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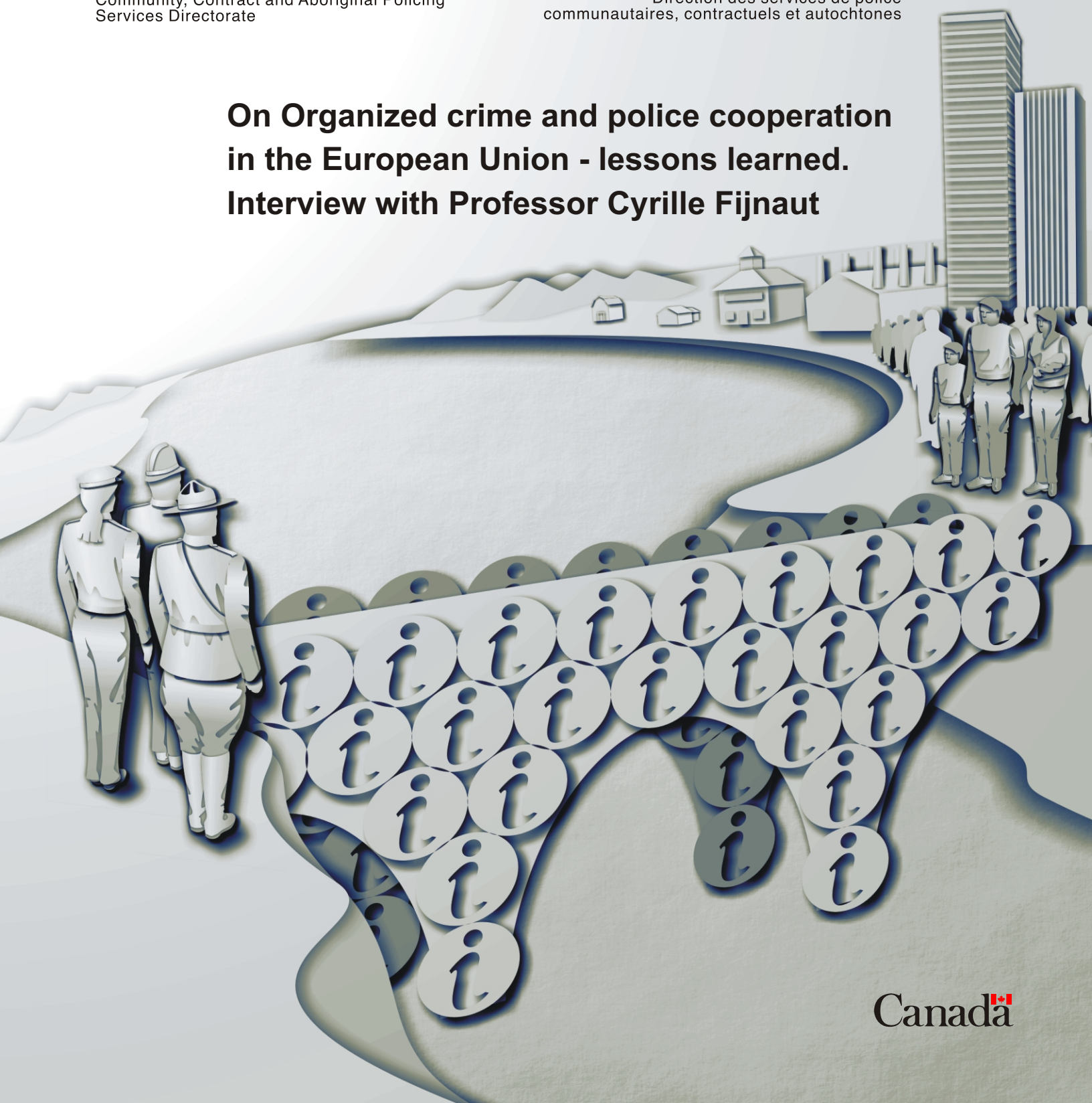
Research and Evaluation Branch

Community, Contract and Aboriginal Policing
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Sous-direction
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**On Organized crime and police cooperation
in the European Union - lessons learned.
Interview with Professor Cyrille Fijnaut**



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by

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Introduction

Professor Cyrille Fijnaut is one of the leading figures in Europe in research on police and policing-related issues. In particular, he has worked extensively on the topics of police cooperation in Europe and organized crime. His work has been widely published and he has been involved as the head of research in a number of Commissions of inquiry.

Professor Fijnaut is currently serving at the Katholieke Universiteit Brabant/Tilburg University in The Netherlands and as professor at Katholieke Universiteit Leuven/K.U. Leuven in Belgium. He is also a visiting professor of law at the New York University School of Law; Global Law School Program.

This interview was conducted at his home in Tilburg in June 2002.

Interview with Professor Fijnaut

MEL: Organized crime is one important priority of both the Federal Government in Canada and Canadian law enforcement agencies. A second and closely related issue is that of the “border.” I would like to know your views about major border issues within the context of the European Union?

Professor Fijnaut: Let me start with the border control issue. If you look at the European side, at the borders between the European countries, we still have controls between the member states. Looking at Belgium and France, and Belgium and the Netherlands for example, we find that border control is an important issue. One could easily make the case that although we had in theory very strict border controls, their extent and enforcement was very limited and people could cross borders easily – the flow of people was no problem at all. The main restrictions were related to the transportation of goods and to some extent capital and services. But, when it comes to the movement of people I would say that long before the Schengen initiative (1985) the borders did not hamper movement.

Of course member states still had a duty to establish border controls and from time to time they did this. Sometimes you saw customs officials and national police checking people at the borders. It was however the terrorism problems of the 70's that raised the issue of the degree we have to cooperate to overcome the lack of border controls. In the 70's, Europe was to some extent a highly violent area. You had terrorist groups operating in Germany, Italy, France and Spain. The problem was that even if the German Police were successful on German territory, their success was really limited by the fact that the members of the Red Army Fraction could easily cross the borders to Belgium, the Netherlands and France and thus escape the German authorities. The success of the containment of terrorism was thus very limited. They could not

control the border. Then they came to the question: should we reinforce the borders, even up to an 'iron curtain' between the member states? That is not what we want! We just want to open borders on the whole Western European territory and build up an integrated market. That means not only should the flow of people be facilitated but also the flow of capital, of services and goods. To rebuild border controls would have been completely in contradiction, with the development of the European community at that time. Germany in the 70's tried to find a solution out of this dilemma by making bilateral conventions with Holland, Belgium; with France it was difficult.

Then we come to the end of the 70's and the beginning of the 80's papers published by the European Commission, said that taking the whole European integration a step further should build up the integrated internal market. In 1984 Germany and France said they would support this, but they needed flanking measures in regards to immigration, customs, police and judicial cooperation. In 1984 -85 the Benelux countries concluded together the Schengen agreement. This agreement is the basis of a lot of the developments in the last 15 years in the framework of the European Union. In this agreement you find starting points and ideas about rather intensive police cooperation and even the idea of building a central common police institution to support mutual cooperation in the drugs field, as well as far reaching proposals in the fields of immigration and customs and some other minor areas. The Benelux countries began this initiative because they were afraid that otherwise a lot of problems would emerge in the Netherlands. Besides, the Benelux convention already had led to the abolishment of border control, and greatly facilitated the flow of people and transportation. What Germany and France were doing in 1984 is exactly what the Benelux countries did in the 50's.

Following the Schengen Agreement in 1985 came the Schengen Convention in 1990. This convention is to a large extent limited to police and judicial cooperation and to a lesser extent to immigration and custom issues. The reason for that is that between 1985-1990 the European Community underwent such a huge development that a large number of the issues of the Schengen Agreement of 1985 were overtaken. So the Schengen Agreement became more limited

to the issues of police and judicial cooperation. However, in comparison with the past that was an enormous step forward. For the first time we had an integrated framework for police and judicial cooperation. In the past, while you had mutual assistance treaties (judicial) in the field of criminal matters, police cooperation was to a large extent based on informal agreements and diplomatic letters and/or a few clauses in bilateral or extradition treaties. It was very confusing. With the Schengen Application Convention we had for the first time an integrated framework for police and judicial cooperation and, to some extent customs.

Second, in the past police cooperation in Western Europe was for the most part limited to the exchange of information, although in some part of Europe one found provisions regarding hot pursuit. Now, with the Schengen Application Convention we had a formal system for exchange of information: The Schengen Information System. It is very operational forms of police cooperation: for example involving cross border surveillance, hot pursuit and controlled deliveries. In 1985, they also talked about building a police institution to support the intergovernmental mutual cooperation. However, that idea was not included in Schengen and there are no Schengen institutions – it is all based on mutual cooperation. One could say that the police institution that “Schengen” talked about has evolved into Europol,. This idea was pursued in negotiations on the Maastricht treaty and included in Chapter VI - Home Affairs and Justice.

In 1995 we have the convention on Europol. Europol is predominantly limited to the exchange and analysis of information. It has no operational powers and no executive duty whatsoever. Many members states were strongly opposed to an FBI-like police institution for several reasons. Some people said that, historically, when we have had this type of operational police force it was always in times of dictatorships – France under Napoleon, Foucher and Germany under Hitler. So we do not like an operational European police. Others made the case that the FBI is not appropriate in the European context it is a completely different constitutional environment.

In summary, the member states on the one hand addressed border measures by intensifying the modalities for operational police cooperation (e.g., cross border exchange of information,

controlled deliveries and cross borders surveillance) and, on the other hand by establishing Europol. Schengen started with five member states and now it has thirteen. Some say that Europol should, in one way or another, get connected more operationally with the national, local and domestic police forces in the member states. It is important that through the Amsterdam Treaty, the revision of the Maestricht Treaty, Schengen has been integrated in the European Union. This means that the Schengen Initiative and the Europol Initiative now have been brought together in the same framework. Now we get discussions on the extent to which the data base of Europol can be connected with the Schengen information system and about the extent we should to integrate both initiatives?

MEL: Do you think one day Europol will become operational?

Professor Fijnaut: It is a complicated issue. The Amsterdam Treaty gives Europol the possibility of joining multi-national task forces in the field of organized crime which means that the Europol convention may well be revised under the impetus of the Amsterdam Treaty. Now we can talk about the extent that the Europol Convention has to be revised. Part of the discussion is related to the supervision of this task and the role of the Europol participants in it.

MEL: What kind of relationship does Europol have with the law enforcement agencies from different member states? Is it a supra law enforcement body or do they look only at collecting information and intelligence to make sure there is a free flow of information. How do they connect?

Professor Fijnaut: Europol was born in a quiet political climate. Not all the member states liked the idea of Europol. That is why its task is so limited. On the other hand it was an enormous step forward to have a European police institution on a democratic footing and to that extent I was a supporter of it. It was the first time that democratic states themselves supported this initiative. That was a breakthrough in Europe. The problem is that if you look now at the Europol Convention, while it is a sort of link-pin between national member states it is very

difficult for both sides to develop this connection. Police officers in the member states, and especially those in criminal intelligence, quite often ask the question: what is the added value of Europol? It is not involved in operational matters. They say we just want a body to help or to support the organization of our operations. Europol, as it is now, is just one more complicating factor, and we already have to cope with so many obstacles in international operations. Europol has no added value and it can't easily have added value because it is not involved in domestic police operations. Police officers are therefore not always willing to share information with Europol because it makes no sense to them. So Europol to some extent hopes that the possibility for it to join multi-national task forces will stimulate the flow of information between it and the member states.

If it comes to specific issues - and they demonstrate best what is going on - we can discuss the issue of providing protection for the euro against counterfeiting. Europol acquired quite an important role in this area. First of all you need information about counterfeiters and about their objectives. So the member states established an expert group in Europol and they indeed sent some of their best experts in counterfeiting to help. The result was that the old boys network was to some extent combined with the formal procedures of Europol. What happened was that these individuals went to the member states and to the others in the network and said "get us this information - we need it". They organized the whole thing in quite an informal manner and then they used the Europol channels to formalize the information they collected in the member states. People have told me they have never seen an evaluation but it seems to have gone quite smoothly.

Now in the case of terrorism, the members states established a group of terrorism experts. I have heard that they have sent some of their best peoples to Europol in order to collect and analyze information from the fifteen member states. That is a heavy burden, especially as the willingness to share information was not that great in the past. However I get the impression that when it comes to hot issues, member states are more and more willing to bring together in Europol some of their best experts and in this way stimulate the flow of information in the Europol framework.

Although Europol still has no operational power, in my view we should not exaggerate this issue. What is Europol? At the heart of Europol is a collection of liaison officers connected immediately, in one minute, by telephone, fax, and by e-mail with the operational forces in the member states. So the whole distinction between operational and non-operational powers is, I would say, to some extent quite superficial. It may be nice for lawyers, but if you speak to police officers involved in these things you will see that it is perhaps not the biggest issue here. The main issue is to what extent member states, police forces and task forces, accept Europol and see the Europol cooperation mechanism as a added value.

MEL: Would you say that the question of Europol's legitimacy is no longer the main point of the discussion?

Professor Fijnaut: In the 80's the legitimacy issue was mainly a question of political legitimacy. It was a big issue and a very controversial issue. I must say I supported it at that time, and these days almost everybody agrees with it. In July, 2001, we organized an inter-parliamentary conference on Europol in The Hague. We had members of parliament from all the member states attending and they spent 3 days discussing Europol. They visited Europol. They could see it and speak with others about it. They came to the conclusion that it is a shame that police forces in our member states don't use this mechanism. They generally support Europol and, now that they know what it is, want it to be developed into a more operational mechanism

In my view, the political legitimacy of Europol - apart from some radicals or left wing people - is not a real problem anymore. The problem now concerns its operational legitimacy. This is clearly linked to its efficiency and its effectiveness and to the added value discussion. For example there is a major issue related to the production of ecstasy. Ecstasy from The Netherlands is exported all around the world because of its fine quality. These days there is more cooperation between the Dutch special units and Europol with its communication system and liaison offices. It is possible to reduce a lot of one's international communication burden just by cooperating with Europol. Now they see the added value. That is what I see developing more

and more, but always linked to specific problems. The result is that more people will be convinced of the advantages of the Europol mechanism.

And please don't forget that the convention was only ratified by all the member states in 1999. Even though we have talked about Europol for 15 years it only became fully operational three years ago. To that extent it is a wonder that it is functioning so well.

MEL: Police officers are still not allowed to enforce law in other member states where they come from. A police officer from France can't enforce the law in Belgium. How does this affect the fight against organized crime?

Professor Fijnaut: I am in the process of writing a long piece about the position and tasks of foreign police officers in the field of criminal investigation working on the territory of other states. Under the impetus of all the international initiatives, police officers are crossing the Dutch border all the time, in a quite large numbers. Of course the starting point is that they do not have any power on Dutch territory. They cannot enforce Dutch laws. Here in the Netherlands you have also five Schengen cross border surveillance units. They have their counterparts in Germany, France, Belgium, and the United Kingdom, etc. So, for example, Belgian surveillance teams come to the Dutch border, inform the contact points in the Netherlands, hand over the surveillance to a Dutch Schengen surveillance team and they continue the operation. Usually a Belgian police officer just joins the Dutch team. He goes into their car, because he is familiar with the situation. Similarly, Dutch surveillance officers will join a Belgian team on Belgian territory. Although they do not have formal powers and cannot arrest anyone or seize anything, they are nonetheless present and can have an influence on what is going on. Another quite important example is the role of undercover agents. We have just had a case of German and British undercover agents working in Rotterdam. They worked here for two years under the responsibility of the Dutch police. They were just integrated into the Dutch infiltration team and they operated under Dutch supervision and with the permission of the Dutch judicial authorities. No problem at all.

MEL: Is there a need to make sure that officers from one country understand the laws of the other country?

Professor Fijnaut: This is not a big issue. They just support law enforcement people from other member states. There was a recent issue here as to the extent that German police undercover agents are willing and able to get permission from their authorities to testify in court in The Netherlands? Here you have the whole issue of the protection of undercover agents: to what extent they can hide their real identity and to whether or not they have to testify if judges ask for or allow for this. In Holland the judges are quite strict. Usually undercover agents are interviewed at the pre-trial stage and testify incognito. Only the investigating judge knows who they are and attests to their identity. In Germany, the usual procedure is that they don't testify in court. Here you can see minor conflicts between Germany and The Netherlands related to different legal systems. Up to this moment it has not been a real big issue, despite some rumors and discussions.

MEL: A major issue between Canada and the US involves weapons. Police officers are not allowed to carry their weapon to a foreign country.

Professor Fijnaut: It is an issue here too, but it is not a problem. Under the Schengen Convention, police officers are allowed to take their guns with them. An officer can carry a gun from one country to another but can use it only in self defense. To say that foreign police officers cannot operate here in Holland and cannot enforce the law, is just not true. If you take the case of the infiltrators I mentioned, they enforce Dutch law under Dutch supervision. If you look at the European Union Convention of Mutual Assistance, which was signed in May, 2000, you will see that this mutual assistance treaty really formalizes joint operations and covert operations. Now all over Europe the member states are discussing the conditions under which these joint teams must operate and how they should deal with the issues of powers and governance.

MEL. What are the obstacles that these teams face, taking into consideration that the training is

not the same, and that the power given by legislation is not the same, technology systems are not the same?

Professor Fijnaut: I have not yet seen very good detailed evaluations of joint teams but there have been some efforts undertaken here along the Belgian-Dutch border. There are sometimes legal issues related to enforcement powers. Most of the time they are minor issues, because they always try to arrange it so that individuals will exercise their own powers in their own territory. The larger problem is setting priorities – to what extent do the authorities want to prioritize a given issue or a given case? The result is that you now get issues about such things as the organizational structure, equipment, the numbers involved and, the length of the cooperation. There are also issues related to the judicial authorities – an investigating judge in Belgium is quite different from an investigating judge in Holland. How do you work together if, for example, a Belgium judge would allow for an operation but a Dutch judge could see problems in the framework of Dutch criminal procedure. It needs a lot of talk and balancing between the two systems to make this work. Now the member states want to create a framework for joint teams' creation and operations.

There is a close connection between the need for cooperation and legal harmonization. If you want to cooperate, to some extent you have to have harmonization and harmonization will to some extent will be the consequence of cooperation. If you harmonize systems you facilitate cooperation – it works both ways. Take the example of undercover agents. Even in the 60's police officers in this part of Europe came to the conclusion that sometimes they needed such cooperation, for example French undercover agents working in the Netherlands and vice versa. This led to two things. First they created a Memorandum of Understanding which said that within these defined conditions they would support each other and send undercover agents to another country. The second thing is also very important. They also worked toward common training courses to facilitate tactics and cooperation on foreign territory.

MEL: You are touching here on something that is extremely important – the human side of it .

In Joint Force Operations, participants come together from different backgrounds with different experiences to work as a team. In the past, in joint teams' work, one difficulty seems to be related to who gets the good publicity for what they have done. If you have different law enforcement agencies from different countries, there seems to be only one winner.

Professor Fijnaut: Here we have learned that if you only have one winner, you will also have a loser. No one will allow this to happen for a second time. If you must cooperate extensively, you can not work with this maxim anymore. So what we see more and more is member states saying that they have a common problem and then they have to come to a common definition of that problem. In addition, you must have a common understanding of the goals, the effects and the end result of the action. There must be a common understanding of strategies and techniques. Trust is basic. If you say to each other that this is the goal, this is the problem and this is the way to solve that problem – this is our joint strategy – then it is crucial to stick to these arrangements.

MEL: How do you explain that most of the time police officers will agree to work together as long as there is no formal commitment?

Professor Fijnaut: Police officers in general have a pragmatic outlook on the world. They know that trust is very important and that formalizing things can hamper trust and even destroy trust. The result is that you get lost in all sorts of minor technical and financial issues. Within the police culture it is common to hear “we are all police officers”. We know who the enemy is, we know the problem, we know what we want to achieve. Why should it be necessary to write this down in a formal agreement – it just creates a lot of problems. That is one side of it. In addition, the moment you start to formalize these arrangements, all sorts of other people have to become involved – judicial authorities, chief constables and ministries. In the end you are organizing the bureaucratization of your own investigations, and you spend more time on this than with investigating the case. Police have good reasons to dislike this formalization.

MEL: I recently visited one of the integrated border teams. They used to work with their colleagues but now it is being increasingly formalized and many are having difficulty understanding and adjusting.

Professor Fijnaut: When the Schengen Agreement was concluded and officials were working toward the Schengen Application Convention many police officers were opposed. They said it will destroy our pragmatic approach to these issues of cooperation. I criticized that attitude strongly. In the past the possibilities for cross-border cooperation were very limited and it was quite clear that the Schengen Application Convention would open up many more opportunities. In the end, however, police were convinced and supported the Schengen Application Convention. What you see now is that we have a more open formal framework for cooperation and that it is used extensively, particularly in the field in the exchange of information, cross border surveillance and controlled deliveries. These formal mechanisms also seem to have stimulated informal cooperation enormously because, through these processes police officers also come to know each other better. In addition we should not forget that cross border operations are usually quite costly, calling for large investments of both money and people. They don't want to create formal agreements without at least good preparation at an informal level. For example, if you have a request for cooperation in a complicated case, it would be inappropriate for the Dutch police officer or the Dutch prosecutor to write up a request for mutual assistance without knowing exactly what is needed in the other country – what it means for the police and the prosecution service in order to get that support. What you see in the bigger cases is that the prosecutors and police officers will go to Belgium, France, Italy or Germany to discuss in an informal manner with their future counterparts how they should formulate their request for assistance. And when they reach agreement, in a informal and pragmatic manner, then they send out the formal request.

MEL : Don't you think that formalizing a process means that there has to be some kind of control mechanism or accountability with regard to joint forces at a national level? Who is going to understand what the partner is doing with respect to organized crime?

Professor Fijnaut: I am not opposed to a formal framework, because I have seen that it opens up many more possibilities and that it stimulates informal cooperation. In any event, all police officers know that as long as we have democracy here informal cooperation alone makes no sense in the end. What can you do with informal knowledge? Nothing. You can only use it to steer your cooperation. But in the end you need to arrest someone and you need to collect evidence in order to make your case. All intelligent police officers know that while informal cooperation is certainly needed, they all are also aware that in the end you have to formalize it and to bring it forward before the judge. You can say you have informal and formal cooperation. I would say that most of the time formal cooperation is just the final piece of what has started in an informal manner. Under the rule of law that is indeed the only possibility. Even if a police officer knows a lot about what is going on, if he cannot make a case it means nothing. It is completely useless knowledge. I see a lot of cooperation among special teams in this part of Europe and certainly they all understand this. They work together in an informal manner, but they all know that in the end it has to be formalized and brought by a prosecutor before the judge. There is always a moment of accountability in the legal framework.

MEL: In the EU context what does sharing of information mean for police officers not only in terms of technology, but also when one is sharing the power that results from good information?

Professor Fijnaut: The Schengen Information System is a separate issue. The Schengen Application Convention identifies exactly what can be entered. That amounts to the sharing of information particularly in cases of organized or serious crime and terrorism. It is a difficult issue and there is a lot of talk a lot about it. Detectives and investigators however often feel they have very good reasons to keep their information to themselves, especially if the system with which they have to work is not secure and does not guarantee secrecy. There are very good reasons to keep information secret. If you give it to people who don't understand the problem, to people who have complete different interests, or to people who talk too much you could, for

example, risk the life of your informants. Most of the time therefore police officers have very good reasons to keep information to themselves or limit its circulation to a very small circle of colleagues. For them, these are very legitimate reasons. But at the same time this is also a big problem.

The Netherlands has quite a complicated police system. The Dutch police consist of twenty-five regional forces, one national force, the Gendarmerie, and four bodies that regulate investigative powers. In a small country it is highly divided system. How can you share all the information even if you have the technology to do so? While the technological issue is still an issue, the different forces are now willing to build a system that would make it possible to exchange easily all the information that they have.

Every force has its own data system. Under specific conditions prosecutors can also have access to these police data systems. The problem is how can we connect these different data systems? It does not make sense to give full access to these systems to all police officers. So there is a whole system of entrance. You need special authorization to enter specific paths of the system. This leads to the situation where, for example, information provided by informants or that is the result of secret operations can be accessed only by a few persons. Most of time that is crucial information. You should share this but that does not always happen. How can we arrange for that? Probably we will bring in detectives familiar with these systems and with the information in them, and put them together in national groups. If there is a national demand for a particular piece of information they will relay it back to the regional forces. These should be specialized, qualified detectives, who will ask the necessary questions: what is the reason why you ask for this information and is it legitimate? If it is a legitimate demand we will then see if the information we have is indeed the information you are requesting. They must therefore check the connection between the question and the answer. If there is relevant information, they will see under which conditions that information can be shared in the light of all the interests at stake. This process is now being discussed.

This system got a good start under the pressure of terrorism cases. In the wake of the Sept 11th attacks, a system has been created where information collected by regional special units is immediately connected to a special national unit. If they want to exchange information it has all to go *via* this national linking system. They not only evaluate and assess the information as such, but also question why and who in the forces will get that information? The underlying idea is that the force that has the information remains the owner of the information and in the end only it can decide upon its use.

MEL: George Kelling once said: police officers don't share information because they have nothing to share.

Professor Fijnaut: He likes to say provocative things. I did a study for the Belgian parliament on one of the most awful cases in that country. I had access to all the files on a group of bandits who really terrorized Belgium in the 80's. I was in charge of a Dutch parliamentary inquiry and I did research on organized crime in 1995 and 1996. I had access to all the information in the Netherlands. So, in response to that provocative statement I would argue, on the one hand, that police forces these days in some ways have too much information. I have seen massive amounts of information collected by police officers in many ways and sometimes the biggest problem is to select that which is relevant. I would guess that that is also one of the biggest problems in the US. They are overloaded with information. They could share a lot but it would make no sense. On the other hand sometimes police forces let the most relevant information go as the result of lack of appropriate investment in relation to the problem. I have seen this. If you don't make a priority of the drug trafficking, you have of course no information on it. If you are not interested in organized crime problems in a given field, for example the illegal trade in small arms, of course you have no relevant information. So just to say they don't have relevant information is a nonsensical observation in my view. If we define what are we expecting from our police forces, what are our priorities and the main goals, then you will see that they will get the information.

Of course if you have secret police files and data systems, and the access is too difficult, police

forces can use this secrecy to cover up their lack of knowledge on issues because they have a monopoly. I have seen examples of this. They just can pretend that they don't know anything. Someone in Germany thirty years ago said that the strength of intelligence services is that nobody knows what they know or don't know. And that is partially true.

In my research for the Belgian parliament, I saw that in the end there was a dirty war between the Gendarmerie and the Judicial Police. Members of the latter force were not only just not sharing information but they were operating against the Gendarmerie, saying that some of its members were suspects in the case. In other words, the issue of not sharing information is not only related to the security of informers and to the interest of proceedings, it also has to do with trust and integrity. Sometimes institutions have conflicts, and in order to prevent the other side taking the flowers as they say in Belgium, they are not willing to share that information. Thus the whole issue of sharing information has also a very important institutional side. If you create a policing system with inherent conflicts, this is a guarantee that you will have major problems in sharing information.

MEL: One of the problems we are trying to address in Canada is the impact of organized crime. Researchers from different departments are working on this issue. As you have written, it is difficult to define organized crime and that it important to see this as more than just a legal issue. How then do you measure the impact of something that is difficult to define?

Professor Fijnaut: It is similar to the case of terrorism. If you are not focusing on terrorism you will not have data and if you don't have data it is very difficult to define the problem. Academic support is very limited in general because they can usually collect relevant data only from open sources. The criminal process has two similar functions. On the one hand you collect evidence with a view to the trial but, on the other hand, the important function of the criminal intelligence process is to get an insight in to what is going. I always defend the position that criminal cases are like looking glasses into the world of organized crime. That is the only way to look in-depth into this problem. Thus by investigating cases can you can collect relevant data and, in turn,

relevant data can stimulate criminal cases. You investigate cases and these cases teach you about the nature and extent of the phenomenon and teach you how to deal with it. By doing so you can pursue more relevant investigations than in the past.

MEL: How do you investigate your case then – do you focus on specific groups, on criminal organizations, or on individuals?

Professor Fijnaut: I was an advisor to the Dutch Minister of Justice in the 80's when, for the first time, we got into the discussion of whether or not we had an organized crime problem. Some people said “no that is not our problem. That is a problem in Sicily, China, in Japan and the big cities in North America but not here.” This leads not only to a discussion of how we define organized crime but also to a discussion of how we operationalize the definition. The definition of organized crime is indeed a problem. Generally I always make the distinction, between two main forms of organized crime. The first is related to the delivery of illegal goods and services on black markets whether it be drugs, weapons, diamonds or people. If this is being done in a more or less organized manner and that is the only way to deliver these goods and services, you are probably linked with organized crime. The other main form of organized crime involves the illegal control of legitimate businesses. If you control parts of the construction or transportation sector, or waste disposal as in New York City, or if you can build up a monopoly in such industries by intimidating, or corrupting officials, or by intimidating competitors and if necessary by killing them, then you have racketeering and the illegal control of legitimate businesses. That has always been my perspective on organized crime and it goes without saying that they are often inter-connected: people can make money on the black market and invest it illegally to gain control of legitimate businesses.

MEL: Do you think that they have to enter into the legitimate market in order to spend the money that they have made illegally?

Professor Fijnaut: Of course. And if you have a legitimate market it can also facilitate your

operations on black markets, such as drugs. To that extent they are related to each other. If organized crime means delivery of illegal goods and services on the one hand and illegal control on the other hand, the Dutch approach has been if you define the problem in this way then your second problem is to determine who is really powerful in these black markets? Who tries to get control on the legitimate businesses? To determine this, you need intelligence. The first thing you have to do is build up your intelligence capacity. You need officers who become familiar with these markets, and with their structures and mechanisms and, in the end they will identify the groups or networks or families who are important in these markets.

There has been discussion in Europe – although not much in the Netherlands anymore – because we started to count any group with more than three people as an organized crime group. I must say to find this a rather ridiculous approach. If you look at organized crime groupings and people who are involved in black markets they really consist of networks. Counting means nothing in this regard. It would be very simple for me and for special detectives in the Netherlands to list 10,000 people but it means nothing if you don't know how they are organized, who is directing what, how do they get their money, which people are really central among these 10,000 and why is this individual more important than someone else? Is it because he has access to money, to knowledge, or to people who control boats or housing? Does he have contacts overseas in the production countries or in the delivery countries. That is one of the areas of focus we have in a new report on organized crime that will be published in a few months in the Netherlands. What makes a man in this field important? In order to know that you have to collect intelligence and you need a very sophisticated intelligence operation. That is the only way to find out.

This is the approach we see here in the Netherlands these days. For example we have six more or less qualified supra-regional teams in the field of organized crime. Every year the prosecutors and the police chiefs come together to assign cases. In order to determine which cases, they seek input from the regional forces and the special task forces and they present a general analysis of the organized crime situation in their part of the Netherlands. These reports are integrated at a national level. The result could be perhaps sixty cases in the field of organized crime. We have,

however, only the capacity to deal with 20 cases a year, given the number of detectives available. So they have to select appropriate cases based upon available evidence about the impact of these people on the black market, their role in relation to other parts of the country, the social damage they really can do, and to what extent they support or protect other criminal activities or low level crime problems in a given city or area so that is an on-going process? At present there is a discussion about how this process can be harmonized so that all police forces and special task forces will analyze the situation in their part of the Netherlands or in their fields of organized crime in the same manner. The intent is that these annual reports, these intelligence reports, can be easily integrated at the national level to facilitate the selection process of people and groupings or networks who really matter.

MEL: The predominant view in Canada is that organized crime consists largely of Asian groups, the Italian, the Mafia, the East European and outlaw motorcycles gangs. What do you think of this view?

Professor Fijnaut: First of all, if you have all sorts of groupings the question becomes what is the distinction between an organized crime group and a non-organized crime group. When can we say something is organized crime or not? In my work for various committees of inquiry I always stuck to a quite limited definition, saying that with organized crime corruption is not the most decisive distinction, because in corporate crime and in professional crime you will sometimes have corruption. The basic distinction between organized criminals and corporate criminals for example is their willingness and their capacity to use intimidation, violence, and murder. That is the first part my answer. The second part relates to the distinction among groupings of Italians, Asians, and so on. To some extent it still makes sense. You see it in the Netherlands too. Some organized crime groups are still quite limited to either ethnic, or geographic entities. But the conclusion in our last report for the Ministry of Justice two years ago was – after studying many, many cases – that ethnicity or nationality in itself is no longer so decisive. Organized crime has everything to do with trust. If you have an illegal operation on a large scale, the only mechanism you have to keep control and to be successful is trust and if you

don't have trust, you can resort to violence. But trust is the main thing. It is not that ethnicity or nationality that is unimportant but that trust is more important. If you have Turkish heroin traders, most of the time you will find they come from the same region and/or are members of the same family. But it is not the family as such but the issue of trust that is so important. If they are family members they can trust each other and be successful in a risky environment. So to that extent, I would say that the ethnicity distinction has lost much of its importance. Even in the case of Chinese organized crime groups the argument is that they can trust each other because they come from the same region, speak the same language and have social ties.

My third remark is that here in the Netherlands and Belgium, indeed throughout western Europe, we see more and more that organized crime groups are cooperating and integrating their operations. Some time ago we had a very serious case of trafficking in human beings. The case started in the Netherlands from where sixty Chinese people were taken over to the United Kingdom. If you look to the details of this case, you will see that not only Chinese people were involved. The biggest man in Rotterdam was Turkish; he organized it. The drivers were Dutch. If you look at it from an entrepreneurial viewpoint it makes a lot of sense because it would be quite stupid if a Chinese driver were to bring the lorries from the Netherlands to England. That is an obvious sign to the outside world that something unusual is going on. Similarly, that is why ecstasy producers use grandparents and children to transport ecstasy to the United States.

MEL: Criminal organizations establish partnership from time to time to make sure that, for example, they can then move the drugs from South America and bring them to North America.

Professor Fijnaut: In the past the police saw organized crime as a reflection of the police organization – as stable, hierarchically-structured organizations. That is nonsense; a really false image.

MEL: At the same time it makes life difficult for researchers who would like to try to develop an understanding of what the impact is in a given country. Because then it is not only the Asians

who take from the poor and give to the rich.

Professor Fijnaut: We have also just had this discussion in Central Europe, Eastern Europe, Western Europe, and I wrote a lot against that argument. Western European politicians are saying that the organized crime problem comes from the East. But in all the cases I have seen – and I saw a lot of cases of trafficking in human beings, stolen cars and weapons – most of the time you find cooperation between Dutch, Belgian, German and English criminals and in turn collaborate with Russians, Yugoslavs and Slovaks. This is quite understandable as these people don't know the languages and they are not familiar with our legal systems. They are really in need of each other. These all reflect cooperative mechanisms. They are not solists who can simply organize illegal things throughout the world – it is impossible.

MEL: They assume in one way a leadership in their business. They develop a business as regular businessmen. They open new markets. They cooperate when they have to and they get involved in many different areas.

Professor Fijnaut: You do see that if you look at the history of the Mafia in New York. They operate in different markets and move from one market to the other. It just emerged that they are operating now in the stock markets. They moved into new markets, where nobody was expecting them and which were not prepared for dealing with them. But on the other hand they are still operating in the unions and at the New York harbour, and they still commit all sorts of ordinary theft.

MEL: Most of the time when we look at impacts of organized crime we look at the negative aspect. It has been argued that there are positive aspects of organized crime shown when, for example, illegal money is being transformed by the legal markets and the banks. We don't hear a lot about this.

Professor Fijnaut: This reminds me of an article in a Dutch newspaper yesterday evening about

one of the big Russian tycoons, who emerged after the collapse of the Soviet system. At that time, they wrote, they had a Minister of Finance who asked “is it not a normal problem that these criminals get control of these markets and these companies”? My example perhaps would be the robber barons of a century ago. They operated much like these criminal tycoons now do in Russia. While they are powerful and have the money at a given moment, they also need a regular and secure system. They will become then the biggest supporters for the rule of law, because that is in their interest. Perhaps it will take ten, fifteen or twenty years until it will end up in a very regular system. But that is the only way they can save and protect their interests, in a secure environment.

Most of the time one indeed looks at the negative side of organized crime such as the destruction of local neighborhoods, the gain of illegal power and the corruption of authorities. In this sense organized crime poses a threat to the integrity of society and the state and we have to deal with it. Thus it is quite understandable that most of the time the negative side predominates in all discussions. But I many times have also asked myself the question that if they earn so much black money, illegal money, one way or another how will they invest it. So from an economic viewpoint, although not from a legal or normative viewpoint, it should be a very great thing for communities, and even countries, that this money is being invested.

If you look at the European scene as I did, in many cases I saw that Moroccans who were involved in a hashish ring live here in very modest, sometimes very poor circumstances, but not in Morocco. The same goes for Turkish drug traders who invest money in Turkey. They build up hotel resorts and the most cynical thing about it is that a lot of Dutch people go for their holidays to the shores of Turkey. I have seen pictures of Moroccan hashish traders, from the Rif mountains, really heavily involved in the hashish trade, who build wonderful houses over there but live in a very modest old neighborhood of Rotterdam. They keep it like this to prevent attracting attention from the police or other people. And of course, if they do that, it is a huge stimulus for the economy of Morocco.

I have worked on cases of trafficking of women. It is quite difficult to discuss the issue of trafficking women with East Asian countries. Why? It is a source of income for many of the families connected to these women who not only work as prostitutes, but also as house maids in Saudi Arabia and other countries. It is not that easy to convince them that they should warn women not to go to the West because it is an enormous source of income. But I would differentiate between forms of organized crime. For example consider the illegal trade in weapons. While it can perhaps support the producing countries, general I would say it is a negative thing for the whole world.

If you are operating an illegal market, you need people and logistics. I have studied the black markets in gambling, numbers games and illegal casinos in the 1980's. Of course, lots of people earned their money in these enterprises. I have seen a man who was employing several hundred people. His gambling operations were a source of income for many, many people. He needed this support for his illegal operations in order to keep the whole thing going. He sponsored all sorts of social activities. So he was a nice guy, providing work for so many people and sponsoring clubs. Why then, it was asked, did the police organize these investigations against him? What people didn't know of course was the bad side of this operation. That is of course why you have to make criminal investigations. That is the only way to get the intelligence you need and to show the world that while there may be that positive side, it always also has a negative one.

MEL: Law enforcement organizations certainly can see a positive side to fighting organized crime. They have funding, they create new teams, and they can keep pace with IT changes. Is it a positive change for the police?

Professor Fijnaut: They can have a surrogate interest in this. One hears all the stories about how they promote the issue in order to get the power and the money. On the other hand though, I would say that organized crime is a very risky business for the police in many ways. That's why police sometimes stay away from organized crime; they know how risky it is. In a general sense

it is risky because if you are saying we have an organized crime problem and we need equipment, people, money and powers to fight this, in the end, somebody will ask for results. So you can really create a huge problem of legitimacy for your police. Not in the beginning, but in the end. So that makes it risky. Sometimes it is better not to know about a problem. That can have more advantages than demonstrating a problem because the public will expect you to solve it. And if you can't solve it, people will ask you why you are not capable of doing so with all the money and power that you have. That is one of the reasons I believe that in the 80's and the beginning of the 90's many members states of the European Union were not willing to acknowledge that they had an organized crime problem. They knew that if they acknowledged that there was a problem, there would be a lot of social pressure to do something about it. And, if they attempted to do something about it, within five or 10 years they would be asked to show the results. Intelligent police officers who can take a long-term view don't like these problems. While it is nice to have people and equipment one should also be aware of the other side. That is one reason I believe organized crime can also be a negative problem for them – a problem that can undermine their legitimacy.

In addition, there are also problems in terms of corruption or misuse of power. One of the most notorious cases in the Netherlands, in the beginning of the 90's, was exactly linked to this. Many people thought later on – “My God! We were just so naive, when we said we had such a problem and we should build a special task force.” In the end, that scandal had a negative impact on the whole Dutch police. My experience over the years is that intelligent chief constables and police officers are aware of all of this. That is why they always modulate their strategy. They want to keep control of the enormous risks in this area.

MEL: A last comment?

Professor Fijnaut: Organized crime is not a separate thread in the social fabric of our societies. You should not isolate your organized crime problem. In particular you shouldn't say it is just a criminal law problem because then you are lost in the long run – you are isolating the problem

and you reduce your organized crime problem to a procedural problem. That is an absolutely unwise and unacceptable approach. The containment of organized crime demands close cooperation between administrative and judicial authorities. Unless they are all involved, you can't control the problem.