



Royal Canadian Mounted Police Gendarmerie royale du Canada

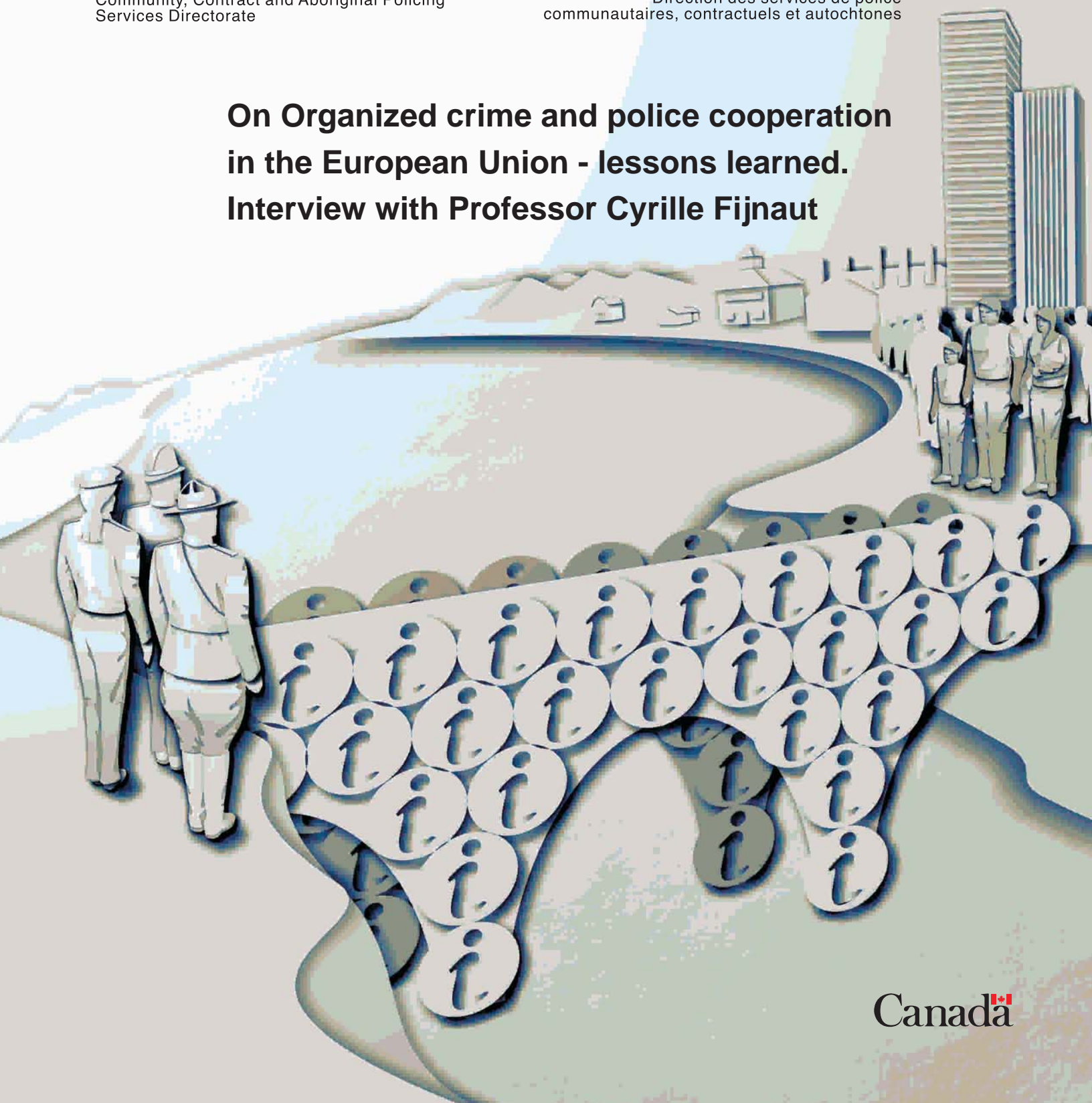
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**On Organized crime and police cooperation in the European Union - lessons learned. Interview with Professor Cyrille Fijnaut**



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Interview with Professor Cyrille Fijnaut.**

by

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## **Introduction**

Professor Cyrille Fijnaut is one of the leading figure in Europe with regards to many policing issues among them, police cooperation in Europe and organized crime. He has published in many journals and have been involved in enquiries Commission as head of research.

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

We conducted an interview in his home in Tilburg in June 2002.

### **Interview with Professor Fijnaut**

**Question:** Organized crime in Canada is one priority for the Federal Government and law enforcement agencies. An other major issue is the border. I would like to know how do you consider border issues within the context of the European Union?

**Answer:** Let me start with the border control issue. If you look at the European side of it, looking at Europe and the borders between the European countries we still have controls there between the member states. Look at Belgium and France, and Belgium and the Netherlands. e.g. Border control is an important issue. I have moved around for 30 years. One could easily make the case that although we had in the part in theory very strict border controls, that their volume and intensity was very limited and people could easily cross borders. And 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 didn't hamper no way anymore. Of course member states still had a duty to establish border controls and from time to time they did this . Of course you saw sometimes customs people and national police checking people at the borders. It was particularly the terrorism problems of the 70's however , that raised the issue to what extent do we have to cooperate to overcome the lack of border controls. Because the 70's Europe was to some extent a highly violent area. You had terrorist groupings in Germany, Italy, France, Spain. So the problem that if the German Police was quite successful on German territory their success was really limited by the fact the members of the Army Fraction could easily cross the borders to Belgium, the Netherlands and France and escape the German authority. The success of the containment of terrorism was in this way very limited. They could not control the border. Then they came to the question: should we reinforce the borders, up to an iron curtain between the member states? That is not what we want! We just want to open them on the whole Western European territory and to build up an integrated market. That means not only the flow of people should 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. We got their papers published by the European Commission, saying now take the whole European integration a step further should build up the integrated internal market. In 1984 Germany and France said we will support this, but we need flanking measures in regards to immigration, customs, police and judicial cooperation. In 1984 -85 they concluded together the Benelux countries the Schengen agreement. This agreement is the basis of a lot of the developments later on in the last 15 years in the framework of the European Union. In this agreement you find starting points and ideas or rather intensive police cooperation even the idea to build a central common police institution to support mutual cooperation in the drugs field, and far reaching proposals, in the field of immigration and customs and in some minor other fields. The Benelux countries jointed this initiative, because they were afraid that otherwise a lot of problems would come to the Netherlands. Besides: The Benelux convention already had led to the abolishment of border control, and facilitated the flow of people and transportation a lot. What Germany and France were doing in 1984 is what the Benelux countries did exactly in the 50's. That explains why the Schengen secretariat was established in the Benelux Secretariat.

We have the Schengen Agreement in 1985 and then we got in 1990 the Schengen Convention. This convention is to a large extent limited to police and judicial cooperation and only to some extend to immigration and custom issues. The reason for that is that between 1985-1990 the European Community took such a huge development that a large number of the issues of the Schengen Agreement of 1985 were taken over by the European Community. So the Schengen Agreement got more limited to the main issues of police and judicial cooperation. In comparison with the part was that was an enormous step forward. For the first time we got an integrated framework for police and judicial cooperation. In the past you had (judicial) mutual assistance treaties in the field of criminal matters but 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 a very confusing thing. With the Schengen application convention we got for the first time an integrated framework for police and judicial, and customs cooperation to some extent.

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 got a formal system for exchange of information, the Schengen info system. But in addition to this a number of very operational forms of police cooperation: cross border surveillance, hot pursuit and controlled deliveries. In 1985, they also talked to build a police institution to support the intergovernmental mutual cooperation. That idea was not taken over in Schengen. There are no Schengen institutions. It is all based on mutual cooperation. There was only a secretariat just to move things going. The police institution that “Schengen” talked about has evolved into Europol, one could say. That idea was taken over in the negotiations on the Maastricht treaty and included in Chapter VI - Home affairs and Justice. So the Maastricht treaty contains this provision. And we got a convention in 1995 on Europol.

Europol is predominantly limited to the exchange and analysis of information. It has no operational powers and no executive duty whatsoever. Many member states heavily opposed to a FBI like police institution for several reasons. For historical reasons: some people said when we have had an operational police force it was always in time of dictatorships like France under Napoleon and Germany under Hitler. So, we do not like an operational European police. Others made the case that the FBI is not what suits the European context and do not refer to the FBI: it is in a completely different constitutional environment.

In summary: the member states took on the other hand border measures by intensifying the modalities for operational police cooperation (cross border exchange of information, controlled deliveries, cross borders surveillance) and by establishing Europol on the other hand. Schengen started with five member states and now it has 13 and Great Britain and Ireland want to join partly the Schengen initiative. Europol should in some way or another get connected with the

national, local and domestic police forces more operationally, some say, in the member states. It is for the rest important that in 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 or to what extent we should to integrate both initiatives?

**Question:** Do you think one day Europol will become a operational?

**Answer:** it is a complicated issue. The Amsterdam Treaty gives Europol the possibility to join multi-national task forces in the field of organized crime which means that at a given moment the Europol convention will be revised under the impetus of the Amsterdam Treaty. Now we have discussion to what extent the Europol Convention has to be revised. Part of the discussion is related to the supervision of these task and particularly of the Europol participants in all this. You see nevertheless that Europol is coming down to the police forces in the member states.

**Question:** What kind of relationship does Europol have with the law enforcement agencies from different member states. Is it a supra law enforcement body- do they look only at collecting information and intelligence to make sure there is a free flow of information. How do they connect. These questions are asked by police officers in the street.

**Answer:** Europol was born in an adversarial 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; 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 it is something as a linking pin between national member states but it is very difficult for both sides to develop this connection. Police officers in the member states and especially CID's quite often ask the question: what is the added value of Europol? They are not

involved in operational matters. We just want a body to help or to support the organization of our operations. Europol, as it is now, is just a more complicating factor. And we have already 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 not thus that much willing to share information with Europol because it makes no sense for them. So Europol to some extent hopes that the possibility to join multi-national task forces will stimulate in any case the flow of information between Europol and the member states.

If it comes to specific issues - and they demonstrate best what is going on - we could discuss the issue of the Euro against counterfeiting protection. Europol got quite an important role in this field. How can you do that? First of all you need information about counterfeiters and about their objectives. So apart from the technical issues, the member states established an expert group in Europol and they indeed sent some of their best experts in counterfeiting to Europol. What happened was that the old boys network was to some extent combined with the formal procedures of Europol. What happened was these old boys ran to the member states and to the other old boys and said just 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, to whitewash so they say, the information they collected in the member states. People have told me they have never seen an evaluation. It has gone however quite smoothly.

Now in the terrorism case, the members states established an 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 15 member states. That is a heavy burden. The willingness to share information was not that great in the past. I get however the impression that when it comes to hot issues member states are more and more willing to bring together in the Europol some of the best experts they have and in this way stimulate the flow of information in the Europol framework. By sending these people they organize themselves to some extent the added value.



Although Europol still has no operational power one should not exaggerate the issue in my view. If you go to Europol, you could say it is just Europol. What is Europol? The heart of Europol is a collection of liaison officers, but that means that all these officers are connected immediately, in one minute, by telephone, fax, by e-mail with the operational forces in the member states. So the whole distinction between operational and no operational powers is, I would say, to some extent a quite superficial distinction, nice for lawyers, but if you go to practice and speak to police officers involved in these things then you 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 it as a added value to take on board the Europol cooperation mechanism.

**Question:** Would you say that the legitimacy question of Europol is not important because it is not the point of the discussion.

**Answer:** In the 80's the legitimacy issue was: can we have such an awful thing? It was political problem of legitimacy. It was a big issue, a very controversial issue. I must say I supported it at that time, however more or less these days everybody agrees about it. The Interpol mechanism is not suited for us. We organized in July 2001 an interparliamentary conference on Europol in the Hague. We had members of parliament of all the member states and there were 3 days in Europol. They visited Europol. They could see it. They could speak with everyone. They came to the conclusion that it is a shame that police forces in our member states don't use this mechanism. That was the final conclusion.

Quite amazing. They are mostly supporting it now and want Europol to be developed into a more operational mechanism, now they know what it is. The political legitimacy of Europol in my view - apart from some radicals or left wing people - is not a real problem anymore. The problem now concerns its operational legitimacy. That is clearly linked to its efficiency and its effectiveness. And they have everything to do with the added value discussion. For example there is the big issue of the ecstasy production. The Dutch ecstasy is exported all around the world because of their fine quality. These days there is more cooperation between the Dutch Special units and Europol. Europol has the communication system and the liaison offices. So



don't have police undercover agents who can only work on Dutch territory. We have just had the case of undercover agents in Rotterdam. They were German and British undercovers. They have worked here for two years and they were working under the responsibility of the Dutch police. They have been just integrated in the Dutch (infiltration) team and they operated under Dutch supervision and with the permission of the Dutch judicial authorities. No problem at all.

**Question:** Was there a need to make sure that officers from one country could understand the laws from another ?

**Answer:** It is not a big issue. They just support law enforcement people from other member states. There was an issue here to what extent German police undercover agents are willing and 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 dissimulate their real identity and to what extent they have to come to testify if judges ask for or allow for this. In Holland judges are quite strict. Usually undercover agents are interviewed in the pre-trial and testify but you cannot recognize them. Only the investigating judge knows who they are and in any case disposes of the evidence that they are the men they say they are. In Germany, the usual line is they don't testify in court. There you have minor conflicts between Germany and the Netherlands. It has to do with the different legal systems. Up to this moment it has not been a real big issue, despite some rumours and discussions. But in the named case you had 12 undercover agents before the tribunal and you just have to accept this.

**Question:** One major issue between Canada and the US is weapon. Police officers are not allowed to carry their weapon to a foreign country.

**Answer:** It is an issue here too, but it is no problem. In the Schengen Convention, they allow police officers to take their guns with them. The only issue is they cannot use it only out in the case of self defense. They can carry their gun from one country to another, however. To say that foreign police officers can't operate here in Holland and can't enforce the law, is just not

true. If you take my case of the infiltrators: they enforce Dutch law under Dutch supervision. And if you go to the European Union Convention of mutual assistance, which has been signed in May 2000 you will see that they are really formalizing joint operations and covert operations in this mutual assistance treaty. Now you see all over Europe that the member states are discussing the conditions under which these joint teams have to operate, how they should deal with the issues of powers and governance? They have already operated search joint teams all over Northwestern Europe in many cases, however.

**Questions.** What are the obstacles that they are faced with taking into consideration that the training is not the same, the power given by legislation is not the same, the incompatibility of the systems?

**Answer:** I have never seen very good detailed evaluations of joint teams but there have been made some evaluations here along the Belgium-Dutch border. There are sometimes legal issues in the field of power. Most of the time they are minor issues, because they always arrange it in this way that everybody will use his powers in his territory. The bigger problem is priority: to what extent do the authorities want to prioritize a given issue and a given case? That is the first thing. Then you get issues about the organization, the equipment, how many members, for how long will they cooperate? Then you get issues related to the judicial authorities: an investigating judge in Belgium it is quite different from an investigating judge in Holland. How you connect these authorities if a Belgium judge would allow for some operations whereas the Dutch judge could see problems in the framework of the Dutch criminal procedure. It needs a lot of talk and balancing the two systems to bring this to end. Now the number states want to build up a framework for joint teams and say within which limits such teams have to be established.

For the rest there is a close connection between cooperation and legal harmonization organization. If you want to cooperate, to some extent you have to organize harmonization and harmonization to some extent will be the consequence of cooperation. If you are harmonizing systems you facilitate cooperation. It works both ways. Take the example of undercover

agents. Already in the 60's police officers in this part of Europe came to the conclusion that sometimes they needed e.g. French undercover agents in the Netherlands and vice versa. So what it did was two things. First they made a memorandum of Understanding saying that within these conditions we will support each other and send undercover agents to another country. And the second thing is also very important: we will organize common training courses and we will conceptualize our tactics as much as it is needed to cooperate on foreign territory.

**Question:** I find you are touching here on something that is extremely important and that most of the time now discussing in papers, that the human side of it . In fact, in JFO capacity participants come from different backgrounds with different pasts experience to come together and work as a team. In the past in joint teams work, one of the obstacle seems to be : Who gets good publicity for what they have done? If you have different law enforcement agencies from different countries, there seems to be only one winner.

**Answer:** Here we have learned that if you just have one winner, the other time you will also have a loser. So you can only win once because all the other times you will loose. No one will allow this to happen for a second time. If you cooperate a lot you can not work with this maxim anymore. You will always loose or you will loose in many cases, or lose cases that are very important for you. So what you see more and more is member states say we have a common problem and then they have to come to a common definition of that problem. Besides that you have to have a common understanding of the goals, the effects and the end result of the action. You have to have a common understanding of strategies and techniques. Basic is trust. 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 strategy, then it is crucial to stick to these arrangements.

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

**Answer:** Police officers in general have let's say a pragmatic outlook on the world and they

know that trust is very important and that formalizing things can hamper trust and even destroy trust. You get lost in all sorts of minor technical and financial issues and in the end you have nothing in hand anymore. That is a cultural reason why they say: the culture of the police is “we are all police officers”. We know who the enemy is, we know the problem, we know what we want to achieve. Why would it be necessary to write this down in an agreement? It is just creating a lot of problems. They really protect the trustfulness . That is one side of it. The other side is that at the moment you start to formalize this, all sorts of other people have to come in, the judicial authorities, chief constables, they need money, the ministries then come in. In the end you are organizing the bureaucratization of your own investigations, and you are more busy just keeping the thing going than with investigating the case. They have good reasons to dislike the formalization of all this.

**Question:** I mentioned that there is now the ongoing on integrated border team. I visited one of the teams recently and people are pretty ..... (Could not make it out not clear). We used to work with our colleagues( interruption from the professor) Now it is being formalized and they couldn't understand why overnight they have changed their name and they have now have to officially work with partners that they used to work with informally.

**Answer:** When the Schengen Agreement was concluded and officials were working toward the Schengen Application Convention many police officers were opposed to it. They said it will destroy our pragmatism approach to these issues. I criticize that attitude a lot. Because in the past the possibilities to co-operate cross border was very limited and it was quite clear that the Schengen Application Convention would open up much more possibilities. In the end, however, they were convinced and supported the Schengen Application Convention. What you see now is that we got a more open formal framework for cooperation and that it is used this a lot, particularly in the field in exchange of information cross border surveillance and controlled deliveries. What was also amazing, using these formal mechanisms has stimulated informal cooperation enormously because by doing all this, police officers come to know each other. In addition one shouldn't forget that cross border operations most of the time are quite costly. They

ask for investments of money and people. They don't want to convene directly formal agreements. Before they step into this, they want to prepare everything at an informal level. Just to do it in a formal way is really nonsensical in my view. If you have for example a request for cooperation, in a complicated case, it would be quite stupid that the Dutch police officer or Dutch prosecutor would write up a request from mutual assistance not knowing what exactly is needed in the other country, what it means for the police and the prosecution service to get that support and their conditions. What you see in bigger cases is that the prosecutors and police officers go to Belgium, France, Italy and Germany to discuss in an informal manner with their future counterparts how they should formulate their request for assistance. And when they agree upon that, in a informal pragmatic manner, then they only send out the formal request.

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

**Answer:** I am not opposed to a formal framework, because I have seen it opens up much more possibilities and it stimulates informal cooperation to the extent that it is necessary. All police officers in any case, as long as we have democracy here, know that informal cooperation 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. Or you need to collect evidence in order to make your case. All more or less intelligent police officers know that informal cooperation, is really needed. They all are 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 most of the time formal cooperation is just the final piece of what has started in an informal manner. That is indeed under the rule of law 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. It means nothing - I see a lot of cooperation with special teams in this part of Europe, of course they all understand this: they work together in an informal manner, but they all know that in the end it has to be put in a formal manner and being brought

by a prosecutor before the judge. There is always a moment of accountability in the legal framework.

**Question:** In the EU context what does sharing of information mean for police officers with incompatibility of technology, but also when you have to start sharing the power of having good information?

**Answer:** The Schengen Information System is just a different issue. The Schengen Application Convention identifies exactly what can be given in. That comes to the sharing of information particularly in cases of organized crime or serious crime or terrorism. That is a difficult issue. I would say people are just complaining about it and talk a lot about it. Detectives and investigators, however, have quite often very good reasons to keep their information with them. Particularly if the system where they have to work with is not a secure system and doesn't guarantee secrecy. There are very good reasons to keep it secret, because if you give your information to people who don't understand the problem, to people who have complete different interests or to people who talk too much you could e.g. risk the life of your informers. So most of the time police officers have very good reasons to keep the information to themselves or limit its circulation to just a very small circle of colleagues. These are very legitimate reasons for them. But that is at the same time also a big problem. In the end you cannot share information.

In the Netherlands which have quite a complicated police system. The Dutch police consist now of 25 regional force, 1 national force and then we have the Gendarmerie and we have 4 regulatory bodies that they dispose of investigative powers. In a small country it is highly divided system. How can you share all the information even if you would have the technology to do it? The technological issue is still an issue, but the forces now are willing to build a system that would make it possible easily to exchange all the information they have.

Every force has its own data system. Under specific conditions also prosecutors can have access to these police data systems. How can we connect now these data systems? How this could happen? It will be nonsensical to give access to these systems to all police officers. So there is a



whole system of entrance. You need a special licence of permit to enter specific paths of that system. That leads to a situation wherein for example information given in by informers or resulting from secret operations can be accessed only by a few persons. That is most of time crucial information. You should share this in time but that doesn't happen here up to now always. How could we arrange for that? Probably we will bring in detectives familiar with these systems, with the information in those systems, and put them together in national groups. If there is a demand for the given piece of information they will relate back to the regional forces. Specialized, qualified detectives, who will ask needed questions: what is the reason why you ask for this information? Is this a legitimate question? If it is a legitimate demand for this information we will see if the information we have is indeed the information you are asking for. So they will 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 viewing all the interests at stake. That is now being discussed. That could perhaps be a way in dealing with this. And that system has got a good start under the pressure of the terrorism cases. Because in the wake of the Sept 11<sup>th</sup> attacks, there has been built up in time a system 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 will get that information in the forces? For what purpose and in which framework? So the whole idea is that the force that has the information remains the owner of the information and he only in the end can decide upon the use of it.

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

**Answer:** He likes provocative things. I did a research for the Belgium parliament on one of the most awful cases in the country. I had access to all the files on these bandits who really terrorized Belgium in the 80's. In charge of a Dutch parliamentary inquiry and I did research on organized crime in 1995 - 96. I had access to all the information in the Netherlands. So

responding to that provocative statement, I would say on the one hand all the police forces these days have much to much information. I have seen massive amounts of information collected by police officers in many ways and the biggest problem is sometimes to select the relevant information. That I guess, is also one of the biggest problems in the US. They are overloaded by information. They could share a lot but it would make no sense. On the other hand sometimes police forces let the most relevant information as the result of lack of investments in the right direction in relation to the problem. I have seen this. If you don't make a priority of the traffic of drugs you have of course no information on it. If you are not interested in organized crime problems in a given field, e.g. 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. You should say what are we expecting from our police forces, what are our priorities, what are the main goals and 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, of course police forces can use this secrecy to cover up their non-knowledge on issues because then they have a monopoly. And I have seen examples of that, so I am not naive in this. They just can cover up that they don't know anything. You know that someone in Germany 30years ago, said that the strength of intelligent services is exactly that nobody knows what they (don't) know. And that is partially true.

In the research for the Belgian parliament I saw in the end there was a dirty war between the Gendarmerie and the Judicial Police. Members of the last-named force were not just not sharing information but they were operating against the Gendarmerie saying that some of its members were the suspects in this case. The issue of not sharing information in other words is not only related to the security of informers and to the interest of proceedings, it also has to do with trust, with (images of) integrity. Sometimes institutions have conflicts, and in order to prevent that the other could take the flowers as they say in Belgium, they are not willing to share information. So the whole issue of sharing information has of course also a very important institutional side. If you are building up a conflictual policing system that is of course guarantee that you will have

big problems in sharing information.

**Question:** With regards to organized crime one of the problems we have now is to try to understand the impact of organized crime in Canada. There is an ongoing task for researchers from different departments working on this issue. As you have mentioned, and wrote in your articles, what is organized crime and the second thing is once you come up with a definition, it is not only legal then the issue is how do you measure the impact of something that is difficult to define?

**Answer:** It is like in the terrorism case. If you are not focusing on terrorism you will not have data. If you don't have data it is very difficult to define the problem. The support of academics is very limited in general because they can collect relevant data most of the time only from open services. The criminal process has two functions in this regard. On the one hand you collect evidence with a view to the trial but the important intelligence function of the criminal process is to get an insight in to what is going. I defend always 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. So only by making cases you can collect relevant data. And relevant data can stimulate criminal cases so you get more or less a circle. You make 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 make more relevant cases than in the past.

**Question:** How do you make your case then, you focus on specific groups, on criminals organizations , on individuals?

**Answer:** To show this I learned a lot about this in New York City. I was advised of the Dutch Minister of Justice in the 80's here and then we got for the first time the discussion: do we have 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. Not here." So what is organized crime? This leads to a discussion of how we define organized crime. But on the other hand one should not only discuss but also do things and see to what extent we have problems related to the

definitions. Indeed, the definition of organized crime is a problem. Generally I always make the distinction, between 2 main forms of organized crime; the first is the delivery of illegal goods and services on black markets it may be drugs, weapons, diamonds, people. If this is being done in a more or less organized manner and that is the only way to deliver goods and services, you are near the field of organized crime. The other main form of organized crime is the illegal control of legitimate businesses. If you control parts of the construction or transportation like in New York City or waste disposal, if you can build up a monopoly in such industries by intimidating, by corrupting officials, by intimidating competitors and if necessary by killing them, then you have a racketeering thing, illegal control of legitimate businesses. That has always been my perspective on organized crime and it goes without saying that they may be inter-connected: people can make money on the black market and invest it in illegal control on legitimate businesses. People are involved in loan sharking and in the end they will say get me a part of your company. Most of the time, if they are organized criminals they will stick to their business. So they try to corrupt people, to intimidate competitors and so they build up a monopoly in a given market.

**Question:** They have to enter into the legitimate market in order to spend the money that they have. Don't you think so?

**Answer:** Of course and if you have a legitimate market it can also facilitate your operations on black markets, for example 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 most of the time that if you define the problem in this manner then your second problem is who is really powerful in those black markets? Who tries to get control on the legitimate businesses? And to know this "who" you need intelligence. The first thing you have to do is build up your intelligence capacity, officers who get familiar with these markets, who get familiar with the structures and mechanisms of these markets, and they in the end will detect the groups or networks or families who are important in these markets, if there are any. The whole discussion we still have in Europe is to some extent - but not that much

in the Netherlands anymore - that we started to count any group with more than 3 people as a manifestation organized crime. 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 built 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 steering what? how they can get the money? which people are really central among these 10,000? why is this man more important than the other one? Is it because he has access to money, to knowledge, to people who control boats or housing, has contacts overseas in the production countries or in the delivery countries. That is one of the focuses 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. What you need is a very qualified intelligence operation. That is the only way to know this. The next step is just to make cases, to that extent the police just have to pull themselves up by their own boot strap. That is the only way to do it.

That is the approach we see here in the Netherlands these days. For example we have 6 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, but which cases? So they ask from the regional forces and these special task forces, that they present a general analysis of the organized crime situation in their part of the Netherlands. These reports are brought together at a national level. They could perhaps make up 60 cases in the field of organized crime . We have, however, only the capacity to deal with 20 cases a year, even if you have 600, 700, 900 detectives. So they have to select your cases and of course must ask questions on the evidence there is, 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? To what extent they support or protect other criminal activities or low level crime problems in a given city or area? That is an ongoing process. What is going on now is a discussion on how this process can be harmonized, so that all the police forces and these special task forces will analyze the situation in their part of the Netherlands or in their fields of organized crime in the same manner so 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 in black markets.

**Question:** The prominent view in Canada on organized crime is that organized crime is mostly made of Asian groups, the Italian, the Mafia, the east European, outlaw motorcycles gangs. What do you think of this view?

**Answer:** First of all if you have all sorts of groupings, the question is the distinction between an organized criminal and a non-organized criminal? When can we say something is organized crime or not. In my work for these committees of inquiry I always stuck to a quite limited definition, saying if you have to do with organized crime, corruption in the end is not the most decisive distinction, because also in corporate crime and in professional crime you will sometimes have corruption cases. So, corruption is not really a distinction. The basic distinction between organized criminals in comparison to e.g. corporate criminals is their willingness and their capacity to use violence, intimidation, up to killing you. That is the first part my answer. The second part relates to this distinction among groupings of Italians, Asians, and so on. To some extent it still makes sense. You see it in the Netherlands too. Some of these organized crime groups, they are quite limited to the 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 not so decisive. Organized crime has everything to do with trust. If you have an illegal operation of a large scale, the only mechanism you dispose of to keep control and to be successful is trust and - if you don't have trust - you have still violence. But the trust is the main thing. And so it is not that much ethnicity or nationality that is important but the trust issue is important. If you have Turkish heroine traders, most of the time you see they come from the same region. They are even family members. But is not that the family as such is that important, but the trust issue is so important. If they are family members, they can trust each other, and can be successful in a risky environment. So to that extent, let's say has the ethnicity distinction lost a lot of its importance. Even, on the case of Chinese organized crime the only rational is that they can trust each other, because they come from the same region, speak

the same language, have social ties.

My third remark is that what we see here in the Netherlands and Belgium, over whole western Europe, we see more and more that organized criminals cooperate and integrate operations. Some time ago we had a very serious open case of trade in human beings. The case started in the Netherlands; sixty Chinese people were brought over to the United Kingdom. If you look to the details of this case, you will see that Chinese people were involved. The biggest man in Rotterdam however was Turkish, he organized it. And the drivers were Dutch. And if you look at it from an entrepreneurial viewpoint it makes a lot of sense because it would be quite stupid when a Chinese driver would bring the lorries from the Netherlands to England. That is the best sign to say to the outside world that something very unusual is going on. So that is why ecstasy producers hire grandparents and children to bring ecstasy to the United States.

**Question:** Criminal organizations establish partnership from time to time, to make sure that they can then take the drugs from south America and bring it to North America.

**Answer:** In the past the police saw organized crime as a reflection of the police organization- as stable and, hierarchal, organisations. That is a nonsensical thing. That image is really false.

**Question:** And at the same time it makes life difficult for researchers would like to try to develop an understanding of what the impact is in a country.

Because then it is not only the Asians who take from the poor and give to the rich. In the meantime beat up a lot of people.

**Answer:** We have also just had this discussion, you know, in Central Europe, Eastern Europe, Western Europe, and I wrote a lot against that. Western European politicians are saying that the organized crime problem come from the East, but in all the cases I have seen - and I saw a lot of cases in trading human beings, stolen cars, arms - most of the time you find cooperation between Dutch, Belgian, German and English criminals cooperating with Russians or Yugoslavians and

Slovaks. And quite understandable, these people don't know the languages. They are not familiar with our legal systems. They don't know where they can't get support. So they are really in need of each other. These are all cooperative mechanisms. They are not solists who can just organize illegal things in the whole world - it is impossible. It's a naive idea.

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

**Answer:** You see that if you look at the history of the mafia in NY. They operate in different markets and move from one market to the other. It just came out that they are operating now in the stock markets. So they moved into new markets, where nobody was expecting them and were not prepared for containing them, but they were operating them. But on the other hand they are still operating in the unions, at the NY Harbour. And they still commit all sorts of ordinary theft.

**Question:** Most of the time when we look at impacts of organized crime we try to look at the negative aspect of organized crime. There are positive aspects of organized crime show when the illegal money is being transformed by the legal markets and the banks. We don't hear a lot about this.

**Answer:** It reminds me of an article in the Dutch newspaper yesterday evening about one of these huge Russian typhoons, who came up after the collapse of the Soviet system. At that time they had a Minister of Finance, they wrote, who said: is it not a normal problem that these criminals get control of these markets and these companies? My examples perhaps were the Robber Barons one century ago. They operated like these criminal tycoons now do in Russia. At the moment they are powerful and have the money, but at a given moment they need a regular and secure system. They will become then the biggest supporters for the rule of law, because



that is in their interest. It perhaps will take 10, 15, 20 years until, it will end up in such a very regular system. But anyhow, that is the only way they can save and protect, in a secure environment, their interests.

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

And if you look at the European scene as I did in many cases, I saw that Moroccans who are involved in a hashish ring, here live 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, they build wonderful houses over there, but they are living in a very modest old neighborhood of Rotterdam and they keep it like this to prevent attracting attention from the police or other people. And of course, if they do that, then 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 case of trafficking women with East Asian countries for example. Why? It is a source of income for all those families connected to these women. Who not only work as prostitutes, but also as house maids in Saudi Arabia and other colonies. It is not that easy to convince them that they should warn women not go to the West because it is an enormous source of income. So they've are also positive sides, I am quite convinced of that. But on the other hand I would also differentiate between forms of organized crime. Take e.g. the illegal trade in weapons, it can perhaps support the producing countries, but in 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 80's black markets in gambling, number games, illegal casinos. Of course, lots of people earned their money there. I have seen a man who was paying several hundreds of people. His gambling operations were a source of income for many, many people. And 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, he gave work to so many people and was sponsoring clubs. Why is the police organizing these investigations against him? What they didn't know was of course the bad side of this. That's off course why you have to make criminal cases, that is the only way to get the intelligence you need and to show the world that it is not only that positive side, but that it always also has a negative one.

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

**Answer:** They can have surrogate interest in this. You have all the stories that they promote the issue in order to get the power and the money. On the other hand, I would say, 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. It is risky in a general sense that, if you are saying we have an organized crime problem, and we need equipment, people and money, 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 having a problem because the public is expecting from you to solve it. And if you can't solve it, people will ask you why you are not capable to solve it with all the money and power 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.

Because they knew that if they would accept that there is a problem, there would be a lot of social pressure to do something about it. And, if they would have to do something about it, within five or 10 years they would be asked to show the result. And intelligent police officers who can think in the long run don't like these problems. It's nice to have people and equipments, but one should also be aware of the other side. That is one reasons I believe organized crime can also be a negative problem for them. A problem that can undermine your whole legitimacy in the end.

But there are also problems in terms of corruption or misuse of powers. 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 just were so naive, when we said we had such a problem and we should build a special task force." Because in the end, that scandal has been de-legitimized 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 to keep control of the enormous risks, in these fields.

**Question:** A last comment?

**Answer:** Organized crime is not a separate wing in the social fabric of our societies. You should not isolate your organized crime problems. And particularly you shouldn't say, it is a criminal law problem because then you are lost in the long run, then you are isolating the problem and you reduce your organized crime problem to a procedural problem. But that is an absolutely unwise and unacceptable approach. The containment of organized crime amounts to close cooperation between administrative and judicial authorities. They all should be involved. Otherwise you can't control the problem.