

European Union Civilian Policing: Foreign Policy Action or Internal Security Tool?

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Introduction

The deployment of the European Union Police Mission (EUPM) to take over for the United Nations-led International Police Task Force in Bosnia-Herzegovina as of 1 January 2003 is bringing EU police participation in peace operations into the limelight. As the first field deployment ordered under the new European Security and Defense Policy (ESDP), which was declared operational only a year ago at the Laeken European Council, it indeed attracts much attention.

International policing has in fact been extensively studied during the past decade as it has gained importance as a component of multinational operations. One of the approaches in those analyses addressed the question from the recipient's point of view, and analyzed its objectives and implications in terms of participation in state and institution building. On the other hand, the donors' motivations and the role of institutions were also central, as was a more operational approach evaluating the factors contributing to success or failure of such operations, thus focusing on the kind of mandate, doctrine, and policies adopted.

In this respect, the real originality of the involvement of the European Union is that it is the first time an international organization with a treaty-stated perception of its own security has committed itself to international policing operations in the name of its own security interests. Therefore, one sees here a new type of action that is more than a multinational operation, as it takes place in the much wider political framework of the Union. But if the EU is more than an intergovernmental body, considering it simply as a state-like homogeneous political entity with clear goals and interests would be too superficial. The aim of this paper is therefore to look at this issue from inside, analyzing both the reasons for the EU's commitment as well as its political and institutional implications. From a more general point of view, this approach can shed some light on the emergence of a common vision of security among the different actors in the Union.

Indeed, the European formal treaty structure currently sharply differentiates between internal and external security, defining different means, ends, and decision-making mechanisms for actions in those two fields. But international policing operations lie at the crossroads of those two different, if not opposite, areas. They are clearly foreign policy-oriented actions, mainly developed under the

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EU's ESDP rules and procedures, but which use police forces that were originally developed as an internal security tool. One can also question their efficiency, as the planning and conduct of operations was confronted with such a rigid institutional framework. Furthermore, as the demarcation line between internal and external security gets more and more blurred, can the EU's security interests still be defined and dealt with within this framework? Is the current pillar structure still adequate to tackle the perceived threats? Can the EU's internal and external security still be considered as separate matters? What are the institutional and political consequences of this evolution?

The answer this paper is aiming to provide to these questions is centered around the argument that the EU's involvement in international policing has reasons for being that go beyond the stated (i.e., CFSP) reasons. Indeed, it has a clear internal security role, which, if it is real, is not clearly laid out in the legislative documents. Therefore, the current institutional and political structure that formally and operationally distinguishes between internal and external security is no longer adapted to a comprehensive European security policy and should be clarified and redefined.

To support this argument, this paper will first, after giving a historical background of international and European policing, analyze the institutional implications, shortcomings, and limitations of understanding such policing only as a foreign policy action. Second, it will show the convergence between the internal security field's (Justice and Home Affairs, or JHA) external dimension and the internal security aspects of international policing operations, a convergence which will underline the need to reinforce cross-pillar and inter-institutional coordination.

Background

Where Have We Come From?

Although policing in peace operations has been a much-debated issue over the past half decade, the practice itself is not totally new. Indeed, it is almost as old as peace operations, as the first policemen were deployed in the early sixties in the Congo as a "haphazard supplement to the military peacekeepers."² But this had nothing to do with the form that policing has taken today. In fact, the evolution can be summarized in three main stages.³

The early type of police participation in peacekeeping operations (PKOs) involved primarily officers in charge of observing and reporting on the activities of local police forces, essentially to prevent undemocratic behavior and human rights abuses. This type of mission was extended to include a monitoring role in Namibia

² Annika S. Hansen, *From Congo to Kosovo: Civilian Police in Peace Operations*, Adelphi Paper 343, International Institute for Security Studies (Oxford: Oxford University Press, 2002), 9.

³ *Ibid.*, 15–32.

(1989 – 1990), where the UNTAG force was to accompany local police, supervise its investigations, and receive and investigate complaints about its behavior.

The next type of operation then quite naturally evolved into a concentration in the early 1990s on police sector reform: in El Salvador, Bosnia, Haiti, and Mozambique, the issue was primarily to reform and restructure—or to establish—a local police force. This concept was first formalized in 1995 by the UN Department for Peacekeeping Operations (DPKO) as the SMART concept: Supporting human rights, Monitoring the local police, Advising on humane and effective law enforcement, Reporting on situations and incidents, Training in accordance with international best practices. The need for this approach was taken into account in the Brahimi report of 2000, which underlined the growing complexity of peace operations and the need for the deeper involvement of police forces in security sector reform.⁴

The Kosovo and East Timor operations marked a new step in the role of policing in PKOs. Indeed, with the establishment of UN civil administrations, the need arose to take on responsibility for maintaining law and order, and then to get involved in “executive policing” missions with UN units formed for this purpose. This kind of operation is by far more complex, as it points out the highly sensitive problems of the use of force, the question of applicable law, and the blurred dividing line between the military and police actions and responsibilities.⁵

As far as Europe is concerned, its involvement in such operations was much more limited before the creation of the relevant international institutions. But, although limited in time and scope, the two European-led police missions⁶ carried out under the auspices of the Western European Union (WEU) provided useful insights on the difficulties that would be faced and the resources that would be needed.⁷ The experience gained from these actions was then used to further develop the EU’s capability in this area.

EU Policing in Peace Operations: A Component of the Union’s Foreign Policy

Within the European Union, the participation of police units in international peace operations has been developed under the second pillar as part of a civilian crisis management (CCM) capability, in order to complement the military means for car-

⁴ United Nations, “Report of the Panel on United Nations Peace Operations” (“Brahimi Report”), UN doc. A/55/305 S/2000/809, 21/08/00, particularly points 118–126 and 219–225.

⁵ See Renata Dwan, ed., *Executive Policing—Enforcing the Law in Peace Operations*, Stockholm International Peace Research Institute (Oxford: Oxford University Press, 2002).

⁶ The police mission to advise on public order issues and the establishment of a multi-ethnic police force, as part of the EU’s administration of the Bosnian city of Mostar (1994–1996), and the WEU Multinational Advisory Police Element (MAPE) in Albania (1997–2001). See Western European Union, “International Policing in South-eastern Europe, report from the Assembly,” doc. A/1721, 07/12/00.

⁷ Renata Dwan, “EU Policing for Peace Operations: What Does it Mean?” discussion paper EIRU/023, European Interdependence Research Unit, Oxford, 2002, 4–5.

rying out the so-called “Petersberg tasks.”⁸ This was to a great extent an adaptation to the new challenges of peace operations and shows the ability of the Union to respond quickly to the evolution of international security challenges. Indeed, the growing complexity of international crises (or the increased perception of their complexity) highlighted the limits of a general military response, as law and order as well as security sector reform were placed higher on the agenda. However, it can and must also be interpreted as a way for the EU to achieve actor status on the international stage, thus attempting to fill in the widening gap between capabilities and expectations.⁹ Confronted with the slow development of the European military capability, as well as the leading and uncontested role of the U.S. in this area, the Union had to develop an original way of getting involved in international crises, especially in fields that were susceptible to more rapid development. Moreover, a certain reluctance of the military to perform police duties—for a number of reasons, most of which could be described as “cultural”—strongly advocated the expansion of peacekeeping forces to include non-military elements.

From an institutional perspective, the European non-military crisis management capability has been developed under the framework of CFSP-ESDP, although it is not clearly laid out in the Treaties. Indeed, the Amsterdam and Nice Treaties only mention the diplomatic and military tools of crisis management. On the other hand, the pre-existing civilian crisis management tools were mainly focused on emergency relief and humanitarian aid, and were managed by the Commission (in particular the European Commission Humanitarian Office, or ECHO).

This orientation towards a civilian response to crisis management was clearly a consequence of both the nature and the complexity of the Kosovo crisis, and the incapacity of the Union to be clearly active in addressing it.¹⁰ Indeed, the idea of non-military crisis management was first formalized at the Cologne European Council in June 1999.¹¹ The Helsinki European Council in December 1999 then produced a report on non-military crisis management,¹² justified under the very

⁸ Those tasks, defined by the WEU in 1992, delimited the scope of its potential commitment in crisis management, ranging from “humanitarian and rescue tasks” to “peacekeeping tasks and missions of combat forces in crisis management, including peacemaking.” They were included in the Treaty on the European Union in 1997 (Amsterdam), Art. 17 §2.

⁹ See Christopher Hill, “Closing the capabilities-expectations gap?” in *A Common Foreign Policy for Europe*, ed. J. Peterson and H. Sursen (London: Routledge, 1998).

¹⁰ Annex 2 to Annex IV to the Conclusions of the Presidency, December 1999. See also Dwan, “EU Policing for Peace Operations,” 6.

¹¹ “The European Council invites the Council (General Affairs) to deal thoroughly with all discussions on aspects of security, with a view to enhancing and better coordinating the Union’s and Member States’ non-military crisis response tools. Deliberations might include the possibility of a stand-by capacity to pool national civil resources and expertise complementing other initiatives within the common foreign and security policy.” Conclusion of the Presidency, point 56, Cologne, 1999.

¹² Appendix 2 to Annex IV to the Conclusions of the Presidency, Helsinki, December 1999.

general rubric of Article 12, Indent 5 of the Treaty.¹³ This report essentially identified resources in the Union and the member states (such as civilian police, humanitarian assistance, administrative and legal rehabilitation, search and rescue, human rights, and electoral monitoring), and proposed a general action plan to coordinate them.¹⁴ As far as policing is concerned, a first step was taken by mentioning the need for a capability to deploy rapidly and sustain a civilian police force in international operations.

The role of policing became progressively central in discussions of peacekeeping operations, leading to the February 2002 General Affairs Council decision to deploy the EUPM in Bosnia-Herzegovina.¹⁵ Indeed, the June 2000 European Council in Santa Maria de Feira set concrete targets in terms of global capability (a 5,000-strong police force, including a 1,000-man rapid reaction force) and of higher standards for police missions (compared to the previous ones, which were mainly those of the UN). In the Conclusions of the Presidency from this Council meeting, the police component of civilian crisis management is considered as the priority around which all other areas in which work is “felt as necessary if a positive outcome of a police mission is to be ensured” are articulated.¹⁶ The Nice European Council in December 2000 developed the Feira conclusions and paved the way for the Göteborg final document of June 2001, which can be considered at this point to be the main framework document for police operations (and non-military crisis management more generally).¹⁷ The conclusions set forth a comprehensive list of targets in terms of civilian crisis management, and identify key issues to be addressed in the policing field. Basically, they go further in terms of operationalization than previous guidelines in their development of a strategic-level planning and conduct capability, command and control concepts and systems, as well as a legal framework for police operations and a training program for police officers. They in fact emphasize the need for permanent structures and expertise within the Council, as well as for a concrete commitment from the member states.

¹³ “The Union shall pursue the objectives set out in Article 11 by (...) strengthening systematic cooperation between Member States in the conduct of policy.”

¹⁴ See note 9. See also, Council of the European Union, “Non-military instruments of crisis management,” doc. 11044/99 REV1, 16/09/99; and Council of the European Union, “Non-military crisis response instruments available in EU Member States,” 12323/99, 24/11/99.

¹⁵ Council of the European Union, “Council Joint Action on the European Union Police Mission,” doc. 6823/02, 11/03/02; Council of the European Union, “Council Decision concerning the conclusion of the Agreement between the European Union and Bosnia and Herzegovina (BiH) on the activities of the European Union Police Mission (EUPM) in BiH,” doc. 11988/02, 17/09/02. The argument can be made that the EU was trapped by its own rhetoric, having declared the ESDP operational in Laeken two months earlier (Dwan, “EU Policing for Peace Operations,” 15).

¹⁶ Appendix 3 to Annex I to the Conclusions of the President, B-II, Santa Maria de Feira, 19–29 June 2000.

¹⁷ Martje Rutten, *From Nice to Laeken. European Defence: Core Documents*, Chaillot Paper 51 (Paris: Institute for Security Studies, 2002), 30–68.

Shortcomings and Limitations of a Pillar Two-Centered Approach

Despite the apparent institutional homogeneity within the second pillar and the real added value of the EU in terms of policing, the current structure reflects a combination of interests, perceptions, and preferences of different actors through national and institutional political gamesmanship. Analyzing those games within the second pillar and between the different pillars not only gives an interpretation of the path chosen by the EU to get involved in international policing, it also shows that the whole process of developing a coherent international policing capability within the Union is seriously undermined by the Union's institutional structure itself.

On the one hand, it appears that policing becomes in the second pillar not only a matter of a shared EU approach to security, but also a way for the states to promote their individual conceptions of the ESDP. Furthermore, from an institutional point of view, such jockeying underlines the lack of coherence of the pillar structure, as it clearly reveals the lack of institutional connections with the other pillars that would be necessary to produce a more efficient outcome.

National Games: Developing EU Policing vs. Shaping the ESDP

From various national perspectives, support for the move towards developing a European policing capability is far more balanced than the Council conclusions imply: if some member states supported it (whether unconditionally or only selectively), some others expressed strong reservations.

The main opposition to a firm commitment from individual states to a European police force has been based on the availability of personnel. Security is an increasingly sensitive issue in national political debates, and states are therefore reluctant to take any political risk to commit police officers abroad when the population is asking for more at home. Moreover, it is difficult for the same reasons to keep forces "on call" when they could be doing something else.

Closely linked to this issue is the question of training. As opposed to military personnel, policemen can hardly be comprehensively trained for peace operations before deployment, due to lack of time, adapted structures, and (more importantly) international procedures and frameworks, since NATO standards have been developed for the military. This situation therefore has a deep impact on interoperability, or the ability of officers from different nations to work together.

The different national police cultures have also influenced the willingness of the states to commit individuals or units. Those differences have operational implications in at least two areas. The first is the relationship between police units and military forces.¹⁸ The logic that led to the Nice European Council "guiding principles" in terms of policing was in this respect quite clear: coordination of

¹⁸ See Thomas Papworth and Sharon Wiharta, "Policing Europe: European Policing? The Challenge of Coordination in International Policing," Stockholm International Peace Research Institute workshop report, Stockholm, 4–5 May 2001.

powers and authority should be entrusted to the military commander in the early stages of an operation, while in later phases the military force should provide support to the civilian authority.¹⁹ But in some member states, military officers and police commanders seem to oppose this logic. As far as they are concerned, the fear is mainly one of losing a rather substantial degree of autonomy in providing support to the other function, given that some of the member states assume that “democratic policing rules out any intervention of the military.”²⁰ Furthermore, some countries, such as the United Kingdom, have legal or constitutional difficulties with allowing their police officers to serve under military command. The second type of “cultural difference” regards juridical practices. Although the Conclusions of Nice called for a legislative framework (some called it a “portable juridical kit”) to be implemented in the field that could level differences between various juridical practices, the significance of these differences should not be ignored.²¹ Criminal law procedures, for instance, vary from one state to another, with a clear distinction between the Anglo-Saxon and the Latin traditions, and have a great influence on the relationship between police officers and prosecutors and judges.²²

The main reason—or interest—some supporters voiced in favor of a civilian crisis management capability within the Union was that it—especially its police component—represented a viable alternative to the emerging European military capability. Indeed, as the Kosovo crisis demonstrated the need for a comprehensive response, the move from Saint-Malo to Nice clearly put an increased emphasis on the military. Three types of reactions of states incapable or unwilling to join this movement can then be identified.²³ The first group encompasses the “neutral” states, who see the increasing closeness of the relationship between the EU and NATO as questioning their military non-alignment. These states were joined by a second group of other, smaller EU members in expressing their concern about a potential domination of EU crisis response by Britain, France, Germany, Italy, and Spain. Finally, a third group of supporters of a non-military crisis management capability were found among anti-federalists in some countries, such as Denmark

¹⁹ Carlo Jean, *An Integrated Police Force for the European Union* (Brussels: Centre for European Policy Studies, 2002), 31.

²⁰ Ibid.

²¹ See Pierre Dolo (Colonel, direction de la Gendarmerie Nationale), “Le ‘maintien de la paix publique’ dans les crises,” communication at the Doctrine Forum of the French Army Commandement de la Doctrine et de l’Enseignement Supérieur, Paris, 15/06/01. Available at <http://www.cdcs.terre.defense.gouv.fr/sitefr/Organismes/cr/forumdu15juin2001.pdf>. See also Council of the European Union, “Seminar on the role of police in peace-keeping operations (Cascais 29–31 May 2000)—Summary of Presidency and major points of interest,” doc. 9113/02, 09/06/00.

²² Jean, *Integrated Police Force*, 25.

²³ Dwan, “EU Policing for Peace Operations,” 6–7.

and the United Kingdom, who saw it as a way to broaden the scope of the CFSP and therefore diminish its real weight.

But some other states not only supported the police capability *per se* as a counterbalance to the increasing weight of the military, but also because it allowed them to make use of some of their specific capabilities in the field of policing. In this respect, the role of countries that could commit police forces with military status (such as the French Gendarmerie and the Italian Carabinieri) was crucial.²⁴ This group of four countries, also known as FIEP (for the initials of France, Italy, Spain [España], and Portugal), exerted a strong lobbying effort in the Council and managed to get some of its proposals through. According to those states, these kinds of units can solve some of the problems posed by the creation of a European police force mainly by resolving the question of availability; having military status, those units are trained in quick deployment to maintain law and order and are well equipped. They are accustomed to operating as formed units and can be deployed as such without altering their command and control structures, thereby increasing their efficiency. Moreover, their military status enhances both their mutual interoperability and their ability to integrate into a military command structure, making them the ideal transitional structures between the military operation and the reconstructed local authority.²⁵

Institutional Games: A Need for Clarification

The emergence of a police force within the crisis management capability of the EU does not only reflect the particular interests of national actors. The Union is itself a complex aggregate of different institutional and bureaucratic bodies, all of which influence the decision-making process in varying degrees.²⁶ This institutional structure, and particularly the division of the decision-making process into three different pillars, then is reflected in its own productions. If international policing is formally part of the ESDP, and therefore falls into the intergovernmental second pillar, the different institutional actors involved in those actions are not only second-pillar actors. As a consequence, civilian police—and the process of long-term stability building, of which civilian police actions are a part—clearly

²⁴ This lobbying took different forms. A meeting of officers from those countries agreed, for instance, on the concept of FESI (European Security and Investigation Force, based on police with military status), as a transition between military intervention and the transfer of authority to reconstituted local police, a concept that Mr. Solana is said to be encouraging; see Statewatch, “EU Global Policing Role: How Non-military Crisis Management will Contaminate Justice and Home Affairs,” *Statewatch Bulletin* 10:3/4 (June–August 2000). France could also exert a more direct influence during its presidency, as reflected by its contribution to the “Roadmap to meet concrete police targets”; see Dwan, “EU Policing for Peace Operations.”

²⁵ Didier Bigo, “When Two Become One”, in *International Relations Theory and the Politics of European Integration*, eds. Morten Kelstrup and Michael Williams (London: Routledge, 2000), 189.

²⁶ See Helen and William Wallace, *Policy Making in the EU* (Oxford: Oxford University Press, 4th ed., 2000).

interact both with the European Community first pillar as well as with the Justice and Home Affairs area (under Title VI of the TEU for the third pillar, and even under Title IV of the European Community Treaty for some matters). The most striking feature when looking at police operations and civilian crisis management from a Title V perspective is the number of institutional bodies involved and the lack of coordination between them.

The overall coordination in this area is supposed to be performed by the Committee for Civilian Crisis Management (CivCom), created under the Portuguese presidency in May 2000.²⁷ Formally operating under COREPER authority, the CivCom's main role is to provide advice to the PSC on second-pillar and member states' activities, and to COREPER on Community activities. But its role appears to be fairly limited, as it has no operational role in planning or conducting operations. The Committee was given technical competence in police matters under the Swedish presidency with the creation of a police experts working group. From a general point of view, this somewhat redundant structure does not seem to provide any added value, but instead complicates the decision-making process and makes it less transparent. In fact, the weight of national representatives in the committee and its relative institutional weakness can be seen as a way to counterbalance the increasing weight of the Secretariat.²⁸ Indeed, this institution has been active in the field of policing, both in making propositions during the build-up phase of civilian crisis management and in planning and now conducting police operations. But here again the principle of "unity of command" is far from being achieved, mainly due to competing interests.²⁹

A police operations planning unit (also known as the Police Unit) was created in Directorate General E (the directorate in charge of external relations in the Council Secretariat, which includes a Crisis Management directorate) in 2001 after the Göteborg European Council. It has an extensive mandate centered on "planning and conduct of police operations, including integrated planning and coordination, situation assessment, preparation of exercises, and preparation of legal framework and rules."³⁰ But two main difficulties appear in implementing these tasks.

First, the Police Unit is noticeably understaffed.³¹ A parallel can be drawn with the EU Military Staff, which has the same kind of mandate in the military area: while the EUMS is composed of 135 personnel and is directly linked to the HR/SG (the head of the EUMS has the rank of Director General), the Police

²⁷ Council of the European Union, "Establishment of a committee for civilian crisis management," doc. 6755/00, 10/03/00.

²⁸ Dwan, "EU Policing for Peace Operations," 18.

²⁹ Jean, *Integrated Police Force*, 3–4.

³⁰ Annex to the Conclusions of the President, "Presidency report to the Göteborg European Council on European security and defence policy," point 22, 15–16/06/01.

³¹ Dwan, "EU Policing for Peace Operations," 17.

Unit is composed of seven seconded police officers and is far from having the same institutional weight and visibility. Moreover, the power and the resources provided to the Unit seem to be a concern, as the Commitment Conference held in Brussels emphasized.³² As some states show a willingness to commit police forces to participate in police operations, they seem to be less keen to surrender part of their sovereignty by letting a European structure have too much influence over the planning and conduct of these operations.

Secondly, the Police Unit appears to be quite isolated from the other actors in civilian crisis management involved in police operations. The major weakness in this respect is the lack of an efficient integrated civil-military planning structure in the EU, although the PSC was formally given this role by the Treaty following Nice.³³ This could be offset by improved coordination between the existing bodies, but the relationship between the Police Unit and the EUMS cannot help but be unbalanced since, given their different size and institutional position and weight, they do not operate on the same footing

Moreover, the reasons for such a lack of interaction seem in some cases to go beyond the lack of a suitable institutional framework, as in the case of the relations between the Police Unit and the Policy Planning and Early Warning Unit (PPEWU). Indeed, this body, which is directly attached to the HR/SG, has been initially active in setting the targets and agendas for civilian crisis management in the absence of any other specialized agency, thus increasing the role of its chief, Javier Solana.³⁴ In this light, the issue at stake becomes partly the respective influence of the Secretariat, which does not want to see its role confined to administrative support to the Council, and the PPEWU, which is looking to maintain its prerogatives.

The institutional gamesmanship, redundancies, and competitions spill over into the activities run under Title V of the EU Treaty. In this respect, the role of the Commission and its implications for civilian crisis management and policing in peace operations can lead to different interpretations. The first Commission actors involved in crisis management (e.g., the Directorate General for Development and ECHO) shared a traditional and complementary approach to the concept, focused on the provision of technical infrastructure, humanitarian assistance, and aid to economic development. The more recent involvement of the Directorate General for External Relations (DG RELEX), under the leadership of Chris Patten, is aimed at counterbalancing the increasing role of the Council in the EU's foreign policy, thus blurring the dividing line between the two institutions.³⁵ If the Council is formally in charge of crisis management, the Commission is in charge

³² Council of the European Union, "Declaration of the Police Commitment Capabilities Conference," Brussels, 19/11/01, doc. 14197/01, 19/11/02, point 6.

³³ See Jean, *Integrated Police Force*.

³⁴ Dwan, "EU Policing for Peace Operations," 18.

³⁵ *Ibid.*

of institution building, and it seems to have adopted an extensive interpretation of the concept of training and advisory missions. Security sector reform, and consequently police training, then also become Commission responsibilities.³⁶

Another interaction—which is carefully ignored in all of the EU official documents—is the relation between policing in peace operations and the Justice and Home Affairs area, both under Title VI of the EU Treaty and Title IV of the EC Treaty. This relationship is crucial, for it has consequences for the very way that the EU’s own security will be perceived and defined; indeed, the institutional framework inherited from Maastricht maintains an artificial and outdated distinction between internal and external security. Looking at policing only through the lens of foreign policy is thus not enough, and it is necessary to have a closer look at this cross-relationship between the EU’s inside and outside. What are the consequences of using what is by definition an internal security function (policing) as a foreign policy tool? What is the role—if any—of international policing in terms of internal security? What are the benefits of getting involved in such operations?

The Internal Security Aspects of Policing

The External Dimension of JHA

The Justice and Home Affairs domain in the EU has, despite its name, an external dimension that cannot be ignored. Indeed, a traditional vision of political science originating in Jean Bodin and Thomas Hobbes’ works makes a clear separation between the internal and the external political spheres in terms of security.³⁷ Internal security, initially defined as regime security and later as security of the citizens, could be achieved by the state, the sovereign ruling among his subjects. At the other end of the scale, international security was merely defined as defending the state against aggression from other states or state-like actors. This dual vision was strengthened by the establishment of the nation-state in Western Europe; the Westphalian order was composed of units entrusted, according to Max Weber, with the direct monopoly, through different agencies, over legitimate internal and external violence.

But the conjunction of two main factors made the picture much more blurred and fuzzy. On the one hand, the effects of globalization on criminal activities resulted in a globalization and transnationalization of threats that had previously been considered as falling under the category of internal security.³⁸ On the other hand, regional integration, especially in Europe, created a new type of “internal

³⁶ European Commission, “Commission Communication on Conflict Prevention,” COM (2001) 211 final, 11/04/01.

³⁷ See M. Anderson, M. Den Boer, P. Cullen, W. Gilmore, C. Raab, and N. Walker, *Policing the European Union* (Oxford: Clarendon Press, 1995), in particular Ch. 3, “Political Theory of Police Cooperation.”

³⁸ Alessandro Politi, *New Transnational Risks and European Security*, Chaillot Paper 29 (Paris: Institute for Security Studies, 1997).

space”—inside Europe but outside the borders of the member states—in which a new concept of internal security was to be applied. As a consequence, the Justice and Home Affairs area—and mainly policing, which used to be a purely internal concern—naturally finds an external role through two of its main characteristics.

First, this cooperation is built on networks that unite national agencies in charge of internal security.³⁹ The 1970s saw the proliferation of informal clubs of experts dealing with what were not yet called transnational threats, initially terrorism (Bern group; the police working group on terrorism, or PWGOT; Trevi group; Vienna group) and drug trafficking (Pompidou group). Those groups were not formally or institutionally linked with the EC (which had no formal competence in these areas at the time), but developed a strong cooperative culture and common perceptions of the threats and ways to deal with them. During the 1980s, this cooperation expanded in two ways, involving more and more actors (not only policemen but also magistrates, customs officers, and even military officers via police units with military status and intelligence services) and dealing with a widening array of matters, extending from terrorism to drug trafficking, organized crime, smuggling, and illegal immigration.⁴⁰ The evolution of this internal security field into what became the Justice and Home Affairs area of the European Union has thus been heavily shaped by the relative position, weight, and perceptions of the different actors involved.

Indeed—and this is the second characteristic of JHA cooperation—the specific discourse and definition of the threat is central to the form that such cooperation has taken, and shapes the political, institutional, and operational aspects of this policy.⁴¹ European politicians have indeed emphasized the security deficit resulting from the abolition of border controls and the implications for transnational mobility, terrorism, organized crime, drug trafficking, illegal immigration and, more recently, trafficking in human beings. These are clearly seen as major risks for European security.⁴²

From an institutional point of view, the linkage of the different elements of an external threat to internal security into a security continuum appears clearly in the structure of the Maastricht Treaty creating the European Union, which links the areas of law enforcement and free movement of people.⁴³ The third pillar area then groups under a single coordinating committee (K4 committee, which became the Article 36 Committee, or CATS, after Amsterdam) all the Union actions in

³⁹ See Didier Bigo, *Polices en réseaux, l'expérience européenne* (Paris: Presses de Sciences Po, 1996).

⁴⁰ Didier Bigo shows clearly the extension over time of the competence of the various cooperative groups mentioned above (*Polices en réseaux*, 351).

⁴¹ See Anderson, et al., *Policing the European Union*, esp. Ch. 5, “Internal and External Security”; and Monica Den Boer, “Wearing the Inside Out: European Police Cooperation between Internal and External Security,” *European Foreign Affairs Review* 2 (1997): 491–508.

⁴² See Politi, *New Transnational Risks*.

⁴³ See Bigo, “When Two Become One.”

the fields of immigration and asylum, police and customs cooperation (including drugs and terrorism), and civil and criminal judicial cooperation. And although the Amsterdam Treaty transferred some of these third-pillar responsibilities to the first Community pillar (under Title IV of the EC Treaty), one cannot speak in terms of a de-linkage. In fact, if the decision-making rules are different, the same culture still prevails: both the DG JHA in the Commission and the DG H (the Council Secretariat body in charge of JHA) in the Council are still dealing with both Title VI and Title IV matters, and most of the representatives in the working groups are the same.

This double characteristic of the historical and operational importance of international law enforcement networks and the perception of an internal threat of external origin then naturally leads to the definition of an external role for the Justice and Home Affairs area. In the case of European “internal” security, this materialized first in operational achievements; the externalization of internal security resulted in an external projection of internal security agencies, which reinforced their cooperation with third countries in four areas.⁴⁴ Police cooperation started initially with training in Central and Eastern Europe and the Baltic states, and was then complemented with increasing exchanges of information between Europol and third countries, particularly concerning drug trafficking. Immigration services also began to exchange more information, while customs services focused on guarding the EU’s external borders. Finally, judicial linkages aimed at fostering cooperation on key issues such as organized crime and trafficking in human beings.

Beyond those operational achievements, the international—or rather the extra-European—role of JHA was institutionalized through the 1990s, mainly through the development of pre-accession norms for candidate countries. But it reached a more general scope with the Tampere European Council, which formally recognized the need for “stronger external action” in the field of JHA.⁴⁵ Those points were subsequently developed in documents issued by DG H, which constitute a codification of that external role.⁴⁶ Thus, the internal security of the EU needs to be at least assured through external action. But where does international policing fit—if anywhere—in this picture?

The Internal Security Role of CIVPOL Operations

An EU civilian police component in crisis management operations has by definition a role in Justice and Home Affairs external policy, for there seems to be a good

⁴⁴ Ferruccio Pastore, *Reconciling the Prince’s Two Arms: Internal-external security coordination in the European Union*, Occasional Paper 30 (Paris: Institute for Security Studies, 2001), 2–3; Den Boer, “Wearing the Inside Out.”

⁴⁵ “Conclusions of the Presidency,” Tampere European Council, points 59–62, 15–16/10/99.

⁴⁶ Council of the European Union, “EU Priorities and Policy Objectives for External Relations in the Field of JHA,” doc. 7653/00, 06/06/00; and “Troika Program for External Relations in the Field of JHA,” doc. 10685, 05/07/02.

deal of common ground between the two areas. Indeed, the documents dealing with the external aspects of JHA expressly mention themes related to civilian crisis management and policing. For instance, in a case where an EU action is felt to be necessary in its “near neighborhood,” including the Balkans, state stabilization, rule of law, and the fight against organized crime are presented as key aspects.⁴⁷ Furthermore, some JHA-related bodies are involved in civilian crisis management actions as part of a JHA external action, and the national representatives sitting at the CIVCOM are usually seconded by their third-pillar attaché.⁴⁸ This JHA involvement also includes offering training courses for police commissioners at the European Police Academy, which, although it is a typical third-pillar body, has among other missions the design and provision of training programs aimed at preparing EU police forces to take part in non-military crisis management.⁴⁹ The other third-pillar body involved in police operations is the police working group, which is involved in the elaboration of in-theatre training programs as well as selection criteria for police officers.⁵⁰

On the other hand, all levels of the system, whether national or European, recognize the risk of a spill-over effect within the EU of security problems in its neighborhood. Therefore, tackling those problems with an EU police force appears to be a legitimate way of protecting the Union’s internal security.

Most of the European states share such a discourse. When the British Home Secretary Jack Straw notes that, “the Balkans have become the gateway to Europe for organized criminals,” the EUPM is described in the same document as a “UK-led project to tackle organized crime in South Eastern Europe.”⁵¹ The French Gendarmerie also considers the internal security benefits of such police operations. Indeed, in addition to the experience gained by the participants, which is considered useful in itself, these operations allow the gathering of information on criminal networks that can be used in national operations.⁵²

The connections between internal and external security are also taken into account by the two major security organizations in Europe, NATO and the EU. Lord Robertson underlines the geographical continuity of organized crime from the Balkans into Europe when he talks about a single black market “exporting its

⁴⁷ Council of the European Union, “Troika Program For External Relations in the Field of JHA,” doc. 10685, 05/07/02, 12–13.

⁴⁸ *Ibid.*, 17.

⁴⁹ Council of the European Union, “CEPOL annual work programme for 2003,” doc. 9419/02, 04/06/02, 4.

⁵⁰ Council of the European Union, “EU selection criteria for police officers, their equipment, and requirements for their training in the context of civilian crisis management,” doc. 5038/3/01, 19/03/01; Council of the European Union, “Non-military crisis management—Introductory information for police forces in the area of operations,” doc. 8888/1/01 REV 1, 29/08/01.

⁵¹ Foreign and Commonwealth Office, Daily Bulletin, 25/11/02, available at www.britishgebotschaft.de/en/news/items/021125a.htm

⁵² Dolo, “‘Maintien de la paix publique,’” 94.

nefarious products right to our doorstep” (e.g., “drugs that . . . end up on our streets and in our schools,” “guns . . . putting our police officers more at risk,” prostitution, and an increased number of asylum-seekers), which must be addressed by law enforcement bodies. He therefore advocates the basic realist view that, if NATO’s commitment in the Balkans was motivated by humanitarian concerns, it was also because “the broader effects of unchecked conflict would be damaging to our own societies.”⁵³

If the EU institutional discourse seems to carefully avoid such rather blunt statements in order to preserve a more altruistic image, one can nevertheless notice that the same kind of link is made between international policing and internal security. Using the example of the Balkans, the two key indicators of success for such missions are, according to Javier Solana, the re-establishment of law and order in the region and the eradication “of the organized crime which stretches across the Balkans into the European Union.”⁵⁴ This linkage was codified in the Feira European Council conclusions, which mention the management of adverse effects on EU countries as one of the objectives of civilian crisis management.⁵⁵

This direct link with third-pillar activities has been emphasized by the Council bodies in charge of policing and the High Representative for CFSP as an incentive for national contributions.⁵⁶ Indeed, the internal benefits of such operations are the main argument that could convince JHA ministers to send some of their policemen abroad at a time when security at home is high on domestic political and electoral agendas. But this goes even further when it comes to dealing with the terrorist threat. Indeed, the EUPM mission statement includes the development of a state-level capability for countering terrorism.⁵⁷ This aspect has been developed in a confidential Council document that presents the fight against terrorism as an important secondary mission of the EUPM, which led to the reinforcement of the police force with twenty-five anti-terrorist specialists.⁵⁸ In consequence, one can again see here a clear operational link between second-pillar and third-pillar activities that is not reflected in the legal and formal arrangements.

Therefore, it appears that the interaction between police operations and the EU’s “internal” security goes well beyond the stated cross-pillar coordination in the training of police officers, and that the two issues—rebuilding and enforcing

⁵³ Lord George Robertson, “International Security and Law Enforcement—A Look Ahead,” speech at the Law Enforcement and National Security Global Forum, Edinburgh, 19/06/01.

⁵⁴ Javier Solana, “Message to the EU Conference of National Police Commissioners,” Brussels, 10 May 2001; quoted in Rutten, *From Nice to Laeken*, 2002, 1–2.

⁵⁵ Conclusions of the Presidency, Santa Maria da Feira European Council, 19–20 June 2000, Appendix 3 to Annex I; quoted in Martje Rutten, *From Saint-Malo to Nice. European Defence: Core Documents*, Chaillot Paper 47 (Paris: Institute for Security Studies, 2001), 146.

⁵⁶ Discussions with Council officials, February 2003.

⁵⁷ Council of the European Union, “Council Joint Action on the European Union Police Mission,” doc. 6823/02, 11/03/02, Annex, 3.

⁵⁸ See note 55.

the rule of law in Europe's vicinity and the protection of Europe's borders—are closely linked. Two major questions arise regarding where those police operations should take place and what kind of policing should be provided to the recipient countries.

First, one can legitimately express concern regarding the geographical limits of the EU commitment in terms of police forces. Is the spill-over of the “nefarious products” into European space a necessary condition for the EU to commit non-military crisis management means, particularly police forces? The “Petersberg tasks,” which also constitute the framework for police operations, are not limited as such to European territory. But, despite the EU leaders' statements, initial planning continues to focus on Europe's neighborhood, inducing the concern, especially among African leaders, that EU member states will become more reluctant to commit police forces in other operations.⁵⁹

Second, what kind of policing advice, training, and support should the EU provide to the recipient country? Considering the strong interaction between peace operations and EU security, needs and interests may diverge, and the donor is in this case in a much stronger position. From an EU perspective, and for the reasons mentioned above, the tendency is to focus on “high policing,” which reflects what has been noted in the development of the third pillar.⁶⁰ Thus, an emphasis is put on high-profile missions that are a political priority for the EU, such as the fight against organized crime, trafficking and illegal immigration networks, or even terrorism. Such practices are often recommended by field personnel, with some advocating the necessity of strong intelligence and financial units with extended powers extending to the customs sector, fiscal matters, surveillance of air, land, and sea borders, as well as a close cooperation with Europol against drugs and terrorism.⁶¹ But this strong tendency then raises the question of the consequences of such a focus. Indeed, it tends to overshadow other “low policing” missions that can serve a very important social function in reassuring local populations and rebuilding community relations in post-conflict societies.⁶² Moreover, shifting more and more resources and personnel to “high policing” capabilities can have direct implications for the restructuring of local police forces, deepening inequalities and structural problems of the regular police compared to specialized units.⁶³

⁵⁹ Dwan, “EU Policing in Peace Operations,” 12.

⁶⁰ Den Boer, “Wearing the Inside Out,” 494 ff.

⁶¹ Jean, *Integrated Police Force*, 56, 65.

⁶² “Managing the Context of Police Reform,” International Institute for Security Studies and Geneva Centre for the Democratic Control of Armed Forces joint workshop, Geneva, 23–25 April 2001. See also Council of the European Union, “Seminar on the role of police in peace-keeping operations (Cascais 29–31 May 2000)—Summary of Presidency and major points of interest,” doc. 9113/02, 09/06/00, 1, 5.

⁶³ Marina Caparini, “Reform: Issues and Experiences,” paper presented at the Fifth International Security Forum, Zurich, 14–16 October 2002, 10–11.

This in turn raises the more general problem of the legitimacy of such actions. Should an EU police force aim at stabilizing a society by helping to reconstruct social ties, or first and foremost deal with EU priorities and therefore shape the supported country's police force according to the EU's agenda and priorities?⁶⁴

Increasing Legitimacy and Efficiency?

We then see that, although policing in peace operations integrates a wider framework of visibility of JHA action abroad and appears to have substantial internal security implications, the EU lacks a clear and coordinated vision. Indeed, first- and third-pillar instruments dealing with police issues are hardly involved officially in the planning and deployment of such operations (with the previously mentioned exceptions of the European Police Academy and the Police Working Group with secondary tasks), which do not make any use of the experience accumulated in efficient and established bodies such as Europol or the Police Chief Operational Task Force.

The current pillar structure thus shows a patent inadequacy to tackle the intermingling issues of external and internal security, and adaptations are therefore necessary to offset both the efficiency and legitimacy deficits mentioned above. Thus we must examine issues more general than policing, which nevertheless remains a key illustration of the reasons why changes are needed. Generally speaking, increasing the legitimacy of ESDP military and police actions requires increasing transparency and accountability in three main fields.⁶⁵

The first is administrative accountability. The number of working groups involved, the absence of a clear division of labor within and across the three pillars, and the limited coordination between them reinforces considerably the opacity of the decision-making process.

Parliamentary accountability is also important, and should be increased since the European Parliament, like most national parliaments, has virtually no role in the field of EU police operations.⁶⁶ An alignment of ESDP decision-making procedures with some of the Title VI procedures would certainly increase the EP's

⁶⁴ Ibid. This preoccupation is also displayed by some NGOs. Amnesty International's EU Office representative Gabriele Juen expressed the organization's concerns about the EUPM agenda; according to her, terrorism and organized crime (i.e., issues of "high policing") were too high on the agenda in comparison to human rights standards and war-crimes related actions. BBC World Television interview, 15/01/03.

⁶⁵ See Giovanna Bono, "Democratic Accountability of International Military and Police Cooperation in the EU (ESDP)," paper presented at the Geneva Centre for the Democratic Control of Armed Forces Fourth Annual Workshop, "Strengthening Parliamentary Oversight of International Military Cooperation and Institutions," Brussels, 12–14 July 2002.

⁶⁶ "The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Presidency and the Commission of the development of the Union's foreign and security policy." Article 21 of the EU Treaty (Title V, CFSP).

role, as this institution proved to be rather influential in the development of anti-terrorist measures after September 11.⁶⁷

But the most important field is political accountability, which derives from a clear relationship between the military and politicians, the former operating under the directives of the latter. In this case, this relationship has been inverted; due to a lack of clear political guidance and the absence of a strategic concept, most of the progress in the CFSP/ESDP field, including its police component, has developed as technical achievements, “implicitly containing political assumptions about the geographical scope and mandate” of the potential operations.⁶⁸ Political will on the part of the member states is therefore a key prerequisite for this typical intergovernmental process to achieve anything viable. This technocratic drift and lack of strategic vision is one of the main grievances of members of the European Convention, some of whom have deplored the imprecision of the “‘strategies’ of the EU.”⁶⁹

Defining a “joint” external and internal security strategy to overcome the technical character of the EU decisions about policing and CFSP/ESDP in general implies a rationalization of the “institutional over-provision” of the current architecture.⁷⁰ Obviously, this could first and foremost be done within the second pillar, by reasserting the respective roles of the different working groups and committees in charge of civilian crisis management and military operations. Furthermore, a clear hierarchy between them and tight political control over them is necessary to impose a strategic vision.

But the major condition for success is the clarification of the multifaceted nature of the EU’s external action, and this must take place at the Council, bureaucratic (i.e., from COREPER down to the working parties), and operational levels.⁷¹ At the Council level, two major actions could be taken. Following the Helsinki European Council, the General Affairs Council has been given a coordinating role (in which it has proved to be fairly efficient in monitoring the global EU response after September 11, coordinating all three pillars’ initiatives). Furthermore, joint General Affairs (extended to defense ministers) and JHA Councils, although they have not been tested so far, could prove to be adequate structures to deal with external/internal security matters. The same approach should be adopted at the bureaucratic level: although this is likely to encounter more resistance, the coordinating role of the COREPER should be reinforced even over JHA matters,

⁶⁷ “The Council shall consult the European Parliament before adopting any measure referred to in Article 34(2)(b), (c) and (d). The European Parliament shall deliver its opinion within a time limit which the Council may lay down, which shall not be less than three months.” Article 39 of the EU Treaty (Title VI, JHA).

⁶⁸ Bono, “Democratic Accountability.”

⁶⁹ Wim Van Eekelen, paper for European Convention Working Group VIII on Defense, 19/09/02.

⁷⁰ Bono, “Democratic Accountability,” 15.

⁷¹ Pastore, *Reconciling the Prince’s Two Arms*, 7–9.

therefore clarifying its relations with the CATS and giving it a clear political prerogative.⁷² Here again, external/internal issues could be dealt with either by joint COREPER/CATS meetings or by developing a specific JHA expertise within the COREPER. As far as the operational level is concerned, the problems—which are real, but are more technical than political—seem to require mainly training and the achievement of increased interoperability.⁷³

Finally, institutional clarification could be complemented by a more rational legislative procedure. Joint instruments on the basis of both CFSP/ESDP and JHA could be adopted, such as those that have been adopted against the financing of terrorism, therefore drawing on their preparation and adoption expertise in both fields.⁷⁴

Conclusion

The general record of EU policing and the policy implications outlined in this essay might be interpreted as a rather starkly contrasted, if not discouraging, picture. But interpreting it in such a pessimistic way and presenting EU involvement in policing as an initiative doomed to failure would be wrong. In fact, all of the necessary operational and institutional elements are in place to make it a success story. The EU's capabilities actually represent clear progress in five major areas beyond what has been done so far within the United Nations framework.

First, the EU's operational capabilities are real. The member states—and also those non-member states willing to be associated with the initiative, as the fact that almost twenty percent of the policemen in the EUPM in Bosnia-Herzegovina are from non-EU member states illustrates—have shown a rather strong commitment to the Feira Headline Goal set forth during the Brussels Capability Commitment Conference in November 2001.

Second, the EU now has a rapid reaction capability, which is one of its major innovations compared with UN capabilities: 1,000 of the 5,000 personnel of the Headline Police Force can be operational within thirty days, which is very close to the standard of the best multinational military units of this nature.

Third, the EU possesses a real qualitative added-value advantage in the field of policing. This is due on the one hand to its resources of highly-skilled personnel in specific areas (technical and scientific police, forensics, etc.) and on the other hand to its capability of using police forces, such as the French Gendarmerie, which are able to change their posture almost instantaneously from maintaining

⁷² Ibid.

⁷³ See Jean, *Integrated Police Force*.

⁷⁴ "Council Common Position of 27 December 2001 on combating terrorism (2001/930/CFSP)," *Official Journal* L 344 (28/12/2001): 0090–0092. "Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (2001/931/CFSP)," *Official Journal* L 344 (28/12/2001): 0093–0096.

law and order in riot conditions to normal day-to-day policing. Although the focus has been so far more on numbers than on skills, the potential is clearly there.⁷⁵

Fourth, civil-military coordination, a crucial condition for success, has been made easier due to the fact that those two functions have been conceptualized together as part of the larger crisis management framework of the Petersberg missions.⁷⁶

Finally, the requisite strategic-level structures are in place and, although their functionality, size, or links with other institutions need to be readdressed (sometimes dramatically), they are far more developed than those that the UN has ever achieved.

But, in the assurance of security, no technical or institutional arrangement will replace a strategic political vision, which is the *sine qua non* for those five major European assets to be fully exploited. Then again, the different institutional adaptations mentioned above may not be sufficient to deal with the intricate character of internal and external security challenges. Therefore, many members of the European Convention have made proposals in favor of a complete revision of the Treaties structure and the replacement of the three-pillar framework.⁷⁷

This new institutional framework, which would reflect a more global and comprehensive view of security in integrating all the Union's security-related tools and instruments, appears rather ambitious, as it supposes that member states will overcome their national interests in favor of well-defined European security interests. Indeed, such propositions underline the fact that, since Europe is more a dynamic than a stable set of institutions, an evolutionary movement towards more federal institutions in the CFSP and JHA areas is an ineluctable and necessary condition for the EU to survive. Given that, it appears that a more modest policy, driven by the means available rather than by the aim to be achieved, is the direction in which the Convention is actually heading.

⁷⁵ Dwan, "EU Policing in Peace Operations," 15–16.

⁷⁶ See Jean, *Integrated Police Force*; Kelvin Ong, "Policing the Peace: Towards a Workable Paradigm," conference report from the International Peace Academy, New York, 2–3 November 2000.

⁷⁷ Erwin Teufel, contribution to the European Convention, CONV 24/02, 09/04/02, point 4.