complexity*. Brussels, European Parliament.
Available at: [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2019\)621806](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2019)621806).
- Arriaga, F. (2016) Understanding Crimmigration: Implications for Racial and Ethnic Minorities Within the United States. *Sociology Compass*, 10, 805– 812.
- Brouwer, J., Woude, M.A.H. van der & Leun, J.P. van der (2018) (Cr)immigrant framing in border areas: decision-making processes of Dutch border police officers. *Policing and Society*, 28:4, 448-463.
- Deflem, M. (2002) *Policing World Society*. Oxford, Oxford University Press
- Fijnaut, C. (1979) *Opdat de macht een toevlucht zij? Een historische studie van het politieapparaat als een politieke instelling*. Antwerpen, Kluwer Rechtswetenschappen
- Greilsamer, L. (1997) *Interpol: policiers sans frontières*. Paris, Fayard.
- Van Daele, D. (2020) Cyrille Fijnaut: a pioneer from the low countries, *Police Practice and Research*, 21:4, 418-433.