Political territoriality in the European Union : the changing boundaries of security and healthcare

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Chapter 7
Political territoriality and security in the European Union and the Netherlands

The post Cold War environment is one of increasingly open borders in which the internal and external aspects of security are indissolubly linked. (…) Our traditional concept of self-defence – up to and including the Cold War – was based on the threat of invasion. With the new threats, the first line of defence will often be abroad. (…) It is in the European interest that countries on our borders are well-governed.
European Security Strategy[1]

7.1 Introduction

Concerns about criminals, terrorists, and illegal immigrants roaming freely into and within a borderless internal market have replaced fears of invading Soviet armies in Western Europe, particularly since the Iron Curtain no longer seals off the east of the Euro-polity. Global networks of criminals and terrorists are believed to render borders irrelevant. This shift in security threats has been graphically illustrated in news papers: arrows on European maps no longer indicate potential attacks by Soviet troops, but flows of terrorists, criminals, or illegal immigrants. In December 2003, the governments of the EU Member States approved the European Security Strategy that addresses these perceived changes in the geography of threats.

As was argued in the previous chapter, the changing geography of threats is not just a matter of technological innovation, but also includes defining threats within certain social, institutional and geographical circumstances. So, how have security threats in Europe been re-defined since the 1980s? Which actors have subsequently expressed dissatisfaction about their security situation? Have governments individually or as an EU collective sought to escape from the American sphere of influence, or did

[1] European Council (12 December 2003), *European Security Strategy: A Secure Europe in a Better World.*

they try to enhance their voice within, remaining loyal to shared Western values? And what about local security authorities within the Member States: have they sought to improve their security situation by expressing their desires within the national voice structures, or by (partially) escaping from the national security container in a borderless Europe? And have citizens in the EU area directed their dissatisfaction with security towards local, national or European security authorities, or have they used the exit option of private security? Section 7.2 discusses in more detail the redefined demands of security in Europe and the Netherlands since the 1980s, spelling out the potential implications for the European and Dutch organisation of security following the propositions regarding changing political territoriality put forward in Chapter 5. The subsequent question is whether the security authorities at various levels in Europe have used territoriality or non-territorial strategies of control in response to dissatisfaction expressed about security. The sections 7.3 and 7.4 present evidence, largely drawn from secondary sources, on the extent as to which territoriality is still used in the organisation of security in the European Union and the Netherlands, tracing the ways security threats have been controlled in the European Union.

Robert Cooper, the main author of the 2003 European Security Strategy, has urged "liberal imperialism" as the guiding principle for the European Union's security strategy.[2] Whereas high-intensity force is no longer needed to sustain order *within* the European Union, he argues that the spread of (European) values such as democracy, solidarity, and the rule of law outside the EU still require force. The creation of a buffer zone of friendly neighbours via the European Neighbourhood Policy (ENP) has been used to prevent or combat threats to European security in its near abroad, adding to the imperial image of the European Union, in which the extension of civilisation by force or conviction edges over the defence of territory. However, the alleged establishment of a Fortress Europe still suggests territorial strategies to control people and phenomena reminiscent of states are used. Section 7.5 therefore discusses the territorial nature of the European security morphology: is it an empire in the making, does it evolve into an ideal type state, or is something else emerging? In the last section, the chapter reflects on the significance of

[2] Cooper, R. (7 April 2002), 'The New Liberal Imperialism', in *The Observer*.

territoriality since the 1980s in the field of security as well as on the analytical instruments used.

7.2 The redefinition of security threats in European Union and the Netherlands

Security threats have been drastically redefined since the 1980s in the European Union and the Netherlands, partly due to the process of globalisation. The growing number, frequency and intensity of cross-border, worldwide contacts has also included criminal connections. For example, cocaine from South-America flowed into Europe at an increased scale and with lower prices in the early 1980s. In 1986, a report to the Council of Europe stated that cross-border crime in Europe also involved arms-trafficking, money laundering, and the trafficking of women.[3] The US administrations of both Reagan and Bush Sr. sustained American efforts to combat the illicit drug trade and money-laundering. US security authorities, showing their "hegemonic policing power", pushed bilaterally and via the UN and G7 for its anti-drugs policies worldwide, including Western Europe.[4] The concern in Europe was mainly regarding (transnational) organised drug related crime corrupting the legitimate parts of economy, politics and society. Attracting a lot media attention, court cases against mafia organisations in southern Italy and New York fostered a "mafia fixation" in politics and the media.[5] However, doubts existed concerning the organisational sophistication of criminal groups, their corruptive effects on the public sector, and their transnational nature. With the respect to the latter aspect, "…there is almost no hard information available about cross-border crime for gain in Europe" until the late 1980s, because most crime was still registered by locality or national territory (an example of methodological territorialism) and was often kept confidential.[6] Knowledge on the extent of organisation or

[3] Fijnaut, C.J. (1991), 'De Internationalisering van (Georganiseerde) Misdaad in West-Europa: Een Toenemend Probleem?', in *Delikt & Delikwent*. Vol. 21, no. 9, p. 963.
[4] Andreas, P. & Nadelmann, E. (2006), *Policing the Globe*. Oxford: Oxford University Press. p. 223.
[5] Paoli, L. & Fijnaut, C.J. (2006), 'Organised Crime and its Control Policies', in *European Journal of Crime, Criminal Law and Criminal Justice*. Vol. 14, no. 3, p. 312.
[6] Levi, M. & Maguire, M. (1992), 'Crime and Cross-border Policing in Europe', in J. Bailey (ed.), *Social Europe*. London: Longman. p. 171; see also Anderson, M. et al. (1995), *Policing the European Union*. Oxford: Oxford University Press., p. 19; Fijnaut, C.J. & Paoli, L. (2004), 'General Introduction', in C.J. Fijnaut & L. Paoli (eds.),

intrusion into the public sector also remained limited. The debate on transnational organised crime has continued in Western Europe since the 1980s, also linked to concerns about the quality of urban life and about the integration of immigrants.[7] Similarly to American debates on crime, the issues of organised crime, drugs trade, and immigrant societies became increasingly associated with each other, particularly after a new influx of migrants in the 1980s.[8] Even if this association was not necessarily empirically correct, xenophobic violence connected immigration with increasing insecurity. A shift in public attention thus took place from the local, to the national and international scale of crime.[9]

Throughout the 1970s, the European Court of Justice had limited the exemptions on the rights of residence and movement within the EC area for citizens of the EC Member States, after EC governments attempted to deny particularly southern-European guest workers entry or stay.[10] The creation of a single European market further aggravated concerns about the uncontrollability of (criminal) persons, particularly because the freedom of criminal persons allegedly could not be matched by national security authorities still bound to national territories.[11] "Compensatory measures" at the European level were said to be necessary. The German Chancellor Helmut Kohl called in 1988 for the establishment of a European FBI after it was reported the Italian mafia had infiltrated the German restaurant business.[12] Police officers at a higher-level appeared to be somewhat sceptical about the upward effect of

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Organised Crime in Europe: Concepts, Patterns and Control Policies in the European Union and beyond. Dordrecht: Springer. pp. 1-20.

[7] Bigo, D. (2000), 'When two become one: Internal and External Securitisations in Europe' in M. Kelstrup & M.C. Williams (eds.), *International Relations Theory and the Politics of European Integration: Power, Security and Community*. London: Routledge. p. 182.

[8] Anderson, M. et al. (1995), supra note 6, p. 35.

[9] Idem, p. 170.

[10] Guild, E. (2001), *Moving the Borders of Europe* (Inaugural lecture, Nijmegen University). p. 8.

[11] Sheptycki, J.W.E. (2002), *In Search of Transnational Policing: towards a Sociology of Global Policing*. Aldershot: Ashgate. pp. 135-136; Boer, M. den & Walker, N. (1993), 'European Policing after 1992', in *Journal of Common Market Studies*. Vol. 31, no. 1, p. 9.

[12] Boer, M. den & Wallace, W. (2000), 'Justice and Home Affairs', in H. Wallace & W. Wallace (eds.), *Policy-making in the European Union* 4th edition. Oxford: Oxford University Press. p. 496.

open borders on the level of transnational organised crime.[13] Nevertheless, "[o]pening the internal borders has certainly been exploited by police and security services in order to gain a broader mandate, more resources and better equipment."[14]

In this respect, the end of the Cold War and EU enlargement served the police and security services well, not the least because some security agencies were looking for a new job after the threat of the Soviet Empire diminished.[15] Politicians voiced more loudly their concerns in the media about an alleged increase in cross-border organised crime in Western Europe. The Iron Curtain would no longer provide (an imagined) protection against the mobility of criminals from the east trafficking people, drugs or nuclear materials, while fear increased that Central and Eastern European politicians and political systems were not resistant to infiltration by the mafia.[16] Organised crime in Western Europe was most often presented as originating in Eastern Europe. However, the fall of the Iron Curtain also entailed an eastward extension of illegal markets, and created the opportunity for West European mafia to infiltrate Central and Eastern Europe.[17] Nevertheless, it appeared that "…the spectre of Russian organised crime [was] a particularly potent folk devil…"[18] Moreover, crime research indicates that, apart from Italy and Turkey, the intrusion of criminals or their organisations into governmental spheres in Western Europe was fairly limited, although criminal organisations and criminals do invest in certain legitimate parts of the economy (in particular real estate; bars and restaurants; construction sector).[19] In contrast to the mafia-like image of organised crime in the media and politics, crime research also points at the rather disorganised nature of crime in Europe, which predominantly consists of "relatively small and often ephemeral enterprises."[20]

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[13] Anderson, M. et al. (1995), supra note 6, pp. 16-17.
[14] Idem, p. 61.
[15] Idem, pp. 172-173.
[16] Idem, pp. 19, 24, 35, 110.
[17] Mitsilegas, V., Monar, J. & Rees, W. (2003), *The European Union and Internal Security: Guardian of the People?* Basingstoke: Palgrave MacMillan, pp. 66; 70.
[18] Idem, p. 68; Sheptycki, J.W.E. (2002), supra note 11, p. 135.
[19] Paoli, L. & Fijnaut, C.J. (2006), supra note 5, p. 318
[20] Idem, p. 314.

Even if imagined, the external de-consolidation of the EU and its Member States continued. The opening of the Iron Curtain and the Balkan wars confronted Western Europe with an increasing number of refugees, asylum seekers, and other immigrants. In addition, Western European governments and societies faced challenges to international norms and order in the Balkans wars, as well as an emerging hot spot of trade in illegal weapons, the trade in illicit drugs, human trafficking, terrorism, and money laundering. Throughout the 1990s and up into the present, an increasing number of Western European politicians and media have presented immigrants as threats to national culture, security, labour markets, and welfare systems. The subsequent introduction of more restrictive migration policies has created a larger market for human smuggling. Meanwhile, the potential extension of the area of free movement further eastward with EU enlargement was seen as yet another cause of increasing insecurity in Western Europe.

Certain immigrants do play a role in transnational criminal networks, maintaining connections with their home country, while seeking social mobility through crime in their new country because of their relatively marginal socio-economic or cultural position. In 2004, the European Police Office (Europol) also reported that most cross-border organised crime in the EU area can be linked to Lithuanian, Bulgarian, Albanian, Russian, former Yugoslav, Moldovan, Polish, Kosovar, Ukrainian, and Estonian gangs involved with human trafficking and the drugs trade. Furthermore, criminal Turks and Chinese entered more easily the EU area via Central and Eastern Europe.[21] Despite the apparent security threat related to migration, it has been found that "the opening of European borders was much more a catalyst of police and judicial cooperation [such as Europol] than an incentive for transnational criminality."[22] Furthermore, local aspects of organised crime have been somewhat overlooked: "Since the early 1990s the transnational dimension of organised crime has also been strongly emphasised, obscuring the fact

[21] See, *e.g.*, Europol (2004), *European Union Organised Crime Report*. The Hague: Europol.
[22] Alain, M. (2001), 'Transnational Police Cooperation in Europe and North America: Revisiting the Traditional Border between Internal and External Security Matters, or how Policing is being globalized', in *European Journal of Crime, Criminal Law and Criminal Justice*. Vol. 9, no. 2, p. 114 (note 6).

that most organised crime activities are anchored locally."[23] The Council of Europe in its 2004 Organised Crime Situation Report on the origin of organised crime also concluded that: "…throughout Europe the majority of suspects of organised crime are nationals of the country in which the crimes are committed, and they network with criminals in other countries to carry out activities involving different countries."[24] Thus, organised crime originates predominantly from domestic groups with the probable exception of relatively small countries such as Belgium.[25] Furthermore, "[t]he vast majority of policing remains largely insulated from foreign affairs."[26] The law of geographical and social proximity still leaves a significant mark on the actual geography of crime. Nevertheless, the *imagined* geography of threats did change considerably due to the expected growth of mobility within the internal market and the enlargement of the European Union.

The third wave of external de-consolidation of the European Union and its Member States has also been reflected in changing security demands in the Netherlands. A government memorandum on crime in 1985 entitled "Society and Criminality" still very much focused on the prevention of petty crime.[27] Police involvement with (transnational) illegal drug trade remained fairly limited in the 1970s and 1980s. Gradually, organised drug crime attracted the attention of the police. Despite a lack of precise knowledge on the nature, scale and size of organised (drug) crime in the Netherlands, particularly police officials from the urban Randstad region in the west of the country called for counter-measures. Criminologists such as Cyrille Fijnaut invited New York experts on organised crime for a conference in 1990 to raise attention to the issue. Following the killing of the well-known criminal Klaas Bruinsma, and pressure from the Lower Chamber of Parliament, the government issued in 1992 a memorandum on the fight against organised crime, urging the need for research on a

[23] Paoli, L. & Fijnaut, C.J. (2006), supra note 5, p. 311.
[24] Council of Europe (2004), *Organised Crime Situation Report*. Strasbourg: Council of Europe. p. 169.
[25] Mitsilegas, V. et al. (2003), supra note 17, p. 66.
[26] Andreas, P. & Nadelmann, E. (2006), supra note 4, p. 252.
[27] Bunt, H. van de (2006), 'Organised Crime Policies in the Netherlands', in C.J. Fijnaut & L. Paoli (eds.), *Organised Crime in Europe: Concepts, Patterns and Control Policies in the European Union and beyond*. Dordrecht: Springer. p. 681.

larger scale.[28] Meanwhile, the predominant focus of national crime policy remained local.[29] In 1996, the Lower Chamber of Parliament started a parliamentary inquiry into oversight failures regarding questionable investigative techniques, which came to the public's attention because of conflicts within an inter-regional crime squad on controlled drug delivery by criminal participating informers (*criminele burgerinfiltranten*). The parliamentary inquiry committee asked for an extensive report on organised crime in the Netherlands.

The researchers, despite difficulties in mapping the scale, size and nature of organised crime, did not find evidence of mafia-like tight mega-hierarchies or conspiracies, nor did they uncover large-scale infiltration by criminal networks into the public sector. Organised crime was a fluid matter of temporary criminal networks. Regarding the international nature of organised crime, the report concluded: "It is (…) obvious how international traditional organized crime (such as trade in illicit drugs, arms, and women, as well as fraud and car theft, HV) is now becoming."[30] A few monitor reports later, the conclusion still is that "to a large extent, organised crime in the Netherlands boils down to crossing borders."[31] In the Netherlands, "transit crime" is the dominant type of organised crime. Remaining cross-border social relationships of ethnic minorities and the Dutch trade infrastructure provided the transnational connections with criminal networks in Russia, Morocco, Turkey, China, Colombia, Ghana, and Nigeria.[32] In addition to being a hub for transnational criminal activities, the Netherlands is also home to major producers and exporters of ecstasy and drug precursors. Whereas the authors estimated the size of organised crime and its links with the licit parts of the economy of relatively modest size in 1998, ten years later they expressed concerns about the prominent position of the Netherlands in transnational

[28] Fijnaut, C.J., Bovenkerk, F., Bruinsma, G. & Bunt, H. van de (1998), *Organized Crime in the Netherlands*. The Hague: Kluwer. Ch. 2.
[29] Kamerstukken II 1994/95 24225 no. 2 *Veiligheidsbeleid 1995-1998* (13 June 1995).
[30] Fijnaut, C.J. et al. (1998), supra note 28, p. 123.
[31] Kleemans, E. (2004), 'Crossing Borders: Organised Crime in the Netherlands', C.J. Fijnaut & L. Paoli (eds.), *Organised Crime in Europe: Concepts, Patterns and Control Policies in the European Union and beyond*. Dordrecht: Springer. p. 324.
[32] Fijnaut, C.J. et al. (1998), supra note 28.

organised crime and the large sums of criminal money being invested in the public economy.[33]

Since 1994 the general public has listed criminality and security among the major issues of concern on the list of main national political problems.[34] Whereas the Netherlands had a relatively mild penal climate until the 1980s, the number and length of unsuspended prison sentences did rise considerably between 1980 and 2000. The rise is said to be due to the increase of serious crime (in particular violent crime) as well as prosecutors and judges becoming more punitive.[35] 98% of the registered offences involved violent crime, property crime, destruction, and traffic crimes. The average of registered crime in larger cities and towns is higher than in small communities. Over the last 25 years, the steep rise in criminality figures suggests an increase in the threat of crime. Since during this period according to crime victim surveys, the incidence of crime has remained at the same level, the rise can be attributed to an increase in reporting by crime victims and particularly better registration of crimes by the police.[36]

Associations between migrants and criminality can be easily made. In the Netherlands, "(n)on-natives account for more than half of the entire prison population. Prisoners of a foreign nationality account for about one third of the total prison population."[37] Among the non-natives, prisoners from Surinam, Moroccan and Turkish decent, as well as people of Colombian, British and German nationalities dominated. The roughly three-quarters of the estimated number of those killed between 1992 and 1998 were born outside the Netherlands proper, such as in Turkey, Surinam, the Netherlands Antilles, Morocco and China.[38] In the 2002

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[33] De Volkskrant (31 March 2006), '"Als we zo doorgaan wordt het hier een Soort Italië".'

[34] Aarts, K. (1995), 'Nationale Politieke Problemen, Partijcompetentie en Stemgedrag', in J.J.M. van Holsteyn & B. Niemöller (eds.), *De Nederlandse Kiezer 1994*. Leiden: DSWO Press. p. 178; Holsteyn, J.J.M. van (2003), 'Minderheden en de Verkiezingen van 15 mei 2002', in H. Pellikaan & M. Trappenburg (eds.), *Politiek in de Multiculturele Samenleving*. Amsterdam: Boom, pp. 104, 120.

[35] Tak, P.J.P. (2003), *The Dutch Criminal Justice System: Organization and Operation*. Den Haag: WODC. p. 124.

[36] Wittebrood, K. & Nieuwbeerta, P. (2006), 'Een Kwart Eeuw Stijging in Geregistreerde Criminaliteit: Vooral meer Registratie, nauwelijks meer Criminaliteit', in *Tijdschrift voor Criminologie*. Vol. 48, no. 3, pp. 227-242.

[37] Tak, P.J.P. (2003), supra note 35, p. 112.

[38] Kleemans, E. (2004), supra note 31, pp. 303-332.

national election campaign, criminality and multiculturalism became one of the major issues.[39]

In response, the short-lived Balkenende government issued a new security memorandum in 2002. Although the focus remained on the local approach to (international) crime, it also emphasised the need to centralise police efforts. Moreover, it aimed at combating illegal immigration, also in order to control criminality by illegal immigrants.[40] The Islamist terrorist attacks in the USA and Europe, the arrest of terrorist suspects, and the assassination of a politician and film maker within the Netherlands kept security high on the political agenda. The heightened electoral and political attention resulted in various initiatives from Dutch security authorities to explore in more detail the security situation. According to the subsequent reports, all main threats to Dutch society have international elements, such as human trafficking, car theft, the illicit drug trade, counterfeiting, and trade in firearms. The threat of criminality from eastern and southern Europe scored particularly high among security officials. In 2002 there were more than 2,000 East-European suspects, which is three times more than the number in 1996.[41] Although in 2003 less than 10% of the suspects came from Eastern Europe, one of their future foci remained criminal networks from new EU Member States and non-EU eastern European countries.[42] Eastward expansion of the EU continued to be associated with the import of criminality, particularly in the southern border regions, considering the manifold of news reports on East European burglary gangs.[43] In addition, border

[39] Holsteyn, J.J.M. van & Ridder, J. den (2005), *Alles blijft anders: Nederlandse Kiezers en Verkiezingen in het Begin van de 21e Eeuw*. Amsterdam: Aksant. p. 110.
[40] Kamerstukken II 2002/03 28684 no. 2 *Naar een Veiliger Samenleving* (14 Novermber 2002).
[41] KLPD-DNRI (2004), *Misdaad zonder Grenzen: Criminaliteitsbeeld Oost-Europa*. Zoetermeer: KLPD-DNRI.
[42] KLPD-DNRI (2004), *Nationaal Dreigingsbeeld Zware of Georganiseerde Criminaliteit: Een Eerste Proeve*. Zoetermeer: KLPD-DNRI. pp. 48-49; See also Bruinsma, G.J.N. (2004), 'Misdaaddreigingen uit de Nieuwe Lidstaten van de EU', in *Justitiële Verkenningen*. Vol. 30, no. 6, pp. 36-50.
[43] See, *e.g.*, Leidsch Dagblad (11 December 2004), '…Een Moordprovincie: Wildwest tussen de Heuvels door Toeloop van Oost-Europese Criminelen'; NRC Handelsblad (8 January 2006), 'Nieuwe EU-landen leveren "Mobiele Bandieten"'; De Telegraaf (22 May 2007), 'Rooftocht Balkan-Bendes'; NRC Handelsblad (28 February 2008), 'Mobiele Bandieten actief in Nederland: Bendes uit Polen en Baltische Staten stelen in Opdracht Luxeproducten uit Winkels'.

regions have experienced problems with French, German and Belgian drug tourists, enjoying the free movement of persons in the EU.[44]

The end of the Cold War also redefined the security agenda in other ways. Although NATO and the Warsaw Pact officially declared in 1990 that there was no longer a mutual threat, concerns about threats from the east still remained. A total collapse of the Soviet Union made West European security authorities concerned that a Wild East may develop in which war lords and criminal gangs might take control of nuclear weaponry or other weapons of mass destruction. The coup d'état against Gorbachev in August 1991 accelerated the dissolution of the Soviet Union. Although the subsequent Commonwealth of Independent States provided a means to prevent total collapse, fear existed about an aggrieved yet powerful Russian government contesting Western domination in the Baltic countries, Balkans and further. After the influence of the Soviet Empire decreased in Central and Eastern Europe, serious concerns arose that historic ethnic tensions could potentially develop into violent conflicts. Protests from Hungarian-speaking Romanians and Slovaks, political rifts between Czech and Slovak politicians, and particularly the start of several wars in Yugoslavia since 1991 all illustrate such tensions and potential for conflict. Insecurity at the EC/EU boundaries were used both to advocate large-scale and speedy eastward enlargement as well as its postponement to prevent the import of instability into the EU.[45]

The end of the Cold War has been perceived as a victory for Western liberal democracy, diminishing the threat of a large-scale attack on Western Europe. Governments and security authorities began to reassess the (financial) priority they gave during the Cold War to the defence of national and NATO territory. The end of the Cold War raised serious doubts about the future of transatlantic military cooperation, since anti-communism could no longer serve as a basis for trans-Atlantic loyalty. Meanwhile, the reduced confrontation between the US and USSR

[44] See, *e.g.*, Leers, G.B.M. (18 May 2004), 'Limburg zucht onder Drugsbeleid', in *NRC Handelsblad*; *Leidsch Dagblad* (31 October 2007), 'Harddrugsroute du Soleil'; *De Standaard* (21 February 2008), '"Drugs Maastricht veroorzaken Overlast in België"'.
[45] Higashino, A. (2004), 'For the Sake of "Peace and Security"? The Role of Security in the European Union Enlargement Eastwards', in *Cooperation and Conflict*. Vol. 39, no. 4, pp. 347-368.

offered the opportunity for the UN Security Council to agree on many more operations to stop violations of human rights across the world as well as in Europe. Subsequently, the prevention of crimes against humanity raised on the security agenda in the West, and led to discussions of whether the principle of territoriality can be subordinated to the principle of human intervention if serious violations of human rights take place.

Interventions in Europe or elsewhere were not only motivated to stop the violation of human rights, but also to stem potential hotbeds of organised crime, illegal immigration, or the illegal trade in weapons of mass destruction because of a lack of effective governance. The peace-supporting operations and other interventions confronted most West European security agencies with low-intensity conflicts (LICs), which were different and required a re-evaluation of the plans and practices they were used to in the Cold War. The distinction between government, armed forces, and population is largely blurred in LICs. Peace-keeping operations required the conviction of the hearts and minds of men by persuasion, policing and also anti-guerrilla tactics, instead of massive, high-intensive warfare to conquer territory. Western security forces had therefore to leave their "geographic bias of strategy."[46]

The fall of the Berlin Wall offered the opportunity to unite West and East Germany. Governments in neighbouring countries feared the power of this united polity, as well as its possible escape from Western and Soviet control during the Cold War. They therefore sought a lasting security guarantee for the German problem. In 1990 the Gulf War confronted the West European governments with the inadequacy of their military capabilities. Meanwhile, the American government reduced the number of troops located in Europe from 350,000 in 1989 to 100,000 in 1994.[47] The retreat of US military presence was felt even more, when the Western European security forces had only limited capabilities to intervene in the EU's own backyard (such as in the Balkans), to deal with Greek-Turkish conflicts, as well as to protect new EU member states

[46] Creveld, M. van (1990), *The Transformation of War*. New York: Free Press. pp. 215, 207, 203.
[47] Forster, A. & Wallace, W. (2000), 'Common Foreign and Security Policy', in H. Wallace & W. Wallace (eds.), *Policy-making in the European Union* (4th ed). Oxford: Oxford University Press. p. 467.

against Russian imperial policies. Meanwhile, the Iraq issue also created another concern: the possession and use of weapons of mass destruction by governments and non-governmental actors who may challenge Western interests and values.

Although international terrorism by non-governmental actors was certainly not unknown in Europe, the terrorist attacks in the United States on 11 September 2001 stimulated the external deconsolidation of security systems in Europe. Security authorities and citizens became increasingly aware of the global mobility of terrorists, and realised that apparently integrated fellow-citizens could commit terrorist crimes. Bush Jr.'s administration stepped up its efforts to combat terrorism bilaterally and multilaterally. The protection of the American homeland involved ICT surveillance techniques screening the world regardless of state borders, because US security authorities feared the seemingly borderless activities of terrorists. Despite concerns about terrorism committed by home grown or foreign Islamic militants, most terrorist attacks (89%) within the EU are still related to separatists in Spain and France.[48]

The 2003 European Security Strategy reflected the redefinition of threats since the 1980s, listing terrorism, the distribution of weapons of mass destruction, regional conflicts, failed states and organised crime as the main security threats to the European Union. The European Security Strategy states that the international nature of crime, migration, terrorism, and violation of human rights renders state borders and the distinction between domestic and foreign affairs insignificant for organising security. The terrorist attacks in Madrid (2004) and London (2005) contributed to the sense of vulnerability of the European Union and its Member States to cross-border threats, even though terrorism is still more likely to stem from intra-European conflicts. Meanwhile, growing concerns with energy, climate change and infectious diseases have been added to the list of security threats in the European Union. Energy issues may contribute to instability at its boundaries, while climate change increases the likelihood of "environmental migrants", "radicalization and state failure, (and) conflict."[49]

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[48] Europol (2008), *EU Terrorism Situation and Trend Report*. The Hague: Europol.
[49] High Representative CFSP/ European Commission (2008), *Climate Change and International Security*. S113/08; Ferrero-Waldner, B. (11 July 2008), *Global Europe? What next for EU Foreign Policy?* Speech at European Policy Centre.

The redefinition of threats at the European level has also been paralleled by the Dutch security authorities. Initial concerns by Dutch security authorities concerning German preponderance (see below) were quickly replaced in the 1990s. A reorientation in foreign and defence policy reflected the changing conception of threats. Instead of defence of national and NATO territory, the prime task of the armed forces became the maintenance of international legal order by peace-supporting and humanitarian operations. According to the government, the perceived permeability of national borders and speed of travelling brought about an increasing interdependence of threats such as organised crime, immigration, and terrorism across the world. Distance no longer provides security, became the fundamental insight in the government's vision on threats.[50] The Netherlands Defence Doctrine holds that internal and external security are "inextricably linked" in "a situation in which national borders have become significantly less important."[51] Whereas the Dutch government regarded the probability of a terrorist attack on Dutch territory as "small" in 1999, the 9/11 assaults led it immediately to emphasise the civil protection of "society and her citizens."[52] In its *Actieplan Terrorismebestrijding en Veiligheid* (Action plan Terrorism Control and Security) the Dutch government repeated that security threats were no longer geographically located, but a global problem. The assassination of the politician Pim Fortuyn in 2002 and a TV personality/ film maker Theo van Gogh in 2004 and the capture of terrorist suspects shifted the attention of Dutch security authorities more towards national security, in addition to the maintenance of the international legal order.[53] In an extensive exercise of securitisation in 2006 involving all ministries, crime, threats from failing states, terrorism, deterioration of social security, inter-ethnic tensions, and natural catastrophes also became seen

[50] Kamerstukken II 1999-2000 26900 no. 1-2 *Defensienota 2000* (29 November 1999), p. 27
[51] Netherlands Defence Staff (2005), *Netherlands Defence Doctrine*. The Hague: Ministry of Defence. p. 29.
[52] Kamerstukken II 1998/99 26382 no. 2 *Hoofdlijnennotitie Defensienota 2000* (13 April 1999), p. 4; Kamerstukken II 2001/02 27925 no. 10 *Terroristische Aanslagen in de Verenigde Staten* (5 October 2001), p. 2
[53] Wijk, R. de & Toxopeus, R. (2005), 'Hoe Binnen- en Buitenlandse Veiligheid verweven zijn', in *Internationale Spectator*. Vol. 59, no. 7/8, p. 422.

as potential threats.[54] These threats remained defined from the perspective of the Dutch territory and society, as the Netherlands Defence Doctrine also demonstrates: "the main aim of Dutch foreign and security policy is to ensure the independence, integrity, stability and welfare of the home nation."[55]

The changing security agenda of Western Europe after the creation of the Single European Act, the end of the Cold War and growing attention to international terrorism and climate change is also reflected in the opinions of Dutch respondents. In 1990, they no longer considered the Soviet Union or Warsaw Pact large military threats to the Netherlands. They feared oil-producing Arab countries for a short while during the Gulf War in early 1991, but soon after 63% of respondents in public opinion poll agreed "no country" was an important military threat to the Netherlands.[56] Chemical and nuclear weaponry in the Third World, Moslem fundamentalism, terrorism, drugs trafficking, and criminality were instead considered as the main threats.[57] According to the public, international peacekeeping and humanitarian operations are considered the most important task, replacing the defence of national and NATO territory.[58] Next to the concerns about criminality (see above), fear of international terrorism rose considerably in the years after 9/11 and the assassination of Theo van Gogh by an Islamist in 2004. Today, the Dutch public perceives terrorism, Islamic fundamentalism, the green house effect, as well as economic decline and to a lesser extent also immigrants as the main international threats.[59] They perceive the international (and much less the European) level as most appropriate to fight environmental pollution, terrorism and crime. Opinions are divided on the issue on

[54] Project Nationale Veiligheid (2006), *Hoofdlijnen Interdepartementale Zelfevaluatie en Collegiale Toetsing*. Den Haag: Ministerie van Binnenlandse Zaken.
[55] Netherlands Defence Staff (2005), supra note 51, p. 35.
[56] Everts, Ph. (1992), *Wat denken 'de Mensen in het Land'? Ontwikkelingen in de Publieke Opinie over Problemen van Buitenlandse en Defensiepolitiek, 1983-1992*. Nijmegen: KUN Studiecentrum voor Vredesvraagstukken. pp. 17-20.
[57] Wecke, L. (1991), 'Ontwikkelingen in het Nederlandse Vijandsbeeld', in B. Bomert & L. Wecke (eds.), *Van Vijandbeeld naar Vriendbeeld! Van Dienstplicht naar Beroepsleger?* Nijmegen: SVV. pp. 10, 13, 19, 20.
[58] Everts, Ph. (2008), *De Nederlanders en de Wereld: Publieke Opinies na de Koude Oorlog*. Assen: Van Gorcum. p. 76.
[59] Idem.

which level (national or European) immigration and defence should be dealt with.[60]

Both in the European Union and the Netherlands, a redefinition of threats has occurred among governments, security officials, and citizens since the 1980s. The question is how the ensuing dissatisfaction on security provision by the contemporary multi-layered organisation of security has changed the (territorial) organisation of security within the European Union and the Netherlands. Propositions have been divided in two sets. Section 7.3 focuses on how security authorities attempt to keep threats out of the European Union. The first proposition is that if the EU uses territory as security strategy, then EU enlargement would keep the logic of territoriality in its security organisation weak. As a consequence of the weak logic of territoriality, voice will be mainly geographically and socially concentrated at lower levels regarding the redefinition of threats. Because voice structures are still concentrated within EU Member States, threats and measures to prevent these threats will predominantly be framed in national terms. Despite this national focus, national governments will not seek exit from the EU, because the costs will be too high for them.

The second set of propositions focuses on the attempts to minimize threats within the EU area and the Netherlands since the 1980s (Section 7.4). The proposition is that the free movement of persons, goods, capital and services in the EU has weakened the logic of territoriality at the national and sub-national level. The remaining impact of particularly national territory on the organisation of Dutch security results in conflicting territorialities between the national and the European level. Nevertheless, the weakened tendency of impersonality at the national level will lead to more person-based means of boundary control. If citizens become dissatisfied about security in the Netherlands, (partial) exits of a person-based nature are therefore expected. The weakening logic of territoriality at the national level would also result in case of

[60] Holsteyn, J. van (2007), 'Denkend aan Europa… Nederlanders over de EU en Voortgaande Europese Integratie', in H. Vollaard & J. Penders (eds.), *De Spankracht van de Europese Unie*. Den Haag: Lemma. pp. 155-156.

dissatisfaction in particular interface regions seeking (partial) exit from the national security container to organise security in a borderless Europe.

7.3 Keeping security threats out of the European Union

7.3.1 The creation of European boundary control

Territorial control of exit and entry at the European level started with German and French truck drivers protesting at the French-German border about the long waiting times to cross the border. In 1984, the German and French authorities signed the Saarbrücken agreement to ease control at the French-German border. The Benelux governments quickly expressed their desire to join this agreement to secure the interests of their transport industry. The following Schengen agreement elaborated on the existing trilateral and bilateral boundary agreements within the Benelux and the Saarbrücken agreement. According to the Schengen governments, the agreement should compensate for the expected loss of control on goods, services, capital and persons within the planned creation of a single European market. Next to arrangements concerning internal border control (see below), the Schengen agreement aimed at developing common conditions of entry and exclusion of third-country nationals by among others a common list of visa countries, a common information system on entry and exit, and common rules on short-stay visas.

Unimpressed by the competences of South-European security forces, the Schengen governments did not immediately seek common external boundary control for the entire EC area.[61] They considered it an "interim solution"[62] to be extended later on. The European Commission participated therefore as an observer. The Schengen customs arrangements regarding cross-border movement of goods and services were implemented in 1986. Free movement of persons had to wait for the Convention Implementing the Schengen Agreement (CISA) in 1990, for which negotiations took quite some time also because of the changing security constellation after the fall of the Iron Curtain and intense debates on immigration in Germany. In 1995, the CISA entered into force. Free entry and stay within the Schengen area is limited to those who represent

[61] Anderson, M. et al. (1995), supra note 6, p. 69.
[62] Idem, p. 59.

a threat to national security, public policy, or the international relations of any Schengen member. The development and implementation of measures regarding the crossing of Schengen borders, asylum applications, and visas did encounter several problems. Eventually, the Schengen Information System (SIS), storing data on incoming and outgoing persons for the entire Schengen area, wanted and missing persons, as well as stolen property and entry bans, and the Schengen Manual on external border checks have been developed to streamline the control of external borders.

Meanwhile, the Italian (1990), Spanish, Portuguese (1991), Greek (1992), Austrian (1995) and Danish, Finnish, Swedish (1996) and Icelandic and Norwegian (1999) governments also signed the Schengen agreement. It took quite some time before Italy (1997) and Greece (2000) became effectively part of the Schengen area, and the Schengen Executive Committee decided to form inspection teams to audit Italian border control afterwards. It is anticipated that the SIS will be replaced by a technologically more advanced information system (SIS-II), which also enables the participation of new Member States. In addition, a Visa Information System (VIS) based on biometric, digitized data, is due to be operational in 2012. Visa officers of the Schengen members have regularly met in third countries to discuss which persons are considered *bona fide*, which allows for quick provision of a visa for a member state of the Schengen area, and who are considered *mala fide*, such as unemployed persons, which usually results in a denial or more difficult provision of a Schengen visa.[63]

While just five EC governments established the Schengen regime, the ministers of justice and home affairs of all EC Member States created between 1985 and 1991 more than 20 working groups to discuss matters of security.[64] The Ad Hoc Immigration Group (since 1986) focused on immigration, asylum, and external borders, the Mutual Assistance Group '92 examined customs cooperation, while "Trevi 1992" (since 1988) concentrated on the consequences of the creation of the internal market

[63] Guild, E. & Bigo, D. (2002), 'The Legal Mechanisms – Collectively specifying the Individual: The Schengen Border System and Enlargement', in Anderson, M. & Apap, J. (eds.), *Police and Justice Co-operation and the New European Borders*. The Hague: Kluwer. pp. 121-138

[64] Mitsilegas, V. et al. (2003), supra note 17, p. 30.

by 1992. These working groups drafted conventions on immigration, asylum-seeking and external frontiers, and these were considered the "first collective move towards a harmonized frontier control policy" within the EC.[65] The EC governments did not formally adopt an External Frontiers Convention due to disagreement between the Spanish and British government about the status of Gibraltar within the EC.[66] The Asylum Convention received common approval of the EC governments at a 1990 meeting in Dublin. Asylum and immigration issues remained politically sensitive issues during the Intergovernmental Conferences in 1990 and 1991 on economic and monetary policy, as well as the political union among the EC governments.[67] An attempt to incorporate the Schengen agreements into the new European Union failed largely because of British opposition. The governments eventually agreed to keep control over decisions on security and the free movement of persons, while, apart from visa policy for third-country nationals, restricting involvement of the European Parliament, the European Commission, and the European Court of Justice to non-security aspects of the free movement of goods, capital and services.[68] The Trevi system and the working groups were incorporated in the third pillar of Justice and Home Affairs within the newly established European Union.

The Treaty on the European Union was the first formal basis for European measures on common border control. The focus in the years after the treaty went into effect (1993) was mostly restricted to collecting and sharing information on immigration and frontiers. Decision-making on those issues was hampered by its political sensitivity, the variety of decision-making arenas (first pillar and third pillar of the European Union, as well as the Schengen regime), and the difficulties to conclude, ratify and implement international agreements within a reasonable period of time, if at all, in the intergovernmental third pillar. The prospect of enlargement of the EU raised concerns particularly among the French and German security authorities, because they perceived Central and Eastern European countries as an important transit area for drugs and human

[65] Anderson, M. et al. (1995), supra note 6, p. 133.
[66] Idem, p. 140.
[67] Mitsilegas, V. et al. (2003), supra note 17, p. 27.
[68] Guild, E. (2001), supra note 10, p. 12.

trafficking to Western Europe.[69] The adoption of the Schengen regime would require EU candidate members in Central and Eastern Europe to invest in security measures, including external border control. At the 1997 Amsterdam summit finalising another Intergovernmental Conference, the EU governments therefore decided to incorporate the Schengen regime (including the variety of bilateral agreements among its members) into the European Union, and elevated the creation of an Area of Freedom, Security and Justice (AFSJ) as one of the main goals of the European Union. They also attached deadlines to security measures, and transferred the issues of external border control, customs cooperation, asylum and immigration to the first pillar to facilitate and speed up decision-making. The absorption of Schengen into the EU is a centralising and inclusive step within the organisation of boundary control at the European level. However, the Irish and British governments secured the right to opt-out from measures taken on justice and home affairs, and the Danish government also maintained a special position.[70] In contrast, the non-EU Icelandic and Norwegian governments joined the AFSJ. Yet the incongruence of boundaries demarcating EU membership and the security area respectively reflects the limits on the extent of inclusiveness as well as centrality.

Since Amsterdam, the European Commission and EU governments agreed to several action plans to combat organised crime within (candidate) member states. The European Council dedicated itself for the first time almost exclusively to justice and home affairs at the Tampere summit in 1999. The Council agreed upon a list of detailed measures to implement the AFSJ by 2004. According to the European Council, the AFSJ required external action (see below). It also emphasised "the need for a consistent control of external borders" to combat crime and stop illegal immigration. In particular, it called for cooperation on maritime borders, indicating a shift in attention from insecurity in the east to the south. After the Tampere summit, the European Commission issued several communications, legislative proposals and action plans on the issue of immigration, asylum, visas, a common data system for

[69] Mitsilegas, V. et al. (2003), supra note 17, pp. 34-35.
[70] See Kuijper, P.J. (2004), 'The Evolution of the Third Pillar from Maastricht to the European Constitution: Institutional Aspects', in *Common Market Law Review*. Vol. 41, p. 620.

fingerprints (EURODAC), and border management, not the least motivated by the heightened attention to terrorism after 9/11. Several EU governments already exercised a feasibility study on establishing European Border Police, because they perceived the Central and Eastern European candidates to be ill-prepared for joining the AFSJ.[71] The European Council in Laeken (2001) mandated the Council and Commission to develop proposals on external boundary control. In 2002, the European Commission issued an action plan on the management of external borders, which among other things led to the creation of an External Borders Practitioners Unit.[72]

The French presidential elections in the spring of 2002 increased the political sensitivity of immigration issues, due to the results of the anti-immigration candidate Jean-Marie le Pen (Front National). The Spanish government, faced with a rising number of illegal immigrants, subsequently decided when holding EU presidency to dedicate another European Council in Seville in June 2002 largely to justice and home affairs. The European Council wanted to intensify the external dimension of justice and home affairs (see below). It also decided to create a network of border management among the border guards of the Member States (as well as those of Iceland and Norway), focusing on practical cooperation. Challenged by increasing flows of illegal immigrants across the Mediterranean Sea and from candidate Member States, particularly southern EU governments exercised joint operations involving both police and military forces on land and at sea. Various governments also hosted ad hoc centres making risk analyses of sea, land and air boundaries, and ensuing proposals to enhance boundary control.

After a proposal by the European Commission in 2003, the EU governments agreed a year later to create an "agency for management of operational cooperation at the external borders" to "ensure a uniform and high level of control and surveillance."[73] The tasks of the agency, called Frontex, were to be common training of border guards, research, risk

[71] Monar, J. (2003), 'Justice and Home Affairs', in *Journal of Common Market Studies.* Vol. 41 (Annual Review), p. 124.
[72] Jorry, H. (2007), *Construction of a European Institutional Model for Managing Operational Cooperation at the EU's External Borders: Is the Frontex Agency a Decisive Step forward?* Research paper no. 6. Brussels: Challenge.
[73] Monar, J. (2005), 'Justice and Home Affairs', in *Journal of Common Market Studies.* Vol. 43 (annual review), pp. 131-146.

analyses, coordination of joint border patrols, monitoring and evaluation of border control, and assistance for joint return operations of illegal residents. In April 2005, the official opening of a Frontex office in Warsaw followed, which is linked to a network of national contact points in the member states. Frontex is only supplementary to the boundary control by the security authorities of the EU Member States. As its Regulation says, "[r]esponsibility of the external borders lies with the Member States".[74] Frontex is therefore largely dependent on the willingness and capabilities of Member States for actual boundary control. EU governments make tools and resources available through a Central Record of Available Technical Equipment (CRATE). For example, the Dutch made a frigate and helicopter available for patrolling the Mediterranean Sea.[75] A European Patrols Network was launched in 2007 to support coordinated efforts of EU governments to control the seas around the EU. In exceptional and urgent boundary situations, since 2007 Frontex can also form Rapid Border Intervention Teams (RABITs), a so-called rapid reaction capacity of about 600 national border guards available at request. Furthermore, an External Borders Fund was established in 2007 to share the financial burden of external border control. The British and Irish governments do formally not participate in Frontex, but cooperate actively in its activities. The focus of the Frontex activities has been on the southern maritime borders. The size of its budget and the reluctance of particularly northern EU members to share the costs of external border control in the south and east of the EU hamper the functioning of Frontex.[76] Concerns also exist about the lack of trust between the various organisations involved with border control within countries as well as between countries.

The JHA Council and European Council repeatedly urged for the management of illegal immigration particularly at the southern maritime borders, such as in the Hague Programme (a follow-up to the Tampere agreements for the 2005-2009 period) and in a discussion on migration at

[74] Council of the European Union (26 October 2004), *Council Regulation establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union* (EC) 2007/2004 (26 October 2004); OJ L 349/25.11.2004
[75] NRC Handelsblad (13 March 2008), 'Nederland zet Fregat in tegen Immigranten.'
[76] See, *e.g*, Euobserver.com (3 August 2007), 'EU Border Agency under Pressure to restart Patrol Mission.'

the informal European Council in Hampton Court in 2005. With regard to external boundary control (as well as visa, asylum, illegal immigration, and civil law cooperation), the European Parliament and the Council of the European Union (by qualified majority) co-decide on proposals from the European Commission or Member States since January 2005. In 2006, a Common Border Code was decided upon simplifying and consolidating the Schengen Manual and other sources on external border control.[77] Its implementation remains in the hands of the EU governments. In late 2007, the Schengen area/AFSJ has expanded to include all members of the EU and EFTA (including soon Switzerland), except for Britain, Ireland, Cyprus, Romania and Bulgaria. Meanwhile, the European Commission sought intensification of external boundary controls. Biometrics was considered among other things as a counter-terrorism strategy and means of control.[78] This idea re-appeared in 2008 in a proposal to counter migration flows from the Balkans. These flows shifted from the Atlantic Ocean and Western Mediterranean Sea (Canary Islands; Gibraltar), via the centre (Malta; Lampedusa) to the east, in large part due to the intensification of boundary controls at sea and the conclusion of readmission agreements with various African governments. Together with the eastward extension of the Schengen area, a shift towards the Balkans is expected.[79] The European Commission proposed the verification of identity at entry and exit based on biometrics such as fingerprints as part of the European Border Surveillance System (Eurosur). In addition, it wishes to explore the possibilities of an Electronic Travel Authorisation System to prevent people from over-staying their visas.[80]

The Commission thus aimed at the territorial exclusion of people by digitized means. In other words, territoriality remains a strategy that is used to control exit and entry by the European Union and its Member States. The creation of European boundary control involves consequently a "territorialisation" of the organisation of security at the European level,

[77] Jorry, H. (2007), supra note 72.
[78] Council of the European Union (1 December 2005), *The European Union Counter-Terrorism Strategy*. Brussels: JHA Meeting. pp. 8-9.
[79] EuropeanVoice.com (7 February 2008), 'Frontex Chief warns of High Migration via the Balkans.'
[80] European Commission (2008), *Communication: Preparing the Next Steps in Border Management in the European Union*. SEC(2008) 153/ SEC(2008)154.

defining an impersonalised, territorial outsider as a threat.[81] The Iron Curtain has thus been replaced by a clearly visible "welfare curtain"[82] to exclude perceived threats to the affluent EU. However, arrangements to facilitate local border traffic between for example Poland and Ukraine have been made to mitigate the exclusionary effect of the EU border. After the failed ratification of the European Constitutional Treaty, the European Commission has put more emphasis on exclusionary security demands of citizens (both in terms of social security and crime) in its boundary policies.[83] Next to geographical exclusivity, the establishment of an institutional framework to exchange information on entry and exit according to increasingly common formats and rules also shows some centralisation within the AFSJ. Nevertheless, the continuous expansion of external boundary control from Member States, Schengen to the AFSJ has hampered the institutional depth and breadth of the EU borders, and has consequently kept the logic of territoriality weak at the EU level. Lacking a geographically fixed image of the EU and its external borders, a locking-in effect entailing further centralization and inclusion has been fairly limited.

The external boundary regime of the Schengen area/ AFSJ does undermine Member States' principle of territoriality. EU governments are no longer fully sovereign in deciding about the location of their external boundaries, the control of those external boundaries, and the exit and entry of persons to its territory. Nevertheless, the logic of territoriality still leaves its imprint on the political behaviour of EU governments. They still decide individually what is considered a security risk to the AFSJ. Facing increasing insecurity because of the drugs trade or terrorist attacks, politicians or security authorities in France, Poland, and the Netherlands have proposed or re-introduced national boundary control. The exceptional status of Ireland, the United Kingdom and Denmark also indicate the continuous significance of national territory as the strategy for control. The insistence on national prerogatives regarding boundary control, and the unwillingness to share the costs of external boundary

[81] Mitsilegas, V. et al. (2003), supra note 17, pp. 84-86.
[82] Dannreuther, R. (2004), 'Conclusion: Towards a Neighbourhood Strategy?', in in R. Dannreuther (ed.), *European Union Foreign and Security Policy: Towards a Neighbourhood Strategy*. London: Routledge. p. 210.
[83] Comelli, M., Greco, E. & Tocci, N. (2007), 'From Boundary to Borderland: Transforming the Meaning of Borders through the European Neighbourhood Policy', in *European Foreign Affairs Review*. Vol. 12, p. 214.

control also reflect this continuous significance. A lack of mutual trust among security authorities within the AFSJ results in the denial to dissolve units for internal boundary control, and to transfer prerogatives on border guards to the European Union. Low institutionalisation of EU boundaries and consequent weak geographical fixity, inclusion and centralisation are thus combined with conflicts of territorialities, between the EU level and the Member States' level.

7.3.2 Outward-looking and value-based security policies of the EU

The logic of territoriality at the European level in the organisation of security is not only weakened by the continuously shifting boundary of the EU. The nature and origin of European boundary control also partly explains the weak territorialising effects. The introduction of carrier sanctions and cargo inspections at the point of origin expands the zone of EU boundary control into foreign territories. In addition, the advanced information technologies distributed by Frontex allows for "differentiated border management detached from the territorial logic and targeted to certain groups of people."[84] Person-based strategies to classify people and communicate exclusion and inclusion compete with the efficiency of territorial strategies of security control. People with an Islamic or poor background are increasingly treated with routine suspicion as the group of *mala fide* travellers. Above all, the changing definition of threats has resulted in a non-fixed nature of European boundary control, as has been aptly summarised by António Vitorino, the European Commissioner for Justice and Home Affairs, who argues: "…the best way to consolidate the security of the Union is not by erecting a barrier against our neighbours, but by spreading both stability and prosperity beyond our borders."[85] Instead of desiring weak neighbours to keep security threats low for defensive reasons, well-organised and safe neighbours would be required for security.[86] Combating root causes of threats wherever they are by spreading values and security measures would consequently replace

[84] Jorry, H. (2007), supra note 72, p. 14.
[85] Vitorino, A. (2002), 'New European Borders and Security Cooperation: Promoting Trust in an Enlarged Union', in M. Anderson & J. Apap (eds.), *Police and Justice Co-operation and the New European Borders*. The Hague: Kluwer. p. 17.
[86] Howorth, J. (2007), *Security and Defence Poliy in the European Union*. Houndmills: Palgrave MacMillan. p. 200.

territorial containment as the main security strategy. It would fuse an imperial inclination into EU security policies: providing security by expanding its boundaries and spreading its values. Would this potential imperial security policy result in a stronger voice within or gradual exit from the American security framework? And because imperial policies are only limited in practice and not in principle, where would EU imperialism stop? These are the leading questions of this section.

EU governments started to keep threats out long before the creation of the framework of Justice and Home Affairs. Some governments agreed in 1948 to automatic common defence within the Western European Union (WEU), although this task was transferred to NATO. Fearing a possible large-scale attack (from Russian armies), Western European countries would rather count on the US government and therefore sought NATO for protection.[87] The evolution of the WEU after its revivification in the 1980s indicates the changing nature of security threats. At this time it also started to look outside the WEU area.[88] WEU forces swept mines in the Gulf in 1988 and 1990. In its Paris Communiqué, the WEU members acknowledged "the growing significance for European security of events that may occur outside Europe…."[89] Although 'events' in Washington have been significant for some decades for European security, the quote indicates a tendency among WEU members to deal with non-European events. The question is, however, as part of Western or EU imperial policies.

Due to the perceived victory of Western values in Europe and giving priority to other parts of the world, the US government sought to reduce American troops in Europe substantially after 1989. It also resulted in a reorientation of the relationship between the US government and the European members of NATO. NATO members discussed whether the focus should be more on political, instead of military cooperation. In addition, the contribution, tasks, and autonomy of European forces were discussed. Although successive US governments welcomed European security authorities to maintain Western domination in the

[87] Menon, A. (2004), 'From Crisis to Catharsis: ESDP after Iraq', in *International Affairs*. Vol. 80. no. 4, p. 635.
[88] Bloed, A. & Wessels, R.A. (1994), *The Changing Functions of the Western European Union: Introduction and Basic Documents*. Dordrecht: Martinus Nijhoff. pp. xxiv ff.
[89] Idem, p. 97.

neighbourhood of the EU, they also feared an independent European security policy which might conflict with their ideas and interests. EC/EU political and security authorities were divided among themselves about the extent in which the EU should pursue an independent course. Discussions thus focused on the effects of 'de-NATO-ization' for security within the European Union, for the security of the European Union, and the defence of Western values across the world. A European exit from the US-led Western security bloc would thus not only encounter US criticism, but also from within the EU, particularly from the British, Portuguese, Dutch, and Danish governments.

In 1988, the French and German security authorities invited their European partners to join the French-German brigade, upgraded to the Eurocorps. The French particularly considered the Eurocorps as a starting point for European defence identity. Just for this reason, the Dutch government declined the invitation to join. After the end of the Cold War, parallel discussions in the WEU, EC, and NATO intensified about the creation of an autonomous European force. American political and security officials indicated that a stronger voice for European members in NATO would be acceptable, but an exit through the WEU would absolutely not be accepted.[90] In addition, they decided in favour of incorporating East Germany in the Federal Republic of Germany and also in NATO to prevent German security authorities from going alone. As a gesture to the Soviet government, the US government promised to discuss European security matters also in the Conference of Security and Cooperation in Europe, in which they both participated.

NATO members accepted in 1991 the development of multinational forces such as the Eurocorps (made available to NATO by 1993), officially insisting on the primacy of NATO regarding European defence issues. NATO gradually reoriented its focus from large-scale conventional attacks on allied territories to military actions outside the NATO area. Hitherto, out-of-area operations had barely been discussed in NATO, because the US government did not like to be involved with British or French imperial actions in the 1950s, while European NATO members did want to become drawn into US imperial endeavours in,

[90] Lundestad, G. (1998), *"Empire" by Integration: The United States and European Integration, 1945-1997*. Oxford: Oxford University Press. p. 115.

among others places, Vietnam. The new attention to out-of-area operations has been motivated by the changing perceptions of security threats. Another reason for its existence is the desire to maintain a well-organised security organisation. Although several EU governments defined stability at the Balkans a prior responsibility for EU, NATO was the only organisation available to plan and implement multi-national interventions in the former Yugoslavia in a rather efficient and coherent way, backed up with transport capacities and real-time intelligence mainly from US armed forces.

Next to the Intergovernmental Conference (IGC) on Economic and Monetary Union, the French and German governments also proposed to launch an IGC on European Political Union to enhance foreign and security policies at the European level. At their concluding session in Maastricht in December 1991, the EC governments agreed to establish a Common Foreign and Security Policy (CFSP), which could eventually include a common defence policy that "might in time lead to a common defence." Meanwhile, WEU members declared at a separate meeting in Maastricht that they considered the WEU as "an integral part of the development of the EU." Staunch pro-NATO members like the British, Dutch and Greek governments did want to stay in (or join, in the Greek case) this WEU, because they preferred to have a voice option on its security role, while particularly the British hoped the French government would join the military branch of NATO in return. The previously London-based WEU set up infrastructure in its new Brussels headquarters to analyse coordination among the armies of its member states and to monitor security developments. In the 1992 Petersberg Declaration, the WEU emphasised it would focus on operations initiated by the OSCE (and later also the UN), involving operations aimed at humanitarian relief, conflict prevention, peace-keeping and peace-enforcement operations. The choice for these operations did not only originate from the political necessity to avoid duplicating NATO's main goal of defending the territorial integrity of its members, but also from the changing perception of threats within the WEU that low-intensity conflicts require a different response than large-scale conventional

attacks.[91] The Independent European Programme Group was incorporated into the WEU framework, and was referred to as the Western European Armament Group. Forces such as the British-Dutch amphibious force, the Multinational Division (combining British, Belgian, Dutch and German units), and the French-German Eurocorps (expanded with Luxembourgian, Spanish and Belgian units) became forces (also) "answerable to WEU."

After a competitive spell between WEU and NATO, mutual relationships eventually improved.[92] Common experiences in the wars in the former Yugoslavia brought particularly French forces and security authorities closer to NATO. In 1994, the French and British governments officially declared they were discussing defence issues, and French security authorities expressed their desire to join the military branch of NATO again.[93] The French learned from the Yugoslav experiences that NATO was far more efficient in organising military operations than the WEU. The latter organisation kept on struggling with making itself effectively operational.[94] Although the French government has not yet joined the integrated command structure of NATO, it rejoined its military committee in 1995.[95]

A year before in 1994, NATO members had decided to create so-called Combined (*i.e.*, multi-national) Joint (*i.e.*, multi-service) Task Forces (CJTFs). After the continuing reduction of "in place forces" (consisting partly of conscripted men for defence of NATO territory), those task forces indicated a step towards out-of-area operations for a coalition of those willing. NATO members also agreed to set goals to transform their military capabilities to exercise out-of-area operations in low-intensity conflicts. Furthermore, the Clinton administration in the US accepted that European governments would have a more autonomous security and defence identity in NATO, and that WEU members could launch out-of-area operations without US participation, but with use of NATO infrastructure under the formula of "separable but not separate."

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[91] *Cf.* Eekelen, W.F. van (1998), *Debating European Security: 1948-1998*. The Hague: SDU. p. 214.
[92] Idem.
[93] Wijk, R. de (1997), *NATO on the Brink of the New Millennium: The Battle for Consensus*. London/ Washington: Brassey's. p. 123ff.
[94] Eekelen, W. van (1998), supra note 91.
[95] Howorth, J. (2007), supra note 86, Ch. 2.

Protracting debates followed about how exactly the WEU could borrow infrastructure and forces from NATO, and how non-WEU members of NATO (Norway, Iceland, USA and Turkey) would be involved in decision-making on European operations. Although the French government agreed that the WEU should not duplicate NATO, it also did not want the WEU subordinate to NATO.

The EU governments decided at their Amsterdam summit in 1997 to adopt the WEU Petersberg tasks. They also decided to create the position of a high representative for CFSP, as well as a Policy Planning and Early Warning Unit within the Council Secretariat. These decisions can be seen as modest attempts at centralising, as well as exclusionary steps in organising foreign and security policies at the European level. However, debates on the use of NATO assets and capabilities by the EU for Petersberg tasks continued, while the need for those assets and capabilities would not decrease because of the limited defence expenses by EU members. Concerns developed within successive British governments that European security efforts were not effective. They feared that US politicians would consider these efforts unconvincing to maintain military solidarity for the European members of NATO. In addition, insufficient European security efforts would sustain the inability to act independently from the US armed forces, although the violation of human rights in the Balkans, and particularly in Kosovo, called for intervention according to the foreign policy doctrine of the new British Prime Minister Blair in 1997. Blair therefore expressed his desire that the EU should be able to fulfil the Petersberg tasks independent of US assistance, albeit with use of NATO infrastructure. The French President Jacques Chirac agreed, and he signed with Blair the 1998 Saint Malo agreement, stating that "… the Union must have the capacity for autonomous action, backed up by credible military forces…."[96]

The EU governments all agreed except for the Danish government and they subsequently launched a common European Security and Defence Policy (ESDP) in 1999, which included the creation of a European Rapid Reaction Force to exercise the civil-military Petersberg tasks, leaving territorial defence and high-intensity violence to NATO and national forces. The EU governments set so-called Helsinki Headline

[96] Quoted in Howorth, J. (2007), supra note 86, p. 34.

Goals to transform their armed forces to perform those tasks collectively. The EU governments set up an institutional framework of an intergovernmental nature to coordinate the predominantly civil-military tasks within the EU. The high representative for CFSP became the high-profile former NATO secretary-general Javier Solana, who also took on the position of WEU secretary-general. A newly established Political and Security Committee (known under its French acronym of COPS), consisting of representatives of the EU member states, were to monitor the international security situation and also the implementation of the Headline Goals. An EU Military Committee (EUMC) also consisting of national representatives advises COPS on military matters, whereas an EU Military Staff (EUMS) within the Council Secretariat provides the HR CSFP with a unit for early warning, situation analysis, strategic planning, and if necessary, for the implementation of decisions made by the EUMC. Thus, the EUMS is the "only permanent integrated military structure of the European Union."[97] A Committee for Civilian Aspects of Crisis Management advises COPS on civilian matters, whereas a police unit within the Council Secretariat provides the necessary information regarding these matters.

The 2001 European Council in Gothenburg re-emphasised the significance of civilian capabilities next to military ones for conflict prevention and human security, after the EU governments agreed in 2000 to make police forces, experts on rule-of-law and law practitioners available. The European Council, meeting in the aftermath of 9/11 in Seville in 2002, also extended the Petersberg tasks by declaring that CFSP and ESDP should also be used to fight terrorism.[98] A Civilian Headline Goal was set in 2004 to improve the collective civilian capabilities. The EU governments also decided to create a Situation Centre (SITCEN) within a Policy Unit in 2003 and appointed a counter-terrorism coordinator in 2004. Steps towards the creation of a European Defence Agency to collectively develop and acquire defence materials followed. Meanwhile, the EU governments also agreed in 2002 with NATO about an arrangement in which non-EU NATO members would be timely

[97] Howorth, J. (2007), supra note 86, p. 75
[98] See also Council of the European Union (1 December 2005), *The European Union Counter-Terrorism Strategy*. Brussels: JHA Meeting. pp. 11-12.

informed and consulted before the EU would use NATO assets and capabilities.

However modest it is, the creation of the institutions of the CFSP/ESDP is a step towards centralisation and inclusion in the organisation of security within the EU. The solidarity clause agreed upon after the Madrid terrorist attacks in 2004 indicated a further feeling of inclusion within the EU. Nevertheless, these steps are largely made on paper. The ESDP met severe problems in implementing its goals, because of a lack of effort from EU governments to expand their financial, logistical, communicative and operational capabilities to respond rapidly to out-of-area threats as well as the relationship between ESDP and the US government and NATO.[99] The EU set new targets in 2004 (the Headline Goal 2010), continued to negotiate with non-EU NATO partners, and agreed to launch small-sized battle groups (about 1,500 persons each) that are rapidly deployable in ambit of 6,000 kilometres from Brussels. However, the attempt to introduce enhanced co-operation with new treaties encountered severe ratification problems.

Meanwhile, the UK government, disappointed by the lack of substantial progress, and bolstered by Eastern European governments greater trust in the US government and NATO structures, refocused their own support for NATO, seeing it also as an effective force for challenging terrorism at a global level. At the NATO summit in 2002, the organisation agreed to the creation of a NATO Response Force with a global reach. In addition, severe tensions among EU governments emerged in the discussions in 2002 and 2003 on militarily intervention in Iraq. After 9/11, the European NATO members invoked the solidarity article in the NATO treaty not only because of shared values, but also because they sought to prevent the US government from overreacting.[100] They tried to keep the US government within the NATO framework, which would offer them a voice option on US actions. Similarly, certain European NATO members also tried to keep the US government within the UN framework. The US government showed a preference to act unilaterally outside both the UN and NATO frameworks. In response, some European NATO members

[99] Menon, A. (2004), supra note 87.
[100] Boer, M. den & Monar, J. (2002), 'Keynote Article: 11 September and the Challenge of Global Terrorism to the EU as a Security Actor', in *Journal of Common Market Studies*. Vol. 40 (Annual Review), p. 12.

expressed their desire to partially exit from the US-led security empire. The governments in Belgium, France, Germany and Luxembourg all expressed their desire to create an independent European military headquarters separate from NATO. Although this initiative encountered fierce criticism from other European NATO members, the French, German and British governments soon agreed (after consultation with the US government and NATO) to add an EU unit within the NATO military headquarters in Mons (Belgium) for EU operations using NATO facilities. For most EU-only operations, the EU can use the national military headquarters of the United Kingdom, France, Germany, Italy or Greece, while a small EU civil-military planning cell in Brussels would serve small missions if NATO or national facilities are not available.[101] Plans to create the European Gendarmerie (in which the Dutch *Marechaussee* also participates) followed.[102]

Despite the Iraq tensions, and notwithstanding a lack of transport capacity, secure communication infrastructure and military intelligence, the EU launched military, police and judicial missions in the Balkans, Caucasus, the Congo, Iraq and Afghanistan within the ESDP framework. These missions indicate an outward-looking as well as value-based security policy of the European Union. The missions aimed at the maintenance of order outside its territory to prevent criminality, illegal immigration and ethnic war from spilling over into the EU. In addition, the missions have been motivated to spread values of democracy, rule of law, and solidarity among its neighbours and further abroad.[103] As a consequence, a social order and threats defined by the EU rather easily gloss over local security concerns and practices in EU operations abroad.[104] European security rather than local security is the motivation to

[101] Dijkstra, H. (2007), 'Het Tweede Militaire Hoofdkwartier in Brussel: Nieuwste Duplicatie in Relatie EU-NAVO', in *Internationale Spectator*. Vol. 61, no. 9, pp. 425-428.
[102] Euractiv.com (27 January 2006), 'Five EU Countries launch the European Gendarmerie Force.'
[103] Matlary, J.H. (2008), 'Much ado about little: The EU and Human Security', in *International Affairs*. Vol. 84, no. 1, pp. 131-143.
[104] *Cf.* Merlingen, M. & Ostrauskaite, R. (2005), 'ESDP Police Missions: Meaning, Context and Operational Challenges', in *European Foreign Affairs Review*. Vol. 10, p. 219; Barbé, E. & Johansson-Nogués, E. (2008), 'The EU as a Modest "Force for Good": The European Neighbourhood Policy', in *International Affairs*. Vol. 84, no. 1, p. 92.

promote western values, economic development or effective governance abroad.[105]

In the 2003 European Security Strategy (ESS), the EU governments laid down the EU's outward-looking and value-based security policy. As has been quoted from the ESS at the beginning of this chapter, the first line of European defence lies abroad. The five main threats of terrorism, distribution of weapons of mass destruction, regional conflicts, failed states and organised crime requires "preventive engagement" and "effective multilateralism," both near and farther away. Would the ESS indicate a first step towards a European security policy independent and deviating from the main power in the Western bloc, the US government? The US government has expressed concerns about a potential European exit from the Western bloc, insisting on the need to complement rather than duplicate NATO security efforts. In addition, it is claimed that US policy is to urge enlargement also to weaken the political cohesion within the EU.[106] Enlargement would provide the opportunity to play divide-and-rule even more effectively, not the least because of the continuous intergovernmental nature of CFSP/ESDP.

However, both US and EU governments emphasise the congruence of their interests and values. The spread of stability and security in Southern and Eastern Europe by EU enlargement serves both EU and US interests and ideas.[107] NATO enlargement as well as the Partnership for Peace with non-NATO members provides a security cover for EU enlargement. During the discussions on war in Iraq, a difference in geographical focus and particularly values allegedly emerged within the Western camp between the US government and several EU governments. However, solidarity and shared Western values can still be denoted in voting behaviour in the UN, the collective efforts within NATO to stabilise, reconstruct and democratise Afghanistan, and the manifold activities to cooperate closely in the fight against crime and terrorism between several US security authorities and the European Commission, European Central

[105] Duffield, M. (2007), 'Development, Territories, and People: Consolidating the External Sovereign Frontier', in *Alternatives*. Vol. 32, pp. 225-246.
[106] Dorronsoro, G. (2004), 'The EU and Turkey: Between Geopolitics and Social Engineering', in R. Dannreuther (ed.), *European Union Foreign and Security Policy: Towards a Neighbourhood Strategy*. London: Routledge. p. 50.
[107] Euobserver.com (27 September 2006), 'US welcomes EU Expansion and calls for more.'

Bank, Europol, Eurojust, Club de Berne's Counterterrorist Group, and national intelligence services within the EU, including the French.[108] The participation of US law enforcement officials represented "an unprecedented opening of EU structures towards a third country."[109] US security authorities also practiced "coercive co-optation" with respect to JHA policies threatening to block access to its territory for European (business) travellers.[110] Nevertheless, US policies towards European integration are still more about unite-and-support-us rather than divide-and-rule.[111] Although serious doubts exist whether NATO will be apt to unite the transatlantic security empire in the long run,[112] ESDP can be understood as a modest attempt to sustain military transatlantic engagement by complementing NATO, rather than as an immediate exit from the US-dominated Western bloc.

The EU's value-based and outward-looking security policy is not just a matter of ESDP, but also of justice and home affairs (JHA). Since the Treaty of Amsterdam, candidate member states have to adopt the full Schengen/ JHA package. In the Treaty of Amsterdam, the EU governments sought to include matters related to JHA in international agreements concluded by the European Community. They agreed at the Tampere European Council (1999) to add an external dimension to justice and home affairs. The Feira European Council (2000) and the Seville European Council (2002) emphasised that JHA goals should also be respected in external policies, for example in peacekeeping operations as well as in aid and development agreements. Henceforth, a clause on immigration had to be adopted in every bilateral or regional agreement. The Aeneas programme provided third countries financial and technical

[108] Boer, M. den & Monar, J. (2002), supra note 100, p. 14; Gegout, C. (2002), 'The Quint: Acknowledging the Existence of a Big Four-US Directoire at the Heart of the European Union's Foreign Policy Decision-making Process', in *Journal of Common Market Studies*. Vol. 40, no. 2, pp. 331-344; Aldrich, R.J. (2004), 'Transatlantic Intelligence and Security Cooperation', in *International Affairs*. Vol. 80, no. 4, pp. 731-753; NRC Handelsblad (4 July 2005), 'Frankrijk en VS bestrijden samen Terreur: Hoofdkwartier in Parijs; Euractiv.com (9 November 2006), 'EU-US Crime "Contact Group" launched.'
[109] Boer, M. den & Monar, J. (2002), supra note 100, p. 14.
[110] Andreas, P. & Nadelmann, E. (2006), supra note 4, p. 220.
[111] Peterson, J. (2004), 'America as a European Power: The End of Empire by Integration?' in *International Affairs*. Vol. 80, no. 4, p. 614.
[112] Wijk, R. de (2004), 'Functie van de NAVO geërodeerd door Beleid Regering-Bush', in *Internationale Spectator*. Vol. lviii, no. 10, pp. 478-483.

assistance to stop immigration or readmit migrants from the EU.[113] Later on, agreements with the EU also included anti-terrorism clauses.[114] In addition, a network of immigration liaison officers was established to manage migratory flows in neighbouring countries. Next to illegal immigration and terrorism, combating illicit drug trafficking was also given special attention in dialogues with security counterparts in the Balkans, Central Asia, and Latin America.

As follow-up of the Tampere agreements, the Hague Programme for the period 2004-2009 once more emphasised the necessity of the external dimension of JHA. In a communication especially dedicated to this issue, the European Commission argued that the external dimension exists because threats to internal security from terrorism, organised crime and drug trafficking often originate abroad. That also requires "the promotion of the values of freedom, security and justice in third countries"[115] through technical support for border management, strengthening law enforcement institutions, and the support of human rights in those countries. In a communication on migration the Commission emphasised the need for "dialogue and cooperation" with governments from Africa and neighbouring countries, albeit predominantly on (security) priorities set by the EU.[116] In addition, the European Commission and Frontex also started to establish working arrangements on border control with governments of transit countries and countries of origin (regarding crime, terrorism, and illegal migration).[117] Europol and the navies of various EU member states agreed to control illicit drug transport from West-Africa to Europe.

The expansionary inclination of the outward-looking and value-based security policy of the EU is particularly visible in the treatment of its

[113] Monar, J. (2004), 'Justice and Home Affairs', in *Journal of Common Market Studies*. Vol. 42 (Annual Review), p. 121.
[114] Monar, J. (2004), 'The EU as International Actor in the Domain of Justice and Home Affairs', in *European Foreign Affairs Review*. Vol. 9, p. 413.
[115] European Commission (2005), *Communication: Strategy on the External Dimension of the Area of Freedom, Security and Justice*. COM(2005) 491 final. p. 4.
[116] See, *e.g.*, European Commission (2006), *Communication: The Global Approach to Migration one Year on: Towards a Comprehensive European Migration Policy*. COM(2006) 735 final.
[117] European Commission (2008), *Communication: Report on the Evaluation and Future Developments of the FRONTEX Agency*. SEC(2008) 148/ SEC(2008) 149/ SEC(2008) 150.

near abroad. Initially, the EU sought to pacify its neighbourhood through peace-supporting operations and diplomatic interventions, mostly within the framework of international organisations such as the UN, OSCE, Council of Europe, WEU, and NATO. A secure and wealthy future through accession to EU and NATO also offered an instrument to limit instability and conflict at EU boundaries. The prospect of enlargement shifted attention from settling conflicts at EU boundaries to the 'import' of crime, as well as immigration from Central and Eastern Europe and later from the Balkans. The 1994 Berlin declaration can be seen as a significant EU effort to combat crime, trade in nuclear material and illegal immigration in accession countries.[118] The 1998 Pre-Accession Pact on Organised Crime effectively turned candidate countries in Central and Eastern Europe into temporary "law enforcement buffer zones"[119] against the infiltration of illegal immigrants, drugs, and criminals into the EU, as well as the export of stolen goods from West to East. The Stability Pact Initiative against Organised Crime in South-Eastern Europe has had a similar function. Security agencies from the EU Member States have thus not only been active in maintaining peace, separating conflicting parties, maintaining public order, controlling borders, and training police and border forces in non-EU Europe, but also in instructing the judiciary and public prosecution, and in launching joint action plans fighting drug trafficking, organised crime and illegal immigration. This was often done in close cooperation with US security authorities.[120] Compliance could be enforced by the prospect of EU enlargement. The EU provided pre-accession as well as post-enlargement funding to sustain efforts of transition towards secure countries.[121]

Extension of EU rules is also aimed at countries that do not have a perspective on EU membership. The aim has been to spread stability and security further by creating a "ring of friends" around the EU through the

[118] Boer, M. den (1997), 'Wearing it inside out: European Police Cooperation between Internal and External Security', in *European Foreign Affairs Review*. Vol. 2, no. 4, pp. 491-508.
[119] Andreas, P. (2003), 'Redrawing the Line: Borders and Security in the Twenty-first Century', in *International Security*. Vol. 28, no. 2, p. 103.
[120] Andreas, P. & Nadelmann, E. (2006), supra note 4, p. 185.
[121] Pippan, C. (2004), 'The Rocky Road to Europe: the EU's Stabilisation and Association Process for the Western Balkans and the Principle of Conditionality', in *European Foreign Affairs Review*. Vol. 9, pp. 219-245.

European Neighbourhood Policy (ENP). It aims officially at preventing another Iron Curtain from dividing Europe after the enlargement of 2004. The EU and each neighbour have a say in the respective action plans on their relationship, but in those plans EU security interests figure prominently. The EU offers visa facilitation to its neighbours' citizens (with special treatment for those living in the border regions), but in exchange for readmission agreements and financial and institutional assistance to combat crime, illegal immigration and terrorism.[122] The neighbouring countries around the Mediterranean Sea and the east (Ukraine, Moldova, Belarus, Georgia, and Armenia) are intended to serve as a protective buffer zone. By making JHA policy an important part of ENP, the EU extra-territorialises the management of threats. For example, the required adoption of the Geneva asylum regime within the agreements with their neighbours would create a buffer zone of safe countries, to which asylum applicants within the EU area could be returned.[123] Similarly, several European politicians proposed placing refugee camps in Ukraine and North Africa, relegating them to a position of protective buffer for the rich and powerful EU core.[124] Eventually, so-called Regional Protection Programmes have provided the financial and organisational means since 2006 to assist countries of origin and transit to protect and resettle refugees.

Benita Ferrero-Waldner, the European Commissioner who is responsible for the ENP, has described it as the "newest democratization tool."[125] In its bilateral agreements the EU also officially promotes human rights and democratic governance. Moreover, in the 2004 Orange Revolution in the Ukraine and Serbia EU politicians supported the so-called pro-Western democratic camp. However, the EU did not conclude an agreement with the Belarus government because of its dictatorial nature. Instead, it applied sanctions to Belarus, and funds 'independent'

[122] Wichmann, N. (2007), *The Intersection between Justice and Home Affairs and the European Neighbourhood Policy: Taking Stock of the Logic, Objectives & Practices*. CEPS Working Document no. 274. Brussels: CEPS.
[123] Guild, E. (2005), 'What is a Neighbour? Examining the EU Neighbourhood Policy from the Perspective of Movement of Persons.' Paper presented at Western NIS Forum for Refugee-Assisting NGOs (Yalta, 1 – 3 June 2005). p. 28.
[124] Euobserver.com (16 September 2004), 'Four EU Member States suggest Refugee Camp in Ukraine.'
[125] Quoted in Barbé, E. & Johansson-Nogués, E. (2008), supra note 104, p. 87.

TV and radio broadcasting to Belarus to support the opposition.[126] The EU thus shows it aims at spreading values in its neighbourhood. The EU policy towards its neighbours has been described as "hub-and-spoke bilateralism"[127] since it seeks to impose its priorities into these agreements on a bilateral basis. ENP also shows the differentiation of EU boundaries, particularly the non-congruity of the institutional and legal boundaries of the EU.[128] The radial pattern in the EU security policies towards candidate members and neighbouring countries indicates its imperial nature.

Once the supply of energy emerged as a new security priority in addition to crime, illegal immigration and terrorism, then the Southern Caucasus and Central Asian region also received greater attention from the EU. Since its outward-looking and value-based policies have in principle no geographical limits, the question can be asked where might their implementation stop in practice? The instrument of EU enlargement is limited by the willingness within the EU to accept new members as well as the availability of new members adhering to EU values. If it would accept members that do not honour EU values, the credibility of the EU would be seriously undermined. Next to the geographical range of shared values, the practical limits to EU outward-looking security policy also depend on the possibility of monitoring and enforcing the observance of its values. The EU is still dependent on the willingness of its Member States, the support of US security authorities as well as NATO's infrastructure for exercising peace-supporting or humanitarian operations in addition to the external dimension of JHA. Moreover, certain non-EU governments have been sufficiently powerful to refuse cooperation with the EU. Although the EU has agreements with the Russian Federation on crime and immigration, it cannot enforce observance to the extent it has been able to in Central and South-eastern Europe.

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[126] Euractiv.com (25 August 2005), 'Commission supports Independent Broadcasting to Belarus'; Euractiv.com (27 February 2006), 'EU backing Democratic Forces in Belarus.'

[127] Charillon, F. (2004), 'Sovereignty and Intervention: EU's Interventionism in its "Near Abroad"', in W. Carlsnaes, H. Sjursen & B. White (eds.), *Contemporary European Foreign Policy*. London: Sage. p. 259.

[128] Lavenex, S. (2004), 'EU External Governance in "Wider Europe"', in *Journal of European Public Policy*. Vol. 11, no. 4, p. 681.

Because ESDP remains close to NATO in values and practice, the Russian government still perceives the US government as the prime security actor in Europe.[129] Russian governments perceive the former Soviet Republics as belonging to its sphere of influence, and have grudgingly accepted the expansion of NATO into Central and Eastern Europe.[130] Since 2000, the Russian neighbourhood policy aims at "the creation of a belt of good neighbourliness around Russian borders."[131] However, the friendliness from the EU towards Russia's neighbours has raised some mutual irritation. To the extent in which the EU has increasingly tried to use its influence concerning issues of ethnic conflict, elections and energy security in Moldova/Transniestria, South Caucasus and Ukraine,[132] it has annoyed the Russian government which sees the EU meddling in its near abroad because of its concerns about human rights and democracy.[133] In-between the softly clashing imperial policies of the EU and Russia, the Ukrainian government honours the literal meaning of its country's name, borderland. The stalemate between the EU and Russian imperial policies may eventually lead to a geographical fixation of the EU boundary, resulting in a further locking-in effect, reflected by the further inclusion and centrality of EU efforts to keep security threats out of the EU. Until now, the relatively unfixed and person-based nature of the EU boundaries due to its imperial origin has prevented yet a deep and broad institutionalisation of a territorial boundary and that keeps the logic of territoriality at the European level weak.

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[129] Forsberg, T. (2004), 'The EU-Russia Security Relationship: Why the Opportunity was missed', in *European Foreign Affairs Review*. Vol. 9, p. 257.
[130] Allen, D. (1997), 'EPC/CFSP, the Soviet Union, and the Former Soviet Republics: Do the Twelve have a Coherent Policy?', in E. Regelsberger, P. de Schoutheete de Tervarent & W. Wessels (eds.), *Foreign Policy of the European Union: From EPC to CSFP and beyond*. Boulder (CO): Lynne Rienner. p. 232.
[131] Quoted in Löwenhardt, J. (2005), *Stuck in the Middle: The Shared Neighbourhood of the EU and Russia, 2000-2005*. The Hague: Clingendael. p. 33.
[132] Euobserver.com (29 August 2006), 'EU Neighbours drifting into War, Brussels warns.'
[133] Euobserver.com (6 September 2005), 'Putin asks West not to meddle in ex-Soviet Republics'; Euobserver.com (13 March 2006), 'Russia Critical of EU Role in Moldova as Transniestria Tension mounts'; Euobserver.com (16 February 2007), 'EU's New Black Sea Policy faces Russian Misgivings.'

7.3.3 Dutch security policies in European perspective I

The weak institutionalisation of the EU territory results in a relatively low tendency towards centralisation and inclusion within the EU, as well as geographical or social concentration of mobilisation and representation of voice at sub-European level. The predominance of national voice structures within the EU would therefore make it more likely to hear dissatisfaction with (new) security threats phrased in national terms. As has been argued above, national governments will nevertheless not seek exit from the EU, because the costs will be too high for them. The Dutch case exemplifies this.

The various documents and reports cited in section 7.2 confirm the proposition that concerns with or dissatisfaction regarding security are being expressed in national terms. Discussion and debate concerning the organisation of security are still focussed on cooperation among Dutch security authorities. Moreover, the homeland to be secured is the Netherlands, rather than the European Union. The Dutch security authorities describe the Schengen/AFSJ borders as Dutch borders, which should be guarded well to protect the Dutch, rather than the European system from crime, illegal immigration, and terrorism. This is despite the fact that borders are said to become increasingly irrelevant today for maintaining security, because of the worldwide interconnectedness and mobility of threats today. In addition, Dutch security authorities have increasingly emphasised that the Dutch society and its citizens should be protected in addition to the Dutch territory. Thus, the Dutch security system is more referred to in person-based rather than in territory-based terms, while its protection requires worldwide activities and not just border control.

It should be noted that Dutch security policies have had a person-based and worldwide reach before. According to Article 90 of the Dutch Constitution, the Dutch authorities should promote the development of the international legal order. That includes norms regarding the principle of territoriality to protect small entities from interference by great powers, but also the observance of human rights. Dutch authorities have been fairly active after the Second World War spreading economic and political freedom working with the United Nations as well as through their own developmental aid policies. The Cold War rivalry between the US and

USSR prevented the UN Security Council from launching many peacekeeping operations, and drew the focus of the attention to the defence of national and NATO territory. Therefore, until the early 1980s, security of the territory of the Dutch Kingdom and NATO was the main priority of the Dutch armed forces, whereas police forces concentrated on security within the Dutch territory. The Royal Military Constabulary (*Marechaussee*) protected the Dutch external borders of the Benelux area. The third wave of external de-consolidation entailed fundamental changes to the organisation of the Dutch security forces.

Due to a strong navy lobby, the Dutch forces were of considerable size in the 1980s.[134] Several political parties, out of the desire for pacifism or financial austerity, had hitherto unsuccessfully argued for the reduction of the Dutch defence budget. The end of the Cold War provided the justification for introducing cuts for the next decade. The 1991 Defence Memorandum (*Defensienota*) also emphasised the need to turn the Dutch army from a static defence organisation into a flexible and mobile force, not only for effective NATO operations against potential aggression from the Soviet Union/Russia, but also international UN peace-support operations. After the chance of a large-scale attack from the east largely vanished, the Dutch government increasingly focused on the creation of an expeditionary force for peace operations under the aegis of the UN or OSCE. In its 1993 Priorities Memorandum (*Prioriteitennota*), the Dutch government argued that the maintenance and promotion of the international legal order is in the interest of the Dutch state.[135] The establishment of an Air Manoeuvre Brigade (*Luchtmobiele Brigade*) soon followed in order to rapidly deploy the Dutch forces in low-intensity conflicts wherever in the world. The new focus on peace operations entailed the suspension of conscription, because such missions now required professionals. In addition, it seemed unjustified to ask one-third of conscripts called-up for military service to die abroad for the sake of international justice.[136] The volunteer army force (*Nationale Reserve*)

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[134] Honig, J.W. (1989), "The Dutch as Allies: Image and Reality", in *Internationale Spectator*. Vol. 43, no. 11, pp. 701-705.
[135] Wijk, R. de (2004), 'Defensiebeleid in Relatie tot Veiligheidsbeleid', in E.R. Muller, D. Starink, J.M.J. Bosch & I.M. de Jong (eds.), *Krijgsmacht: Studies over de Organisatie en het Optreden*. Alphen aan den Rijn: Kluwer. pp. 147-178.
[136] Idem, p. 158.

which was intended to protect the Netherlands against communist revolutions or Soviet invasion also became largely redundant and was eventually reduced considerably in numbers. Thus, the armed forces no longer served nation-building at home, but abroad.

The military leadership reluctantly agreed with the Ministry of Foreign Affairs and the majority of parliament to send Dutch troops on UN peace operations in the Balkans in the early 1990s. This was partly motivated by their desire to prevent further budget cuts. After Dutch forces felt lost without the support of a major power in the Bosnian enclave of Srebrenica in 1995, the simultaneous US participation in peace-support operations has been considered a prerequisite. The Dutch security authorities still consider NATO as "cornerstone" in keeping large-scale violence out of the European Union and the Netherlands. Although Dutch security authorities have started to cooperate more closely with their continental partners (see below), they remain divided in the 1990s on the extent to which Atlantic cooperation should become Europeanised.[137] The decision of the pro-NATO British government to launch the ESDP with French and German support came as a surprise for the Atlantic-oriented Dutch security elites. After the 1999 European Council officially adopted ESDP, the previously pro-NATO Minister of Foreign Affairs Van Aartsen and Minister of Defence De Grave turned more European.[138] De Grave even elevated ESDP to "main target" (*speerpunt*) in Dutch defence policy.[139]

Why did these ministers actively support ESDP? First, it could help to prevent further cuts in the Dutch defence budgets. More importantly, however, to join their initiative was considered the only way of preventing domination by the three more powerful neighbours of the Netherlands, as well as trying to keep a voice on European security matters. The costs of exit for the Dutch government would therefore be higher than to voice their concerns within the ESDP. Following the argument of the British, the Dutch government also hoped that European efforts to share the

[137] Wallace, W. (2005), 'Foreign and Security Policy: The Painful Path from Shadow to Substance', in Wallace, H., Wallace, W. & Pollack, M.A. (eds), *Policy-Making in the European Union* (5th ed.). Oxford: Oxford University Press. p. 442.
[138] Wijk, R. de (2004), supra note 135, p. 169.
[139] Kamerstukken II 2000/01 27400X no. 48 *Begroting Ministerie van Defensie* (25 June 2001), p. 3.

transatlantic security burden via ESDP would convince the US government to sustain its involvement in European security matters. It considered the ESDP as a contribution to the transformation of NATO into a more mobile and flexible force and one manner of catching up with the advanced technologies of the so-called "Revolution in Military Affairs" of the US armed forces. Fostering interoperability with fellow EU-members would facilitate NATO operations. The Dutch government subsequently urged bilateral military cooperation and European task specialisation, emphasising the need to enhance mutual trust.[140] The Dutch security authorities participated in various multi-national projects on air transport and navy, partly financed from a small ESDP fund in the Dutch budget. Moreover, it was intended that the ESDP would specialise in civil-military tasks, whereas NATO would focus on violence in the higher spectrum of force. ESDP would therefore be complementary to NATO. As long as the ESDP does not duplicate or decouple from NATO, or discriminate non-EU NATO members, the Dutch security authorities support it.

In the Defence Memorandum in 2000, the Dutch government included the ESDP in its security policies. It emphasised the expeditionary nature of the Dutch armed forces as well as the necessity of supporting civil authorities at home and abroad to defend the Dutch society and its citizens against borderless threats. It also subscribed to the outward-looking and value-based security policies of the ESDP. In contrast to the mutual acknowledgement of states within an inter-territorial world, such a policy implies a self-image of superiority providing the conviction that intervention is justified without approval. In the aftermath of the Kosovo conflict, it seemed that the Dutch government deemed formal rules on territorial sovereignty no longer sacred. A first version of the 2000 Defence Memorandum sent to parliament flatly stated that in the long run humanity is more important than territorial sovereignty.[141] The government later replaced this phrase with a remark on the problematic nature of territorial sovereignty and international law with regard to the

[140] Kamerstukken II 2003/04 29200X no. 4 *Begroting Ministerie van Defensie* (16 September 2003), p. 9.
[141] Kamerstukken II 1999/2000 26900, no. 1-2 *Defensienota 2000* (29 November 1999), p. 5.

violation of human rights.[142] The second version still held that the approval of the UN Security Council is not necessary if a veto would block a necessary humanitarian intervention. The Dutch government also attached value to human security in addition to the norms of the international order of territorial states.

The security policies of the Dutch government have therefore evolved from a rather passive wait-and-see international security policy before and after the Second World War to an "active peace and security policy."[143] Both the preventive engagement of potentially contagious conflicts and the origins of transnational organised crime abroad are considered in the interest of the security of Dutch society and its citizens. This preventive tendency has been considerably reinforced by the 9/11 terrorist attacks on US territory.[144] Declared an attack on NATO territory, on Western values and on an important ally, the Dutch government joined military operations in Afghanistan and Iraq to stabilise and reconstruct areas from which challenges to the international order have originated according to the US government. The Dutch government also supported the establishment of the NATO Response Force (NRF) to intervene quickly and robustly worldwide. Furthermore, it contributed to the construction of the EU battle groups (together with German, British, Finnish and Belgian counterparts) and the EU Gendarmerie Force. Emphasising the supplementary nature of ESDP, the Dutch government supported the declaration attached to the 2007 Lisbon Reform Treaty according to which NATO is primarily responsible for collective defence in Europe.[145] An exit from the US-led West is not considered, as the Dutch Defence Doctrine says: "NATO is the most important pillar of Dutch security policy… Good transatlantic relations will continue to be essential for our security in the future."[146]

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[142] Kamerstukken II 1999/2000, 26900 no. 4 *Defensienota 2000* (15 December 1999).
[143] Kamerstukken II 2003/04 29200X no. 4 *Begroting Ministerie van Defensie* (16 September 2003), p. 6.
[144] Wijk, de R. (2004), supra note 135, p. 170.
[145] TK 2007/08, 31384 (R 1850) no. 3 *Goedkeuring van het op 13 december 2007 te Lissabon totstandgekomen Verdrag van Lissabon tot wijziging van het Verdrag betreffende de Europese Unie en het Verdrag tot oprichting van de Europese Gemeenschap, met Protocollen en Bijlagen* (17 March 2008), pp. 69-70.
[146] Netherlands Defence Staff (2005), supra note 51, p. 36.

The multi-national NRF and EU battle groups may limit the national autonomy to decide on the use of Dutch forces. It would be difficult to opt out at the very last moment from the multi-national units offered: the UK/NL Amphibious Force, the Benelux Navy Command, and the German-Dutch Army corps (accompanied with Finnish units).[147] Be that as it may, autonomy may have been even more limited in the Cold War period when most Dutch forces were integrated in a larger NATO scheme. Moreover, the intergovernmental nature of NATO as well as the ESDP offers a formal ground to refuse participation in their operations. Matters are different regarding EU border control. The weak institutionalisation of EU territory results in a low degree of centralisation and inclusiveness regarding EU border control. Nevertheless, an emerging logic of territoriality at an EU level starts to conflict with the remaining logic of territoriality at the national level. The Dutch government has ceded some competences to the central European institutions with respect to European border control. The Royal Military Constabulary is now also protecting the Schengen area/AFSJ, thus adapting to the priorities and organisation of EU border control. In addition, the Dutch navy has been involved in defending the southern AFSJ boundaries in the Mediterranean Sea. However modest, the logic of territoriality at an EU level challenges the centrality and inclusiveness of Dutch border control.

The support for the value-based and outward-looking security policies of the UN, NATO and ESDP, required a switch from static defence to flexibility and mobility among the other military forces. The Dutch government no longer has the mobilisation units, capacities and supplies necessary for military territorial defence against a large-scale conventional attack.[148] Instead, crisis management has become the guiding principle of the Dutch forces since the end of the Cold War.[149] The operational-strategic differences between protecting the NATO area and executing international crisis management have gradually

[147] Adviesraad Internationale Vraagstukken (2007), *Inzet van de Krijgsmacht, Wisselwerking tussen Nationale en Internationale Besluitvorming*. Den Haag: AIV.
[148] Kamerstukken II 2004/05 29800X no. 84 *Begroting Ministerie van Defensie (Defensie en Nationale Veiligheid)* (22 April 2005), p. 4.
[149] Wijk, R. de (2004), supra note 135; Teunissen, P.J. & Emmens, H. (2004) 'De Krijgsmacht in Internationaal Verband', in E.R. Muller, D. Starink, J.M.J. Bosch & I.M. de Jong (eds.), *Krijgsmacht: Studies over de Organisatie en het Optreden*. Alphen aan den Rijn: Kluwer. p. 97.

disappeared.[150] Dutch forces should now be able to intervene robustly, restore public order, as well as reconstruct governance, societies and economies at the boundaries of NATO and EU (the Balkans) as well as farther away (Afghanistan). Peace-supporting and humanitarian operations require both armed and police forces.

Joint operations require a reorganisation of security forces and the way they function. In the latest Defence review it is written: "Security risks no longer mind the boundaries between countries, ministries, and services, and require a broader, integrated approach and closer cooperation between ministries and services."[151] Also motivated by further cuts in the defence budget, the Dutch government centralised the command of army services, abolishing the separate command structures of the land forces, air force, and navy in order to respond more quickly. In addition, the Dutch government emphasised the need for Network Enabled Capabilities, information and communication technology that facilitates joint as well as combined operations. The armed forces seek closer cooperation. For example, the navy has focused more on littoral operations to support land forces. Civil-military cooperation has been of modest size, because of the limited number of police and judicial officials sent abroad. That still depends on the regionally organised police forces whether they are able and willing to deliver the manpower. In various documents, the Dutch security authorities warned that operations abroad may elicit (terrorist) attacks at home. More steps have been taken concerning civil-military cooperation to secure the Dutch homeland (see below).

The Dutch military forces have experienced fundamental changes since the third wave of external de-consolidation. Instead of defence of national and allied territory, it is now more focused on peace operations and assistance to civil authorities in the Netherlands. The reorganisation of military forces does not necessarily imply the diminishing relevance of territory as a security strategy, despite claims to the contrary. Rather it can be argued that European border control indicates the continuing value attached to territoriality. Outward-looking and value-based security

[150] De Wijk, R. (2004), supra note 135, p. 164.
[151] Kamerstukken II 30300X no. 107 Begroting Ministerie van Defensie (*Actualisering van de Prinsjesdagbrief 2003: Nieuw Evenwicht, Nieuwe Ontwikkelingen: Naar een Toekomstbestendige Krijgsmacht)* (2 June 2006), p. 12 (My translation).

policies no longer involve territorial defence against large-scale conventional attacks as in the Cold War, but variegated, mobile, flexible and more rapid responses to threats of illegal migration, terrorism and organised crime, abroad and at home. The Dutch government remains key player in providing security for its citizens. In response to the redefinition of threats, it has changed its security apparatus to protect the Dutch territory, society and its citizens also by protecting the Schengen/AFSJ territory, while remaining a loyal NATO ally to protect the US-led Western civilisation in the world and in the EU's neighbourhood.

7.4 Keeping security threats down in the European Union

7.4.1 Dutch security policies in European perspective II

The Dutch security authorities have also favoured the continued presence of the US and NATO in Europe because of security *within* the European Union. Just after the fall of the Berlin Wall, the Dutch government expressed its concern about the quick pace of German unification pursued by the German Chancellor Helmut Kohl. Like the British Prime Minister Margaret Thatcher, the Dutch government preferred to stick to the borders agreed on by the CSCE, keeping the Polish-German Oder-Neisse border intact, while giving the impression Germany should not be unified immediately.[152] When the French government proposed to tie Germany into an intergovernmental European foreign and security policy, the Dutch Minister of Foreign Affairs, Hans van den Broek, considered this another Fouchet plan for Franco-German domination of Western Europe.[153] The Dutch government therefore urged the American government to stay in Europe to keep the Germans and French in check. The Dutch Minister of Foreign Affairs reminded his audience of the consequences of American isolationism after the First World War for

[152] Harryvan, A.G. & Harst, J. van der (1994), 'Het Nederlandse Europa-Beleid na het Einde van de Koude Oorlog', in *Transaktie*. Vol. 23, no. 2, pp. 150ff; Dinan, D. (1994), *Ever Closer Union? An Introduction to the European Community*. Basingstoke: MacMillan. pp. 160ff.

[153] Kwast-Van Duursen, M. (1991), 'Nederland en een Federaal Europa: Kleine Landenpolitiek of Ideaal van Buitenlands Beleid?', in P. Everts (ed.), *Nederland in een Veranderende Wereld: De Toekomst van het Buitenlands Beleid*. Assen: Van Gorcum. p. 70.

European security.[154] According to the Dutch government, the developments in Central and Eastern Europe as well as the Balkans still required a common European foreign policy. It therefore attempted (in vain) in the negotiations on the European Political Union to launch a supranational structure for a European foreign policy as a counterweight against Franco-German domination, while it emphasised in WEU, EC, and NATO meetings the exclusivity of NATO in European security and defence affairs.[155]

The US government eventually supported quick German unification, as well as the fusion of East Germany into NATO and the EU to prevent Germany becoming neutral from the Western bloc. In addition, the US government accepted CFSP and WEU as a European effort to share the burden of European security within the transatlantic relationship more equally. Because the idea of exiting from NATO or the EC would already entail huge costs for the German government, the German government voiced its security demands within, locking itself into European integration, a Franco-German defence relationship, and transatlantic agreements. The German government also pushed for enlargement of NATO and the EU to create a safer eastern boundary. Instead, the Dutch government favoured deepening integration above enlargement, to prevent NATO and EU from weakening their binding effects on Germany (as well as weakening the liberalisation of the internal market).[156]

Meanwhile, the Dutch armed forces started to work more closely with their continental counterparts: land forces participate in a fully integrated German-Dutch army corps, while the air and sea forces cooperate with Belgian partners.[157] In 1994, a new Dutch Minister of Foreign Affairs Hans van Mierlo aimed at closer security cooperation with its continental neighbours Germany, France, and Belgium. He sought to enhance mutual

[154] Hellema, D. (2001), *Neutraliteit & Vrijhandel: De Geschiedenis van de Nederlandse Buitenlandse Betrekkingen.* Utrecht: Het Spectrum. p. 355.
[155] Harryvan, A.G. & Harst, J. van der (1994), supra note 152, p. 158.
[156] Staden, A. van (1996), 'Komt Tijd, komt Raad? Nederland en de Oostwaartse Uitbreiding van de NAVO', in P. Everts (ed.), *Nederland in een Veranderende Wereld: De Toekomst van het Buitenlands Beleid.* Assen: Van Gorcum. p. 45; Harryvan, A.G. & Harst, J. van der (1994), supra note 152.
[157] See for an overview of the international cooperation by the Dutch armed forces: Teunissen, P.J. & Emmens, H. (2004), supra note 149, pp. 126-127.

trust within Europe as well as to save costs.[158] Nevertheless, the Dutch armed forces have kept close contacts with their Anglo-Saxon partners, as is also indicated by a preference for buying American rather than European material, such as Apache helicopters and Joint Strike Fighters. Today, according to the Dutch Minister of Defence, "we Dutch have no longer to fear anything from our neighbours, fortunately."[159] The Dutch government yet expressed its reluctance to adopt a mutual assistance clause in the ill-fated Constitutional Treaty, fearing it may undermine the collective defence mechanism within NATO.[160] In addition to its continuous reliance on NATO also for intra-European security, the redefinition of threats has made the Dutch government focus on other issues than large-scale conventional attacks within the EU.

7.4.2 The creation of the Area of Security, Freedom and Justice at European level

As discussed in Section 7.2, illegal immigration, organised crime and terrorism have replaced conventional wars as the main security threats in the Netherlands and also the EU. Whereas conventional wars most often take place between adjacent powers, the origins and movements of migrants, criminals and terrorists are more widespread in a globalizing world. Section 7.3 has shown how security forces have attempted to keep security threats out of the EU, also using territoriality as a security strategy. The proposition holds that the continuous external de-consolidation of the EU, particularly due to enlargement, keeps the logic of territoriality weak in the organisation of security *within* the EU. The developments since the 1980s will therefore be discussed in this section. The following Section 7.4.3 reflects how the creation of European security territory has challenged the logic of territoriality at the national and the sub-national level in the Netherlands since the 1980s.

The governments of EC Member States made modest steps in organising security within the framework of TREVI in the 1970s and 1980s. The Schengen agreements entailed a much wider range of measures

[158] Staden, A. van (1997) 'The Netherlands', in J. Howorth & A. Menon (eds.), *The European Union and National Defence Policy*. London: Routledge. p. 99.
[159] Kamp, H.G.J. (2004), 'De Toekomst van onze Krijgsmacht', in *Militaire Spectator*. Vol. 173, no. 4, p. 195. (My translation).
[160] Teunissen, P.J. & Emmens, H. (2005), supra note 149, p. 118.

to compensate for the loss of internal border control. It included a system of authorisation for cross-border surveillance and hot pursuit to be elaborated in bilateral agreements between Schengen members. The Schengen agreements also covers measures regarding extradition, mutual assistance in criminal matters, the transfer of sentenced persons, and the combat of crime involving drugs. Furthermore, communication and cooperation in border regions, as well as regarding threats of public order and the prevention and detection of crime, have been stimulated in the Schengen framework. Its main result has been the Schengen Information System (SIS), storing data on persons and property necessary for police and custom checks at borders and within the territories of the Schengen members. Whereas the main aim of the Schengen agreements is to allow free movement of persons within the Schengen area, third-country nationals and particularly asylum seekers have remained more restricted in their movement. The Schengen agreements also allows for reintroducing internal border controls in urgent and exceptional cases of insecurity. For example, immediately after the agreements went into force in 1995, the French security authorities temporarily re-introduced controls at its northern borders to stop the drugs trade from the Netherlands.

The Schengen agreements initially involved a limited number of EC member states. Concerns about the effectiveness and the security of transmitting messages within the Interpol framework made all EC members work toward reinforcing co-operation within the Trevi Group.[161] In the Council of Europe, the EC and its members secured a special position for this enhanced cooperation on criminal matters. Indicating French concerns on drug use, the *Comité Européen pour la Lutte Anti-Drogue* (CELAD) was constituted at the instigation of the French President François Mitterrand. In 1985, the working group TREVI III was established to cooperate to combat drugs and organised crime. This working group agreed in 1990 to establish an agency to exchange information on organised crime, particularly related to drugs, which became the European Drugs Unit (EDU). The German Chancellor Kohl had repeatedly called for the establishment of a European FBI, and urged that a European Central Criminal Investigation be adopted as part of the

[161] Anderson, M. et al. (1995), supra note 6, p. 55.

new EU treaty. In 1991, the EC governments eventually agreed at the Maastricht summit to establish a European Police Office (Europol). The exchange of information and best practices, crime analyses, and assistance in criminal investigations are among its tasks. It was not intended that Europol would have operational powers. The EDU became the forerunner of Europol, in which liaison officers from the various countries would form an information network at one location in The Hague.

The Maastricht treaty adopted TREVI into the EU infrastructure, and officially declared justice and home affairs as a third main field of European integration, next to the economic and monetary union and a common foreign and security policy. The focus was to be on asylum, immigration, drugs, fraud, and judicial and police cooperation on civil and criminal matters. The right of initiative and decision making remained almost exclusively in the hands of the EU governments. Most initiatives in the post-Maastricht period involved repeated calls to adopt the relevant conventions of the Council of Europe and the UN, as well as the collection and sharing of information on criminality, and particularly drugs, such as the establishment of the European Monitoring Centre for Drugs and Drug Addiction in Lisbon.

Meanwhile, criminality, immigration, and international organised crime had become hot issues in many EU member states. Concerns developed that while an internal common market had been established, a single security area was missing. It was pointed out that a 'security deficit' would appear if criminals can move around freely, while security authorities are bound to their national territory. The Spanish and British governments also expressed their concerns about the free movement of terrorists. Some decisions were made to address these concerns, such as on the appointment of liaison law enforcement officers (adding to the liaison police officers from the TREVI period). Many resolutions and recommendations were also adopted. The non-ratification of conventions, problems of cross-pillar coordination regarding the free movement of persons, goods, capital and services, and intergovernmental decision-making contributed to an image of ineffectiveness among those politicians preparing to reform EU treaties. In addition to concerns about the loyalty of EU citizens in the aftermath of the difficult ratification of the Maastricht Treaty, as well as the limited capability of the EU to

interfere in the Balkan Wars, some in the EU saw a need for the centralisation of the EU's internal security organisation.

The Dublin European Council decided in 1996 to create a high-level group on organised crime as an immediate response to the killing of an Irish journalist investigating crime. At the Amsterdam summit in 1997, the European Council approved an action plan against organised crime proposed by the high-level group. At the same summit, the European Council revised the EU treaties, which prepared the ground for strengthening cooperation regarding justice and home affairs. It defined the creation of an Area of Freedom, Security and Justice as a main objective of the European Union, in which its citizens should enjoy a "high level of public safety" and could move about freely in a "law-abiding environment." The EU governments incorporated the Schengen agreements, measures and jurisprudence (the Schengen *acquis*) into the EU. The United Kingdom and Ireland were exempted from their application, but their governments can ask the Council to join Schengen measures or new measures. The UK and Irish governments have joined, among other things, the SIS, most measures concerning illegal immigration and the fight against drugs. The Schengen acquis continued to be applied as traditional, international law instead of European Community law in Denmark. The Danish government can opt-in on Schengen measures, while for new measures international agreements are required. The EU governments emphasised that the European measures taken should not affect their responsibilities regarding the maintenance of public order. In addition, judicial and criminal cooperation remained intergovernmental within the renamed third pillar of Police and Judicial Cooperation in Criminal Matters, while the governments kept a large say for at least a transitional period of five years regarding asylum, external border control, and illegal migration, which were transferred to the first, communitarian pillar. This transfer does not hold for Denmark, the United Kingdom and Ireland, because of the above-mentioned opt-out arrangements.

Notwithstanding the apparent predominance of national governments, the Amsterdam treaty allowed for measures to approximate rules on criminal matters throughout the AFSJ, to strengthen the Europol vis-à-vis national investigation teams, and legislation on preventing and

combating crime and terrorism. The role of the European Commission was also enhanced regarding legislative initiatives and decision-making regarding justice and home affairs. Furthermore, the EC governments could unanimously decide to transfer policy issues from the intergovernmental third pillar to the first pillar with the Community decision-making method (according to the so-called passerelle clause).

Still under the Maastricht regime, a European Judicial Network was established in 1998 to enhance contacts among law enforcement officials among EU member states. Fairly detailed action plans to combat organized crime in (candidate) member states analysed how the police and the judiciary could cooperate more closely within the EU. In addition, security forces also participated actively in the UN conferences on transnational organised crime and the Council of Europe. The Tampere summit of the European Council in 1999 represented a major step toward organising security within the EU. The European Council decided upon a detailed list of measures to implement the Area of Freedom, Security and Justice within five years. It elevated mutual recognition as the "cornerstone" regarding judicial matters, which implies that judgements and other decisions made by judicial authorities from other EU member states should be recognised and executed as if they were national decisions. In addition, the European Council also aimed at the approximation of national criminal and civil law to enhance the basis for mutual recognition throughout the Area of Freedom, Security and Justice.

Furthermore, it pushed for the establishment of a range of institutions for judicial and police cooperation at the European level, including the European Police Chiefs' Task Force (EPCTF) to exchange information and ideas regarding combating crime, a network of national police training institutes in a European Police College (CEPOL), an organisation to facilitate cross-border judicial cooperation among public prosecutors and magistrates in the EU (Eurojust), and joint investigation teams. The European Council also decided that Europol should be allowed to more actively assist criminal investigations, but without having executive powers. In 2000, the EPCTF and CEPOL became operational. In the same year, the EU governments also signed a convention on mutual legal assistance in criminal matters. Regarding joint investigation teams, the convention states that the law of the member state applies where the

operation takes place.[162] This convention reversed the traditional principles of mutual assistance. The requested state now has to comply with the formalities and procedures of the requesting state, instead of its own formalities and procedures.[163]

The ministers of the justice adopted between 1999 and 2003 on average almost 10 texts a month in their Council meetings, of which 36% were legally binding. In contrast, the Council adopted just 5 texts on average per month in the years 1993 to 1999 before Tampere, of which only 10% were legally binding.[164] This legal avalanche not only stems from the ambitious Tampere summit, but also from the European response to the 9/11 terrorist attacks on US territory. The various EU institutions drafted and adopted quickly a cross-pillar action plan in September 2001. Partly under pressure of the European Council, the JHA Council decided in the following years on a common definition of terrorism, minimum penalties for terrorist offences, a common list of terrorist organisations, the freezing of terrorist assets, compliance with the UN Security Council resolution on combating terrorism, and terrorism-related money-laundering. However, many decisions taken after 9/11 are concerned with crime in general, and have been adopted after inserting a section on terrorism.

The Council decided on the European Arrest Warrant (in force in several member states since 2004), facilitating extradition for criminal offences including terrorism within the EU. The European Arrest Warrant replaced the traditional procedures for extradition involving executive powers by judges deciding on a direct request from law enforcement agencies (magistrates) from another member state in a limited time frame. Furthermore, for thirty-two sometimes somewhat vaguely described offences (including terrorism), the principle of dual criminality no longer holds if the offences are subject to at least a maximum of three years of imprisonment in the member state where the request to surrender has been issued. Various grounds of refusal still exist, such as

[162] Plachta, M. (2005), 'Joint Investigation Teams: A New Form of International Cooperation in Criminal Matters', in *European Journal of Crime, Criminal Law and Criminal Justice*. Vol. 13, no. 2, pp. 284-302.
[163] Joutsen, M. (2006), *The European Union and Cooperation in Criminal Matters: The Search for Balance*. HEUNI Paper no. 25. Helsinki: HEUNI.
[164] Monar, J. (2004), supra note 113, p. 127.

the existence of a final judgement regarding the same offence, and an explicit exemption of prosecution or punishment within the member state where the request to surrender should be executed. Surrender can also be refused if the offence took place partly or largely on the territory of the requested state. Surrender because of euthanasia and abortion committed on Dutch territory could therefore be refused.[165] Nevertheless, in some instances, as a consequence of lifting the dual criminality principle, someone in the Netherlands can be asked to be extradited, even if he or she has not committed an offence according to Dutch law. Thus, the Dutch authorities lose the exclusivity in determining what is considered a crime, and who is to be prosecuted on Dutch territory.[166] The warrant also implies lifting the restriction on non-extradition of its own nationals, which used to be a fundamental right of a sovereign state to refuse.[167] Extradition of someone having Dutch nationality has still been forbidden, unless he or she can be imprisoned in the Netherlands after the conviction abroad.

Various legislative steps have been made to approximate criminal procedural law and enhance cross-border legal assistance throughout the AFSJ. For example, the Council adopted a proposal for the cross-border recognition and the execution of judicial decisions to freeze property and evidence in the framework of criminal proceedings. It also agreed on the European Evidence Warrant, in which specific request for the cross-border provision of existing evidence has been arranged. Request for evidence can be refused for only a limited number of reasons. For at least a period of five years after the warrant coming into force, a request can be turned down if an offence partly or entirely took place on the territory of a requested state. That provides Dutch courts the ground for refusing requests related to soft drug use on Dutch territory.

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[165] Smeulers, A. (2004), 'Het Europees Aanhoudingsbevel: Consequenties voor de Rechtspraktijk en Mensenrechtelijke Aspecten', in *Justitiële Verkenningen*. Vol. 30, no. 6, p. 69.
[166] Friedrichs, J. (2006), 'When Push comes to Shove: The Territorial Monopoly of Force and the Travails of Neomedieval Europe', in M.D. Burgess & H. Vollaard (eds.), *State Territoriality and European Integration*. Routledge: London. p. 238.
[167] Mackarel, M. (2007), 'The European Arrest Warrant – the Early Years: Implementing and Using the Warrant', in *European Journal of Crime, Criminal Law and Criminal Justice*. pp. 37-65.

After 9/11, the Council also sped up the institutional organisation of security within the EU. Instead of waiting for the ratification of the convention on mutual legal assistance to create joint investigation teams (in force in several member states since 2005), it adopted a framework decision by 2002, allowing also representatives of European bodies such as Europol and OLAF (the European Anti-Fraud Office) as well as US law enforcement authorities to participate in the teams.[168] Next to those teams, Eurojust was eventually established in 2002, and located in The Hague. Eurojust is allowed to ask for an investigation or prosecution in the Area of Freedom, Security and Justice, or to establish a joint investigation team, a bilateral or multilateral group of detectives to investigate cross-border serious crime. Furthermore, a Community Civil Protection Mechanism has been established to respond quickly with help from other member states in the event of natural or man-made disasters, including nuclear accidents, inside and outside the EU.

In 2001, the security and intelligence services of EU member states established a Counter Terrorist Group, but many of them also continued to participate in the non-EU Berne Group. After 9/11, Europol also established a separate terrorism unit, and quickly expanded its personnel specialising in terrorism. The unit was soon abolished, however, because national intelligence services largely refused to share their information, and preferred the informal meetings of Club de Berne. A few years later, however, the Europol anti-terrorism unit was re-activated. It was decided it should participate in regular meetings with the anti-terrorism coordinator of the CSFP (installed after the Madrid terrorist attacks in 2004), Eurojust, and other European agencies dealing with terrorism. The Joint Situation Centre in the CSFP infrastructure has also focused since 2004 on internal security, providing the Council strategic intelligence-based assessments on counter-terrorism issues.

In the aftermath of the Madrid attacks, the EU governments adopted a solidarity statement, promising to assist in case of such man-made catastrophes as well as natural disasters, for instance, through the so-called civil protection mechanism. The attacks in Madrid and in London (2005) fostered fear about home-grown terrorism, attacks committed by integrated EU citizens. A new counter-terrorism strategy

[168] Plachta, M. (2005), supra note 162, pp. 292-294

followed, repeating previous measures concerning among others things the radicalization and recruitment of terrorists, the disruption of terrorist networks, the protection of critical infrastructure (also against cyber attacks), and crisis management within the EU.[169] According to the counter-terrorism coordinator Gijs de Vries, European counter-terrorism policy has been hampered by the protracted decision-making and weak implementation of anti-terrorism measures by the EU governments.[170] Institutional haggling on the competences of the European Parliament and European Commission in justice and home affairs did not help much in this respect. Although some EU governments would not object to using the above-mentioned passerelle clauses to transfer judicial and police cooperation in criminal matters to the first pillar, several governments did not accept this transfer before the acceptance of a new treaty.[171] Meanwhile, the governments of France, Germany, Italy, Poland, Spain, and the United Kingdom have sought closer contact concerning their anti-terrorism policies.

After the five year Tampere period has ended, it appeared that not much of the European legislation on justice and home affairs had been implemented yet. The EU governments agreed in the Council in 2004 with the so-called Hague Programme to reinforce implementation of its policies and further completion of a secure and free area. Subsequent legal activities focused on minimum standards about the treatment of suspects and defendants, the transfer of proceedings, the collection and transfer of evidence, the exchange of information from criminal records, and the transfer of sentenced offenders to their state of nationality or state of residence. In addition, the Hague Programme introduced the principle of availability, holding that a law enforcement official in one member state should provide information necessary for prevention, detection or investigation of criminal offences by a law enforcement official from another member state. Of a more practical nature, the Europol started to issue regular crime threats assessments for the entire AFSJ and the European Crime Prevention Network was launched to exchange

[169] Monar, J. (2006), ,'Justice and Home Affairs', in *Journal of Common Market Studies.* Vol. 44 (Annual Review), p. 115.
[170] Monar, J. (2007), 'Justice and Home Affairs', in *Journal of Common Market Studies.* Vol. 45 (Annual Review), p. 118.
[171] Idem, pp. 119ff.

information on crime prevention, while organising more cross-border contacts among magistrates and public prosecutors aimed at creating a "European judicial culture" based on mutual trust. The Hague Programme also emphasised the necessity of integration of minorities (albeit in the Member States' societies, not so much in Europe), for which a handbook of best practices was drafted. Apart from the attention given to terrorism and organised crime, the EU also continued to focus specifically on drugs, which it considered a "threat to the security and health of European society."[172] Various EU decisions and resolutions were passed aiming at the harmonisation of punishment and investigation policy regarding drugs.[173]

Notwithstanding the institutionalisation, formalisation and multilateralisation of the European crime control regime since the 1990s, the German, French, Belgian, Luxembourgian, Dutch, Austrian and Spanish governments decided to enhance their cooperation on justice and home affairs. They agreed with the international treaty of Prüm (signed in 2005), among other things, on the mutual availability of anonymous data on fingerprints and DNA, on cross-border surveillance, hot pursuit and joint police operations (in urgent situations police officers can even act without prior consent), coordination of repatriating illegal immigrants, police assistance in case of big events or disasters, and on the employment of air marshals. According to the Prüm treaty, security organisations can inform their cross-border counterparts on persons who would be a threat to public order or public security or might commit criminal offences in the future without being specifically requested to provide such information.[174] The Council decided by early 2007 to adopt most of the Prüm treaty into EU law, except for the arrangement on cross-border hot pursuit (because of British and Irish resistance). The British, Irish and Danish governments also insisted on their special position regarding the transfer of police and judicial cooperation in criminal matters from the third to the first pillar with the 2007 Lisbon Reform Treaty. The Reform

[172] European Commission (2005), *Communication: On a EU Drugs Action Plan (2005-2008)*. COM(2005) 45 final.
[173] Blom, T. (2006), 'Coffeeshops, Gedoogbeleid en Europa', in *Justitiële Verkenningen*. Vol. 32, no. 1, pp. 146-156.
[174] Balzacq, T., Bigo, D., Carrera, S. & Guild, E. (2006), *Security and the Two-Level Game: The Treaty of Prüm, the EU and the Management of Threats*. CEPS Working Document no. 234. Brussels: CEPS. pp. 6-7.

Treaty also contains the possibility for the creation of a European Public Prosecutor and enhanced cooperation, while it expands the working field of Europol. However, it also holds various options for individual governments to block applications, decision-making and communitarization concerning justice and home affairs. While the ratification of the Lisbon Treaty is still pending, new proposals have been made to fight organised crime and terrorism, for example on enhancing the role of Eurojust, the exchange of passengers' information with EU member states and others, and limits on the dissemination of terrorist propaganda.

In response to the third wave of external deconsolidation and the accompanied redefinition of threats, EU governments have thus created a European security system to deal with illegal migration, terrorism, and organised crime. Its reliance on the US government and NATO to provide security within the EU has apparently diminished, as it witnessed by the withdrawal of most of the US military forces from Western Europe and the gradual steps towards mutual solidarity within the EU. That does not mean that the US government has no relevance anymore for organising security within the EU: "Although far more often overlooked than U.S. military power, in the realm of policing power the United States very much retains the title of global hegemon."[175] The "global crusader" against terrorism and transnational organised crime has maintained an influential extraterritorial impact by pushing for security measures in Europe bilaterally and multilaterally (*e.g.*, via the UN and G8), making private actors (carriers; banks) responsible for taking security measures, and making access to US territory dependent on security measures taken within the EU. This indicates the dominance of the US government in the worldwide criminalisation according to Western values. This imperial inclination notwithstanding, the preferable form for providing development, security and counter-terrorist strategies is a well-functioning state.

In addition to an outward-looking security policy, the EU governments decided to use territoriality as security strategy by creating a European security territory, the Schengen area/ the Area of Freedom, Security and Justice. The subsequent logic of territoriality was expected to

[175] Andreas, P. & Nadelmann, E. (2006), supra note 4, p. 243.

be weak, in large part because European security territory could only weakly institutionalise due to the continuity of external deconsolidation caused particularly by enlargement. The Schengen area/ AFSJ is not really broadly embedded yet, because its expansion went fairly quickly without too many changes required in other institutions. In addition, the Schengen area/ AFSJ is not deeply entrenched in people's imagination since it lacks geographical fixity, even though it deeply interferes with people's travel behaviour in its border regions.

Weak centralisation and weak inclusion indicates the consequent weak logic of territoriality. The numerous European institutions dealing with law enforcement are still dependent on decision-making and implementation by national security authorities. Despite the attempts to harmonise, converge and approximate procedural and substantive criminal law as well as practices of prosecuting and policing, the inclusive 'container effects' of the European security territory still face exemptions (opt-outs). Nevertheless, the efforts to enhance European legitimacy among its citizens, to foster the loyalty of minorities, to strengthen the mutual trust between law enforcement organisations, and to allow free movement for long-stay third-country nationals, indicates the inclusive effects within the Schengen area/ AFSJ.

7.4.3 Security and territoriality in the Netherlands since the 1980s

European integration challenges the Dutch organisation of security within the Netherlands in two ways. First, the image of a borderless Europe de-consolidates the security territories at the national and the local level. Second, the newly created European security impacts on the logic of territoriality at the national and the sub-national level. This section shows how the situation of conflicting territorialities gradually emerged between the national and the European level with respect to justice and home affairs. Free movement of goods, capital, services and persons within the EU implies the abolition of national border controls. The proposition is that the subsequent weakening of the logic of territoriality will entail more person-based boundary control (lower tendency towards impersonality), meaning that control depends more on who you are, than where you are. The following proposition is that weakening the logic of territoriality at the national level also facilitates a (re)emergence of conflict lines between

interface regions and other regions. If interface regions are dissatisfied about security provided within the Dutch system, they can seek (partial) exit by organising trans-border security instead.

This section also explores how the creation of another security territory at the European level has influenced the multi-level organisation of Dutch security. The proposition is that the logic of territoriality will be weakened more at the sub-national rather than the national level, because the national level is more deeply and broadly institutionalised. After the terrorist attacks in America and Europe the third wave of external de-consolidation has continued. It is expected that due to the weak logic of territoriality at the EU level, voice will remain socially and geographically concentrated at the national level. Although national security authorities can still use territoriality as a security strategy, the proposition is that due to a weakened logic of territoriality, they can also use non-territorial, person-based strategies of control and delineation. The subsequent proposition is that if citizens become dissatisfied about the way security is provided in the Netherlands, they may use (partial) exits of a person-based nature, creating person-based security boundaries cutting through the Netherlands.

7.4.3.1 Conflicting territorialities: National/ European

Pressure on the Dutch government has grown since the 1980s partly due to the image of a borderless Europe, to combat threats of street crime, illegal immigration, organised crime and terrorism. Concerned voices from police officials, academics, media and the electorate within the Netherlands urged it to reconsider its security strategies. Since the Netherlands is an important hub in global transport, other governments also asked the Dutch government to step up measures against particularly organised crime. Whereas the national level might not be the most effective level to combat street crime, illegal immigration, organised crime or terrorism, the dissatisfaction of people was increasingly addressed to the national government. In its security memoranda and action plans, the Dutch government still emphasised the responsibility of local security authorities to combat crime. Furthermore, the Dutch government has become involved in international cooperation to deal with immigration, organised crime and terrorism. The Dutch government has also taken the

first international steps towards further regulation and coordination of police and judicial cooperation within the framework of the Council of Europe, the Benelux, the United Nations, and TREVI, while Dutch security organisations have cooperated more closely with American security organisations, such as the Drug Enforcement Administration.

It therefore does not come as a surprise that the Dutch government was among the first Schengen members and also joined the third pillar of justice and home affairs. Nevertheless, the Ministry of Justice did give limited attention to these efforts, leaving it mainly to a few civil servants responsible for international and European judicial cooperation. The Ministry remained internally divided between those considering international cooperation as a threat and those considering it a necessity for free movement in the EU, resulting in a rather reactive, ad hoc, conservative position.[176] The Ministry of Justice preferred pragmatic cooperation above formal European interference in the Dutch criminal law system, insisting on the freedom of the Public Prosecution Office (*Openbaar Ministerie*) and courts to prosecute and to administer justice, respectively.[177] The Dutch Prime Minister supported at European Councils the Tampere programme (1999) and the counter-terrorism measures (2001) rather under pressure of the Ministry of Foreign Affairs.[178] Reluctance among Ministers of Justice regarding European interference in the Dutch criminal system remained. Benk Korthals (1998-2002) did not want Eurojust to become the European Public Prosecutor.[179] His successor Piet-Hein Donner (2002-2006) expressed his concerns about European integration penetrating the entire criminal law system of the EU member states, while only terrorism, organised transnational crime and cross-border crime should be dealt with at the European level. He therefore proposed, in vain, a federal criminal law system, inspired by the US, to prevent full-scale European harmonization of criminal law. [180] Donner's proposal clearly indicates the tension

[176] Schans, W. van der & Buuren, J. van (2003), *Keizer in Lompen: Politiesamenwerking in Europa*. Breda: Papieren Tijger. Ch. 1.
[177] Hert, P. de & Roos, Th.A. (2004), 'De Positie van Nederland in het Europees Strafrechtelijk Landschap', in *Justitiële Verkenningen*. Vol. 30, no. 6, pp. 119-140.
[178] Schans, W. van der & Buuren, J. van (2003), supra note 176, pp. 21-22.
[179] Idem, p. 137.
[180] NRC Handelsblad (10 May 2003), '"Samenwerken ja, Uniformeren nee": Minister Donner over Europese Justitie.'

between the inclusiveness of the European security territory versus the geographical exclusivity of the national security territory. Notwithstanding its reluctance, the Dutch government preferred to keep its voice option on the developments at the European level rather than to opt-out from justice and home affairs.[181] The preference of the Dutch government for intergovernmental arrangements such as the Treaty of Prüm to enhance judicial and police cooperation, reflected the continuing reluctance regarding supranational centrality at the EU level.

Judicial and police cooperation at the EU level remained largely a matter of negotiating legal texts until the 1990s. The civil servants of the Ministry of Justice barely involved the Ministry of the Interior, the police, and the Public Prosecution Office in their preparations for EU negotiations.[182] Apparently, the Ministry of Interior Affairs did not feel the urge to be involved, because "[m]inistry of interior officials had remained among the least internationally-minded within national governments throughout the first forty years of western European integration, working within an ideological framework which clearly separated domestic law and order from events beyond national boundaries."[183] After the European Council decided to intensify practical police cooperation at its Tampere summit, the situation changed somewhat. A new Dutch Centre for International Police Cooperation (*Nederlands Centrum voor Internationale Politiesamenwerking*) provided a platform for the police, but also for the Public Prosecution Office and the Ministry of Interior to discuss the Dutch contribution to European judicial and police cooperation.

The launch of several courses on European judicial and police cooperation for judges, public prosecutors, and police officials in the Netherlands indicate that practitioners still need explanation how relevant the European security system is. Europol, the European Judicial Network, the European Taskforce of Police Chiefs, Eurojust and the emerging networks of liaison officers offer an opportunity to be included in the European security territory, but mainly for high-ranking law enforcement

[181] Schans, W. van der & Buuren, J. van (2003), supra note 176, Ch. 1
[182] Idem.
[183] Wallace, W. & Lavenex, S. (2005), 'Justice and Home Affairs: Towards a "European Public Order"?', in H. Wallace, W. Wallace & M.A. Pollack (eds.), *Policy-Making in the European Union* (5th ed.). Oxford: Oxford University Press. p. 463.

officials and specialists.[184] Knowledge of the daily practice of cross-border judicial and police cooperation is limited.[185] However, the tentative conclusions are still that "…the huge majority of policemen have rarely or never had anything to do with transnational policing"[186] and "[t]he vast majority of policing remains largely insulated from foreign affairs."[187] The exception to these conclusions is the police in border regions. However, police in these regions are more likely to face issues of petty crime and public order, rather than transnational organised crime or terrorism which are the issues specifically addressed by European policing and judicial cooperation.[188]

It is not just a matter of geographical proximity or the nature of crime. The locking-in effects of national and sub-national security organisations has resulted in an inward-looking focus. Due to the territorial fragmentation of the Dutch security system, the lower levels remained often unaware of all changes in European legislation.[189] An agreement between the Dutch and French government in 1997 to create a joint team to combat the illicit drug trade initially failed because the Dutch government depended on sub-national approval on the use of policing capacity. Dutch law enforcement officials had a bad reputation regarding mutual legal assistance in criminal matters, because domestic cases received priority over foreign ones.[190] Until the early 2000s, the organisation responsible for criminal prosecution (Public Prosecution

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[184] Aden, H. (2001), 'Convergence of Policing Policies and Transnational Policing in Europe', in *European Journal of Crime, Criminal Law and Criminal Justice*. Vol. 9, no. 2, p. 103.
[185] Fijnaut, C. (2004), 'Police Cooperation and the Area of Freedom, Security and Justice' in N. Walker (ed.), *Europe's Area of Freedom, Security and Justice*. Oxford: Oxford University Press. p. 270; Boer, M.G.W. den & Spapens, A.C. (2002), *Investigating Organised Crime in European Border Regions*. Tilburg: IVA; Boer, M. den (1999), 'Internationale Politiesamenwerking', in C.J.C.F. Fijnaut, E.R. Muller & U. Rosenthal (eds.), *Politie: Studie over haar Werking en Organisatie*. Alphen aan den Rijn: Samsom. p. 605.
[186] Aden, H. (2001), supra note 184, p. 102.
[187] Andreas, P. & Nadelmann, E. (2006), supra note 6, p. 252.
[188] Sheptycki, J.W.E. (2001), 'Patrolling the New European (In)Security Field: Organisational Dilemmas and Operational Solutions for Policing the Internal Borders of Europe' in *European Journal of Crime, Criminal Law and Criminal Justice*. Vol. 9, no. 2, p. 145.
[189] Schans, W. van der & Buuren, J. van (2003), supra note 176, p. 51.
[190] Idem, p. 128; Beijer, A., Bokhorst, R.J., Boone, M., Brants, C.H. & Lindeman, J.M.W. (2004), *De Wet Bijzondere Opsporingsbevoegdheden: Eindevaluatie*. Den Haag: WODC. pp. 212-213.

Office) followed their own national priorities rather than take the European initiatives of Eurojust into account.[191] Moreover, the parliamentary committee looking at police investigation methods called for a "healthy distrust" regarding international cooperation, partly in response to the activities of foreign liaison officers on Dutch territory.[192]

The formal complexities of the inter-state deals related to the Schengen regime and the Area of Freedom, Security and Justice complicated matters. A few years after the Schengen agreements went into force, serious doubts were expressed whether police officers were familiar with the "jungle of new rules, agreements and codes, which are difficult to use in practice."[193] Policemen have often been unaware of the legal possibilities offered in the Schengen framework.[194] The pace and amount of new legislative initiatives from the EU have most probably add to the confusion among law enforcement agencies. Delayed or non-implementation of European legislation regarding cross-border judicial and police cooperation, variation of implementation due to different transpositions and language versions of European framework decisions, and the diverse application of fundamental treaties like the European Convention of Human Rights has certainly not limited that confusion.

Nevertheless, Dutch policemen have international contacts; many cases involve contacts with foreign police services, but these are not necessarily guided by the European initiatives. That has also to do with the nature of police work. The Schengen agreements and the Area of Freedom, Security and Justice are about the legal framework and political priorities of judicial and police cooperation. Police officials have often preferred to avoid electoral politics, protracted negotiations and burdensome procedures and complex consultations, maintaining their own international contacts to solve criminal cases. Trust has been seen as essential to cross-border police contacts, because of the sharing of sensitive intelligence and the competition in solving criminal cases.[195] As a consequence, "[formal] cooperation agreements and information

[191] Schans, W. van der & Buuren, J. van (2003), supra note 176, p. 138.
[192] Beijer, A. et al. (2004), supra note 190, p. 207.
[193] Boer, M. den (1999), supra note 185, p. 596 (my translation).
[194] Alain, M. (2001), supra note 22, p. 120.
[195] Boer, M. den & Spapens, A. (2002), supra note 185, p. 25.

exchange mechanisms never replaced the informal networks that police officers have built over the years."[196]

A lack of trust has hampered the functioning of Europol.[197] Politicians decided to expand Europol's working field according to the latest news rather than at the practitioners' request. It thus received tasks on pornography, nuclear material, human trafficking, counterfeiting, terrorism, illegal immigration, and trade in vehicles, even though it initially should have focused on drugs. These political decisions did not match with the existing working relations of police officials, who already held manifold international, informal, and personal contacts. The lack of information provided to Europol by national policemen did not help Europol in making well-founded analyses of cross-border crime;[198] neither did the delayed and problematic launch of the Europol Information System in 2004. Fears among national police officials about Europol developing into full-fledged European FBI reflects the tension that exists between the inclusive tendency within the EU security territory versus the exclusive tendency within the national security territories.[199]

7.4.3.2 Personalisation of boundary control

Whereas ordinary law enforcement organisations only gradually felt the impact of European integration, the organisation responsible for national border control, the Royal Military Constabulary (*Marechaussee*), immediately felt the consequences of creating a borderless Europe. After the removal of internal border controls in the Benelux area in the 1960s, the Royal Military Constabulary started random controls in the southern, Dutch-Belgian border regions, and assisted local police forces since 1976 in the surveillance of aliens. The *Marechaussee* were again looking for new responsibilities following the decision in the Schengen agreement to remove control at the Dutch-German border.[200] The Dutch government wanted the *Marechaussee* to continue to exist, because it liked to have a centrally directed, military police force after it faced police strikes in the

[196] Alain, M. (2001), supra note 22, p. 128.
[197] Bigo, D. (2000), supra note 7, p. 79.
[198] Schans, W. van der & Buuren, J. van (2003), supra note 176, Ch. 3.
[199] Idem, Ch. 1.
[200] Weger, M. de (2006), *De Binnenlandse Veiligheidstaken van de Nederlandse Krijgsmacht*. Assen: Van Gorcum. Chapter 7 and 8.

1980s. Moreover, mayors also preferred its continuation, because the *Marechaussee* served as a strategic reserve force for assistance in emergency situations. However, the discussions on the new role of the Marechaussee were protracted. After media attention on asylum and criminality rose, the Prime Minister intervened and accelerated the decision-making process. The end result was the *Marechaussee* becoming responsible for external border control as well as all policing tasks at airports in the Netherlands.

Flying brigades were created to exercise random control on aliens (*Mobiel Vreemdelingen Toezicht*) once immediately over the border. The *Marechaussee* also launched pre-boarding control to prevent future illegal migrants (and later also potential terrorists) from entering the Netherlands by plane. The *Marechaussee* also provides assistance to the police to combat serious cross-border crime, such as human trafficking and the illicit drugs trade, in so-called cross-border crime teams (GOC-teams). The replacement of permanent border control with random checks within Dutch territory entails a personalisation of control strategies. Instead of "systematic and egalitarian" border control, the random checks focus instead on someone's behaviour or appearance.[201] Smart cameras, identification technologies based on someone's physical characteristics, and data-mining (for example in the Schengen Information System) to detect deviant behaviour or illegal presence have contributed to this person-based security strategy. Patrolling border areas is thus added with patrolling data and images; boundaries are now everywhere.[202] Thus, European integration and new technologies weaken the logic of territoriality at the national level regarding its tendency toward impersonality. It matters more who you are than just where you are (at the border in this respect), strengthening the person-based boundary of the Dutch political system.

[201] Bigo, D. (2000), supra note 7, p. 185.
[202] Sheptycki, J. (2001), supra note 188; Broeders, D. (2009), 'Mobiliteit en Surveillance: Een Migratiemachine in de Maak', in H. Dijstelbloem & A. Meijer (eds.), *De Migratiemachine: De Rol van Technologie in het Migratiebeleid*. Amsterdam: Van Gennep. pp. 35-60..

7.4.3.3 Partial exit by interface regions

The European weakening of the logic of territoriality at the national level can also cause interface regions to seek (partial) exit if they are dissatisfied with the security provided within the Dutch system. The national governments of the Netherlands and the neighbouring countries have offered legal opportunities to obtain security from foreign providers to soothe potential problems in border regions. The Schengen regime allows Dutch policemen to pursue a suspect into Germany without any limit, and in Belgium for 30 minutes after passing the border. Belgian and German policemen can pursue a suspect within the Netherlands for 10 kilometres after crossing the Dutch border. Foreign policemen are allowed to apprehend a suspect, but the formal arrest of a suspect is restricted to a police officer from the country where it takes place. In addition to hot pursuit, the Schengen regime provides a framework for cross-border observation, controlled drug delivery and the exchange of police information without formal approval of judicial authorities. Before the Schengen regime entered into force in 1995, the Dutch government provided subsidies to explore and stimulate police cooperation in border regions.

Since the 1980s, various trilateral and bilateral agreements among the Benelux governments have expanded the formal opportunities for police cooperation, the exchange of police information, assistance in crisis management and disaster control in border regions. Security arrangements at the local level have followed, such as mutual access to the Belgian and Dutch part of river Maas, the protection of the harbours of Ghent and Zeeland, and mutual use of ambulances in several border municipalities. The Benelux governments agreed in Senningen in 1996 to expand police and judicial cooperation, particularly in border regions. Initiatives followed to help facilitate cross-border communication between ambulances, fire brigades and police to deal with man-made or natural disasters.[203] A temporary treaty on cross-border police cooperation during the European Football Championships (2000) provided the basis for a new treaty (signed in 2004) allowing policemen to act without prior approval in urgent situations in Belgium, Luxembourg

[203] Kamerstukken II 2001/02 27556 no. 3 *Internationale Aspecten van het Beleid inzake Brandweer en Rampenbestrijding* (28 November 2001).

and the south of the Netherlands. In addition, policemen can pursue and hold a person without limits in time or place if he or she is reasonably suspected of an offence. Policemen can use force to defend themselves. The Benelux treaty also offers opportunities to decide locally on joint control and patrol teams without approval by the respective national governments. Policemen have to act according to the criminal law where the pursuit, arrest, observation, control or patrol takes place, are under the supervision of the relevant authorities there, and have to inform the authorities as quickly as they can.[204]

The Dutch government also established agreements and treaties with the German government and the region of Nordrheinland-Westphalia to facilitate police cooperation, disaster control and crisis management in the German-Dutch border regions. A joint police centre was opened in Dinxperlo-Suderwick in 1999. Initiatives have been launched to improve cross-border communication between the new communication system among the regionally organised Dutch police and emergency forces (C2000) and their German as well as their Belgian counterparts. The Dutch-German Treaty of Enschede (in force in 2006) expands the legal opportunities of the Schengen framework for cross-border cooperation, basically following the Treaty of Prüm. It describes the wider conditions under which policemen can observe, investigate, pursue and hold someone across the border. In urgent situations, German policemen can now use force on Dutch territory, albeit according to Dutch law. The treaty also contains arrangements regarding infiltration, the freezing and transfer of evidence, joint police centres, joint border patrols, controlled delivery, and the sharing of information.

As has been mentioned before, the daily police practices in border regions are sometimes very different from the legal opportunities offered by treaties concerning international police cooperation.[205] Nevertheless, the free movement of goods, services, capital and persons has had an immediate impact on the security situation of border regions. In

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[204] Kamerstukken II 2004/05 29996 no. 3 *Verdrag inzake Grensoverschrijdend Optreden* (8 June 2004).

[205] See also Twuyver, M. & Soeters, J.M.L.M. (1999), 'Internationalisering bij de Politie: Politiesamenwerking binnen de Euregio Maas-Rijn', in C.G. Spoormans, E.A. Reichenbach & A.F.A. Korsten (eds.), *Grenzen over: Aspecten van Grensoverschrijdende Samenwerking*. Bussum: Coutinho. pp. 145-155.

particular, production, trade and consumption of drugs have become an issue, because of the relatively relaxed prosecution policy regarding the consumption of soft drugs in the Netherlands. So-called Joint Hit Teams consisting of French, Luxembourgian, Belgian or Dutch policemen have launched an attack on the illicit drug trade conducting checks on the railways and main motorways between the Netherlands and France. Security authorities in the German-Belgian-Dutch Euregio Maas-Rijn (Aachen; Liège; Maastricht) have also launched initiatives independent of their own respective national (or regional) government.

People's dissatisfaction with the security situation is growing in the relatively urbanized Maas-Rijn region (appr. 3.7 million inhabitants). In general, the crime rate in the three parts of the region is above average in comparison to the Netherlands, Belgium, and Germany, respectively. For example, in crime categories such as car theft and homicide, the Dutch Zuid-Limburg police region scored third place in 2001 after the police regions of Amsterdam-Amstelland and Rotterdam-Rijnmond.[206] Crime has more often a cross-border element, reflected by the high number of requests for mutual legal assistance.[207] Car theft, burglary, trade and production of drugs, human trafficking and VAT fraud are the most prominent categories of cross-border crime. Changes in investigation practices have also cross-border effects. Due to stricter controls in the Netherlands, the production and trade of synthetic drugs and cannabis partly shifted to Belgium.[208]

Police forces in the Euregio Maas-Rijn have had a mutual cooperation scheme since 1969 (NeBeDeAgPol). Police authorities and also the authorities of the five larger cities in the region (Maastricht, Heerlen, Aachen, Hasselt, Liège) agreed to intensify their cooperation in the early 1990s. The launch of EMMI (*Euregionale Multimediale Informatie-uitwisseling*) provided a digital and online channel for the instant exchange of information between police forces in the border region, while a Euregional alarm system linked the emergency services. An International Coordination Centre (ICC) has assisted police forces since

[206] Spapens, A.C. & Fijnaut (2005), *Criminaliteit en Rechtshandhaving in Euregio Maas-Rijn*. Antwerpen: Intersentia. p. 61.
[207] Idem, p. 28
[208] Idem, Ch. 9; De Standaard (22 May 2006), 'Nederlandse Drugsmaffia kweekt bij Vlaamse Boeren.'

1995 in the cross-border exchange of information, cross-border police operations, and requests for legal assistance. A new range of initiatives followed in the 2000s. Since 2004, the *Bureau voor Euregionale Samenwerking* (Centre fore Euregional Cooperation) has provided structural cross-border cooperation among public prosecutors. Regular meetings of crime investigators aim at the coordination of investigation efforts. The Dutch police force launched a special Euregional investigation team to be expanded with Belgian and German investigators. Several joint operations to control the drug trade, human trafficking and burglary gangs have been executed. The Heerlen-based *Euregionaal Politie Informatie en Coördinatie Centrum* (Euregional Police Information and Coordination Centre) opened in 2005 builds upon the ICC enhancing the information exchange among police forces in the region. Some have argued in favour of a Euregional Crime Investigation Organisation or a Euregional Police Force to enhance cross-border police and judicial cooperation.[209] Thus, the tendency towards partial exit by the interface regions in the Euregio is apparent.

However, cooperation at the Euregional level has been hampered by the differences between rules and practices of the three criminal law systems involved, particularly with regard to the prosecution for soft drugs. The local authorities in the Euregio have therefore called for common action against soft drugs with the so-called Maastricht Resolution (20 May 2005). The Dutch and Belgian governments concluded a Euregional security plan to combat cross-border crime, but could not agree on how to deal with soft drugs. The Maastricht mayor continued to draw attention to the issue of soft drugs in the Dutch media, thus using his national voice option. In response, a Dutch parliamentary committee held a hearing session in the Euregional city of Lanaken (Belgium) on the cross-border drug problem, the first time ever a parliamentary committee was officially convened abroad.[210] The decision by the Maastricht authorities to re-locate coffeeshops (the shops where small amounts of soft drugs can be obtained) from the Maastricht city

[209] Reformatorisch Dagblad (19 May 2005), 'Pleidooi voor Euregionale Recherche rond Limburg'. NRC Handelsblad (24 May 2007), '"Eén Politiedienst in Euregio mogelijk"'.
[210] De Standaard (22 May 2006), 'Nederlandse Justitiecommissie vergadert in België over Drugs'.

centre to the Dutch-Belgian border also raised considerable protest in Belgium.[211] The Dutch government promised in 2007 in the new coalition agreement to limit the number of coffeeshops in the border regions. The Dutch government thus attempted to soothe dissatisfaction with cross-border crime in the Euregio, effectively keeping the interface region in the national security system.

7.4.3.4 European integration and conflicting territorialities: local/national
The previous chapter showed the conflicts between the inclusive tendency within the Dutch security territory versus the exclusive tendency within the local security territories. European integration is expected to challenge the local security territories more than the national security territory, because the latter is more deeply and broadly institutionalised. The third wave of external de-consolidation, including the free movement of persons, goods, services and capital in a borderless Europe, has exerted more pressure on local security authorities. In order to fight organised crime more efficiently, a large-scale reorganisation of the Dutch police system was launched in 1993. The *Rijkspolitie* and *Gemeentepolitie* were replaced by 25 regional police forces and a national police service (*Korps Landelijke Politiediensten*; KLPD). The KLPD became responsible for the motorway police, water police, railway police and the protection of important persons. In addition, the *Centrale Recherche Informatiedienst* (CRI; national criminal investigation information office) became part of it and was intended to focus on large-scale organised crime. The KLPD became responsible for Dutch liaison officers abroad, as well as for contacts with foreign liaison officers in the Netherlands.

Each regional police force was headed by one of the mayors in the region, which led the police force in close cooperation with the main public prosecution officer and the chief of police. Although local exclusivity of the 148 city police forces and local districts of the *Rijkspolitie* had been abolished, the territorial circumscription of regional police forces soon established the logic of territoriality at the regional level. The exclusive orientation toward regional territory resulted in the initial

[211] De Standaard (19 April 2007), 'Verhofstadt schrijft Boze Brief naar Balkenende.'; NRC Handelsblad (31 January 2008), 'Drugstoeristen naar Wietboulevard: Plan van Maastricht om Coffeeshops richting Belgische Grens te verplaatsen wekt Woede.'

failure of cross-regional communication and information systems among the police forces. The various branches of the KLPD did collect criminal intelligence and investigate serious crime, but the bulk of the criminal investigative work was done within the 25 police forces and the 6 inter-regional crime squads (*Interregionaal Rechercheteam; IRT*), focusing on more complex and serious cases of organised crime. According to the various reports by the National Court of Audit, the regional police forces functioned as "little kingdoms", reluctant to share their information with the national CRI or with other regional forces.[212] As the national contact point for the Schengen Information System, the CRI might obtain a more central position in crime information management. Nevertheless, registration and exchange of information was hampered by "regional discrepancies" because of different registration systems and methods among the regional police forces.[213]

The uncontrolled delivery of large amounts of drugs via participating informers by the *Interregionale Recherche Team Noord-Holland/Utrecht* (inter-regional crime squad) resulted into one of the biggest police scandals in Dutch police history. A parliamentary inquiry on criminal investigation techniques uncovered how, among other things, territorially exclusivist tendencies in participating judicial and police regions resulted in a lack of oversight and the sharing of information. To overcome the exclusivist tendencies of regional police territories regarding combating organised crime, a National Criminal Investigation Team (*Landelijke Rechercheteam; LRT*) was established within the KLPD, in which the inter-regional crime squad teams became interlinked (although they remained regionally located). In addition, a National Public Prosecutor Office (*Landelijk Parket*) was established next to regional district offices, which became responsible for supervising liaison officers abroad and the investigations by the LRT.

Foreign liaison officers expressed their surprise and annoyance about the regionally organised investigations, because they believed the international scale of crime in the Netherlands as a transport and

[212] Kamerstukken II 1995/96 24548 no. 2 *Beheer in het Nieuw Politiebestel: Stand van Zaken op Hoofdlijnen* (19 December 1995); Kamerstukken II 1998/99 26215 no. 2 *Uitwisseling van Recherche-Informatie tussen CRI en Politieregio's* (24 September 1998).
[213] Kamerstukken II 1996/97 25200 no. 2 *Nationaal Schengen Informatie Systeem* (30 January 1997).

communication hub required a coordinated and centralised response. A promise by the Dutch government to create a joint team with the French police to fight drug-related crime initially failed because police employment and prosecuting was the responsibility of regionally organised police forces and public prosecution offices. It was also sometimes hard for a foreign law enforcement agency to find the right person within the fragmented Dutch police system and requests for mutual legal assistance were not met. In addition, the pervasive perception of strict and bureaucratic procedures regarding investigation methods in the Netherlands led to rumours about crime inspectors using a foreign escape route to obtain crime information that would be accepted by Dutch courts on the basis of the principle of faith among well-governed nations.[214] Notwithstanding this perception, the Dutch government adopted several far-reaching measures for intercepting telecommunication, collecting DNA material, investigating potential suspects and their acquaintances, and providing security organisations to interlinked databases, turning the Netherlands from a "privacy paradise" into a "control state."[215]

In the late 1990s, the public attention turned from organised crime to street crime, a-social behaviour and problems of integration.[216] People voted with their feet leaving insecure, often multi-cultural neighbourhoods in the big cities. Instead of relying on public security provisions, people increasingly protected their own houses. These private exits may help governments avoid full responsibility for unsatisfactory security situations. Nevertheless, dissatisfaction was clearly expressed in local and national elections. In response, local security authorities launched camera surveillance and created special preventative search territories as security strategies. The Balkenende-I government (2002) emphasised in its security memorandum that it would combat crime at the local level. It also promised to limit the number of (criminal) illegal migrants, and to foster the integration of migrant communities. Aliens control within the Dutch territory has been stepped up with the

[214] Beijer, A. et al. (2004), supra note 190, p. 244
[215] Vedder, A., Wees, L. van der, Koops, B.-J. & Hert, P. de (2007), *Van Privacyparadijs tot Controlestaat? Misdaad- en Terreurbestrijding in Nederland aan het Begin van de 21ste Eeuw*. Den Haag: Rathenau Instituut.
[216] Bunt, H. van de (2006), supra note 27, p. 689.

Vreemdelingenpolitie (Aliens police; part of the regional police forces) focusing more on removing illegal migrants.

The Balkenende-II government (2003-2006) initiated the further centralisation of the Dutch police, because it felt pressure both from the greater public and the parliament to combat crime. In 2003, the six inter-regional crime squads were separated from regional police forces and were instead combined together with the LRT and units specialised in synthetic drugs and human trafficking, creating the new *Dienst Nationale Recherche* (National Criminal Investigation Service) of the KLPD. This service had to focus on transnational organised crime and other serious crime. According to the government, this centralisation allows regional police forces to focus more on street crime.[217] A number of supra-regional crime squads (*bovenregionale teams*) were established by the regional police forces to deal with serious crime on an inter-regional scale. The *Dienst Internationale Netwerken* (International Networks Service) of the KLPD dealt with Dutch liaison officers and operations abroad, as well as mutual legal assistance at the national level. *Informatie en Coördinatie Centra voor Internationale Rechtshulp* (Information and Coordination Centres for International Legal Assistance; IRC) enhanced the capacity to deal with mutual legal assistance at the inter-regional level.

The less deeply and broadly institutionalised local security territories have been up-scaled to regional police territories in order to face the challenge of crime in the 1990s. In addition, a process of centralisation has taken place within the Dutch security system, although the size of the Netherlands might not be considered sufficiently effective for dealing with the threats of crime. Indeed, a large majority (68%) of the Dutch public consider the international level as the most appropriate for dealing with organised crime.[218] However, voice has been socially and geographically concentrated within the Netherlands and focused on the national government. The national government has therefore felt responsible for dealing with the threats of crime. It has attempted to centralise its grip on regional police forces through contracts on their achievements. A National Threat Assessment (*Nationaal Dreigingsbeeld*) should provide the basis for nation-wide priorities in prosecution policies: terrorism,

[217] Idem, p. 710.
[218] Holsteyn, J.J.M. (2007), supra note 60, p. 156.

drugs (heroin; cocaine; synthetic), human trafficking, weapons trade and money-laundering. This tendency towards centralisation at the national scale has been fostered by European integration. The image of a borderless Europe has strengthened fears about large-scale crime, providing an argument for transferring responsibilities from the local to the regional, and from the regional to the national level. In addition, the institutional framework of national contact points for the exchange of information on crime according to increasingly common formats and rules among the Schengen members exerts a centralising impact on information management within the Netherlands.[219] Thus, centralisation within the European security territory has weakened the logic of territoriality at the sub-national level. The need for a coordinated Dutch response to further European developments is also used as another argument in the continuous debate on the creation of a single, national police force in the Netherlands.[220]

7.4.3.5 Terrorism: centralisation and nationalism

The terrorist attacks in Europe and America have reinforced the third wave of external de-consolidation, weakening the perceived relevance of national territory. Indeed, a large majority of the Dutch population consider the international level as the most appropriate to deal with terrorism.[221] The proposition is that the deeply and broadly institutionalised territory of the Netherlands will continue to structure the behaviour of the Dutch security authorities. However, they will also resort to non-territorial, less impersonal means of control and delineation. It is therefore expected that if citizens become dissatisfied concerning the way security is provided in the Netherlands, they may use (partial) exits of a person-based nature, creating person-based security boundaries cutting through the Netherlands.

In exceptional circumstances, the Dutch government could reinstate border control within the Schengen area, as for instance happened during

[219] *Cf.* Boer, M. den (2002), 'Intelligence Exchange and the Control of Organised Crime: from Europeanisation via Centralisation to Dehydration?' in M. Anderson & J. Apap (eds.), *Police and Justice Co-operation and the New European Borders.* The Hague: Kluwer. pp. 151-163.
[220] NRC Handelsblad (20 September 2005), '"Europa vraagt om Centrale Politie": Van Thijn, Nordholt en Fijnaut over Vorming van Nationale Politie.'
[221] Holsteyn, J.J.M. van (2007), supra note 60, p. 156.

the European Championship Football matches in 2000. However, calls from parliament members to reintroduce passport control at Schiphol Airport for passengers from Schengen countries have been denied by the Minister of Justice.[222] Nevertheless, these calls from parliament indicate the continuing perceived relevance of the Dutch territory. In addition, the Dutch government has strengthened Dutch border control. The civil intelligence service is increasingly focusing its analyses on the intrusion of foreign powers and terrorists on Dutch territory. The Royal Military Constabulary intensified its mobile control just behind the borders, while enhancing its checks at airports and harbours (together with the Sea harbour police Rotterdam-Rijnmond). Moreover, quick reaction alert (QRA) fighters of the Royal Air Force have become available to protect Dutch air space. The coastal guard in the Caribbean and the North Sea has been intensified.[223] The National Audit Office evaluated how border control could be further tightened at small harbours and airports, which indicates the continuous perceived relevance of Dutch border control to exclude threats.[224] In response, the Dutch government strengthened border control by introducing "concentric circles" consisting of respectively a. the intelligence and security services, b. the liaison officers, embassies, carriers, consulates and pre-boarding teams abroad, c. the protection at the physical border itself, and d. domestic surveillance.[225]

The large-scale Islamic terrorist attacks in America and Europe have been another reason to argue for a united police force within the Dutch territory.[226] In response, concerns have been expressed that issues of public order and crime prevention in local neighbourhoods would be

[222] NRC Handelsblad (4 October 2005), 'Pleidooi van CDA en VVD: "Pascontrole op Schiphol uitbreiden."
[223] Kamerstukken II 2005/06 30300X no. 107 Begroting Ministerie van Defensie (*Actualisering van de Prinsjesdagbrief 2003: Nieuw Evenwicht, Nieuwe Ontwikkelingen: Naar een Toekomstbestendige Krijgsmacht)* (2 June 2006).
[224] Kamerstukken II 2005/06 30315 no. 1-2 *Gebruik van Grenscontroles bij Terrorismebestrijding* (28 September 2005).
[225] Kamerstukken II 2005/06 30315 no. 3 *Gebruik van Grenscontroles bij Terrorismebestrijding* (3 February 2006).
[226] See, *e.g.*, NRC Handelsblad (20 July 2004), 'Nederlands Politiebestel door Terrorisme onder Druk: Voorstel om Politie onder te brengen bij Justitie vormt Nieuwe Dimensie in Debat'; NRC Handelsblad (29 August 2005), 'Hoogleraar Fijnaut: "Politie kan Grote Aanslag niet aan."'

neglected by a centralised police force.[227] The premature resignation of the Balkenende-II government prevented the adoption of a law to establish a national police force.[228] Nevertheless, further centralisation has taken place in response to the terrorist attacks. The Ministry of Justice has become the lead ministry for preventing and investigating terrorism, whereas the Ministry of Interior is responsible for coordinating crisis management together with local authorities and regional police forces in case of terrorist attacks. It appears that territorial fragmentation has also hampered information flows on terrorism among security organisations.[229] A national anti-terrorism coordinator (*Nationale Coördinator Terrorismebestrijding*) has been trying since 2005 to overcome this problem through the *Contraterrorisme Infobox* (Contra-terrorism information box) involving the civil and military intelligence services, the KLPD, the Public Prosecution Office (Openbaar Ministerie), and *Immigratie en Naturalisatie Dienst* (Immigration and Naturalization Service).

In the aftermath of the terrorist attacks, the national security authorities also established in 2004 another close combat unit, the *Bijzondere Bijstands Eenheid - Snelle Interventie Eenheid*, consisting both of police and military.[230] A new *Dienst Speciale Interventies* (Special Interventions Service) within KLPD has been responsible since 2006 for coordinating assistance on arresting potentially violent criminals and terrorists by the BBE-SIE and other units. The involvement of military personnel has not been limited to the close combat units or border control (see above). In the 2000 Defence Memorandum, assistance to Dutch civil authorities has been described as one of the three main tasks of the armed forces. After the terrorist attacks in America and Europe, the armed forces should no longer be a safety net for civil authorities, but

[227] NRC Handelsblad (3 September 2005), 'Job Cohen Kritisch over Vorming van Nationale Politie: "Wijkpolitie wordt het Kind van de Rekening"'; NRC Handelsblad (11 December 2006), 'Raad van State: Politie schiet niets op met Landelijk Korps.'
[228] NRC Handelsblad (8 July 2006), 'Baas van Bromsnor: Nieuwe Politiewet blijft waarschijnlijk een Droom van Balkenende-III.'
[229] Kamerstukken II 28845 2002/03 no. 2 *Uitwisseling van Opsporings- en Terrorisme-Informatie* (11 April 2003).
[230] Kamerstukken II 2004/05 29754 no. 23 *Terrorismebestrijding* (3 June 2005).

instead adopt a "structural role as security partner"[231] by keeping more than 25% of its military personnel permanently available for supporting civil authorities.

The permanent involvement of the armed forces to manage all kinds of threats in the Netherlands, involved a change in the focus of the armed forces, as the military doctrine of the land forces says:

"Dit betekent dat waar vroeger de aandacht vooral was gericht op de beveiliging *van* het Nederlands grondgebied, er nu meer sprake is van de beveiliging *op* het Nederlands grondgebied." (This means that whereas the attention was directed to the security *of* the Dutch territory in the past, there is today more talk about security *on* the Dutch territory).[232]

As a consequence, the Dutch armed forces have to focus increasingly on the protection of the "Dutch society and its citizens"[233], as well as the protection of "critical infrastructure", such as military objects, transport networks, communication and information networks, governmental buildings, and gas plants.[234] Small-scale territoriality as security strategy is required to protect the nodes of the infrastructural networks.[235] The intensification of civil-military cooperation within the Netherlands has entailed a reorientation in investment and operations of the armed forces.[236] For example, better connections between the information and communication systems of the police and armed forces, and closer contacts between Regional Military Commanders and the security regions are required. The armed forces have had to change its organisation to provide permanent security on Dutch territory. It reflects nevertheless the continued relevance of the Dutch territory in Dutch security policies.

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[231] Netherlands Defence Staff (2005), supra note 51, p. 79; Kamerstukken II 2004/05 29800X no. 84 *Begroting Ministerie van Defensie (Defensie en Nationale Veiligheid)* (22 April 2005).
[232] Koninklijke Landmacht (1996), *Militaire Doctrine*. Den Haag: KL. p. 233
[233] Kamerstukken II 30300X no. 107 Begroting Ministerie van Defensie (*Actualisering van de Prinsjesdagbrief 2003: Nieuw Evenwicht, Nieuwe Ontwikkelingen: Naar een Toekomstbestendige Krijgsmacht)* (2 June 2006). p. 6.
[234] Kamerstukken II 2001/02 27925 no. 40 *Terroristische Aanslagen in de Verenigde Staten* (18 January 2002). p. 3.
[235] *Cf.* Welten, B.J.A.M. (2006), 'Niet alleen in Geval van Nood', in *Militaire Spectator*. Vol. 175, no. 11, pp. 490-499.
[236] Kamerstukken II 2005/06 30300X no. 106 *Begroting Ministerie van Defensie (Intensivering Civiel-Militaire Samenwerking)* (24 May 2006).

Notwithstanding the intensified border control, the image still remains that terrorism is not bound by European or Dutch borders. A less impersonal security strategy is therefore expected to deal with the threat of terrorism. The obligation to carry an identity card, soon with biometric data, supports person-based security strategies. With the help of advanced ICT applications, information-based, preventative and pro-active policing enhances the personalisation of security strategies. By doing so, Dutch security organisations are moving the boundaries of privacy.[237] The intention to commit a terrorist attack has become punishable and can be reason for preventive incarceration. Deviating behaviour reported anonymously can now be reason to start a criminal investigation. Data-mining in linked computerised databases provides the possibility to see whether someone is deviating from standardised norms. The call for loyalty towards the Dutch nation by the manifold emphasis on the common history, values, norms and language provides a basis to measure deviation. Boundaries are therefore drawn between us, who embody these norms, and the others who are different. Indeed, intelligence and security organisations closely follow the activities of extreme-right movements and Islamic radicals. Whereas the extreme-right movement is considered fairly weak in terms of violence, concerns exist about migrant communities living in "parallel societies" that provide cover for those inspired by the global jihad, to radicalise and commit terrorist attacks.[238] The potential development of parallel societies indicates a tendency towards exits of a person-based nature from the Dutch security system. An Action Plan against Polarisation and Radicalisation aims however at strengthening the internal cohesion of the Dutch system, by teaching the use of democratic voice to prevent violent exit.[239]

In sum, the third wave of external de-consolidation entails a personalisation of security strategies, because it has undermined the perceived relevance of territoriality as security strategy. Nevertheless, the deeply and broadly institutionalised national territory continues to structure the behaviour and ideas of Dutch security organisations, even

[237] Vedder, A. et al (2007), supra note 215.
[238] *Cf.* Wijk, R. de (2007), 'The Multiple Crises in Dutch Parallel Societies', in M. Emerson (ed.), *Readings in European Security*. Brussels: CEPS. pp. 51-64.
[239] Kamerstukken II 2006/07 29754 no. 103 *Terrorismebestrijding (Actieplan Polarisatie en Radicalisering 2007-2011)* (30 August 2007), p. 22.

though the creation of the European security territory and its ensuing logic of territoriality starts to conflict with the logic of territoriality at the national level. The tendencies of geographical inclusion both from the European and the national level weaken the geographical centrality and exclusion at the sub-national level.

7.5 The morphology of Europe's organisation of security

Until the 1980s, the multi-layered organisation of security in Europe showed a combination of state, imperial and local territorialities. The third wave of external de-consolidation entailed a drastic redefinition of threats challenging the security boundaries at the local, national, European level and of the Western civilisation. Nevertheless, several structural features of Europe's organisation of security have remained. The imperial inclination of the Western security system led by the US government is still present, albeit with a larger role for EU authorities and governments. The end of the Soviet Empire has only widened the geographical opportunities to expand the Western security system. National governments still rely on territoriality at the national scale as a security strategy. The domestic role of the armed forces has particularly changed due to the redefinition of threats. Even though because of the changing nature of threats national territories are no longer the functional size to effectively deal with these threats, nation-based political structuring still puts national governments in a key position to respond at the request of their electorates or fellow-governments. Demands for more international cooperation as well as tougher crime policies have even resulted in centralisation within the Dutch security system. The Dutch case also shows that a national government may also rely on person-based security strategies in addition to territoriality. Advanced ICT applications apparently beat territoriality in terms of efficiency and effective controlling. In addition, the person-based nation provides a means of loyalty maintenance in a Europe said to be borderless. New security cleavages may emerge because of interface regions using a (partial) exit option or citizens exiting in response to the personalisation of security strategies.

National governments also agreed to enhance a European security system to deal particularly with illegal migration, transnational organised

crime and terrorism. Territoriality remained to be used to protect the EU. European border control provides it with the image of a state-like Fortress Europe, although the digital surveillance techniques and networks of liaison officers also offer de-territorialised means to keep threats out of the EU.[240] The weak institutionalisation of the Schengen area/AFSJ has resulted in the weak tendencies of geographical fixity, impersonality, inclusion/exclusion and centrality. The variable geometry indicates the weak locking-in effects within the EU territory, although the costs of full exit seem too high for national governments. The first steps towards geographical inclusiveness and institutional centrality at the EU level have nevertheless challenged the geographical exclusiveness at the national and the sub-national level, resulting in a situation of conflicting territorialities. This is reminiscent of a federal system. However, the EU's is also expanding according to its geographically unlimited, outward-looking and value-based security policies. The creation of an EU security system with protective buffer zones is not contrary to values and interests of the US-led Western security system (in other words being an exit). This multi-level, value-based, outward-looking entity with no permanent boundaries and inequality of member status from a Schengen core to its European neighbourhood resembles an empire. The continuous prominence of national governments reflects a position not unlike the territorial princes in the Holy Roman-German Empire: they were focused on the security of their own areas, but also offered forces for the protection of the larger entity, and preferred to use voice rather than exit from the empire.

7.6 The territorial trap avoided

European integration in the field of security is not heralding the end of the territoriality era. The use of the Sack and Rokkan inspired analytical tools precluded the equation of state and territoriality in analysing the organisation of security in Europe. Instead of comparing the present situation with a fictive image of a fixed state, the previous chapter provided a more variegated empirical starting point to explore continuities and changes in the European and the Dutch organisation of security. Increasing mobility and the collapse of the Soviet empire has led

[240] Andreas, P. & Nadelmann, E. (2006), supra note 4, p. 239; 248.

to drastic changes in the definition of threats and the organisation of security. The inclusion of the various levels of security organisation and both police and military forces has offered a better empirical understanding of the continuous use of territoriality at national and European level, albeit with different means.

Yet it has remained difficult to indicate precisely the institutionalisation of territory and the impact of the subsequent logic of territoriality in such a vast field as the organisation of security in the European Union and the Netherlands. Nevertheless, the empirical evolutions discussed by and large do not contradict the propositions phrased in Chapter 5. In addition, the triad of exit, voice and loyalty and their systemic counterparts have helped to perceive political systems as not static or function-driven, but permanently evolving due to changing sources of dissatisfaction, and continuous patterns of nation- and Western-based loyalty, as well as nationally structured voice. The continued significance of the nation and national government should not be automatically equated with the continued significance of the territorial state. National governments have decided to re-territorialise the organisation of security, creating the European security territory while partly weakening national border control in the Schengen area. Thus mapping the subtleties of territoriality, the analytical tools offer a valuable way to avoid the territorial trap.